

CALIFORNIA HOMEOWNER BILL OF RIGHTS

Kamala D. Harris, Attorney General of California

The California Legislature is considering the 2012 California Homeowner Bill of Rights, a legislative package designed to bring fairness, accountability and transparency to the state's mortgage and foreclosure process.

More than one million California homes were lost to foreclosure between 2008 and 2011—with an additional 500,000 currently in the foreclosure pipeline. Seven of the nation's 10 hardest-hit cities by foreclosure rate in 2011 were in California.

The California Homeowner Bill of Rights marks the third step in Attorney General Harris' response to the state's foreclosure and mortgage crisis. The first step was to create the Mortgage Fraud Strike Force, which has been investigating and prosecuting misconduct at all stages of the mortgage process. The second step was to extract a commitment from the nation's five largest banks of an estimated \$18 billion for California borrowers. The settlement contained thoughtful reforms but are only applicable for three years, and only to loans serviced by the settling banks.

Two key bills contain significant mortgage and foreclosure reforms. AB 278 (Eng/Feuer/Mitchell) and SB 900 (Leno/Corbett/DeSaulnier/Evans) have been thoroughly considered by a legislative conference committee. The major provisions of the bills include:

- ❖ **Dual track foreclosure ban** – The legislation would require 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** – The legislation would require a mortgage servicer to designate a "single point of contact" for borrowers who are potentially eligible for a federal or proprietary loan modification application. 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 mortgage servicer.
- ❖ **Enforceability**: Includes authority for borrowers to seek redress of "material" violations of the legislation. Injunctive relief would be available prior to a foreclosure sale and recovery of damages would be available following a sale.
- ❖ **Verification of documents**: The legislation would subject the recording and filing of multiple unverified documents to a civil penalty of up to \$7,500 per loan in an action brought by a civil prosecutor. It would also allow enforcement under a violator's licensing statute by the Department of Corporations, Department of Real Estate or Department of Financial Institutions.

The other bills in the California Homeowner Bill of Rights are:

BLIGHT PREVENTION LEGISLATION: AB 2314 (Carter) & SB 1472 (Pavley and DeSaulnier) to help combat the blight and crime associated with foreclosed properties. These bills have passed the Assembly and Senate, respectively, and now will be heard in the other house.

TENANT PROTECTION LEGISLATION: AB 2610 (Skinner) and SB 1473 (Hancock) to help protect tenants in foreclosed properties. These bills have passed the Assembly and Senate, respectively, and will now be heard in the other house.

ENHANCEMENT OF ATTORNEY GENERAL ENFORCEMENT ACT: AB 1950 (Davis) to strengthen the law enforcement response to mortgage and foreclosure fraud. This bill passed the Assembly and will now be heard in the Senate.

ATTORNEY GENERAL SPECIAL GRAND JURY ACT: AB 1763 (Davis) and SB 1474 (Hancock) to allow the use of a statewide grand jury to prosecute complex, multi-jurisdictional fraud and crimes. These bills have passed the Assembly and Senate, respectively, and will now be heard in the other house.