

CITY OF OAKLAND

BILL ANALYSIS



FILED
OFFICE OF THE CITY CLERK
OAKLAND

2011 Date: 14 PM 4: 48 April 14, 2011

Bill Number: AB935 Foreclosure Mitigation Charge

Bill Author: Bob Blumenfield

DEPARTMENT INFORMATION

Contact: Ada Chan
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RECOMMENDED POSITION: STRONG SUPPORT

Summary of the Bill

Existing law authorizes county recorders to charge and collect specified fees for services performed. Specifically this bill requires that no notice of trustee sale shall be accepted with a county recorder until the mortgage servicer pays a foreclosure mitigation charge of \$20,000. It would require the county recorder keep the moneys in trust until a notice of rescission is filed, at which time the moneys would be returned to the mortgage servicer, or until a trustee deed of sale is filed, at which time the moneys would be transmitted to the Treasurer for deposit in the Foreclosure Mitigation Fund, which would be created by the bill; the interest earned on the moneys would be retained by the county recorder in either case. The fund would be distributed by the Treasurer to local communities to be used in the following manner:

- 20% for public education, kindergarten through community college level.
- 20% for public safety, including local police, county sheriffs, and local fire protection
- 20% for redevelopment to bring economic activity to distressed neighborhoods
- 20% to cities and counties to pay for mitigating the effects of foreclosures on the community, core functions and the construction of affordable housing
- 20% for small business loans in the area.

Positive Factors for Oakland

Statewide, it is expected that over 10 billion dollars will be generated in the next two years. Monies will be distributed to local jurisdictions at the same rate that the jurisdiction paid into the fund. By imposing a fee on the foreclosing entity, this bill will help support the City's efforts in addressing the impacts of foreclosure on our neighborhoods, and the city overall by giving us the additional tools needed to ensure the protection and safety of our residents.

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Negative Factors for Oakland

None noted

PLEASE RATE THE EFFECT OF THIS MEASURE ON THE CITY OF OAKLAND:

- Critical** (top priority for City lobbyist, city position required ASAP)
 Very Important (priority for City lobbyist, city position necessary)
 Somewhat Important (City position desirable if time and resources are available)
 Minimal or **None** (do not review with City Council, position not required)

Known support:

Alliance of Californians for Community Empowerment
California Reinvestment Coalition (CRC)
People Improving Communities through Organizing (PICO) California
Service Employees International Union (SEIU) California

Attach bill text and state/federal legislative committee analysis, if available.

Respectfully Submitted,

Rebecca Kaplan
Council Member At Large

Approved for Forwarding to
Rules Committee

Office of City Administrator

Item: _____
Rules & Legislation Comte.
Date xx, 2010

AMENDED IN ASSEMBLY APRIL 4, 2011

CALIFORNIA LEGISLATURE—2011—12 REGULAR SESSION

ASSEMBLY BILL

No. 935

Introduced by Assembly Member Blumenfield

February 18, 2011

~~An act to amend Section 27360 of the Government Code, relating to local government.~~ *An act to add Section 27389 to the Government Code, relating to foreclosures, and making an appropriation therefor*

LEGISLATIVE COUNSEL'S DIGEST

AB 935, as amended, Blumenfield. ~~County recorders' fees.~~
Foreclosures: foreclosure mitigation charges.

Existing law sets forth the criteria for procedures for the foreclosure of property, including the filing of various notices with the county recorder, and generally sets forth the duties of the county recorder in this regard.

This bill would prohibit a notice of trustee's sale from being accepted for filing with the county recorder until the mortgage servicer pays a foreclosure mitigation charge of \$20,000. It would require the county recorder to keep the moneys in trust until a notice of rescission is filed, at which time the moneys would be returned to the mortgage servicer, or until a trustee deed of sale is filed, at which time the moneys would be transmitted to the Treasurer for deposit in the Foreclosure Mitigation Fund, which would be created by the bill; the interest earned on the moneys would be retained by the county recorder in either case. The fund would be continuously appropriated for distribution by the Treasurer to local agencies for specified purposes.

By imposing a new duty on county recorders in collecting this fee, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~This bill would make a technical, nonsubstantive change to these provisions:~~

~~Vote: majority ²/₃. Appropriation: no-yes. Fiscal committee: no-yes. State-mandated local program: ne-yes.~~

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

1 SECTION 1. Section 27389 is added to the Government Code,
2 to read:

3 27389. (a) Notwithstanding any other provision of law, no
4 notice of trustee's sale shall be accepted for filing with the county
5 recorder until the mortgage servicer, as defined in subdivision (q)
6 of Section 50003 of the Financial Code, pays a foreclosure
7 mitigation charge of twenty thousand dollars (\$20,000). The cost
8 of this charge may not be passed on to borrowers.

