



CBA Regulatory Compliance Bulletin

September 15, 2014

New Bill Improves HELOC Payoff Process at Closing

A new bill, AB 1770, enhances the process of paying off a home equity line of credit account (HELOC) in connection with an escrow for the sale of the secured property or a refinance. The bill was sponsored by the California Land Title Association, whose members sometimes face situations where a lender fails to close a HELOC prior to close of escrow, funds are drawn on it, and the innocent buyer inherits the underlying lien and loan. The borrower may innocently be unaware that the HELOC is secured by the property, or may purposely request multiple HELOCs from different lenders and proceed to draw funds from one line while another is being requested. Any of these circumstances potentially creates conflicts with buyers, as well as loan priority problems for subsequent lenders.

AB 1770, which adds Section 2943.1 to the Civil Code, addresses these issues by bolstering the standardized process to terminate a HELOC when the residential property is in escrow. The bill requires a beneficiary¹ that provides a payoff demand statement² in connection with an equity line of credit³ to include in the demand an e-mail

¹ As defined in existing Civil Code Section 2943(a)(1).

² As defined in existing Civil Code Section 2943(a)(5).

³ "Equity line of credit" is newly defined in new Civil Code Section 2943.1 as "a revolving line of credit used for consumer purposes, which is secured by a mortgage or deed of trust encumbering residential real property consisting

address, fax number, or mailing address for delivery of the newly created Borrower's Instruction to Suspend and Close Equity Line of Credit. The text of these instructions is provided in the bill, and it is presented to the borrower by the entitled person⁴ to be used by the borrower to request closing of the account. The form instruction is deemed to be effective if worded substantially in the form as follows, and signed by the borrower:

Borrower's Instruction to Suspend and Close Equity Line of Credit

Lender: [Name of Lender]

Borrower(s): [Name of Borrower(s)]

Account Number of the Equity Line of Credit:
[Account Number]

Encumbered Property Address: [Property
Address]

Escrow or Settlement Agent: [Name of Agent]:

In connection with a sale or refinance of the above-referenced property, my Escrow or Settlement Agent has requested a payoff demand statement for the above-described equity line of credit. I understand my ability to use this equity line of credit has been suspended for at least 30 days to accommodate this pending transaction. I understand that I cannot use any

of one to four dwelling units, at least one of which is occupied by the borrower."

⁴ As defined in existing Civil Code Section 2943(a)(4).

• 2 September 15, 2014

credit cards, debit cards, or checks associated with this equity line of credit while it is suspended and all amounts will be due and payable upon close of escrow. I also understand that when payment is made in accordance with the payoff demand statement, my equity line of credit will be closed. If any amounts remain due after the payment is made, I understand I will remain personally liable for those amounts even if the equity line of credit has been closed and the property released.

This is my written authorization and instruction that you are to close my equity line of credit and cause the secured lien against this property to be released when you are in receipt of both this instruction and payment in accordance with your payoff demand statement.

(Date)

(Signature of Each Borrower)

When a beneficiary receives the instruction that is signed by the borrower, it must suspend the line of credit for at least 30 days. To suspend means to prohibit the borrower from drawing on, increasing, or incurring any additional principal debt on the equity line of credit.⁵ When the beneficiary receives both the signed instruction and payment that satisfies the payoff demand, it must close the line of credit and release or reconvey the property. The beneficiary may conclusively rely on the borrower's instruction as coming from the borrower.

AB 1770 has a delayed operative date of July 1, 2015, and it sunsets on July 1, 2019. Kevin Gould was the lead lobbyist on the bill.

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⁵ Section 2943.1(a)(6).



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