

**Bill Status**  
**California Homeowner Bill of Rights**

Assembly Committee Status	Senate Committee Status
<p><b>AB 1602 Mortgages and deeds of trust: foreclosure.</b></p> <p>04/10/12      Re-referred to Com. on B. &amp; F.</p> <p>04/09/12      From committee chair, with author's amendments: Amend, and re-refer to Com. on B. &amp; F. Read second time and amended.</p> <p>03/29/12      Referred to Coms. on B. &amp; F. and JUD.</p> <p>02/07/12      From printer. May be heard in committee March 8.</p> <p>02/06/12      Read first time. To print.</p>	<p><b>SB 1470 Mortgages and deeds of trust: foreclosure.</b></p> <p>04/11/12      Set for hearing April 18.</p> <p>04/10/12      From committee with author's amendments. Read second time and amended. Re-referred to Com. on B. &amp; F.I.</p> <p>04/09/12      Re-referred to Coms. on B. &amp; F.I. and JUD.</p> <p>03/29/12      From committee with author's amendments. Read second time and amended. Re-referred to Com. on RLS.</p> <p>03/22/12      Referred to Com. on RLS.</p>
<p><b>AB-1763 Grand jury proceedings: Attorney General: powers and duties.</b></p> <p>04/12/12      Re-referred to Com. on PUB. S.</p> <p>04/11/12      From committee chair, with author's amendments: Amend, and re-refer to Com. on PUB. S. Read second time and amended.</p> <p>03/26/12      Re-referred to Com. on PUB. S.</p> <p>03/22/12      From committee chair, with author's amendments: Amend, and re-refer to Com. on PUB. S. Read second time and amended.</p> <p>03/01/12      Referred to Com. on PUB. S.</p>	<p><b>SB 1474 Grand jury proceedings: Attorney General: powers and duties.</b></p> <p>04/11/12      From committee with author's amendments. Read second time and amended. Re-referred to Com. on PUB. S.</p> <p>04/11/12      Set for hearing April 17.</p> <p>04/09/12      Re-referred to Com. on PUB. S.</p> <p>03/29/12      From committee with author's amendments. Read second time and amended. Re-referred to Com. on RLS.</p> <p>03/22/12      Referred to Com. on RLS.</p>
<p><b>AB 1950 Prohibited business practices: enforcement.</b></p> <p>04/11/12      Re-referred to Com. on PUB. S.</p> <p>04/10/12      From committee chair, with author's amendments: Amend, and re-refer to Com. on PUB. S. Read second time and amended.</p> <p>03/29/12      Referred to Coms. on PUB. S. and L. GOV.</p> <p>02/24/12      From printer. May be heard in committee March 25.</p> <p>02/23/12      Read first time. To print.</p>	

