

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2023-2024 Regular Session**

SB 455 (McGuire)  
Version: March 20, 2023  
Hearing Date: May 2, 2023  
Fiscal: No  
Urgency: No  
ME

**SUBJECT**

State of emergency: mortgage servicers: written disclosure

**DIGEST**

This bill requires a transferor mortgage servicer to disclose to a transferee mortgage servicer specified information related to the rebuild, repair, or replacement of a property damaged in an emergency.

**EXECUTIVE SUMMARY**

75 percent of the top 20 most destructive California wildfires took place in the last ten years.<sup>1</sup> These fires resulted in enormous loss of human life as well as property loss. The author of this bill represents a district that was particularly hard hit by wildfires in the last decade. The trauma from loss of life and property is immeasurable. Californians are left to pick up the pieces as they try to navigate healing their trauma and rebuilding their homes. The author brings this measure to help their constituents and all Californians with their mortgage servicers as they navigate the rebuilding process. Constituents have reported problems that have arisen when their mortgage servicers change in the midst of this process. As explained by Legal Aid of Sonoma County, supporters of the bill, “[in] the event of a declared State of Emergency under Government Code, SB 455 will require mortgage servicers and providers to disclose to any subsequent mortgage servicer or provider the terms of any already agreed upon contracts to rebuild or replace a survivor’s lost homes. This will help ensure that existing rebuild or repurchase contracts are honored and that recovery can continue on an effective timeline.”

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<sup>1</sup> See Cal Fire Top 20 Most Destructive California Wildfires, available at: [https://34c031f8-c9fd-4018-8c5a-4159cdf6b0d-cdn-endpoint.azureedge.net/-/media/calfire-website/our-impact/fire-statistics/featured-items/top20\\_destruction.pdf?rev=479d39ded1e248faac4114bdabf49416&hash=33D35B11518F3A681BA613D8C32073FC](https://34c031f8-c9fd-4018-8c5a-4159cdf6b0d-cdn-endpoint.azureedge.net/-/media/calfire-website/our-impact/fire-statistics/featured-items/top20_destruction.pdf?rev=479d39ded1e248faac4114bdabf49416&hash=33D35B11518F3A681BA613D8C32073FC) [as of April 27, 2023].

This bill is author sponsored, supported by Legal Aid of Sonoma County, and has no known opposition. The bill passed the Senate Banking and Financial Institutions Committee on a 7 to 0 vote.

### **PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Pursuant to Regulation X (12 CFR Part 1024), which implements the Real Estate Settlement Procedures Act (12 U.S.C. § 2601 *et seq.*):
  - a) Requires mortgage servicers to provide specified disclosures to a mortgage borrower related to any assignment, sale, or transfer of the servicing of a mortgage loan. (12 CFR 1024.33.)
  - b) Requires mortgage servicers to maintain policies and procedures that are reasonably designed to ensure that the servicer can:
    - i. As a transferor servicer, timely transfer all information and documents in the possession or control of the servicer relating to a transferred mortgage loan to a transferee servicer in a form and manner that ensures the accuracy of the information and documents transferred and that enables a transferee servicer to comply with the terms of the transferee servicer's obligations to the owner or assignee of the mortgage loan and applicable law.
    - ii. As a transferee servicer, identify necessary documents or information that may not have been transferred by a transferor servicer and obtain such documents from the transferor servicer. (12 CFR 1024.38)
- 2) Pursuant to Regulation Z (12 CFR Part 1026), which implements the Truth in Lending Act (15 § U.S.C. 1601 *et seq.*), requires any person that becomes the owner of an existing mortgage loan by acquiring legal title to the debt obligation to provide a specified disclosure to the consumer who is obligated on the mortgage loan. (12 CFR 1026.39.)
- 3) Requires that any person transferring the service of indebtedness on a loan, as specified, to a different servicing agent shall provide to the new agent all existing insurance policy information that the person is responsible for maintaining, including but not limited to flood and hazard insurance policy information. (Civil Code Section 2937.)

