

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

AB 1837 (Mia Bonta)
Version: May 19, 2022
Hearing Date: June 21, 2022
Fiscal: Yes
Urgency: No
TSG

SUBJECT

Residential real property: foreclosure

DIGEST

This bill makes anti-fraud modifications and other operational improvements to the SB 1079 process, an existing legal mechanism giving tenants, prospective owner-occupants, non-profit affordable housing providers, and public entities a window of opportunity to buy a home in foreclosure by matching or beating the winning foreclosure auction bid.

EXECUTIVE SUMMARY

Institutional investors took advantage of the 2008 foreclosure crisis in the U.S. to buy up large numbers of residential homes at auction sales. These investors then rented those homes out or flipped them for a profit. As a result, homeownership rates fell, the price of residential property soared, and an increasing number of Californians found themselves renting their homes from large corporate landlords. To try to prevent so many foreclosed upon properties from falling into the hands of large institutional investors again, California enacted SB 1079 in 2020. SB 1079 established a window of opportunity for tenants, prospective owner-occupants, non-profit affordable housing providers, and public entities to acquire residential homes going through the foreclosure process by matching or exceeding the winning bid at auction. After one year in operation, stakeholders have observed loopholes in SB 1079's eligibility rules. Those loopholes have apparently enabled some investors to game the system. This bill tightens the eligibility rules and brings increased accountability to the SB 1079 process. At the same time, the bill makes it easier for foreclosure trustees to administer that process. Finally, the bill extends the SB 1079 process for an additional five years, through January 1, 2031.

The bill is sponsored by California Community Land Trust Network. Support comes from community land trusts and affordable housing advocates who appreciate how the bill strengthens the SB 1079 process. Opposition comes from the state association of realtors who request greater documentation before tenants become eligible to buy a home. The bill passed off of the Assembly Floor by a vote of 55-18. 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) Sets forth comprehensive procedures for conducting a foreclosure sale through an auction. (Civ. Code §§ 2924g and 2924h.)
- 2) Establishes a statutory system 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.)
- 3) Defines “eligible bidder,” for purposes of **(Error! Reference source not found.,** above, to include all of the following:
 - a) a prospective owner-occupant, defined as a natural person who will occupy the property within 60 days of when the trustee’s deed upon sale is recorded and for at least one year thereafter;
 - b) an eligible tenant buyer; defined as a natural person who is occupying the property as a primary residence under a rental or lease agreement entered into before a notice of default was recorded against the property;
 - c) a nonprofit association, nonprofit corporation, or cooperative corporation in which an eligible tenant buyer or a prospective owner-occupant is a voting member or director;
 - d) an eligible nonprofit corporation based in California whose primary activity is the development and preservation of affordable rental housing;
 - e) a limited partnership or a limited liability company in which the managing general partner or managing member, respectively, is an eligible nonprofit corporation based in California whose primary activity is the development and preservation of affordable housing;
 - f) a community land trust;
 - g) a limited-equity housing cooperative;
 - h) 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. (Civ. Code § 2924m(a).)
- 4) Empowers an individual or entity to bid on the purchase of residential property that has gone up for auction sale provided that the individual or entity presents to the foreclosure trustee a declaration or affidavit stating that the individual or entity is an eligible bidder. (Civ. Code § 2924m; Code Civ. Proc. § 2015.5.)
- 5) Establishes the following procedures for eligible bidders to place their bids:
 - a) if a prospective owner-occupant made the last and highest bid at the foreclosure auction, then that person will automatically take title to the property;

- b) otherwise, a 15-day window opens after the foreclosure sale;
 - c) during this 15-day window, a representative of all of the current tenants in the property has a right of first refusal to match the foreclosure sale price. If at any time during the 15-day window this representative matches the foreclosure sale price, the sale is immediately deemed final and the tenants will take title to the property;
 - d) during the same 15-day window, any current tenant in the property and all other eligible bidders can submit higher offers than the foreclosure sale price **or** a non-binding notice of intent to bid;
 - e) if neither of these occurs, the party that made the last and highest offer at the initial foreclosure auction will take title to the property;
 - f) otherwise, if either of these occurs, an additional window opens up which lasts until 45 days after the foreclosure sale;
 - g) during the 45-day window, a representative of all of the current tenants in the property again has a right of first refusal to match the foreclosure sale price. If, at any time during the 45 days, this representative matches the foreclosure sale price, the sale is immediately deemed final and the tenant will take title to the property;
 - h) during the same 45-day window, any current tenant in the property and all other eligible bidders can submit higher offers than the foreclosure sale price;
 - i) if, during the 45 days, one or more of the eligible bidders submits a bid that exceeds the foreclosure sale price, the sale is deemed final at the conclusion of the 45 days, and the eligible bidder that made the highest offer will take title to the property;
 - j) otherwise, the sale is deemed final at the conclusion of the 45 days, and the party that made the last and highest offer at the initial foreclosure auction will take title to the property. (Civ. Code § 2924m(c).)
- 6) Establishes a comprehensive schedule of fees that can be charged by foreclosure trustees for their services. (Civ. Code § 2924d.)
- 7) Ensures that residential tenants whose landlord loses ownership of the rental property as a result of foreclosure sale can maintain their tenancy until the end of their lease term, provided certain conditions are met. Regardless, these tenants must be given at least 90 days' written notice before their tenancy can be terminated. (Code Civ. Proc. § 1161b.)

