

New Foreclosure Rules—One- to Four-Unit Properties

In anticipation of a heightened housing crisis in the wake of COVID-19, Senate Bill 1079 went into effect on January 1, 2021, with the stated goal of promoting owner-occupied homeownership, protecting tenants from displacement, and preventing corporate speculators from acquiring bundled one- to four-unit homes.

The law, which sunsets on January 1, 2026, changes California's nonjudicial foreclosure sales for real property containing one- to four-unit residences. In addition to creating preferential bidding opportunities for specific categories of eligible bidders before a trustee's sale can be finalized, the law prescribes several new procedures which apply to foreclosing lenders.

Previously, once a nonjudicial foreclosure sale was successfully conducted, the last and highest bidder became the new owner of the foreclosed property, pending certain trustee requirements. SB 1079 does two things that change the bidding process. First, if the last and highest bidder of a foreclosed property is a prospective owner-occupant, including any current tenant buyers, then the bid becomes finalized without any further trustee requirements. Second, should the last and highest bidder not be a prospective owner-occupant, the bill creates new preferred categories of eligible bidders who can either submit a bid, or submit an intent to bid, for a prescribed period after the trustee's sale. This change allows eligible tenant buyers to match the last and highest bid at the trustee's auction, which then becomes the final winning bid. It also allows all other eligible bidders to submit a bid that exceeds the last and highest bid at auction.

Eligible bidders fall into several categories: eligible tenant buyers, prospective owner-occupants, nonprofit organizations

in California whose main purpose is the development and preservation of affordable housing, community land trusts, limited-equity housing cooperatives, and state and local government, including the Regents of the University of California. As discussed above, eligible tenant buyers and prospective owner-occupants have rights within the newly prescribed bidding process that privilege their interests even over other eligible bidders.

The new eligible bidder categories outlined above now have preferential bidding rights that did not previously exist. This means that public agencies and nonprofit corporations that develop and maintain affordable housing in California have an opportunity to bid on foreclosed one- to four-unit properties after the public sale has concluded. The new bidding hierarchy, along with the prioritization of eligible tenant buyers and prospective owner-occupants, aims to prevent speculative buyers from acquiring property. The bill expressly prohibits foreclosure trustees from auctioning bundled property to a single buyer unless the deeds of trust specifically require otherwise.

There are also new procedures that impact foreclosing lenders of one- to four-unit properties. In addition to the standard power of sale notice requirements, lenders are now required to send foreclosure notices with specified language to all current tenants outlining their rights under the trustee's sale. Foreclosure trustees will also need to maintain a website and toll-free phone number in the period following any trustee sale, and these resources must be available to eligible bidders who may choose to exercise their right to bid or submit a notice of intent to bid. These modes of communication are intended to create transparency for eligible bidders, to

document the amount of the last and highest bid at auction, and to easily allow new categories of eligible bidders to contact the trustee in order to invoke any rights post-sale.

The requirement that trustees make this information available provides an opportunity for affordable housing advocates to track potential local foreclosure sales of one- to four-unit properties. Nonprofits and public agencies can also take action such as checking legal notices in newspapers and regularly

visiting trustee websites for possible acquisition opportunities, as well as educating tenants, homeowners, and prospective homeowners of their new rights.

For further information regarding how SB 1079 may impact your work, or if you would like assistance navigating California's new nonjudicial foreclosure process, please contact Dave Kroot, Jeff Streiffer, Minda Hickey, or any other attorney at Goldfarb & Lipman LLP.

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