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AB-2170 Residential real property: foreclosure sales. (2021-2022)

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Date Published: 10/03/2022 02:00 PM

Assembly Bill No. 2170

CHAPTER 865

An act to add Section 2924p to the Civil Code, relating to foreclosure.

[Approved by Governor September 30, 2022. Filed with Secretary of State September 30, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2170, Grayson. Residential real property: foreclosure sales.

Existing law prescribes various requirements to be satisfied before the exercise of a power of sale under a mortgage or deed of trust and prescribes a procedure for the exercise of that power. Existing law, until January 1, 2026, prescribes a process in connection with a trustee's sale of property under a power of sale contained in a deed of trust or mortgage on real property containing one to 4 residential units, inclusive, that provides specified bidding priorities to certain parties, including prospective owner-occupants.

This bill would prescribe requirements that would apply to sales of real property containing one to 4 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, as defined. The bill would require the institution, during the first 30 days after a property is listed, as specified, to only accept offers from eligible bidders, as defined, and to respond, in writing, to all offers received from eligible bidders before considering any other offers.

This bill would require an eligible bidder to submit an affidavit or declaration, as specified, with their offer to an institution. By expanding the crime of perjury, this bill would impose a state-mandated local program.

This bill would also prohibit an institution from conducting a bundled sale, as defined.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

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 home ownership housing in California.

(C) 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.

(D) 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.

(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 (E) 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.

(5) 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.