

AMENDED IN SENATE JUNE 3, 2025

AMENDED IN ASSEMBLY APRIL 2, 2025

AMENDED IN ASSEMBLY MARCH 14, 2025

CALIFORNIA LEGISLATURE—2025–26 REGULAR SESSION

ASSEMBLY BILL

No. 238

**Introduced by Assembly Members Harabedian and Irwin
(Principal coauthors: Assembly Members Bryan, Calderon, Caloza,
Fong, Mark González, Haney, Ransom, Celeste Rodriguez,
Schiavo, Schultz, and Zbur)**

January 13, 2025

An act to add Title 19.1 (commencing with Section 3273.20) to Part 4 of Division 3 of the Civil Code, relating to wildfire relief, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 238, as amended, Harabedian. Mortgage forbearance: state of emergency: wildfire.

Existing law requires a mortgage servicer to comply with applicable federal guidance regarding borrower options following a forbearance relating to the COVID-19 emergency.

This bill would authorize a borrower who is experiencing financial hardship that prevents the borrower from making timely payments on a specified residential mortgage loan due directly to the wildfire disaster described in the proclamation of a state of emergency issued by Governor Gavin Newsom on January 7, 2025, or the federally declared disaster, declared on January 8, 2025, related to the Eaton Wildfire, the Palisades Fire, and the Straight-line Winds, to request forbearance on their residential mortgage loan, as prescribed. The bill would limit

eligibility for that forbearance to loans that are secured by residential real property improved by 4 or fewer residential units. The bill would require the borrower to affirm that they are experiencing a financial hardship due to the wildfire disaster. Because the bill would expand the crime of perjury, the bill would impose a state-mandated local program.

This bill would, except as specified, require a mortgage servicer to offer mortgage payment forbearance of a period of up to an initial 90 days, which shall be extended at the request of the borrower in 90-day increments, up to a maximum forbearance period of 12 months. The bill would also prohibit a mortgage servicer from assessing any late fees to the borrower's account or charging a default rate of interest during the forbearance period. The bill would provide that the forbearance period includes any period of forbearance related to the wildfire disaster that a mortgage servicer has provided to a borrower before the effective date of these provisions. The bill would require a mortgage servicer to report the credit obligations of borrowers under a disaster-related forbearance plan in compliance with the federal Fair Credit Reporting Act and applicable federal ~~guidelines and suspend reporting delinquencies to consumer reporting agencies for~~ *guidelines*. *For accounts granted disaster-related mortgage payment relief that were current when the borrower entered forbearance, and that are otherwise performing as agreed: agreed, the bill would require mortgage servicers to suspend reporting delinquencies to consumer reporting agencies and would prohibit them from furnishing information regarding payment forbearance to consumer reporting agencies.* The bill would prohibit a mortgage servicer from initiating any judicial or nonjudicial foreclosure process, moving for a foreclosure judgment or order of sale, or executing a foreclosure-related eviction or foreclosure during the period of forbearance.

This bill would require the Department of Financial Protection and Innovation to post specified information on its website including links to the provisions of servicing guidelines pertaining to disaster-related forbearance relief for federally backed loans and a dedicated telephone number for borrowers seeking assistance.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Title 19.1 (commencing with Section 3273.20) is added to Part 4 of Division 3 of the Civil Code, to read:

TITLE 19.1. MORTGAGE FORBEARANCE ACT

3273.20. This title is known, and may be cited, as the “Mortgage Forbearance Act.”

3273.21. For purposes of this title, the following terms have the following meanings:

(a) (1) “Borrower” means a natural person who is a mortgagor or trustor, or a person who holds a power of attorney for a mortgagor or trustor.

(2) “Borrower” does not include an individual who has surrendered the secured property as evidenced by either a letter confirming the surrender or delivery of the keys to the property to the mortgagee, trustee, beneficiary, or authorized agent.

(3) “Borrower” does not include an individual who has a recorded notice of default recorded against the real property that is secured by the residential mortgage loan before the beginning of the wildfire disaster unless the notice of default was rescinded.

(b) “Federally backed loan” means a residential mortgage loan that is insured, guaranteed, purchased, or secured by a federal agency or government-sponsored entity.

(c) “Disaster-related forbearance relief” means the relief described in servicing guidelines for federally backed loans.

