



Regulatory Compliance Bulletin

November 19, 2020

SB 1079 – Foreclosure: Eligible Bidders

SB 1079, which was chaptered on September 28, 2020, makes three changes related to the non-judicial foreclosure sale process.

Current law sets forth a process for non-judicial foreclosures. Within this process is a requirement that if the deed of trust or mortgage containing a power of sale is secured by real property containing from one to four single-family residences, a notice of the sale must be posted to include specific language to potential bidders and property owners. In addition, current law requires that when a property consists of several known lots or parcels, they shall be sold separately unless the deed of trust or mortgage provides otherwise. It also allows a governmental entity to impose civil fines of up to \$1,000 per day upon the legal owner of a property purchased at a foreclosure sale for failure to maintain that property.

SB 1079 will make three changes in and around the non-judicial foreclosure sale process. First, this bill implements a 45-day period after a foreclosure sale for an “eligible tenant buyer” or “eligible bidders” to purchase properties. Both groups have 15 days after the trustee’s sale to either place a bid or submit a nonbinding written notice of intent to place such a bid.

Eligible tenant buyers are defined as a person who at the time of the trustee’s sale is occupying the real property as their primary residence, is occupying the real property under a rental or lease agreement and is not the mortgagor nor related to them. An eligible tenant buyer is required to submit a bid to the trustee in an amount equal to the full amount of the last and highest bid at the trustee’s sale.

Eligible bidders are defined as eligible tenant buyers, prospective owner-occupants, nonprofit associations, nonprofit corporations, or cooperative corporation in which an eligible tenant buyer or a prospective owner-occupant is a voting member or director. In addition, eligible bidders include nonprofit corporations, limited partnerships and limited liability companies in which the managing member is an eligible nonprofit corporation based in California whose primary activity is the development and preservation of affordable housing, and the state, cities and other public entities. For these eligible bidders, their bids must exceed the last and highest bid at the trustee’s sale.

A requirement to the notice of sale has been added titled: NOTICE TO TENANT, to include language to notify a tenant of their

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right to purchase the property after the trustee auction.

Second, AB 1079 requires 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.

Third, this bill increases the civil fines that can be imposed by governmental entities upon the legal owners of a property purchased at a foreclosure sale for failing to maintain that property up to a maximum of \$2,000 per day for the first 30 days, and up to \$5,000 per day thereafter.

CBA opposed this bill arguing that the 45-day period for specified persons or entities to purchase properties after a trustee's sale would discourage and depress bidding during a foreclosure sales process by creating uncertainty in the bidding process. In addition, the new bundling requirement is unnecessary as it restates current law. And lastly, the increase in penalties for failing to maintain properties following a foreclosure sale is unjustified.

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