



## NEW CALIFORNIA LAW PROTECTIONS AGAINST FORECLOSURE

AB 3088 was signed into law by California Governor Newsom on August 31, 2020. The law is intended to forestall public harm by temporarily preventing unpaid rental debt from serving as a cause of action for eviction or foreclosure during the COVID pandemic emergency. This Summary is limited to discussing the impact of the Act on mortgages, including foreclosure rights.

## EXPANSION OF THE CALIFORNIA HOMEOWNER BILL OF RIGHTS

### WHAT TYPES OF LENDERS ARE COVERED?

The new law applies to the following Lenders or Servicers:

- » DRE Licensees (real estate brokers),
- » CFL Lenders,
- » California RMLA Lenders, and
- » State and federal banks.

### WHAT TYPES OF BORROWERS ARE COVERED?

The new law applies to both a Borrower who is a consumer and a Borrower who is not a consumer.

### WHAT TYPES OF LOANS ARE COVERED?

Special protections apply to loans secured by either of the following types of properties (both consumer purpose and business purpose loans):

**Consumer Owner-Occupied 1-to-4 Family Dwellings** // A consumer- purpose loan that is secured by a first lien on a 1-to-4 family property that is occupied by the Borrower as the Borrower's principal dwelling.

**1-to-4 Family Rental Property** // A loan secured by a first lien 1-to-4 family dwelling occupied by a tenant as the tenant's principal residence that meets the following conditions:

- » Property Owner. The property owner:
  - Is/are one or more individuals
  - Who collectively own no more than 3 residential real properties, none of which contains more than 4 dwelling units.
- » Tenant. The Tenant:
  - Lives in the property as the Tenant's principal residence under an arms' length "market" lease.
  - Is unable to pay rent due to a reduction in income resulting from the novel coronavirus.

### WHAT IS THE EMERGENCY PERIOD DURING WHICH THE NEW PROTECTIONS APPLY?

The Protections end on January 1, 2023.





## HOW DID THE NEW LAW EXPAND THE HBOR?

The following Protections will apply during the Emergency Period as long as the property remains occupied by a Tenant described above under an arms' length lease.

1. **Notice of New Sale Date** // If a trustee sale a sale is postponed for a period of at least 10 business days, the Lender must give the Borrower written notice about the new sale date and time, within 5 business days following the postponement.
2. **Limits on Notice of Default for Servicers Who Foreclosed on < 175 1-to-4 Family Dwelling During its Preceding Annual Reporting Period** //
  - A. *A Lender of Servicer may not record a Notice of Default until both of the following have occurred:*
    - » Requirement 1: Foreclosure Avoidance. 30 days after either:
      - Discuss Foreclosure Avoidance With the Borrower. The Servicer contacts the Borrower in person or by telephone to discuss foreclosure avoidance options. The Servicer must tell the Borrower that the Borrower has a right to ask for another meeting, which the Servicer must schedule during the next 14 days. The Seller must give the Borrower the toll-free telephone for a HUD-certified housing counseling agency.
      - Servicer Tries But Fails to Contact the Borrower. The Servicer:
        - Mails a first-class letter to the Borrower that includes the toll-free number of a HUD-certified housing counseling agency.
        - The Servicer then calls the Borrower at the Borrower's primary number in the Servicer's files at least 3 times at different hours on different days.
        - If the Borrower does not respond within 2 weeks, the Servicer then sends a certified letter, return receipt requested.
        - The Servicer provides a toll-free number or other means for the Borrower to contact a live representative during business hours.
        - The Servicer posts a prominent link on its homepage containing (a) foreclosure avoidance options with instructions on how to explore the options, (b) a list of financial documents to give to the Servicer when discussing foreclosure options, (c) a toll free telephone number to discuss foreclosure options with the Servicer, (and d) a toll-free number to find a HUD-certified housing counseling agency.
    - » Requirement 2: Borrower Submits Loan Modification Application. If the Borrower has submitted a complete loan modification application, at least 5 business days before a scheduled foreclosure sale, the Servicer and Lender may not record a notice of default, notice of sale, or conduct a trustee's sale while the complete first lien loan modification application is pending, and until the borrower has been provided with a written determination by the Servicer about the Borrower's eligibility for the modification.
  - B. *Compliance Notice in Notice of Default.* The Notice of Default must contain a declaration that (a) the Servicer contacted the Borrower, (b) made attempts to contact the Borrower as required above, or (c) the Borrower is not covered by the protections (natural person potentially eligible for foreclosure relief under a program offered by the Servicer).



C. *Servicers.* The Limits of Notice of default apply only to Servicers (including CFL and DRE licensees) that foreclosed on < 175 1-to-4 family dwellings in California during the preceding annual reporting period.

