

AMENDED IN ASSEMBLY JUNE 4, 2020

AMENDED IN ASSEMBLY MAY 11, 2020

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 2501

Introduced by Assembly Member Limón

February 19, 2020

An act to add Title 19 (commencing with Section 3273.01) to Part 4 of Division 3 of the Civil Code, and to add ~~Sections 22698 and~~ *Section* 23039 to the Financial Code, relating to COVID-19 relief.

LEGISLATIVE COUNSEL'S DIGEST

AB 2501, as amended, Limón. COVID-19: homeowner, tenant, and consumer relief.

(1) 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. Existing law establishes certain requirements in connection with foreclosures on mortgages and deeds of trust, including restrictions on the actions mortgage servicers while a borrower is attempting to secure a loan modification or has submitted a loan modification application. Existing law also imposes requirements on loans secured by liens on motor vehicles.

This bill would enact the COVID-19 Homeowner, Tenant, and Consumer Relief Law of 2020. The bill, with respect to residential mortgage loans, would prohibit a mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent, as defined, from taking specified actions during the COVID-19 emergency and the 180-day period

following the emergency. The bill would prohibit the above persons from commencing or continuing any judicial foreclosure action, recording a notice of default, or taking any action to evict a person following a foreclosure. The bill would also require the above persons to stay all foreclosure proceedings and time limits in a judicial or nonjudicial foreclosure on a property. The bill would not apply these provisions to a mortgage secured by a dwelling that any of the above persons has determined, after exercising reasonable diligence, is vacant or abandoned.

The bill, with respect to residential mortgage loans, would authorize a borrower experiencing a financial hardship during the COVID-19 emergency ~~or the 180 days thereafter, to seek~~ *request* forbearance from any mortgage obligation by submitting a request to the borrower's mortgage servicer. The bill would require the mortgage servicer to provide the forbearance requested for 180 days and to extend that timeframe if the borrower affirms that they continue to experience hardship. The bill would prohibit a mortgage servicer from misleading or making misrepresentations to a borrower about forbearance and repayment options.

The bill would require a borrower receiving a forbearance with respect to a mortgage secured by a dwelling that has a tenant, regardless of whether the borrower also lives in the dwelling, to provide the tenant with rent relief for not less than the forbearance period. The bill would require a mortgage servicer, during the COVID-9 emergency, to automatically grant a delinquent borrower on a mortgage obligation a 180-day forbearance, subject to extension. The bill would require a mortgage servicer, upon placing a mortgage obligation in forbearance, to provide the borrower written notification of the forbearance terms, treatment of payments, and other options available to the borrower at the end of the forbearance period.

The bill would prohibit a mortgage servicer from assessing, accruing, or applying fees, penalties, or additional interest to the borrower's account beyond specified scheduled or calculated amounts. The bill would require the mortgage servicer, if the borrower in forbearance makes payments to an impound account, to pay or advance the disbursements on or before relevant deadlines to avoid a penalty and would authorize the mortgage servicer to collect any resulting shortage or deficiency on that account for the borrower after the forbearance period ends. The bill would also require the mortgage servicer to evaluate the borrower's ability to return to making regular mortgage

payments, and to take various steps to allow for modification of the borrower's loan. The bill would require a mortgage servicer that claims investor guidelines or applicable law prohibit implementation of postforbearance reinstatement to notify the Commissioner of Business Oversight, as specified, and to present documentation, in accordance with procedures developed by the commissioner, subject to judicial review. The bill would require the mortgage servicer, if the borrower is unable to return to making regular mortgage payments, to evaluate all loan modification options, and, if the borrower qualifies, to implement the option with no penalties, late fees, or additional interest beyond specified scheduled amounts. The bill would also require a mortgage servicer, if a borrower does not qualify for modification, to evaluate the borrower for all available nonhome retention loss mitigation options before considering any foreclosure acts. The bill would require any notices or agreements to be provided in specified languages.

The bill would provide that a mortgage servicer that violates any of the above requirements forfeits their rights to commence a foreclosure on a borrower that is harmed by the violation, subject to the right to cure a violation and reinstate their rights. The bill would also make a violation of the above provisions an unfair and deceptive business practice, as well as a violation of other specified laws. The bill would authorize a borrower, if a trustee's deed upon sale has not been recorded, to bring an action for injunctive relief, and would establish various other legal remedies, including treble damages and attorney's fees and costs.

The bill, with respect to multifamily mortgage loans, would authorize a borrower to submit a request for forbearance to the borrower's mortgage servicers, affirming that the multifamily borrower is experiencing hardship during the COVID-19 emergency. The bill would require a mortgage servicer, upon request from a multifamily borrower, to request documentation of the financial hardship, provide the forbearance for not less than 180 days, subject to extension. The bill would require a multifamily borrower, during the forbearance term, to provide rent relief to tenants living in the property secured by the mortgage and would prohibit eviction for a tenant's nonpayment of rent or application or accrual of fees or other penalties on renters for nonpayment of rent. The bill would require a multifamily borrower to bring a loan placed in forbearance under these provisions current within a specified timeframe.

