

CITY OF OAKLAND

BILL ANALYSIS



FILED
OFFICE OF THE CITY CLERK
OAKLAND

2011 APR 14 PM 4:48
Date:

April 14, 2011

Bill Number: AB1321 Mortgages and Deeds of Trust
Recordation

Bill Author: Wieckowski

DEPARTMENT INFORMATION

Contact: Ada Chan
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RECOMMENDED POSITION: SUPPORT

Summary of the Bill

Existing law authorizes the recording of an instrument affecting the title to or possession of real property, as well as the recording of an assignment of a mortgage or a deed of trust. Under existing law, the recordation of an interest in real property provides notice of that interest to subsequent purchasers and mortgagees. Existing law provides that an unrecorded conveyance of real property is void against a duly recorded interest by a subsequent purchaser or mortgagee, if he or she acted in good faith and paid valuable consideration. This bill would instead require that mortgages and deeds of trust as well as assignments of a mortgage or a deed of trust be recorded within 30 days of the execution of the deed or other document creating a security interest in the real property or within 30 days of execution of the assignment. The bill would further require that either the promissory note or a specified certificate affirming the existence of the promissory note be attached at the time of recordation.

Existing law, upon a breach of the obligation of a mortgage or transfer of an interest in property, authorizes the mortgagee, trustee, or beneficiary to record a notice of default in the office of the county recorder where the mortgaged or trust property is situated. This bill would prohibit the mortgagee, trustee, or beneficiary from recording a notice of default until 45 days after it has recorded the mortgage or deed of trust and any assignment of the mortgage and deed of trust. This bill would mandate recording of all mortgage deeds/trusts and assignments, and payment of the requisite fees. It would also require that the mortgage note be filed prior to issuing a Notice of Default to ensure that the foreclosing party has the right to foreclose.

Positive Factors for Oakland

The City of Oakland cannot afford to see foreclosures separate more citizens from their homes. By creating more rigid requirements regarding the verification of legal documents related to foreclosures this bill will prevent fraud and be part of breaking the cycle of foreclosures that are hindering the growth of our communities.

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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 (ACCE)
California Reinvestment Coalition (CRC)
People Improvi8ng Communities through Organizing (PICO) California
Service Employees international Union (SEIU)

Known Opposition:

No known opposition at this time.

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

ASSEMBLY BILL

No. 1321

Introduced by Assembly Member **Wieckowski**

February 18, 2011

An act to amend Section 2934 of, and to add Sections 1214.5 and 2923.7 to, the Civil Code, and to amend Section 27280 of the Government Code, relating to mortgages and deeds of trust.

LEGISLATIVE COUNSEL'S DIGEST

AB 1321, as introduced, Wieckowski. Mortgages and deeds of trust: recordation.

Existing law authorizes the recording of an instrument affecting the title to or possession of real property, as well as the recording of an assignment of a mortgage or a deed of trust. Under existing law, the recordation of an interest in real property provides notice of that interest to subsequent purchasers and mortgagees. Existing law provides that an unrecorded conveyance of real property is void against a duly recorded interest by a subsequent purchaser or mortgagee, if he or she acted in good faith and paid valuable consideration.

This bill would instead require that mortgages and deeds of trust as well as assignments of a mortgage or a deed of trust be recorded within 30 days of the execution of the deed or other document creating a security interest in the real property or within 30 days of execution of the assignment. The bill would further require that either the promissory note or a specified certificate affirming the existence of the promissory note be attached at the time of recordation.

Existing law, upon a breach of the obligation of a mortgage or transfer of an interest in property, authorizes the mortgagee, trustee, or

beneficiary to record a notice of default in the office of the county recorder where the mortgaged or trust property is situated.

This bill would prohibit the mortgagee, trustee, or beneficiary from recording a notice of default until 45 days after it has recorded the mortgage or deed of trust and any assignment of the mortgage and deed of trust.

