

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

SB 1212 (Skinner)
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Hearing Date: April 30, 2024
Fiscal: No
Urgency: No
ME

SUBJECT

Real estate investment trusts: purchase, acquisition, and sale of housing

DIGEST

This bill places restrictions on Real Estate Investment Trusts (REITs) purchasing housing, as defined. This bill places restrictions on REITs selling housing, as provided.

EXECUTIVE SUMMARY

Under this bill, a REIT is not allowed to purchase or make an offer to purchase housing unless the housing has been listed for sale to the general public for at least 60 days. This 60-day timeline resets if the seller changes the asking price for the housing. A REIT shall pay a final sales price that is not less than 95 percent of the publically listed sales price. A REIT that violates these provisions shall be subject to civil damages in an amount not to exceed one million dollars. A seller of housing and anyone acting as an agent for the seller shall not be liable for any violation of the bill if the seller obtains a written release signed by the buyer stating that the buyer is not a REIT.

Under this bill a REIT, must comply with the following before offering to sell housing to any purchaser other than an existing tenant. A REIT is required to send notice of its intent to sell the housing to each adult tenant who is named in the rental agreement and who currently resides at the property. If no tenant resides at the property, the REIT may proceed in selling the housing without regard to the below requirements. A tenant may, within 20 days of receipt of the notice of intent to sell, send notice to the REIT expressing interest in purchasing the housing. If the REIT does not receive notice from the tenant expressing interest in purchasing the housing within 20 days of the tenant receiving notice of intent to sell, the REIT may proceed in selling the housing. If the REIT receives notice from the tenant expressing interest in purchasing the housing within 20 days of the tenant receiving notice, the REIT shall afford the tenant 60 days after the date it received the notice to secure financing and submit a formal offer. If the tenant does not secure financing and submit a formal offer within 60 days, the REIT may proceed in selling the housing. A REIT may reject any offer submitted to purchase housing. If the REIT receives a formal offer from the tenant and rejects that offer, the REIT may sell the housing to any other buyer, but still must comply with this bill,

including the above restrictions on REITs buying homes. However, the REIT is not allowed to list the housing for sale to the general public in an amount less than the amount offered by the tenant to purchase the housing unless one of the following conditions are satisfied: the tenant revokes the formal offer; the tenant fails to secure financing; or the housing appraises for less than the amount offered in the formal offer.

This bill is author sponsored and supported by the California Democratic Renters Council, the AIDS Healthcare Foundation, the American Federation of State, County, and Municipal Employees (AFSCME), AFL-CIO, Alliance of Californians for Community Empowerment, East Bay Housing Organizations, TechEquity Action, End Poverty in California, and Livable California. The bill is opposed by the California Association of Realtors, California Escrow Association, California Land Title Association, the National Rental Home Council, the California Apartment Association, and the California Mortgage Bankers Association.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Provides that all property has an owner, whether that owner is the state and the property is public, or the owner is an individual and the property is private. Provides that the State may also hold property as a private proprietor. (Civ. Code § 669.)
- 2) Provides that any person, regardless of their citizenship status, may take, hold, and dispose of property, real or personal, within this state. (Civ. Code § 670.)
- 3) Defines a “real estate investment trust” as any unincorporated association or trust formed to engage in business and managed by, or under the direction of, one or more trustees for the benefit of the holders or owners (hereinafter in this part “shareowners”) of transferable shares of beneficial interest in the trust estate (hereinafter in this part “shares”) and that meets one of the following two tests:
 - (a) It received, before a specified date, an order, permit, or qualification from the Commissioner of Corporations pursuant to the provisions of the Corporate Securities Law of 1968 or any predecessor statute finding that it was a real estate investment trust, notwithstanding the subsequent amendment, suspension or revocation of any such finding, order, permit, or qualification, and it has for one or more of its three fiscal years immediately prior to the effective date of this part complied with, or in good faith filed a federal income tax return on the basis that it has complied with the requirements for real estate investment trusts set forth in Section 856 of the Federal Internal Revenue Code; or
 - (b) It is formed for the purpose of engaging in business as a real estate investment trust under Part II of Subchapter M of Chapter 1 of Subtitle A of the Internal Revenue Code of 1986, as amended from time to time; the sale of

its shares has been qualified at any time by the Commissioner of Financial Protection and Innovation pursuant to the Corporate Securities Law of 1968; and in good faith it has commenced business as a real estate investment trust. (Corp. Code § 23000.)