This bill, with respect to vehicle-secured credit obligations, would prohibit a servicer of vehicle-secured credit from taking any action to

repossess a mobilehome or motor vehicle that secures a loan during the COVID-19 emergency and for the 180-day period thereafter. The bill would authorize a consumer experiencing a financial hardship during the COVID-19 emergency to request forbearance from any vehicle-secured credit obligation, regardless of delinquency status, *obligation* by submitting a request to the servicer of vehicle-secured credit, affirming that the ~~borrower~~ *consumer* is experiencing hardship. The bill would require a servicer of vehicle-secured credit to provide the forbearance requested for a period of 90 days, and to extend the forbearance period upon request, if the ~~borrower~~ *consumer* affirms that they continue to experience hardship. The bill would *authorize a servicer of vehicle-secured credit to assess, accrue, or apply to a consumer's account a rate of interest of up to 7% per annum, but would prohibit a servicer of vehicle-secured credit from assessing, accruing, or applying additional fees, penalties, or other interest to a borrower's consumer's account beyond the amounts scheduled or calculated, as specified.*

The bill would require the holder of a vehicle-secured credit obligation to evaluate a consumer's ability return to making regular payments before the completion of a forbearance period, and if the consumer is able to return to making regular payments, modify the consumer's vehicle-secured credit obligation to extend the term, modify the obligation, notify the borrower, and take other specified actions, including proceeding with a written notice of intent to repossess the vehicle only after the expiration of the COVID-19 emergency and the 180-day period thereafter. ~~The bill would also provide that a deficiency judgment shall not lie after the sale or disposition of a mobilehome or motor vehicle for failure by a consumer to make a payment after the sale or other disposition of a mobilehome or motor vehicle for failure by a consumer to make a payment that was due during the COVID-19 emergency or the 180-day period following the emergency unless the servicer of the vehicle-secured credit obligation has complied with these provisions.~~ *The bill would provide that a repossession of a mobilehome or motor vehicle by a servicer of a vehicle-secured credit obligation that has failed to comply with all of these provisions constitutes an acceptance of the collateral in full satisfaction of the vehicle-secured credit obligation.*

~~(2) Existing law, commonly known as the Property Assessed Clean Energy (PACE) program, authorizes public agency officials and property owners, as provided, to enter into voluntary contractual assessments, known as PACE assessments, to finance the installation of distributed~~

~~generation renewable energy sources or energy or water efficiency improvements that are permanently fixed to real property.~~

~~Existing law, the California Financing Law (CFL), requires a program administrator who administers a PACE program on behalf of, and with the written consent of, a public agency to comply with specified requirements relating to the PACE program. Existing law requires a program administrator to be licensed by the Commissioner of Business Oversight under the CFL.~~

~~This bill would require a program administrator, during the COVID-19 emergency and the 180-day period thereafter, within 60 days after enactment of this bill, to notify each property owner with an outstanding assessment contract that the property owner is entitled to forbearance on the next annual PACE assessment owed pursuant to the assessment contract, if the property owner is facing a financial hardship due to the COVID-19 emergency. The bill would require the notification to specify how the property owner may elect to accept the offer of forbearance and would require a program administrator to provide forbearance on the next annual PACE assessment owed by a property owner that accepts such an offer. The bill would permit a program administrator under these circumstances to require the property owner to pay the amount of the forborne PACE assessment in the year following the scheduled end of the assessment contract and would prohibit a program administrator from charging additional fees or interest related to the forborne PACE assessment. The bill would also prohibit a program administrator from exercising any contractual rights of acceleration related to unpaid assessments during the COVID-19 emergency.~~

~~(3)~~

~~(2) The California Deferred Deposit Transaction Law provides for the licensure and regulation by the Commissioner of Business Oversight of persons engaged in the business of making or arranging deferred deposit transactions. A knowing and willful violation of the provisions of this law is a crime.~~

~~This bill, during the COVID-19 emergency and the 180-day period thereafter, would prohibit a fee for a deferred deposit transaction from exceeding 5% of the face amount of the check. The bill would require a licensee under that law to offer a customer the option to enter into a payment plan that provides an extension of time for repayment of an existing deferred deposit transaction in accordance with specified procedures. By expanding the scope of an existing crime, the bill would~~

impose a state-mandated local program. The bill would also include related legislative findings.

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.

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

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

- 1 SECTION 1. The Legislature finds and declares the following:
- 2 (a) In late December 2019, several cases of unusual pneumonia
- 3 began to emerge in the Hubei province of China. On January 7,
- 4 2020, a novel coronavirus, SARS-CoV-2, was identified as the
- 5 likely source of the acute respiratory disease now known as
- 6 COVID-19.
- 7 (b) Infections have rapidly spread to other countries throughout
- 8 the world, including the United States.
- 9 (c) On January 30, 2020, the World Health Organization (WHO)
- 10 declared COVID-19 a Public Health Emergency of International
- 11 Concern, and on January 31, 2020, the United States Secretary of
- 12 Health and Human Services declared a public health emergency.
- 13 (d) On March 4, 2020, California Governor Gavin Newsom
- 14 declared a state of emergency to make additional resources
- 15 available, formalize emergency actions already underway across
- 16 multiple state agencies and departments, and help the state prepare
- 17 for a broader spread of COVID-19.
- 18 (e) On March 19, 2020, California Governor Gavin Newsom
- 19 issued a stay at home order to protect the health and well-being of
- 20 all Californians and to establish consistency across the state in
- 21 order to slow the spread of the virus.
- 22 (f) Due to the voluntary and mandatory actions by Californians
- 23 to slow the spread of COVID-19, economic activity in the state
- 24 has fallen precipitously.
- 25 (g) In the seven weeks prior to May 1, 2020, approximately
- 26 3,900,000 California workers filed claims for unemployment
- 27 benefits, which represents 20 percent of the state’s workforce.

1 (h) The economic hardships brought on by the COVID-19
2 pandemic mean that many California individuals and households
3 are likely to have difficulty remaining current on monthly debt
4 obligations through no fault of their own.

5 (i) Temporary forbearance benefits not only borrowers, but also
6 other creditors by avoiding downward collateral price spirals
7 triggered by an increase in foreclosure or repossession activity.

8 (j) Without forbearance, many borrowers are unlikely to pay
9 their obligations according to their original terms and are likely to
10 default on obligations or file for bankruptcy, resulting in reduced
11 recoveries for creditors, and in the case of bankruptcy, no recovery
12 of unaccrued interest.

