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Lawsuit Challenging New California Subordinate Mortgage Servicing Law is Dismissed*

In 2025, Assembly Bill 130 (AB 130) was enacted as part of a broader state budget package aimed at addressing housing affordability in California. It included new California Civil Code Section 2924.13, which contains provisions related to the servicing and foreclosure of subordinate mortgages in California. The law established new categories of unlawful practices in connection with the servicing of subordinate mortgages, as well as created new requirements for foreclosing on subordinate mortgages and new avenues for borrowers to challenge such foreclosures.

The law was aimed at preventing foreclosures on so-called “zombie mortgages,” which are subordinate mortgages seemingly abandoned that have risen from the “dead” years later. However, the law was widely criticized in the industry as being overbroad and over concerns that it could reduce or eliminate the enforceability of any subordinate lien secured by residential real property in California, not just the “zombie mortgages” the law purportedly targeted.

A lawsuit was filed in the United States District Court for the Eastern District of California in September 2025, challenging California Civil Code Section 2924.13 on constitutional grounds. *California Mortgage Association v. Bonta*, 2:25-cv-02614 (E.D. Cal., filed Sept. 8, 2025). The State of California, through Attorney General Bonta, filed a motion to dismiss the lawsuit.

On June 4, 2026, the court granted this motion, dismissing the lawsuit without leave to amend. Attorney General Bonta argued that sovereign immunity barred the complaint brought against him, as he was named as the defendant in the case in his capacity as attorney general. The plaintiffs sought to bring this lawsuit based on an exception to the doctrine of sovereign immunity recognized by the U.S. Supreme Court, which authorizes federal courts to enjoin certain state officials from enforcing state laws in some situations. However, Attorney General Bonta argued that the attorney general lacks any statutory authority to enforce California Civil Code Section 2924.13, and thus, he cannot be subject to the lawsuit. The court agreed and dismissed the plaintiffs' complaint without leave to amend.

* Janet Bonnefin has retired from the firm.

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It is possible that the plaintiffs in this case may yet appeal the adverse decision. If not, a lender seeking to challenge the new law will likely need to bring a constitutional challenge in an individual case in which a borrower had asserted that the lender's subordinate mortgage was not enforceable.

Contact Harry Khalsa at HKhalsa@ABLAWYERS.COM with any questions on California Civil Code Section 2924.13.