

Date of Hearing: May 11, 2022

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Chris Holden, Chair

AB 2170 (Grayson) – As Amended April 27, 2022

Policy Committee: Judiciary

Vote: 9 - 0

Urgency: No

State Mandated Local Program: Yes

Reimbursable: No

SUMMARY:

This bill enacts a version of the Federal Housing Finance Agency's "First Look" program by providing tenants, prospective owner-occupants and nonprofit affordable housing providers an initial 30-day window to purchase properties of one to four units acquired by institutions through foreclosure. This bill also bans financial and real estate institutions from bundling foreclosure properties for sale.

FISCAL EFFECT:

- 1) Cost pressure (Trial Court Trust Fund) in the upper thousands of dollars to the trial courts in increased court staff workload to the extent this bill results in increased Unfair Competition Law (UCL) litigation. Business and Professions Code section 17200, et seq., generally allows any private actor or public attorney to file for injunctive relief for any violation of state law. Presumably, that would apply to any person or business that attempts to sell foreclosed properties without providing 30 days for tenants, prospective owner-occupants or non-profit organizations to make an offer on a property. An hour of court time costs \$1000 in workload. If 10 injunctive actions are filed requiring five hours of court time, the total cost to the trial courts would be \$50,000 annually.
- 2) Likely minor and absorbable costs to the Department of Justice (DOJ) to the extent it is required to prosecute any violations of the UCL to enforce the mandates in this bill. Any costs will likely be offset by an attorneys' fees award.

COMMENTS:

- 1) **Purpose.** According to the author:

AB 2170 will give more Californians the chance to own a home by giving owner-occupants and [nonprofit] entities a "First Look" at purchasing bank-owned properties, and by prohibiting "bulk sales" of foreclosed homes, if the mortgage servicer managing the bank's portfolio forecloses on 175 or more parcels annually.

- 2) **Federal First Look Program.** In 2008, in response to the then-unfolding financial crisis, Congress created the Federal Housing Finance Agency (FHFA) in order to take the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Corporation (Freddie Mac), and eleven Federal Home Loan Banks (FHL Banks) into conservatorship. In 2009,

FHFA announced a program, entitled “First Look” in which eligible nonprofits and public entities would be given the first opportunity to make offers on properties acquired by the government-sponsored enterprises through foreclosure and subsequently resold. In its initial form, these eligible offerors were given a window of time between listing and appraisal—on average 12 business days—to evaluate a property, and then given another two days to make an offer. It would apply only to “institutions”—entities such as mortgage services, lenders (including banks and credit unions), and real estate brokers—that foreclosed on more than 175 residential properties in the preceding year. Residential properties are those containing one to four units.

- 3) **UCL.** The UCL establishes a statutory cause of action for unfair competition, including any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising. Pursuant to the UCL, actions for relief are required to be prosecuted exclusively by the Attorney General, a district attorney, a city attorney of a city with a population of over 750,000 residents, or a city attorney of a city and county. Additionally, a county counsel may bring a UCL action but only by agreement with the district attorney and only involving a violation of a county ordinance. Moreover, with the consent of the district attorney, a UCL action may be brought by a city prosecutor in a city having a full-time city prosecutor in the name of the people of the State of California, as specified. A person who has suffered injury in fact and has lost money or property as a result of the unfair competition may file a UCL lawsuit as well. The suing party may seek to recover civil penalties or injunctive relief. The requirements of this bill may be enforceable pursuant to the UCL.

- 4) **Argument in Support.** According to the California Association of Realtors:

In recent years we have seen an unprecedented shift in the ownership of homes from families on Main Street to investors on Wall Street. The housing market continues to see a massive infusion of capital from corporate investors seeking to capitalize on changes driven by the COVID-19 pandemic. In fact, California’s 2020 overall homeownership rate has declined to just 56%. Among the state’s largest ethnic group, Latinos, it’s 46% and only 37% of Black families own their home due to rising housing costs. Last year the median home price was \$786,750 and the median home price in California is expected to surpass \$830,000 in 2022.

- 5) **Related Legislation.** AB 1837 (Bonta) makes changes to an existing process related to the acquisition of homes in foreclosure proceedings by prospective owner-occupants, tenants, nonprofit organizations and public entities (also known as the “SB 1079 process”) to prevent fraud and requires the trustee in any foreclosure home sale to report information to the DOJ about the winning bidder. AB 1837 is pending in this committee.