This bill:

- 1) Requires a mortgage servicer servicing a mortgage with respect to a property located within the geographic limits of an emergency, as specified, to provide a written disclosure to a transferee or purchaser mortgage servicer of all of the following:
  - a) if the property at issue experiences a total loss due to the proclaimed emergency;
  - b) if the borrower has conveyed an intention to rebuild, repair, or replace the home; and
  - c) any contracts related to a rebuild, repair, or replacement, as specified.
- 2) Requires a transferee or purchaser mortgage servicer that receives a written disclosure described in (1) above to do all of the following:
  - a) comply with the terms as agreed upon by the original mortgage servicer in any contract or agreement;
  - b) provide to a transferee or purchaser mortgage servicer the written disclosure provided by the mortgage servicer that was the servicer at the time of the emergency proclamation described by subdivision (a) as updated, if applicable, to reflect subsequent agreements, contracts, and negotiations; and
  - c) continue in good faith any negotiation disclosed pursuant to (1) above.

### COMMENTS

#### 1. Stated need for the bill

The author writes:

SB 455 is a common sense piece of legislation that will protect fire and other disaster survivors and help keep their home rebuilds on track. Tens of thousands of Californians have lost their homes and businesses to wildfires in the last eight years. Since 2015, over 42,000 homes, businesses and other structures have been damaged or destroyed by mega fires.

Not only do these survivors have to deal with the traumatic and life changing experience of losing their home, they also have to begin the challenging task of rebuilding their homes and lives. While mortgage sales and transfers are a common practice by mortgage companies, if a homeowner is in the process of a disaster rebuild, a number of issues have arisen. There have been cases where a

rebuild is underway, the mortgage is sold, and the new provider refuses to release funds until additional information has been provided and an inspection has been completed, significantly delaying the payout and delaying the rebuild for months. In other cases, the insurance payout wasn't sufficient to rebuild the same home as was lost, and the original provider had signed off on a smaller footprint. However, upon sale of the mortgage, the new provider refused to release all of the remaining funds because the rebuild was different than the lost home.

Survivors have been forced to liquidate pensions and use up their hard-earned savings in order to comply with the terms of their rebuild contracts, or default on their contracts when they entered into them in good faith after discussions with their mortgage company. Even if they eventually receive all of their insurance funds, which doesn't always happen, survivors often aren't made whole. SB 455 will make sure any agreements made between homeowners and their mortgage company on the rebuilding of their home after a disaster are disclosed to the new company if the mortgage is sold, and requires that the new financial institution honor the original agreement.

Ensuring that these existing rebuild agreements are honored when mortgages are sold is just common sense. Disaster survivors already face tremendous challenges to recover from the impacts of a disaster, and SB 455 will give homeowners certainty and peace of mind when they rebuild their home and lives.

Legal Aid of Sonoma County writes the following in support of the bill:

SB 455 will help our most vulnerable community members, including LASC's clients and survivors throughout the state, maintain their rebuild timelines and prevent rebuild or replacement contracts from being abandoned as a result of funds being withheld by a mortgage servicer or provider. SB 455 is imperative because it will require rebuild or replacement funds be released in a timely manner, prevent the expenditure of additional funds on rebuild projects due to delays in release of funds, and prevent builders from cancelling contracts due to lack of timely payments or exhaustion of funds. [ . . . ]

Frequently, survivors enter rebuild or replacement contracts with the hope that their mortgage servicer will release the funds so the survivor can begin the rebuild or replacement process. However, it is also common for the survivor's mortgage servicer or provider to sell the survivor's mortgage to a new mortgage servicer or provider. When this occurs, the subsequent mortgage servicer or provider is often not made aware of the existing contract to rebuild or replace the lost home or the mortgage servicer or provider may simply have

a different interpretation of what requirements must be met prior to releasing the survivor's insurance funds under the terms of the existing contract.

Currently, without SB 455, the subsequent mortgage servicer or provider is not required to abide by any rebuild agreements that they were not made aware of prior to the transfer of the mortgage. This delays the rebuild process, increases the cost to rebuild, and leads to the abandonment of rebuilds. We need SB 455 to allow disaster survivors to rebuild or replace their lost homes and become permanently and safely rehoused in a timely manner. SB 455 will allow survivors to access their insurance proceeds after the total loss of their home by requiring mortgage servicers and providers to disclose the terms of any existing rebuild or replacement contract to any subsequent mortgage servicer. SB 455 will also require subsequent mortgage transferees to abide by such terms.