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<p><b>AB 2314 Real property: blight.</b></p> <p>04/12/12     Re-referred to Com. on JUD.</p> <p>04/11/12     From committee chair, with author's amendments: Amend, and re-refer to Com. on JUD. Read second time and amended.</p> <p>04/09/12     Re-referred to Coms. on JUD. and H. &amp; C.D. pursuant to Assembly Rule 96.</p> <p>04/09/12     Re-referred to Com. on H. &amp; C.D.</p> <p>03/29/12     From committee chair, with author's amendments: Amend, and re-refer to Com. on H. &amp; C.D. Read second time and amended.</p>	<p><b>SB 1472 Real property: blight.</b></p> <p>04/13/12     Set for hearing April 17.</p> <p>04/11/12     From committee with author's amendments. Read second time and amended. Re-referred to Com. on T. &amp; H.</p> <p>04/09/12     Re-referred to Coms. on T. &amp; H. and JUD.</p> <p>03/29/12     From committee with author's amendments. Read second time and amended. Re-referred to Com. on RLS.</p> <p>03/22/12     Referred to Com. on RLS.</p>
<p><b>AB 2425 Mortgages and deeds of trust: foreclosure.</b></p> <p>04/10/12     Re-referred to Com. on B. &amp; F.</p> <p>04/09/12     From committee chair, with author's amendments: Amend, and re-refer to Com. on B. &amp; F. Read second time and amended.</p> <p>03/29/12     Referred to Coms. on B. &amp; F. and JUD.</p> <p>02/27/12     Read first time.</p> <p>02/26/12     From printer. May be heard in committee March 27.</p>	<p><b>SB 1471 Mortgages and deeds of trust: foreclosure.</b></p> <p>04/11/12     Set for hearing April 18.</p> <p>04/10/12     From committee with author's amendments. Read second time and amended. Re-referred to Com. on B. &amp; F.I.</p> <p>04/09/12     Re-referred to Coms. on B. &amp; F.I. and JUD.</p> <p>03/29/12     From committee with author's amendments. Read second time and amended. Re-referred to Com. on RLS.</p> <p>03/22/12     Referred to Com. on RLS.</p>
<p><b>AB 2610 Foreclosure: tenants.</b></p> <p>04/09/12     Re-referred to Coms. on JUD. and H. &amp; C.D. pursuant to Assembly Rule 96.</p> <p>04/09/12     Re-referred to Com. on H. &amp; C.D.</p> <p>03/29/12     From committee chair, with author's amendments: Amend, and re-refer to Com. on H. &amp; C.D. Read second time and amended.</p> <p>03/29/12     Referred to Coms. on H. &amp; C.D. and JUD.</p> <p>02/27/12     Read first time.</p>	<p><b>SB 1473 Foreclosure: tenants.</b></p> <p>04/11/12     Set for hearing April 17.</p> <p>04/09/12     Re-referred to Com. on JUD.</p> <p>03/29/12     From committee with author's amendments. Read second time and amended. Re-referred to Com. on RLS.</p> <p>03/22/12     Referred to Com. on RLS.</p> <p>02/27/12     Read first time.</p>



# HOMEOWNER BILL OF RIGHTS

## **Blight Prevention**

AB 2314 (Carter) AND SB 1472 (Pavley & DeSaulnier)

### **Summary**

AB 2314 and SB 1472 will provide local jurisdictions with additional tools to fight blight. These tools will include increased penalties against owners of blighted property and allowing the imposition of the costs of a receivership over blighted property to be imposed directly against the owner of blighted property.

### **Background**

Communities throughout the State are being inundated with foreclosed homes which often remain empty, and fall into disrepair. This blight not only creates a nuisance for neighboring residents, but further lowers the value of surrounding homes, driving homeowners further underwater.

This problem has been at the forefront of the discussions that the Attorney General has had with local officials throughout the State. These discussions with law enforcement partners, and others, indicate that blighted homes are a nuisance, reduce neighboring home values, and threaten the health and safety of communities hardest hit by the mortgage crisis. Public health and safety are implicated by vacant, foreclosed homes because they attract gangs, prostitution, drug users, squatters, and untended property creates mosquito abatement problems and a create a risk of wildfire in areas of high fire risk.

### **Solution**

AB 2314 and SB 1472 would amend section 17980 of the Health and Safety to Code to prevent blight enforcement actions from being taken against new purchasers of blighted property for 60 days, provided repairs are being made to the property, and to require banks that release liens on foreclosed property to inform local code enforcement agencies of the release so that demolition of severely blighted property can proceed.

This legislation will, additionally, amend California Civil Code section 2929.3 by increasing fines against owners of blighted property from \$1,000 per day to \$5,000 per day, and allowing the imposition of the costs of a receivership over blighted property to be imposed directly against the owner of blighted property. This should encourage greater use of the receivership remedies provided by the Health and Safety Code.

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**The Foreclosure Reduction Act of 2012**  
**AB 1602 (Eng and Feuer) & SB 1470 (Leno, Pavley and Steinberg)**

**Summary**

AB 1602 and SB 1470 would extend to all distressed California homeowners many of the procedural safeguards agreed to by five major banks in the National Mortgage Settlement.

**Background**

California homeowners are losing their homes even though they are following the directions given to them by loan servicers, are adhering to the modified terms of their mortgages, and making the payments that they were told would lead to permanent loan modifications.

The Attorney General has met with struggling homeowners across the state, and continually hears from homeowners who claim to have been subjected to outrageous treatment by loan servicers, while making good faith efforts to secure a sustainable modification on their home loans. The Attorney General's Office has received complaints from individuals whose lenders informed them they were eligible for loan modifications and if they made trial modification payments on an agreed-upon basis, a permanent modification would be approved. Yet in too many instances, a promising modification process is disrupted mid-stream by a foreclosure.