13 (k) With forbearance, creditors are likely to realize greater
14 long-term value because borrowers will be more likely to repay
15 their obligations after the major disaster or emergency has subsided.

16 (l) Ensuring that homeowners and tenants are able to remain in
17 their residences helps to minimize the spread of the novel
18 coronavirus and protects the public health.

19 (m) Providing forbearance and an opportunity to repay amounts
20 owed after the emergency subsides will position California
21 consumers, households, and businesses for a stronger economic
22 recovery than the state would otherwise realize if no action were
23 taken.

24 (n) Without emergency action to prevent it, delinquent loan
25 payments will likely lead to mass foreclosures, evictions, and
26 repossessions that will harm the health, safety, and welfare of
27 Californians today and for years after the pandemic ends.

28 (o) The Legislature hereby finds and declares that there is a
29 current and immediate threat to the public health, safety, and
30 welfare and a need for immediate preservation of the public peace,
31 health, or safety that warrants this urgency legislation, which
32 finding is based upon the facts stated in the recitals above.

33 SEC. 2. Title 19 (commencing with Section 3273.01) is added
34 to Part 4 of Division 3 of the Civil Code, to read:

1 TITLE 19. COVID-19 HOMEOWNER, TENANT, AND
2 CONSUMER RELIEF LAW OF 2020

3
4 CHAPTER 1. TITLE AND DEFINITIONS
5

6 3273.01. This title is known and may be cited as the
7 “COVID-19 Homeowner, Tenant, and Consumer Relief Law of
8 2020.”

9 3273.1. For purposes of this title, the following definitions
10 apply:

11 (a) “Borrower” means any natural person who is a mortgagor
12 or trustor and who is potentially eligible for any federal, state, or
13 proprietary foreclosure prevention alternative program offered by,
14 or through, the borrower’s mortgage servicer. “Borrower” shall
15 not include any of the following:

16 (1) An individual who has surrendered the secured property as
17 evidenced by either a letter confirming the surrender or delivery
18 of the keys to the property to the mortgagee, trustee, beneficiary,
19 or authorized agent.

20 (2) An individual who has contracted with an organization,
21 person, or entity whose primary business is advising people who
22 have decided to leave their homes on how to extend the foreclosure
23 process and avoid their contractual obligations to mortgagees.

24 (b) “Consumer” means a person obligated to repay a
25 vehicle-secured credit obligation.

26 (c) “COVID-19 emergency” means the period that begins upon
27 the date of the enactment of this title and ends on the date that the
28 state declares the emergency related to the COVID-19 disease has
29 ended.

30 (d) “Impound account” means a type of account for payment
31 of taxes on real property, insurance premiums, or other purposes
32 relating to the property. Such an account may be structured as an
33 impound, trust, or other type of account.

34 (e) “Mobilehome” means a structure designed for human
35 habitation and for being moved on a street or highway under permit
36 pursuant to Section 35790 of the Vehicle Code. Mobilehome
37 includes a manufactured home, as defined in Section 18007 of the
38 Health and Safety Code, and a mobilehome, as defined in Section
39 18008 of the Health and Safety Code, but, except as provided in
40 subdivision (b), does not include a recreational vehicle, as defined

1 in Section 799.29 of this code and Section 18010 of the Health
2 and Safety Code or a commercial coach as defined in Section
3 18001.8 of the Health and Safety Code.

4 (f) “Mortgage servicer” means a person or entity who directly
5 services a loan, or who is responsible for interacting with the
6 borrower, managing the loan account on a daily basis including
7 collecting and crediting periodic loan payments, managing any
8 escrow account, or enforcing the note and security instrument,
9 either as the current owner of the promissory note or as the current
10 owner’s authorized agent. “Mortgage servicer” also means a
11 subservicing agent to a master servicer by contract. “Mortgage
12 servicer” shall not include a trustee, or a trustee’s authorized agent,
13 acting under a power of sale pursuant to a deed of trust.

14 (g) “Motor vehicle” means a vehicle required to be registered
15 under the Vehicle Code that is bought for use primarily for personal
16 or family purposes, and does not mean any vehicle that is bought
17 for use primarily for business or commercial purposes or a
18 mobilehome, as defined in Section 18008 of the Health and Safety
19 Code that is sold on or after July 1, 1981. “Motor vehicle” does
20 not include any trailer that is sold in conjunction with a vessel and
21 that comes within the definition of “goods” under Section 1802.1.

22 (h) “Multifamily borrower” means a borrower of a residential
23 mortgage loan that is secured by a lien against a property
24 comprising five or more dwelling units.

25 (i) “Servicer of vehicle-secured credit” means either:

26 (1) The entity that is servicing the vehicle-secured credit
27 obligation for the holder.

28 (2) The holder, if it is servicing the obligation.

29 (j) “Vehicle-secured credit obligation” means *a form of credit*
30 *owed by a natural person, not to include artificial entities, such*
31 *as partnerships, corporations, trusts, estates, cooperatives,*
32 *associations or entities created by statute, such as governmental*
33 *agencies, that is either:*

34 (1) A loan for ~~personal, family, or household purposes~~ that is
35 secured by a mobilehome or motor vehicle.

36 (2) A conditional sale contract as defined by subdivision (a) of
37 Section 2981.

38 3273.2. (a) The provisions of this title apply to specified
39 obligations, as follows:

1 (1) Article 1 (commencing with Section 3273.10) of Chapter 2
2 shall apply to a mortgage or deed of trust that is secured by
3 residential property containing no more than four dwelling units.

4 (2) Article 2 (commencing with Section 3273.20) of Chapter 2
5 shall apply to a mortgage or deed of trust that is secured by
6 residential property containing five or more dwelling units.

