

October 7, 2013

California's "Homeowner Bill of Rights"—Be Aware of Your Obligations

The California Homeowner Bill of Rights became law on January 1, 2013. It was created "to ensure fair lending and borrowing practices for California homeowners," and is the byproduct of a "Mortgage Fraud Strike Force" created in May 2011 to investigate and prosecute misconduct at all stages of the mortgage process.

All those in the California commercial real estate industry must be conversant with the law's key provisions. They include:

- **Restriction on dual-track foreclosure:** Mortgage servicers are restricted from advancing the foreclosure process if the homeowner is working on securing a loan modification. When a homeowner completes an application for a loan modification, the foreclosure process is essentially paused until the complete application has been fully reviewed.
- **Guaranteed single point of contact:** Homeowners are guaranteed a single point of contact as they navigate the system and try to keep their homes: a person or team at the bank who knows the facts of their case, has their paperwork and can get them a decision about their application for a loan modification.
- **Verification of documents:** Lenders that record and file multiple unverified documents will be subject to a civil penalty of up to \$7,500 per loan in an action brought by a civil prosecutor. Lenders who are in violation are also subject to enforcement by licensing agencies, including the Department of Business Oversight, the Bureau of Real Estate.
- **Enforceability:** Borrowers will have authority to seek redress of "material" violations of the new foreclosure process protections. Injunctive relief will be available prior to a foreclosure sale and recovery of damages will be available following a sale. (**AB 278, SB 900**)
- **Tenant rights:** Purchasers of foreclosed homes are required to give tenants at least 90 days before starting eviction proceedings. If the tenant has a fixed-term lease entered into before transfer of title at the foreclosure sale, the owner must honor the lease unless the owner can prove that exceptions intended to prevent fraudulent leases apply. (**AB 2610**)
- **Tools to prosecute mortgage fraud:** The statute of limitations to prosecute mortgage-related crimes is extended from one to three years, allowing the Attorney General's office to investigate and prosecute complex mortgage fraud crimes. In addition, the Attorney General's office can use a statewide grand jury to investigate and indict the perpetrators of financial crimes involving victims in multiple counties. (**AB 1950, SB 1474**)
- **Tools to curb blight:** Local governments and receivers have additional tools to fight blight caused by multiple vacant homes in their neighborhoods, from more time to allow homeowners to remedy code violations to a means to compel the owners of foreclosed property to pay for upkeep. (**AB 2314**)

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Brownstein's California real estate litigation group regularly advises California lenders, developers and financial services companies on their state and federal obligations with respect to proper lending practices, and represents them in related government and consumer actions. A thorough knowledge of the "dos and don'ts," as well as an audit of existing practices, is essential to make sure you are not running afoul of California regulators.

This document is intended to provide you with general information regarding California's "Homeowner Bill of Rights." The contents of this document are not intended to provide specific legal advice. If you have any questions about the contents of this document or if you need legal advice as to an issue, please contact the attorneys listed or your regular Brownstein Hyatt Farber Schreck, LLP attorney. This communication may be considered advertising in some jurisdictions.

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