9 (b) (1) The county recorder shall hold the moneys collected
10 pursuant to subdivision (a) in trust until either of the following
11 occurs:

12 (A) If a notice of rescission is filed with respect to the property,
13 the county recorder shall return the moneys to the mortgage
14 servicer, except as provided in paragraph (2).

15 (B) If a trustee deed upon sale is filed with respect to the
16 property, and except as provided in paragraph (2) the county
17 recorder shall transmit the moneys to the Treasurer for deposit in
18 the Foreclosure Mitigation Fund, which is hereby established as
19 a special fund in the State Treasury.

20 (2) The county recorder may retain any interest earned while
21 the moneys were held in trust pursuant to this subdivision, to cover
22 administrative costs.

23 (c) (1) Moneys in the Foreclosure Mitigation Fund are hereby
24 continuously appropriated for distribution by the Treasurer to
25 local agencies, in the same amount as the applicable counties'
26 respective deposits.

1 (2) Moneys distributed to local agencies pursuant to this
2 subdivision shall be used as follows:

3 (A) Twenty percent for K-12 and community college purposes.

4 (B) Twenty percent for public safety purposes, including, but
5 not limited to, local police, county sheriffs, and local fire
6 protection.

7 (C) Twenty percent for redevelopment activities within the
8 jurisdiction of the local agency, including, but not limited to, the
9 construction of affordable housing.

10 (D) Twenty percent for mitigating the effects of foreclosures on
11 the community, including, but not limited to, reimbursement of the
12 county recorder's costs in collecting the charge imposed pursuant
13 to subdivision (a).

14 (E) Twenty percent for loans for small businesses within the
15 jurisdiction of the local agency.

16 SEC 2. No reimbursement is required by this act pursuant to
17 Section 6 of Article XIII B of the California Constitution because
18 a local agency or school district has the authority to levy service
19 charges, fees, or assessments sufficient to pay for the program or
20 level of service mandated by this act, within the meaning of Section
21 17556 of the Government Code.

22 SECTION 1. ~~Section 27360 of the Government Code is~~
23 ~~amended to read:~~

24 ~~27360. The county recorder shall charge and collect the fees~~
25 ~~fixed in this article for services he or she performs.~~

FILED
OFFICE OF THE CITY CLERK
OAKLAND

DRAFT

City Attorney

2011 APR 14 PM 4:48

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

Introduced by Councilmember Rebecca Kaplan

Resolution In Support of Assembly Bill 935 (Blumenfield) An act to amend Section 27360 of the Government Code, creating a foreclosure mitigation charge of \$20,000, that must be deposited by a mortgage servicer upon filing a notice of trustee's sale with the county recorder. The monies collected to be used to create a Foreclosure Mitigation Fund to be distributed to local agencies for specific designated uses.

WHEREAS, the foreclosure crises continues in California :

- One in five U.S. foreclosures is in California.ⁱ
- California is the hardest hit of all states with the highest number of foreclosures- 700,000 homes in some stage of foreclosure.ⁱⁱ
- There have been 1.2 million foreclosures since 2008 in California and that number is expected to climb to 2 million through 2012.ⁱⁱⁱ
- Foreclosures in 2011 are expected to exceed 2010 levels.^{iv}
- More than a third of California homeowners with a mortgage already owe more on their mortgages than their homes are worth.^v

WHEREAS, the costs of the foreclosure crisis in California include (2008-2012):

- Homeowner losses to foreclosed and neighboring homes estimated at \$600 billion to as much as \$1 trillion,
- Property tax revenue losses estimated at \$4 billion, and
- Local government losses for multiple agencies and multiple levels of government to respond to absorb the increased foreclosure-related costs including maintenance of blighted properties, sheriff evictions, inspections, public safety, trash removal, and other costs estimated at \$17 billion—\$19,229 cost for every foreclosure.

WHEREAS, foreclosures in our community have had a fiscal impact on education, public services, infrastructure and essential safety-net services in our neighborhoods.

WHEREAS, banks continue to use flawed, and in some cases fraudulent, procedures which create foreclosures in our community. The revelations of widespread foreclosure mismanagement by mortgage servicers who failed to properly document the seizure and sale of homes has prompted investigation of foreclosure practices. In some cases, the banks who took those homes can't even prove that they had the authority to do so.

APPROVED AS TO FORM AND LEGALITY

City Attorney

WHEREAS, unless we address the California foreclosure crisis, the damage to communities and the local economy will be staggering and long-lasting.

RESOLVED: The City of Oakland urges support for Assembly Bill 935 (Blumenfield)

BE IT FURTHER RESOLVED that our elected representatives in Sacramento be notified of the benefits of this bill to the City of Oakland.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20_____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT BRUNNER

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

ⁱ RealtyTrac.com.

ⁱⁱ RealtyTrac.com 2010 year end foreclosure filings and Center for Responsible Lending.