

Date of Hearing: April 26, 2022

ASSEMBLY COMMITTEE ON JUDICIARY  
Mark Stone, Chair  
AB 2170 (Grayson) – As Amended April 18, 2022

PROPOSED CONSENT (As Proposed to be Amended)

**SUBJECT:** RESIDENTIAL REAL PROPERTY: FORECLOSURE SALES

**KEY ISSUES:**

- 1) SHOULD CALIFORNIA BUILD ON AN EXISTING FEDERAL PROGRAM TO PROVIDE PROSPECTIVE OWNER-OCCUPANTS AND NONPROFIT AFFORDABLE HOUSING PROVIDERS AN EXCLUSIVE 30-DAY WINDOW TO MAKE OFFERS ON POST-FORECLOSURE RESIDENTIAL PROPERTIES BEING SOLD BY INSTITUTIONS, PRIOR TO THESE PROPERTIES BEING AVAILABLE FOR GENERAL SALE?
- 2) SHOULD CALIFORNIA BAN INSTITUTIONS FROM BUNDLING POST-FORECLOSURE RESIDENTIAL PROPERTIES FOR SALE?

**SYNOPSIS**

*This bill, sponsored by California Association of Realtors, would enact in California law a state-level analogue to the Federal Housing Finance Agency's "First Look" program, which gives individuals, nonprofits, and public entities a 30-day opportunity to make offers on post-foreclosure properties that are put up for sale by federal lenders, Fannie Mae and Freddie Mac.*

*Under this measure, any institution—defined to include mortgage servicers, lenders such as banks and credit unions, real estate brokers, and other regulated entities in the areas of finance and real estate—that acquires 175 or more residential properties (containing 1-4 units) through foreclosure in a given year would be subject to the following restrictions when offering such properties for sale in the following year:*

- 1. The institution would be prohibited from bundling two or more such properties for sale; instead, these properties would have to be sold individually.*
- 2. During the first 30 days these properties were offered for sale, only prospective owner-occupants, nonprofit affordable housing providers, community land trusts, and limited-equity housing cooperatives would be eligible to make purchase offers for them.*
- 3. The institution would have to respond in writing to any offer made by one of these eligible bidders during the 30-day window.*

*The purpose of this bill is to increase individual homeownership and California's stock of affordable housing, instead of continuing to transfer residential properties to corporate ownership for rental through the foreclosure process.*

**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. Specifically, **this bill**:

- 1) States that it is the intent of the Legislature to do all of the following:
  - a) Allow for prospective owner-occupants and eligible bidders to have the first opportunity to purchase properties that have been acquired through the foreclosure process by an entity that annually forecloses on 175 or more residential real properties in California.
  - b) Promote owner occupancy by enacting legislation, consistent with the provisions of the federal First Look program, to provide owner-occupants and affordable housing providers an opportunity for their offers to be considered on foreclosed properties prior to other offers.
  - c) Ensure that the requirements of this section are consistent with the original stated goals of the federal First Look program, which were to expand home ownership opportunities, strengthen neighborhoods and communities, while also providing that sellers are required to respond to offers received during the first look period before accepting or considering investor offers to purchase single-family homes.
- 2) 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.
- 3) Defines “prospective owner-occupant” to mean a natural person who meets all of the following requirements:
  - a) The person will occupy the property as their primary residence within 60 days of the trustee’s deed being recorded.
  - b) The person will maintain their occupancy for at least one year.
  - c) The person is not any of the following:
    - i) The mortgagor or trustor.
    - ii) The child, spouse, or parent of the mortgagor or trustor.
    - iii) The grantor of a living trust that was named in the title to the property when the notice of default was recorded.
    - iv) An employee, officer, or member of the mortgagor or trustor.
    - v) A person with an ownership interest in the mortgagor, unless the mortgagor is a publicly traded company.
  - d) The person is not acting as the agent of any other person or entity in purchasing the real property.
- 4) Defines “eligible bidder” to mean any of the following:

- a) A prospective owner-occupant.
  - b) A nonprofit corporation that meets all of the following requirements:
    - i) It has a determination letter from the Internal Revenue Service affirming its tax-exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code and is not a private foundation as that term is defined in Section 509 of the Internal Revenue Code.
    - ii) It is based in California.
    - iii) All of its board members have their primary residence in California.
    - iv) Its primary activity is the development and preservation of affordable rental or homeownership housing in California.
  - c) A limited partnership based in California in which the managing general partner is a nonprofit corporation, based in California, the primary activity of which is the development and preservation of affordable housing.
  - d) A limited liability company based in California in which the managing member is a nonprofit corporation, based in California, the primary activity of which is the development and preservation of affordable housing
  - e) A community land trust based in California.
  - f) A limited-equity housing cooperative based in California.
- 5) 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.
- 6) 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 and must respond, in writing, to all offers received from eligible bidders.

- b) Any eligible bidder must submit with their bid an affidavit or declaration under penalty of perjury that they are either (i) a prospective owner-occupant who meets the conditions set forth in 3) or (ii) an eligible bidder listed in 4)b) - 4)f).
- 7) Declares that any fraudulent statements under 6) may be subject to civil or criminal liability.
- 8) Prohibits an institution from conducting a bundled sale of properties acquired through foreclosure or at a foreclosure sale.
- 9) 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.

