

The California Homeowner Bill of Rights

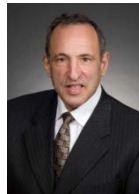
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Overview

- California Homeowner Bill of Rights – Effective January 1, 2013 and sunsets generally on January 1, 2018.
- The Foreclosure Reduction Act, Assembly Bill 278/Senate Bill 900 is main component. Other bills include blight prevention, tenant protection and attorney general enforcement provisions
- The Firm's Resources on the California Homeowner Bill of Rights:
 - [Part 1 - A Preliminary Guide to the California Homeowner Bill of Rights](#)
 - [Part 2 - The Protection of Tenants and Prospective Tenants under the California Homeowner Bill of Rights](#)
 - [Part 3- Penalties against Lenders and Servicers for Blight under the California Homeowner Bill of Rights](#)

Limitations to the Act

- The Act limits its application to “borrowers” defined as “a natural person who is a mortgagor or trustor” and who is potentially eligible for any foreclosure prevention alternative.
- The Act applies largely only to first lien, residential mortgage loans secured by one-to-four family residence that is occupied by the borrower.
- Excludes those who have surrendered subject property or contracted with a foreclosure delay business.
- Excludes an individual in an active bankruptcy or where court has not granted relief from a stay of foreclosure.

Prohibition on Dual Tracking

- The Act restricts the practice known as “dual tracking.”
- A Notice of Default, Notice of Sale, or Trustee’s Deed Upon Sale may not be recorded while a complete loan modification application is pending. Note that **all** mortgage servicers will be subject to this general prohibition, and it does not sunset as do other parts of the Act.
- A loan modification application is “complete” when the borrower has submitted all required documents “within the reasonable timeframes” set by the servicer.

Borrower Private Right of Court Action

- The Act authorizes borrowers to seek redress of “material” violations of certain sections.
- Private right of action authorized for violations of:
 - California Civil Code §§ 2923.5, 2923.55 and 2924.9 (due diligence and specified notices); 2923.6 and 2923.10 (loan modification procedures and appeals), 2923.7 (single point of contact requirement), 2924.11 and 2924.18 (dual tracking and requirements of servicer); and 2924.17 (robo-signing).
- Question as to whether this covers particular irregularities in foreclosure documents or process.

Borrower Private Right of Action (Cont'd)

- If the property has not yet been sold, the borrower may sue to enjoin the trustee's sale until the mortgage servicer has remedied the violations of the Act, as decided by the court.
- If property has already been sold, the borrower may sue in civil court for **actual economic damages only** resulting from a material violation that was not remedied prior to sale.
- If the violation of the Act is found to be intentional or reckless, the court may award the borrower the greater of treble actual damages or statutory damages of \$50,000.
- If the borrower is the prevailing party in a private right of action against a mortgage servicer for violations of the Act, the court may award the borrower reasonable attorneys' fees and court costs.

Borrower Private Right of Action (Cont'd)

- A borrower is considered the prevailing party for the purposes of awarding attorneys' fees if the borrower obtained either injunctive relief or damages.
- Requires a "material" violation of the specified sections.
- Servicer has right to cure violations prior to recording of Trustee's Deed Upon Sale to avoid damages.
- Safe Harbor –No liability for signatory banks to the National Mortgage Settlement in compliance with the national mortgage settlement with respect to the borrower alleging a violation, i.e. no liability for conflicting obligations.

Single Point of Contact

- Requirement for mortgage servicers that conduct more than 175 foreclosures annually only.
- A SPOC can be either an individual or team of individuals so long as each team member has knowledge of the borrower's status in the foreclosure process, access to decision makers and can coordinate the flow of documentation.
- Same single point remains assigned until the mortgage servicer has determined that every potential loss mitigation option has been made available to the borrower.
- Note that servicers are only required to offer existing loss mitigation options or programs.