This bill:

- 1) Requires eligible tenant buyers to attach a copy of their dated and signed rental or lease agreements, if available, to the affidavits in which they affirm their status.
- 2) Alters the categories of affordable housing providers that qualify as eligible bidders, including by requiring that, to be eligible, nonprofit corporations:

- a) have their principal place of business in California;
 - b) all of their board members' primary residence must also be in California;
 - c) one of their primary activities must be the development and preservation of affordable rental or homeownership housing in California; and
 - d) have a determination letter from the Internal Revenue Service affirming their tax-exempt status as a 501(c)(3) corporation.
- 3) Declares that bids are limited to a single bid amount and may not include instructions for successive bid amounts.
 - 4) Requires that the affidavit or declaration of the winning bidder that it is an eligible bidder and the category of bidder which it falls under to be attached to the trustee's deed and recorded.
 - 5) Requires the trustee, within 15 days of any sale in which the winning bidder is an eligible bidder, to send information about the sale to the Attorney General, including the name of the winning bidder, the address and assessor's parcel number of the property, and a copy of the trustee's deed, together with the attached affidavit or declaration.
 - 6) Authorizes the Attorney General, a city attorney, county counsel, or district attorney to bring an action for specific performance or any other remedy at equity or law to enforce the requirements of the SB 1079 bid process.
 - 7) Permits the trustee, in order to cover costs associated with handling post-foreclosure auction bids by eligible bidders, to deduct from the foreclosure sale proceeds a fee which may not exceed the greater of \$200 or one-sixth of one percent of the unpaid principal of the loan that was secured by the property being foreclosed on. However, a trustee may claim this fee only if, within the first 15 days after a foreclosure auction, at least one eligible tenant buyer or eligible bidder submits a bid or a nonbinding written notice of intent to place a bid on the property.
 - 8) Requires, beginning on January 1, 2023, that any property purchased by an eligible bidder that is a private entity (i.e., not a prospective owner-occupant, a tenant buyer, or a public entity) through the SB 1079 process be maintained as affordable housing for lower income households for a period of 30 years from the date the trustee's deed is issued.
 - 9) Permits the imposition of requirements to maintain property as affordable housing for lower income householders for periods longer than 30 years if specified conditions are met.

- 10) Extends the existing sunset date on the SB 1079 process from January 1, 2026 until January 1, 2031, and applies this extended sunset date to this bill's provisions.

COMMENTS

1. The impact of foreclosure on residential property ownership

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

As the author and sponsors 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.

2. SB 1079 and the post-foreclosure window of opportunity for tenants, prospective owner occupants, non-profit affordable housing providers and public entities to acquire the property

California enacted SB 1079 (Skinner, Ch. 727, Stats. 2020) as one strategy for trying to reduce the transfer of residential property into the hands of large institutional investors. SB 1079 introduced a new step into the foreclosure sale process. The new step has the effect of opening up a window of time in which the current tenants, prospective owner

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).

occupants, affordable housing providers, and public entities all have the opportunity to try to acquire the home.

Under the old pre-foreclosure procedures, when it came time for the property to be sold off, the foreclosure trustee simply convened a public auction, took bids from those present, and awarded ownership of the property to the highest bidder upon payment.

Under SB 1079, the same basic process unfolds except that, once the amount of the winning bid has been established, the foreclosure trustee waits an additional period of time. During this additional time, any “eligible bidder” – meaning a current tenant, a prospective owner occupant, an affordable housing provider, or a public entity – all have the opportunity to match or exceed the winning bid from the auction. If no one takes this opportunity, then the foreclosure trustee sells the property to the auction winner for the amount of the winning bid. If one of the eligible bidders does match or exceed the winning bid, however, then the foreclosure trustee sells the property to that eligible bidder instead.³ In this way, SB 1079 gives tenants, owner occupants, affordable housing providers, and public entities a way to acquire homes that have been foreclosed upon and would probably otherwise end up in the hands of profit-driven speculators or investors otherwise. SB 1079 achieves this outcome without diminishing any return that the lender and former homeowner receive from the sale.

3. Preventing people from gaming the SB 1079 system

SB 1079 has now been operative in California for over a year. The window of opportunity created by SB 1079 appears to have successfully enabled some former tenants, prospective owner occupants, affordable housing providers, and public entities to purchase properties in the wake of a foreclosure. As just one example of how SB 1079 has worked well, the author points to the experience of Jocelyn Foreman. According to one media account:

Jocelyn Foreman had never expected to become a homeowner. The Berkeley native and her five children had been homeless for the better part of the past 20 years, couch surfing with relatives. She said she felt stuck in a cycle of poverty. But all of that changed in the fall of 2018, when she found an affordable home to rent in Pinole. [...] But that house went into foreclosure last year after her landlord had trouble paying the mortgage. The foreclosure was delayed due to the pandemic, so the house didn't go to auction until March of this year. The winning bid was for \$600,000. It had been made by Wedgewood Inc., a Southern California-based real

³ This summary of the SB 1079 process is intended to enable readers to swiftly comprehend the basic gist of how that process works. It is accurate, but necessarily leaves out some nuances. More precise details of how SB 1079 works can be obtained by reviewing items (2) through (5) in the “Existing Law” section of this analysis.