#### **EXISTING LAW:**

- 1) Provides for the transfer of real property among persons. (Civil Code Sections 1091-1134.)
- 2) Establishes comprehensive procedures for conducting a nonjudicial foreclosure on a mortgage or deed of trust secured by residential real property, as well as for conducting a post-foreclosure sale of such property. (Civil Code Sections 2920-2944.10.)
- 3) Establishes the Homeowner Bill of Rights, a set of procedural protections meant to avert avoidable foreclosure on residential real property that contains no more than four units. (Civil Code Sections 2920.5, 2923.3-2923.7, 2924.8-2924.20.)
- 4) Enacts a statutory scheme whereby eligible bidders may acquire properties consisting of one to four residential dwelling units offered at a foreclosure auction by matching or exceeding the last and highest offer made at the auction. (Civil Code Section 2924m.)

**FISCAL EFFECT:** As currently in print this bill is keyed fiscal.

**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 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](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 author writes:

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.

***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. (Housing and Economic Recovery Act of 2008, Pub. L. No. 110-289, 122 Stat. 2654; 12 U.S.C. Section 4617.) FHFA's conservatorship of these entities continues to the present day. According to FHFA, its purpose "is to ensure that Fannie Mae, Freddie Mac, and the FHL Banks fulfill their mission by operating in a safe and sound manner so that they serve as a reliable source of liquidity and funding for housing finance and community investment throughout the economic cycle." (FHFA, *Strategic Plan Fiscal Years 2022-2026* at 6, available at [https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/FHFA\\_StrategicPlan\\_2022-2026\\_Final.pdf](https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/FHFA_StrategicPlan_2022-2026_Final.pdf).)

Through Fannie Mae and Freddie Mac—together known as "government-sponsored entities," or "GSEs"—the federal government owns virtually every residential mortgage loan in the United States, so long as the loan was for an amount below what is known as the conforming loan limit (currently \$647,200) when originated.

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 GSEs 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. According to FHFA, “The purpose of the [FHFA First Look] real estate-owned (REO) property disposition program is to dispose of properties in a manner that expands homeownership opportunities, strengthens neighborhoods and communities, and ensures a maximum return to the mortgage insurance funds.” (*Federal Housing Administration (FHA) First Look Sales Method for Grantees, Nonprofit Organizations, and Subrecipients Under the Neighborhood Stabilization Programs* (Jul. 15, 2010) 75 Fed. Reg. 41225.)

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.) On September 1, 2021, FHFA announced that it was extending the period under First Look, from 20 days to 30 days, during which these prospective purchasers have an exclusive opportunity to bid on GSE-owned properties. (Federal Housing Finance Agency, “News Release: FHFA Extends the Enterprises’ REO First Look Period to 30 Days,” (Sep. 1, 2021) *available at* <https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Extends-the-Enterprises-REO-First-Look-Period-to-30-Days.aspx>.)

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 i) foreclosing on a defaulted loan secured by the property, ii) retaining the property on its books after a foreclosure auction that fails to meet the institution’s asking price, or iii) 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 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 the bill bear further elaboration.

The 175-foreclosure minimum before this bill applies is adapted from the Homeowner Bill of Rights (HBOR), a statutory scheme meant to ensure that, as part of the nonjudicial foreclosure process, 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: that borrowers be given a single point of contact at the mortgage servicer (Civil Code Section 2923.7), and 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). The author and sponsor reasoned that a similar threshold was 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, and limited-equity housing cooperatives—are derived from the past year’s experiences with the process created by SB 1079 (Skinner, Chap. 202, Stats. 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, 2022) (introducing anti-fraud protections to the SB 1079 process). This bill borrows AB 1837’s statutory definitions of eligible bidders in order to help prevent fraud in the “first look” process this measure would establish.

**Technical amendments.** Two technical amendments are necessary to clarify this bill’s intent.

1. On page 5, in line 1, strike out “fewer” and insert “more”

This amendment ensures that the definition of “institution” captures persons and entities that acquired 175 or **more** residential properties through foreclosure, rather than those that acquire 175 or fewer.

2. On page 5, in line 31, after “trust” insert “by an institution”

This amendment ensures that the bill’s offer process only applies to residential real properties acquired **by an institution** through foreclosure, not to such properties generally.

**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 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. [...] AB 2170...seeks to prohibit the bulk sale of REO parcels by mortgage servicers who foreclose on 175 or more residential properties annually.

***Prior and pending related legislation:*** SB 1079 (Skinner, Chap. 202, Stats. 2020) provided tenants, prospective owner-occupants, nonprofit affordable housing providers, and public entities a 45-day window to purchase residential properties of 1-4 units if they were able to match or exceed the highest bid at a preceding foreclosure auction. That bill also banned properties from being bundled for sale at foreclosure auctions.

AB 1837 (Bonta, 2022) would add provisions to combat fraud, assist in the preservation of affordable housing, and make operational improvements to the post-foreclosure process established by SB 1079. The bill was previously passed by this Committee, and is currently being considered by the Assembly Appropriations Committee.

AB 2710 (Kalra, 2022) would ensure that tenants, nonprofit affordable housing providers, community land trusts, limited-equity housing cooperatives, and local public entities have both a right of first offer and a right of first refusal for most rental housing that goes on sale in California. The bill was previously passed by this Committee, and is set to be heard by the Assembly Housing and Community Development Committee.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

California Association of Realtors (sponsor)

##### **Opposition**

None on file

**Analysis Prepared by:** Jith Meganathan / JUD. / (916) 319-2334