

# AN EXECUTIVE SUMMARY OF CALIFORNIA HOMEOWNER BILL OF RIGHTS

October 12, 2012

*Disclaimer: Lender's Foreclosure Service has compiled this Executive Summary to brief our clients on the recent legislative changes to statutes governing the non-judicial foreclosure procedures. While the content contained below is derived from sources deemed trustworthy, it is intended for informational purpose only and shall not be construed as legal advice. You are advised to seek legal counsel to interpret the law.*

**Lender's Foreclosure Services**

[www.lendersforeclosureservices.com](http://www.lendersforeclosureservices.com)

Tel: 626.579.535 Fax: 626.579.2524

## CALIFORNIA HOMEOWNER BILL OF RIGHTS

### Background

On July 11, 2012, Governor Brown sign into law the **California Homeowner Bill of Rights (CHBR)**, which will take effect on January 1, 2013. The CHBR comes in the wake of the national mortgage settlement with five of the nation's largest mortgage lenders and on the eve of the scheduled sunset date of many foreclosure prevention statutes enacted since 2009.

The CHBR is a package of eleven state assembly and senate bills that intend to encourage loan modification, curtail abusive foreclosure practices, help tenants in foreclosed properties, prevent blight and crime associated with foreclosed properties. Meanwhile, the CHBR grants the Attorney General greater power in prosecuting violations.

### Type of Loan CHBR Covers

- FIRST deed of trust only
- 1-to-4 unit residential properties occupied by owner at the time default.

### **Lender's Foreclosure Services**

[www.lendersforeclosureservices.com](http://www.lendersforeclosureservices.com)

Tel: 626.579.535 Fax: 626.579.2524

## CHBR Main Points

- ***Ban on dual track foreclosure*** – CHBR requires a mortgage servicer to render a decision on a loan modification application before advancing the foreclosure process by filing a notice of default or notice of sale, or by conducting a trustee’s sale. The foreclosure process is essentially paused upon the completion of a loan modification application for the duration of the lender’s review of that application.
- ***Single point of contact*** – CHBR requires a mortgage servicer to designate a “single point of contact” for borrowers who are potentially eligible for a federal or proprietary loan modification applications. The single point of contact is an individual or team, which must have knowledge of the borrower’s status and foreclosure prevention alternatives, access to decision makers, and the responsibility to coordinate the flow of documentation between borrower and the mortgage servicer.
- ***Enforceability*** – CHBR offers borrowers the right to seek redress of “material” violations of the legislation through the court system in the form of injunctive relief prior to a foreclosure sale, or recovery of damages following a sale.
- ***Verification of documents*** – CHBR subjects a mortgage lender/servicer to a civil penalty of up to \$7,500 per loan for recording and filing of multiple unverified documents (i.e. filing foreclosure notices without establishing a verifiable status as the beneficiary under the note and deed of trust). It also allows enforcement under a violator’s licensing statute by the Department of Corporations, Department of Real Estate or Department of Financial Institutions.
- ***Combat blight*** – CHBR authorizes municipal government to impose a fine of \$1,000 to \$5,000 on a mortgage lender/servicer for failing to maintain a foreclosed property within 60 days after taking title.
- ***Tenant protection*** – CHBR requires that 90-day notice instead of 60-day notice be served on tenants living in a foreclosed property. Tenant will be allowed to live until the end of the term of a bona fide lease.
- ***Expansion of AG prosecution right*** – CHBR expands the Attorney General’s right to prosecute violations including the right to convene a grand jury.

## **Lender’s Foreclosure Services**

[www.lendersforeclosureservices.com](http://www.lendersforeclosureservices.com)

Tel: 626.579.535 Fax: 626.579.2524

## **CHBR Implementation Guidelines**

### ● *Ban on Dual Track Foreclosure*

- 1) Lender/servicer is banned from recording NOD /NOS or going to sale when
  - ◆ Borrower has filed a complete application for loan modification or other FPAs while the application is pending.
  - ◆ Borrower is appealing the denial for loan modification or other FPAs
  - ◆ Borrower has entered into a loan modification agreement and is in compliance with the terms of LM.
  - ◆ Borrower's request for short sale or deed in lieu of foreclosure is approved
- 2) Lender/servicer shall rescind NOD/NOS upon the borrower's executing a permanent loan modification agreement.
- 3) Lender/servicer may not charge late fees while the application for loan modification is pending.

### ● *Single Point of Contact*

If borrower is 1) 60 days delinquent; 2) in foreclosure (NOD recorded); 3) seeking a loan modification or loss mitigation options, a servicer must establish a Single Point of Contact (SPOC).

Servicer must provide the identity and contact information of the SPOC within 10 business days and update within 5 business days of any changes. The SPOC must have access to current information and personnel sufficient to inform the borrower of the current status of the loan modification or other FPA in a timely, accurate and adequate manner.

