California Bankers Association
Bank Counsel Seminar

Examining the Impact of AB 130 on Junior Liens in California

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T. Robert Finlay is one of the three founding partners of Wright, Finlay & Zak. Since 1994, Mr. Finlay has focused his legal career on consumer finance and mortgage-related litigation, compliance and regulatory matters. Mr. Finlay is at the forefront of the mortgage banking industry, handling all aspects of the ever-changing default servicing and mortgage banking litigation arena, including compliance issues for servicers, lenders, investors, title companies and foreclosure trustees. Mr. Finlay successfully guides clients through the complexities of litigation while being extremely mindful of their core values and business models. He is a regular speaker (at industry events and for clients) on a variety of loan servicing and mortgage banking issues, including key legislative and legal updates.

Mr. Finlay is also the General Counsel for the California Mortgage Association (CMA), advising its Board and members on a variety of loan origination, servicing and other legal and compliance issues. In this role, Mr. Finlay works closely with the CMA's lobbyists in Sacramento to mitigate the impact of proposed new laws on the mortgage industry.

Mr. is also an active member and participant in the California Mortgage Bankers Association (CMBA), Mortgage Bankers Association (MBA), United Trustees Association (UTA), and California Bankers Association (CBA). For over 10 years, Mr. Finlay served as a Committee Member and Board Member of the United Trustees Association, being elected as its President in 2011 and 2012 and Chair of the Legislative Committee from 2013 to 2019, working closely with lobbyists in California, Nevada, Washington and Oregon on key industry issues. Since 2013, Mr. Finlay has also been on the Legislative Committee for the CMBA. In 2020, Mr. Finlay became the Co-Chair for the National Private Lenders Association (NPLA). He is also a member of the Orange County Bar Association (OCBA). Mr. Finlay is a regular contributor to several industry periodicals and has also authored pertinent Amicus Briefs on key issues impacting the mortgage and finance industry. His key published opinions include Sheen v. Wells Fargo Bank, N.A., (2022) 12 Cal.5th 905 (Amicus Counsel); Mabry v. Superior Court (2010) 185 Cal.App.4th 208 (Amicus counsel); and Bostanian v. Liberty Saving Bank (1997) 52 Cal.App.4th.

AB 130: IMPACTING SUBORDINATE LIENS

- Effective July 1, 2025.
- Codified as Civil Code 2924.13.
- What loans are impacted?
  - "Subordinate liens", defined at the time the DOT was created.
  - Does AB 130 apply retroactively?
  - What about refi loans recorded while the loan it is paying off is still on title?
  - Does AB 130 only apply to consumer loans?
- Who is negatively impacted?
- Who is protected?

AB 130: "UNLAWFUL PRACTICES"

Civil Code Section 2924.13(b) identifies certain servicer conduct that now constitute "unlawful practices", including:

- The servicer (including all prior servicers) did not provide the borrower with any written communication for at least 3 years;
- The servicer failed to provide a servicing transfer notice that was required by law;
- The servicer failed to provide an ownership transfer notice that was required by law;
- The servicer conducted or threatened to conduct a foreclosure sale after providing a "form" to the borrower indicating that the debt had been written off or discharged, including, but not limited to, an IRS 1099;
- The servicer conducted or threatened to conduct a foreclosure sale after the applicable statute of limitations expired; and
- The servicer failed to provide a periodic statement that was required by law, investor, or guarantor requirements.

AB 130: THE NEW CERTIFICATION REQUIREMENT

Section 2924.13(c) prohibits the servicer from "threatening" to non-judicially foreclose or conducting a non-judicial foreclosure sale before the servicer records a newly required Certification.

- Must be recorded "simultaneously" with the NOD
- Signed under penalty of perjury, attesting that either:
  - The servicer (defined to include prior servicers) did not engage in an unlawful practice as described in subdivision (b); or
  - The servicer lists all instances when it committed an unlawful practice.
- Certification must be mailed to the borrower at the time of recording the NOD, along with a notice indicating that - If the borrower believes the servicer (again, including the prior servicers) engaged in an unlawful practice or misrepresented its compliance history, the borrower may petition the court for relief before the foreclosure sale.

AB 130: COMMONLY ASKED QUESTIONS

- Can a servicer take any collection actions on subordinate loans?
- Can a servicer enter into a modification, extension, or forbearance on a subordinate lien?
- Is it ok to send Payoff or Reinstatement Demands on subordinate loans?
- Why would a servicer ever admit to committing an unlawful practice?
- What if the NOD was recorded prior to July 1st?
- What should the servicer do if the 1st is about to foreclose and wipe out the subordinate lien?
- Can the servicer just foreclose judicially to avoid this mess?

AB 130: CONSEQUENCES FOR VIOLATING THE NEW LAW?

If the servicer (including prior servicers) failed to record the Certification, engaged in an unlawful practice or misrepresented the compliance history, the Borrower can sue to enjoin the foreclosure sale, set aside the foreclosure sale, equitable relief and (???) monetary damages.

- Is a request for a Temporary Restraining Order (TRO) mandatory?
- What sort of equitable relief can the court order?
- Can the borrower set aside a completed foreclosure sale to the lender or a BFP?
- What if the foreclosure sale was completed prior to July 1, 2025?
- Can the borrower recover monetary damages?