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**November 4, 2021**

## **AB 175 – Foreclosure: Eligible Bidders**

AB 175, which was chaptered on September 23, 2021, among other additions, makes clarifying amendments to SB 1079 (Skinner), Chapter 202, Statutes of 2020 related to residential property foreclosure. These provisions will become operative on January 1, 2022.

SB 1079 made changes in and around the non-judicial foreclosure sale process, including implementing a 45-day period after a foreclosure sale for an “eligible tenant buyer” or “eligible bidders” to purchase properties. In addition, SB 1079 required that a trustee not bundle properties for the purpose of sale and that each property shall be bid on separately, unless the deed of trust or mortgage requires otherwise, and increased fines upon the legal owners of a property purchased at a foreclosure sale for failing to maintain that property.

AB 175 contains clean up language to SB 1079 clarifying several provisions contained in that piece of legislation. First, this bill extends the time period to record the trustee’s deed upon the acceptance of the last and highest bid from 18 to 21 calendar days after the sale, or the next business day following the 21<sup>st</sup> day if the county recorder in which the property is located is closed on the 21<sup>st</sup> day. If an eligible bidder submits a written notice of

intent to bid, the trustee’s sale will be deemed perfected on the actual date of sale if the trustee’s deed is recorded within 60 calendar days after the sale or the next business day following the 60<sup>th</sup> day if the county recorder in the property is located is closed on the 60<sup>th</sup> day.<sup>i</sup> This is an increase from 48 days under current law.

This new law adds that either a declaration under penalty of perjury or an affidavit be presented to the trustee to determine who is considered a “prospective owner-occupant”. It also refines the definition of a “prospective owner-occupant” so that it does not include the grantor of a living trust that was named in the title to the property when the notice of default was recorded, an employee, officer, or member of the mortgagor or trustor, or a person with an ownership interest in the mortgagor, unless the mortgagor is a publicly traded company.<sup>ii</sup>

Under current law, a trustee sale of property under a power of sale contained in a deed of trust or mortgage on real property containing one to four residential units under conditions set forth in the law, will not be deemed final until the earliest of a number of potential occurrences. AB 175 clarifies some of these potential occurrences including specifying that if the prospective owner-occupant is the last

and highest bidder at the trustee sale, they must submit either the affidavit or declaration of their status as a prospective owner-occupant to the trustee at the trustee sale or to the trustee by 5 p.m. on the next business day following the trustee sale.<sup>iii</sup>

If an eligible tenant buyer or eligible bidder submits either a written notice of intent to buy or places a bid, the bid or notice of intent must be accompanied by an affidavit or declaration of their eligibility as a tenant buyer, to be received by the trustee no later than 5 p.m. on the 15<sup>th</sup> day after the trustee sale and contain a current telephone number and return mailing address of the person submitting the bid or notice of intent.<sup>iv</sup>

In the situation where a representative of all eligible tenant buyers submits a bid, the bid must be accompanied by an affidavit or declaration that the persons represented are eligible tenant buyers and either be received by the trustee no later than 5 p.m. on the 15<sup>th</sup> day after the trustee sale or be received by the trustee no later than 5 p.m. on the 45<sup>th</sup> day after the trustee's sale, if at least one of the eligible tenant buyers submitted a nonbinding written notice of intent to place a bid. The bid must also contain a current telephone number and return mailing address for the person submitting the bid.<sup>v</sup>

<sup>i</sup> Cal. Civil Code §2924h (c)

<sup>ii</sup> Cal. Civil Code §2924m (a)(1)

<sup>iii</sup> Cal. Civil Code §2924m (c)(1)

<sup>iv</sup> Cal. Civil Code §2924m (c)(2)

For instances when an eligible bidder may submit a bid to the trustee that exceed the last and highest bid at the trustee's sale, the bid must be accompanied by an affidavit or declaration that sets forth the category to which an eligible bidder belongs, be received by the trustee no later than 5 p.m. on the 45<sup>th</sup> day after the trustee's sale if the eligible bidder submitted a nonbinding written notice of intent to bid, and contain a current telephone number and return mailing address for the person submitting the bid.<sup>vi</sup>

Lastly, AB 175 contains a provision that limits the information required to be provided by the trustee to eligible bidders or to persons considering whether to submit a bid or notice of intent to bid to the date on which the trustee's sale took place, the amount of the last and highest bid at the trustee's sale, and an address at which the trustee can receive documents sent by U.S. mail and by a method of delivery providing for overnight delivery.<sup>vii</sup>

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<sup>v</sup> Cal. Civil Code §2924m (c)(3)

<sup>vi</sup> Cal. Civil Code §2924m(c)(4)

<sup>vii</sup> Cal. Civil Code §2924m(d)(6)