**3. *Limits on Notice of Default for Servicers Who Foreclosed on > 175 1-to-4 Family Dwelling During its Preceding Annual Reporting Period.***

A. *A Lender of Servicer may not record a Notice of Default until each of the following have occurred:*

- » Requirement 1: Statement to Borrower. The Servicer sends the Borrower a Statement that:
  - If the borrower is a servicemember or a dependent of a servicemember, he or she may be entitled to certain protections under the federal Servicemembers Civil Relief regarding the interest rate and the risk of foreclosure, and counseling for covered servicemembers that is available at agencies such as Military OneSource and Armed Forces Legal Assistance.
  - The Borrower may ask for a copy of (a) the borrower's promissory note, (b) the borrower's Deed of trust, (c) any assignment of Deed of trust, and (d) the borrower's payment history.
- » Requirement 2: Foreclosure Avoidance. 30 days after either:
  - Discuss Foreclosure Avoidance With the Borrower. The Servicer contacts the Borrower in person or by telephone to discuss foreclosure avoidance options. The Servicer must tell the Borrower that the Borrower has a right to ask for another meeting, which the Servicer must schedule during the next 14 days. The Seller must give the Borrower the toll-free telephone for a HUD-certified housing counseling agency.
  - Servicer Tries But Fails to Contact the Borrower. The Servicer:
    - Mails a first-class letter to the Borrower that includes the toll-free number of a HUD-certified housing counseling agency.
    - The Servicer then calls the Borrower at the Borrower's primary number in the Servicer's files at least 3 times at different hours on different days.
    - If the Borrower does not respond within 2 weeks, the Servicer then sends a certified letter, return receipt requested.
    - The Servicer provides a toll-free number or other means for the Borrower to contact a live representative during business hours.
    - The Servicer posts a prominent link on its homepage containing (a) foreclosure avoidance options with instructions on how to explore the options, (b) a list of financial documents to give to the Servicer when discussing foreclosure options, (c) a toll free telephone number to discuss foreclosure options with the Servicer, (and d) a toll-free number to find a HUD-certified housing counseling agency.
- » Requirement 3: Borrower Submits Loan Modification Application (Applies to All Servicers). If the Borrower has submitted a complete loan modification application, at least 5 business days before a scheduled foreclosure sale, the Servicer and Lender may not record a notice of default, notice of sale, or conduct a trustee's sale while the complete first lien loan modification application is pending, and until the borrower has been provided with a written determination by the Servicer about the Borrower's eligibility for the modification.



- B. *Compliance Notice in Notice of Default.* The Notice of Default must contain a declaration that (a) the Servicer contacted the Borrower, (b) made attempts to contact the Borrower as required above, or (c) the Borrower is not covered by the protections (natural person potentially eligible for foreclosure relief under a program offered by the Servicer).
- C. *Servicers.* The Limits of Notice of default apply only to Servicers (including CFL and DRE licensees) that foreclosed on > 175 1-to-4 family dwellings in California during the preceding annual reporting period.
- 4. Denial Rights Under a Loan Modification Request.**
- A. *Stop Foreclosure Action.* If a Borrower submits a first- lien Loan Modification application to a Servicer at least 5 days before the foreclosure sale, the Servicer and Lender may not (a) record a notice of default, (b) record a notice of sale, or (c) conduct a trustee's sale, until:
- » The Servicer determine that the Borrower is not eligible for the Modification and the appeal period has expired,
  - » The Borrower fails to accept a Modification within 14 days after the Servicer's offer,
  - » The Borrower accepts the Modification defaults under that Modification.
- B. *Right to Appeal Denial.* A Borrower has 30 days to appear a denial of a Loan Modification.
- 5. Foreclosure Restrictions After Loan Modification Has Been Denied.** A Servicer or Lender may not record a notice of default, record a notice of sale, or conduct a trustee's sale for a Borrower whose Loan Modification application has been denied until the later of:
- A. 31 days after the Borrower is notified of the denial, and
  - B. If the Borrower appeals, the later of (i) 15 days after denying the appeal, (ii) 14 days after offering a Modification that is not accepted by the Borrower, or (iii) the Borrower's default under a Modification that is offered and accepted.
- 6. Notice of Reasons For the Denial.** The Servicer must send the Borrower written reasons for denying a Loan Modification, including:
- A. *When the Borrower may ask* for an appeal and how to do so.
  - B. *Specific reason* of any investor disallowance.
  - C. *The monthly gross income and property values* used to compute net present value (if the Modification was denied on net present value).
  - D. *The fact that the Borrower previously defaulted* under a prior Modification, if applicable.
  - E. *A description* of foreclosure prevention alternatives.
- 7. Servicer Does Not Have to Entertain Multiple Modification Requests.** If a Servicer has denied a Modification request and given the Borrower the rights described above, the Servicer does not have to evaluate an addition Modification request (unless there has been a material change in circumstances).



