

CONCURRENCE IN SENATE AMENDMENTS

AB 2170 (Grayson)

As Amended June 23, 2022

Majority vote

SUMMARY

Provides tenants, prospective owner-occupants, and nonprofit affordable housing providers an initial 30-day window to purchase properties acquired by institutions through foreclosure. Further bans institutions from bundling such properties for sale.

Major Provisions

- 1) Defines "bundled sale" to mean the sale of two or more parcels of real property containing one to four residential dwelling units, inclusive, at least two of which have been acquired through foreclosure under a mortgage or deed of trust.
- 2) Defines "eligible bidder" to mean any of the following:
 - a) A prospective owner-occupant.
 - b) A nonprofit corporation that meets specified requirements, including that its primary activity is the development and preservation of affordable rental or home ownership housing in California.
 - c) A community land trust based in California.
 - d) A limited-equity housing cooperative based in California.
 - e) The state, the Regents of the University of California, a county, city, district, public authority, or public agency, and any other political subdivision or public corporation in the state.
- 3) Defines "institution" to mean any of the following, if the person or entity, during its immediately preceding annual reporting period, as established with its primary regulator, foreclosed on 175 or more residential real properties, containing no more than four dwelling units:
 - a) A depository institution chartered under state or federal law.
 - b) A person licensed under the California Financing Law in the Financial Code.
 - c) A person licensed under the California Residential Mortgage Lending Act in the Financial Code.
 - d) A person licensed under the Real Estate Law in the Business and Professions Code.
- 4) Requires the following in connection with any sale of residential real property containing one to four units, if the property was acquired by an institution either through foreclosure or at a foreclosure sale:

- a) During the first 30 days after the property is listed for sale, the institution may only accept offers from eligible bidders.
 - b) Any eligible bidder must submit with their bid an affidavit or declaration under penalty of perjury that they are either a prospective owner-occupant or an eligible bidder, as defined.
 - c) The institution must respond, in writing, to all offers received during the initial 30 day period from eligible bidders before considering any other offers.
- 5) Declares that any fraudulent statements may be subject to civil or criminal liability.
 - 6) Prohibits an institution from conducting a bundled sale of properties acquired through foreclosure or at a foreclosure sale.
 - 7) Declares the foregoing provisions to be severable, so that if any provision is held invalid, that this invalidity does not affect other provisions that can be given effect without the invalid provision.

Senate Amendments

Remove certain limited partnerships and limited liability companies from the definition of "eligible bidder"; add public entities to the definition of "eligible bidder"; and clarify that institutions, as defined, must respond in writing to all timely offers from eligible bidders before they may consider other offers.

COMMENTS

The last dozen years have seen significant growth in the number of single-family homes owned by private equity firms and other for-profit corporate investors, and an attendant decline in individual and family home ownership. In 2020, California's homeownership rate—the percentage of California homes owned by their occupants—stood at 55.9%, approximately where it was in 1997, and down from a high of 60.2% in 2006. (U.S Census Bureau, *Homeownership Rate for California*, available at <https://fred.stlouisfed.org/series/CAHOWN>.)

Prior to 2008, corporate ownership of single-family homes offered for rent was basically unknown. These properties were largely held by individual homeowners and by small landlords. This has changed. According to a report by the Alliance of Californians for Community Empowerment (ACCE), Americans for Financial Reform, and Public Advocates:

Industry spokespeople portray the single-family rental boom as a temporary phenomenon. But while there has been some retrenchment recently, many of the big players clearly see more growth ahead. [In November 2017,] the merger between Blackstone's Invitation Homes and Starwood Waypoint Homes was completed, giving the new merged entity, operating as Invitation Homes, approximately 82,000 properties. This makes them the largest landlord of single-family homes in the country and the second largest real-estate company in the world. (ACCE, et al., *Wall Street Landlords Turn American Dream into a Nightmare* (2018) p. 10, available at https://www.acceinstitute.org/wall_street_landlords_turn_american_dream_into_american_nightmare.)

Widespread corporate ownership has caused a decline in middle-class Californians' wealth. The ACCE report quoted above explain how this lost wealth has been transferred to investors:

This increasing dominance of finance as a means of wealth accumulation has resulted in windfall profits for the financial elite, and led to unprecedented levels of wage and wealth inequality by redistributing tenants' rent payments to wealthy investors and redirecting the benefits of home price appreciation to private equity funds and corporate executives rather than homeowners. (ACCE, *supra*, p. 28.)

The increase in corporate home ownership is largely the result of two waves of investment: first, bulk purchases of distressed properties by corporations in the wake of the 2008 financial crisis, and subsequently, regular purchases of these properties at foreclosure auctions. This bill seeks to address both of these phenomena.

The 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 through foreclosure and subsequently resold. The First Look program has evolved over time, and currently gives priority to purchasers who are prospective owner-occupants, nonprofits, or public entities. (24 CFR Section 291.205.) This bill aims to create a state equivalent of the First Look program.

What this bill would do. The process this bill would establish is straightforward. 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.

