
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2021 - 2022 Regular Session

AB 2170 (Grayson) - Residential real property: foreclosure sales

Version: June 23, 2022

Urgency: No

Hearing Date: August 1, 2022

Policy Vote: JUD. 11 - 0

Mandate: Yes

Consultant: Matthew Fleming

Bill Summary: AB 2170 would establish a “First Look” program at the state level, in which individuals, nonprofits, and public entities would have a 30-day window to make offers on post-foreclosure properties that are put up for sale by large lending institutions.

Fiscal Impact: 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).

Background: During the foreclosure crisis that set off the Great Recession from approximately 2008- 2010, institutional investors bought up a large quantity of formerly owner-occupied homes at a discount and turned them into rentals. As a result, homeownership rates dropped, people’s housing security became more precarious, and residential communities became less stable. In response, the federal government created the “First Look” program. The “First Look” program gives individuals, nonprofits, and public entities a 30-day window to make offers on post-foreclosure properties when they are put up for sale by the federal lenders Fannie Mae and Freddie Mac. This bill would create an analogous “First Look” program at the state level. Under the bill, prospective owner-occupants and specified non-profit affordable housing providers will have a 30-day window to make offers on post-foreclosure properties when they are put up for sale by large lending institutions. In addition, the bill requires large lending institutions to sell properties coming out of foreclosure individually, not in bundles.

Proposed Law:

- Defines numerous terms for the purposes of this bill, including “bundled sale,” “prospective owner-occupant,” “eligible bidder,” and “institution.”
- 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:
 - 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; and
 - Any eligible bidder must submit with their bid an affidavit or declaration under penalty of perjury confirming that they are an eligible bidder.
 - Declares that any fraudulent claim to be an eligible bidder may result in civil or criminal liability.

- Prohibits an institution from conducting a bundled sale of properties acquired through foreclosure or at a foreclosure sale.
- 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.
- Makes codified legislative findings and declarations.

Staff Comments: This bill is likely to result in additional litigation under the Unfair Competition Law (UCL). The Business and Professions Code generally allows any private actor or public attorney to file for injunctive relief for any violation of state law (§17200, et seq). That would ostensibly include any person in violation of the provisions of this bill by attempting to sell foreclosed properties without providing 30 days for tenants, prospective owner-occupants or non-profit organizations to make an offer on a property. It is unknown how many additional actions would require adjudication as a result of the implementation of this bill. However, it generally costs about \$1,000 on average to operate a courtroom for one hour. Therefore if violations of this bill throughout the state result in 50 or more hours of additional courtroom time, then the bill would meet the suspense threshold.

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