- 8. Single Point of Contact at a Servicer That Foreclosed on > 175 1-to-4 Properties During Prior Annual Reporting Period.**
- A. A Servicer must give a Borrower who asks for foreclosure alternatives a single point of contact with whom to communicate.
  - B. The single point of contact must:
    - » Describe the process for foreclosure prevention alternatives,
    - » Gather all documents for foreclosure prevention alternatives,
    - » Update the Borrower on the foreclosure prevention alternatives,
    - » Give the Borrower all foreclosure prevention alternatives offered by the Servicer, and
    - » Have access to persons with the authority to stop the foreclosure.
- 9. Foreclosure Prevention Options Presented by a Servicer That Foreclosed on > 175 1-to-4 Properties During Prior Annual Reporting Period.** Within 5 days after recording a notice of default, a Servicer that offer a foreclosure prevention alternative must send a written notice to the Borrower stating:
- A. The Borrower may be evaluated for one or more foreclosure prevention alternatives,
  - B. Whether the Borrower has to apply to be considered for a foreclosure prevention alternative, and
  - C. How the Borrower can get a copy of the application for the foreclosure prevention alternative.
- 10. Acknowledge of Receipt of Loan Modification Application by a Servicer That Foreclosed on > 175 1-to-4 Properties During Prior Annual Reporting Period.** Within 5 business days after receiving a Borrower's application for a first lien Modification, the Servicer acknowledge receipt and include:
- A. A description of how the Modification process works,
  - B. Any deadlines for documents,
  - C. Any expiration dates of documents, and
  - D. Any deficiency in the Modification application.
- 11. Approving a Foreclosure Prevention Alternative Before Recording a Notice of Default (Applies to all Servicers).**
- A. If a foreclosure prevention alternative is approved before recording a notice of default, then a notice of default may not be filed if:
    - » The Borrower complies with the Modification, Forbearance or repayment plan, or
    - » A foreclosure prevention alternative has been approved in writing by all parties and proof of funds or financing has been provided to the servicer.
- 12. Approving a Foreclosure Prevention Alternative After Recording a Notice of Default – (Applies to All Servicers).**
- A. If a foreclosure prevention alternative is approved after recording a notice of default, then a notice of sale may not be filed, and a trustee's sale may not be conducted if:
    - » The Borrower complies with the Modification, Forbearance or repayment plan, or



- » A foreclosure prevention alternative has been approved in writing by all parties and proof of funds or financing has been provided to the servicer.

**13. Copies of Foreclosure Prevention Alternative Documents - Servicer That Foreclosed on > 175 1-to-4 Properties During Prior Annual Reporting Period..**

- A. A Servicer must give a Borrower copies of fully executed foreclosure prevention alternative documents.

**14. Cancelling Foreclosures Actions - Servicer That Foreclosed on > 175 1-to-4 Properties During Prior Annual Reporting Period.**

- A. A Lender must record a rescission of a notice of default or cancel a pending trustee's sale, if applicable, after the borrower executes a permanent foreclosure prevention alternative.
- B. In the case of a short sale, the cancellation of the pending trustee's sale must occur when the short sale has been approved by all parties and proof of funds or financing has been provided to the Lender.

**15. No Fees For Foreclosure Prevention Alternatives - Servicer That Foreclosed on > 175 1-to-4 Properties During Prior Annual Reporting Period.**

- A. A Servicer may not:
  - » Charge any application, processing, or other fee for a first lien loan modification or other foreclosure prevention alternative, or
  - » Collect any late fees for periods when a (i) complete first lien loan modification application is under consideration, (ii) a denial is being appealed, (iii) the borrower is making timely modification payments, or (iv) a foreclosure prevention alternative is being evaluated or exercised.

**16. Borrower Submits Loan Modification Application – Servicer That Foreclosed on < 175 1-to-4 Properties During Prior Annual Reporting Period.** If the Borrower has submitted a complete loan modification application, at least 5 business days before a scheduled foreclosure sale, the Servicer and Lender may not record a notice of default, notice of sale, or conduct a trustee's sale while the complete first lien loan modification application is pending, and until the borrower has been provided with a written determination by the Servicer about the Borrower's eligibility for the modification.