7 (3) *Chapter 3 (commencing with Section 3273.30) shall apply*
8 *to a vehicle-secured credit obligation that was outstanding as of*
9 *the enactment of this title.*

10 (b) *Notwithstanding subdivision (a), Chapter 3 shall apply to*
11 *all nonpurchase money loans where the lender obtains a security*
12 *interest in a motor vehicle.*

13 ~~(b)~~

14 (c) The provisions of this title apply to the specified persons,
15 as follows:

16 (1) Chapter 2 (commencing with Section 3273.10) shall apply
17 to a depository institution chartered under federal or state law, a
18 person licensed pursuant to Division 9 (commencing with Section
19 22000) or Division 20 (commencing with Section 50000) of the
20 Financial Code, or a person licensed pursuant to Part 1
21 (commencing with Section 10000) of Division 4 of the Business
22 and Professions Code.

23 (2) Chapter 3 (commencing with Section 3273.30) shall apply
24 to a holder of a conditional sales contract as defined by the
25 Automobile Sales Finance Act (Chapter 2b (commencing with
26 Section 2981) of Title 14), ~~a person licensed pursuant to covered~~
27 ~~by the licensing requirements of~~ Division 9 (commencing with
28 Section 22000) of the Financial Code, or a depository institution
29 chartered under federal or state law.

30

31

CHAPTER 2. MORTGAGES

32

33

Article 1. Residential Mortgage Loans

34

35 3273.10. (a) A mortgage servicer, mortgagee, trustee,
36 beneficiary, or authorized agent shall not do any of the following
37 during the COVID-19 emergency and the 180-day period following
38 that emergency:

39 (1) Commence or continue any judicial foreclosure action.

40 (2) Record a notice of default pursuant to Section 2924.

1 (3) Take any action to evict a person following a foreclosure.

2 (b) A mortgage servicer, mortgagee, trustee, beneficiary, or
3 authorized agent shall stay all foreclosure proceedings and time
4 limits in a judicial or nonjudicial foreclosure on a property during
5 the COVID-19 emergency and the 180-day period following that
6 emergency. All time periods established under the state foreclosure
7 law for a borrower to respond, cure a default, redeem, or take any
8 action shall be stayed during the COVID-19 emergency and the
9 180-day period following that emergency.

10 (c) This section does not apply to a mortgage that is secured by
11 a dwelling that the mortgage servicer, mortgagee, trustee,
12 beneficiary, or authorized agent has determined, after exercising
13 reasonable diligence, is vacant or abandoned.

14 ~~3273.11. (a) A borrower experiencing a financial hardship~~
15 ~~during the COVID-19 emergency or the 180 days following that~~
16 ~~emergency may request forbearance from any mortgage obligation,~~
17 ~~regardless of delinquency status, by submitting a request to the~~
18 ~~borrower's mortgage servicer, either orally or in writing, affirming~~
19 ~~that the borrower is experiencing hardship during the COVID-19~~
20 ~~emergency. A borrower shall not be required to provide any~~
21 ~~additional documentation to receive a forbearance.~~

22 *3273.11. (a) During the COVID-19 emergency, a borrower*
23 *may request forbearance from any mortgage obligation by*
24 *submitting a request to the borrower's mortgage servicer, either*
25 *orally or in writing, affirming that the borrower is experiencing*
26 *a financial hardship that prevents the borrower from making timely*
27 *payments on the mortgage obligation due, directly or indirectly,*
28 *to the COVID-19 emergency.*

29 (b) Pursuant to a borrower submitting a request for forbearance,
30 a mortgage servicer may require the borrower to provide a written
31 attestation subject to the following requirements:

32 (1) The attestation shall include only the following text: "I,
33 [borrower name], attest that I am experiencing a financial hardship
34 that prevents me from making timely payments on my mortgage
35 obligation due, directly or indirectly, to the COVID-19
36 emergency."

37 (2) The mortgage servicer shall notify the borrower of the
38 attestation requirement and the wording set forth in paragraph
39 (1) and provide clear directions for how the attestation shall be
40 delivered to the mortgage servicer.

1 (3) *The mortgage servicer shall provide forbearance for a period*
2 *of no less than 30 days before canceling the forbearance due to a*
3 *borrower failing to provide the attestation required by the*
4 *mortgage servicer.*

5 (4) *The mortgage servicer shall not require the borrower to*
6 *provide any additional information or documentation besides the*
7 *attestation described in paragraph (1).*

8 ~~(b)~~

9 (c) A mortgage servicer shall provide the forbearance requested
10 pursuant to subdivision (a) for a period of 180 days. If the borrower
11 affirms that they continue to experience hardship within the 30
12 days prior to the expiration of the initial forbearance period, the
13 mortgage servicer shall extend the forbearance period upon request
14 of the borrower for an additional 180 days. At the borrower’s
15 request, either the initial or extended period of forbearance may
16 be shortened.

17 ~~(e)~~

18 (d) A mortgage servicer shall not mislead or make
19 misrepresentations to a borrower about any of the following:

- 20 (1) Options for forbearance provided by state or federal law.
- 21 (2) Options for repayment after a forbearance period ends
22 provided by state or federal law.

23 ~~(f)~~

24 (e) A borrower receiving a forbearance under this article with
25 respect to a mortgage secured by a dwelling that has a tenant,
26 whether or not the borrower also lives in the dwelling, shall provide
27 the tenant with rent relief for a period of not less than the period
28 covered by the forbearance.

29 3273.12. (a) Notwithstanding any other state law governing
30 forbearance relief, during the COVID-19 emergency, a mortgage
31 servicer shall automatically grant a borrower who is or becomes
32 60 days or more delinquent on a mortgage obligation a 180-day
33 forbearance, which may be extended upon request of the borrower
34 for an additional 180 days. Such a borrower may elect to continue
35 making regular payments by notifying their mortgage servicer of
36 their election.

