

SENATE BILL 1447 SEEKS TO EXPAND CALIFORNIA'S HOBR TO INCLUDE NON-OWNER OCCUPIED RENTAL PROPERTIES

by T. Robert Finlay, Esq.

In 2013, California's Legislature enacted groundbreaking support for borrowers on owner-occupied properties who could not afford their mortgage payments. The Homeowner Bill of Rights or HOBR, as it became known, included several borrower protections that have become common place throughout the mortgage industry. HOBR's key protections include: (1) a requirement that, prior to recording a Notice of Default, the loan servicer attempt to contact the borrower to discuss foreclosure prevention alternatives, such as a loan modification; and (2) banned the practice of dual tracking after a complete loan modification application is received, i.e., the loan servicer must put the foreclosure on hold while reviewing that application. Legislators intentionally limited HOBR's application to owner-occupied properties, excluding second homes, commercial units and rental properties. Despite abuses by borrowers and their attorneys, HOBR has primarily accomplished its goal of connecting borrowers and their loan servicers to discuss options to avoid foreclosure.

[Senate Bill 1447](#) hopes to extend HOBR's protections to owners of one to four unit residential properties, where the tenants have been unable to pay rent as a result of COVID-19. If passed, loan servicers will have to apply similar procedures to applicable rental properties as they currently do on single family owner-occupied properties. *If* that were all that was required, SB 1447 would probably not disrupt the loan servicing process. However, there are several holes in proposed language that must be closed. For instance:

- When is the Bill effective and will it apply to Notices of Default recorded prior to the statute's enactment?
- While the Bill requires that the owner have a bona fide lease and that the tenant's ability to pay rent is impacted by COVID-19, there is presently no requirement that the lease be in writing, that the owner provide the servicer a copy of the lease or any evidence that the tenant is not paying rent as a result of COVID. The California Mortgage Association ("CMA") has proposed amendments to address each of these issues.
- The Bill currently only applies to "individual" owners who own no more than three (3) residential properties, with no more than four (4) units each. This language needs to be clarified to only apply to individual "borrowers", not their successors. In addition, the CMA proposed language that would require borrowers to declare, under penalty of perjury, that they fall under this limit (otherwise, how would the servicer know), that the tenant has a bona fide lease and that the tenant is not paying rent due to COVID-19.
- The Bill is intended to go through 2022, which seems excessive. As a result, the CMA has asked that it be reduced to run through 2021.

While the CMA will undoubtedly not get everything it is asking for, we are optimistic that, as a result of the proposed amendments, the final language will be more palatable, less open to litigation and easier to implement. CMA's advocates in Sacramento think that this bill is likely to pass in some form. While the CMA will undoubtedly not get everything it is asking for, we are optimistic that, as a result of the proposed amendments, the final language will be more palatable, less open to litigation and easier to implement.

Thanks, everyone. If you have any questions about SB 1447, HOBR or any proposed laws in California or the Western United States, please feel free to contact Robert Finlay at rfinlay@wrightlegal.net.



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