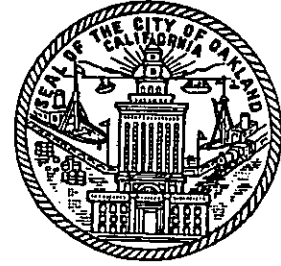


FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

# CITY OF OAKLAND

## BILL ANALYSIS



2009 MAY 11 PM 4: 37  
May 19, 2009

**Bill Number: AB 603**

**Bill Author: Assembly Member Curren Price (D)**

### DEPARTMENT INFORMATION

**Contact: Rick Nemcik-Cruz**  
**Department: CEDA/HCD/Rent Adjustment**  
**Telephone: (510) 238-2079 FAX # (510) 238-6181**  
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### RECOMMENDED POSITION:

Support.

### Summary of the Bill

This bill would provide the following protections to a tenant of a residential building whose owner acquired the property through foreclosure, or by a deed in lieu of foreclosure:

1. The new owner would be prohibited from taking action to evict the tenant unless the tenant: fails to pay rent; violates a condition of the tenancy and fails to cure the breach after notice; commits "waste"<sup>1</sup> on the property; maintains a "nuisance"<sup>2</sup> on the property; uses the property for an "unlawful purpose"<sup>3</sup>; or the owner moves in.
2. Throughout the foreclosure process and after, the new owner would be required to maintain the same utility service to the unit that was provided by the prior owner.

<sup>1</sup> Substantial and permanent diminution of the property's fair market value. *Freeze v Brinson* (1991) 3 CalApp 4th Supp. 1, 4, 5.

<sup>2</sup> "Anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance." Civil Code Section 3479

<sup>3</sup> "...[a] tenant's violation of a statute or ordinance in using the property is likely to be construed as an unlawful purpose...*only if the usage threatens physical safety, will stigmatize the premises, or impairs the landlord's continued receipt of rent.* [emphasis in original] The Rutter Group, California Landlord-Tenant Practice Guide, (2009) §4:120.

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3. A tenant could sue an owner who violates this provision for actual damages and a fine no more than \$100 for each day the landlord remains in violation, with a minimum of \$250 for each separate violation.
4. Courts would be authorized to award reasonable attorney's fees to the prevailing party, and would authorize a tenant to seek injunctive relief, as specified.

The bill expressly provides that any local ordinance governing the rights of tenants is NOT pre-empted by this legislation. Eviction controls are separately and specifically not pre-empted. Unless reenacted, the law would expire on January 1, 2013.

### **Positive Factors for Oakland**

AB 603 provides protections for tenants in Oakland residing in foreclosed properties, in addition to those protections provided in the Just Case for Eviction Ordinance.

The bill prohibits the lender and subsequent purchaser from evicting affected tenants solely on the basis of the foreclosure.

The foreclosure process presents a myriad of problems for tenants, who are often not properly informed of the change in ownership, and who are often hindered by language barriers. In the absence of a notice from the new owner, tenants often find themselves evicted because they were paying rent to the former owner, not the new owner, as they did not know that ownership had changed. In other cases, foreclosure processors employed by lenders provide tenants with written notice demanding access to inspect the property, and when non-English speaking tenants fail to comply, they are served with an eviction notice for failure to provide access. These problems are affecting non-English speaking tenants disproportionately, as any notices provided are almost always written in English. This new legislation would prohibit these and similar unfair practices.

When an owner defaults on the loan payments, they usually stop paying for utilities as well. This creates a problem for all tenants in buildings where the landlord is responsible for payment of the utilities because a payment arrearage accumulates. Under these circumstances, PG&E and EBMUD have instituted programs to allow tenants to assume responsibility for the service and make payments. In order to restore service, tenants in master-metered buildings are often required to assume responsibility for payment of the utilities jointly, making a single payment to the utility company. A

difficult arrangement at best, it becomes a practical impossibility to organize in a larger building. Although EBMUD has recently extended a moratorium on disconnecting service from master-metered buildings in foreclosure, the moratorium is unilateral and could be terminated, leaving the tenants without utility service. AB 603 addresses the problem by requiring the new owner to assume responsibility for the utility services.

Although existing law applied to the situations described above can be interpreted to reach the same result in a less direct way,<sup>4</sup> the current bill eliminates any contrary interpretation by clarifying the responsibilities of the lender/purchaser to the tenants, when acquiring title to residential rental property through foreclosure. It addresses the major problems for residential tenants in buildings in the foreclosure process. The bill provides a private right of action to tenants to enforce the rights granted with attorney's fees to the prevailing party, to encourage attorneys to bring these cases to court.

To address the concerns that the bill might substitute weaker state-wide protections for stronger one found in Oakland's Ordinances, staff exchanged emails with the lobbyist for the Western Center on Law and Poverty who stated that the sponsors of the bill are aware that this provision of the bill is too vague and they intend to amend it to address this potential problem in the Senate Judiciary Committee.