37 (b) Upon placing a mortgage obligation in forbearance pursuant
38 to subdivision (a), a mortgage servicer shall provide the borrower
39 written notification of the forbearance terms, including treatment
40 of payments to an impound account during the forbearance period,

1 and a complete and accurate description of the loss mitigation and
2 reinstatement options that will be available to the borrower at the
3 end of the forbearance period.

4 (c) Any payments made by the borrower during the forbearance
5 period shall be credited to the borrower's account in accordance
6 with Section 129F of the Truth in Lending Act (15 U.S.C. Sec.
7 1639f) or as the borrower may otherwise instruct that is consistent
8 with the terms of the mortgage loan contract.

9 3273.13. (a) Upon receiving a request for forbearance from a
10 borrower under Section 3273.11 or placing a borrower in automatic
11 forbearance under Section 3273.12, a mortgage servicer shall
12 provide the forbearance for not less than 180 days, and an
13 additional 180 days at the request of the borrower, provided that
14 the borrower will have the option to discontinue the forbearance
15 at any time.

16 (b) During the period of a forbearance under this article, a
17 mortgage servicer shall not assess, accrue, or apply to a borrower's
18 account any fees, penalties or additional interest beyond the
19 amounts scheduled or calculated as if the borrower made all
20 contractual payments on time and in full under the terms of the
21 mortgage contract in effect at the time the borrower enters into the
22 forbearance.

23 (c) If a borrower in forbearance under this article is required to
24 make payments to an impound account, the mortgage servicer shall
25 pay or advance the disbursements on or before any relevant
26 deadlines to avoid a penalty, regardless of the status of the
27 borrower's payments. The mortgage servicer may collect any
28 resulting shortage or deficiency in the impound account from the
29 borrower after the forbearance period ends in any of the following
30 manners at the borrower's election:

- 31 (1) In a lump sum.
- 32 (2) Amortized over 60 months.
- 33 (3) Capitalized into the loan.

34 3273.14. (a) Before the completion of a forbearance period
35 provided by this article, a mortgage servicer shall evaluate the
36 borrower's ability to return to making regular mortgage payments.

37 (b) If the borrower is able to return to making regular mortgage
38 payments based on the evaluation required by subdivision (a), the
39 mortgage servicer shall:

- 40 (1) Either:

1 (A) Modify the borrower's loan to extend the term for the same
2 period as the length of the forbearance, with all payments that were
3 not made during the forbearance distributed at the same intervals
4 as the borrower's existing payment schedule and evenly distributed
5 across those intervals, with no penalties, late fees, additional
6 interest accrued beyond the amounts scheduled or calculated as if
7 the borrower made all contractual payments on time and in full
8 under the terms of the mortgage contract in effect at the time the
9 borrower entered into the forbearance, and with no modification
10 fee charged to the borrower, or

11 (B) If the borrower elects to modify the loan to capitalize a
12 resulting impound account shortage or deficiency, the mortgage
13 servicer may modify the borrower's loan by reamortizing the total
14 unpaid principal balance and extending the term of the loan
15 sufficient to maintain the regular mortgage payments.

16 (C) A mortgage servicer that claims investor guidelines or any
17 applicable law prohibits the mortgage servicers from implementing
18 a postforbearance reinstatement option described in subparagraphs
19 (A) and (B) shall notify the borrower and the Commissioner of
20 Business Oversight of the claim at the time of an offer of
21 forbearance. Failure to make that disclosure shall have the effect
22 of a designation by the servicer that it has the authority to
23 implement the provisions of this section. At the time of an offer
24 of forbearance, the servicer claiming such an exception shall
25 present documentation of the ground for the exception to the
26 borrower and the Commissioner of Business Oversight. The
27 Commissioner of Business Oversight shall develop a procedure
28 for reviewing and determining the validity of such exception
29 requests and an affected borrower shall have the opportunity to
30 participate in the review. Determinations by the Commissioner of
31 Business Oversight shall be subject to judicial review.

32 (2) Notify the borrower in writing of the extension or
33 modification required by paragraph (1), including provision of a
34 new payment schedule and date of maturity, and that the borrower
35 shall have the election of prepaying the suspended payments at
36 any time, in a lump sum or otherwise.

37 (c) If the borrower is unable to return to making regular
38 mortgage payments based on the evaluation required by subdivision
39 (a):

1 (1) The mortgage servicer shall evaluate the borrower for all
2 loan modification options, without regard to whether the borrower
3 has previously requested, been offered, or provided a loan
4 modification or other loss mitigation option and without any
5 requirement that the borrower come current before that evaluation
6 or as a condition of eligibility for the modification. A modification
7 may include any of the following:

- 8 (A) Further extending the borrower's repayment period.
- 9 (B) Reducing the principal balance of the loan.
- 10 (C) Any other modification or loss mitigation options available
11 to the servicer under the terms of any investor requirements and
12 existing laws and policies.

13 (2) If the borrower qualifies for a modification described in
14 paragraph (1), the mortgage servicer shall implement the option,
15 with no penalties, late fees, additional interest beyond the amounts
16 scheduled or calculated as if the borrower made all contractual
17 payments on time and in full under the terms of the mortgage
18 contract in effect at the time the borrower entered into the
19 forbearance, and with no modification fees charged to the borrower.

20 (d) If a mortgage servicer determines that a borrower does not
21 qualify for a modification after the mortgage servicer conducts the
22 evaluations required by this section, the mortgage servicer shall
23 evaluate the borrower for all available nonhome retention loss
24 mitigation options before considering any foreclosure acts upon
25 the expiration of 180 days after the COVID-19 emergency.

26 3273.15. (a) Any notices or agreements required by this article
27 shall be provided in the languages described in Section 1632.

28 (b) A mortgage servicer shall communicate about forbearance
29 and loan modification options described in this article in the
30 borrower's preferred language when the mortgage servicer
31 regularly communicates with the borrower in that language.

