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# California's New Homeowner Bill of Rights and its Effect on California's Real Estate Market Recovery

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In today's economy, bankers, mortgage servicers, lenders and customers have incurred additional costs due to constant regulatory evolution – both from a legal liability standpoint and adhering to sweeping mandates.

Examples of this multitude of changes and increased costs are consequences of legislation such as the Homeowner Bill of Rights that took effect in California on January 1, 2013. The new law imposes stricter rules on mortgage servicers seeking to non-judicially foreclose on delinquent mortgage loans. In particular, the law redefines servicers' foreclosure processes such as the potential need to hire and train additional employees tasked with carrying out the "guaranteed single point of contact" requirement. The single point of contact provision requires that borrowers are assigned to a person or team to assist borrowers in navigating the servicers' procedures in loss mitigation options, to process and review their loan modification, and remain assigned to borrowers until all loss mitigation options are exhausted.

Another key aspect of the law is the prohibition of dual tracking of foreclosure and loan modification. Mortgage servicers are restricted from advancing the foreclosure process if borrowers are working on securing a loan modification. Thus, when a borrower completes an application for a loan modification, the foreclosure is essentially paused until a servicer provides a borrower with a determination whether the modification is approved. If a borrower is denied a modification and a borrower does not appeal within 30 days from the date of the written denial, then a servicer may proceed with the foreclosure.

### Penalties for Non-Compliance

In addition, and perhaps, the most significant departure from prior legislation is the potential statutory liability for non-compliance with the law. Pre-2013, the sole remedy for violation of the contact requirement, Civil Code section 2923.5, was postponement of impending foreclosure. The new law imposes perilous penalties if violated. The new law permits a borrower to sue mortgage servicers, mortgagees, beneficiaries or their authorized agents for damages even after the trustee's sale has taken place. The Court may award actual damages where a material violation is not corrected prior to recordation of the sale deed, which could result in greater of treble damages or $50,000 if the violation resulted from reckless or willful misconduct by a mortgage servicer, mortgagee, beneficiary or their authorized agent. Interestingly, most of these statutory provisions apply only to owner-occupied residential real property of not more than four units and entities that handle an annual foreclosure volume of over 175 residential properties.

### The New Law's Effect on the Real Estate Market Recovery

The debate remains as to whether the law and its new processes will help reduce the already falling foreclosure rate or will it just be another "cost of doing business" in California. To address these questions, proponents of the law contend that it is aimed at assisting homeowners by slowing down the foreclosure process to allow a borrower to cure the default, allowing time for a servicer to evaluate options in lieu of foreclosure and helping California communities recover from the foreclosure crisis. However, these noble intentions have led to unintended consequences of increased costs and "foreclosure flare-ups." Studies and foreclosure tracking data have shown that the longer length of foreclosures will cause further reduction in home value, encourage borrowers to default on their loan to reside in the property "rent-free," increase the risk of lending for mortgage companies and ultimately reduce the availability of credit for future homebuyers, according to a report by Beacon Economics on Foreclosure Reform in California: An Economic Analysis. Daren Blomquist from RealtyTrack, a company based in Irvine, Calif. that tracks current trends in the U.S. foreclosure

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market, reveals that other “dangerous foreclosure flare-ups are still popping up in states where foreclosures have been delayed by a lengthy court process or by new legislation making it more difficult to foreclose outside of the court system. Foreclosure stats have been steadily building in those states over the last several months and likely will end up as bank repossessions or short sales later this year.”

At the same time, it is difficult to measure the true success or failure of this new law due to the fact that California was on a path to recovery before the legislation was in effect. Recent reports from DataQuick and DQNews.com have shown that the number of California homes in foreclosure fell during the fourth quarter of 2012, and was down 22.1% from 49,026 during the prior three months, and down 37.9% from 61,517 in fourth quarter of 2011. This represents the lowest level in six years, which experts believe is due to the improving economy and rising home values. Fewer homeowners are underwater, which means they can sell and pay off their mortgage or refinance to avoid foreclosure. Based on this data, it appears the new law will delay California’s real estate market recovery. While the new law is effective until January 1, 2018, it remains to be seen if any later enacted statute will shorten the end date of the law.