estate flipper that specializes in flipping distressed homes. [...] But Foreman doesn't have to worry now...about being forced to leave the house. SB 1079 gave Foreman a fighting chance to buy the house herself—but not without help. After finding out about the foreclosure, she reached out to the Sustainable Economies Law Center, a nonprofit legal aid organization that helped put her in touch with the Northern California Land Trust. [...] Under the terms of the deal, the land trust will maintain ownership of the property until Foreman can qualify for a traditional mortgage. At that time, she'll have the opportunity to purchase the home. The land underneath the house will remain with the trust, so that if Foreman ever moves out or decides to sell, it will be sold at an affordable price to the next buyer.⁴

At the same time, SB 1079's first year in effect also revealed some flaws. The author and sponsors of this measure report that some real estate speculators have taken advantage of SB 1079's definition of who qualifies as an eligible bidder to bid on homes during the SB 1079 window of opportunity, purchase those homes, and then immediately resell them at a significant markup. The author and sponsors also report cases in which auction bidders have been observed fraudulently invoking the SB 1079 process by submitting documentation to the foreclosure trustee that falsely assert an intent to reside at the property.

To close these loopholes and generally make it more difficult for anyone to try to take advantage of the SB 1079 process, this bill makes a series of revisions to that process.

a. Tightening up "eligible bidder" definitions

First, the bill tightens up the definitions that govern who qualifies to be an "eligible bidder." Under the existing law, only certain non-profit entities could access the SB 1079 window of opportunity and bid on foreclosed properties. But some for-profit actors have apparently disguised themselves as eligible bidders by forming and controlling non-profit entities that qualify for SB 1079 even though the underlying for-profit actors would not. This bill revises the eligible bidder definitions to require that if the entity making the bid is a limited liability corporation, it must be wholly owned by a California-based non-profit corporation that specializes in providing affordable housing, or another type of non-profit in which a current tenant is a member or director.

b. Recording the basis for bidder eligibility

⁴ Baldassari. *East Bay Grandmother Facing Eviction Joins Forces With Land Trust to Buy Her Home – Thanks to New Law* (Apr. 26, 2021) KQED <https://www.kqed.org/news/11871064/east-bay-tenant-land-trust-buy-foreclosed-home-in-early-test-of-new-california-law> (as of Jun. 13, 2022.)

Second, the bill adds a requirement that the documentation stating the basis for the bidder's eligibility for the SB 1079 process must be recorded together with the title for the property. By itself, this does not prevent fraud, but it creates an easy way for law enforcement or other entities investigating fraud to show when fraud has taken place by pulling the relevant property records.

c. Establishing an enforcement database and powers

Third, the bill requires the foreclosure trustees to forward the documentation of the basis for eligibility to the California Department of Justice (CADOJ). The bill does not say what the CADOJ is supposed to do with the documentation it receives, but the obvious intent is for CADOJ to keep it, perhaps in the form of a database, so that CADOJ could search for evidence of questionable activity. For example, if the database showed that the same individual had established SB 1079 eligibility for the purchase of five different properties by promising to occupy each of them, the CADOJ could investigate that as a likely case of fraud. Relatedly, the bill also empowers the Attorney General and any other public attorney to enforce the SB 1079 process.

d. Requiring evidence of tenancy

Finally, the bill makes it harder for anyone to try to acquire property through the SB 1079 process by falsely claiming to be a tenant who was occupying the home when it went into foreclosure. To be eligible for the SB 1079 process under existing law, a tenant's bid must come accompanied with an affidavit or declaration stating the basis for the tenant's eligibility, but no further documentation is currently required. In theory, then, someone seeking to game the SB 1079 system could simply claim to have been a tenant in the property at the time of the foreclosure, submit a bid on that basis, and walk off with the property, probably at a significant discount off of fair market value.

To prevent this potential misuse of the SB 1079 process, this bill requires tenants to submit a copy of their lease together with their bid. However, under the bill in print, tenants only need to submit a copy of their lease if it is available.

The lone remaining opposition to the bill, the California Association of Realtors, objects to this language. According to C.A.R. allowing tenants to bid during the SB 1079 window of opportunity without submitting a copy of their lease simply invites cheating. The proponents counter that tenants do not always have a copy of their lease and are unlikely to be able to obtain one from their former landlord who, after all, has just been foreclosed upon. They point out, moreover, that a written lease is not legally required to establish a tenancy; legally binding lease agreements may be created verbally or through the actions of the parties (typically the landlord's acceptance of rent payments or other consideration in exchange for allowing someone to reside at the property).

After some back and forth, the parties have reached a compromise in which tenants will have to submit evidence verifying the existence of the tenancy in order to be an eligible bidder, but that evidence may be a copy of the written lease or either of the following alternatives: evidence of rent payments covering the six months prior to the recording of the notice of default or copies of utility bills for the property, payable by the tenant, for the six months prior to the recording of the notice of default. The author proposes to offer amendments in Committee that reflect this compromise. With that, C.A.R. has indicated that it will remove its opposition to the bill.

4. Compensation for foreclosure trustees' additional time in the SB 1079 process

In addition to its anti-fraud measures, the bill also provides for modest additional compensation for foreclosure trustees if an eligible bidder makes an eligible bid triggering the SB 1079 process. Specifically, the foreclosure trustee could claim an additional fee of one-sixth of one percent of the outstanding principal balance secured by the foreclosed-upon loan. This payment comes as acknowledgment that the SB 1079 process does require additional time and effort from the trustees and, accordingly, a higher level of compensation is appropriate.