Robo-signing Prohibition and how it is “defined”

- This is the practice where representatives of a financial institution process foreclosure documents without verifying their accuracy.
- New law requires that all documents in support of the foreclosure have been verified for accuracy, are complete and are supported by competent and reliable evidence.
- The Act provides for a \$7,500 civil penalty per mortgage or deed for instances of multiple and repeated inaccurate filings of foreclosure documents in an action brought by a public prosecutor, not general public.

Requirements for servicers with more than 175 foreclosures.

- For large servicers, the relevant Notice and Contact provision is 2923.55
- For servicers that conduct fewer than 175 foreclosures in any calendar year, the relevant section is 2923.5.
- The 5-business day notice after Notice of Default regarding foreclosure prevention alternatives (Civil Code section 2924.9) applies only to large servicers.

Requirements for servicers with more than 175 foreclosures. (Cont'd)

- The modification application requirements in Civil Code Section 2924.10 does not apply to small servicers
- Requires large servicers to send a written acknowledgment of the receipt of the documentation within five business days of receipt as well as an initial acknowledgement that includes a description of the loan modification process including:
 - (1) an estimate of when a decision on the loan modification will be made after a complete application has been submitted by the borrower and the length of time the borrower will have to consider an offer of a loan modification or other foreclosure prevention alternative and
 - (2) any deadlines, including deadlines to submit missing documentation, that would affect the processing of a first lien loan modification application
 - (3) any expiration dates for submitted documents;
 - (4) any deficiency in the borrower's first lien loan modification application.

Requirements for servicers with more than 175 foreclosures. (Cont'd)

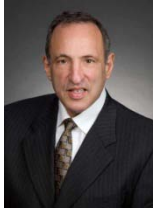
- For large servicers, the private right of action includes a right of action for violation of the Single Point of Contact requirement of 2923.7. Section 2923.12.
- The private right of action for smaller servicers is provided under 2924.19 which otherwise mirrors the private right of action provisions of 2923.12.
- For large mortgage servicers, borrower has at least 30 days to appeal a denial for error. If the appeal is denied, the servicer can record its notice of default, notice of sale, or trustee's deed upon sale after 14 days. This provision will sunset in 2018.

Requirements for servicers with more than 175 foreclosures. (Cont'd)

- Large mortgage servicers also required to send certain additional notices in writing to a borrower:
 - A statement that borrower may be entitled to certain protections under the federal Servicemembers Civil Relief Act (50 U.S.C. Sec. 501 et seq).
 - A statement that the borrower may request:
 - A copy of the promissory note or other evidence of indebtedness
 - A copy of the borrower's deed of trust or mortgage
 - A copy of any assignment, if applicable, to demonstrate the right of the mortgage servicer to foreclose



Closing Remarks & Questions



Biography of Eric D. Dean

Managing Litigation & Transactions Attorney

In 2009, Mr. Dean joined The Wolf Firm, a California law corporation representing clients statewide for around 30 years, and is the Lead Attorney of its Commercial and Real Estate Department.

Mr. Dean graduated UCLA School of Law Order of the Coif in 1973. From 1973 through 1980, he was an associate in a law firm that successfully prosecuted a number of Plaintiff's Federal Securities Class Actions. In 1980, Mr. Dean formed a firm with a real estate transactional attorney where he represented lenders, brokers and developers. By 1983, Mr. Dean's practice was built entirely around the representation of lenders, servicers and sub-servicers. Between 1983 and 1990, he was the Group Leader of the Commercial Loan Real Estate and Title Insurance Department of a regional law firm with a focus on financial services. In 1990, Mr. Dean formed a statewide law firm as lead counsel in the commercial lending area. Mr. Dean later became Group Leader of the "Commercial Lending Group" of a national law firm.