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 1214.5 is added to the Civil Code, to
2 read:

3 1214.5. Every mortgage or deed of trust of real property shall
4 be recorded within 30 days of the execution of the deed or other
5 document creating a security interest in the real property. The
6 mortgage or deed of trust shall be recorded in the office of the
7 recorder of each county where the mortgaged or trust property or
8 some part or parcel thereof is situated, with either of the following
9 documents attached:

- 10 (a) The promissory note.
- 11 (b) A certificate that confirms the existence of the promissory
12 note and contains all of the following information:
 - 13 (1) The date of execution of the promissory note.
 - 14 (2) The identities of the parties to the promissory note.
 - 15 (3) The terms of the debt, including, as applicable, the interest
16 rate, prepayment penalties, and other escrow items.

17 SEC. 2. Section 2923.7 is added to the Civil Code, to read:

18 2923.7. (a) A mortgagee, trustee, or beneficiary may not file
19 a notice of default until 45 days after it has duly recorded the
20 mortgage or deed of trust and any subsequent assignments of the
21 mortgage or the beneficial interest under the deed of trust. Pursuant
22 to Sections 1214.5 and 2934, the mortgage and deed of trust and
23 any subsequent assignments shall be recorded with the promissory
24 note or certificate attached.

25 (b) Nothing in this section shall be construed to require the
26 county recorder to certify that a mortgage, deed of trust, and any
27 assignments of the mortgage or beneficial interest under the deed
28 of trust have been properly recorded prior to recording a notice of
29 default.

1 SEC. 3. Section 2934 of the Civil Code is amended to read:

2 2934. (a) Any assignment of a mortgage and any assignment
3 of the beneficial interest under a deed of trust—may *shall* be
4 recorded,—and—from *with the promissory note or the certificate*
5 *described in subdivision (b) of Section 1214.5 attached, within 30*
6 *days of execution of the assignment. From the time the—same*
7 *assignment* is filed for record, *it* operates as constructive notice of
8 the contents thereof to all persons;—and—any.

9 (b) Any instrument by which any mortgage or deed of trust of,
10 lien upon, or interest in real property, (or by which any mortgage
11 of, lien upon, or interest in personal property a document
12 evidencing or creating which is required or permitted by law to be
13 recorded), is subordinated or waived as to priority may be recorded,
14 and from the time—the—same *it* is filed for record operates as
15 constructive notice of the contents thereof, to all persons.

16 SEC. 4. Section 27280 of the Government Code is amended
17 to read:

18 27280. (a) ~~Any—~~*Except as provided in subdivision (b), any*
19 *instrument or judgment affecting the title to or possession of real*
20 *property may be recorded pursuant to this chapter.*

21 (b) *A mortgage or deed of trust shall be recorded within 30 days*
22 *of the execution of the deed or other document creating a security*
23 *interest in the real property pursuant to Section 1214.5 of the Civil*
24 *Code. An assignment of a mortgage or deed of trust shall be*
25 *recorded within 30 days of the execution of the assignment*
26 *pursuant to Section 2934 of the Civil Code.*

27 (b)

28 (c) Any instrument or document submitted for recordation which
29 effectuates a change in ownership may be accompanied by a change
30 in ownership statement as provided for in Section 480 of the
31 Revenue and Taxation Code. Upon receipt of such change in
32 ownership statement, the recorder shall transmit, as soon as
33 possible, the original statement or true copy thereof to the county
34 assessor along with the recorded document as required by Section
35 255.7 of the Revenue and Taxation Code. The change in ownership
36 statement shall not be recorded nor open and available to public
37 inspection and shall at all times remain confidential, except as
38 provided in Section 408 of the Revenue and Taxation Code.

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City Attorney

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OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

Introduced by Councilmember Rebecca Kaplan

Resolution In Support of Assembly Bill 1321 (Wieckowski) - Mortgage Title Transparency. A bill mandating the recording of all mortgage deeds/trusts and assignments, and payment of the requisite fees. It would also require that the mortgage note be filed prior to issuing a Notice of Default to ensure that the foreclosing party has the right to foreclose.

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 1321 (Wieckowski) - Mortgage Title Transparency.

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