The Attorney General's investigation has revealed that in order to enter a loan modification process with a lending institution, distressed homeowners are encouraged to default on their mortgage payments because modification requests are not entertained in the absence of a default. Once in default, a homeowner's credit score is damaged and their home is under threat of foreclosure, which in California is accomplished without judicial oversight.

On February 9, 2012, California and 48 other states announced a settlement in litigation against five major banks arising from widespread irregularities in the documents used in the foreclosure process. The National Mortgage Settlement includes mortgage servicing standards that are designed to return integrity to the foreclosure process. These standards should be made permanent and applied to other banks and servicers to re-establish integrity and uniformity in the State's foreclosure process.

**Solution**

AB 1602 and SB 1470 would amend numerous provisions of the California Civil Code to conform with the servicing standards established by the National Mortgage Settlement.

These amendments would accomplish the following:

- Require creditors to provide documentation to borrowers that establishes the creditor's right to foreclose on real property prior to recording a notice of default.

- Require creditors to provide documentary evidence of ownership, the chain of title to real property, and the right to foreclose, at the time of the filing of a notice of default.
- Prohibit the recording of a notice of default when a timely-filed application for a loan modification or other loss mitigation measure is pending.
- Require creditors to disclose why an application for a loan modification or other loss mitigation measure has been denied.
- Prohibit creditors from recording a notice of sale when a timely-filed application for a loan modification or other loss mitigation measure is pending.
- Prohibit creditors from recording a notice of sale while a borrower is in compliance with the terms of a trial loan modification or after another loss mitigation measure has been approved.
- Require that notices of foreclosure sales be personally served, including notices of when a foreclosure sale is postponed.
- Provides homeowners with a private right of action in instances in which the requirements set forth in the legislation are not followed.

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**Tenant Protection**  
**AB 2610 (Skinner) AND SB 1473 (Hancock)**

**Summary**

AB 2610 and SB 1473 will provide California tenants with the same protections that they are currently afforded under federal law.

**Background**

Tenants' rights in the foreclosure process under California law do not match protections provided by federal law. Under California law, tenants residing in foreclosed properties are given 60 days from the date of a foreclosure sale before eviction proceedings may begin. Under federal law, this period is 90 days. This discrepancy cause confusion, and too often results in tenants receiving inadequate time to relinquish foreclosed property. In addition, there are no protections under current law for the preservation of leasehold rights through the foreclosure process.

**Solution**

Tenant protections under California law should match federal protections. This legislation would amend California Civil Code section 2924.8 to require purchasers of foreclosed homes to honor the terms of existing leases and to give tenants at least 90 days before commencing eviction proceedings.

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# HOMEOWNER BILL OF RIGHTS

## Homeowner's Due Process Rights AB 2425 (Mitchell) & SB 1471 (DeSaulnier & Pavley)

### Summary

AB 2425 and SB 1471 would provide additional due process protections to California homeowners. These protections would include: enhanced penalties for robo-signing; a requirement that all assignments of interests in real estate be recorded with the County recorder; a private right of action to challenge unlawful foreclosure proceedings; and, a requirement that all homeowners going through the foreclosure process be given a single point of contact at their lending institution.

### Background

The Attorney General's investigation has revealed that the foreclosure process has been undermined by industry practices causing uncertainty in the system of public recording of real estate interests, and chaos in the loan modification process. These have combined to prejudice homeowners' ability to prevent foreclosures and in some cases have resulted in wrongful foreclosures. Moreover, under some circumstances, homeowners have little recourse to challenge foreclosures that may have been completed unlawfully.

On February 15, 2012, the San Francisco Assessor-Recorder announced audit findings that showed 84% of foreclosures on San Francisco homes 2009, 2010, or 2011 were corrupted by at least one clear violation of California's foreclosure laws.

There are key problem areas:

#### "Robosigning" in California

Under Civil Code section 2923.5, before a Notice of Default can be recorded to commence the foreclosure processes, a mortgagee, beneficiary, or authorized agent must: (1) make contact with a homeowner to assess the homeowner's financial situation; (2) explore options for the homeowner to avoid foreclosure; (3) advise the homeowner of their right to request a subsequent meeting; and, (4) provide the toll-free telephone number made available by the United States Department of Housing and Urban Development (HUD) to find a HUD-certified housing counseling agency. Following this exchange, the Notice of Default must include a declaration that the mortgagee, beneficiary, or authorized agent has satisfied these requirements.

