

California's Homeowner Bill of Rights Summary What Borrowers Need to Know

In a nutshell: The Homeowner Bill of Rights (HBOR) was passed by the California Legislature in 2012 and becomes effective January 1, 2013. It adds new protections to existing laws to help prevent avoidable foreclosures. It requires enhanced notifications so that borrowers will know their rights and how to contact their loan servicer to pursue a loan modification or other relief. It curbs “Dual Tracking” where loan servicers put homeowners on the foreclosure track, even when loan modification applications are under consideration. It facilitates better communication between borrower and loan servicer by requiring loan servicers to provide an accountable, consistent point of contact to help the homeowner through the loan modification and or foreclosure process. HBOR requires lenders to provide proper documentation before they can foreclose, and it gives borrowers tools to enforce their rights.

The following is a summary of the major consumer protection provisions of HBOR. The most comprehensive details are contained in the actual law itself which can be accessed here.

http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_0851-0900/sb_900_bill_20120711_chaptered.pdf

1. For Borrowers—HBOR provides a fighting chance to avoid a foreclosure through more notification, an opportunity to apply for a loan modification or other relief for eligible borrowers, and restrictions on dual tracking. Here's how:

A. HBOR requires servicers to send more notifications regarding foreclosure to all borrowers to notify them of their rights:

- **Before filing a notice of default (NOD)**, in writing and at least 30 days prior to recording a NOD, the mortgage servicer must send a notice stating that if the borrower is a service member, or a dependant of a service member, he or she may be entitled to certain protections. The loan servicer's notice must also inform borrowers, (military and non-military), that they have the right to request and obtain key loan documents, and their payment history.
- **If the lender has filed a notice of default (NOD)**, the mortgage servicer must send a written communication to the borrower within 5 business days notifying the borrower that he or she may be evaluated for a foreclosure prevention alternative; whether an application is required to be considered; and the means and process by which a borrower may obtain an application.

B. HBOR requires servicers to inform borrowers about the opportunity to apply for a loan modification or other relief, when available.

- If you qualify as an eligible borrower under the law, and your loan servicer has foreclosure options available, it must offer you an opportunity to apply for a loan modification or an alternative if you request one. This could be a loan modification or another available loss mitigation option.

C. HBOR requires servicers to acknowledge receipt and to not proceed with the foreclosure process while evaluating your eligibility or while you are complying with the terms of an offered loan modification or other relief.

Deadlines for submitting a loan modification application may vary by loan servicer. If you submit a loan modification application, the servicer must provide written acknowledgement of receipt of any borrower documentation within 5 business days of receipt that provides information about the application process, advises you of any missing documentation needed to make the application complete and gives you a deadline for submitting that documentation, and:

- **You must be informed one way or the other.** Borrowers who submit a completed loan application must get a “yes” or “no” decision from their servicer before the servicer can commence or continue with the foreclosure process. A denial must include a detailed explanation for their decision.
- **HBOR halts foreclosure while you wait for a decision.** Once you’ve submitted a completed loan modification application, your servicer cannot file or proceed with a filed foreclosure until your lender has given you a decision on your modification application.
- **You can appeal if your request for a loan modification or other relief is denied.** You have at least 30 days from the day of denial to appeal and provide evidence that the determination was in error.
- **If your appeal is denied,** the servicer can proceed with the foreclosure process 15 days after the denial of the appeal.
- **If you don’t appeal a denial,** the servicer can commence with the foreclosure process 31 days after the borrower is notified in writing of the denial.
- **HBOR halts foreclosure if you qualify for, accept and keep current on a loan modification.** If your lender says you qualify and you accept an offer, the lender cannot proceed with foreclosure, as long as you keep paying on time and as agreed in the modification.

- **You have 14 days to accept an offered first lien loan modification.** If you do not accept, the servicer can proceed with the foreclosure process 14 days after the first lien loan modification is offered.
- **No application fee.** Loan servicers cannot charge you a fee to apply for a loan modification or other relief.
- **Late fees cannot be assessed** for periods during which a complete loan modification application is under consideration, during an appeal, or while timely loan modification payments are being made.
- **If you are granted a modification or other relief and the loan is sold or transferred,** the subsequent servicer must honor the agreement.

Who can enforce their rights under these provisions?

Eligible Borrower: A borrower may be eligible to enforce their rights if he or she is potentially eligible for any federal, state or lender foreclosure prevention alternative program offered by, or through his or her mortgage servicer.

Not Eligible Borrower: A borrower who has surrendered the property as evidenced by either a letter or delivery of the keys to the lender or the authorized agent; a borrower who has decided to leave the home and has contracted with someone to advise on how to stay in the home and avoid the contractual obligations under the loan; a borrower who has filed Chapter 7, 11, 12, 13 bankruptcy and the bankruptcy court has not entered an order closing or dismissing the bankruptcy case.

