

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 2170 (Grayson)
Version: April 27, 2022
Hearing Date: June 21, 2022
Fiscal: Yes
Urgency: No
TSG

SUBJECT

Residential real property: foreclosure sales

DIGEST

This bill establishes a state-level “First Look” program, 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.

EXECUTIVE SUMMARY

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 an effort to combat that phenomenon, 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 creates 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.

The bill is sponsored by the California Association of Realtors. Support comes from proponents of homeownership who believe the bill will help boost owner-occupancy. There is no known opposition. The bill passed off of the Assembly Floor by a vote of 76-0. If the bill passes out of this Committee, it will next be heard in the Senate Appropriations Committee.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Provides for the transfer of real property among persons. (Civ. Code §§ 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. (Civ. Code §§ 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. (Civ. Code §§ 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. (Civ. Code § 2924m.)

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; and
 - 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 and 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; or
 - 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; and
 - 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; or
 - 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; or
 - 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; and
 - b) any eligible bidder must submit with their bid an affidavit or declaration under penalty of perjury confirming that they are an eligible bidder.
- 7) Declares that any fraudulent claim to be an eligible bidder may result in 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.

COMMENTS

1. Background on the role of foreclosure in converting owner-occupied homes into corporate rentals

The last foreclosure crisis in California struck roughly in the period 2007-2010. It led to a significant decline in homeownership rates throughout the state. According to the Public Policy Institute of California (PPIC), 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 720,000.¹

A major factor contributing to this transformation was the entry of institutional investors into the rental market. The quintessential example is Blackstone, an investment firm which is reported to have seized on the relatively cheap price of residential property in depths of the foreclosure crisis to acquire and rent out as many as 13,000 homes in California. Only once the crisis subsided and institutional investors could no longer obtain properties so easily at foreclosure sales did homeownership rates begin to recover.²

¹ Johnson and Cuellar Mejia, *The Decline of the Homeowner* (Aug. 19, 2014) Public Policy Institute of California <https://www.ppic.org/blog/the-decline-of-the-homeowner/> (as of Jun. 15, 2022).

² Levin, Data Dig: Big Investment Firms Have Stopped Gobbling Up California Homes (Apr. 4, 2018) CalMatters <https://calmatters.org/housing/2018/04/data-dig-big-investment-firms-have-stopped-gobbling-up-california-homes/> (as of Jun. 15, 2022).

As the author and sponsor of this measure point out, declining rates of homeownership have at least two significant detrimental policy effects. First, they undermine investment and stability in communities. For economic and personal reasons, homeowners have a long-term interest in things like the success of local businesses, neighborhood upkeep, and the quality of local public amenities. Tenants do not share that long-term interest to the same degree because they do not reap corresponding benefits in property value and because their residency is often more transient. Second, declining rates of homeownership undermine the accumulation of family wealth in ways that exacerbate income and racial inequality. As the sponsor of the bill notes:

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. 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.

2. About the federal "First Look" program

This bill is modeled on an existing federal initiative known as the "First Look" program. The "First Look" program creates a 30-day window after a real estate owned property first comes on the market during which only prospective owner-occupants may make offers. Investors therefore have to wait until after owner-occupants have had a first shot at securing the property before the investors can try to acquire it for themselves. The idea, according to Fannie Mae's materials about the program, is to "stabilize communities and support housing recovery through the creation of affordable homeownership opportunities."³

³ *Freddie Mac First Look Initiative*. HomeSteps Freddie Mac Homes <https://www.homesteps.com/homesteps/offer/firstlook.html> (as of Jun. 12, 2022).

3. Establishing a state equivalent to the “First Look” program

Much like the federal First Look program, this bill proposes to open an exclusive, 30-day window of opportunity immediately after a foreclosed upon property goes on the market. During that window of opportunity, only specified categories of potential buyers could make offers to purchase the home. Specifically, only prospective owner-occupants, certain affordable housing providers, and community land trusts, could make offers during this time frame. All other interested investors would have to wait. Since the federal First Look program also allows public entities to make offers during the window of opportunity, the author may wish to consider adding public entities as an eligible category in this bill as well.

As indicated previously, the federal First Look program applies to properties that were foreclosed upon and wound up in the hands of Freddie Mac or Fannie Mae. By contrast, the state analog proposed by this bill would apply to properties that were foreclosed upon and wound up in the hands of larger institutional lenders, specifically those that acquired at least 175 properties through foreclosure in the preceding year. The 175 property threshold derives from the Homeowners Bill of Rights (HBOR), the laws governing how lenders must interact with homeowners during the foreclosure process. As is the case with HBOR, the purpose behind the threshold is to apply the program to larger, more sophisticated lenders without impacting smaller operators.