5. Extending the life of the SB 1079 process

As a final component, the bill pushes out the applicable sunset date for the statutes that establish the SB 1079 process. Under the present law, the SB 1079 process is scheduled for repeal in 2021. This bill would extend it for an additional five years.

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:

- specify the evidence of a tenancy that a tenant would need to provide in order to qualify as an eligible tenant buyer.

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

7. Arguments in support of the bill

According to the author:

AB 1837 would strengthen the existing foreclosure intervention law and help keep homeownership and housing within the reach of more families. In 2020, we passed landmark legislation to ensure that investor corporations were not allowed to capitalize on a foreclosure crisis by creating a fairer process under which non-profits or prospective homeowners could outbid corporations.

However, for-profit actors have found ways to exploit this important consumer bill. [...] Out of state players are also exploiting opportunities afforded to nonprofit affordable housing organizations to win foreclosure auctions and flip the property for a profit, with no clear intention of providing affordable housing to families. AB 1837 will close these existing loopholes [...] [and] create a fairer and more affordable path to housing for prospective homeowners, not corporations.

As sponsor of the bill, the California Community Land Trust Network writes:

In 2021, housing advocates became aware that for-profit actors were finding ways to defy SB 1079 and even manipulate it in their favor. At least one trustee in Northern California has attempted to coerce all present bidders at auction to sign a SB 1079 “waiver” form, certifying that they were a prospective owner occupant and would use the property as their primary residence so as to preclude the opportunity for actual prospective homeowners to place a bid. In other cases, bad actors have taken advantage of lax SB 1079 enforcement and legislative loopholes to sideline residents and mission-driven nonprofits and flip properties for a profit. AB 1837 (Bonta) would strengthen the law and deter those who would misuse it.

8. Arguments in opposition to the bill

In opposition to the bill unless amended, the California Association of Realtors (C.A.R.) writes:

C.A.R. is concerned AB 1837 opens the Trustee sale process established under SB 1079 (Skinner, Statutes 2020) to fraud and abuse by permitting those falsely, and unlawfully, claiming tenant status to be considered an eligible bidder.

SUPPORT

California Community Land Trust Network (sponsor)
Alliance of Californians for Community Empowerment
ASIAN, Inc.
Avanzando San Ysidro Community Land Trust
Bend the Arc: Jewish Action Southern California
California Coalition for Rural Housing
California Community Builders
California Community Economic Development Association
California Democratic Party Renters’ Council

California Housing Partnership Corporations
California Reinvestment Coalition
Californians for Economic Justice
California Association for Micro Enterprise
CARE Community Land Trust
Center for California Homeowner Association Law
Central Valley Urban Institute
Community Economics
Congregations Organized for Prophetic Engagement
Consumer Action
Consumer Advocates Against Reverse Mortgage Abuse
Crenshaw Subway Coalition
East Bay Housing Organizations
East Los Angeles Community Corporation
Eden Community Land Trust
El Sereno Community Land Trust
EPACANDO
Fair Housing Advocates of Northern California
Fair Housing Council of the San Fernando Valley
Faith and Community Empowerment
Greater Sacramento Urban League
Haven Neighborhood Services
Home Preservation and Prevention, Inc.
Housing Now! CA
Housing Rights Committee of San Francisco
Inclusive Action for the City
Inland Equity Community Land Trust
Irvine Community Land Trust
Koreatown Youth & Community Center
Liberty Community Land Trust
Meadow Farm Community Land Trust
Mission Asset Fund
Montebello Housing Development Corporation
Multicultural Real Estate Alliance for Urban Change
National Housing Law Project
Northern California Land Trust
Oakland Community Land Trust
Pahali Community Land Trust in East Palo Alto
Public Advocates
Public Law Center
Gabriel Quinto, Mayor, City of El Cerrito
Reinvent South Stockton Coalition
Renaissance Entrepreneurship Center
Richmond LAND

Richmond Neighborhood Housing Services, Inc.
Richmond Our Power Coalition
Sacramento Community Land Trust
Sacramento Housing Alliance
Saint Joseph Community Land Trust
San Diego Community Land Trust
San Francisco Community Land Trust
Santa Barbara Tenants Union
South Bay Community Land Trust
Sustainable Economies Law Center
T.R.U.S.T. South LA
United Trustees Association
Western Center on Law and Poverty

OPPOSITION

California Association of Realtors

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 2170 (Grayson, 2022) 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 subsequently put up for sale by large lending institutions. AB 2170 is currently pending consideration before this Committee and will be heard on the same day as this bill.

Prior Legislation:

AB 175 (Budget, Ch. 255, Stats. 2021), a budget trailer bill, clarified several provisions of SB 1079, such as the form of affidavit or declaration that eligible bidders must use.

AB 140 (Budget, Ch. 111, Stats. 2021) enacted the Foreclosure Intervention Housing Preservation Program, allocating \$500 million over a ten-year period to enhance occupant ownership and nonprofit ownership of residential real property. Acquisition of properties through the SB 1079 process is eligible for funding under the Program.