The Attorney General's investigation and the San Francisco Assessor's Audit indicate that this declaration has frequently been robo-signed. In other words, the document's representations of compliance are either false, or have been attested to by an individual with no knowledge of the institution's contacts with the homeowner, or both. Where a section 2923.5 declaration is false, the homeowner's legal protections in the foreclosure process have been substantially undermined. Without notice of critical rights, that might have allowed homeowners to prevent foreclosure, it is virtually impossible to know how many Californians have needlessly lost their homes.

### MERS Registration

MERS is a privately held company established in 1993 to operate a national electronic registry designed to facilitate the securitization of mortgages. MERS tracks beneficial ownership interests and servicing rights associated with residential mortgage loans. Approximately 5,000 institutions participate as members of MERS, 3,000 of which are residential mortgage servicers. MERS members register loans and report transfers, foreclosures, and other changes to the status of residential mortgage loans on the MERS system. As of 2011, there are approximately 31 million active residential mortgage loans registered on the MERS system.

MERS is supplanting the remarkably stable public land title system that has governed the recording of interests in real estate since colonial times. As a result of MERS, homeowners often can no longer visit the County Recorder's Office to determine which entities claim have an interest in their property.

### In re Gomes

In *Gomes v. Countrywide Home Loans, Inc.* (2011) 192 Cal.App.4th 1149, the Court of Appeal denied standing to a homeowner who sought to challenge a foreclosure commenced by an agent of MERS, on the grounds that MERS had no authority to foreclose. The Gomes case is illustrative of the problems MERS presents for distressed homeowners—because Gomes could not learn the identity of the owner of the note, he was unable to seek a loan modification or otherwise pursue loss mitigation measures. Yet, under the Gomes ruling, the homeowner cannot sue for relief.

### Single Point of Contact

Over the last year, the Attorney General's Office has met with homeowners and housing counselors about foreclosure and loan modification processes. They have all expressed significant frustration with the inability to contact a bank representative who knows the status of their loan modification application. A typical example involves a complaint from a homeowner who, during the course of the dual tracked foreclosure/modification process with a major financial institution, spoke to more than ten individuals, was given conflicting information regarding the status of the application, was required to submit the same paperwork numerous times, but ultimately lost the home to foreclosure. The process appears both arbitrary and designed to stall meaningful modification negotiations, until a foreclosure can be completed.

On February 9, 2012, California and 48 other states announced a settlement in litigation against five major banks arising from widespread irregularities in the documents used in the foreclosure process. The National Mortgage Settlement includes mortgage servicing standards that are designed to return integrity to the foreclosure process. One of these reforms is a commitment to provide homeowners a single point of contact. This should be made permanent and applied other banks and servicers to re-establish integrity and uniformity in the State's foreclosure process.

## **Solutions**

AB 2425 and SB 1471 would amend California law to provide the following reforms:

- Require creditors to provide a single point of contact to borrowers in the foreclosure process who will be responsible for providing accurate account and other information related to the foreclosure process and loss mitigation efforts.
- Require creditors to provide a dedicated electronic mail address, facsimile number and mailing address for the borrower to submit information requested as part of a loan modification, short sale or other loss mitigation option.
- Authorize a borrower to challenge the unlawful commencement of a foreclosure process in court.
- Impose a \$10,000 civil penalty on the recordation or filing of “robosigned” documents, defined as documents that contain information that was not verified for accuracy by the person or persons signing or swearing to the accuracy of the document or statement.
- Require that assignments of mortgage interests be recorded in a county recorder’s office.

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**Grand Jury for California Financial Crimes  
AB 1763 (Davis) & SB 1474 (Hancock)**

**Summary**

AB 1763 and SB 1474 would allow for the Attorney General to convene a special grand jury for the investigation and indictment of crimes against the state fisc, and of financial crimes involving victims in multiple jurisdictions where under current law charges must be brought in multiple counties to encompass all victims.

