

CLTA-PAC: YEARS OF MAJOR POLITICAL SUCCESS

California Land Title Association's 104th Annual Convention

May 22-24, 2011



I. 2010-2011 Recent Legislative Successes:

The CLTA, working with a number of financial trade organizations, opposed the following bills.

1. Adjustable Rate Mortgages (*Defeated*)

Assembly Bill 406 (Davis) would prohibit balloon payments from being included in the terms of an adjustable rate loan for real property containing one to four residential units secured by a mortgage or deed of trust on real property.

2. Mortgage Prepayment Penalties (*Defeated*)

Assembly Bill 407 (Davis) would prohibit the imposition of prepayment charges for loans secured by a mortgage or deed of trust on real property improved with one to four dwelling units.

3. Mortgage Counseling (*Defeated*)

AB 643 (Davis) would prohibit a mortgagee, trustee, beneficiary, or authorized agent from filing a notice of default unless the borrower has been provided counseling by the mortgage broker relating to foreclosure prevention that includes assistance in negotiating an agreement to cure the default.

4. Borrower Education (*Defeated*)

Assembly Bill 645 (Davis), would provide that the fiduciary duty owed to a borrower includes a requirement that the mortgage broker provide information to a borrower regarding the advantages and disadvantages of the loan options available to the borrower based upon the borrower's income and credit rating.

5. Recordation of Mortgages and Deeds of Trust (*Defeated*)

AB 1321 (Wieckowski) would instead require that mortgages and deeds of trust as well as assignments of a mortgage or a deed of trust be recorded within 30 days of the execution of the deed or other document creating a security interest in the real property or within 30 days of execution of the assignment. The bill would

further require that either the promissory note or a specified certificate affirming the existence of the promissory note be attached at the time of recordation.

6. California Coastal Act of 1976 Enforcement (*Defeated*)

SB 588 (Evans) would provide that a person who violates the act is subject to an administrative civil penalty that may be imposed by the California Coastal Commission by a majority vote of the commissioners, upon consideration of various factors, in a public hearing, and in an amount no less than \$5,000 and no more than \$50,000 for each violation.

7. Insurance Commissioner Enforcement Actions (*Defeated*)

SB 631 (Evans) would authorize the California Insurance Commissioner to impose upon an insurer, licensee, or other entity or person subject to the commissioner's authority specified remedies, either by way of settlement or following a hearing, whenever the commissioner finds that there has been a violation of an applicable insurance provision, as prescribed.

8. Foreclosure Mitigation Charges (*Defeated*)

AB 935 (Blumenfeld) would impose a \$20,000 tax on every foreclosed property.

9. Notices of Default (*Defeated*)

SB 729 (Leno) would establish pre-NOD modification and notification requirements, multiple private rights of action, and post-foreclosure rescission. The bill alters the definition of a bona fide purchaser, and institutes significant penalties for even minor violations.

II. 2009 – 2010 Legislative Successes:

The CLTA, working with a number of financial trade organizations, opposed the following bills.

1. Property Tax Postponement (*Vetoed*)

Governor Schwarzenegger vetoed Assembly Bill 1718 on real property tax postponement as requested by the CLTA and the California Escrow Association. The bill would have created a super-lien for certain postponed taxes.

The bill was a well-intentioned attempt to modify the current program for senior and disabled citizens' property tax postponement. The CLTA believes that the existing process for the postponement program worked and an entirely new

system did not need to be created.

2. Transfer on Death Deeds (*Defeated*)

A bill touted as an easy alternative to probates and trusts for seniors, AB 724 (DeVore) failed to pass the Senate Appropriations Committee last year. AB 724 had been criticized by the CLTA for its potential to increase fraud and elder abuse through its transfer on death deeds. CLTA had opposed the bill for the previous two years.

The legislation needed to pass the Senate before August 13th to remain alive. The California Land Title Association had raised questions about the bill since its introduction and joined with the California Judges Association, the State Bar of California, and the California Escrow Association in opposing the legislation.

3. Foreclosure Modification (*Defeated*)

Legislation proposing significant changes to the foreclosure process failed to meet a crucial deadline in the Legislature last September. The failure occurred after last-minute amendments did not win sufficient support to pass the bill.