Under this bill, if an institution acquires a residential property through foreclosure, whether by 1) foreclosing on a defaulted loan secured by the property, 2) retaining the property on its books after a foreclosure auction that fails to meet the institution's asking price, or 3) winning a foreclosure auction, the subsequent sale of that property would be subject to the following requirements:

- 1) Institutions would be forbidden from conducting bundled sales of two or more such properties. In other words, an institution would have to sell each such property individually, rather than packaging them for sale. Such sales would be banned because the capital and connections required to participate in a purchase of bundled properties significantly disadvantages individual and nonprofit purchasers, to the advantage of investors.
- 2) During the first 30 days that an institution offers a foreclosed-on property for sale, it could only accept offers from eligible bidders, defined to include individuals who are prospective owner-occupants, as well as designated nonprofit and public entities. Together with their offer, these eligible bidders would have to submit an affidavit under penalty of perjury that they meet the qualifications to bid.
- 3) Institutions would have to respond in writing to any offer made by an eligible bidder within the 30-day window. Only then could the property be offered for general sale.

Two aspects of this bill require further explanation. First, the 175-foreclosure minimum before this bill applies is adapted from the Homeowner Bill of Rights (HBOR), a statutory scheme meant to ensure that borrowers are considered for, and have a meaningful opportunity to obtain, loan modifications and other alternatives to foreclosure. (*See* Civil Code Section 2923.4.) Certain HBOR protections are only required of institutions that foreclosed on more than 175 residential properties in the prior year, including that a borrower who timely submits an application for a loan modification be given a written determination before the foreclosure process can proceed (Civil Code Section 2924.18). A similar threshold appears appropriate for this bill, which also requires written responses to offers to purchase. Second, the statutory requirements imposed on eligible bidders—potential owner-occupants, nonprofit affordable housing providers, community land trusts, limited-equity housing cooperatives, and public entities – are derived from the past year's experiences with the process created by SB 1079 (Skinner), Chapter 202, Statutes of 2020, (providing eligible bidders an opportunity to match or exceed the winning bid at foreclosure sale). Fraudsters have exploited loopholes under SB 1079, resulting in this year's AB 1837 (Bonta) of the current legislative session (introducing anti-fraud protections to the SB 1079 process). This bill draws on AB 1837's statutory definitions of eligible bidders in order to help prevent fraud in the "first look" process this measure would establish.

According to the Author

In recent years we have seen an unprecedented shift in the ownership of homes from families on Main Street to investors on Wall Street. According to the Public Policy Institute of California, between 2006 and 2012, the number of owner-occupied housing units in California declined by more than 320,000 while the number of renter-occupied housing units increased by more than 720,000. Homeownership is one of the most effective ways for families to build wealth and achieve economic stability. According to the Federal Reserve's 2019 Survey of Consumer Finances, wealth accumulation remains driven almost entirely by homeownership status. 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.

Arguments in Support

California Association of Realtors explains that this bill is important to build household wealth and close the racial wealth gap:

According to the Federal Reserve's 2019 Survey of Consumer Finances, wealth accumulation remains driven almost entirely by homeownership status. While a family that owns a home had a median net worth of \$255,000, a comparable renter family had a median net worth of only \$6,300. Given the persistent racial wealth gap that exists in California, it is essential that working-class families and people of color have the opportunity to once again build wealth and gain stability in their own communities. The housing market continues to see a massive infusion of capital from corporate investors seeking to capitalize on [COVID-19]. 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. [...] AB 2170...seeks to prohibit the bulk sale of REO parcels by mortgage servicers who foreclose on 175 or more residential properties annually.

Arguments in Opposition

No opposition on file.

FISCAL COMMENTS

According to the Senate Appropriations Committee, unknown, potentially significant cost pressures due to increased court workload as a result of having to adjudicate potential violations of this measure (Special Fund – Trial Court Trust Fund, General Fund).

VOTES:**ASM JUDICIARY: 9-0-1**

YES: Stone, Davies, Kalra, Kiley, Maienschein, Reyes, Robert Rivas, Friedman, Bloom

ABS, ABST OR NV: Cunningham

ASM APPROPRIATIONS: 16-0-0

YES: Holden, Bigelow, Bryan, Calderon, Carrillo, Megan Dahle, Davies, Mike Fong, Fong, Gabriel, Eduardo Garcia, Jones-Sawyer, Quirk, Robert Rivas, Akilah Weber, Wilson

ASSEMBLY FLOOR: 76-0-2

YES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Bigelow, Bloom, Boerner Horvath, Mia Bonta, Bryan, Calderon, Carrillo, Cervantes, Chen, Choi, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Davies, Flora, Mike Fong, Fong, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Gray, Grayson, Haney, Holden, Irwin, Jones-Sawyer, Kalra, Kiley, Lackey, Lee, Levine, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Nguyen, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Seyarto, Smith, Stone, Ting, Valladares, Villapudua, Voepel, Waldron, Ward, Akilah Weber, Wicks, Wilson, Wood, Rendon

ABS, ABST OR NV: Berman, O'Donnell

SENATE FLOOR: 40-0-0

YES: Allen, Archuleta, Atkins, Bates, Becker, Borgeas, Bradford, Caballero, Cortese, Dahle, Dodd, Durazo, Eggman, Glazer, Gonzalez, Grove, Hertzberg, Hueso, Hurtado, Jones, Kamlager, Laird, Leyva, Limón, McGuire, Melendez, Min, Newman, Nielsen, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener, Wilk

UPDATED

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CONSULTANT: Jith Meganathan / JUD. / (916) 319-2334

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