



The State Bar of California

**OPEN SESSION
AGENDA ITEM
119.1 JULY 2020
BOARD EXECUTIVE COMMITTEE III.J**

DATE: July 16, 2020

TO: Members, Board Executive Committee
Members, Board of Trustees

FROM: Linda Katz, Principal Program Analyst, Mission Advancement & Accountability
Division

SUBJECT: Approval of Addition to Legislative Priorities

EXECUTIVE SUMMARY

The Board of Trustees approved 2020 legislative priorities at its January, March, and May meetings. This item requests that the Board Executive Committee and Board approve one addition to the 2020 legislative priorities.

BACKGROUND

In 2018, the Board adopted a new legislative program that established criteria for the Board to consider in taking positions on proposed legislation and in advancing legislative proposals. The purpose of the State Bar's legislative program is to monitor legislative activity, and represent and advocate for the State Bar on legislation, policy, and budget matters before the Legislature and the Governor. This agenda item sets forth an addition to the legislative priorities for 2020. Specifically, this item seeks the Board's approval of a letter of support for Senate Bill 1447, authored by Senator Steven Bradford, which would add a cause for discipline against attorneys who charge advance fees for providing foreclosure prevention assistance, and provide additional foreclosure protections to homeowners who rent their properties out to tenants.

DISCUSSION

Civil Code section 2944.6 requires any person who offers to perform mortgage loan modification assistance to provide a specific written notification to the borrower regarding no cost options for obtaining such assistance. Civil Code section 2944.7 provides that it is unlawful for any person who offers such assistance to require or receive compensation for their services until the person has fully performed the contracted services. When initially enacted, Business and Professions Code section 6106.3 provided a cause for discipline against an attorney who violates either of these sections of the Civil Code. Due to chaptering issues, however, the provision related to Civil Code section 2944.7 was allowed to sunset. SB 1447 would amend Business and Professions Code section 6106.3, restoring the cause for discipline against an attorney who violates Civil Code section 2944.7. In addition to the amendment addressing attorney discipline, SB 1447 would revise the list of actions that define a foreclosure consultant, and extend protections provided under the California Homeowner Bill of Rights.

This agenda item requests authorization to support Senate Bill 1447, including a letter of support from the State Bar.

FISCAL/PERSONNEL IMPACT

None

AMENDMENTS TO RULES OF THE STATE BAR

None

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & OBJECTIVES

None: Core – core business operations

RECOMMENDATIONS

Should the Board Executive Committee concur in the proposed action, passage of the following resolution is recommended:

RESOLVED, the Board Executive Committee recommends that the Board of Trustees approve the addition to the State Bar’s 2020 legislative priorities included in this item.

Should the Board of Trustees concur in the proposed action, passage of the following resolution is recommended:

RESOLVED, that the Board of Trustees, upon recommendation of the Board Executive Committee approve the addition to the State Bar's 2020 legislative priorities included in this item.

ATTACHMENT(S) LIST

- A. Senate Bill 1447

SENATE BILL

No. 1447

Introduced by Senator Bradford

February 21, 2020

~~An act to amend Section 25471 of the Public Resources Code, relating to energy.~~ *An act to amend Section 6106.3 of the Business and Professions Code, and to amend Sections 2945 and 2945.1 of, and to amend, repeal, and add Section 2924.15 of, the Civil Code, relating to mortgages.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1447, as amended, Bradford. ~~Energy Efficient State Property Revolving Fund Mortgages and deeds of trust: foreclosure.~~

(1) Existing law, the State Bar Act, provides for the licensure and regulation of attorneys by the State Bar of California, a public corporation, which is governed by its board of trustees. If an attorney violates specified requirements relating to negotiating or arranging mortgage loan modifications or other form of mortgage loan forbearance for a fee, it is a cause for discipline under the act.

This bill would provide that other actions relating to negotiating or arranging mortgage loan modifications or other form of mortgage loan forbearance for a fee would be a violation of the State Bar Act, including charging or collecting any compensation until after the person has fully performed every service that the person contracted to perform or represented that they would perform.

