

ASSEMBLY BILL

No. 1603

**Introduced by Assembly Members Feuer and Eng
(Coauthors: Assembly Members Dickinson and Skinner)**

February 6, 2012

An act to add Article 1.7 (commencing with Section 2946) to Chapter 2 of Title 14 of Part 4 of Division 3 of the Civil Code, relating to mortgages.

LEGISLATIVE COUNSEL'S DIGEST

AB 1603, as introduced, Feuer. Mortgages and deeds of trust: mortgage servicers: force-placed insurance.

Existing law generally regulates mortgages and deeds of trust, including, among other things, recording mortgages and deeds of trust, disclosures in connection with mortgages and deeds of trust, and foreclosure procedures for mortgages and deeds of trust.

This bill would regulate the arranging by a mortgage servicer, as defined, of a replacement policy of hazard, flood, or homeowner's insurance, collectively defined as "force-placed insurance," with respect to a residential property securing a mortgage loan, when a borrower has failed to make payments on hazard, flood, or homeowner's insurance sufficient to satisfy the terms of the mortgage loan agreement. The bill would require a mortgage servicer to make reasonable efforts to continue or reestablish the borrower's insurance with respect to the property, as specified, prior to arranging for force-placed insurance.

The bill would require a mortgage servicer to provide written notice, as specified, to a borrower prior to arranging for force-placed insurance. The bill would specify the circumstances, manner, and limitations under which a mortgage servicer may arrange for force-placed insurance, and

when a borrower is entitled to a refund from the mortgage servicer in connection with that insurance.

The bill would authorize a borrower to bring a civil action in connection with the mortgage servicer’s violation of the provisions of the bill. The bill would authorize the Attorney General to bring an action for injunctive relief, and for restitution, disgorgement, or damages, as appropriate, for the affected borrowers. The bill would also authorize the Attorney General to include a claim for costs, including reasonable attorney’s fees and expenses. The bill would further authorize the Attorney General to levy a civil penalty not exceeding \$10,000 against any mortgage servicer who violates the provisions of the bill, and would establish notice and hearing procedures for persons subject to the civil penalty.

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

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

1 SECTION 1. Article 1.7 (commencing with Section 2946) is
2 added to Chapter 2 of Title 14 of Part 4 of Division 3 of the Civil
3 Code, to read:

4
5 Article 1.7. Force-Placed Insurance
6

7 2946. As used in this article, the following definitions shall
8 apply:

9 (a) “Force-placed insurance” means a policy of hazard, flood,
10 or homeowner’s insurance that is purchased on behalf of a borrower
11 by a mortgage servicer with respect to real property securing a
12 mortgage loan serviced by the mortgage servicer after the borrower
13 has failed to make payments on hazard, flood, or homeowner’s
14 insurance for that property.

15 (b) “Mortgage servicer” means a person that is an approved
16 servicer for the Federal Housing Administration, Veterans
17 Administration, Farmers Home Administration, Government
18 National Mortgage Association, Federal National Mortgage
19 Association, or Federal Home Loan Mortgage Corporation, and
20 directly services or offers to service mortgage loans.

21 (c) “Mortgage loan” means a federally related mortgage loan
22 as defined in Section 3500.2 of Title 24 of the Code of Federal

1 Regulations, or a loan made to finance construction of a one-to-four
2 family dwelling.

3 2946.1. (a) If a mortgage servicer is aware that a borrower has
4 failed to make a premium payment to maintain hazard, flood, or
5 homeowner's insurance coverage sufficient to satisfy the terms of
6 the mortgage loan agreement, the mortgage servicer shall take
7 reasonable actions to continue or reestablish that insurance
8 coverage.

9 (b) A mortgage servicer may require a borrower to provide
10 updated premium payment information to enable the mortgage
11 servicer to continue or reestablish insurance coverage described
12 in subdivision (a).

13 2946.2. A mortgage servicer shall not arrange for force-placed
14 insurance if the mortgage servicer knows or has reason to know
15 that the borrower has insurance coverage sufficient to satisfy the
16 terms of the mortgage loan agreement.

17 2946.3. If a mortgage servicer satisfies the requirements of
18 Section 2946.1 and is not able to continue or reestablish the
19 borrower's hazard, flood, or homeowner's insurance, the mortgage
20 servicer may arrange for force-placed insurance covering the
21 mortgaged property. Prior to arranging for force-placed insurance,
22 the mortgage servicer shall provide written notice to the borrower,
23 including a clear and conspicuous statement, of all of the following:

24 (a) Procedures for the borrower to, within a reasonable period
25 of time specified in the notice, demonstrate to the mortgage servicer
26 that the borrower has insurance coverage sufficient to satisfy the
27 requirements set forth in the mortgage loan agreement.

28 (b) Procedures by which the mortgage servicer shall terminate
29 the force-placed insurance and refund to the borrower any insurance
30 premiums and related fees paid by or charged to the borrower.

31 2946.4. A mortgage servicer shall provide the borrower with
32 a refund of unearned premiums paid by the borrower or charged
33 to the borrower for force-placed insurance arranged by the
34 mortgage servicer if the borrower provides reasonable proof that
35 the borrower has obtained insurance coverage sufficient to satisfy
36 the terms of the mortgage loan agreement.

37 2946.5. (a) A mortgage servicer who arranges for force-placed
38 insurance in accordance with this chapter shall obtain that insurance
39 coverage at a commercially reasonable rate.

1 (b) A mortgage servicer shall not arrange for force-placed
2 insurance, or require a borrower to obtain or maintain insurance
3 coverage, in excess of the replacement cost of the improvements
4 on the mortgaged property.

5 (c) A mortgage servicer shall not arrange for force-placed
6 insurance with an affiliated entity or any entity in which the
7 mortgage servicer has an ownership interest.

8 (d) A mortgage servicer shall not split fees, give, or accept any
9 referral fees or anything else of value in connection with arranging
10 for force-placed insurance.

11 (e) A mortgage servicer shall pay to the borrower the amount
12 of any funds that the mortgage servicer receives as a result of
13 arranging for force-placed insurance in violation of this section.

14 2946.6. A borrower may bring a civil action against a mortgage
15 servicer that violates this article with respect to that borrower.

16 2946.7. (a) In addition to the remedy provided in Section
17 2946.6, the Attorney General may bring an action for injunctive
18 relief, and for restitution, disgorgement, or damages, as appropriate,
19 on behalf of injured borrowers, and may include a claim for costs,
20 including reasonable attorney’s fees and expenses.

21 (b) In addition to the remedies provided in subdivision (a) and
22 in Section 2946.6, the Attorney General may levy a civil penalty
23 not exceeding ten thousand dollars (\$10,000) against any mortgage
24 servicer who violates this article.

25 (c) Before a civil penalty is levied, the person charged with the
26 violation shall be given a written notice of the nature of the
27 violation and the amount of the proposed penalty, and shall have
28 the right to request a hearing within 20 days after receiving notice
29 of the proposed penalty. A notice of the proposed penalty that is
30 sent by certified mail to the last known address of the person
31 charged shall be considered to have been received even if delivery
32 is refused or the notice is not accepted at that address. If a hearing
33 is requested, notice of the time and place of the hearing shall be
34 given at least 10 days before the date set for the hearing. At the
35 hearing, the person shall be given an opportunity to review the
36 Attorney General’s evidence and to present evidence on his or her
37 own behalf. If a hearing is not timely requested, the Attorney
38 General may impose the penalty proposed without a hearing.

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