



April 9, 2012

TO: All Members, California State Legislature

FROM: California Bankers Association
 California Chamber of Commerce
 California Credit Union League
 California Financial Services Association
 California Independent Bankers
 California Mortgage Association
 California Mortgage Bankers Association
 Mortgage Electronic Registration Systems
 Securities Industry and Financial Markets Association
 United Trustees Association

RE: Observations on Pending Residential Mortgage Lending Legislation

The trade associations listed above wish to share initial observations regarding mortgage and foreclosure-related measures pending consideration in the Legislature. Once again, there are more than four dozen measures introduced this year focusing on various aspects of residential mortgage lending, loan servicing and foreclosure processes. In many cases, measures before the Legislature are duplicative, overlap, conflict, compete with others in amending similar or the same code sections or are cross-purposed.

We remain concerned with legislation that results in the further erosion of property taxes for local governments, perpetuates community blight for longer periods, acts as disincentives for capital investments and forestalls economic recovery. Should state laws with respect to loan origination and collateral recovery become too onerous, private capital will be reluctant to invest or will only invest at a significant risk-based premium, resulting in higher costs for consumers.

To the extent that home retention efforts fail, foreclosure is an unfortunate but necessary process. We agree that this process must be lawful, fair and respectful of the rights of borrowers, but at the same time, legal devices should not be used to unduly delay the inevitable when other options have been exhausted. As the legal and compliance risk involved in transactions

increases, inventory that ultimately could be sold to bona fide purchasers can remain in limbo under clouded titles, continuing to depress property values. Furthermore, as collateral recovery becomes less certain, investors in mortgage products will be less inclined to employ their investment capital in mortgage assets. This will have the effect of reducing the availability of credit, as lenders restrict their origination to higher credit quality borrowers (where foreclosure is deemed less likely) and investors demand higher returns on their investments, to compensate for increased risk.

Our trade associations, and the hundreds of members within, are proud of the dozens of measures that we have helped craft that have been signed into law during the past four years on this very topic. We reiterate our commitment to being part of this year's legislative conversation, as we have been for so many years. In that regard, we appreciate the initial meetings focused on the California Attorney General's (AG) 11-bill package and the time that interested parties have devoted to dissecting these proposals.

We preliminarily understood that certain measures within the AG legislative package were intended to codify elements of the national mortgage settlement and apply its requirements to all mortgage servicers. However, we have learned through our meetings that, in fact, proposed legislation exceeds and deviates from that settlement. Expanding an agreement that is barely a month old, has yet to be finally approved by the court, and making it permanent when it was intended to be temporary, is unsettling and has numerous consequences, including disjointed state efforts that were intended to be uniform in application.

Furthermore, the rush to codify without sufficient experiences to analyze the benefits and demerits of the settlement will lock a set of procedures inflexibly in statute. Even if adhered to precisely, it's unclear whether such an application to all mortgage servicers is wise policy. It has also become apparent that certain measures contain provisions purposefully overturning years of established case law.

The national settlement anticipated error rates and afforded a right to cure mistakes. Yet, measures within the AG legislative package impose strict liability with no right to cure and impose multiple, layered individual lawsuits with accompanying statutory, actual, treble and punitive damages. Exposing entities and individuals to excessive litigation risk will not attract and encourage creditors and investors to inject the capital necessary to revive California's residential housing marketplace.

As the economy in California and the nation is improving, the measures before the legislature must be carefully considered as they will directly influence our recovery and are likely to hinder emerging improvements in the housing sector. Well-intentioned efforts to help distressed borrowers may further restrict access to credit in the future. Advancing legislation that creates additional procedural hurdles or conflicting layers of bureaucracy for loan servicers, without addressing the borrower's underlying financial condition, may ultimately miss the mark of resolving core economic issues, and will ultimately prove unsuccessful at solving this complex problem.

Observations on Pending Residential Mortgage Lending Legislation

April 9, 2012

Page 3

Notwithstanding the foregoing, we will continue to seek reasonable solutions that provide meaningful consumer protections that avoid long-term damage to the marketplace, cause industry to exit residential mortgage lending and increase the cost of credit. The people of California require a full service home mortgage finance system that is accessible, affordable, transparent, prudent and effective, and the measures we refer to would not further the achievement of that goal.

Thank you.

cc: Anthony Williams, Policy Director, Senate President pro Tem Darrell Steinberg
Fredericka McGee, Legislative Counsel, Speaker John A. Perez