(2) Existing law defines foreclosure consultants and regulates their activities. Under existing law, a foreclosure consultant, among other things, is a person who solicits, represents, or offers to perform for compensation specified acts for a property owner, as defined, including

stopping or postponing a foreclosure sale. Existing law makes a statement of legislative findings and declarations regarding foreclosure consultants.

This bill would revise the list of actions that define a foreclosure consultant to also include the act stopping or postponing a delinquency on a mortgage or deed of trust. The bill would also revise the statement of legislative findings and declarations regarding foreclosure consultants.

(3) Existing law prescribes various requirements to be satisfied before the exercise of a power of sale under a mortgage or deed of trust. In this regard, existing law requires that a notice of default and a notice of sale be recorded and that specified periods of time elapse between the recording and the sale. Certain laws, commonly referred to as the California Homeowner Bill of Rights (HOBR), established a variety of requirements in connection with foreclosures on mortgages and deeds of trust, including restrictions on the actions of mortgage servicers while a borrower is attempting to secure a loan modification or has submitted a loan modification application. The foreclosure provisions of HOBR were generally limited to first lien mortgages and deeds of trust on owner-occupied residences, as specified.

This bill, until January 1, 2023, would extend protections of the HOBR to first lien mortgages or deeds of trust on properties that are secured by tenant-occupied residential real property containing no more than 4 dwelling units and that meet other specified conditions. In this regard, the bill would require that the property owner have no more than 3 residential real properties, each containing no more than 4 dwelling units, that the property is occupied by a tenant pursuant to an applicable lease, as defined, and that a tenant is unable to pay rent due to a reduction in income resulting from the novel coronavirus. The bill would require that the property remain the principal residence of a tenant for the prescribed relief to apply.

~~Existing law establishes the Energy Efficient State Property Revolving Fund and continuously appropriates moneys in the fund to the Department of General Services for loans for projects on state-owned buildings and facilities to achieve greater, long-term energy efficiency, energy conservation, and energy cost and use avoidance. Existing law transfers into the fund \$25,000,000 from moneys received under federal American Recovery and Reinvestment Act of 2009. Existing law authorizes the State Energy Resources Conservation and Development Commission, for the 2011–12 and 2012–13 fiscal years, to transfer up~~

to \$50,000,000, in total, into the fund from moneys received by the commission under federal American Recovery and Reinvestment Act of 2009.

This bill would repeal those obsolete provisions relating to the transfer of moneys into the fund.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

1 SECTION 1. Section 6106.3 of the Business and Professions
2 Code is amended to read:

3 6106.3. ~~(a)~~— It shall constitute cause for the imposition of
4 discipline of an attorney within the meaning of this chapter for an
5 attorney to engage in any conduct in violation of Section 2944.6
6 or 2944.7 of the Civil Code.

7 ~~(b) This section shall become operative on January 1, 2017.~~

8 SEC. 2. Section 2945 of the Civil Code is amended to read:

9 2945. (a) The Legislature finds and declares that homeowners
10 whose residences are *at imminent risk of foreclosure or are in*
11 *foreclosure* are subject to fraud, deception, harassment, and unfair
12 dealing by foreclosure consultants from the time *an economic*
13 *crisis threatens the ability of a homeowner to afford their mortgage*
14 *payments, through the time a Notice of Default is recorded pursuant*
15 *to Section 2924 and until the time surplus funds from any*
16 *foreclosure sale are distributed to the homeowner or his or her*
17 *their* successor. Foreclosure consultants represent that they can
18 assist homeowners who *are at imminent risk of default or who*
19 have defaulted on obligations secured by their residences. These
20 foreclosure consultants, however, often charge high fees, the
21 payment of which is often secured by a deed of trust on the
22 residence to be saved, and perform no service or essentially a
23 worthless service. Homeowners, relying on the foreclosure
24 consultants' promises of help, take no other action, are diverted
25 from lawful businesses which could render beneficial services,
26 and often lose their homes, sometimes to the foreclosure
27 consultants who purchase homes at a fraction of their value before
28 the sale. Vulnerable homeowners are increasingly relying on the
29 services of foreclosure consultants who advise the homeowner
30 that the foreclosure consultant can obtain the remaining funds from