4. Relationship of this bill to other post-foreclosure property acquisition policy

This bill shares much in common with a cluster of recent California legislation designed to try to mitigate the pernicious effects of high-volume corporate investment in the residential housing market. (*See* Prior Legislation, below, for highlights of these efforts.)

Of particular relevance to this bill, SB 1079 (Skinner, Ch. 202, Stats. 2020) just went into effect last year. Like this bill, SB 1079 creates a window of opportunity for an exclusive set of people and entities to try to acquire a residential property that has been foreclosed upon. As in the case of this bill, the idea behind SB 1079 is to give prospective homeowners and affordable housing providers a chance to buy these properties before they fall into the hands of large institutional investors. The key difference is that SB 1079 applies to properties that are being sold at a foreclosure auction. By contrast, this bill applies to properties that go through the foreclosure process, do *not* sell at auction, and therefore wind up in the hands of the lender who must then try to sell them on the open market.⁴

Some revisions to SB 1079 are now under legislative consideration in the form of AB 1837 (Bonta, 2022). Among other things, those revisions are meant to close loopholes in the definitions of who can participate in the window of opportunity. These revisions are needed to address reports that institutional investors have been able to disguise

⁴ Properties fitting this description are sometimes referred to as “real estate owned” or REO properties.

themselves as non-profit organizations. Then, these investors-in-disguise use the SB 1079 process to acquire residential properties in California on the cheap, flip them quickly, and make a tidy profit. This is precisely the sort of speculation that SB 1079 was designed to defeat. AB 1837 is meant to prevent it from recurring.

Given their related structure and purpose, there would be policy benefits to harmonizing several aspects of the state First Look analog proposed by this bill and the SB 1079 process. Parallel definitions would reduce confusion, facilitate implementation, and make any necessary statutory interpretation easier for the courts. The fact that AB 1837 is making a simultaneous journey through the Legislature creates an opportunity for such harmonization between the two programs.

As things stand currently, however, AB 1837 allows “eligible tenant buyers” to participate in the window of opportunity, but AB 2170 does not. Similarly, AB 1837 allows public entities to participate in the window of opportunity, but AB 2170 does not. There are also nuanced differences between the way that the two bills treat limited liability partnerships and companies. Negotiations between the various stakeholders, sponsors, and authors on this point are ongoing. If a resolution can be reached in time, the author hopes to offer those amendments in Committee.

5. Limitation on “bundled sales”

To further support the goal of avoiding the high-volume conversion of owner-occupied homes into corporately-owned rentals through the foreclosure process, the bill also restricts the use of “bundled sales” to dispose of multiple foreclosed-upon properties at once. In a bundled sale, a lending institution sells off a series of properties that it has foreclosed upon all at once. This method of sale is efficient for the lender and helps them to sell off less-desirable properties by grouping them with more-desirable properties. However, bundled sales effectively exclude everyone apart from institutional investors because in order to buy the bundled properties, the purchaser must have a lot more money available to invest and they must be prepared to manage multiple properties. By requiring individual sales of all properties being offered in the wake of foreclosure, the bill ensures that prospective owner-occupants, in particular, have a better chance of acquiring the property.

6. Proposed amendments

In order to address the issues set forth in the Comments, above, the author proposes to incorporate amendments into the bill that would:

- clarify that the lender must respond to all offers from eligible bidders made within the first 30 days before considering any other offers;
- add public entities as a category of eligible bidder, consistent with the federal First Look program; and

- remove limited liability partnerships and limited liability corporations from among the categories of eligible bidders.

A mock-up of the amendments in context is attached to this analysis.

7. Arguments in support of the bill

According to the author:

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. 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. 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. AB 2170 will provide families with that opportunity.

As sponsor of the bill, the California Association of Realtors writes:

[We are] pleased to sponsor AB 2170 (Grayson), which seeks to codify the federal "First Look" program in California statute [...]. In recent years we have seen an unprecedented shift in the ownership of homes from families on Main Street to investors on Wall Street. In the years since the foreclosure crisis of 2008, private equity firms and large corporations have created a new kind of rental housing market that harms both vulnerable renters and established 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 support, the City of Concord writes:

A corporate goal of the City of Concord is to preserve and enhance the livability of Concord's residential neighborhoods with opportunities for a broad range of housing options, and we support this legislation because it will help grow the expansion of owner-occupied neighborhoods within our community.