32 3273.16. Nothing in this article shall relieve a mortgage servicer
33 of its obligations under Section 2923.5, 2923.55, 2923.6, 2923.7,
34 2924.9, 2924.10, 2924.11, 2924.17, or 2924.18.

35 3273.17. (a) The Legislature finds and declares that any duty
36 mortgage servicers may have to maximize net present value under
37 their pooling and servicing agreements is owed to all parties in a
38 loan pool, or to all investors under a pooling and servicing
39 agreement, not to any particular party in the loan pool or investor
40 under a pooling and servicing agreement, and that a mortgage

1 servicer acts in the best interests of all parties to the loan pool or
2 investors in the pooling and servicing agreement if it agrees to or
3 implements a forbearance, loan modification or workout plan for
4 which both of the following apply:

5 (1) The loan is in payment default, or payment default is
6 reasonably foreseeable.

7 (2) Anticipated recovery under the forbearance and loan
8 modification plan exceeds the anticipated recovery through
9 foreclosure on a net present value basis.

10 (b) It is the intent of the Legislature that a mortgage servicer
11 offer a borrower a forbearance and loan modification or workout
12 plan if such a plan is consistent with the mortgage servicer's
13 contractual or other authority.

14 3273.18. (a) (1) A mortgage servicer that violates any of the
15 requirements of this article shall forfeit any rights to commence a
16 foreclosure on a borrower that is harmed by the violation.

17 (2) Notwithstanding paragraph (1), the mortgage servicer shall
18 have a right to cure any violation and reinstate their rights to
19 commence a foreclosure on the borrower. In order to cure the
20 violation, the mortgage servicer shall provide the borrower with
21 compensation, which may include refunds, forbearance, or any
22 other form of compensation, so that the borrower is returned to a
23 state similar to that which the borrower would have been if the
24 mortgage servicer did not violate this article.

25 (b) A violation of any provision of this article shall be deemed
26 an unfair and deceptive business practice pursuant to Section 17200
27 of the Business and Professions Code. Such violations include,
28 but are not limited to, the following:

29 (1) A false statement, misrepresentation, or concealment by a
30 mortgage servicer related to the availability of postforbearance
31 payment options.

32 (2) A misrepresentation or concealment related to a requirement
33 that a borrower pay a lump sum at the end of a forbearance period.

34 (3) A claim of a restriction placed on a mortgage servicer by an
35 investor that is not provided accurately or timely according to the
36 provisions of this article.

37 (c) A violation of a provision of this article shall be deemed a
38 violation of the law pursuant to which a mortgage servicer is
39 licensed, and such a violation shall be subject to the enforcement
40 authority provided to the licensing agency by the licensing law.

1 (d) A violation of Section 4022 of the federal CARES Act
2 (Public Law 116-136) shall be a violation of the state licensing
3 law pursuant to which a mortgage servicer is licensed.

4 3273.19. (a) (1) If a trustee's deed upon sale has not been
5 recorded, a borrower may bring an action for injunctive relief to
6 enjoin a material violation of this article.

7 (2) Any injunction shall remain in place and any trustee's sale
8 shall be enjoined until the court determines that the mortgage
9 servicer has corrected and remedied the violation or violations
10 giving rise to the action for injunctive relief. An enjoined entity
11 may move to dissolve an injunction based on a showing that the
12 material violation has been corrected and remedied.

13 (b) After a trustee's deed upon sale has been recorded, a
14 mortgage servicer shall be liable to a borrower for actual economic
15 damages pursuant to Section 3281, resulting from a material
16 violation of this article by that mortgage servicer where the
17 violation was not corrected and remedied prior to the recordation
18 of the trustee's deed upon sale. If the court finds that the material
19 violation was intentional or reckless, or resulted from willful
20 misconduct by a mortgage servicer, the court may award the
21 borrower the greater of treble actual damages or statutory damages
22 of fifty thousand dollars (\$50,000).

23 (c) No violation of this article shall affect the validity of a sale
24 in favor of a bona fide purchaser and any of its encumbrancers for
25 value without notice.

26 (d) The rights, remedies, and procedures provided to borrowers
27 by this section are in addition to and independent of any other
28 rights, remedies, or procedures under any other law. Nothing in
29 this section shall be construed to alter, limit, or negate any other
30 rights, remedies, or procedures provided to borrowers by law.

31 (e) A court may award a prevailing borrower reasonable
32 attorney's fees and costs in an action brought pursuant to this
33 section. A borrower shall be deemed to have prevailed for purposes
34 of this subdivision if the borrower obtained injunctive relief or
35 was awarded damages pursuant to this section.

36
37 Article 2. Multifamily Mortgage Loans

38
39 3273.20. (a) A multifamily borrower may submit a request
40 for forbearance to the borrower's mortgage servicer, either orally

1 or in writing, affirming that the multifamily borrower is
2 experiencing hardship during the COVID-19 emergency.

3 (b) A multifamily borrower shall have the option to discontinue
4 the forbearance at any time.

5 3273.21. Upon receipt of an oral or written request for
6 forbearance from a multifamily borrower, a mortgage servicer
7 shall request documentation of the financial hardship, provide the
8 forbearance for not less than 180 days, and provide the forbearance
9 for an additional 180 days upon the request of the borrower at least
10 30 days prior to the end of the initial forbearance period.

11 3273.22. During the term of forbearance under this article, a
12 multifamily borrower shall provide rent relief to any tenants living
13 in the property that secures the mortgage and may not evict a tenant
14 for nonpayment of rent or apply or accrue any fees or other
15 penalties on renters for nonpayment of rent.