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 55, Noes 18)

Assembly Appropriations Committee (Ayes 12, Noes 4)

Assembly Judiciary Committee (Ayes 8, Noes 2)

Amended Mock-up for 2021-2022 AB-1837 (Mia Bonta (A))

Mock-up based on Version Number 96 - Amended Assembly 5/19/22

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

SECTION 1. Section 2924d of the Civil Code is amended to read:

2924d. (a) (1) Commencing with the date that the notice of sale is deposited in the mail, as provided in Section 2924b, and until the property is sold pursuant to the power of sale contained in the mortgage or deed of trust, a beneficiary, trustee, mortgagee, or their agent or successor in interest may demand and receive from a trustor, mortgagor, or their agent or successor in interest or any beneficiary under a subordinate deed of trust, or any other person having a subordinate lien or encumbrance of record those reasonable costs and expenses, to the extent allowed by subdivision (c) of Section 2924c, that are actually incurred in enforcing the terms of the obligation and trustee's or attorney's fees that are hereby authorized to be in an amount as follows:

(A) If the unpaid principal sum secured is fifty thousand dollars (\$50,000) or less, then in a base amount that does not exceed four hundred seventy-five dollars (\$475).

(B) If the unpaid principal sum secured is greater than fifty thousand dollars (\$50,000) but does not exceed one hundred fifty thousand dollars (\$150,000), then in a base amount that does not exceed four hundred seventy-five dollars (\$475) plus 1 percent of the unpaid principal sum secured exceeding fifty thousand dollars (\$50,000).

(C) If the unpaid principal sum secured is greater than one hundred fifty thousand dollars (\$150,000) but does not exceed five hundred thousand dollars (\$500,000), then in a base amount that does not exceed four hundred ten dollars (\$410) plus 1 percent of the unpaid principal sum secured exceeding fifty thousand dollars (\$50,000) up to and including one hundred fifty thousand dollars (\$150,000), plus one-half of 1 percent of any portion of the unpaid principal sum secured exceeding one hundred fifty thousand dollars (\$150,000).

(D) If the unpaid principal sum secured exceeds five hundred thousand dollars (\$500,000), then in a base amount that does not exceed four hundred ten dollars (\$410) plus 1 percent of the unpaid principal sum secured exceeding fifty thousand dollars (\$50,000) up to and including one hundred fifty thousand dollars (\$150,000), plus one-half of 1 percent of any portion of the unpaid principal sum secured exceeding one hundred fifty thousand dollars (\$150,000) up to and including five hundred thousand dollars (\$500,000), plus one-quarter of 1 percent of any portion of the unpaid principal sum secured exceeding five hundred thousand dollars (\$500,000).

(2) For purposes of this subdivision, the unpaid principal sum secured shall be determined as of the date the notice of default is recorded. Any charge for trustee's or

attorney's fees authorized by this subdivision shall be conclusively presumed to be lawful and valid where that charge does not exceed the amounts authorized in this subdivision. Any charge for trustee's or attorney's fees made pursuant to this subdivision shall be in lieu of and not in addition to those charges authorized by subdivision (d) of Section 2924c.

(b) (1) Upon the sale of property pursuant to a power of sale, a trustee, or their agent or successor in interest, may demand and receive from a beneficiary, or their agent or successor in interest, or may deduct from the proceeds of the sale, those reasonable costs and expenses, to the extent allowed by subdivision (c) of Section 2924c, that are actually incurred in enforcing the terms of the obligation and trustee's or attorney's fees that are hereby authorized to be in an amount which does not exceed four hundred seventy-five dollars (\$475) or 1 percent of the unpaid principal sum secured, whichever is greater. For purposes of this subdivision, the unpaid principal sum secured shall be determined as of the date the notice of default is recorded.

(2) In addition to the amounts authorized under paragraph (1), if at least one eligible tenant buyer or eligible bidder submits to the trustee either a bid or a nonbinding written notice of intent to place a bid pursuant to paragraph (2) of subdivision (c) of Section 2924m, the trustee may deduct from the proceeds of the sale trustee's or attorney's fees for providing services pursuant to Section 2924m that are hereby authorized to be in an amount which does not exceed two hundred dollars (\$200) or one-sixth of 1 percent of the unpaid principal sum secured, whichever is greater.

(3) Any charge for trustee's or attorney's fees authorized by this subdivision shall be conclusively presumed to be lawful and valid where that charge does not exceed the amount authorized herein. Any charges for trustee's or attorney's fees made pursuant to this subdivision shall be in lieu of and not in addition to those charges authorized by subdivision (a) of this section and subdivision (d) of Section 2924c.

(c) (1) No person shall pay or offer to pay or collect any rebate or kickback for the referral of business involving the performance of any act required by this article.

(2) Any person who violates this subdivision shall be liable to the trustor for three times the amount of any rebate or kickback, plus reasonable attorney's fees and costs, in addition to any other remedies provided by law.

(3) No violation of this subdivision shall affect the validity of a sale in favor of a bona fide purchaser or the rights of an encumbrancer for value without notice.

(d) It shall not be unlawful for a trustee to pay or offer to pay a fee to an agent or subagent of the trustee for work performed by the agent or subagent in discharging the trustee's obligations under the terms of the deed of trust. Any payment of a fee by a trustee to an agent or subagent of the trustee for work performed by the agent or subagent in discharging the trustee's obligations under the terms of the deed of trust shall be conclusively presumed to be lawful and valid if the fee, when combined with

other fees of the trustee, does not exceed in the aggregate the trustee's fee authorized by subdivision (d) of Section 2924c or subdivision (a) or (b) of this section.

(e) When a court issues a decree of foreclosure, it shall have discretion to award attorney's fees, costs, and expenses as are reasonable, if provided for in the note, deed of trust, or mortgage, pursuant to Section 580c of the Code of Civil Procedure.

(f) This section shall remain in effect only until January 1, 2031, and as of that date is repealed.