SUPPORT

California Association of Realtors (sponsor)
City of Concord
Liveable California
Rocket Mortgage

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation:

SB 1323 (Archuleta, 2022) inserts a new stage into California's non-judicial foreclosure process during which an attempt would be made to sell the property through a multiple-listing service before the property is auctioned off, if the total amount owed by the homeowner does not exceed 90 percent of the appraised market value of the property. SB 1323 is currently pending consideration before the Assembly Judiciary Committee.

AB 1837 (Bonta, 2022) adds provisions to combat fraud, assist in the preservation of affordable housing, and make operational improvements to the post-foreclosure process established by SB 1079, below). AB 1837 is currently pending consideration before this Committee.

Prior Legislation:

AB 2710 (Kalra, 2022) would have given tenants, nonprofit affordable housing providers, community land trusts, limited-equity housing cooperatives, and local public entities a right to make a first offer and a right of first refusal to purchase most rental housing that goes on sale in California. AB 2710 died in the Assembly Housing and Community Development Committee.

SB 1079 (Skinner, Ch. 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.

PRIOR VOTES:

Assembly Floor (Ayes 76, Noes 0)
Assembly Appropriations Committee (Ayes 16, Noes 0)
Assembly Judiciary Committee (Ayes 9, Noes 0)

Amended Mock-up for 2021-2022 AB-2170 (Grayson (A))

Mock-up based on Version Number 97 - Amended Assembly 4/27/22

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 2924p is added to the Civil Code, to read:

2924p. (a) For purposes of this section, it is the intent of the Legislature to do all of the following:

(1) 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.

(2) Promote owner occupancy by enacting legislation consistent with the provisions of the federal First Look program that provides owner-occupants and affordable housing providers an opportunity for their offers to be considered on foreclosed properties prior to other offers.

(3) 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.

(b) For purpose of this section:

(1) "Bundled sale" means 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) "Eligible bidder" means any of the following:

(A) A prospective owner-occupant.

(B) A nonprofit corporation that meets all of the following requirements:

(i) The nonprofit corporation 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) The nonprofit corporation is based in California.

(iii) All of the board members of the nonprofit corporation have their primary residence in California.

(iv) The primary activity of the nonprofit corporation 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, and their primary activity is to develop and preserve affordable housing.~~

~~(D) A limited liability company based in California in which the managing member is a nonprofit corporation based in California, and their primary activity is to develop and preserve affordable housing.~~

~~(CE)~~ A community land trust based in California, as defined in clause (ii) of subparagraph (C) of paragraph (11) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code.

~~(DF)~~ A limited-equity housing cooperative, as defined in Section 817, that is 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) "Institution" means any of the following, if that 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 4 dwelling units:

(A) A depository institution chartered under state or federal law.

(B) A person licensed pursuant to Division 9 (commencing with Section 22000) or Division 20 (commencing with Section 50000) of the Financial Code.

(C) A person licensed pursuant to Part 1 (commencing with Section 10000) of Division 4 of the Business and Professions Code.

(4) "Prospective owner-occupant" means a natural person whose affidavit or declaration under paragraph (2) of subdivision (c) states all of the following:

(A) They will occupy the property as their primary residence within 60 days of the trustee's deed being recorded.

(B) They will maintain their occupancy for at least one year.

(C) They are 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) They are not acting as the agent of any other person or entity in purchasing the real property.

(c) All of the following shall apply to sales of real property containing one to four residential dwelling units, inclusive, that is acquired through foreclosure under a mortgage or deed of trust by an institution or that is acquired at a foreclosure sale by an institution:

(1) During the first 30 days after the property is listed for sale, the institution shall only accept offers from eligible bidders. ~~in this time period and shall respond, in writing, to all offers received from eligible bidders.~~

(2) An eligible bidder shall submit with their offer to the institution an affidavit or declaration, pursuant to Section 2015.5 of the Code of Civil Procedure, that states they are either of the following:

(A) An eligible bidder pursuant to subparagraphs (B) through (F) of paragraph (2) of subdivision (b).

(B) A prospective owner-occupant purchasing the property as a primary residence pursuant to this subdivision.

(3) Any fraudulent statements may be subject to criminal or civil liability.

(4) The institution shall respond, in writing, to all offers received from eligible bidders during the first 30 days after the property is listed for sale before considering any other offers.

(4) Notwithstanding any other law, an institution shall not conduct a bundled sale.

(d) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local

agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.