16 3273.23. A multifamily borrower shall bring a loan placed in
17 forbearance under this article current within the earlier of 12
18 months after the conclusion of the forbearance period or within
19 10 days of the receipt by the multifamily borrower of any business
20 interruption insurance proceeds.

21 3273.24. A mortgage servicer of a federally backed multifamily
22 mortgage loan that complies with Section 4023 of the federal
23 CARES Act (Public Law 116-136) shall be deemed to be in
24 compliance with this article.

25

26 CHAPTER 3. VEHICLE-SECURED CREDIT OBLIGATIONS

27

28 3273.30. A servicer of vehicle-secured credit may not take any
29 action to repossess the mobilehome or motor vehicle that secures
30 a loan during the COVID-19 emergency and for the 180-day period
31 following that emergency, including providing a verbal or written
32 notice of intent to repossess the mobilehome or motor vehicle.

33 ~~3273.31. (a) A consumer experiencing a financial hardship~~
34 ~~during the COVID-19 emergency may request forbearance from~~
35 ~~any vehicle-secured credit obligation, regardless of delinquency~~
36 ~~status, by submitting a request to the servicer of vehicle-secured~~
37 ~~credit, either orally or in writing, affirming that the borrower is~~
38 ~~experiencing hardship during the COVID-19 emergency. A~~
39 ~~borrower shall not be required to provide any additional~~
40 ~~documentation to receive such forbearance.~~

1 3273.31. (a) *If a servicer of vehicle-secured credit complies*
2 *with all provisions of this section, the servicer may proceed with*
3 *a repossession of a mobilehome or motor vehicle that secures a*
4 *vehicle-secured credit obligation due to a consumer failing to*
5 *make a scheduled payment pursuant to the vehicle-secured credit*
6 *obligation.*

7 (b) *During the COVID-19 emergency, a consumer may request*
8 *forbearance from a vehicle-secured credit obligation by submitting*
9 *a request to the servicer of the vehicle-secured credit, either orally*
10 *or in writing, affirming that the consumer is experiencing a*
11 *financial hardship that prevents the consumer from making timely*
12 *payments on the vehicle-secured credit obligation due, directly or*
13 *indirectly, to the COVID-19 emergency.*

14 (c) *Pursuant to a consumer submitting a request described in*
15 *subdivision (b), a servicer of vehicle-secured credit may require*
16 *the consumer to provide a written attestation subject to the*
17 *following requirements:*

18 (1) *The attestation shall include only the following text: “I,*
19 *[consumer name], attest that I am experiencing a financial*
20 *hardship that prevents me from making timely payments on my*
21 *vehicle-secured credit obligation due, directly or indirectly, to the*
22 *COVID-19 emergency.”*

23 (2) *The servicer shall notify the consumer of the attestation*
24 *requirement and provide clear directions for how the attestation*
25 *shall be delivered to the servicer.*

26 (3) *The servicer shall provide forbearance for a period of no*
27 *less than 30 days before canceling the forbearance due to a*
28 *consumer failing to provide the attestation required by the servicer.*

29 (4) *The servicer shall not require the consumer to provide any*
30 *additional information or documentation besides the attestation*
31 *described in paragraph (1)*

32 ~~(b)~~

33 (d) *A servicer of vehicle-secured credit shall provide the*
34 *forbearance requested pursuant to subdivision (a) for a period of*
35 *90 days. If the ~~borrower~~ consumer affirms that they continue to*
36 *experience hardship within the 30 days prior to the expiration of*
37 *the initial forbearance period, the servicer of vehicle-secured credit*
38 *shall extend the forbearance period upon request of the ~~borrower~~*
39 *consumer for an additional 90 days. Those forbearance periods*
40 *shall continue to be extended upon request of the ~~borrower~~*

1 throughout the duration of the COVID-19 emergency and the
 2 180-day period following that emergency. *consumer up to a*
 3 *cumulative total of 270 days of forbearance.*

4 (e)

5 (e) During the period of a forbearance under this chapter, a
 6 servicer of vehicle-secured credit ~~shall not~~ *may* assess, accrue, or
 7 apply to a ~~borrower's~~ *consumer's* account a rate of interest of up
 8 to 7 percent per annum, but shall not assess, accrue, or apply to
 9 a consumer's account any additional fees, penalties, or ~~additional~~
 10 interest beyond the amounts scheduled or calculated as if the
 11 ~~borrower~~ *consumer* made all contractual payments on time and in
 12 full under the terms of the vehicle-secured credit obligation contract
 13 in effect at the time the ~~borrower~~ *consumer* enters into the
 14 forbearance.

15 3273.32. (a) Before the completion of a forbearance period
 16 provided by this article, the holder of a vehicle-secured credit
 17 obligation shall evaluate a consumer's ability to return to making
 18 regular payments.

19 (b) If the consumer is able to return to making regular payments
 20 based on the evaluation required by subdivision (a), the holder of
 21 the vehicle-secured credit obligation shall:

22 (1) Modify the consumer's vehicle-secured credit obligation to
 23 extend the term for the same period as the length of the forbearance,
 24 with all payments that were not made during the forbearance
 25 distributed at the same intervals as the consumer's existing payment
 26 schedule and evenly distributed across those intervals, with no
 27 penalties, late fees, or additional interest accrued beyond the
 28 amounts scheduled or calculated as if the consumer made all
 29 contractual payments on time and in full under the terms of the
 30 vehicle-secured credit obligation contract in effect at the time the
 31 consumer entered into the forbearance, and with no modification
 32 fee charged to the consumer.

33 (2) Notify the borrower in writing of the modification required
 34 by paragraph (1), including provision of a new payment schedule
 35 and date of maturity, and that the consumer shall have the election
 36 of prepaying the suspended payments at any time, in a lump sum
 37 or otherwise.

38 (3) Not require the consumer to waive any other claim provided
 39 by law in order to accept the terms of a modification.

