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Bills to Reform Foreclosure Process

By Anna Scott

Attorneys general from all 50 states along with federal agencies have been negotiating with more than a dozen major mortgage lenders for months, seeking to create a set of universal foreclosure procedures to minimize shoddy home loan documentation and wrongful foreclosures.

Meanwhile, two proposed bills pending in the state Legislature aim to accomplish similar goals for California.

One of those measures would require mortgage servicers to pay local jurisdictions \$20,000 per foreclosure. The other would require deeds of trust and their assignments to be recorded with counties, creating a public trail tracking who holds the debt on a given property to make loan modifications more accessible and avoid the sloppy, sometimes fraudulent paperwork that sparked the "robo-signing" scandal that rocked the housing industry last year.

Government officials and some lawyers say the legislation is badly needed to make mortgage lenders more accountable in dealing with at-risk borrowers in the state. However, banking attorneys say that the latter bill is misguided because it targets an issue that has been confined mostly to judicial foreclosure states, where lenders must go through the court system to foreclose and meet strict legal standards to prove loan ownership. In California, those attorneys say, loan ownership documentation has not been as widespread a problem and such a bill would only give plaintiffs' lawyers new ammunition to drag out legitimate foreclosures.

"If this were to be adopted, it would create a tremendous problem where we don't have it right now," said Orange County banking attorney Julia Greenfield, of the Greenfield Law Offices. "It is a problem that for a large number of these loans, they did not carefully assign them or transfer the notes, and there's a lot of litigation going on now that challenges all of this. But so far ... those issues have not been a problem in the courts in California. If you put this in as legislation here, that is going to prevent servicers from being able to foreclose."

Attorneys on the other side say lenders need to be held to higher standards, even if the California courts don't require it.

"While you might be creating a new problem for the industry, this industry needs to be revamped," said Mike Arias of Arias Ozzello & Gignac LLP, who recently filed a class action against CitiMortgage Inc. and Bank of America in California federal court over allegedly fraudulent mortgage-related documentation. "This legislation will say, 'You've

got to clean this up one way or another, and operate the same way any other business is expected to operate."

Government officials share that sentiment. In 2010, attorneys general in multiple states temporarily froze foreclosures in the wake of revelations that many banks rubber-stamped or did not properly track loan-related paperwork before moving to take over properties. Though the problem was mostly confined to judicial foreclosure states, and proved in most cases to reflect sloppiness rather than fraud, widespread efforts to clean up banks' procedures followed.

Now, federal bank regulators reportedly are close to striking a deal with 14 national lenders that would standardize and streamline the loan documentation and foreclosure processes. State attorneys general also are negotiating a similar, separate deal with the same lenders, though sources say an agreement is not imminent.

In California, Assembly member Bob Blumenfield (D-San Fernando Valley) introduced Assembly Bill 935 last month, the proposal requiring lenders to pay \$20,000 per foreclosure, with the money going to offset foreclosure-related expenses and fund public education, safety, redevelopment and small business loans. The proposal dealing with mortgage assignments, Assembly Bill 1321, was introduced by Assemblyman Bob Wieckowski (D-Fremont), last month.

Backlash from the mortgage industry has been swift.

"We are opposing both bills," said Beth Mills, a spokeswoman for the California Bankers Association. "We view 935 as a tax on all properties in foreclosure, and we don't feel this will do anything to help anybody who's struggling to make mortgage payments."

Blumenfield disputed the criticism. "The purpose of the bill is not to help homeowners meet their monthly payments," he said. "The purpose is to try to capture some of the hidden costs of foreclosure to our communities ... costs to law enforcement, the cost of blight that happens when property values go down."

Regarding 1321, Mills said, "What that comes down to is another measure that would create more procedural hurdles for the industry. I don't think in any of the robo-signing issues they found a case where somebody was foreclosed on and they should not have been." If the measure is adopted, Mills said, more mortgage servicers in California could choose to pursue judicial foreclosures to protect themselves.

Again, the assemblyman behind the bill brushed off Mills' assessment. "In a non-judicial foreclosure, there is no oversight," said Wieckowski, who is also a bankruptcy lawyer. "It's a transparency issue. What happened with the invention of [Mortgage Electronic Registration Systems], which is an industry invention, they just started not recording these transfers."

Assembly Bill 935 is scheduled to go before the Assembly Committee on Banking and Finance April 25.

AB 1321 will be taken up April 26 by the Judiciary Committee.