(d) (1) “Mortgage servicer” means a person or entity who directly services a loan or who is responsible for interacting with the borrower, managing the loan account on a daily basis, including collecting and crediting periodic loan payments, managing any escrow account, or enforcing the note and security instrument, either as the current owner of the promissory note or as the current owner’s authorized agent.

(2) “Mortgage servicer” also means a subservicing agent to a master servicer by contract.

(3) “Mortgage servicer” does not include a trustee, or a trustee’s authorized agent, acting under a power of sale pursuant to a deed of trust.

(e) “Residential mortgage loan” means a loan that is secured by residential real property improved by four or fewer residential units.

(f) “Wildfire disaster” means the conditions described in the proclamation of a state of emergency issued by Governor Gavin Newsom on January 7, 2025, or the federally declared disaster, declared on January 8, 2025, related to the Eaton Wildfire, the Palisades Fire, and the Straight-line Winds (DR-4856-CA).

3273.22. This title applies to a depository institution chartered under federal or state law, a person covered by the licensing requirements of Division 9 (commencing with Section 22000) or Division 20 (commencing with Section 50000) of the Financial Code, or a person licensed pursuant to Part 1 (commencing with Section 10000) of Division 4 of the Business and Professions Code.

3273.23. (a) A borrower who is experiencing financial hardship that prevents the borrower from making timely payments on a residential mortgage loan due directly to the wildfire disaster may request forbearance on the residential mortgage loan by doing both of the following:

(1) Submitting a request to the borrower’s mortgage loan servicer before the earlier of either of the following:

(A) Six months after the date upon which the state of emergency issued by Governor Gavin Newsom on January 7, 2025, is terminated.

(B) January 7, 2027.

(2) Affirming that the borrower is experiencing a financial hardship due to the wildfire disaster.

(b) Upon a request by a borrower for forbearance under subdivision (a), a mortgage servicer shall offer mortgage payment forbearance for a period of up to an initial 90 days, which shall be extended at the request of the borrower in 90-day increments, up to a maximum forbearance period of 12 months.

(c) The borrower shall be notified within ~~five~~ 10 business days by the ~~mortgage~~ mortgage servicer whether their request for forbearance has been approved.

(d) If the mortgage servicer, acting under delegated authority to make forbearance determinations on behalf of the investor, denies a forbearance request, *request within the maximum allowable forbearance period of 12 months pursuant to subdivision (b)*, the mortgage servicer shall not be in violation of this section if the mortgage servicer provides written notice to the borrower stating the specific reason for denial. The notice shall include both of the following:

(1) A clear and concise explanation of the specific investor provision that ~~requires~~ *is the basis for the denial*.

(2) The text of the ~~servicing guidelines describing the disaster-related forbearance relief~~. *specific investor guideline or contractual provision that is the basis for the denial of the borrower's forbearance request*.

(e) If the written notice in subdivision (c) cites any defect in the borrower's request, including an incomplete application or missing information, that is curable, the mortgage servicer shall do all of the following:

(1) Specifically identify any curable defect in the written notice.

(2) Provide 21 calendar days from the mailing date of the written notice for the borrower to cure any identified defect.

(3) Accept the borrower's revised request for forbearance before the 21-day period described in paragraph (2) lapses.

(4) Respond to the borrower's revised request within five business days of receipt of the revised request.

(f) The forbearance period required by subdivision (b) shall include any period of forbearance related to the wildfire disaster that a mortgage servicer has provided to a borrower before the effective date of this title.

(g) During the period of forbearance required by this section, no late fees shall be assessed to the borrower's account and the borrower shall not be charged a default rate of interest.

(h) No later than 30 calendar days before the end of an initial forbearance period, a mortgage servicer shall provide written notice to the borrower disclosing both of the following:

(1) Any documentation or forms that the mortgage servicer requires the borrower to furnish or complete to be considered for an additional period of forbearance.

(2) A description of the deadlines and timelines associated with considering the borrower for an additional period of forbearance.

1 (i) A mortgage servicer shall report the credit obligations of
2 borrowers under a disaster-related forbearance plan in compliance
3 with the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681
4 et seq.) and applicable federal guidelines. ~~Mortgage servicers shall~~
5 ~~suspend reporting delinquencies to consumer reporting agencies~~
6 ~~for~~ For accounts granted disaster-related mortgage payment relief
7 that were current when the borrower entered forbearance, and *that*
8 ~~are otherwise performing as agreed. agreed, a mortgage servicer~~
9 *shall suspend reporting delinquencies to consumer reporting*
10 *agencies and shall not furnish information regarding payment*
11 *forbearance to consumer reporting agencies.*

12 3273.24. (a) A mortgage servicer shall disclose to a borrower
13 to whom a forbearance has been granted pursuant to Section
14 3273.23 that the forborne mortgage payments are required to be
15 repaid.

