



Bill Analysis

Author: Ting, et al.

Sponsor:

Bill Number: AB 828

Analyst: Cristina Perfino

Phone: (916) 845-4313

Amended: July 28, 2020

Attorney: Shane Hofeling

Related Bills: See Legislative
History

SUBJECT

Temporary Moratorium on Foreclosures due to COVID-19

SUMMARY

This bill, under the Civil Code (CC), Code of Civil Procedure (CCP), and Government Code (GC), would prohibit foreclosures and unlawful detainer actions while there is a state or locally declared state of emergency related to COVID-19. In addition, this bill, under the Revenue and Taxation Code (R&TC), would suspend the sale of property tax-defaulted residential real property while there is a state or locally declared state of emergency related to COVID-19.

This analysis only addresses the provisions that would impact the department.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The July 28, 2020, amendments made changes to the bill related to the legislative findings and declarations, under the CC, and the CCP. Changes were made to the GC related to foreclosures, unlawful detainers and county recordation. In addition, a section was added to the CCP related to unlawful disclosures and the R&TC provision regarding suspension of sales of tax-defaulted residential real property.

REASON FOR THE BILL

The reason for this bill is to provide relief to Californians experiencing difficulty remaining current on their rental or mortgage housing payments due to economic hardship brought on by COVID-19.

ANALYSIS

This bill, under the CC, CCP, and GC, would prohibit foreclosures and unlawful detainer actions while there is a state or locally declared state of emergency related to COVID-19 in the jurisdiction where the property or residential real property is located.

Under the CC, this bill states that no person shall take any action to foreclose on residential real property, as specified. Any action taken in violation of this section is void. Under the CCP, any action for foreclosure on a mortgage or deed of trust of residential real property is stayed. The court may not take any action and or issue decisions or judgments unless the court finds that an action is required to further the public health and safety subject to a state or locally declared state of emergency on account of COVID-19.

No party shall submit for recordation, any instrument, paper, or notice that constitutes a notice of default, notice of sale, or a trustee's deed, as specified. Any sale made on the basis of a false or omitted affidavit shall be voided.

In addition, under the R&TC, property tax collectors shall suspend the sale of property tax-defaulted residential real property in the jurisdiction where the residential real property is located.

The bill specifies that these COVID-19 related provisions would become inoperative 91 days after the state or local state of emergency ends and would be repealed on January 1, 2022.

Effective/Operative Date

As an urgency measure, this bill would be effective and operative immediately upon enactment.

Federal/State Law

Federal Law

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) provides a federally-backed mortgage payment forbearance option for all borrowers who, either directly or indirectly, suffer a financial hardship due to the novel coronavirus (COVID-19) national emergency.

A forbearance is a temporary postponement or reduction of mortgage payments. It is not payment forgiveness. Under the CARES Act, borrowers are entitled to an initial forbearance period of up to 180 days, upon a borrower's request. Also, upon a borrower's request, the forbearance must be extended for up to an additional 180 days. A borrower can, at any time the borrower chooses, shorten the forbearance and resume repayment of the loan.

A servicer of a federally backed mortgage loan may not initiate any judicial or non-judicial foreclosure process, move for a foreclosure judgment or order of sale, or execute a foreclosure-related eviction or foreclosure sale for a 60-day period beginning on March 18, 2020.

State Law

Tax Liens

Under both federal and state income tax laws, in general, if a taxpayer owes delinquent tax amounts, a tax lien may automatically arise by operation of law for that amount, and is known as a statutory tax lien. A statutory tax lien is an unrecorded claim upon real and personal property for the satisfaction of a debt. Current law requires a county recorder to record any instrument, paper, or notice that is authorized or required to be recorded upon payment of proper fees and taxes.

The recording of a tax lien is a public record and is against all real and personal property belonging to the taxpayer. With respect to real property, a Notice of State Tax Lien may be filed with the County Recorder's Office of the county in which the real property is located.

Foreclosures

In California, in the event of a foreclosure, a Deed of Trust holder (through a Foreclosure Trustee) or the County Tax Collector is usually responsible for initiating a sale of property. When a property is sold at auction for more than what is owed to the party that initiated the sale, the seller generally will notify persons with recorded interests in the real property, including the Franchise Tax Board (FTB), that a sale took place. If excess proceeds are available, the FTB will submit a claim on all tax years with a statutory tax lien (at the time of sale) when the lien was recorded in the same county as where the property is located. For years without a recorded statutory tax lien, the FTB may issue an Order to Withhold (OTW) that includes the statutory tax lien amount and additional interest that has accrued from the sale date of the property, on the tax years that have a lien.

Implementation Considerations

Implementing this bill would not significantly impact the department's programs and operations.

Technical Considerations

None noted.

Policy Concerns

This bill would establish a state moratorium on foreclosure actions with different timeframes than the federal moratorium on foreclosure actions.

LEGISLATIVE HISTORY

Research of California legislation history found no legislation similar to this bill.

PROGRAM BACKGROUND

None noted.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

ECONOMIC IMPACT

Revenue Estimate

This bill, as amended on July 28, 2020, would not change the way income or franchise tax is calculated under the Revenue and Taxation Code. However, based on current collection data, this bill would delay approximately \$4 million of tax lien collections from the gains on foreclosed properties.

This estimate assumes the COVID-19 state or locally declared State of Emergency would remain in place until June 30, 2021, and that the number of foreclosures during this time would remain consistent.

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

To be determined.

ARGUMENTS

To be determined.

LEGISLATIVE STAFF CONTACT

Cristina Perfino
Legislative Analyst, FTB
(916) 845-4313
cristina.perfino@ftb.ca.gov

Tiffany Christiansen
Revenue Manager, FTB
(916) 845-5346
tiffany.christiansen@ftb.ca.gov

Annette Kunze
Legislative Director, FTB
(916) 845-6333
annette.kunze@ftb.ca.gov