



California MBA Legislative Accomplishments 2020

AB 3088 – Mortgage Forbearance and Tenant Rent Relief

AB 3088 (Chapter 37, Statutes of 2020) reflects a compromise that was moved forward in the final weeks of the legislative session as an alternative to more problematic foreclosure ban and forbearance mandate legislative proposals, and it provides tenant rent relief and mortgage borrower assistance. The bill includes language that was initially in SB 1447, providing HBOR protections for residential 1-4 properties occupied by rental tenants.

One of the key bill provisions is that if a mortgage servicer denies a forbearance request made during the effective time period (operational date of the new title to April 1, 2021), the servicer must provide a written notice to the borrower explaining the reason forbearance was not provided. If there was a curable defect in the borrower's forbearance request, the servicer must identify the defect and allow 21 days for the borrower to cure the defect. Also, if forbearance is denied the servicer must include in the declaration required by Section 2923.5 whether forbearance was or was not required. There is a safe harbor from these requirements for both federally backed and non-federally backed mortgages if the servicer complies with the relevant CARES Act provisions. The bill would also require a mortgage servicer to comply with applicable federal guidance regarding borrower options following a COVID related forbearance. There is a safe harbor for compliance with federal agency guidance regarding these requirements for both federally backed loans and non-federally backed loans. The bill took effect immediately upon being signed by the governor.

AB 1864 – Department of Financial Protection and Innovation

Early in 2020 the governor put forward a budget trailer bill proposal to restructure the Department of Business Oversight into the new Department of Financial Protection and Innovation and to establish the California Consumer Financial Protection Law. This proposal was described as an effort to combat non-licensed entities offering financial products and services but the original proposal created an additional layering of regulation for already licensed mortgage lenders and would have subjected these lenders to extensive new regulator enforcement authority, including massive new penalties and legal liability.

Negotiations with the governor's office and the Legislature on this proposal continued throughout the legislative process until a compromise was reached in the final weeks of the legislative session. The compromise language was amended into AB 1864 (*Chapter 157, Statutes of 2020*) and exempted state licensed mortgage lenders/servicers and state/federally chartered banks and clarified that the legislation maintained the status quo regarding enforcement and legal liability under state law for licensees operating under the authority of their license. These removed the concerns the CA MBA had with earlier versions of the proposal.

AB 2501 – Mortgage Forbearance Mandate & Foreclosure Moratorium

AB 2501 was amended with provisions to provide borrowers with forbearance relief for mortgages, automobile loans, payday loans and PACE financing. Many of the amendments were based on the proposal at the federal level that the House Democrats put forward during the CARES Act discussions. With respect to mortgages, the proposal originally would have put in place a foreclosure moratorium during the state COVID-19 state of emergency and the 180-day period after. It would also have allowed a borrower experiencing financial hardship during the COVID crisis to ask for up to 360 days of forbearance on mortgage payments during the emergency or 180 days after. These provisions would have been automatically triggered after 60 days of delinquency.

The foreclosure and forbearance provisions were later amended to implement the foreclosure moratorium for all of 2021 and to allow for the borrower to obtain, at his or her discretion, up to 360 days of forbearance starting at any point in 2021. Language was also added stating that compliance with the relevant Federal CARES Act forbearance provisions constitutes compliance with the bill's forbearance provisions for federally backed mortgage loans. Additional provisions required notifying the borrower regarding available modification or loss mitigation options. If the borrower was unable to continue the normal payments after forbearance, the servicer would have been required to implement modification or loss mitigation options for which the borrower qualified without penalty or additional interest. The bill originally would have created significant penalties and remedies for violations, including forfeiting rights to commence foreclosure and express Business and Professions Code 17200 unfair and deceptive practice legal liability.

AB 2501 died on the Assembly floor with strong opposition from the CA MBA and other industry group trade groups in spite of the author's repeated attempts to gain the necessary votes to pass the bill.

AB 828 – Foreclosure Moratorium

The CA MBA opposed AB 828 and it died in the Senate Judiciary Committee. It would have prohibited a party from submitting to a county recorder any instrument, paper, or notice that constitutes a notice of default, a notice of sale, or a trustee's deed upon sale for residential real property during a declared state of emergency relating to the COVID-19 virus. It would also have provided that any action for foreclosure on a mortgage or deed of trust of a residential real property is stayed during a declared state of emergency related to the COVID-19 virus and that the court may take no action unless the court finds that the action is required to further public health and safety. It would have extended the period for exercising rights, including right of redemption, until 90 days after the state of emergency ends.

AB 828 would also have impacted residential landlord and tenant contracts. It originally would have required the court in an unlawful detainer case to reduce the rent by 25 percent for twelve months if the tenant shows increased costs for household necessities or reduced household earnings.

SB 939 – Commercial Landlords and Tenants

SB 939 died in the Senate Appropriations Committee following strong opposition from the CA MBA and several other industry trade groups that worked to inform policymakers of the problems the bill would create in the commercial real estate marketplace. It would have made it unlawful to terminate the tenancy of or evict a tenant of a commercial real property during the COVID state of emergency declared by the Governor. If a tenant does not pay rent during any or all months occurring during the state of emergency, the sum total of that rent shall be due 12 months after the date the state of emergency ends, unless the tenant has reached an agreement with the landlord to pay the sum total of that rent at a date later than 12 months after the end of the state of emergency. The nonpayment of rent that would have been due during the state of emergency cannot be grounds for an unlawful detainer.

The bill would have also allowed a COVID impacted commercial tenant who wishes to modify his or her commercial lease, to engage in good faith negotiations with its landlord to modify any rent or economic requirement regardless of the term remaining on the lease. If the tenant and the landlord did not reach a mutually satisfactory agreement within 30 days, a tenant would have been able to unilaterally terminate a commercial lease by serving a lease termination notice on the landlord.

SB 1079 – Residential property Foreclosure Sale

In legislative hearings the legislative author of SB 1079 (Chapter 202, Statutes of 2020) stated that the bill is intended to protect against a situation like what occurred in the last recession where large corporations purchased high volumes of single-family residences in neighborhoods to rent them out and left many of them unoccupied and did not maintain them for periods of time. She also said the bill would allow local governments to increase fines for properties that are not maintained. The bill, until January 1, 2026, would create an alternative process in connection with a trustee's sale of property under a power of sale contained in a deed of trust or mortgage on real property containing 1 to 4 residential units. The new process allows specified persons to, within 15 days of the trustee's sale, notify the trustee of the intent to place a bid and provides for a total 45-day timeframe to complete that bidding process. If a prospective owner occupant is the last highest bidder and meets conditions required of the bidder, the sale becomes final. The bill would prescribe duties for trustees in connection with this process. The amendments also create a new process for local governments to fine purchasers of foreclosed properties for not maintaining a property, including \$2000 per day penalties that can be increased to \$5000 after 30 days. The CA MBA opposed SB 1079, and the final version of the bill included significant improvements from earlier more problematic versions, including removing language allowing local governments to assess \$10,000 per day penalties for not maintain a property.