Under SB 1275 (Leno), prior to filing a notice of default, a trustee or beneficiary would have had to provide a borrower with an application for loan modification, or other foreclosure avoidance options, as well as a notice specifying a borrower's rights during the foreclosure process. The bill would have also prohibited a beneficiary or their agent from combining collections activity with communications to a borrower about foreclosure avoidance options, and would have required that a compliance notice be recorded concurrently with the filing of a notice of default. Failure to record the compliance notice would have allowed the borrower to take action to either void the foreclosure or seek statutory damages up to \$10,000.

Senate Bill 1275 was opposed by CLTA, the California Bankers Association, the California Escrow Association, and other industry groups.

4. Coastal Commission Enforcement (*Defeated*)

Legislation expanding the California Coastal Commission's enforcement authority died in the state Senate this past fall. Assembly Bill 226 (Ruskin) would have allowed the Commission to impose its own civil penalties. Under current law, the Commission works through the California Attorney General, and can seek penalties and fines through the court system.

The bill failed on the Senate Floor after opposition from a number of trade organizations concerned over the expansion of the Commission's enforcement authority, including the CLTA, CAR, and the CBIA.

5. Anti-Deficiency Protections (Vetoed)

Governor Schwarzenegger vetoed Senate Bill 1178, a bill designed to extend anti-deficiency protections to refinanced mortgage debt. In his veto message, the Governor wrote that SB 1178 "would fundamentally alter and impair the nature of pre-existing, previously negotiated mortgage loan contracts. In addition, the bill would encourage borrowers to strategically default on loans they have the capacity to repay simply because the mortgaged properties have lost value."

III. 2008 – 2009 Legislative Successes:

The CLTA, working with a number of financial trade organizations, opposed the following bills.

1. Restrictive Covenant Bill (Vetoed)

Legislation was vetoed that would have required county recorders to create a dual records system made up of "official records" which contain unlawful restrictive covenants and "public records" which are an exact copy of the official record, but with the unlawful restrictions redacted. In addition, the bill would have required title companies, homeowners associations and real estate professionals to hand out potentially unnecessary forms to consumers involved in real estate transactions, loan refi's, etc., creating unneeded confusion in the escrow process.

Furthermore, the bill provided for a recording fee of up to \$2.00 per document in the first year of implementation and did not have a cap on the fee in subsequent years.

The CLTA helped coordinate veto efforts with other groups representing real estate professionals, home owners associations, and anti-tax associations.

2. Matricula Consular I.D. Bill (Vetoed)

A controversial measure that would have allowed the use of the Matricula Consular identification card was vetoed. The bill authorized Mexican government-issued cards to be used as ID for notarization in the absence of a California Drivers' license or other similar photo ID.

The CLTA and other groups opposed to the bill originally sought a carve-out for real estate transactions. Unfortunately, the amendments were not included, forcing the CLTA and others to seek a veto of the bill.

3. Riders on Deeds of Trust (*Defeated*)

A coalition led by the CLTA sidelined SB 919, a bill that would have required the attachment of a rider to deeds of trust. The rider would have contained a laundry list of real estate professionals involved in the transaction; without it, the county recorder would be prohibited from accepting the deeds of trust for recordation.

IV. Garamendi Regulations Repealed (2006-2008)

Insurance Commissioner Garamendi drafted 240 pages of regulations that would have resulted in:

- A. Expensive data call (approximately \$400 million plus for title industry to implement).
- B. Interim rates setting (moving from "file and use" to "prior approval").
- C. Up to 20% or more in rate cuts.
- D. As an alternative, the CLTA authored SB 133, creating marketing reforms.

V. RADIAN Bill Killed (2003)

The Radian Group sponsored legislation that would have allowed them to offer a mortgage impairment product.

- A. Authored by Senator Jackie Speier, Chairwoman of the Senate Banking and Insurance Committee.
- B. Bill sponsored by Radian Group.
- C. Would have eliminated up to 40% of title market.
- D. Would essentially have eliminated the "monoline" protections in law.
- E. Radian spent over \$800,000 in lobbying fees.

VI. Referral Fee Bills Killed (1997)

Three bills were sponsored by a real estate association allowing referral fees for business but CLTA killed them all:

- A. Assumable Title (AB 319)
- B. Referral fees of \$25 per referral (Never heard in Committee)
- C. Allowing a "service" fee to the Realtor if the agent or broker performed a "service" for the title company (Dropped by author).