



## CA SB 1079 ALLOWS ELIGIBLE BUYERS TO BID ON A FORECLOSED PROPERTY AFTER A TRUSTEE'S SALE

### WHAT'S GOING ON?

State Senator Nancy Skinner, D-Berkeley, introduced Senate Bill 1079 to reduce the number of California's vacant homes and give a first right of refusal to buy a foreclosed property to tenants, buyer's intending to occupy the property as a primary residence, local governments intending to use the property as affordable housing, and certain other eligible buyers. SB 1079 would also increase the fines that cities and counties can charge to a person who acquires a vacant residential property through foreclosure if that person does not properly maintain that property. The issue of corporations purchasing homes and leaving them vacant was raised by Moms 4 Housing when the group occupied a corporately owned vacant home in West Oakland.



## CHANGES TO RULES FOR TRUSTEE SALES

### WHEN DOES SB 1079 GO INTO EFFECT?

January 1, 2021.

### WHAT TYPES OF PROPERTIES ARE COVERED?

The new law applies to any 1-to-4 family dwelling, including investment and rental properties.

### WHAT IS THE PERIOD DURING WHICH PERSONS CAN MAKE NEW BIDS?

The new law applies until January 1, 2026.

## BUNDLED SALE OF PROPERTIES

### CAN A PERSON "BULK-PURCHASE" FORECLOSED HOMES AT A TRUSTEE'S SALE?

Generally, no. A trustee may not bundle properties for sale. Each property must be bid on separately, unless the deed of trust requires otherwise. Similarly, when the property consists of several lots or parcels, they must be sold separately unless the deed of trust provides otherwise.

SB 1079 is designed to prevent the scenario California experienced during the Great Recession when large corporations bulk-purchased foreclosed homes, causing owner-occupied home ownership to drop to the lowest level in decades. This new law now provides that, during a foreclosure auction, sellers may not bundle homes together and sell them to a single



buyer. Instead, foreclosed homes must be sold individually to ensure that who desire to live in a foreclosed home have an opportunity to purchase that home. Then, after initial bids at a foreclosure auction are received, certain “Eligible Bidders” have a 45-day window to exceed the highest auction bid in order to buy the property.

## **BIDDING ADVANTAGE TO ELIGIBLE BIDDERS**

### **WHAT ARE THE BIDDING RIGHTS OF ELIGIBLE BIDDERS?**

An “Eligible Bidder” may submit a bid to a trustee to buy a foreclosed property 45 days after the trustee’s sale. Except as discussed below, an Eligible Bidder must submit a bid that exceeds the last and highest bid at the trustee’s sale.

### **WHO IS AN ELIGIBLE BIDDER?**

An Eligible Bidder includes:

1. **An “Eligible Tenant Buyer,”** who is a natural person who:
  - » At the time of the trustee’s sale occupies the property as the person’s primary residence,
  - » At the time of the trustee’s sale has an arm’s length lease agreement with the Borrower that is dated before the Notice of Default was recorded, and
  - » Is not the Borrower or the Borrower’s family member.
2. **A “Prospective Owner-Occupant,”** who is a natural person who gives an affidavit to the trustee stating that the person:
  - » Will occupy the Property as the person’s primary residence within 60 days after the trustee’s deed is recorded,
  - » Will live in the Property for at least one year,
  - » Is not the Borrower or the Borrower’s family member, and
  - » Is not acting as the agent of any other person or entity in buying the property
3. **A nonprofit** in which an Eligible Tenant Buyer or a Prospective Owner-Occupant is a voting member or director.
4. **An eligible California nonprofit corporation** whose primary activity is the development and preservation of affordable rental housing.
5. **A limited partnership or limited liability company** in which the managing general partner or managing member is an eligible California nonprofit corporation whose primary activity is the development and preservation of affordable housing.
6. **A community land trust.**
7. **A limited-equity housing cooperative.**
8. **The State of California, 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 California.**

### **DOES A PERSON NEED TO GIVE THE TRUSTEE EVIDENCE THAT THEY ARE AN ELIGIBLE BIDDER?**

Yes. A person must give an affidavit to the trustee that identifies in which category of Eligible Bidder the person belongs and states that the person meets the criteria for that category.

The trustee may reasonably rely on this affidavit.



## **WHEN DOES AN ELIGIBLE BIDDER HAVE TO GIVE THE TRUSTEE NOTICE THAT THE ELIGIBLE BIDDER INTENDS TO PLACE A BID?**

An Eligible Bidder must send a written notice of intent to place a bid so that the trustee receives it no more than 15 days after the trustee's sale.