### **Negative Factors for Oakland**

None.

### **PLEASE RATE THE EFFECT OF THIS MEASURE ON THE CITY OF OAKLAND:**

- Critical** (top priority for City lobbyist, city position required ASAP)
- Very Important** (priority for City lobbyist, city position necessary)
- Somewhat Important** (City position desirable if time and resources are available)
- Minimal or**  **None** (do not review with City Council, position not required)

<sup>4</sup> E.g. Public Utilities Code §12822.1.

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**Known support:**

Acorn (sponsor); Consumer Federation of California; CalPIRG; Western Center on Law and Poverty; CA Rural Legal Assistance Foundation.

**Known Opposition:**

California Apartment Association

**Attach bill text and state/federal legislative committee analysis, if available.**

Respectfully Submitted,



Walter S. Cohen  
Director, Community and Economic  
Development Agency

Approved for Forwarding to  
Rules Committee



Office of City Administrator

Item: \_\_\_\_\_  
City Council  
May 19, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 603**

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**Introduced by Assembly Member Price**

February 25, 2009

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An act to ~~amend Section 2924 of~~ *add and repeal Sections 1940.97 and 2924.9* of the Civil Code, relating to mortgages.

LEGISLATIVE COUNSEL'S DIGEST

AB 603, as amended, Price. Mortgages and deeds of trust: ~~foreclosure.~~  
*foreclosure: tenants in possession of property.*

*Existing law governs foreclosure proceedings, including requiring specified notice to residents of property subject to a foreclosure sale. Existing law also governs residential tenancies.*

*This bill would prohibit, until January 1, 2013, an owner of a qualified rental unit, as defined to mean real property that is rented or leased for residential purposes whose owner acquired the property as a result of a default on a mortgage, as specified, from taking action to terminate any tenancy within one year of acquiring ownership, as specified, except under certain circumstances, including the failure of a tenant to pay rent or a violation of a condition of the tenancy, as described. The bill would also provide that a landlord who violates this provision would be liable to the tenant in a civil action for actual damages and a fine not to exceed \$100 for each day the landlord remains in violation of this provision, but not less than \$250 for each separate cause of action. The bill would authorize a court to award reasonable attorney's fees to the prevailing party, and would authorize a tenant to seek injunctive relief, as specified.*

~~Existing law requires that, upon a breach of the obligation of a mortgage or transfer of an interest in property, the trustee, mortgagee, or beneficiary record a notice of default in the office of the county recorder where the mortgaged or trust property is situated.~~

~~This bill would make a nonsubstantive change to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: no.

State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1940.97 is added to the Civil Code, to  
2 read:

3     1940.97. (a) An owner of a qualified rental unit shall not take  
4 action to terminate any tenancy within one year of acquiring  
5 ownership, including, but not limited to, making a demand for  
6 possession of a rental unit, threatening to terminate a tenancy,  
7 serving a notice to quit or other eviction notice, or bringing an  
8 action to recover possession or to be granted recovery of  
9 possession of a qualified rental unit, unless one of the following  
10 applies:

11     (1) The tenant has not paid the rent due. The rent does not  
12 become due within the meaning of this paragraph until the owner  
13 has served the tenant a written notice informing the tenant of the  
14 location where, and the manner in which, the tenant shall pay the  
15 rent. The owner may not retroactively demand or collect rent for  
16 rental periods before service of this notice.

17     (2) The tenant has violated a condition or covenant of the  
18 tenancy, other than the obligation to surrender possession upon  
19 proper notice, and has failed to cure the violation after having  
20 received written notice thereof from the owner.

21     (3) The tenant is committing waste upon the premises, contrary  
22 to the conditions or covenants of his or her lease, is maintaining,  
23 committing, or permitting the maintenance or commission of a  
24 nuisance upon the premises, or is using the premises for an  
25 unlawful purpose.

26     (4) The owner is a natural person who seeks in good faith to  
27 recover possession of the qualified rental unit for use and  
28 occupancy by his or her spouse, child, parent, or grandparent.  
29 The owner may use this ground only once for each spouse, child,  
30 parent, or grandparent.

1 (b) The owner shall comply with the procedural and notice  
2 requirements of the law of this state, including Section 1161 of the  
3 Code of Civil Procedure, before pursuing an unlawful detainer  
4 action.

5 (c) If the prior owner was responsible for maintaining utility  
6 services, the owner of a qualified rental unit shall ensure that  
7 utility services to the units are not interrupted or terminated.

8 (d) The owner of a qualified housing unit shall comply with the  
9 notification requirements of Section 1962 of the Code of Civil  
10 Procedure.

