

Calif. Legislature OKs homeowners' bill of rights

Marisa Lagos and Wyatt Buchanan — Updated 11:33 p.m., Monday, July 2, 2012

What the legislation does:

Delays: Bans banks from proceeding with a foreclosure when a homeowner is seeking a loan modification, a practice known as dual tracking.

Dual tracking has always been part of the foreclosure process. Foreclosure is supposed to be a threat to compel a borrower to either pay up or sell and move out. Foreclosure is a threat designed to compel action. Banks use the threat of foreclosure to ensure borrowers are dealing with them in good faith. If a lender senses the borrower is not cooperating, they pull the trigger on the foreclosure to boot them out.

This provision came about because some borrowers were frustrated when they were negotiating with one division at the bank, and another foreclosed on them. There were instances where the left hand didn't know what the right hand was doing. Was this widespread? Probably not, but many people who were denied short sales, often without explanations for the denial, were foreclosed on, and they felt the process needed clearer procedures. Perhaps they are right.



The details on how this is implemented matters. If the lender cannot *begin* the process while a borrower is applying for a loan modification, then after the loan modification is denied, each borrower gets four months of free rent while the lender waits the statutory timeframe. However, if the lender must simply halt the process, then very little has changed.

There is only a three week period between the Notice of Trustee Sale and the actual auction. If the lender has filed a NOD, something they will now be strongly encouraged to do in order to start the process, then they can process a loan modification request during the 90-day redemption period, which is what that period is intended for (loan modification is another form of curing).

If this change prevents the lender from taking the *next* step rather than the *first* step, then this law will have a positive impact. One thing it will likely do is streamline the loan modification process. When lenders finally want to stop amend-extend-pretend, they will want to process foreclosures in a timely manner, which means processing a loan modification request in 90 days.

This law will also require some clarification on the loan modification process. Is there a timeframe for borrower compliance? If not, this is ripe for abuse. What happens when the borrower is tardy with providing necessary documents? Is that an automatic denial? Does the borrower have the right to appeal a “no” answer? If so, what are the timeframes, and what is the process. If these items are not spelled out, attorneys will use these ambiguities to tie up lenders in loan modification requests for months to help their clients get more free housing.



Contacts: Requires banks to provide struggling borrowers with a single point of contact at the bank.

This is a good idea. This should eliminate most of the intra-bank communication problems. Borrowers should know who to call who can give them answers.

Answers: Requires banks to clearly explain to borrowers why they are rejected for a loan modification.



I can make mortgage documents appear before your eyes.

This is another good idea. Of course, borrowers may not like the answer they are given, but that leads back to the questions I posed above about the loan modification process. Once a borrower gets a “clear no” what can they do about it? Anything? Attorneys will take advantage of this part of the process.

Recourse: Gives borrowers the right to sue lenders for “significant, material violations” of the law.

This is another provision the attorneys are going to love as “significant, material violations” of the law is defined. If this provision has real teeth, like the law in Nevada, it could really put a damper on foreclosures and enshrine squatting for many in shadow inventory.

Fines: Subjects lenders to fines of \$7,500 per loan for filing and recording unverified documents.

This is similar to the Nevada law. If the paperwork in California is truly shoddy, this will halt many foreclosures and give free houses to loan owner who don't deserve them.

Limits: Applies to first-lien mortgages for owner-occupants.

At some point, I expect to see this broadened to cover seconds and HELOCs. Right now, those mortgages are unlikely to foreclose because they are underwater and have no value, but if prices do rise, these subordinate lien holders will play havoc on delinquent borrowers unless the banks create universal procedures for both first and second mortgages.