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SB-455 State of emergency: mortgage servicers: property repair. (2023-2024)

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AMENDED IN SENATE MAY 25, 2023

AMENDED IN SENATE MARCH 20, 2023

CALIFORNIA LEGISLATURE— 2023–2024 REGULAR SESSION

SENATE BILL**NO. 455****Introduced by Senator McGuire****February 13, 2023**

An act to add Article 4 (commencing with Section ~~2970~~ 2968) to Chapter 2 of Title 14 of Part 4 of Division 3 of the Civil Code, relating to mortgages.

LEGISLATIVE COUNSEL'S DIGEST

SB 455, as amended, McGuire. State of emergency: mortgage servicers: ~~written disclosure~~. *property repair*.

Existing law generally regulates mortgages and mortgage servicers, as defined, including the transfer of servicing a borrower's debt to a subsequent mortgage servicer. Existing law provides that a covenant made by an owner or grantee of land to do or refrain from doing some act on the owner's or grantee's land, which doing or refraining is expressed to be for the benefit of the covenantee, is a covenant that runs with the land granted to the covenantor if specified requirements are met. The California Emergency Services Act establishes the effect of a proclamation of a state of emergency, as defined, or a local emergency, as defined.

This bill would require a transferor mortgage servicer servicing a mortgage secured by property, as defined, within the geographic limits of a proclaimed state of emergency or local emergency to deliver to a transferee mortgage servicer any material written records between the borrower and the mortgage servicer relating to the repair of property that suffered a total loss due to damage caused by a natural disaster for which the state of emergency or local emergency was proclaimed. The bill would prohibit the transferee mortgage servicer from dishonoring a previous written agreement to repair property made prior to the transfer between the transferor mortgage servicer and the borrower and approved by the owner of the promissory note.

~~Existing law generally regulates mortgages and the process of foreclosing on mortgages, including by, if a borrower has been approved in writing for a first lien loan modification or other foreclosure prevention alternative, and the servicing of that borrower's loan is transferred or sold to another mortgage servicer, requiring the subsequent mortgage servicer to continue to honor any previously approved first lien loan modification or other foreclosure prevention alternative, as prescribed. The California Emergency Services Act~~

~~establishes the effect of a proclamation of a state of emergency, as defined, or a local emergency, as defined:~~

~~This bill would require a mortgage servicer servicing a mortgage with respect to a property located within the geographic limits of a proclaimed state of emergency or a local emergency that was the mortgage servicer at the time of the emergency proclamation to provide written disclosure to a transferee or purchaser mortgage servicer of certain information, including any contracts executed or agreements made to rebuild or repair a home damaged by the proclaimed emergency or to purchase a home to replace a home damaged by the proclaimed emergency, as specified. The bill would require a transferee or purchaser mortgage servicer to make a similar disclosure to a subsequent transferee or purchase mortgage servicer, as prescribed.~~

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. *Article 4 (commencing with Section 2968) is added to Chapter 2 of Title 14 of Part 4 of Division 3 of the Civil Code, to read:*

Article 4. State of Emergency

2968. (a) *For purposes of this article, the following definitions apply:*

- (1) *"Mortgage servicer" has the same meaning as defined in subdivision (a) of Section 2920.5.*
- (2) *"Property" means residential real property that is improved by four or fewer residential dwelling units, affixed mobilehomes, and manufactured homes.*
- (3) *"State of emergency" and "local emergency" have the same meanings as defined in subdivisions (b) and (c), respectively, of Section 8558 of the Government Code.*

(b) A transferor mortgage servicer servicing a mortgage secured by property within the geographic limits of a proclaimed state of emergency or local emergency shall deliver to a transferee mortgage servicer any material written records between the borrower and the mortgage servicer relating to the repair of property that suffered a total loss due to damage caused by a natural disaster for which the state of emergency or local emergency was proclaimed.

(c) A transferee mortgage servicer pursuant to subdivision (b) shall not dishonor a previous written agreement to repair property made prior to the transfer between the transferor mortgage servicer and the borrower and approved by the owner of the promissory note.

~~SECTION 1. Article 4 (commencing with Section 2970) is added to Chapter 2 of Title 14 of Part 4 of Division 3 of the Civil Code, to read:~~

~~4. State of Emergency~~

~~2970. (a) A mortgage servicer servicing a mortgage with respect to a property located within the geographic limits of a proclaimed state of emergency, as defined in Section 8558 of the Government Code, or a local emergency, as defined in Section 8558 of the Government Code, that was the mortgage servicer at the time of the emergency proclamation shall provide written disclosure to a transferee or purchaser mortgage servicer of all of the following:~~

~~(1) If the property at issue experiences a total loss due to the proclaimed emergency:~~

~~(2) If the borrower has conveyed an intention to do either of the following:~~

~~(A) Rebuild or repair a home damaged by the proclaimed emergency.~~

~~(B) Purchase a home to replace a home damaged by the proclaimed emergency.~~

~~(3) (A) Any contracts executed or agreements made to do either of the following:~~

~~(i) Rebuild or repair a home damaged by the proclaimed emergency.~~

~~(ii) Purchase a home to replace a home damaged by the proclaimed emergency.~~

~~(B) A contract or agreement disclosed pursuant to this subparagraph shall be attached to the written disclosure.~~

~~(4) The status of any negotiation between the borrower and the disclosing mortgage servicer related to an~~

~~intention described in subparagraph (B):~~

~~(b)A transferee or purchaser mortgage servicer that receives a written disclosure pursuant to subdivision (a) or paragraph (2) shall do all of the following:~~

~~(1)Comply with the terms as agreed upon by the original mortgage servicer in any contract or agreement disclosed pursuant to paragraph (3) of subdivision (a):~~

~~(2)Provide to a transferee or purchaser mortgage servicer the written disclosure provided by the mortgage servicer that was the servicer at the time of the emergency proclamation described by subdivision (a) as updated, if applicable, to reflect subsequent agreements, contracts, and negotiations.~~

~~(3)Continue in good faith any negotiation disclosed pursuant to paragraph (4) of subdivision (a):~~