



McCalla Raymer Leibert Pierce, LLC

301 E. Ocean Boulevard, Suite 1720

Long Beach, CA 90802

T. (833) 290- 7452

www.mccalla.com

Office Hours: Monday - Friday 9am - 5pm (Pacific)

ALABAMA	ILLINOIS
CALIFORNIA	MISSISSIPPI
CONNECTICUT	NEVADA
FLORIDA	NEW JERSEY
GEORGIA	NEW YORK
OREGON	TEXAS
WASHINGTON	

CA SB-1079 Creates a Stage for Future Litigation

Michael Gonzales, Managing Partner of CA/NV Foreclosure and Litigation,
Michael.Gonzales@mccalla.com

In a misguided effort to steer future foreclosed homes into the hands of tenants and owner-occupants rather than corporate investors, the California legislature hastily passed CA SB-1079, which made sweeping changes to the foreclosure sale process and set the stage for our industry's next wave of litigation.

Effective January 1, 2021, SB-1079 creates an entirely new post foreclosure process which may grant an "eligible bidder" 15 days post sale to send in a non-binding notice of intent to bid on the property, which automatically triggers an additional 30 days to send in an affidavit affirming they are an eligible bidder, along with certified funds. Eligible bidders are listed as: tenants of the foreclosed property (tenants are prioritized), a person who wants to purchase the property as their primary residence, or certain types of nonprofit organizations. The post sale bidding deadline is 5 PM of the 45th day after the original sale date in which all bids must then be reviewed to determine the highest bidder and funds are returned to non-winning bidders.

The statute prioritizes an eligible tenant as the "winner" of the sale once the tenant submits bid funds **equal** to the bid at sale (along with the applicable affidavit) because this is deemed *prior* to a non-tenant eligible bidder submitting bid funds *exceeding* the original bid at sale. However, the likelihood of this is slim since certified funds would be required (usually a cashier's check) for the entire bid amount.

In the event of non-tenant Eligible Bidders, the statute states sales "shall not be deemed final until the **earliest** of the following..." (subsections (c)(1)-(4)). The term **earliest** is key, so despite the statute being silent on multiple eligible bidders for the same amount, it is our belief that courts will deem the eligible bidder who submitted the highest bid first, the winner. The public policy of the bidding process is to raise as much money as possible to pay off all liens and put the excess into the former borrower's pocket. Accepting lower bids, regardless of party type, would fly directly in the face of this long-standing policy.

This creates multiple lanes for delay tactic litigation as well as fights over who wins, especially since there are no consequences for eligible bidders' failure to consummate the process. We anticipate an increase in Temporary Restraining Order applications as a large wave of loans come off hold and move into the default process. These Temporary Restraining Orders must be strenuously defended as the recently passed CA AB-3088 states that attorneys' fees and costs are recoverable as soon as a borrower obtains a Temporary Restraining Order.

As in the past, it will take a couple years before the true effects of the bill are known and cases work their way through our judicial system, but lenders and servicers can be assured a wave of litigation is headed their way.