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Why California's New Recording Fees Matter for Servicers

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California Senate Bill 2, the Building Homes and Jobs Act, attempts to address California's housing dilemma by bringing in an estimated \$250M annually via an additional \$75 fee per recorded real estate document. Through February, the Act has generated roughly \$90M.



The Act adds Government Code §27388.1, requiring a \$75 fee per document, commencing January 1, 2018, for recording "of every real estate instrument, paper, or notice required or permitted by law to be recorded . . . per each single transaction per parcel of real property." The fee is capped at \$225 for transactions recording multiple documents simultaneously. Section 27388.1(a)(1) defines "real estate instrument, paper, or notice" as "a document relating to real property," including a list such as a deed, grant deed, trustee's deed, deed of trust, reconveyance, quit claim deed, assignment of deed of trust, notice of default, etc. The statute does not limit the definition to a finite list; other real property related documents not specifically listed are subject to the fee unless an exception applies.

What are the exceptions?

Section 21388.1(a)(2) provides exceptions to the \$75 fee, including transactions involving transfer/sale of property subject to documentary transfer tax under California Revenue and Taxation Code §11911. Section 2 of the Bill describes the intention of the exception as follows: "In order to promote housing and homeownership opportunities, the recording fee imposed by this act shall not be applied to any recording made in connection with a sale of real property. Purchasing a home is likely the largest purchase made by Californians, and it is the intent of this act to not increase transaction costs associated with these transfers."

Section 21388.1(a)(2) also provides an exception for transfer of property to a grantee who will occupy the dwelling as a principal residence. Thus, documents recorded on an owner-occupied property are exempt, but if it involves non-owner occupied property, the fee will be imposed.

As a practical matter, County Recorders do not agree on which documents are subject to the fee or entitled to an exception, creating a challenge for loan servicers and lenders. To ease this challenge, title companies suggest that any exception must be described on the face of the document or a cover sheet when presented for recording.

Interpreting the \$225 fee cap

Regarding the \$225 fee cap, documents in a single transaction are those presented together and related to the same parties and property. The Legislature's imposition of the cap "*per each single transaction per parcel of real property*" suggests that the \$225 fee limit is not intended to be for the life of a loan, but is a cap for all documents submitted simultaneously in one transaction. Trailing documents recorded days or weeks after other documents would not be included in the calculation of the \$225 cap. Unfortunately, County Recorders also cannot agree on how the \$225 limit should be applied, creating additional challenges for lenders.

Practical Applications

Practically, lenders and servicers may want to consider including in payoff demand statements an additional \$150 in recording fees for a Substitution of Trustee and Full Reconveyance (\$75.00 for each document "title"), necessary for the release of the loan. It is advised that such multipurpose documents will be assessed the fee for a document.

The same applies to any foreclosure-related documents. In other words, the Act intended to help build low-income homes is doing so on the back of borrower's facing foreclosure.

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Michelle A. Mierzwa joined Wright, Finlay & Zak's Compliance Division in 2015, providing loan originators, lenders, servicers, trustees and others in the mortgage industry with state and federal compliance and regulatory counsel. Since 1998, Her accomplishments include creating the legal department for one of the largest non-judicial foreclosure trustees in the Western U.S., the management and resolution of litigated matters through jury and bench trials and appellate practice, the coordination of compliance audits, and managing the California branch of a national law firm. Mierzwa served two three-year terms on the Board of Directors of the United Trustees Association (UTA) and is a member of the Legislative Committees of the California Mortgage Bankers Association and the UTA. She is licensed to practice in California and Washington.

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Joan C. Spaeder-Younkin is a senior associate with Wright, Finlay & Zak. Since 1997 and has focused her legal career on consumer credit, business, and real estate litigation. As a seasoned litigator, she provides clients with efficient case management, guidance through the complexities of litigation, and creative solutions in a wide range of real estate disputes, while addressing the unique needs of each client. Spaeder-Younkin authored briefs in a published foreclosure decision affecting title after a foreclosure sale was deemed void, entitled Dimock v. Emerald Properties LLC, et al, (2000) 81 Cal. App. 4th 868. She has also briefed and argued many other various appeals involving judicial and non-judicial foreclosure issues. Spaeder-Younkin is licensed to practice in all courts in the State of California, including all of the U.S. District Courts within the State of California and the United States Court of Appeals for the Ninth Circuit.

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