- 4) Provides that no shareowner of a real estate investment trust shall be personally liable as such for any liabilities, debts or obligations of, or claims against, the real estate investment trust, whether arising before or after such shareowner became the owner or holder of the shares thereof. (Corp. Code § 23001.)
- 5) Provides that section 23001 shall apply to any real estate investment trust organized under the laws of this state with respect to liabilities, debts, obligations and claims wherever arising, and to any real estate investment trust organized under the laws of a foreign jurisdiction with respect to liabilities, debts, obligations and claims arising in this state. (Corp. Code § 23002.)

This bill:

- 1) Makes findings and declarations regarding the need for the bill.
- 2) Defines the following in the bill:
 - (a) "Interest" means any estate, remainder, or reversion enumerated in Chapter 1 (commencing with Section 761) of Title 2 of Part 2, or portion of the estate, remainder, or reversion, or an option pursuant to which one party has a right to cause legal or equitable title to housing to be transferred;
 - (b) "Housing" means a single-family dwelling or other dwelling that consists of one or two residential units;
 - (c) "Real estate investment trust" means the same as defined in Section 23000 of the Corporations Code.
- 3) Provides that, notwithstanding any other law, on and after January 1, 2025, it shall be unlawful for a real estate investment trust (REIT) to purchase, acquire, or offer to purchase or acquire any interest in housing unless the housing has been listed for sale to the general public for at least 60 days.
- 4) Provides that the 60-day timeline described above shall reset if the seller changes the asking price for the housing, and a REIT shall be prohibited from purchasing, acquiring, or offering to purchase or acquire any interest in the housing until it has been listed for sale to the general public at the new asking price for at least 60 days.
- 5) Provides that a REIT that purchases, acquires, or offers to purchase or acquire any housing shall pay a final sales price that is not less than 95 percent of the publically listed sales price.

- 6) Provides that a REIT that violates the above shall be subject to civil damages in an amount not to exceed one million dollars (\$1,000,000).
- 7) Specifies that a seller of housing and anyone acting as an agent for the seller shall not be liable for any violation of this bill if the seller obtains a written release signed by the buyer stating that the buyer is not a REIT.
- 8) Provides that a REIT that sells housing in this state after January 1, 2025, shall comply with the provisions of 9) through 17) below before offering to sell housing to any purchaser other than an existing tenant.
- 9) Provides that a REIT shall send notice of its intent to sell the housing to each adult tenant who is named in the rental agreement and who currently resides at the property. The notice shall include all of the following:
 - (a) the location and a description of the housing;
 - (b) the unit number or other designation of each rental unit of the housing, if any;
 - (c) the number of bedrooms and bathrooms in each rental unit;
 - (d) the price at which the housing will be listed for sale to the general public;and
 - (e) the annual expenses for the housing, including, but not limited to, management, insurance, utilities, and maintenance costs.
- 10) Provides that a tenant may, within 20 days of receipt of the notice, send notice to the REIT expressing interest to purchase the housing.
- 11) Provides that if the REIT does not receive notice from the tenant expressing interest to purchase the housing within 20 days of the tenant receiving the above notice, then the REIT may proceed in selling the housing.
- 12) Provides that if the REIT receives notice from the tenant expressing interest to purchase the housing within 20 days of the tenant receiving notice from the REIT of their intent to sell, the REIT shall afford the tenant 60 days after the date it received the notice expressing interest to secure financing and submit a formal offer.
- 13) Provides that if the tenant does not secure financing and submit a formal offer within 60 days, the REIT may proceed in selling the housing.
- 14) Provides that a REIT may reject any offer submitted to purchase housing.
- 15) Provides that if the REIT receives a formal offer pursuant to the above process and rejects that offer, the REIT may sell the housing to any other buyer in accordance with this bill.

- 16) Provides, however, that the REIT shall not list the housing for sale to the general public in an amount less than the amount offered by the tenant to purchase the housing unless one of the following conditions are satisfied: the tenant revokes the formal offer; or the tenant fails to secure financing; or the housing appraises for less than the amount offered in the formal offer.
- 17) Provides that if no tenant resides at the property, the REIT may proceed in selling the housing.

COMMENTS

1. Author statement

According to the author:

During the foreclosure crisis of the Great Recession, large corporations and investment firms purchased hundreds of thousands of California homes making single-family homes a Wall Street asset class for the first time. Met Life Investment Management predicts that by 2030, Wall Street will control up to 40% of the single-family home rental market nationwide. These buyers make it increasingly difficult for families to compete. Hedge funds and other large investors can buy homes before they are listed, pay in cash, and are able to buy multiple homes at one time, pushing the dream of home ownership further and further away from California families. The share of California adults who own their home is now more than 15 percentage points lower than the rest of the country, with Black and Brown families and those age 35 to 45 experiencing the steepest decrease.