16 (b) The disclosure required by subdivision (a) is only required
17 to be furnished to the borrower once at the beginning of the
18 forbearance period.

19 (c) A lump sum payment shall not be required for a borrower
20 who was current on the residential mortgage loan when the
21 borrower entered forbearance.

22 3273.25 During the time of forbearance granted pursuant to
23 this title, a mortgage servicer shall not initiate any judicial or
24 nonjudicial foreclosure process, move for a foreclosure judgment
25 or order of sale, or execute a foreclosure-related eviction or
26 foreclosure sale if the borrower is performing pursuant to the terms
27 of the forbearance.

28 3273.26. Failure to comply with this title shall not affect the
29 validity of a trustee's sale or a sale to a bona fide purchaser for
30 value.

31 3273.27. (a) (1) With respect to a federally backed loan, a
32 person shall not be held liable for a violation of this title if
33 compliance with this title conflicts with the servicing guidelines
34 applicable to the federally backed loan.

35 (2) Servicing guidelines applicable to a federally backed loan
36 includes servicing guidelines like those issued by the Federal
37 National Mortgage Association (Fannie Mae) and the Federal
38 Home Loan Mortgage Corporation (Freddie Mac), the Single
39 Family Housing Policy Handbook issued by the Federal Housing
40 Administration of the United States Department of Housing and

1 Urban Development, the VA Servicer Handbook issued by the
2 United States Department of Veterans Affairs, or a servicing
3 handbook issued by the Rural Development division of the United
4 States Department of Agriculture, as those guidelines existed on
5 January 13, 2025.

6 (b) With respect to a residential mortgage loan that is not a
7 federally backed loan, a person shall not be held liable for a
8 violation of this title if compliance with this title conflicts with the
9 servicing guidelines issued by Fannie Mae or Freddie Mac.

10 (c) For purposes of this section, “conflicts with” means that it
11 is impossible to comply with this title and the person’s obligation
12 under the applicable servicing guidelines.

13 3273.28. The Department of Financial Protection and
14 Innovation shall post all of the following on its website:

15 (a) Links to the provisions of servicing guidelines pertaining to
16 disaster-related forbearance relief for federally backed loans.

17 (b) A summary of Fannie Mae and Freddie Mac guidance to
18 assist borrowers in understanding their forbearance programs.

19 (c) A dedicated telephone number for borrowers seeking
20 assistance.

21 3273.29. It is the intent of the Legislature that a mortgage
22 servicer offer a borrower forbearance that is consistent with the
23 mortgage servicer’s contractual or other authority. Nothing in this
24 title requires a mortgage servicer to take any action that would
25 require the mortgage servicer to breach the terms of an existing
26 contract with the investor that owns the residential mortgage loan.

27 3273.30. The provisions of this title are severable. If any
28 provision of this title or its application is held invalid, that
29 invalidity shall not affect other provisions or applications that can
30 be given effect without the invalid provision or application.

31 SEC. 2. No reimbursement is required by this act pursuant to
32 Section 6 of Article XIII B of the California Constitution because
33 the only costs that may be incurred by a local agency or school
34 district will be incurred because this act creates a new crime or
35 infraction, eliminates a crime or infraction, or changes the penalty
36 for a crime or infraction, within the meaning of Section 17556 of
37 the Government Code, or changes the definition of a crime within
38 the meaning of Section 6 of Article XIII B of the California
39 Constitution.

1 SEC. 3. This act is an urgency statute necessary for the
2 immediate preservation of the public peace, health, or safety within
3 the meaning of Article IV of the California Constitution and shall
4 go into immediate effect. The facts constituting the necessity are:
5 To avert economic and social harm by providing a structure for
6 temporary relief to financially distressed borrowers during
7 conditions of extreme peril to the safety of persons and property
8 that exist due to impacts of the Eaton Fire, the Palisades Fire, and
9 the windstorm, it is necessary that this act take effect immediately.

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