SEC. 2. Section 2924d is added to the Civil Code, to read:

2924d. (a) (1) Commencing with the date that the notice of sale is deposited in the mail, as provided in Section 2924b, and until the property is sold pursuant to the power of sale contained in the mortgage or deed of trust, a beneficiary, trustee, mortgagee, or their agent or successor in interest may demand and receive from a trustor, mortgagor, or their agent or successor in interest or any beneficiary under a subordinate deed of trust, or any other person having a subordinate lien or encumbrance of record those reasonable costs and expenses, to the extent allowed by subdivision (c) of Section 2924c, that are actually incurred in enforcing the terms of the obligation and trustee's or attorney's fees that are hereby authorized to be in an amount as follows:

(A) If the unpaid principal sum secured is fifty thousand dollars (\$50,000) or less, then in a base amount that does not exceed four hundred seventy-five dollars (\$475).

(B) If the unpaid principal sum secured is greater than fifty thousand dollars (\$50,000) but does not exceed one hundred fifty thousand dollars (\$150,000), then in a base amount that does not exceed four hundred seventy-five dollars (\$475) plus 1 percent of the unpaid principal sum secured exceeding fifty thousand dollars (\$50,000).

(C) If the unpaid principal sum secured is greater than one hundred fifty thousand dollars (\$150,000) but does not exceed five hundred thousand dollars (\$500,000), then in a base amount that does not exceed four hundred ten dollars (\$410) plus 1 percent of the unpaid principal sum secured exceeding fifty thousand dollars (\$50,000) up to and including one hundred fifty thousand dollars (\$150,000), plus one-half of 1 percent of any portion of the unpaid principal sum secured exceeding one hundred fifty thousand dollars (\$150,000).

(D) If the unpaid principal sum secured exceeds five hundred thousand dollars (\$500,000), then in a base amount that does not exceed four hundred ten dollars (\$410) plus 1 percent of the unpaid principal sum secured exceeding fifty thousand dollars (\$50,000) up to and including one hundred fifty thousand dollars (\$150,000), plus one-half of 1 percent of any portion of the unpaid principal sum secured exceeding one hundred fifty thousand dollars (\$150,000) up to and including five hundred thousand dollars (\$500,000), plus one-quarter of 1 percent of any portion of the unpaid principal sum secured exceeding five hundred thousand dollars (\$500,000).

(2) For purposes of this subdivision, the unpaid principal sum secured shall be determined as of the date the notice of default is recorded. Any charge for trustee's or attorney's fees authorized by this subdivision shall be conclusively presumed to be lawful and valid where that charge does not exceed the amounts authorized in this subdivision. Any charge for trustee's or attorney's fees made pursuant to this subdivision shall be in lieu of and not in addition to those charges authorized by subdivision (d) of Section 2924c.

(b) Upon the sale of property pursuant to a power of sale, a trustee, or their agent or successor in interest, may demand and receive from a beneficiary, or their agent or successor in interest, or may deduct from the proceeds of the sale, those reasonable costs and expenses, to the extent allowed by subdivision (c) of Section 2924c, that are actually incurred in enforcing the terms of the obligation and trustee's or attorney's fees that are hereby authorized to be in an amount which does not exceed four hundred seventy-five dollars (\$475) or 1 percent of the unpaid principal sum secured, whichever is greater. For purposes of this subdivision, the unpaid principal sum secured shall be determined as of the date the notice of default is recorded. Any charge for trustee's or attorney's fees authorized by this subdivision shall be conclusively presumed to be lawful and valid where that charge does not exceed the amount authorized herein. Any charges for trustee's or attorney's fees made pursuant to this subdivision shall be in lieu of and not in addition to those charges authorized by subdivision (a) of this section and subdivision (d) of Section 2924c.

(c) (1) No person shall pay or offer to pay or collect any rebate or kickback for the referral of business involving the performance of any act required by this article.

(2) Any person who violates this subdivision shall be liable to the trustor for three times the amount of any rebate or kickback, plus reasonable attorney's fees and costs, in addition to any other remedies provided by law.

(3) No violation of this subdivision shall affect the validity of a sale in favor of a bona fide purchaser or the rights of an encumbrancer for value without notice.

(d) It shall not be unlawful for a trustee to pay or offer to pay a fee to an agent or subagent of the trustee for work performed by the agent or subagent in discharging the trustee's obligations under the terms of the deed of trust. Any payment of a fee by a trustee to an agent or subagent of the trustee for work performed by the agent or subagent in discharging the trustee's obligations under the terms of the deed of trust shall be conclusively presumed to be lawful and valid if the fee, when combined with other fees of the trustee, does not exceed in the aggregate the trustee's fee authorized by subdivision (d) of Section 2924c or subdivision (a) or (b) of this section.

(e) When a court issues a decree of foreclosure, it shall have discretion to award attorney's fees, costs, and expenses as are reasonable, if provided for in the note, deed of trust, or mortgage, pursuant to Section 580c of the Code of Civil Procedure.

(f) This section shall be operative January 1, 2031.

SEC. 3. Section 2924m of the Civil Code is amended to read:

2924m. (a) For purposes of this section:

(1) "Prospective owner-occupant" means a natural person who presents to the trustee an affidavit or declaration, pursuant to Section 2015.5 of the Code of Civil Procedure, that:

(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.

(2) "Eligible tenant buyer" means a natural person who at the time of the trustee's sale:

(A) Is occupying the real property as their primary residence.