SB 1212 as amended would increase homeownership opportunities for California families by prohibiting entities known as Real Estate Investment Trusts (REITs) from buying single-family homes without first giving individuals and families a right to purchase the home for 60 days. And, for those REITs who are selling homes with existing tenants, SB 1212 will give the tenants the right of first refusal to purchase the home. With these provisions, SB 1212 will give Californians a fair shot at home ownership, an increasingly difficult endeavor due to the dominance of large national REITs in the single family home market.

According to a report provided by the author's office entitled "Institutional Investors Outbid Individual Homebuyers," Evidence Matters, by the Housing and Urban Development, Office of Policy Development and Research, Winter 2023¹:

¹ Available at: <https://www.huduser.gov/portal/periodicals/em/winter23/highlight1.html>

- Institutional and other large corporate investors own an increasing share of single-family homes, taking properties off the market for individual homebuyers and putting upward pressure on home prices and rents.
- Institutional investors have concentrated their purchases regionally (in the Sun Belt) and in particular neighborhoods (typically low-income, historically nonwhite and disinvested areas).
- Federal, state, and local governments can combat the negative impacts of institutional investors, often in partnership with nonprofit and other social-purpose organizations that can purchase single-family homes for individual buyers or help those buyers purchase them directly.

2. What the bill does

This bill places restrictions on REITs purchasing housing and restrictions on REITs selling housing.

a. Places restrictions on sellers selling housing to REITs

Under this bill, a REIT is not allowed to purchase or make an offer to purchase housing unless the housing has been listed for sale to the general public for at least 60 days. This 60-day timeline resets to another 60-day timeline restriction if the seller changes the asking price for the housing. If the seller wants to sell to a REIT after the restrictive timelines run then a seller can only sell to a REIT if the final sales price is not less than 95 percent of the publically listed sales price. A REIT that violates any of the above restrictions shall be subject to civil damages in an amount not to exceed one million dollars. Pursuant to the bill, a seller of housing and anyone acting as an agent for the seller shall not be liable for any violation of the bill if the seller obtains a written release signed by the buyer stating that the buyer is not a REIT.

b. Places restriction on REITs selling homes

Under this bill a REIT, must comply with the following before offering to sell housing to any purchaser other than an existing tenant.

A REIT is required to send notice of its intent to sell the housing to each adult tenant who is named in the rental agreement and who currently resides at the property. If no tenant resides at the property, the REIT may proceed in selling the housing.

A tenant may, within 20 days of receipt of the notice, send notice to the REIT expressing interest in purchasing the housing. If the REIT does not receive notice from the tenant expressing interest in purchasing the housing within 20 days of the tenant receiving notice from the REIT, the REIT may proceed in selling the housing.

If the REIT receives notice from the tenant expressing interest to purchase the housing within 20 days of the tenant receiving notice, the REIT shall afford the tenant 60 days

after the date it received the notice expressing interest to secure financing and submit a formal offer. If the tenant does not secure financing and submit a formal offer within 60 days, the REIT may proceed in selling the housing.

A REIT may reject any offer submitted to purchase housing by the tenant. However, if the REIT receives a formal offer from the tenant and rejects that offer, the REIT may sell the housing to any other buyer, but still must comply with this bill, including the above timeline restrictions on REITs buying housing. Moreover, the REIT is not allowed to list the housing for sale to the general public in an amount less than the amount offered by the tenant to purchase the housing unless one of the following conditions are satisfied: the tenant revokes the formal offer; the tenant fails to secure financing; or the housing appraises for less than the amount offered in the formal offer.

3. Support

In support of the bill, the American Federation of State, County, and Municipal Employees, AFL-CIO, writes:

Investment entities like hedge funds began to get involved in the single-family housing market following the foreclosure crisis that occurred at the beginning of the Great Recession. There were thousands of available homes that had been foreclosed upon and many investment firms saw them as portfolio assets. Fast forward nearly twenty years later and giant investment firms like Blackstone are now the landlord for hundreds of thousands of single-family properties across the United States and California.

This trend has dire consequences for the future of housing in California. According to MetLife Investment Management, corporate investment entities will own 40 percent of all single-family rental units in the country by 2030. When entities like Blackstone, which manages more than \$1 trillion of total assets, buy up single-family properties, it prices out Californians like AFSCME members who may be trying to buy their first home or renting. While these entities claim they may let go of some of their current holdings soon because of market forces, current law would not stop them from doing exactly what they did in 2008 again.