## 2. Mortgage servicers may change from time to time

A mortgage servicer is an entity that interacts with borrowers after a loan has been originated and the borrower begins to repay the loan. A mortgage servicer collects payments from the borrower, manages the associated escrow account, and asserts mortgage holder rights when the borrower defaults. The mortgage servicer is often a different entity than the lender who initially funded the loan or the legal owner of the mortgage debt. Mortgage servicer obligations are typically detailed in a servicing agreement or servicing guidelines provided by the investor. Property insurance contracts typically include a mortgagee, loss payee, or lenders loss payable clause that is designed to protect a mortgage lender in case the property that secures the mortgage is damaged or destroyed. The insurance company typically pays out the claim that arises from damage or loss to the lender and not the homeowner (borrower).

A borrower may not always engage with the same mortgage servicer over the life of a mortgage even though the actual mortgage does not change ownership. It is common for the mortgage servicing rights to be transferred, assigned, or sold to a new servicer. Sometimes the actual mortgage does change ownership and results in a change in the mortgage servicer.

Mortgage servicers have the legal obligation to notify borrowers of certain basic information when their mortgage is transferred from one servicer to another. Mortgage servicers are also required to maintain policies and procedures that are reasonably designed to ensure the timely transfer of all information and documents related to a transferred mortgage loan from the mortgage servicer transferor to the mortgage servicer transferee. However, as explained in the Senate Banking and Financial Institutions analysis of this bill, "[n]either the regulations, nor the official interpretations, however, provide any additional detail on how servicers should treat the transfer of a mortgage that is the subject of an insured loss event."

In order to ensure that homeowner borrowers are not negatively impacted by the transfer of mortgage servicing from one mortgage servicer to another when they are trying to rebuild their homes that were harmed during a declared state of emergency, this bill requires a mortgage servicer to provide a written disclosure of specified relevant information to a mortgage servicer transferee or purchaser mortgage servicer. The bill also requires a mortgage servicer transferee or purchaser mortgage servicer that receives the specified written disclosure to then comply with the terms as agreed upon by the original mortgage servicer in any contract or agreement; provide to a transferee or purchaser mortgage servicer the written disclosure, provided by the mortgage servicer that was the servicer at the time of the emergency proclamation, to reflect subsequent agreements, contracts, and negotiations; and continue in good faith any negotiation.

3. Real life experiences motivating the introduction of this bill

The author details some homeowner experiences in his district that inspired him to author this bill:

- A married couple with a special needs son filed an insurance claim and notified their mortgage company that they suffered a total loss. After negotiation with the insurance company the funds were released to the mortgage provider. The survivors identified a builder to rebuild their home and signed a rebuild contract with signoff from their mortgage company. After the rebuild contract was signed, the mortgage was sold to another provider. When that transfer occurred the survivors requested that the new mortgage provider release the remaining funds according to the contractual agreement between the contractor and the survivors. The mortgage provider refused to release such funds and requested additional information and an inspection - none of which was previously agreed to. Ultimately it took about 6 months to negotiate the release of funds from the mortgage provider even though the terms of release of funds had previously been agreed to by the initial mortgage provider.
- A married couple with two small children filed an insurance claim and notified their mortgage company that they suffered a total loss. After negotiating with the insurance company the funds were released to the mortgage provider. The survivors were significantly underinsured, so they identified an alternative rebuild project (a smaller home than the home that was lost) and a builder to build. After the rebuild contract was signed, the mortgage was sold to another provider. After that transfer occurred, the new mortgage holder would not release funds for the rebuild of a home that was different than the lost home even though this had already been agreed to by the prior mortgage holder and there was no concern about the protection of the value of the mortgage holder's surety

interest. Eventually the mortgage company released some funds but withheld additional funds - leaving the survivors in a position where they had to use their remaining personal property money to complete the rebuild.

- A married couple filed an insurance claim and notified their mortgage company after suffering a total loss. After their insurance company refused to allow them to repurchase, they were in essence forced to rebuild. They found a builder willing to build a similar home and received signoff from their insurance and mortgage company. Once the mortgage company received the funds they initially paid according to the rebuild contract as agreed; however, the mortgage was eventually sent to a new servicer. At that point, the new mortgage service provider refused to honor the payment schedule as was previously agreed to by the original mortgage provider. Eventually, the new mortgage provider released some funds but the survivors were forced to liquidate a pension at significant penalty to complete the rebuild.

#### **SUPPORT**

Legal Aid of Sonoma County

#### **OPPOSITION**

None known

#### **RELATED LEGISLATION**

Pending Legislation: None known.

Prior Legislation: None known.

#### **PRIOR VOTES:**

Senate Banking and Financial Institutions Committee (Ayes 7, Noes 0)

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