

Date of Hearing: April 3, 2019

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 1106 (Smith) – As Introduced February 21, 2019

SUBJECT: Los Angeles County: notice of recordation.

SUMMARY: Eliminates the sunset date on specified elements of the Los Angeles County Homeowner Notification Program. Specifically, **this bill**:

- 1) Eliminates the January 1, 2020, sunset date on the authority of Los Angeles County (LA County) to notify by mail the party or parties subject to a notice of default or notice of sale, including the occupants of that property, within five days but in any event no more than 14 days of recordation of those notices.
- 2) Eliminates the January 1, 2020, sunset date on LA County's authority to charge an additional fee of up to \$7 for the recordation of the above notices to cover the cost of mailing the notification described above and providing information, counseling, or assistance to a person who receives the notification.
- 3) Eliminates a requirement that LA County submit a report to the Legislature regarding the above authorizations, as specified.

FISCAL EFFECT: None

COMMENTS:

- 1) **Background.** State law generally provides that any instrument or judgment affecting the title to or possession of real property may be recorded at a county recorder's office. Recordable instruments include: various types of deeds, which are used to transfer or convey title to real property; notices of default, which must be recorded to initiate foreclosure proceedings; and, notices of sale, which must be recorded before real property can be sold through the foreclosure process.
- 2) **LA County Homeowner Notification Program.** The LA County Homeowner Notification Program (Homeowner Notification Program) was authorized by SB 1842 (Watson), Chapter 815, Statutes of 1992. SB 1842 allowed LA County to establish a three-year real estate fraud pilot program to address a significant crisis in the county with foreclosures related to falsified real estate loan documents.

Under the program, LA County notifies homeowners by mail when a deed, quitclaim deed, or deed of trust is recorded against their property. The mailing instructs homeowners to contact the County's Department of Consumer and Business Affairs (DCBA) if they suspect forgery or fraud, or if they need additional assistance. Initially, LA County's Recorder was allowed to charge an additional fee for filing these documents to cover the cost of the notifications, not to exceed \$10. The program was re-authorized in 1996 without a sunset date and with the authority for the Recorder to collect an additional fee of up to \$7 from the party filing a deed, quitclaim deed, or deed of trust to cover the cost of mailing the notification to affected homeowners.

SB 62 (Liu), Chapter 141, Statutes of 2011, expanded the program by allowing LA County to notify property owners and tenants when a notice of default or a notice of sale is recorded. A notice of default signifies the beginning of the non-judicial foreclosure process, and a notice of sale announces the sale date of a foreclosed property. Although existing law mandates mailing or posting several other statutory notices to both property owners and tenants affected by a non-judicial foreclosure, this additional notice allows LA County to send region-specific information to help individuals become aware of available resources and potential scams that may target owners of distressed properties.

The expanded SB 62 notification program authorized the Recorder to collect up to \$7 from parties that record notices of default and notices of sale to cover the cost of mailing notifications and providing information, counseling, or assistance to a person who receives a notification. SB 62 also required LA County to submit a report with specified elements by January 1, 2014, to the Senate Committee on Judiciary and the Assembly Committee on Local Government. Authorization for this expanded or “enhanced” SB 62 component of the Homeowner Notification Program was set to expire on January 1, 2015.

Nearing the sunset of the program’s enhanced notification authorization, LA County sponsored SB 827 (Liu), Chapter 65, Statutes of 2014. SB 827 extended the sunset on the program’s authority to notify property owners and tenants when a notice of default or a notice of sale is recorded, including the \$7 additional fee, until January 1, 2020. However, because LA County did not begin implementing the enhanced provisions of SB 62 until December of 2013, the County had no data to include in the report SB 62 required it to submit to the Legislature. SB 827 retained this reporting requirement with a due date of January 1, 2019, and added several components to the report.

- 3) **2019 Report.** LA County’s DCBA submitted the report required by SB 827 in January of this year. The required components of the report and its contents are summarized here:
 - a) **A copy of each type of notice mailed.** The report contained a copy of the notifications it sends regarding the filing of a notice of default or notice of sale, in both English and Spanish.
 - b) **The number of filed notices of default and notices of sale for which a fee was collected.** Fees were collected for 49,884 notices of default and 38,127 notices of sale recorded between January 1, 2015, and November 30, 2018.
 - c) **The amount of fees collected for the filing of notices of default and notices of sale.** Fees of \$349,188 for notices of default and \$266,889 for notices of sale were collected between January 1, 2015, and November 30, 2018.
 - d) **The amount of fees spent to provide housing information, counseling, and assistance.** Slightly more than \$291,400 in fee revenue was allocated for these purposes between January 1, 2015, and November 30, 2018.
 - e) **Documented examples showing how the county’s homeowner notification program led to successful investigations of real estate fraud activity, referrals to prosecuting agencies, avoided foreclosures, or helped property owners and residents avoid falling victim to real estate fraud.** According to the report, “From 2013 to 2018, the

Program led to the receipt of 3,723 cases by DCBA, 1,403 of which involved real estate fraud. The successful investigation of these cases resulted in restitution to homeowners valued at \$11,695,585.36. The majority of the fraud cases involved homeowners who were victims of foreclosure rescue fraud...One hundred fifty-six (156) of the cases investigated by DCBA staff were determined to have significant evidence of fraud or major civil or criminal violations of law.” These were referred to various law enforcement agencies or government attorneys’ offices for civil or criminal prosecution. The program also referred 36 cases to the California State Bar Association for disciplinary action, which led to nine disbarments, a suspension and an inactive enrollment.