11 (e) (1) A landlord who violates this section shall be liable to  
12 the tenant in a civil action for all of the following:

13 (A) Actual damages incurred by the tenant.

14 (B) An amount not to exceed one hundred dollars (\$100) for  
15 each day or part thereof the landlord remains in violation of this  
16 section. In determining the amount of the award, the court shall  
17 consider proof of matters as justice may require; however, in no  
18 event shall less than two hundred fifty dollars (\$250) be awarded  
19 for each separate cause of action. Each subsequent or repeated  
20 violation, which is not committed contemporaneously with the  
21 initial violation, shall be treated as a separate cause of action and  
22 shall be subject to a separate award of damages.

23 (2) In any action brought pursuant to this section, the court  
24 shall award reasonable attorney's fees to the prevailing party.  
25 The tenant may seek appropriate injunctive relief to prevent  
26 continuing or further violation of the provisions of this section  
27 during the pendency of the action. The remedy provided by this  
28 section is not exclusive and does not preclude the tenant from  
29 pursuing any other remedy which the tenant may have under any  
30 other provision of law.

31 (f) Nothing in this section shall be construed to affect the  
32 authority of a public entity to take any other action that is  
33 authorized by law to regulate the grounds for eviction, and this  
34 section shall not, and shall not be construed to, preempt any local  
35 ordinance governing the rights of tenants. This section is not  
36 intended and it shall not be construed to be a limitation or  
37 constraint on the authority or ability of a local government, as  
38 may otherwise be provided by law, to require or provide tenant  
39 protections in addition to the requirements of this section.

1 (g) For purposes of this section, a "qualified rental unit" means  
2 real property that is rented or leased for residential purposes,  
3 including a single-family dwelling, duplex, apartment,  
4 condominium, cooperative, or townhouse, whose owner acquired  
5 the property at a trustee's sale or a sale held pursuant to a judicial  
6 foreclosure proceeding, or through a deed in lieu of foreclosure,  
7 including a sale of property under the power of sale contained in  
8 any deed of trust or mortgage.

9 (h) This section shall remain in effect only until January 1, 2013,  
10 and as of that date is repealed, unless a later enacted statute, that  
11 is enacted before January 1, 2013, deletes or extends that date..

12 SEC. 2. Section 2924.9 is added to the Civil Code, to read:

13 2924.9. (a) Notwithstanding any other provision of law, if  
14 residential real property that is rented or leased for residential  
15 purposes is acquired pursuant to a trustee's sale or a sale of  
16 foreclosure, Section 1940.97 shall apply.

17 (b) This section shall remain in effect only until January 1, 2013,  
18 and as of that date is repealed, unless a later enacted statute, that  
19 is enacted before January 1, 2013, deletes or extends that date.

20 SECTION 1. ~~Section 2924 of the Civil Code is amended to~~  
21 ~~read:~~

22 ~~2924. (a) Every transfer of an interest in property, other than~~  
23 ~~in trust, made only as a security for the performance of another~~  
24 ~~act, is to be deemed a mortgage, except when in the case of~~  
25 ~~personal property it is accompanied by actual change of possession,~~  
26 ~~in which case it is to be deemed a pledge. Where, by a mortgage~~  
27 ~~created after July 27, 1917, of any estate in real property, other~~  
28 ~~than an estate at will or for years, less than two, or in any transfer~~  
29 ~~in trust made after July 27, 1917, of a like estate to secure the~~  
30 ~~performance of an obligation, a power of sale is conferred upon~~  
31 ~~the mortgagee, trustee, or any other person, to be exercised after~~  
32 ~~a breach of the obligation for which that mortgage or transfer is a~~  
33 ~~security, the power shall not be exercised except if the mortgage~~  
34 ~~or transfer is made pursuant to an order, judgment, or decree of a~~  
35 ~~court of record, or to secure the payment of bonds or other~~  
36 ~~evidences of indebtedness authorized or permitted to be issued by~~  
37 ~~the Commissioner of Corporations, or is made by a public utility~~  
38 ~~subject to the provisions of the Public Utilities Act, until all of the~~  
39 ~~following apply:~~



1 ~~(1) The trustee, mortgagee, or beneficiary, or any of their~~  
2 ~~authorized agents shall first file for record, in the office of the~~  
3 ~~recorder of each county wherein the mortgaged or trust property~~  
4 ~~or some part or parcel thereof is situated, a notice of default. That~~  
5 ~~notice of default shall include all of the following:~~

6 ~~(A) A statement identifying the mortgage or deed of trust by~~  
7 ~~stating the name or names of the trustor or trustors and giving the~~  
8 ~~book and page, or instrument number, if applicable, where the~~  
9 ~~mortgage or deed of trust is recorded or a description of the~~  
10 ~~mortgaged or trust property.~~

