

LEGISLATIVE HISTORY: CA MORTGAGES AND FORECLOSURES



PUBLIC POLICY
BRIEFING KEYS

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Recent Federal Law

Federal Reserve Board's Regulation Z – adopted July 2008; Effective October 1, 2009

These rules, which apply to all lending institutions, add the following four key protections for a newly defined category of “higher-priced mortgage loans” (essentially subprime loans) secured by a consumer’s principal dwelling: 1) prohibit a lender from making a loan without regard to borrowers’ ability to repay the loan; 2) require creditors to verify borrowers’ income and assets to determine repayment ability; 3) ban any prepayment penalty if the payment can change in the initial four years, and limit them in other higher-priced loans to no more than two years; and 4) require creditors to establish escrow accounts for property taxes and homeowner's insurance for all first-lien mortgage loans, starting Oct. 1, 2010.

2008 Special Session(s) and 2009 Legislative Session

AB4X (Lieu) (proposed): This bill would extend the foreclosure process by 90 days (after the Notice of Default), but provide an exemption for mortgage servicers that demonstrate they have implemented a comprehensive loan modification program intended and reasonably designed to effect affordable and sustainable loan modifications. The bill also provides for monitoring and reporting on the servicers’ loan modification programs.

2008

The 2008 legislative session saw a flurry of mortgage-related bills, some directed at helping existing mortgage borrowers, and others at reforming the mortgage system going forward.

SB 1137 (Perata) – Chapter 69, Statutes of 2008.

This bill was enacted as an emergency measure. The bill has three parts: (1) requiring a pre-foreclosure meeting between servicer and borrower to discuss restructuring options; (2) expanding tenant notification following foreclosure; and (3) allowing civil penalties for failure to maintain foreclosed property.

AB 529 (Torrico): This bill would have required mortgage loan servicers to provide borrowers with an additional notice (from that required by federal law) of an impending interest rate reset (and payment increase). Governor Schwarzenegger vetoed the bill, citing possible confusion.

The 2008 session began with numerous mortgage reform bills, including **AB 1830** (Lieu) (mortgage lending reform), **AB 2880** (Wolk) (mortgage broker reform); **AB 2359** (Jones) (assignee liability & contractual waivers); **AB 2740** (Brownley) (mortgage servicer reform); and **AB 512** (Lieber) (mortgage document translation). At the end of the session, only **AB 1830** had survived.

AB 1830 (Lieu): This bill (1) codified a broad broker fiduciary duty; (2) prohibited brokers from steering borrowers into more expensive loans; (3) capped allowable prepayment penalties that trap borrowers in loans; and (4) allowed harmed borrowers to pursue relief from violations, including attorney fees. Governor Schwarzenegger vetoed the bill, expressing concern for increased litigation and an uneven playing field for state-regulated entities vis-à-vis their federal counterparts.

**2007****SB 385** (Machado) – Chapter 301, Statutes of 2007

This bill directed the state agencies to adopt federal guidance as to subprime and non-traditional mortgage loans. Federal regulators adopted underwriting and other guidelines for non-traditional mortgages, *see Interagency Guidance on Nontraditional Mortgage Product Risks*, 71 Fed. Reg. 58609 (Oct. 4, 2006), and for subprime mortgages, *see Final Guidance – Statement on Subprime Mortgage Lending* (June 2007). This bill also directed licensed entities to adopt and follow policies designed to meet the objectives of the federal guidance.

2005**AB 901** (Ridley Thomas) – Chapter 531, Statutes of 2005

This bill increased the loan limit on the Covered Loan Law from the original \$250,000, to the Fannie Mae conforming loan limit.

SB 790 (Speier): This bill would have amended the definition of “covered” loans under the Covered Loan Law by increasing the qualifying loan amount, including prepayment penalties and yield spread premiums in the point and fee calculation and including open ended credit. This bill also would have required pre-loan counseling, and would have prohibited prepayment penalties after one year on covered loans.

2001**SB 489** (Migden) – Chapter 732, Statutes of 2001

This bill, codified as the Covered Loan Law (Cal. Fin. Code 4970, *et seq.*), prohibits licensed persons from engaging in 15 specified prohibits acts when making very high cost loans, designated “covered loans.” These prohibitions include 1) making a covered loan without regard for the borrower’s ability to repay it; 2) steering a borrower into an unnecessarily costly loan, or a loan with a worse credit grade than that for which the borrower qualifies, among other things; 3) refinancing a loan when the resulting loan does not result in a net benefit to the borrower; and 4) financing single payment credit insurance