Other Important Limitations:

- HBOR does not require a servicer to offer you a loan modification if it does not participate in any such program, or if you do not meet the applicable eligibility requirements.
- Also, where a borrower was provided a fair opportunity to be evaluated for a loan modification prior to January 1, 2013, a mortgage servicer is not required to evaluate a loan modification application from a borrower unless there has been a material, documented change in the borrower's financial circumstances.
- The duty to offer an opportunity to apply for foreclosure prevention alternatives, if available through the lender, is limited to **first lien** loans, which means the most senior mortgage or deed of trust on the property which is the subject of the notice of default (NOD) or notice of sale (NOS). Additionally, it is limited to borrowers whose loans are secured by owner-occupied residential real property containing no more than four dwelling units. Under HBOR, "owner-occupied" means that the property is the principal residence of the borrower and is security for a loan made for personal, family, or household purposes.

What lenders and servicers must offer assistance?

Any entity servicing a loan on a property located in California is required to offer eligible borrowers an opportunity to apply for loss mitigation alternatives, where available, **except** entities that have foreclosed on 175 or fewer residential properties located in California in the previous year. Such entities are subject to lesser obligations under HBOR. Also, signatories to the National Mortgage Settlement who are in compliance with the relevant terms of that settlement while it is in effect are considered to be in compliance with these provisions of HBOR. (For more information on the National Mortgage Settlement, see <http://nationalmortgagesettlement.com/>).

What to do if you suspect or know of a violation:

- Contact an attorney to discuss your rights. Locate a Legal Aid attorney for low to moderate income individuals (eligibility for services varies) <http://lawhelpca.org/find-legal-help?subtopic=foreclosure-prevention&topic=housing>.
- Get a referral to a private attorney through the State Bar of California Lawyer Referral Services 1-866-442-2529 (toll free in California)
- Complain to the California Attorney General <http://oag.ca.gov/consumers>
- Complain to the California Department of Corporations <http://www.corp.ca.gov/Forms/Complaint.asp>

2. HBOR requires the servicer to assign borrowers an accountable “single point of contact” (SPOC) to help navigate the loan modification/foreclosure process, upon request from a borrower who requests a foreclosure prevention alternative.

- The SPOC must provide the borrower clear and accurate information about available alternatives to foreclosure and the process.
- The SPOC must coordinate the receipt of all documents and ensure that the borrower is considered for all foreclosure prevention alternatives offered by or through the mortgage servicer.
- Each member of the SPOC team is required to be knowledgeable about the borrower’s financial situation and current status.
- The SPOC team must remain assigned to the borrower’s case until the servicer determines that all loss mitigation options have been exhausted or the borrower’s account becomes current.
- A mortgage servicer that conducts 175 or fewer foreclosure sales per year is exempt from the requirement to provide a SPOC.

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3. HBOR requires all borrowers to be protected against foreclosures with inaccurate or unverified information, also known as “robo-signing.”

- HBOR requires servicers to review reliable evidence to prove the borrower’s default and their right to foreclose.
- All recorded foreclosure documents must be properly reviewed and verified for accuracy.
- Servicers who violate this law repeatedly can be subject to civil penalties of up to \$7,500 per mortgage or deed of trust for filing unverified documents, also known as “robo-signing.” These civil actions can be brought by state and local government entities.

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4. ENFORCING YOUR RIGHTS: HBOR puts borrowers in the drivers’ seat when there is a violation of certain provisions.

As noted above, borrowers should notify the Attorney General and the Department of Corporations when they suspect or know of a HBOR violation.

Additionally, borrowers may sue violators in a court of law for material violations of HBOR provisions. Contact an attorney to discuss your rights. The relief the borrower may obtain depends on when the lawsuit is filed.

- **If the lender/servicer hasn’t already sold the home (prior to the trustee’s sale)**, and if a notice of default has already been recorded, a borrower can sue for injunctive action against a mortgage servicer for a material violations of the following provisions: the requirement for increased borrower outreach and notifications, the required filing of the declaration of contact or due diligence, the provisions against dual tracking, and the processes required around loan modification applications, denials and appeal. Further,

the borrower can request that a court provide injunctive relief to address violations for failure to provide a single point of contact, to not dual track and to not assess late fees while the loan modification application is pending or when the borrower is paying as agreed on an offered loan modification. Injunctive relief may include requiring the lender to delay the foreclosure sale in order to fix any previous violations.

- **If the lender has already sold the home**, the violation is material, and the servicer has failed to correct it, then judges may award actual damages, plus attorney fees. A court may award the greater of triple actual damages or \$50,000 if it finds that the servicer's violation was intentional, reckless or resulted from willful misconduct.
- **NOTE:** Regardless of any legal action against a servicer, no violation shall affect the validity of a sale to a "bona fide purchaser" which means a sale to a third party who buys a home through foreclosure--from the servicer or lender- without notice of the violation or other legal impropriety.

Finally, beware of scams, especially phone and mail solicitations from scam artists claiming to provide assistance related to HBOR. Check with the state agencies listed above, your housing counselor if you have one and/or a trusted attorney, and do not entrust your money or personal information to anyone who solicits you. Report solicitations to the California Department of Justice at <http://oag.ca.gov/contact/consumer-complaint-against-business-or-company>

Last updated December 18, 2012