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## Senate Bill 724

Date: March 2, 2020  
Committee: Senate Judicial Proceedings Committee  
Bill Title: Mortgage Servicers - Requirements and Prohibitions During and After a State of Emergency and Catastrophic Health Emergency (Foreclosure Relief Act of 2021)  
Re: Letter of Information

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Senate Bill 724 creates a new subtitle under the Real Property article governing foreclosures during and after the declaration of a state of emergency and catastrophic health emergency. The bill combines several concepts, including rules for mortgage forbearances with rules for mortgage foreclosures and the concept of the current state of emergency and catastrophic health emergency with future states of emergency and catastrophic health emergencies. Such concepts are actualized in the bill without drawing distinctions and in ways that will likely create confusion for the consumers, the mortgage servicers who service mortgage loans, and the Office of the Commissioner of Financial Regulation (“OCFR”) the State Agency that supervises mortgage loan services and would be responsible for enforcing the law. In addition to the conceptual confusion, the bill contains apparent drafting errors, imprecise terminology, and fails to properly harmonize the proposed processes with existing foreclosure and mediation procedures. Finally, the OCFR has concerns regarding the constitutionality of some of the mandates contained in the bill.

At the outset, and emblematic of the lack of precision in the terms used throughout the bill, proposed new Section 7-601(D)(2) found on page 2, line 8 states that the definition of a “mortgage servicer” includes “mortgagors” and “grantors”. It is our belief these terms were used in error because mortgagors and grantors are borrowers and not lenders; instead, the bill should provide that the term “mortgage servicer” include “mortgagees” and “grantees.” Additionally, other key terms used in the bill are vague or left undefined including terms such as “state of emergency and catastrophic health emergency,” “federally backed mortgage loan,” “non-federally backed mortgage loan,” “deed of trust,” “mortgage,” “complete an action to foreclose,” “termination (of a state of emergency),” “rescission (of a catastrophic health emergency),” residential property,” “post-forbearance options,” and “negative mortgage payment information.”

The impact of the use of imprecise terms is significant. For example, it is not clear if the bill, or portions thereof, would only apply when both a state of emergency and a catastrophic health emergency are in effect, or if only one of them is required. Another example of the confusion that stems from the use of imprecise terms is the fact that the bill’s scope is unclear because, depending upon the intended coverage of the undefined terms “federally backed mortgage loan,” “non-federally backed mortgage loan,” “deed of trust,” “mortgage,” and “residential property,” the bill’s obligations may encompass servicers of certain commercial as well as consumer loans. The OCFR anticipates the following issues in implementing this bill as drafted:

1. Establishing meaningful and enforceable standards by which to evaluate consumer complaints.
2. Difficulty in bringing enforcement actions against entities who fail to comply with, or probe the boundaries of, the law.

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3. Difficulty in providing meaningful guidance, whether through regulations or advisories, to servicers.
  4. Difficulty in modifying the OCFR's systems that are designed to collect legislatively mandated foreclosure information in a manner sufficient to address the requirements of this bill.

Certain portions of SB 724 regarding pre-foreclosure notice and timing, as well as the new forbearance and post-forbearance requirements, may conflict with the requirements currently prescribed under the Notice of Intent to Foreclose ("NOI") law. Additionally, the bill seemingly requires servicers to provide certain borrowers forbearance that is in accordance with the Federal Coronavirus Aid, Relief, And Economic Security Act (an undefined standard) for eternity. As drafted, OCFR is concerned this creates uncertainty as to the obligations of mortgage servicers. Aside from the constitutional reservations, the OCFR is concerned that the bill's broad scope may undercut any intent to enact a foreclosure moratorium and that those conflicts and uncertainty, along with the bill's imprecise language, will confuse consumers, the courts, mortgage servicers, and negatively impact the Agency's ability to effectively and efficiently supervise mortgage servicers and protect consumers.