11 ~~(B) A statement that a breach of the obligation for which the~~  
12 ~~mortgage or transfer in trust is security has occurred.~~

13 ~~(C) A statement setting forth the nature of each breach actually~~  
14 ~~known to the beneficiary and of his or her election to sell or cause~~  
15 ~~to be sold the property to satisfy that obligation and any other~~  
16 ~~obligation secured by the deed of trust or mortgage that is in~~  
17 ~~default.~~

18 ~~(D) If the default is curable pursuant to Section 2924e, the~~  
19 ~~statement specified in paragraph (1) of subdivision (b) of Section~~  
20 ~~2924e.~~

21 ~~(2) Not less than three months shall elapse from the filing of~~  
22 ~~the notice of default.~~

23 ~~(3) After the lapse of the three months described in paragraph~~  
24 ~~(2), the mortgagee, trustee or other person authorized to take the~~  
25 ~~sale shall give notice of sale, stating the time and place thereof, in~~  
26 ~~the manner and for a time not less than that set forth in Section~~  
27 ~~2924f.~~

28 ~~(b) In performing acts required by this article, the trustee shall~~  
29 ~~incur no liability for any good faith error resulting from reliance~~  
30 ~~on information provided in good faith by the beneficiary regarding~~  
31 ~~the nature and the amount of the default under the secured~~  
32 ~~obligation, deed of trust, or mortgage. In performing the acts~~  
33 ~~required by this article, a trustee shall not be subject to Title 1.6c~~  
34 ~~(commencing with Section 1788) of Part 4.~~

35 ~~(c) A recital in the deed executed pursuant to the power of sale~~  
36 ~~of compliance with all requirements of law regarding the mailing~~  
37 ~~of copies of notices or the publication of a copy of the notice of~~  
38 ~~default or the personal delivery of the copy of the notice of default~~  
39 ~~or the posting of copies of the notice of sale or the publication of~~  
40 ~~a copy thereof shall constitute prima facie evidence of compliance~~

1 with these requirements and conclusive evidence thereof in favor  
2 of bona fide purchasers and encumbrancers for value and without  
3 notice.

4 (d) All of the following shall constitute privileged  
5 communications pursuant to Section 47:

6 (1) The mailing, publication, and delivery of notices as required  
7 by this section.

8 (2) Performance of the procedures set forth in this article.

9 (3) Performance of the functions and procedures set forth in  
10 this article if those functions and procedures are necessary to carry  
11 out the duties described in Sections 729.040, 729.050, and 729.080  
12 of the Code of Civil Procedure.

13 (e) There is a rebuttable presumption that the beneficiary  
14 actually knew of all unpaid loan payments on the obligation owed  
15 to the beneficiary and secured by the deed of trust or mortgage  
16 subject to the notice of default. However, the failure to include an  
17 actually known default shall not invalidate the notice of sale and  
18 the beneficiary shall not be precluded from asserting a claim to  
19 this omitted default or defaults in a separate notice of default.

## BILL ANALYSIS

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Date of Hearing: May 12, 2009

ASSEMBLY COMMITTEE ON JUDICIARY  
Mike Feuer, Chair  
AB 603 (Price) - As Amended: April 13, 2009

As Proposed to Be Amended

SUBJECT : FORECLOSURE: TEMPORARY TRANSITION PERIOD FOR  
RESPONSIBLE TENANTSKEY ISSUE : TO PROTECT INNOCENT RENT-PAYING TENANTS AT RISK OF  
LOSING THEIR HOMES THROUGH NO FAULT OF THEIR OWN, SHOULD THE NEW  
OWNER OF AN OCCUPIED RENTAL UNIT OBTAINED THROUGH A FORECLOSURE  
SALE BE TEMPORARILY PREVENTED FROM EVICTING PRIOR TENANTS WHEN  
THERE IS NO CAUSE TO DO SO?FISCAL EFFECT : As currently in print this bill is keyed  
non-fiscal.

## SYNOPSIS

This bill, sponsored by California ACORN, seeks to ensure that responsible tenants living in a foreclosed rental property will not be evicted by the acquiring owner without cause for a period of one year from the time ownership was acquired through the foreclosure sale. Under this bill, the owner of a qualified rental unit would be allowed to evict any tenant for good cause.

In addition, the new owner would be permitted to evict any tenant, regardless of cause, when the owner or his or her family sought to occupy the residence. Otherwise tenants would be permitted to remain in their home for a temporary transition period up to one year, provided that the tenant paid the rent and did not violate a condition of the tenancy, commit waste, cause a nuisance or use the premises for an illegal purpose. In order to deal only with the current foreclosure crisis, the bill would sunset in two years. Supporters, representing a broad range of tenants' groups, organized labor and others contend that many tenants who pay their rent and abide by the rules are being victimized by the current foreclosure crisis and should not be subject to potential eviction merely because they happen to live in a foreclosed property. Opponents argue that the bill inappropriately forces lenders to act as landlords and will make it harder for lenders to sell foreclosure properties at an optimal selling price.