In 2004, Mr. Dean accepted the opportunity to become General Counsel for a nationwide real estate development company. In this capacity, in addition to litigation matters, he was responsible for the negotiation and documentation of a number of high dollar and complex acquisition, ground lease, sales, construction and loan transactions involving office buildings and hotels located throughout the United States. Working primarily on the transactional side for these few years gave him a much broader understanding and perspective on such things as the intricacies of and variances between different forms of inter-creditor agreements, loan participation and servicing agreements, ground leases, construction, conduit, and mezzanine financing, local government tax incentive agreements, management agreements, commercial leasing and construction and development contracts. Mr. Dean believes this experience has enabled him to be a far better advisor to the commercial lending clients he currently represents. By understanding the underlying business and transactional dynamics he has stated "I am far more capable of evaluating business concerns, exploring work out possibilities and analyzing the borrower."

Mr. Dean is a member of the Commercial Litigation Committee of the ALFN. He is the sole attorney member of the All Star Group, which consists of the representatives of regional and large financial institutions presenting educational presentations on a statewide basis. He regularly speaks before these and other industry organizations.

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Biography of Hassan Elrakabawy

Associate Litigation Attorney

Mr. Elrakabawy is an associate attorney in the firm's Litigation Department. Prior to joining the firm, Mr. Elrakabawy worked as a law clerk for the Honorable Terry Jennings of the Texas Court of Appeals and practiced litigation at a prominent national law firm, focusing on securities, intellectual property and complex commercial litigation.

Mr. Elrakabawy represents major financial institutions, including banks, mortgage lenders, consumer financial companies and mortgage loan servicers, in all stages of litigation, including trials in state and federal courts. Mr. Elrakabawy specializes in defending national mortgage lenders and mortgage loan servicers against borrower actions alleging lender liability, wrongful foreclosure, title claims, loan servicing claims, and violations of state and federal statutes. He also advises financial institutions as to banking operations, the Uniform Commercial Code, and fair debt collection practice statutes. For automotive finance companies, Mr. Elrakabawy enforces secured financing arrangements and defends various lender liability claims.

Mr. Elrakabawy obtained his *Juris Doctorate* from the University of Texas – School of Law. While in law school, Mr. Elrakabawy won a regional championship in interscholastic mock trial competition and served as a staff editor on the Texas Review of Entertainment and Sports Law. He was admitted to the California State Bar in 2007.

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About The Wolf Firm, A Law Corporation

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For over 25 years The Wolf Firm, A Law Corporation, has provided a broad array of legal and related services throughout California to lenders, servicers, investors, governmental agencies and other members of the financial services community. From simple routine work, to highly complex Bankruptcy and Litigation matters, the Firm is committed to an approach that results in strategic, cost-effective solutions directed to the requirements of the particular matter and the expectations of each client. The Firm's Practice Groups include Residential Mortgage Banking and Business & Commercial. Each provides services through various departments including Litigation, Foreclosure, Bankruptcy, Unlawful Detainer/Eviction, Escrow/Closing, Loss Mitigation, Transactional and Regulatory Compliance.

The Firm is a nationally recognized law firm in the financial services industry and has been honored for its superior skills and services. The Firm is rated "AV" by Martindale-Hubbell and is listed in the Martindale-Hubbell Bar Register of Preeminent Lawyers. It is a member of the Fannie Mae Retained Attorney Network and FDIC approved counsel for the state of California. The Firm has received the USFN Award of Excellence every year since its inception.

Firm members hold positions of leadership in industry groups, speak at national industry events, publish articles in leading industry trade publications and have authored chapters in various industry focused books. Firm members also have been quoted by leading media outlets such as The Wall Street Journal and American Banker and have been included in prestigious listings such as California Super Lawyers and Best Lawyers in America.

The Firm is a proud member, and an active participant, in a number of leading industry trade groups including the National Mortgage Bankers Association, the California Mortgage Bankers Association, the American Legal and Financial Network (ALFN), the National Association of Government Guaranteed Lenders (NAGGL), and the USFN.

With industry savvy, solid leadership, state-of-the-art computerization and a strong focus on client communications and cost-effectiveness, the firm remains committed to providing innovative and responsive solutions to the challenges faced by the industry.