1 the foreclosure sale if the homeowner executes an assignment of
2 the surplus, a deed, or a power of attorney in favor of the
3 foreclosure consultant. This results in the homeowner paying an
4 exorbitant fee for a service when the homeowner could have
5 obtained the remaining funds from the trustee’s sale from the
6 trustee directly for minimal cost if the homeowner had consulted
7 legal counsel or had sufficient time to receive notices from the
8 trustee pursuant to Section 2924j regarding how and where to make
9 a claim for excess proceeds.

10 (b) The Legislature further finds and declares that foreclosure
11 consultants have a significant impact on the economy of this state
12 and on the welfare of its citizens.

13 (c) The intent and purposes of this article are the following:

14 (1) To require that foreclosure consultant service agreements
15 be expressed in writing; to safeguard the public against deceit and
16 financial hardship; to permit rescission of foreclosure consultation
17 contracts; to prohibit representations that tend to mislead; and to
18 encourage fair dealing in the rendition of foreclosure services.

19 (2) The provisions of this article shall be liberally construed to
20 effectuate this intent and to achieve these purposes.

21 *SEC. 3. Section 2945.1 of the Civil Code is amended to read:*
22 2945.1. The following definitions apply to this chapter:

23 (a) “Foreclosure consultant” means any person who makes any
24 solicitation, representation, or offer to any owner to perform for
25 compensation or who, for compensation, performs any service
26 which the person in any manner represents will in any manner do
27 any of the following:

28 (1) Stop or postpone ~~the foreclosure sale~~: *a delinquency on a*
29 *mortgage or deed of trust.*

30 (2) *Stop or postpone a foreclosure sale.*

31 ~~(2)~~

32 (3) Obtain any forbearance from any beneficiary or mortgagee.

33 ~~(3)~~

34 (4) Assist the owner to exercise the right of reinstatement
35 provided in Section 2924c.

36 ~~(4)~~

37 (5) Obtain any extension of the period within which the owner
38 may reinstate ~~his or her~~ *the owner’s* obligation.

39 ~~(5)~~

1 (6) Obtain any waiver of an acceleration clause contained in
2 any promissory note or contract secured by a deed of trust or
3 mortgage on a residence in foreclosure or contained that deed of
4 trust or mortgage.

5 ~~(6)~~

6 (7) Assist the owner to obtain a loan or advance of funds.

7 ~~(7)~~

8 (8) Avoid or ameliorate the impairment of the owner's credit
9 resulting from the recording of a notice of default or the conduct
10 of a foreclosure sale.

11 ~~(8)~~

12 (9) Save the owner's residence from foreclosure.

13 ~~(9)~~

14 (10) Assist the owner in obtaining from the beneficiary,
15 mortgagee, trustee under a power of sale, or counsel for the
16 beneficiary, mortgagee, or trustee, the remaining proceeds from
17 the foreclosure sale of the owner's residence.

18 (b) A foreclosure consultant does not include any of the
19 following:

20 (1) A person licensed to practice law in this state when the
21 person renders service in the course of ~~his or her~~ *the person's*
22 practice as an attorney at law.

23 (2) A person licensed under Division 3 (commencing with
24 Section 12000) of the Financial Code when the person is acting
25 as a prorater as defined therein.

26 (3) A person licensed under Part 1 (commencing with Section
27 10000) of Division 4 of the Business and Professions Code when
28 the person is acting under the authority of that license, as described
29 in Section 10131 or 10131.1 of the Business and Professions Code.

30 (4) A person licensed under Chapter 1 (commencing with
31 Section 5000) of Division 3 of the Business and Professions Code
32 when the person is acting in any capacity for which the person is
33 licensed under those provisions.

34 (5) A person or ~~his or her~~ *the person's* authorized agent acting
35 under the express authority or written approval of the Department
36 of Housing and Urban Development or other department or agency
37 of the United States or this state to provide services.