## **WHEN DOES AN ELIGIBLE BIDDER HAVE TO SUBMIT A BID TO THE TRUSTEE?**

The bid must be received by the trustee no later than 5:00 p.m. on the 45th day after the trustee's sale.

## **ARE THERE SPECIAL BIDDING RULES FOR ELIGIBLE TENANT BUYERS?**

Yes. Eligible Tenant Buyers may submit a bid to purchase the Property equal to the full amount of the last and highest bid at the trustee's sale (does not need to exceed the last and highest bid).

## **WHAT HAPPENS IF A PROSPECTIVE OWNER OCCUPANT IS THE LAST AND SUCCESSFUL BIDDER AT A TRUSTEE'S SALE?**

The trustee's sale will be considered to be final upon payment of the purchase price.

The Prospective Owner-Occupant must submit an affidavit to the trustee that states that the person is a Prospective Owner-Occupant" and meets the criteria for a Prospective Owner-Occupant. The trustee may reasonably rely upon this affidavit.

## **WHAT ARE A TRUSTEE'S NEW OBLIGATIONS AFTER A TRUSTEE'S SALE?**

### ***1. Trustee Must Post Information About the Trustee's Sale Through a Website and Telephone Number***

A trustee must maintain an internet website and telephone number to make the following information available. The website and telephone number must be shown on the Notice of Sale and must be free of charge and available 24 hours a day, seven days a week.

Within 48 hours after a trustee's sale, a trustee must make the following information available through the website and telephone number for a period of 45 days following the trustee's sale:

- » The date when the trustee's sale took place,
- » The amount of the last and highest bid at the trustee's sale, and
- » An address where the trustee can receive documents sent by mail or overnight delivery.

The information above must use the file number that is assigned to the case on the Notice of Sale.

### ***2. New Tenant Notice Must Be Included on the Notice of Sale.***

The Notice of Sale must include the following new notice to tenants.

**NOTICE TO TENANT:** You may have a right to purchase this property after the trustee auction pursuant to Section 2924m of the California Civil Code. If you are an "eligible tenant buyer" you can purchase the property if you match the last and highest bid placed at the trustee auction. If you are an "eligible bidder," you may be able to purchase the property if you exceed the last and highest bid placed at the trustee auction. There are three steps to exercising this right of purchase. First, 48 hours after the date of the trustee sale, you can call [telephone number for information regarding the trustee's sale], or visit this internet website [internet website address for information regarding the sale of this property], using the file number



assigned to this case [case file number] to find the date on which the trustee's sale was held, the amount of the last and highest bid, and the address of the trustee. Second, you must send a written notice of intent to place a bid so that the trustee receives it no more than 15 days after the trustee's sale. Third, you must submit a bid so that the trustee receives it no more than 45 days after the trustee's sale. If you think you may qualify as an "eligible tenant buyer" or "eligible bidder," you should consider contacting an attorney or appropriate real estate professional immediately for advice regarding this potential right to purchase.

### **IS A SUCCESSFUL ELIGIBLE BIDDER REQUIRED TO FOLLOW THE TENANT EVICTION PROTECTION LAWS?**

Yes. Nothing in SB 1079 relieves a person who is the legal owner of real property when a trustee's deed is recorded from complying with applicable law relating to the eviction of tenants, including:

- » notice requirements,
- » requirements for the provision of temporary or permanent relocation assistance,
- » the right to return, and
- » just cause eviction requirements

## **| FINES FOR FAILURE TO MAINTAIN VACANT PROPERTY**

### **ARE THERE FINES FOR FAILURE TO PROPERLY MAINTAIN VACANT PROPERTY?**

Yes. A legal owner must maintain vacant residential property that is purchased at a foreclosure sale once that sale is final. A city or county may fine the owner if the owner fails to maintain the property.

### **WHAT IS A FAILURE TO MAINTAIN A PROPERTY?**

"Failure to maintain" means failure to care for the exterior of the property, including, but not limited to:

- » Permitting excessive foliage growth that diminishes the value of surrounding properties,
- » Failing to take action to prevent trespassers or squatters from remaining on the property, or
- » Failing to take action to prevent mosquito from growing in standing water or other conditions that create a public nuisance.

### **DOES SB 1079 INCREASE THE FINES THAT MAY BE CHARGED FOR FAILURE TO MAINTAIN A VACANT PROPERTY?**

Yes. A city or county may charge a fine for each day that an owner fails to maintain the property, beginning on the day following the end of cure period established by the city or county. The maximum fine is up to:

- » \$2,000 per day for the first 30 days, and
- » \$5,000 per day for each day afterwards.