**17. Notify Regulator if Servicer Exceeds 175 Foreclosures on 1-to-4 Family Dwelling.** Within 3 months after the close of any calendar year or annual reporting period of the Servicer's its primary regulator during which the Servicer exceeds the threshold of 175 foreclosures on 1-to-4 family dwellings, the Servicer shall notify its primary regulator.

## SMALL LANDLORD AND HOMEOWNER RELIEF ACT

### WHAT TYPE OF LOANS ARE COVERED BY THE NEW LAW?

The new law covers both consumer purpose loans, and business purpose loans described below that are outstanding as of August 31, 2020.

### WHAT TYPE OF LENDER ARE COVERED BY THE NEW LAW?

- » The new law applies to a Lender or Servicer that is a:
  - » DRE Licensees (real estate brokers),
  - » CFL Lenders,



- » California RMLA Lender, and
- » State and federal banks.

## WHAT TYPE OF BORROWERS ARE PROTECTED BY THE NEW LAW?

The new law applies to a Borrower:

1. **Natural Person.** Who is a natural person (unless the person has abandoned the property securing the loan), and
2. **Business Entity With a Loan Secured by a 1-to-4 Family Dwelling Occupied by a Tenant.** A business entity (other than an entity described below) that:
  - A. *Is a borrower* for a loan secured by a 1-to-4 family dwelling (including an individual condo or coop unit) occupied by one or more tenants, and
  - B. *Is NOT one of the following types* of entities (unless the property has certain types of affordable housing units):
    - » A corporation,
    - » An LLC with at least one member that is a corporation,

## WHAT IS THE EMERGENCY PERIOD DURING WHICH THE NEW PROTECTIONS APPLY?

The Protections described below end on April 1, 2021.

## WHAT HAPPENS IF A SERVICER DENIES A FORBEARANCE REQUEST?

If:

- A. *A Servicer that denies a forbearance request* from a covered Borrower,
- B. *The Borrower's payments were current* as of February 1, 2020, and
- C. *The Borrower is experiencing a financial hardship* that prevents the borrower from making timely payments due to the COVID-19 emergency.

Then the Servicer must give the Borrower a written statement that

- A. *Contains the reasons why* the request was denied, and
- B. *Identifies any curable defects* in the request.

## WHAT HAPPENS IF THE BORROWER'S REQUEST FOR A FORBEARANCE HAS CURABLE DEFECTS?

- A. *The Servicer must give the Borrower 21 days* to cure the defects,
- B. *Accept any revised request* from the Borrower during the 21-day period, and
- C. *Respond to the Borrower's request* within 5 business days.

## IS THERE A SAFE HARBOR FOR COMPLIANCE WITH THE NEW LAW?

Yes.



- A. *Federally Backed Mortgages.* A Servicer or Lender that complies with the forbearance provisions of the federal Coronavirus Aid, Relief, and Economic Security Act (the CARES Act) with respect to a federally-backed mortgage will be considered to have complied with this new law.
- B. *Non-Federally Backed Mortgages.* A Servicer or Lender that gives a forbearance that is consistent with the requirements of the CARES Act will be considered to have complied with this new law.

### **DOES A SERVICER OR LENDER HAVE TO COMPLY WITH APPLICABLE FEDERAL GUIDANCE ABOUT BORROWER OPTIONS FOLLOWING A COVID-19 RELATED FORBEARANCE?**

Yes.

- A. *Federally Backed Mortgages.* With respect to a federally backed mortgage, a Servicer or Lender is considered to have complied with this new law if it complies with the guidance about borrower options following a COVID-19-related forbearance provided by the Fannie Mae, Freddie Mac, the FHA, the VA, or the U.S. Department of Agriculture.
- B. *Non-Federally Backed Mortgages.* With respect to non-federally backed mortgages, a Servicer or Lender is considered to have complied with this new law if it reviews a Borrower for forbearance options consistent with the guidance given by the federal agencies identified above for federally backed mortgages.

### **DOES A SERVICER OR LENDER HAVE TO COMMUNICATE FORBEARANCE OPTIONS IN THE BORROWER'S PREFERRED LANGUAGE?**

Yes.

### **MAY A BORROWER SUE A LENDER FOR A VIOLATION OF THIS NEW LAW?**

Yes.

- A. *A Borrower may bring an action* for injunctive relief, damages, restitution, and any other remedy to redress a material violation.
- B. *If the Borrower wins an action* for injunctive relief (including a temporary restraining order), a court may award the Borrower its attorneys' fees and costs.
- C. *These rights are an addition* to any other rights that a Borrower may have under other laws.

### **CAN A BORROWER WAIVE THE BORROWER'S RIGHTS UNDER THIS NEW LAW?**

No.