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SUMMARY : Seeks to ensure that rent-paying tenants living in a foreclosed rental property will not be evicted by the acquiring owner without cause for a period of one year from the time ownership was acquired through the foreclosure sale. Specifically, this bill :

- 1) Defines a "qualified rental unit" as real property that is rented or leased for residential purposes, including a single-family dwelling, duplex, apartment, condominium, cooperative, townhouse, community apartment, or residential hotel whose owner acquired the property either through:
  - a) foreclosure under a mortgage or deed of trust
  - b) a trustee's sale or a sale held pursuant to a judicial foreclosure proceeding; or
  - c) a deed in lieu of foreclosure, including a sale of property under the power of sale contained in any deed of trust or mortgage.
- 2) Prevents the owner of a qualified rental unit, as defined, from taking action to terminate any tenancy within one year of acquiring ownership, including, but not limited to, making a demand for possession of a rental unit, threatening to terminate a tenancy, serving a notice to quit or other eviction notice, or bringing an action to recover possession or to be granted recovery of possession of a qualified rental unit, unless one of the following applies:
  - a) The tenant has not paid the rent due, after being served a specified notice on how to pay the rent.
  - b) The tenant has violated a condition or covenant of the tenancy, other than the obligation to surrender possession upon proper notice, and has failed to cure the violation after having received written notice thereof from the owner.

- c) The tenant is committing waste upon the premises, contrary to the conditions or covenants of his or her lease, is maintaining or committing a nuisance upon the premises, or is using the premises for an unlawful purpose.
- d) The owner is a natural person who seeks in good faith to recover possession of the qualified rental unit for use and

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occupancy by his or her self, spouse, child, parent, or grandparent.

- 3) Requires that the owner of a qualified rental unit comply with the notice requirements pertaining to multi-unit dwellings under Section 1962 of the Civil Code, as well as the procedural and notice requirements under Section 1161 of the Code of Civil Procedure before pursuing an unlawful detainer action.
- 4) Provides that if the prior owner was responsible for maintaining utility services, the owner of a qualified rental unit shall ensure that utility services to the units are not interrupted or terminated.
- 5) Specifies the civil liability of a landlord to a tenant in a civil action for violations of these provisions, including all of the following:
  - a) actual damages incurred by tenant; and
  - b) a minimum of \$250 per cause of action, with up to an additional \$100 for each day the landlord remains in violation.
- 6) Provides that the court shall award reasonable attorney's fees to the prevailing party, including a defendant when the action is frivolous, unreasonable, or without foundation.
- 7) Establishes a sunset date of January 1, 2013 for the operation of these provisions.

EXISTING LAW :

- 1) Governs the termination of tenancies and generally allows for termination of a tenancy following a foreclosure on the rental property, except in certain cities (e.g., Los Angeles, Oakland) where local ordinances prohibit automatic evictions of this type. (Code of Civil Procedure section 1161a(b)(2).)
- 2) Establishes the criteria for determining when a tenant is guilty of unlawful detainer (Code of Civil Procedure section 1161) and generally allows a landlord to evict without cause upon serving the tenant with 30 days notice of termination of the tenancy (Civil Code section 1946), except in certain cities where local ordinances prohibit eviction without "just

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cause."

- 3) Specifically requires that, after a rental property is sold into foreclosure, tenants or sub-tenants of the rental property shall be provided 60 days notice before they may be removed from the property. (Civil Code Section 2924.8.)

COMMENTS : This bill seeks to ensure that rent-paying tenants living in a foreclosed rental property will not be evicted by the acquiring owner without cause for a period of one year from the time ownership was acquired through the foreclosure sale. Under this bill, the owner of a qualified rental unit would be allowed to evict any tenant for good cause. In addition, the new owner would be permitted to evict any tenant when the owner or his or her family sought to occupy the residence. Otherwise tenants would be permitted to remain in their home for a temporary transition period up to one year, provided that the tenant paid the rent and did not violate a condition of the tenancy, commit waste, cause a nuisance or use the premises for an illegal purpose.

The sponsor of the bill, California ACORN, writes in support:

Over the next few years, increasing foreclosure rates will continue to severely impact the lives of families

in rental properties. As a result, tenants living in these properties who have consistently and responsibly paid their rent when due, are often forced to find quick, affordable housing in California's expensive marketplace. Further, we see the banks are losing money from vacant properties that aren't selling and that those properties are destroying town and cities all over the state. ACORN believes AB 603 will address these issues by creating a system where rent-paying tenants are not evicted and left homeless, while ensuring that new owners can profit from rent received, and at the same time, protect communities from the spread of additional vacant properties. It is a reasonable, logical solution for all parties involved.