[. . .]

Home ownership is the foundation of the American Dream and has been the pathway to generational wealth for millions of Californians. SB 1212 ensures that dream can still be a reality going forward and makes the single-family housing market a market for families, not investment firms.

Also in support, the East Bay Housing Organizations writes:

Purchasing a home is a way for many families to create generational wealth and for the family and individual home-owners to have long-term stability within a community. However, California is experiencing the lowest rate of owner-occupied home ownership in decades, with Black and brown families and Californians age 35 to 45 experiencing the steepest decrease in home-ownership rates. The share of adults who own their own home in California is 15% lower than the national average. Compounding this problem, since the great recession, large corporations have purchased hundreds of thousands of homes in California. Virtually all of these homes are “starter homes” or homes for first time home buyers. In 2021, nearly one in seven homes sold in the U.S. was bought by corporate investors. In 2022, institutional investors purchased 24% of single family homes. By 2030, Wall Street is expected to control up to 40% of the single-family home rental market nationwide.

Individual homebuyers simply cannot compete against corporate buyers who can buy homes before they are publicly listed, pay in cash, and buy in bulk. This can lock people out of homeownership altogether as well as increasing rents and evictions, compounding our homeless crisis. According to the US Department of Housing and Urban Development, corporate ownership of single family homes not only “take[s] properties off the market for individual homebuyers [but also] put[s] upward pressure on home prices and rents.” A report from the US House of Representatives Financial Services Committee found that the institutional ownership and leasing of single family homes led to large rent increases, inflated maintenance and other fees imposed on tenants, and there was greater disrepair in the homes. A 2018 study cited in this report found that large landlords of single family homes were 68% more likely than small landlords to file for evictions.

Moreover, “institutional investors have concentrated their purchases...in particular neighborhoods (typically low-income, historically nonwhite and disinvested areas).” This fact is borne out in the real-time data published by the California Research Bureau of the State Library on institutional investors in the single family home market in California, where institutional investors are purchasing large number of homes in working class rural, suburban, and urban communities.

4. Opposition

The California Apartment Association writes the following to explain their opposition position:

Ownership of single-family homes by REITS in California is extremely limited, estimated at 0.15 of 1 percent. Admittedly, there were homes purchased by business entities during the 2007-2008 financial crisis, triggered by a housing bubble in the United States, which lead to massive bank foreclosures of homes

during that time. Instead of keeping homes boarded up and allowing neighborhoods to decline, banks sold the homes to business entities that maintained them for tenants.

Your first-right-to-purchase language is consistent with the current practice of REITS that typically offer tenants the first right to purchase the home when the REIT plans to sell the home. We would like to work with you to make sure the timelines are realistic.

As for the other provisions in the bill relating to REITS and the potential purchase of homes, we believe it is unrealistic and premature. Because we don't see REITS overly active in the single-family home market, we respectfully ask that you not move forward with these provisions at this time. If REITS again take a more active role in the market, then revisiting their participation may be in order. At this time, however, we do believe it is imperative to leave the option for a homeowner to sell to a REIT without putting unrealistic time frames and other limitations on the sale of the home (in those limited cases where a REIT is even willing to make an offer). The number of willing and able buyers is extremely limited today given the climate and high mortgage interest rates. Regulating a homeowner's options may be harmful to a homeowner who is desperate to sell the home quickly given their health or other financial challenges. The same is true of "mom and pop" single family homeowners who may not be able to continue to operate the home and pay the mortgage given the limited rental income they received during COVID. Their option to sell to a REIT should not be limited.

The California Association of Realtors, California Escrow Association, California Land Title Association, and California Mortgage Bankers Association write the following in opposition to SB 1212:

While we support and appreciate the intent to assist Californians with obtaining their dream of home ownership, SB 1212 creates off-record property rights for real property that would work in contradiction to that goal.

SB 1212's first right of refusal creates an off-record property right, in contradiction of California's long-established transparent property records system.

Though well intended, the passage of SB 1212 would likely have negative impacts on the transferability of California real property potentially subject to the bill.

After California was admitted to the Union in 1850, one of "the first acts of the California Legislature was to adopt a recording system by which evidence of title or interests in the title could be collected and maintained in a convenient

and safe public place.”² That recording system, still extensively used today, was intended to “inform persons planning to purchase or otherwise deal with land about the ownership and condition of the title,” and “protect innocent lenders and purchasers against secret sales, transfers, or conveyances and from undisclosed encumbrances/liens. The purpose of this system is to allow the title to the real property to be freely transferable.”

