

09 SESSION REVIEW FOR REALTORS®

FORECLOSURES

Bill	Effective Date	Description
<p>AB 65 – Fee for Filing Notice of Default and Election to Sell NVAR monitored this bill after it was amended</p>	<p>Effective July 1, 2009</p>	<p>This bill provides for the collection and disposition of additional court fees for district courts. This bill also requires a county recorder to collect a fee of \$50 upon the filing of any notice of default and election to sell and provides that such fees must be deposited in a special account to support a program of foreclosure mediation established by Supreme Court Rule. This is essentially the funding mechanism for AB 149, the mediation for loan modification bill.</p>
<p>AB 140 – Tenants and Foreclosures NVAR monitored this bill</p>	<p>Effective October 1, 2009</p>	<p>Notice to Tenants This bill requires, if the sale of property is a residential foreclosure, a separate notice must be served upon any tenant or subtenant, occupying the real property that the property is subject to a notice of sale.</p> <p>Unlawful to Deface Notice After the notice is served, it is unlawful for a person to willfully remove or deface a notice of sale under execution or a notice of sale pursuant to a trustee’s power of sale which is posted on real property.</p> <p>Obligation to Maintain Property’s Exterior This bill requires the purchaser of a vacant residential property at a foreclosure sale or a trustee’s sale to maintain the exterior of the property and authorizes the appropriate governmental entity to assess a civil penalty of up to \$1,000 per day, for failure to maintain the property.</p> <p>Payment of Rent and Tenant Eviction This bill provides that a tenant or subtenant may be removed only after the expiration of a specified period not to exceed 60 days if the property has been sold as a residential foreclosure, but must remit rent to the new owner of the property pending expiration of the specified period.</p> <p>Ability to Negotiate New Terms, Including Cash for Keys This bill allows the new owner of the real property, if the property has been sold as a residential foreclosure, to negotiate a new purchase, lease or rental agreement with the tenant or subtenant or offer a payment in exchange for the tenant or subtenant to vacate the property on a date earlier than the end of the specified period.</p> <p>Disclosure of Foreclosure to Prospective Tenants This bill also requires a landlord to disclose in writing to a prospective tenant if the property to be leased or rented is the subject of foreclosure proceedings and makes it a deceptive trade practice for any landlord to willfully fail to make such a disclosure.</p>

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<p>AB 149 – Mediation for Loan Modification NVAR supported this bill</p>	<p>Effective July 1, 2009</p>	<p>This bill establishes certain restrictions on the trustee’s power of sale with respect to single family owner-occupied housing by providing a grantor of a deed of trust or the person who holds the title of record with the right to request mediation under which he may receive a loan modification. Once mediation is requested, no further action may be taken to exercise the power of sale until the completion of the mediation. Each mediation must be conducted by a senior justice, judge, hearing master or other designee pursuant to rules adopted by the Nevada Supreme Court, and a fee of not more than \$85 per hour may be charged and collected for the mediation. The Nevada Supreme Court was given the authority to oversee the mediation process, adopt rules for the mediation if a borrower is in default, and provide for voluntary mediation with respect to a homeowner who is not in default but is at risk of default.</p>
<p>AB 452 – Tenants and Foreclosures NVAR monitored this bill</p>	<p>Failed to pass out of the Assembly committee by the deadline and will not become law.</p>	<p>This bill is very similar to AB 140, regarding tenants and foreclosures.</p> <p>Notice to Tenants This bill would have required a separate notice to be served upon any tenant or subtenant, other than the judgment debtor or grantor occupying the property which is subject to a notice of sale under execution or a notice of sale.</p> <p>Unlawful to Deface Notice This bill would have made it unlawful for a person to willfully remove or deface a notice of sale which is posted on real property.</p> <p>Obligation to Maintain Property’s Exterior It would have also required the purchaser of a vacant residential property at a foreclosure sale or a trustee’s sale to maintain the exterior of the property and authorized the appropriate governmental entity to assess a civil penalty of up to \$1,000 per day for failure to maintain the property.</p> <p>Tenant Eviction This bill would have provided that a tenant or subtenant, other than the person whose name appears on the mortgage or deed of trust, may be removed only after the expiration of 60 days and would have allowed the new owner of the real property to negotiate a new purchase, lease or rental agreement with the tenant or subtenant in occupation of the property.</p> <p>Attempts to Contact Grantors prior to Notice of Default It would have also prohibited the beneficiary, the successor in interest of the beneficiary or the trustee from recording a notice of default until at least 30 days after certain attempts are made to contact the grantor of the real property who is in default. This bill would have required a notice of default recorded to include a declaration stating that the required attempts to contact the grantor of the real property who is in default were made.</p>

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<u>AB 471</u> – Judicial Foreclosure Sale and Deficiency Judgments NVAR supported this bill.	Effective October 1, 2009	<p>This bill provides a right to cure a deficiency in payment on a mortgage or other encumbrance before a judicial foreclosure sale at any time not later than 5 days before the date of sale.</p> <p>This bill also provides that if the judgment creditor or the beneficiary of the deed of trust is a financial institution, a court may not award a deficiency judgment to the judgment creditor or the beneficiary of the deed of trust if:</p> <ul style="list-style-type: none">• the real property is a single-family dwelling and the debtor or grantor was the owner of the property;• the debtor or grantor used the loan to purchase the property;• the debtor or grantor occupied the property continuously after obtaining the loan; and,• the debtor or grantor did not refinance the loan. <p>This bill applies only prospectively to obligations secured by a mortgage, deed of trust or other encumbrance upon real property on or after October 1, 2009.</p>