Impact of the Foreclosure Crisis on Renters. The current foreclosure crisis in California not only impacts homeowners, but also tens of thousands of renters who happen to live in properties subject to foreclosure. According to one recent

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study, it is estimated that 225,000 renters in California lived in rental units that went through foreclosure in 2008 alone. (Hidden Impact: California Renters in Foreclosure Crisis, Tenants Together, April, 2009.) The National Low Income Housing Coalition estimates that 40% of the families who are displaced by a foreclosure are renters. (Renters in Crisis, National Low Income Housing Coalition, February 20, 2009.)

Because California law generally allows a tenant to be evicted without cause after the rental property is sold in a foreclosure sale, the foreclosure crisis impacts even those tenants who consistently pay their rent on time but have the misfortune of having a landlord who is not paying the mortgage. This of course includes many tenants in California who are senior citizens or low-to-moderate income families.

This Bill Follows the Lead of Fannie Mae's National REO Rental Policy Allowing Tenants to Stay in Foreclosed Rental Housing.

In January 2009, national mortgage industry leaders Fannie Mae and Freddie Mac instituted a new policy allowing tenants to continue to live in foreclosed properties, with a month-to-month lease, until the property is sold to a new owner. The new policy applies only to renters occupying the property at the time of foreclosure, and includes tenants of any type of single-family property, including residents of two- to four-unit properties, condos, co-op, single-family detached homes, and manufactured housing. After the foreclosure is complete, renters are offered the opportunity to either accept an incentive payment to vacate the property, or sign a new month-to-month lease with Fannie Mae where they will be charged market rate rent. (See

[http://www.fanniemae.com/newsreleases/2009/faq/FAQ\\_national\\_REO\\_rental\\_policy\\_010709.pdf](http://www.fanniemae.com/newsreleases/2009/faq/FAQ_national_REO_rental_policy_010709.pdf).)

Recent articles in the press suggest that, despite the recent changes in Fannie Mae and Freddie Mac policy, it is still common for tenants in foreclosed properties not held by these two government mortgage companies to be evicted. (See, e.g., The Rent Is All Paid Up, but Eviction Still Looms, New York Times, May 2, 2009.) In following the lead of Fannie Mae and Freddie Mac in this area, this bill recognizes the value in allowing tenants to continue living in rental housing even after it is sold in foreclosure.

Under this bill, an owner of the foreclosed property would not

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be precluded from offering the tenant either an incentive payment to vacate the property or a month-to-month lease, actions consistent with the Fannie Mae policy. However, the bill goes farther than the Fannie Mae policy in that, should the tenants wish to stay in the home, the bill would prevent an owner who acquired the property through foreclosure from evicting the tenants without cause, as provided, for a period of one year after the new owner acquired the property. To the extent that Fannie Mae's policy produces certain economic benefits to both Fannie Mae (i.e., mitigation of income loss) and tenants living in housing it has acquired through foreclosure (i.e., displacement of families), this bill would have similar economic benefits for other owners of foreclosed

property and their tenants.

Keeping Tenants in Place After Foreclosure May Also Help Prevent Crime and Blight Problems Associated with Vacant Foreclosed Homes . In addition to mitigating losses to owners of foreclosed homes and preventing displacement of families who rent, this bill arguably has the additional benefit of alleviating neighborhood crime and blight problems associated with higher numbers of vacant foreclosed homes.

Many real estate owned properties sit vacant for many months after foreclosure, are often vandalized and ransacked by thieves, and create havens for violent crimes. These factors contribute to lower property values throughout an affected neighborhood. According to a recent article in the San Francisco Chronicle:

The droves of vacant foreclosures nationwide and locally, many of them clustered in low-income areas, act as magnets for crime and create neighborhood blight, according to residents and civic leaders. While cities try to fight back, in many cases the sheer volume is so overwhelming that their efforts are scattershot at best.

"Just about every foreclosed property on my beat has some kind of problem," said Derek Smitheram, a police officer in East Oakland, which he said has thousands of vacant homes. At foreclosed properties, "we've encountered trespassers, squatters and activities such as drug use and prostitution," Smitheram said. "There is a lot of gang graffiti and vandalism - stripping

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the properties of anything of value. Some become a dumping ground for litter. Some are used as a burglary clearinghouse - thieves will burglarize other homes in the neighborhood and store the stolen goods in the vacant foreclosure." (Vacant Foreclosed Homes Spawn Blight, Crime, San Francisco Chronicle, May 3, 2009.)

By ensuring that rent-paying, law-abiding tenants may continue to occupy the home for a one-year period after acquisition through foreclosure, this bill will reduce the number of foreclosed properties in the community that sit vacant and that can subsequently become magnets for crime and blight problems in severely affected neighborhoods.

