

SENATE THIRD READING
SB 1447 (Bradford)
As Amended August 6, 2020
Majority vote

SUMMARY:

Expands, for a two-year period, Homeowner Bill of Rights protections to cover tenant-occupied residential real property of 1-4 units in which at least one tenant has been unable to pay rent due to a COVID-19-related reduction in income.

Major Provisions

- 1) Expands protections contained in specified provisions of the Homeowner Bill of Rights (HBOR) to encompass first lien mortgages and deeds of trust secured by residential real property that meets the following criteria:
 - a) It is the principal residence of at least one tenant who has been unable to pay rent due to a reduction in income resulting from the novel coronavirus;
 - b) It contains no more than four dwelling units;
 - c) It is owned by an individual who owns no more than three residential real properties, each of which contains no more than four dwelling units; and
 - d) It is occupied by a tenant who entered into a lease before, and in effect on, March 4, 2020, which was entered into in good faith and for valuable consideration, and which reflects the fair market value for the rental in the open market between informed and willing parties.
- 2) Clarifies that relief shall be available under HBOR only for so long as the real property remains the principal residence of a tenant pursuant to a lease that meets the criteria set forth in 1) d), above.
- 3) Sunsets the expanded protections referenced in 1) above as of January 1, 2023 except for borrowers who meet the following criteria:
 - a) The borrower was approved in writing for a first lien loan modification or other foreclosure prevention alternative.
 - b) The borrower submitted a complete application for a first lien loan modification before January 1, 2023 but, as of that date, either i) the mortgage servicer had not yet determined whether the borrower qualified for the modification, or ii) the appeal period from a denial had not yet expired.
- 4) Amends the list of activities that a person may offer to perform for compensation, so as to meet the definition of "foreclosure consultant," to include the act of stopping or postponing a delinquency on a mortgage or deed of trust.

COMMENTS:

This bill should increase housing stability for small landlords and their tenants who are struggling to cope with the economic effects of the COVID-19 pandemic.

The pandemic is causing many tenants to lose income, whether due to unemployment, reduced working hours, or small business closures. Their loss of income, in turn, may mean that they are unable to pay their full rent. Landlords' consequent loss of rental income means that some are unable to pay the mortgages on their rental properties, increasing the risk that they will be foreclosed on. A foreclosure sale can result ultimately in the eviction and displacement of the tenants who live in the property, which risks exacerbating the state's homelessness crisis and increasing the spread of COVID-19.

In response to the last foreclosure crisis, California enacted the Homeowner Bill of Rights (HBOR), a set of procedural protections meant to avert avoidable foreclosure on *owner-occupied* residential real property that contains no more than four units. This bill proposes to mitigate the anticipated harms outlined in the previous paragraph by extending HBOR to many *tenant-occupied* residential real properties of no more than four units. These additional protections would remain in place for a two-year period, beginning on January 1, 2021.

The bill would also permanently expand the statutory definition of "foreclosure consultant" to include a person who engages in the act of stopping or postponing a delinquency on a mortgage or deed of trust, thereby reducing the chances that vulnerable homeowners are preyed upon as they seek to stave off a mortgage default.

How would an expanded HBOR protect small landlords facing foreclosure (and their tenants)?
Current protections under the Homeowner Bill of Rights apply to owners of residential property containing up to four units include the following:

- 1) At least 30 days before filing a Notice of Default, the mortgage servicer must contact the borrower to explore foreclosure prevention alternatives.
- 2) The servicer must provide a "single point of contact," who is knowledgeable about the borrower's situation, to any borrower seeking a foreclosure prevention alternative.
- 3) If the borrower submits a first lien modification application or supporting documents, the servicer must provide written acknowledgement of receipt and provide important additional information, such as an estimate of how long it will take to make a decision regarding the application, the amount of time the borrower will have to consider a loan modification offer, a description of any omissions in the application, and deadlines for submitting missing documents
- 4) If the borrower submits a complete first lien loan modification application, the foreclosure process must halt while the application is being considered.
- 5) If a borrower is denied a loan modification, the borrower has a right of appeal.
- 6) If the servicing rights on the loan are transferred, the new servicer must honor any foreclosure prevention alternative offered by the previous servicer.

- 7) The borrower must be notified of any postponement in a foreclosure sale that lasts ten business days or longer.

However, under HBOR, these protections are currently only available to borrowers who live in a property facing foreclosure. Under this bill, these protections would be expanded to a fully tenant-occupied property with one to four units, if the following conditions were met:

- 1) The landlord owns no more than three such residential real properties, each of which contains no more than four dwelling units.
- 2) The property for which the landlord is seeking protection is occupied by at least one tenant who has been unable to pay rent due to COVID-19 reduction in income.
- 3) The property for which the landlord is seeking protection is occupied by at least one tenant who entered into a market-rate lease that was in effect on March 4, 2020. The property must continue to be the principal residence of such a tenant throughout the time the landlord is seeking HBOR protections.

