

California Expands Tenant Protections in Response to Foreclosure Crisis*

California Governor Arnold Schwarzenegger recently signed a bill providing protections for tenants and homeowners affected by the foreclosure crisis.¹ The new law increases notice requirements for homeowners and tenants, and it also requires owners of foreclosed residential properties to keep those properties in good repair or risk fines. Additional legislation that would protect tenants living in foreclosed dwellings from having their utilities shut off is awaiting the governor's signature.

The Foreclosure Crisis

Like many other states, California is in the midst of a foreclosure crisis prompted by the collapse of housing prices and widespread trouble with the subprime mortgage market. Foreclosures on residential mortgages in California increased sevenfold from 2006 to 2007.² In 2007, more than 84,000 California properties suffered foreclosures, and over 250,000 loans went into default.³ This dramatic rise in the number of foreclosures has affected more than just those homeowners. It has negatively impacted neighborhood property values and living conditions, and it has forced many renters to hurriedly relocate after lenders foreclosed on their rental properties.

Unoccupied dwellings with unkempt yards are not only eyesores, they may also be public health hazards and crime magnets, according to supporters of the recent legislation.⁴ In a number of reported cases, purchasers have ceased to maintain the foreclosed-upon properties.⁵ Untended swimming pools have become breeding grounds for mosquitoes, and uninhabited homes have invited squatters and vandals.⁶

In addition to neighbors, renters have become casualties of foreclosures. In jurisdictions without adequate notice requirements for tenants living in foreclosed-upon properties, renters may find themselves suddenly homeless

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¹Samantha Sondag, *Governor Signs Law to Help Homeowners Keep Their Properties*, S.F. CHRON., July 9, 2008, <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/07/09/BA3411LL25.DTL>.

²S.B. 1137, 2008 Leg., Reg. Sess. (Cal. 2008).

³*Id.*

⁴See Assembly Floor, S.B. 1137 Analysis at 6-7 (June 30, 2008), http://leginfo.ca.gov/pub/07-08/bill/sen/sb_1101-1150/sb_1137_cfa_20080630_145451_asm_floor.html.

⁵David Streitfeld, *Blight Moves in After Foreclosures*, L.A. TIMES, Aug. 28, 2007, <http://articles.latimes.com/2007/aug/28/business/fi-vacant28>.

⁶*Id.*

even though they have been paying their rent.⁷ Some states and municipalities have responded with legislation that provides tenants with additional notice before they can be evicted from foreclosed properties.⁸ Others, including several in California, provide substantive protections for tenants through state or local good cause for eviction protections that do not specify transfer of title at foreclosure as permissible grounds. However, even in jurisdictions that have protections for tenants, foreclosure purchasers are not always abiding by the law, and many tenants are unaware of their rights.⁹ Some landlords have been serving illegal eviction notices on renters, and others have encouraged tenants to vacate by shutting off utilities or refusing to provide maintenance to the dwellings.¹⁰

In response to these concerns, California has enacted legislation that attempts to minimize foreclosures, offers additional protections to tenants in foreclosed dwellings, and seeks to ensure that abandoned properties do not become public nuisances.

Senate Bill 1137

Senate Bill 1137, sponsored by State Senate President Pro Tempore Don Perata, contains three major changes to existing state law: (1) it requires that lenders warn borrowers at least thirty days prior to filing a notice of default and that they discuss options for borrowers to avoid foreclosure; (2) it mandates that owners of foreclosed residential properties maintain those properties or suffer fines; and (3) it bolsters protections for tenants by (a) requiring that lending companies give them notice of foreclosure sales; and (b) providing them with at least sixty days' written notice prior to eviction.¹¹ The entire bill is subject to a sunset date of January 1, 2013, unless a later-enacted statute extends that date.¹²

Encouraging Alternatives to Foreclosure

The law requires lenders to warn borrowers at least thirty days prior to filing a notice of default.¹³ If the lender is unable to locate the mortgagor, it must fulfill the due diligence requirements articulated in the statute, including contacting the borrower by first-class mail and placing at least three phone calls to the borrower's primary phone

number at different times on different days.¹⁴ Once the mortgagor has been reached, the lender must personally speak to the mortgagor about ways to avoid foreclosure and must provide the borrower with a toll-free telephone number for locating a housing counseling agency certified by the Department of Housing and Urban Development.¹⁵ These provisions of the bill will go into effect on September 6, 2008, sixty days after the bill was signed.¹⁶

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Maintaining Foreclosed Properties

The law requires that owners maintain residential properties that have been subject to foreclosure or suffer fines up to \$1,000 per day for violations.¹⁷ Violations include permitting the yard to become so overgrown that it diminishes the value of surrounding properties, allowing squatters to remain on the property, or permitting standing water that attracts mosquitoes.¹⁸ The law includes a notice requirement of fourteen days for most violations and provides that good faith efforts to remedy the violation shall be considered in the decision to levy any fine.¹⁹ Although local ordinances may already address public nuisances, the new law supplements these ordinances and provides stiff civil penalties to ensure compliance. This provision went into effect immediately.²⁰