The One Year Restriction on Eviction Does Not Apply Retroactively. The bill provides that an owner of a qualified rental unit shall not take action to terminate any tenancy within one year of acquiring ownership, unless certain conditions apply that provide cause to evict (e.g., nonpayment of rent). Importantly, as the bill is currently drafted, the one year restriction on eviction begins at the time ownership of the home was acquired through foreclosure and continues for one year from that date, not one year from the date that this bill becomes effective if eventually signed by the Governor.

Thus, if the bill is signed this year and becomes effective January 1, 2010, it would not apply to rental units that were obtained through foreclosure at any point in 2008, because the one year period following acquisition of those properties would have expired prior to January 1, 2010. Furthermore, for rental units acquired through foreclosure at some point in 2009, the restriction on eviction would amount to less than one year if there are tenants still living in the rental unit when the bill goes into effect. For example, a home acquired through foreclosure on May 1, 2009 would be subject to the restriction only for a period of four months (January 1 to April 30, 2010).

In addition, the bill is scheduled to sunset on January 1, 2013.

Viewed from this perspective, the reach of this bill may be more limited than initially apparent. This bill would primarily apply to foreclosures occurring in 2010, 2011, and 2012 before the proposed law sunsets. It would apply for a period of less than one year to properties which were obtained through

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foreclosure in 2009, and not at all to foreclosures that

happened in 2008 or earlier. These facts may alleviate some concern by purchasers of foreclosed homes that the bill poses an unfair "surprise" by imposing burdensome new restrictions that were unforeseen at the time the purchaser decided to acquire the foreclosed property. Such a claim would be true mainly for properties obtained through foreclosure in 2009 prior to this bill being signed. Purchasers or potential purchasers would therefore have a period of months prior to the effective date of the bill to adjust their plans accordingly.

ARGUMENTS IN OPPOSITION : The bill is opposed by a number of trade associations, including bankers, mortgage bankers, and the California Chamber of Commerce. Several associations combined to submit a single letter of opposition, stating:

By precluding an action to terminate tenancy, AB 603 inappropriately forces lenders to be landlords and property managers. AB 603 will delay economic recovery in the housing sector by extending the time duration of reducing existing housing inventory and REO properties due to foreclosures. Until this inventory is cleared, new housing starts will suffer along with all of the benefits that go with new construction.

Two apartment associations from Southern California have written to express their opposition to the bill, stating:

Despite the terms of the bill, new homeowners will not be able to take occupancy upon transfer because they will have to prove that they will move into the property and once they do, they will have to wait no less than 60-days from the date they take title (pursuant to SB 1137 of 2008). As a consequence of this proposed change in law, AB 603 will be one of the most punitive disincentives for families to purchase foreclosed homes this year.

[In addition] this bill will encourage lenders (who generally take title to property in a foreclosure sale) to accelerate foreclosures because they will know that they will have difficulty selling because of the new and burdensome requirements that will be placed on all prospective purchasers. Unquestionably the property will sell at a lower value.

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Author's Clarifying Amendments : The author proposes various amendments to correct and clarify issues, including the definition of "qualified rental unit" and the one year coverage period to such units. The amendments appear below:

- 1) On page 2, line 28, after "her", insert "self,"
- 2) On page 3, lines 9-10, delete "Code of Civil Procedure" and replace with "Civil Code."
- 3) On page 4, delete lines 1-8 and insert the following:
 

(g) For purposes of this section, a "qualified rental unit" means real property that is rented or leased for residential purposes, including a single-family dwelling, duplex, apartment, condominium, cooperative, ~~or~~ townhouse, community apartments, or residential hotels whose owner acquired the property through foreclosure under a mortgage or deed of trust; or at a trustee's sale or a sale held pursuant to a judicial foreclosure proceeding, or through a deed in lieu of foreclosure, including a sale of property under the power of sale contained in any deed of trust or mortgage. A qualified rental unit shall remain covered for one year after the trustee sale or other specified transaction.
- 4) The author likewise proposes to clarify the important enforcement mechanism in the bill by which tenants would have the right to bring a private civil action when the law is violated. A prevailing party in such a case would be entitled to attorney's fees, as is often the case when a statutory enforcement scheme relies upon private actions and the amount at stake is not sufficient to attract legal representation. This provision is intended to apply to all prevailing parties, without discouraging bona fide actions simply because they may prove to be unsuccessful, as legitimate cases sometimes are. Borrowing from the longstanding practice in other contexts, the author prudently proposes to clarify that prevailing defendants may recover attorney's fees when the action is frivolous, unreasonable, or without foundation. (E.g., *Rosenman v. Christensen* (2001) 91 Cal. App. 4th 859.) The amendment is on page 3, line 24, after "party," insert a comma and "including a defendant when the action is frivolous,"

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unreasonable, or without foundation."

