

Date of Hearing: April 25, 2012

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

Norma Torres, Chair

AB 2314 (Carter) – As Amended: April 11, 2012

SUBJECT: Real property: blight

SUMMARY: Removes the sunset on a statute that permits local governments to fine property owners for failure to maintain certain property and makes other changes relating to the ability of a local enforcement agency to abate nuisances and correct substandard building violations.

Specifically, this bill:

- 1) Removes the sunset on and thereby makes permanent a statute that requires a legal owner to maintain vacant residential property purchased or acquired at foreclosure.
- 2) Provides that if a person has purchased, and is in the process of abating a violation at a residential property that has been foreclosed upon on or after January 1, 2008, then a local enforcement agency shall not commence any action or proceeding until at least 60 days after the person takes title to the property, unless a shorter period of time is deemed necessary by the enforcement agency to prevent or remedy an immediate threat to the health and safety of the public or occupants of the structure.
- 3) Requires an entity, that releases a lien securing a deed of trust or mortgage on a property for which a notice of pendency of action has been recorded by an enforcement agency, to notify the enforcement agency within 30 days of releasing the lien.
- 4) Provides that where a receiver has been appointed to take possession of a substandard building, a court may, upon the request of either the receiver or an enforcement agency, order the owner of the property to pay all unrecovered costs associated with the receivership.

EXISTING LAW:

- 1) Requires, until January 1, 2013, a legal owner to maintain vacant residential property purchased at a foreclosure sale or acquired by that owner through foreclosure under a mortgage or deed of trust. Authorizes a local governmental entity to impose civil fines and penalties for failure to maintain that property of up to \$1000 per day for a violation (Civil Code Section 2929.3(a)(1)).
- 2) Requires the governmental entity to provide a period of not less than 30 days for the legal owner to remedy a violation of the above provision before imposing a civil fine or penalty and to allow for a hearing and an opportunity to contest any fine, as specified. However, a governmental entity may provide less than 30 days' notice, as specified, if a specific condition of the property threatens public health or safety (Civil Code Section 2929.3(a)(2) and (c)).
- 3) Defines "failure to maintain," for purposes of the above, to mean failure to care for the exterior of the property, including, but not limited to, permitting excessive foliage growth that diminishes the value of the surrounding properties, failing to take action to prevent

trespassers or squatters from remaining on the property, or failing to take action to prevent mosquito larvae from growing in standing water or other conditions that create a public nuisance (Civil Code Section 2929.3(b)).

- 4) Specifies that fines and penalties collected pursuant to the above shall be directed to local nuisance abatement programs; that a governmental entity may not impose fines under both the above provisions and a local ordinance; that the above provisions do not preempt any local ordinance; and, that any rights and remedies provided by the above provisions are cumulative and in addition to any other rights and remedies provided by law (Civil Code Section 2929.3(d)-(h)).
- 5) Provides that if any building is constructed or maintained in violation of any provision of law or regulation, as specified, or if a nuisance exists in any building or upon the lot on which it is situated, an enforcement agency shall, after 30 days' notice to abate the nuisance or violation, institute any appropriate action or proceeding to prevent, restrain, correct, or abate the violation or nuisance. Provides that the enforcement agency shall commence proceedings to abate the violation by repair, rehabilitation, vacation, or demolition of the building, as specified. (Health & Safety Code Section 17980(a)-(b))
- 6) Provides that if an owner fails to comply within a reasonable time with the terms of an order or notice to abate a nuisance or violation, the enforcement agency may seek and a court may order fines and penalties as specified, including the appointment of a receiver to take possession of the property in order to correct the conditions that give rise to the nuisance or violation. Specifies the power and duties that shall be granted to the receiver, including but not limited to, the power to make contracts and employ contractors as necessary to correct the condition cited in the violation; the power to collect rents and income from the substandard building; and the power to borrow funds to pay for necessary repairs and, with the approval of the court, to secure a lien on the property to secure that debt. (Health & Safety Code Section 17980.7)

FISCAL EFFECT: None.