Protecting Tenants

Finally, the law requires that tenants be given at least sixty days' notice to quit property that has been foreclosed.²¹ Under prior law, most tenants could be evicted after only thirty days' notice.²² The new law also requires that tenants be alerted that the property is in the foreclosure process and that the property will be subject to foreclosure sale.²³ The sixty-day notice requirement went into effect immediately; the second measure goes into effect on

⁷Dina ElBoghdady, *Foreclosure Crisis Catching Renters Off Guard*, WASH. POST, Aug. 8, 2008, <http://www.washingtonpost.com/wp-dyn/content/article/2008/08/07/AR2008080703574.html>.

⁸See, e.g., MASS. GEN. LAWS ch. 186, §§ 13, 13A (West 2007); BALTIMORE CITY CODE ART. 13, § 8B (2008), <http://cityservices.baltimorecity.gov/charterandcodes/Code/Art%2013%20-%20Housing.pdf>.

⁹James Temple, *Foreclosure's Hidden Victims*, S.F. CHRON., Aug. 15, 2008, <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/08/14/MNB31267IR.DTL&ts=1>.

¹⁰*Id.*; John Glionna, *Renters Tell of Harassment in Foreclosure Proceedings*, L.A. TIMES, Mar. 12, 2008, <http://articles.latimes.com/2008/mar/12/local/me-oakland12>.

¹¹S.B. 1137, 2008 Leg., Reg. Sess. (Cal. 2008).

¹²*Id.*

¹³CAL. CIV. CODE § 2923.5 (West 2008).

¹⁴*Id.* § 2923.5.

¹⁵*Id.*

¹⁶*Id.* This provision only applies to loans made between January 1, 2003, and December 31, 2007, inclusive.

¹⁷CAL. CIV. CODE § 2929.3 (West 2008).

¹⁸*Id.*

¹⁹*Id.*

²⁰*Id.*

²¹CAL. CIV. PROC. CODE § 1161b (West 2008).

²²MOSKOVITZ, CAL. EVICTION DEFENSE MANUAL, § 20.4A (Calif. Continuing Educ. Of Bar, 2003); CAL. CIV. PROC. CODE § 1161a(c) (West 2007); Sondag, *supra* note 1.

²³CAL. CIV. CODE § 2924.8 (West 2008).

September 6.²⁴ Both measures give tenants additional time to find alternative housing, reducing some of the burden they face when forced to relocate due to foreclosure.²⁵

Passage of the Bill

The bill was supported by a diverse coalition including labor unions, community activists, and advocates for fair housing and lending practices.²⁶ It was initially opposed by the banking and real estate industries, but the bill ultimately passed with bipartisan support after long negotiations between the opposing sides.²⁷ At least one lawmaker voted against the bill because of the sixty-day notice period for tenants, stating that it infringed upon property owners' rights.²⁸ However, supporters of the bill, including banking industry representatives, believe that it strikes the proper balance between providing some relief for borrowers and renters and yet not discouraging investment in foreclosed properties.²⁹

Assembly Bill 1333

Another piece of California legislation, Assembly Bill 1333, would require property owners to pay utility bills for properties that have been subject to foreclosure sales.³⁰ According to Assembly member Loni Hancock, who authored the bill, under existing law the new owner has no clear legal obligation to continue to pay utility companies even when such payments are supposed to be included in the tenants' rent payments.³¹ In some cases, owners who take over foreclosed properties have tried to force tenants out by refusing to pay utility bills.³² This new law would make it harder for landlords to succeed at this game by making such actions clearly illegal.³³ To make it easier for utility companies to collect payments from the property owners themselves, the bill would do away with a provision in current law that prohibits a municipal utility district from imposing a lien upon a residential property owner.³⁴ Under the new law, the utility district could seek a judgment lien against the property for all delinquent fees and associated penalties.³⁵ The bill is subject to a sunset provision that would repeal the changes on January 1, 2014, unless a later-enacted statute extends that date.³⁶

²⁴*Id.*

²⁵Marc Lifsher, *California Senate Passes Mortgage Default Warning Bill*, L.A. TIMES, July 3, 2008, <http://www.latimes.com/news/nationworld/washingtondc/la-fi-mortgage3-2008jul03,0,1315562.story>.

²⁶*Id.*

²⁷*Id.*

²⁸Sondag, *supra* note 1.

²⁹Lifsher, *supra* note 25.

³⁰A.B. 1333, 2008 Leg., Reg. Sess. (Cal. 2008).

³¹Assembly Floor, A.B. 1333 Analysis at 3 (Aug. 6, 2008), http://leginfo.ca.gov/pub/07-08/bill/asm/ab_1301-1350/ab_1333_cfa_20080806_182000_asm_floor.html.