1 ~~(e) If the consumer is not able to return to making regular~~
2 ~~payments based on the evaluation required by subdivision (a), the~~
3 ~~holder of the vehicle-secured credit obligation may proceed with~~
4 ~~a written notice of intent to repossess the vehicle as required by~~
5 ~~law only after the expiration of the COVID-19 emergency and the~~
6 ~~180-day period following that emergency.~~

7 ~~3273.33. Notwithstanding Sections 2983.2 or 2983.8, or any~~
8 ~~other provision of law, no deficiency judgment shall lie in any~~
9 ~~event after the sale or other disposition of a mobilehome or motor~~
10 ~~vehicle for failure by a consumer to make a payment that was due~~
11 ~~during the COVID-19 emergency or the 180-day period following~~
12 ~~that emergency unless the servicer of the vehicle-secured credit~~
13 ~~obligation has complied with all provisions of this chapter. A~~
14 ~~repossession of a mobilehome or motor vehicle by a servicer of a~~
15 ~~vehicle-secured credit obligation that has failed to comply with~~
16 ~~all the provisions of this chapter shall constitute an acceptance of~~
17 ~~the collateral in full satisfaction of the vehicle-secured credit~~
18 ~~obligation as provided by Section 9620 of the Commercial Code.~~

19 ~~3273.34. The provisions of this title are severable. If any~~
20 ~~provision of this title or its application is held invalid, that~~
21 ~~invalidity shall not affect other provisions or applications that can~~
22 ~~be given effect without the invalid provision or application.~~

23 ~~SEC. 3. Section 22698 is added to the Financial Code, to read:~~

24 ~~22698. (a) Notwithstanding any other provision of this chapter,~~
25 ~~the following shall apply during the COVID-19 emergency and~~
26 ~~the 180-day period following that emergency:~~

27 ~~(1) Within 60 days of enactment of this section, a program~~
28 ~~administrator shall notify each property owner with an outstanding~~
29 ~~assessment contract that the property owner is entitled to~~
30 ~~forbearance on the next annual PACE assessment owed pursuant~~
31 ~~to the assessment contract if the property owner is facing a financial~~
32 ~~hardship, directly or indirectly, due to the COVID-19 emergency.~~
33 ~~The notification shall specify how the property owner may elect~~
34 ~~to accept the offer of forbearance.~~

35 ~~(2) A program administrator shall provide forbearance on the~~
36 ~~next annual PACE assessment owed by a property owner that~~
37 ~~accepts the offer pursuant to paragraph (1).~~

38 ~~(3) A program administrator may require the property owner to~~
39 ~~pay the amount of the forborne PACE assessment in the year~~
40 ~~following the scheduled end of the assessment contract. A program~~

1 administrator may not charge additional fees or interest related to
 2 the forborne PACE assessment.

3 ~~(4) A program administrator shall not exercise any contractual~~
 4 ~~rights of acceleration related to unpaid assessments during the~~
 5 ~~COVID-19 emergency.~~

6 ~~(b) For the purposes of this section, “COVID-19 emergency”~~
 7 ~~means the period that begins upon the date of the enactment of~~
 8 ~~this section and ends on the date that the state declares the~~
 9 ~~emergency related to the COVID-19 disease has ended.~~

10 ~~SEC. 4.~~

11 *SEC. 3.* Section 23039 is added to the Financial Code, to read:

12 23039. (a) Notwithstanding any other provision of this
 13 division, the following shall apply during the COVID-19
 14 emergency and the 180-day period following such emergency:

15 (1) A fee for a deferred deposit transaction shall not exceed 5
 16 percent of the face amount of the check.

17 (2) A licensee shall offer a customer the option to enter into a
 18 payment plan that provides an extension of time for repayment of
 19 an existing deferred deposit transaction. The payment plan shall
 20 include the following terms:

21 (A) The plan shall not contain any additional fee or charge of
 22 any kind.

23 (B) The plan shall provide the customer with the option to repay
 24 the outstanding amount of the existing deferred deposit transaction
 25 over a 60-day period in four equal installments.

26 (3) At least three days prior to the date to which deposit of check
 27 has been deferred (due date) according to the agreement provided
 28 by the licensee to the customer pursuant to subdivision (e) of
 29 Section 23035, a licensee shall notify a customer of their option
 30 to enter into a payment plan pursuant to paragraph (1). If at any
 31 time, the customer attempts to pay the licensee for an outstanding
 32 amount of an existing deferred deposit transaction, the licensee
 33 shall immediately notify the customer of their option to enter into
 34 a payment plan pursuant to paragraph (1).

35 (4) A licensee shall not enter into a deferred deposit transaction
 36 with a customer within 14 days of the customer fully repaying a
 37 previous transaction.

38 (5) A licensee shall not charge any late fee for the return of a
 39 dishonored check by a depository institution in a deferred deposit
 40 transaction.

1 (b) For the purposes of this section, “COVID-19 emergency”
2 means the period that begins upon the date of the enactment of
3 this section and ends on the date that the state declares the
4 emergency related to the COVID-19 disease has ended.

5 ~~SEC. 5.~~

6 *SEC. 4.* The provisions of this act are severable. If any
7 provision of this act or its application is held invalid, that invalidity
8 shall not affect other provisions or applications that can be given
9 effect without the invalid provision or application.

10 ~~SEC. 6.~~

11 *SEC. 5.* No reimbursement is required by this act pursuant to
12 Section 6 of Article XIII B of the California Constitution because
13 the only costs that may be incurred by a local agency or school
14 district will be incurred because this act creates a new crime or
15 infraction, eliminates a crime or infraction, or changes the penalty
16 for a crime or infraction, within the meaning of Section 17556 of
17 the Government Code, or changes the definition of a crime within
18 the meaning of Section 6 of Article XIII B of the California
19 Constitution.