COMMENTS:

This bill is part of a package of bills sponsored by the California Attorney General in response to the foreclosure crisis. According to the author, communities throughout the state are being inundated with foreclosed homes which often fall into disrepair. Public health and safety are implicated by vacant foreclosed homes because they attract gangs, prostitution, drug users, squatters, and unattended property can create a mosquito abatement problem.

Existing law requires a local enforcement entity to enforce the State Building Standards Code and any other specified rules and regulations. If the local enforcement agency identifies a violation, it must issue an order to abate the nuisance and if the nuisance is not abated within 30 days or less depending on the degree of violation, the enforcement agency must take some action to abate. This bill would give a person who purchases a property that was foreclosed on or after January 1, 2008, and who is in the process of abating the violation 60 days to correct the violation. An enforcement agency can give a shorter time period to correct a violation if it determines that is necessary to protect the health and safety of the occupants of the property or the public.

In 2008, SB 1137 (Perata), Chapter 69, required that the owner maintain a vacant property or face \$1,000 per day fine. It also gave the owner 30 days to correct a violation once notification has been received from the local government. Without an extension this provision would sunset at the end of this year, AB 2314 deletes the sunset date and extends this provision indefinitely.

Local governments have used this provision to various degrees. Some have developed robust ordinances that produced significant revenue, the majority has not. One challenge reported by local enforcement agencies in enforcing local ordinances is identifying the owner of the property when the owner is a lender. Lenders are not required to record the deed of trust at the time of foreclosure and this is the mechanism enforcement agencies use to recover fines. Another challenge to enforcing local ordinances is man power. Many cities do not have the financial resources in the current climate to devote to code enforcement.

This bill would require a lienholder who releases a lien on any property on which the enforcement agency has recorded a *lis pendens* to notify the enforcement agency within 30 days of releasing the lien. According to the sponsor, when an enforcement agency must make a determination as to the appropriate enforcement action, if any, to take against a substandard property, it is often helpful for it to know whether or not any liens have been recorded against the property and if and when the lien is released. This would create an efficient means for the enforcement agency to know when a lien has been released.

This bill would allow for the recovery of certain costs associated with a health and safety receivership. Such receiverships are typically used as a last resort. But where a property owner refuses to take any action, even after receiving notice and given adequate time to correct a violation, the enforcement may seek, and the court may appoint, a receiver to take possession of the property. Existing law sets forth the conditions for establishing the receivership and lists certain powers that a court may grant to the receiver. The receiver's primary function in taking possession of the property is to do whatever is necessary to correct the conditions that gave rise to the receivership. For example, the receiver typically hires contractors to make needed repairs. In order to pay these contractors, the receiver might be empowered to collect rents on the property or to obtain loans that are secured by a lien upon the property. This bill does not change any of the statutory requirements for establishing a receivership or affect the receiver's statutory powers; it would, however, once a receivership has been established, permit either the receiver or the enforcement agency to seek a court order requiring the owner of the property to pay any "unrecovered costs" of the receivership (i.e. presumably those costs not covered by the loans, rents, or other revenue sources). This would ensure that costs associated with rehabilitating the property are borne by the responsible party: the recalcitrant owner who refuses to correct conditions even after being placed on notice. Arguably, existing receivership statutes, which grant courts considerable discretion, would permit such a requirement in the initial court order creating the receivership. This bill, however, would expressly state that the receiver or the enforcement agency could request such an order if one is not initially provided. The bill specifies that the court "may" grant such an order; discretion will ultimately remain, consistent with existing law, with the court.

Committee Comments:

Giving individuals who are genuinely in the process to cleaning up a property should be balanced against local enforcement agencies flexibility to insure that foreclosed properties are

maintained. The committee many wish to consider whether the bill should give some parameters to what it means to be "in the process of abating a nuisance".

Committee Amendments:

On page 4, line 26, after "of" insert "diligently"

Double referred:

The bill passed the Committee on Judiciary on April 17, 2012, by a vote of 10 to 0.

REGISTERED SUPPORT / OPPOSITION:

Support

California Attorney General's Office (sponsor)
American Federation of State, County and Municipal Employees
California Nurses Association
Community Associations Institute

Opposition

None on file.

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