38 (6) A person who holds or is owed an obligation secured by a
39 lien on any residence in foreclosure when the person performs
40 services in connection with this obligation or lien.

1 (7) Any person licensed to make loans pursuant to Division 9
2 (commencing with Section 22000) of the Financial Code when
3 the person is acting under the authority of that license.

4 (8) Any person or entity doing business under any law of this
5 state, or of the United States relating to banks, trust companies,
6 savings and loan associations, industrial loan companies, pension
7 trusts, credit unions, insurance companies, or any person or entity
8 authorized under the laws of this state to conduct a title or escrow
9 business, or a mortgagee which is a United States Department of
10 Housing and Urban Development approved mortgagee and any
11 subsidiary or affiliate of the above, and any agent or employee of
12 the above while engaged in the business of these persons or entities.

13 (9) A person licensed as a residential mortgage lender or servicer
14 pursuant to Division 20 (commencing with Section 50000) of the
15 Financial Code, when acting under the authority of that license.

16 (c) Notwithstanding subdivision (b), any person who provides
17 services pursuant to paragraph (9) of subdivision (a) is a foreclosure
18 consultant unless ~~he or she~~ *the person* is the owner's attorney.

19 (d) "Person" means any individual, partnership, corporation,
20 limited liability company, association or other group, however
21 organized.

22 (e) "Service" means and includes, but is not limited to, any of
23 the following:

24 (1) Debt, budget, or financial counseling of any type.

25 (2) Receiving money for the purpose of distributing it to
26 creditors in payment or partial payment of any obligation secured
27 by a lien on a residence in foreclosure.

28 (3) Contacting creditors on behalf of an owner of a residence
29 in foreclosure.

30 (4) Arranging or attempting to arrange for an extension of the
31 period within which the owner of a residence in foreclosure may
32 cure ~~his or her~~ *the owner's* default and reinstate ~~his or her~~ *the*
33 *owner's* obligation pursuant to Section 2924c.

34 (5) Arranging or attempting to arrange for any delay or
35 postponement of the time of sale of the residence in foreclosure.

36 (6) Advising the filing of any document or assisting in any
37 manner in the preparation of any document for filing with any
38 bankruptcy court.

39 (7) Giving any advice, explanation, or instruction to an owner
40 of a residence in foreclosure which in any manner relates to the

1 cure of a default in or the reinstatement of an obligation secured
2 by a lien on the residence in foreclosure, the full satisfaction of
3 that obligation, or the postponement or avoidance of a sale of a
4 residence in foreclosure pursuant to a power of sale contained in
5 any deed of trust.

6 (8) Arranging or attempting to arrange for the payment by the
7 beneficiary, mortgagee, trustee under a power of sale, or counsel
8 for the beneficiary, mortgagee, or trustee, of the remaining proceeds
9 to which the owner is entitled from a foreclosure sale of the
10 owner's residence in foreclosure. Arranging or attempting to
11 arrange for the payment shall include any arrangement where the
12 owner transfers or assigns the right to the remaining proceeds of
13 a foreclosure sale to the foreclosure consultant or any person
14 designated by the foreclosure consultant, whether that transfer is
15 effected by agreement, assignment, deed, power of attorney, or
16 assignment of claim.

17 (9) Arranging or attempting to arrange an audit of any obligation
18 secured by a lien on a residence in foreclosure.

19 (f) "Residence in foreclosure" means a residence in foreclosure
20 as defined in Section 1695.1.

21 (g) "Owner" means a property owner as defined in Section
22 1695.1.

23 (h) "Contract" means any agreement, or any term thereof,
24 between a foreclosure consultant and an owner for the rendition
25 of any service as defined in subdivision (e).