Pending Legislation : AB 331 (Hall) complements this bill prior to a foreclosure sale by requiring a landlord, at the time of executing a rental agreement for a single-family dwelling, to disclose to a prospective tenant if the property is subject to any outstanding liens or pending suits. AB 331 is scheduled to be heard by the Committee on the same day as AB 603.

Prior Legislation : SB 1137 (Perata) Chapter 69, Statutes of 2008, increased from 30 days to 60 days the time that a tenant or subtenant in possession of a rental housing unit at the time the property is sold in foreclosure is allowed to vacate the property, as specified.

AB 2568 (Torrico) of 2008 would have provided various protections for renters who are displaced as a result of foreclosure, generally requiring the successor in interest (often a bank) to assume some of the obligations of the former landlord, including returning a tenant's security deposit. This bill was vetoed by the Governor.

REGISTERED SUPPORT / OPPOSITION :Support

California Association of Community Organizations for Reform Now (ACORN) (sponsor)  
Alameda Labor Council, AFL-CIO  
American Association of Retired Persons (AARP)  
California Labor Federation  
California Partnership  
California Reinvestment Coalition  
California Rural Legal Assistance Foundation  
CALPIRG  
Center for Responsible Lending  
CHARO Community Development Corporation  
Coalition for Economic Survival  
Community Legal Services in East Palo Alto  
Consumers Union  
East Bay Alliance for a Sustainable Economy (EBASE)  
Greater Richmond Interfaith Program  
Legal Aid Society of San Mateo County  
Office & Professional Employees International Union (OPEIU),  
Local 3

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Pacific Community Services, Inc.  
The Parkmerced Residents' Organization  
Sacramento Housing Alliance  
Strategic Concepts in Organizing and Policy Education (SCOPE)  
Tenants Together  
Urban Habitat  
Western Center on Law and Poverty  
2 individuals

Opposition

Apartment Association, California Southern Cities  
Apartment Association of Orange County  
California Association of Realtors  
California Bankers Association  
California Business Properties Association  
California Chamber of Commerce  
California Credit Union League  
California Financial Services Association  
California Independent Bankers  
California Mortgage Association  
California Mortgage Bankers Association

Analysis Prepared by : Anthony Lew / JUD. / (916) 319-2334



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OAKLAND

2009 MAY 14 PM 4:37

APPROVED AS TO FORM AND LEGALITY

  
DEPUTY CITY ATTORNEY

## OAKLAND CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_ C. M. S.

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### RESOLUTION TO SUPPORT AB 603 (PRICE) TO ADD TENANT PROTECTIONS IN FORECLOSURE SITUATIONS

**WHEREAS**, the City of Oakland has experienced a very high rate of mortgage foreclosures; and

**WHEREAS**, many of the foreclosures have resulted in the evictions of tenants through no fault of their own; and

**WHEREAS**, many of the foreclosures have involved properties rented for residential purposes for which the defaulting owner is responsible for providing the utilities services to the tenant; and

**WHEREAS**, in many instances the defaulting owner has failed to pay the utility bills resulting in interruptions of the utility services to the tenants in said properties; and

**WHEREAS** in some reported instances owners who acquire title in foreclosure deliberately and intentionally fail to assume payment of the utilities to pressure tenants to move out and abandon their rights secured by Oakland's Just Cause for Eviction Ordinance; and

**WHEREAS**, in some instances utility services to units in foreclosed residential rental buildings are interrupted or terminated causing unsanitary and unhealthy conditions in the affected rental units; and

**WHEREAS**, such unsanitary conditions have a negative impact on the affected tenants, as well as the general conditions of health and safety of the City of Oakland; and

**WHEREAS**, the provisions of the bill are complementary to the Municipal Ordinances enacted for the protection of tenants; and

**WHEREAS**, Assemblyperson Curren Price has introduced Assembly Bill 603, which would require successors interest to a landlord obligated to pay utilities bills for services to her or his tenants, creates a private right of action for tenants to directly obtain relief from lack of utility service from the Courts, now, therefore, be it

**RESOLVED:** That the City Council of the City of Oakland hereby supports AB 603 (Price) which will provide additional protections for tenants in the foreclosure process, including

requiring successors-in-interest of landlords who lost their properties in foreclosure to assume responsibility for paying for utilities services the former owner was obligated to provide; and be it

**FURTHER RESOLVED:** That the City Council hereby authorizes and directs the City Administrator, and/or his designee, to work actively for the passage of AB 603.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2009

**PASSED BY THE FOLLOWING VOTE:**

AYES - BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT BRUNNER

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_

LaTonda Simmons  
City Clerk and Clerk of the Council  
of the City of Oakland, California