(B) Is occupying the real property under a rental or lease agreement entered into as the result of an arm's length transaction with the mortgagor or trustor, or with the mortgagor or trustor's predecessor in interest, on a date prior to the recording of the notice of default against the property, and who attaches evidence demonstrating the existence of the tenancy ~~a copy of the dated and signed rental or lease agreement, if one is available,~~ to the affidavit or declaration required pursuant to subparagraph (B) of paragraph (2) of subdivision (c).

(C) Is not the mortgagor or trustor, or the child, spouse, or parent of the mortgagor or trustor.

(3) "Eligible bidder" means any of the following:

(A) An eligible tenant buyer.

(B) A prospective owner-occupant.

(C) A nonprofit association, nonprofit corporation, or cooperative corporation in which an eligible tenant buyer is a voting member or director.

(D) An eligible nonprofit corporation with all of the following attributes:

(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 has its principal place of business in California.

(iii) The primary residences of all board members are located in California.

(iv) One of its primary activities is the development and preservation of affordable rental or homeownership housing in California.

(E) A limited liability company wholly owned by one or more eligible nonprofit corporations as described in subparagraph (C) or (D).

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

(G) A limited-equity housing cooperative as defined in Section 817.

(H) 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.

(4) "Evidence demonstrating the existence of the tenancy" means a copy of the dated and signed rental or lease agreement or, if a copy of the dated and signed rental or lease agreement is not available, then one of the following:

(A) Evidence of rent payments made for the property by the person asserting that they are an eligible tenant buyer for the 6 months prior to the recording of the notice of default.

(B) Copies of utility bill for the property payable by the person asserting that they are an eligible tenant buyer for the 6 months prior to the recording of the notice of default..

(b) Nothing in this section shall prevent an eligible tenant buyer who meets the conditions set forth in paragraph (1) of subdivision (a) from being deemed a prospective owner-occupant.

(c) 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 four residential units pursuant to Section 2924g shall not be deemed final until the earliest of the following:

(1) If a prospective owner-occupant is the last and highest bidder at the trustee's sale, the date upon which the conditions set forth in Section 2924h for the sale to become final are met. The prospective owner-occupant shall submit to the trustee the affidavit or declaration described in paragraph (1) of subdivision (a) at the trustee's sale or to the trustee by 5 p.m. on the next business day following the trustee's sale.

(2) Fifteen days after the trustee's sale unless at least one eligible tenant buyer or eligible bidder submits to the trustee either a bid pursuant to paragraph (3) or (4) or a nonbinding written notice of intent to place such a bid. The bid or written notice of intent to place a bid shall:

(A) Be sent to the trustee by certified mail, overnight delivery, or other method that allows for confirmation of the delivery date.

(B) Be accompanied by an affidavit or declaration, pursuant to Section 2015.5 of the Code of Civil Procedure, identifying the category set forth in paragraph (3) of subdivision (a) to which the person or entity submitting the bid or nonbinding written notice of intent belongs and stating that the person meets the criteria for that category. If the winning bid is placed by an eligible bidder described in subparagraphs (C) to (G), inclusive, of paragraph (3) of subdivision (a), the affidavit or declaration shall affirm the bidder's duty to comply with subdivision (a) of Section 2924o for the benefit of tenants occupying the property.

(C) Be received by the trustee no later than 5 p.m. on the 15th day after the trustee's sale, or the next business day following the 15th day if the 15th day is a weekend or holiday.

(D) Contain a current telephone number and return mailing address for the person submitting the bid or nonbinding written notice of intent.

(3) (A) The date upon which a representative of all of the eligible tenant buyers submits to the trustee a bid in an amount equal to the full amount of the last and highest bid at the trustee's sale, in the form of cash, a cashier's check drawn on a state or national bank, a cashier's check drawn by a state or federal credit union, or a cashier's check drawn by a state or federal savings and loan association, savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state. This bid shall:

(i) Be sent to the trustee by certified mail, overnight delivery, or other method that allows for confirmation of the delivery date and shall

(ii) Be accompanied by an affidavit or declaration, pursuant to Section 2015.5 of the Code of Civil Procedure, stating that the persons represented meet the criteria set forth in paragraph (2) of subdivision (a), and that the persons represented are all of the eligible tenant buyers.

(iii) Meet either of the following criteria:

(I) Be received by the trustee no later than 5 p.m. on the 15th day after the trustee's sale, the next business day following the 15th day if the 15th day is a weekend or holiday.

(II) Be received by the trustee no later than 5 p.m. on the 45th day after the trustee's sale, or the next business day following the 45th day if the 45th day is a weekend or holiday, if at least one of the eligible tenant buyers submitted a nonbinding written notice of intent to place a bid pursuant to paragraph (2).

(iv) Contain a current telephone number and return mailing address for the person submitting the bid.

(v) Be limited to a single bid amount and not contain instructions for successive bid amounts.

(B) If the conditions in this paragraph are satisfied, the eligible tenant buyers shall be deemed the last and highest bidder pursuant to the power of sale.

(4) (A) Forty-five days after the trustee's sale, except that during the 45-day period, an eligible bidder may submit to the trustee a bid in an amount that exceeds the last and highest bid at the trustee's sale, in the form of cash, a cashier's check drawn on a state or national bank, a cashier's check drawn by a state or federal credit union, or a cashier's check drawn by a state or federal savings and loan association, savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state. The bid shall:

(i) Be sent to the trustee by certified mail, overnight delivery, or other method that allows for confirmation of the delivery date.