### ● *Loan Modification*

Upon receiving borrower application for FPA, lender must

- 1) Acknowledge receipt within 3 business days;
- 2) Advise borrower of the process, deadlines, and expiration dates for submitted documents.
- 3) Notify borrower of any deficiencies in the submitted documents within 5 business days.

If an application for loan modification or other FPAs is denied, lender shall provide a written notice stating reasons and facts considered to reach the decision, the time allowed for an appeal, as well as other available options.

Borrower shall have 30 days to appeal the denial of a loan modification application.

## **Lender's Foreclosure Services**

[www.lendersforeclosureservices.com](http://www.lendersforeclosureservices.com)

Tel: 626.579.535 Fax: 626.579.2524

● *Prior to Filing Notice of Default (NOD)*

<b>Under Current Law</b>	<b>Under New Law</b>
<p>30 days prior to filing NOD, lender/servicer shall contact or exercise due diligence to contact borrower to assess financial condition and seek foreclosure prevention alternatives (“FPA”)</p>	<p>Lender/Servicer shall not record NOD if borrower submits a complete application for Foreclosure Prevention Alternatives (FPAs) within 120 days of delinquency until 1) Lender determines that borrower is not eligible for FPAs; or 2) 14 days have passed since Borrower declines the FPA offer.</p> <p>Lender/Servicer shall not record NOD until 1) 30 days have passed after borrower is notified in writing of denial of FPA; 2) If borrower appeals the denial, then the later of 15 days after the appeal is denied or 14 days after Borrower declines FPA offers after an appeal.</p> <p>14 days prior to recording NOD, lender shall send a separate written notice to borrower including the following:</p> <ol style="list-style-type: none"> <li>1) Statement of right to foreclose;</li> <li>2) Notification that borrower may receive payment history back to 60 days delinquency, copies of note, deed of trust, assignments, and name of investor;</li> <li>3) Account summary;</li> <li>4) Statement of possible eligibility for protection under Service Members Civil Relief Act; and</li> <li>5) Statement outlining the loss mitigation efforts that had been undertaken. If none, a statement as to why.</li> </ol>

● *NOD Requirements*

<b>Under Current Law</b>	<b>Under New Law</b>
<p>Attach a declaration to NOD stating</p> <ol style="list-style-type: none"> <li>1) Borrower contact has been made.</li> <li>2) Borrower contact is not successful despite of lender’s due diligence</li> <li>3) An exemption applies.</li> </ol>	<p>Include the following in the statement:</p> <ol style="list-style-type: none"> <li>1) Borrower is not entitled to relief under service members Civil Relief Act;</li> <li>2) Lender has possession of note, TD, assignments, endorsements, etc to establish right to foreclose.</li> <li>3) Attach copies of note, TD, Assignments, endorsements. Or a separate statement in the absence of such documents.</li> </ol>

**Lender’s Foreclosure Services**

[www.lendersforeclosureservices.com](http://www.lendersforeclosureservices.com)

Tel: 626.579.535 Fax: 626.579.2524

*Upon Recording of NOD*

<b>Under Current Law</b>	<b>Under New Law</b>
No comparable provisions	Within 5 days of recording NOD, send written communication notifying borrower <ol style="list-style-type: none"> <li>1) He/she may still be evaluated for FPA;</li> <li>2) Whether written application is required;</li> <li>3) How to obtain FPA application; and</li> <li>4) The deadline for submitting the application.</li> </ol>

● *Notice of Trustee’s Sale (NOS)*

<b>Under Current Law</b>	<b>Under New Law</b>
No comparable provisions.	No NOS shall be recorded if <ol style="list-style-type: none"> <li>1) Borrower submits an application for FPAs less than 15 days before NOS may be recorded and the application is pending; and</li> <li>2) Borrower is in compliance with the terms of a loan modification agreement, forbearance, repayment plan, or if a short sale or deed-in-lieu has been approved.</li> </ol> If NOD is recorded prior to 01/01/2013, the NOS shall include a declaration that written communication has been sent to borrower 60 days before the NOS was recorded stating <ol style="list-style-type: none"> <li>1) he or she may still be evaluated for FPA;</li> <li>2) where and how to obtain an application for FPAs;</li> <li>3) the deadline to submit the application.</li> </ol>

● *Postponement of Trustee’s Sale*

<b>Under Current Law</b>	<b>Under New Law</b>
No comparable provisions.	Any postponements of 10 days or more require written notice to the borrower within 5 calendar days of the postponement.

● *Maintenance of Foreclosed Properties*

Government agencies may impose fines of up to \$5000 for failure to maintain residential properties acquired at foreclosure sale 60 days after taking title.

● *Tenant Protection*

Tenant in a foreclosed property is entitled to 90-day instead of 60-day notice to vacate following a foreclosure sale. In the event of a bona fide lease, the purchaser of the foreclosed property needs to honor the remaining lease term.

**Lender’s Foreclosure Services**

[www.lendersforeclosureservices.com](http://www.lendersforeclosureservices.com)

Tel: 626.579.535 Fax: 626.579.2524