

Key Concepts

Real Alternatives to Foreclosures are Available. In response to the COVID-19 pandemic, insurers and guarantors of most residential mortgages developed programs that help homeowners reinstate their mortgages subject to reasonable, affordable terms when a period of forbearance ends.

But Foreclosure Alternatives Will Not Work If We Let the Incompetence of Mortgage Servicers Undermine Them. We learned from the 2007 foreclosure crisis that servicers are not incentivized to implement large-scale foreclosure prevention programs.

A State Law Must Make Mortgage Servicers Accountable. Servicers of ALL loans, regardless of whether they are federally backed, must give homeowners accurate disclosures of the forbearance and post-forbearance options that are available for their loans. Servicers must review borrowers for these options before they are allowed to foreclose. When servicers ignore these requirements, they must face meaningful legal consequences.

For This to Work, We Need a Moratorium on Foreclosure Activity. Putting a hold on foreclosures for a limited time will ensure that servicers can review homeowners for the options that are appropriate for their loans.

AB 3088 was the First Step

With the enactment of AB 3088 in August 2020, California took the first step toward meeting the challenge of this looming crisis.

Millions of Americans, including hundreds of thousands of Californians, paused payments on their mortgages in the Spring of 2020, as allowed by the CARES Act. Unfortunately, these homeowners will have to rely on mortgage servicers to implement programs that let them repay the missed payments in an affordable way so they can reinstate their loans. During the 2007 foreclosure crisis that led to the Great Recession, millions of unnecessary foreclosures occurred due to servicers' incompetence or error. The state law should build in guardrails to avoid a repeat.

4 Million U.S. Mortgages in
Forbearance

+

1 Million U.S. Mortgages Delinquent on
Payments but not in Forbearance

California is
among the most
heavily affected
areas in terms of
delinquency rate



**A Tsunami of Foreclosures is Coming as
CARES Act Forbearances End**

Relief for Homeowners: Federally Backed Mortgages

Immediately upon the law's effective date, servicers will be required to send each California homeowner with a federally backed mortgage a disclosure of the Covid-19 and general loss mitigation guidelines that apply to that homeowner's loan. The disclosure should include: (1) the identity of the federal entity that owns, insures, or guarantees the loan, such as Fannie Mae, Freddie Mac, FHA, VA, or the USDA's Rural Housing Service; (2) a summary of the forbearance and post-forbearance relief options that are available for the loan; and (3) information on how to request the options.

In addition, the servicers should give homeowners the same disclosure 30 days before expiration of a forbearance period, 30 days before recording a notice of default, and any time when a borrower requests help to avoid foreclosure. Servicers must include a certification of service of these disclosures whenever they record a notice of default.

Relief for Homeowners: Non-Federally Backed Mortgages

The law should require that servicers identify all California residential mortgages they service that are not federally backed.

Unless the servicer has obtained an exception from the Commissioner of the Department of Financial Protection and Innovation (the Commissioner), the options described in the disclosure for non-federally backed loans should include the same forbearance and post-forbearance reinstatement options available for Government Sponsored Enterprises (GSE) loans (loans owned or guaranteed by Fannie Mae or Freddie Mac). If the servicer has obtained an exception from the Commissioner, the servicer should still describe all the forbearance and post-forbearance options that it can offer for the loan consistently with the servicer's contractual authority.

A servicer that claims that investor guidelines or any applicable law prohibit it from implementing the forbearance and post-forbearance options available for GSE loans may seek an exception from the Commissioner. Borrowers must be able to participate in the exception determination. Absent approval of an exception, the servicer must disclose and implement forbearance and post-forbearance reinstatement options consistent with those available for GSE loans.

Compliance as Condition to Foreclosure

Servicers may not record a notice of default or notice of trustee's sale or conduct a foreclosure sale without (1) providing the disclosures with the content and time frame previously described and (2) considering borrowers who indicate they need relief for the options available under the guidelines described in the disclosures.

Meaningful Consequences for Noncompliance

Noncompliance with the law will be a basis for stopping a proposed foreclosure sale or invalidating a completed sale. Homeowners who prevail in any proceeding to enforce this law will be entitled to compensatory and punitive damages as well as an award of attorney's fees and costs

Extend Moratorium on Foreclosure Activity

In view of the pandemic's long-term economic impact, an extended moratorium should prohibit the foreclosure and post-sale eviction activities. The moratorium should extend for 180 days from the end of the Governor's pandemic emergency declaration or for 120 days from the end of a borrower's forbearance period, whichever is later.

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