26 *SEC. 4. Section 2924.15 of the Civil Code is amended to read:*
27 2924.15. Unless otherwise provided, paragraph (5) of
28 subdivision (a) of Section 2924, and Sections 2923.5, 2923.55,
29 2923.6, 2923.7, 2924.9, 2924.10, 2924.11, and 2924.18 shall apply
30 only to first lien mortgages or deeds of trust that *meet either of the*
31 *following conditions:*

32 (a) *They are secured by owner-occupied residential real property*
33 *containing no more than four dwelling units. For these purposes,*
34 *"owner-occupied" means that the property is the principal residence*
35 *of the borrower and is security for a loan made for personal, family,*
36 *or household purposes.*

37 (b) *They are secured by residential real property that is occupied*
38 *by a tenant and that contains no more than four dwelling units*
39 *and meets all of the conditions described in paragraph (2).*

40 (1) *For the purposes of this subdivision:*

1 (A) “Applicable lease” means a lease entered pursuant to an
2 arm’s length transaction before, and in effect on, March 4, 2020.

3 (B) “Arm’s length transaction” means a lease entered into in
4 good faith and for valuable consideration that reflects the fair
5 market value in the open market between informed and willing
6 parties.

7 (C) “Occupied by a tenant” means that the property is the
8 principal residence of a tenant.

9 (2) To meet the conditions of this subdivision, a first lien
10 mortgage or deed of trust shall have all of the following
11 characteristics:

12 (A) The property is owned by an individual who owns no more
13 than three residential real properties, each of which contains no
14 more than four dwelling units.

15 (B) The property shall have been occupied by a tenant pursuant
16 to an applicable lease.

17 (C) A tenant occupying the property shall have been unable to
18 pay rent due to a reduction in income resulting from the novel
19 coronavirus.

20 (3) Relief shall be available pursuant to the aforementioned
21 sections of this code for so long as the property remains the
22 principal residence of a tenant pursuant to a lease entered in an
23 arm’s length transaction.

24 (c) This section shall remain in effect only until January 1, 2023,
25 and as of that date is repealed, unless a later enacted statute that
26 is enacted before January 1, 2023, deletes or extends that date.

27 SEC. 5. Section 2924.15 is added to the Civil Code, to read:

28 2924.15. (a) Unless otherwise provided, paragraph (5) of
29 subdivision (a) of Section 2924, and Sections 2923.5, 2923.55,
30 2923.6, 2923.7, 2924.9, 2924.10, 2924.11, and 2924.18 shall apply
31 only to first lien mortgages or deeds of trust that are secured by
32 owner-occupied residential real property containing no more than
33 four dwelling units. For these purposes, “owner-occupied” means
34 that the property is the principal residence of the borrower and is
35 security for a loan made for personal, family, or household
36 purposes.

37 (b) This section shall be operative January 1, 2023.

38 SECTION 1. ~~Section 25471 of the Public Resources Code is~~
39 ~~amended to read:~~

1 ~~25471. (a) There is hereby created in the State Treasury the~~
2 ~~Energy Efficient State Property Revolving Fund for the purpose~~
3 ~~of implementing this chapter. Notwithstanding Section 13340 of~~
4 ~~the Government Code, the money in this fund is continuously~~
5 ~~appropriated to the department, without regard to fiscal years, for~~
6 ~~loans for projects on state-owned buildings and facilities to achieve~~
7 ~~greater, long-term energy efficiency, energy conservation, and~~
8 ~~energy cost and use avoidance.~~

9 ~~(b) The fund shall be administered by the department. The~~
10 ~~department may use other funding sources to leverage project~~
11 ~~loans.~~

12 ~~(c) The Controller shall disburse moneys in the fund for the~~
13 ~~purposes of this chapter, as authorized by the department.~~

14 ~~(d) Moneys in the fund, including all interest earnings, shall be~~
15 ~~clearly delineated and distinctly accounted for in accordance with~~
16 ~~the requirements of the act.~~

17 ~~(e) Pursuant to subdivision (d) of Section 25422 and subdivision~~
18 ~~(h) of Section 25464, the commission shall transfer to the Energy~~
19 ~~Efficient State Property Revolving Fund repayments of, and all~~
20 ~~accrued interest on, loans funded by the federal American Recovery~~
21 ~~and Reinvestment Act of 2009 (Public Law 111-5).~~