

CHANGES TO CALIFORNIA HOBR

THE “BIG” GUYS, “LITTLE” GUYS, AND THOSE LOST IN BETWEEN

BY T. ROBERT FINLAY, ESQ.

During the height of the Financial Crisis, California passed its landmark legislation intended to help homeowners facing foreclosure – the Home Owner Bill of Rights (HOBR). In short, HOBR required loan servicers to follow certain procedures when putting defaulted borrowers on notice of foreclosure prevention alternatives and prevented servicers

from “dual tracking,” i.e., simultaneously proceeding with foreclosure while the homeowner is being reviewed for a loan modification. The law was limited to owner-occupied consumer loans in first position (In response to COVID’s impact on landlords, California’s Legislature amended HOBR in 2020, extending its application to certain tenant occupied properties. Those extensions have since expired).

HOBR intended to put loan servicers into two buckets for compliance purposes – the “Big Guys” who annually handle 175 or more annual qualifying foreclosures and certain “Little Guys” who do not meet the 175 threshold.

While servicers in both buckets are prohibited from dual tracking, the more detailed and onerous HOBR provisions only applied to the Big Guys, including, but, not limited to:

- » **Civil Code § 2923.7**, requiring a Single Point of Contact; and
- » **Civil Code § 2923.6**, mandating certain notices and procedures when the borrower submits a complete loan modification.

The Little Guys “exception” to the more detailed requirements was limited in Civil Code § 2924.15 to: (A) A depository institution chartered under state or federal line law, a person licensed pursuant to Division 9 (commencing



THE ANTICIPATED CHANGES TO HOBR DO NOT EXEMPT INVESTORS WHO MAKE AND SERVICE SEVEN OR LESS LOANS A YEAR.

with 3 Section 22000) or Division 20 (commencing with Section 50000) of the Financial Code, or a person licensed pursuant to Part 1 (commencing with Section 10000) of Division 4 of the Business 6 and Professions Code, that, during its immediately preceding annual reporting period, as established with its primary regulator, foreclosed on 175 or fewer residential real properties, containing no more than four dwelling units, that are located in California. But, what if you are a retired couple who occasionally invests in Trust Deeds, but are not a “depository institution” or someone “licensed” by the Financial or Business and Professions Codes?



The answer – small investors must comply with the more detailed and onerous HOBR provisions intended by the Legislature to only apply to the Big Guys doing over 175 annual foreclosures! Hard to believe, but an investor who buys one loan a year, must comply with the same HOBR provisions as the largest loan servicers in the country. Since HOBR’s enactment in 2013, the private lending industry has looked for a solution to this obvious unintended oversight by

the California Legislature. Unfortunately, for years, there was no appetite in Sacramento to re-open the heated discussions over HOBR. Fortunately, enough time has finally passed, which allowed the California Mortgage Association (“CMA”) to sponsor Senate Bill 1146, which, among other things, puts a small investor “that makes and services seven or fewer loans” a year in the same compliance bucket as loan servicers who conduct less than 175 annual foreclosures.

SB 1146 recently passed both houses and is waiting for Governor Newsom’s signature. If signed, the “Really Little Guys” will still have to comply with HOBR; but, starting on January 1, 2025, only its less detailed provisions.

Note – The anticipated changes to HOBR do not exempt investors who make and service seven or fewer loans a year. These investors must still comply with HOBR. The new law just reduces the HOBR provisions that need to be complied with.

If you have any questions about what provisions must be complied with or need help complying with HOBR, please feel free to reach out to Robert Finlay at rfinlay@wrightlegal.net. ■



T. ROBERT FINLAY is one of the three founding partners of Wright, Finlay & Zak. Since 1994, Mr. Finlay has focused his legal career on consumer finance and mortgage-related litigation, compliance and regulatory matters.