These conditions are meant to ensure that the temporary HBOR expansion applies only to small landlords who are facing a loss of income due to COVID and who continue to house at least one bona fide tenant.

Ensuring expanded protections last beyond the sunset date for borrowers in the HBOR process.

The expansion of HBOR to tenant-occupied properties under this bill will sunset after two years. This date was chosen because the author currently projects that 2021 will see a substantial increase in mortgage defaults by small landlords, numbers that should fall by the end of 2022. If the state of the economy in 2022 indicates that small landlords will need these protections for a longer period of time, the Legislature could then extend the sunset date.

Regardless of whether the sunset date is extended in the future, the existence of the sunset might create problems for landlords who are in the midst of being considered for a foreclosure alternative when the bill's provisions expire. To take the simplest example, what happens if a landlord applies for a loan modification in November 2022, is approved for the modification in late December 2022, and the servicing rights transfer in January 2023, before the landlord and the previous servicer enter into a binding agreement?

In order to avoid such a result, and to ensure that landlords in the midst of the HBOR process continue to be able to complete their search for a foreclosure alternative, this bill includes a saving clause. A landlord will continue to be eligible for the expanded protections under the bill, even after the sunset, as long as they are approved in writing for a foreclosure prevention alternative or submitted a complete application for a first lien loan modification before the sunset date.

In the author's view, the affirmative step of submitting a completed first lien mortgage loan modification application provides a bright-line delineation between those landlords who are actively working to stave off foreclosure and those who may not be exercising their rights. This standard may disadvantage landlords who default shortly before the sunset date and are unable to timely file a loan modification application, but it does give servicers and lenders certainty as to their ongoing obligations.

If foreclosures are still at a heightened level in 2022 and it appears that many more small landlords may need HBOR protections, the Legislature would have the opportunity to address this issue by extending the bill's sunset date at that time.

Expansion of definition of "foreclosure consultant." The state's last foreclosure crisis yielded a rash of fraudulent foreclosure prevention and rescue scams in which desperate homeowners were cheated out of their remaining savings by individuals who falsely promised to save their homes from foreclosure. The Legislature passed several bills in response to these scams, including AB 2325 (Lieu), Chapter 596, Statutes of 2010 which amended the statutory definition of "foreclosure consultant" to include individuals who offered to arrange a forensic audit of a loan secured by a home in foreclosure in exchange for compensation. This bill would similarly amend the definition of "foreclosure consultant" to include individuals who offer to stop or postpone a delinquency on a mortgage or deed of trust. The rationale for this amendment is described by the author as follows:

California's existing foreclosure consultant law only applies once a home is in delinquency; it fails to cover the period of time during a financial hardship, before that hardship leads to a mortgage delinquency. Most of the federal and state homeowner relief announced in response to COVID-19 includes mortgage forbearance. Because homeowners who have been provided mortgage forbearance from their servicers are not considered delinquent, they could be preyed upon by unscrupulous individuals not covered by California's foreclosure consultant law.

It is hoped that amending the definition of "foreclosure consultant" in this manner will help protect homeowners during the ongoing COVID-19 crisis.

According to the Author:

In 2012, California enacted a comprehensive set of protections for homeowners, which were intended to prevent avoidable foreclosures on owner-occupied principal residences....

However, existing California law will *not* provide needed relief to individuals who own investment properties they rent out to tenants if those tenants' inability to afford their rent payments forces the property owners into mortgage delinquency. Lack of foreclosure protections for owners of rental properties could force tenants onto the streets, if the owners of the homes those tenants are occupying are foreclosed upon. [...] SB 1447 ... provides protections against foreclosure for mom-and-pop landlords.

Arguments in Support:

The California Apartment Association celebrates the author's efforts to protect small landlords:

We appreciate your work to expand the protections of the Homeowner Bill of Rights, especially for mom and pop landlords who can be exposed to these scams during times of economic crises. SB 1447 will help to ensure that they keep their housing and keep their tenants in place. You are taking the important steps needed to prevent unscrupulous servicers and other third parties from interfering with a homeowner's ability to manage their mortgage debt successfully.

Arguments in Opposition:

None on file

FISCAL COMMENTS:

None

VOTES:**SENATE FLOOR: 39-0-1**

YES: Allen, Archuleta, Atkins, Bates, Beall, Borgeas, Bradford, Caballero, Chang, Dahle, Dodd, Durazo, Galgiani, Glazer, Lena Gonzalez, Grove, Hertzberg, Hill, Hueso, Jackson, Jones, Leyva, McGuire, Melendez, Mitchell, Monning, Moorlach, Morrell, Nielsen, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener, Wilk

ABS, ABST OR NV: Hurtado

ASM JUDICIARY: 11-0-0

YES: Mark Stone, Gallagher, Chau, Chiu, Gonzalez, Holden, Kalra, Kiley, Limón, Obernolte, Reyes

UPDATED:

VERSION: August 6, 2020

CONSULTANT: Jith Meganathan / JUD. / (916) 319-2334

FN: 0003374