Today, title companies continue to rely almost exclusively on a search of recorded documents to determine the status of title to real property and compliance with the law. The thresholds and requirements established under SB 1212, however – such as whether a property being sold by a real estate investment trust is tenant-occupied – can’t be verified through a search of recorded documents. In other words, the property rights created under this bill are “off record” and difficult to verify, thereby increasing the complexity and cost of California real estate transactions.

Under proposed Civil Code Section 745.4, for example, a real estate investment trust (REIT) may sell housing to any buyer, but must not list the housing for an amount less than the amount offered by a tenant. Similarly, the REIT must also provide notice of its intent to sell the property to any current tenants. How are parties to a real estate transaction involving REIT-owned property under SB 1212 able to satisfactorily determine whether these obligations, or others created under the bill, have been met? And what effect would a violation of these provisions have on the title to the real property? The bill is silent as to a remedy, leaving open the question of how a court may seek to interpret the Legislature’s intent.

We understand the author’s desire to assist individuals in their goal of buying a home, especially at a time of higher interest rates and limited supply. However, SB 1212 will increase the complexity and costs of real estate transactions that is contrary to its intent.

According to information provided to the Committee by the National Rental Home Council, an opponent of this bill:

There are only 2 companies we are aware of that this bill may impact; both are REITS. Both companies have been net sellers of homes in CA over the last 7 years. Together, they have gone from 18,000 homes owned in CA down to about 13,000 today. With about 8.5 million single family homes in California, their ownership amounts to 0.15 of 1% of all the single family homes in the state. In the last 2 years, both companies have collectively purchased TWO existing homes in California. Despite perceptions of national companies

² See California State Board of Equalization, “Property Ownership and Deed Recording.” https://www.boe.ca.gov/proptaxes/pdf/Ownership_DeedRecording.pdf

crowding out buyers in CA, their presence within the marketplace is not enough to have that sort of impact that many perceive. [. . .]

As we understand the amendments, we wonder why a seller would be prohibited from entering into a contract with a willing buyer for 60 days, should other qualified buyers not come forward. [. . .] As we know, there are many variables that can impact why a home is on the market for 60 days or more and asking price may not be the only factor. Interest rates, condition of the home, location are all examples of other variables that could impact “days on the market” (DOM). [. . .] Institutional purchases averaged 1% of all purchases throughout the last 3 years.

SUPPORT

AIDS Healthcare Foundation and its Housing is a Human Right Division
Alliance of Californians for Community Empowerment
American Federation of State, County, and Municipal Employees (AFSCME), AFL-CIO
California Democratic Renters Council
East Bay Housing Organizations
End Poverty in California
Livable California
TechEquity Action

OPPOSITION

California Association of Realtors
California Escrow Association
California Land Title Association
California Mortgage Bankers Association
National Rental Home Council

RELATED LEGISLATION

Pending Legislation:

AB 2584 (Lee, 2024) prohibits a business entity that owns more than 1,000 single-family residential properties from purchasing any additional single-family properties and renting them out. The bill authorizes the Attorney General to enforce this prohibition through civil litigation. AB 2584 is currently in the Assembly Appropriations Committee.

AB 2230 (Bennett, 2024) enacts the Residential Housing Unfair Practices Act of 2023, to: (1) bring residential housing within the purview of the Cartwright Act, the Unfair Practices Act, and the Unfair Competition Law to prevent market manipulation of housing prices and supply during the period of the previously declared statewide

housing emergency; and (2) ensure that residential housing is developed and managed to be responsive to the needs, demands, and pricing affordable to residents of our state and not to the needs, demands, and pricing desired by nonresident investors or speculators. The bill is currently in the Assembly Judiciary Committee.

AB 1333 (Ward, 2023) prohibits a developer of residential one to four dwelling units from conducting a bundled sale of real property to an institutional investor. Applies this restriction only to properties for which the occupancy permit was issued on or after January 1, 2025. Defines "bundled sale" as the sale of two or more parcels real property containing one to four residential dwelling units, inclusive, in single transaction. Defines "institutional investor" as an entity that is not a natural person and having portfolios containing more than 1,000 units. Defines "real estate investment trust" as a publicly traded limited liability company, limited liability partnership, or other entity that may have multiple affiliated or linked entities serving as a subsidiary or parent company. This bill is currently awaiting referral in the Senate Rules Committee.

Prior Legislation: None known.