The report noted that DCBA secured just over \$19 million in savings for homeowners with successful loan modifications from 2012 through 2018, and helped save over 475 homes from foreclosure sale since the inception of the program. The program also facilitated positive exit strategies, such as “cash for keys” agreements or sales of property with sufficient equity, which saved homeowners more than \$3.7 million between 2012 and 2018.

f) **An evaluation of whether the county’s homeowner notification program, in comparison to other available policy tools in the County of Los Angeles, is a cost-effective approach to combating real estate fraud and reducing foreclosures.**

According to the report, the County has found the program to be “a very successful tool in fighting foreclosure fraud, providing timely counseling and assistance to homeowners in foreclosure, and keeping homeowners in their homes...Homeowners in foreclosure benefit greatly from receiving a notification from Los Angeles County when a notice of default or a notice of sale is recorded. This notification allows adequate time for homeowners to apply for loan modification assistance from their lender, with the assistance of DCBA’s Foreclosure Prevention Unit, often allowing them to keep their homes...The notification also alerts homeowners to any unusual activity relating to their property title and information regarding resources to seek assistance in instances of fraud. The (program) has also allowed Los Angeles County to pursue successful investigations leading to incarceration and restitution.” The report detailed several cases of fraud identified through the program that resulted in pending indictments, convictions and/or restitution to victims.

Comparing other available policy tools in LA County, the report noted that the DCBA program centralizes foreclosure prevention services and real estate fraud investigation. Other policy tools could include referrals to non-profit agencies for assistance or centralizing investigation services in the District Attorney’s (DA’s) office. The report concluded that the program is “more effective and impactful than other policy tools available to the County, at a *de minimis* cost.”

g) **An evaluation of whether the county’s homeowner notification program is an effective way to inform tenants of an impending foreclosure and to combat abusive post-foreclosure practices by property owners.** The report states, “The Program has helped ensure that tenants are paying rent to the appropriate party. DCBA staff can confirm whether or not the property was sold and to whom. In addition, tenants are also counseled on the eviction process in the event that the new owners choose to vacate them. Additionally, the program allows tenants enough time to find an alternative living

arrangement. In some cases, the new landlord will offer financial incentives to the tenant to avoid the eviction process and ensure that the tenant smoothly transitions out of the property in a timely manner.” DCBA’s Foreclosure Prevention Team has assisted more than 115 tenants who received an estimated \$505,382 in relocation assistance since the program’s inception in 2013.

- h) **An assessment of how the county’s homeowner notification program compares to real estate fraud and foreclosure prevention programs being implemented in at least three other large, urban California counties.** The report notes that LA County’s standalone consumer affairs department (DCBA) is unique among California counties and provides a range of services in addition to its foreclosure and real estate fraud notification, assistance and investigation services. Nearly all counties house real estate fraud and consumer protection functions in their DA’s offices. Most of these programs refer distressed homeowners to non-profit HUD-approved agencies or non-profit partners for counseling services rather than providing direct in-house counseling like DCBA does. DCBA surveyed other urban counties in the state and received responses from Fresno, San Diego and Santa Clara counties. Fresno County’s District Attorney’s office accepts complaints through its general intake process, while San Diego and Santa Clara have divisions within their DA’s offices that handle real estate fraud cases. Fresno and San Diego counties also refer homeowners to HUD-approved nonprofit agencies for assistance. Santa Clara’s DA’s office offers both direct assistance and referrals to appropriate non-profit organizations.

Kern, Riverside, San Bernardino and Ventura counties have homeowner notification programs similar to LA County that send letters to homeowners in foreclosure, which those counties have found to be effective, according to the report.

- 4) **Bill Summary and Author's Statement.** This bill eliminates the sunset date on the enhanced components of the Homeowner Notification Program and the associated fee authority, which would make them permanent. It also removes any further reporting to the Legislature on these enhanced elements.

According to the author, "California may be in a period of economic expansion, but the effects of the mortgage crisis are still being felt throughout Los Angeles County. Continuation of the Enhanced Homeowner Notification Program will allow the county to invest in this safety net for homeowners and continue to improve the program before the next economic downturn." This bill is sponsored by the Los Angeles County Board of Supervisors.

- 5) **Committee Amendments.** The original reporting requirements and the expanded reporting requirements operated under sunsets of four and six years, respectively. The first turned out to span too short of a duration to generate enough data that would yield useful information. While LA County has complied with the reporting requirements expanded in 2014, the Legislature still has only one report covering a relatively short time frame by which to evaluate the program’s enhanced components. Rather than eliminating the sunset date and the reporting requirements altogether, the Committee may wish to consider asking for one additional report on a longer time frame, in nine years, and extending the sunset for 10 years. In addition, the Committee may wish to clarify that the report must cover the entire period

during which the enhanced components of the program were operational, beginning December 1, 2013.

- 6) **Arguments in Support.** The Los Angeles County Board of Supervisors, sponsor of this measure, writes, “Although foreclosure rates have leveled off since the height of the (foreclosure) crisis, a significant number of constituents in Los Angeles County (approximately 800) still receive foreclosure notices...each month. According to DCBA, many homeowners and tenants who face foreclosure become targeted by fraudulent ‘foreclosure consultants’ who advertise solutions in exchange for costly services that are never actually rendered...AB 1106 would...allow the County to continue to proactively combat fraud by notifying constituents when their real estate is subject to a recently recorded document that could affect their property interests and owner or tenant rights.”
- 7) **Arguments in Opposition.** None on file.
- 8) **Double-Referral.** This bill is double-referred to the Assembly Judiciary Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Los Angeles County Board of Supervisors [SPONSOR]

Opposition

None on file

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