(ii) Be accompanied by an affidavit or declaration, pursuant to Section 2015.5 of the Code of Civil Procedure, identifying the category set forth in paragraph (3) of subdivision (a) to which the eligible bidder belongs and stating that the eligible bidder meets the criteria for that category.

(iii) Be received by the trustee no later than 5 p.m. on the 45th day after the trustee's sale, or the next business day following the 45th day if the 45th day is a weekend or holiday, if the eligible bidder submitted a nonbinding written notice of intent to bid pursuant to paragraph (2). Notwithstanding clause (i), on the last day that bids are eligible to be received by the trustee under this clause, the trustee shall not receive any bid that is not sent by certified mail or overnight mail.

(iv) Contain a current telephone number and return mailing address for the person submitting the bid.

(B) As of 5 p.m. on the 45th day after the trustee's sale, if one or more eligible bidders has submitted a bid that meets the conditions in this paragraph, the eligible bidder that submitted the highest bid shall be deemed the last and highest bidder pursuant to the power of sale. The trustee shall return any losing bid to the eligible bidder that submitted it.

(d) The trustee may reasonably rely on affidavits and declarations regarding bidder eligibility received under this section. The affidavit or declaration of the winning bidder shall be attached as an exhibit to the trustee's deed and recorded.

(e) If the conditions set forth in paragraph (1) of subdivision (c) for a sale to be deemed final are not met, then:

(1) Not later than 48 hours after the trustee's sale of property under Section 2924g, the trustee or an authorized agent shall post on the internet website set forth on the notice of sale, as required under paragraph (8) of subdivision (b) of Section 2924f, the following information:

(A) The date on which the trustee's sale took place.

(B) The amount of the last and highest bid at the trustee's sale.

(C) An address at which the trustee can receive documents sent by United States mail and by a method of delivery providing for overnight delivery.

(2) The information required to be posted on the internet website under paragraph (1) shall also be made available not later than 48 hours after the trustee's sale of property under Section 2924g by calling the telephone number set forth on the notice of sale as required under paragraph (8) of subdivision (b) of Section 2924f.

(3) The information required to be provided under paragraphs (1) and (2) shall be made available using the file number assigned to the case that is set forth on the notice of sale as required under paragraph (8) of subdivision (b) of Section 2924f.

(4) The information required to be provided under paragraphs (1) and (2) shall be made available for a period of not less than 45 days after the sale of property under Section 2924g.

(5) A disruption of any of these methods of providing the information required under paragraphs (1) and (2) to allow for reasonable maintenance or due to a service outage shall not be deemed to be a violation of this subdivision.

(6) The information to be provided by the trustee to eligible bidders or to persons considering whether to submit a bid or notice of intent to bid pursuant to this section is limited to the information set forth in paragraph (1).

(f) A prospective owner-occupant shall not be in violation of this section if a legal owner's compliance with the requirements of Section 2924n renders them unable to occupy the property as their primary residence within 60 days of the trustee's deed being recorded.

(g) This section shall prevail over any conflicting provision of Section 2924h.

(h) For trustee's sales where the winning bidder is an eligible bidder under this section, the trustee or an authorized agent shall send the following information to the office of the Attorney General within 15 days of the sale being deemed final:

(1) The dates when the trustee's sale took place and when it was deemed final.

(2) The name of the winning bidder.

(3) The street address and assessor's parcel number of the subject property.

(4) A copy of the trustee's deed, as recorded, including the attached affidavit or declaration of the winning bidder.

(5) The category set forth in paragraph (3) of subdivision (a) to which the eligible bidder belongs.

(i) The Attorney General, a county counsel, a city attorney, or a district attorney may bring an action for specific performance or any other remedy at equity or at law to enforce this section.

(j) The pendency of a determination of finality under subdivision (c) shall not cause termination of any hazard insurance coverage in effect at the time of the trustee's sale.

(k) This section shall remain in effect only until January 1, 2031, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2031, deletes or extends that date.

(l) The amendments made to this section by the bill adding this subdivision shall become operative on January 1, 2022.

(m) The amendments made to this section by the bill adding this subdivision shall become operative on January 1, 2023.

SEC. 4. Section 2924o is added to the Civil Code, to read:

2924o. (a) On and after January 1, 2023, in the case of any real property purchased pursuant to Section 2924m by an eligible bidder described in subparagraphs (C) to (G), inclusive, of paragraph (3) of subdivision (a) of that section, the property shall be maintained as affordable housing for lower income households for 30 years from the date the trustee's deed is issued, or a greater period of time if any of the following apply:

(1) The terms of a federal, state, or local grant, tax credit, or other source of project financing funding the purchase or maintenance of the property by an eligible bidder require a longer term.

(2) The property becomes subject to a contract as described in paragraph (11) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code.

(b) Tenants, if any, of a property purchased pursuant to Section 2924m by an eligible bidder described in subparagraphs (C) to (G), inclusive, of paragraph (3) of subdivision (a) of that section may exercise any rights available at equity or in law, including, without limitation, to defend an unlawful detainer or institute an action to enforce this section.

(c) For purposes of this section, "lower income households" has the same meaning as described in Section 50079.5 of the Health and Safety Code.

(d) This section shall remain in effect only until January 1, 2031, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2031, deletes or extends that date.

SEC. 5. 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.