³²See Temple, *supra* note 9; Glionna, *supra* note 10.

³³See CAL. CIV. CODE § 2924.9 (West 2008).

³⁴See A.B. 1333, 2008 Leg., Reg. Sess. (Cal. 2008).

³⁵*Id.*

³⁶*Id.*

Protection for Renters in Other States

Like California, several other states and municipalities have recently taken up the issue of tenants' rights in foreclosure. For example, Massachusetts passed a bill at the end of last year that prohibits buyers of foreclosed properties from immediately evicting tenants.³⁷ Tenants whose leases were at will must be given at least thirty days' notice before eviction, and tenants whose leases were for a term of years become tenants at will.³⁸ Under the new law, foreclosure has no effect upon the lease terms of tenants who receive subsidies from the federal or state government.³⁹ Legislation awaiting the governor's signature in Illinois would give renters a minimum of ninety days' notice before they could be evicted from foreclosed-on properties.⁴⁰ Today renters in Illinois may be evicted with as little as five days' warning.⁴¹ A subcommittee in the Nevada legislature is drafting legislation that would address issues similar to those in the California bills.⁴²

The District of Columbia, as well as many jurisdictions with state or local rent and eviction protections, already has tenant protections in place. Under these laws, because a foreclosure transfer is not specified as good cause for eviction, tenants who live in foreclosed properties are entitled to remain in their homes unless the new owner has an independent good cause to evict.⁴³ Because laws in Maryland offer renters little protection, the city of Baltimore recently passed a law requiring new owners to give tenants in foreclosed properties fourteen days' notice before evicting them.⁴⁴

Congress has also considered providing some relief for renters. Last year, the House of Representatives passed a bill that would provide at least ninety days' notice before renters of foreclosed dwellings could be evicted.⁴⁵

Conclusion

California homeowners and renters affected by foreclosures now have increased legal protections, but it will take some months to evaluate the effectiveness of these

³⁷Binyamin Appelbaum, *Legislature Passes Foreclosure-Aid Bill*, BOSTON GLOBE, Nov. 22, 2007, http://www.boston.com/realestate/news/articles/2007/11/22/legislature_passes_foreclosure_aid_bill/.

³⁸MASS. GEN. LAWS ch. 186, §§ 13, 13A (West 2007).

³⁹MASS. GEN. LAWS ch. 186, § 13A (West 2007).

⁴⁰See 2007 Ill. S.B. 2721, 95th Gen. Assembly, 2d Reg. Sess. (Ill. 2008); Fran Spielman, *New Laws to Protect Renters from Foreclosure*, CHI. SUN-TIMES, Aug. 15, 2008, <http://www.suntimes.com/business/currency/1108898.rent081508.article>.

⁴¹Spielman, *supra* note 40.

⁴²*State Looks at Ways to Quell Crisis*, RENO GAZETTE-JOURNAL, Aug. 3, 2008, <http://www.rgj.com/apps/pbcs.dll/article?AID=/20080803/NEWS/808030364/1321>.

⁴³See, e.g., D.C. CODE § 42-3505.01 (2008); SAN FRANCISCO ADMIN. CODE § 37.9 (2008); Gross v. Superior Ct., 171 Cal. App.3d 265 (1985); ElBoghady, *supra* note 7.

⁴⁴ElBoghady, *supra* note 7.

⁴⁵*Id.* For an update on federal foreclosure legislation, please see page 161 in this issue.

laws. Supporters of the bill hope that borrowers will benefit from the opportunity to learn of alternatives to foreclosure, leading to an increase in the number of loans being modified to lower monthly payments.⁴⁶ Loan modifications have already been rising steadily since the beginning of the year: more than 10,000 home loans were modified in June, up 77% since January,⁴⁷ although the number of modifications substantially lags behind the growing need. The number of foreclosures has varied from month to month but remained approximately static during the same period.⁴⁸ Now that lenders are required by law to discuss alternatives to foreclosure, the number of modifications should continue to increase with a corresponding decrease in the number of foreclosures.

Renters have additional legal protections, but it is up to tenants and their advocates to fight for these rights. Even in eviction control jurisdictions such as Oakland or San Francisco where tenants already had protections, landlords have been abusing tenants' ignorance of these rules by acting as if they do not exist or by offering tenants "cash for keys" to get them out without a fight.⁴⁹ If any new protections are to be effective, tenants and advocates must be educated about these protections and be able and willing to stand their ground. ■

⁴⁶Lifsher, *supra* note 25.

⁴⁷CALIFORNIA DEPARTMENT OF CORPORATIONS, MORTGAGE SERVICERS SURVEY (Aug. 4, 2008), at <http://www.corp.ca.gov/press/news/SPL/LMS0608.pdf>.

⁴⁸*Id.*

⁴⁹Carolyn Said, *Foreclosures Leave Renters in the Lurch*, S.F. CHRON., Feb. 7, 2008, <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/02/07/MN4NUOE27.DTL>.