**Background**

Each county in the state must empanel a grand jury at least once a year. (Cal. Const., art. I, § 23.) These grand juries have dual roles. First, the grand jury is a public watchdog, charged with exposing corruption or negligence with respect to public governmental functions. Second, the grand jury is as a vehicle by which a prosecutor can bring a criminal indictment.

The vast majority of criminal charges in California, however, are brought not by using the grand jury, but rather by preliminary hearings in court. This is because most crimes involve acts of bodily violence or crimes like the simple theft of tangible property; crimes that can easily be charged with the testimony of a single officer. In contrast, preliminary hearings are not as well-suited for financial crimes to indicting financial crimes due to the short timelines that attend the preliminary hearing process.

Financial crimes are typically complex, and involve substantial documentary evidence. Significant time is often needed to investigate and indict such crimes. The preliminary hearing process is not well-suited to the indictment of such crimes, and the existing grand jury process is limited to the investigation and indictment of crimes occurring within the grand jury's county of jurisdiction.

The Attorney General's Office is engaged in the investigation of significant financial crimes of statewide scope and impact. Yet the preliminary hearing process and existing grand jury authority are not well aligned to the needs of these cases.

**Solution**

AB 1763 and SB 1474 would add provisions to existing law to:

- Authorize the AG to convene a special grand jury for crimes against the state fisc and multi-jurisdictional financial crimes involving multiple victims.
- Clarify the rules governing laying a foundation for the introduction of documentary evidence.
- Clarify the rules governing the duty to present exculpatory evidence.

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**Enhancement of Attorney General Enforcement  
for Mortgage Related Prosecutions  
AB 1950 (Davis)**

**Summary**

AB 1950 extends the statute of limitations on mortgage related crimes, including loan modification scams and selling real estate without a license. This legislation will also provide the Attorney General's Office with the funding necessary to prosecute these and other mortgage related crimes.

**Background**

In May 2011, the Attorney General's Office established a Mortgage Fraud Strike Force to investigate and prosecute civil and criminal violations of California's mortgage and foreclosure laws. A widespread investigation of misconduct is required, due to the depth and breadth of the crisis, and the degree to which scam artists have gravitated towards homeowners in distress. To be effective, the Mortgage Fraud Strike Force will need resources and adequate time to investigate and prepare prosecutions.

The Attorney General's Mortgage Fraud Strike Force monitors and prosecutes violations at every step of the mortgage process, from the origination of mortgage loans, the servicing of those loans, the foreclosure process, scams and other predatory behavior associated with mortgages, and the marketing of mortgage-backed securities to the investing public. Today, the Strike Force has over 40 members and is simultaneously engaged in several critical mortgage fraud investigations and prosecutions. It is critical that the Strike Force's efforts be insulated from cuts to the State's general fund.

It is also critical that the Attorney General's office be given the opportunity to prosecute a number of these crimes. Misdemeanor violations of California laws that protect homeowners in the foreclosure process are subject to a one-year statute of limitations. For example, Civil Code sections 2944.6 and 2944.7, which prohibit charging up-front fees for loan modification services, a practice which has been the hallmark of mortgage scams, are subject to only a one-year statute of limitations.

Additionally, the crimes of acting as a real estate broker or salesperson without a license, acting as a mortgage loan originator without a license, and practicing law without a license are all misdemeanor offenses that are subject to a one-year statute of limitations.

The Attorney General's Office has successfully brought charges against and shut down a number of mortgage-related scams. However, the one-year limitations period has inhibited a number of prosecutions because the foreclosure process is a protracted one, and victims often do not discover the scam and refer their case to the Attorney General before it is too late for prosecution.

**Solution**

This legislation would amend the Civil Code by imposing a new \$25 fee to be paid by servicers upon the recording of the notice of default. The fee would be deposited into a real estate fraud prosecution trust fund that would support the Attorney General's efforts to deter, investigate, and prosecute real estate fraud crimes, which would currently include the work of the Mortgage Fraud Strike Force.

Additionally, AB 1950 would enable more thorough investigations and prosecutions of mortgage-related crime by changing the statute of limitations for mortgage-related crimes to four years. This legislation would amend Penal Code, section 809, to provide a four-year statute of limitations for violations of Civil Code sections 2944.6 and 2944.7, and Business and Professions Code sections 6126, 10085.6 and 10130.

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