

A series of bills collectively known as the “California Homeowner Bill of Rights” (the “Bill”) was signed into law by California Governor Jerry Brown on July 11, 2012. The Bill tries to mirror the National Mortgage Settlement in an attempt to aid homeowners. In reality, the new law will probably only encourage increased foreclosure related litigation and unnecessarily delay foreclosures. In addition, loan servicers, lenders, trustees, beneficiaries, and their agents will soon face a number of new procedural hurdles when completing non-judicial foreclosures on residential properties. The Bill takes effect January 1, 2013 and has four major components:

- ***Dual track foreclosure ban*** – The Bill requires a mortgage servicer to render a decision on a loan modification application before advancing the foreclosure process by filing a notice of default or notice of sale, or by conducting a trustee’s sale. The foreclosure process is essentially paused upon the completion of a loan modification application for the duration of the lender’s review of that application and a possible appeal by the borrower. Civil Code section 2923.5.
- ***Single point of contact*** – The Bill requires a mortgage servicer to designate a “single point of contact” for borrowers who request a foreclosure prevention alternative. The single point of contact is an individual or team which must have knowledge of the borrower’s status and foreclosure prevention alternatives, access to decision makers, and the responsibility to coordinate the flow of documentation between borrower and mortgage servicer. Civil Code section 2923.7.
- ***Enforceability*** – The Bill includes authority for borrowers to seek redress of “material” violations of the legislation. The Bill creates a private right of action for borrowers, who may now (i) enjoin a pending trustee’s sales if the procedural requirements have not been met; (ii) recover damages if a trustee’s sale is completed in violation of the procedural requirements; and/or (iii) recover the greater of treble actual damages or \$50,000 for willful, intentional, or reckless violations of the procedural requirements. The Bill also has a discretionary attorney’s fees provision if the borrower is awarded damages or an injunction. Civil Code section 2924.19.
- ***Verification of documents*** – The Bill subjects the recording and filing of multiple unverified documents to a civil penalty of up to \$7,500 per loan in an action brought by a civil prosecutor. It would also allow enforcement under a violator’s licensing statute by the Department of Corporations, Department of Real Estate or Department of Financial Institutions. Civil Code section 2924.17.

Although homeowners have always been able to challenge non-judicial foreclosures, their remedies were generally limited to actual damages (if any) and the temporary avoidance of foreclosure. Even in those situations, courts are hesitant to prevent or undo a non-judicial foreclosure when the borrower would remain in default and would be unable to tender the full amount of the loan. With the new private right of action, however, homeowners now have a new remedy to prevent and/or delay non-judicial foreclosures. The Bill may allow homeowners to survive demurrers (or motions to dismiss) that would have otherwise been sustained for failure to state a cause of action. This, in addition to the possibility of treble damages or \$50,000, is likely

to increase the volume of foreclosure related litigation and both the cost and time required to resolve the litigation.

The provisions of the Bill are not retroactive. However, some of the provisions could be triggered if a foreclosure is pending as of January 1, 2013. For example, a pending foreclosure cannot go forward if a borrower submits a complete loan modification application after January 1, 2013. The Bill sunsets on January 1, 2018.