

The Right to Rent Act of 2009

Drafted by the Center for Economic and Political Research (CEPR)

Short Description: A bill to allow homeowners of low- and moderate-value homes who are subject to foreclosure proceedings to remain in their homes as renters for a significant period of time.

Section 1. Legislative Findings.

The Legislature finds as follows:

- (1) During the current foreclosure crisis, foreclosures have increased to three times their historic rates.
- (2) Since the late 1990s, there have been radical changes in mortgage lending, including steering high-priced mortgages to people who may have qualified for lower-priced fixed-rate mortgages and aggressive marketing of high-risk mortgages based on the assumption that the housing market would continue to inflated at historically unprecedented rates.
- (3) After extraordinary housing price increases in many parts of the state, prices declined and flattened, refinancing became impossible for many homeowners, and the bubble in housing markets burst.
- (4) Now in the midst of the most severe economic recession since the Great Depression, [INSERT number] of [INSERT state] homeowners now find themselves unable to meet their monthly mortgage payments; many others who can make payments now owe far more than their houses are worth, and are paying substantially more than it would cost to rent their house at its fair market value.
- (5) Nationally, it is estimated that one in every nine homeowners is likely to be in foreclosure over the next few years, and one in five will likely have a mortgage that is higher than their house is worth, making default a financially rational alternative.
- (6) According to the Congressional Oversight Panel established by the Emergency Stabilization Act of 2008, "The foreclosure problem has grown so large that it threatens the whole economy."
- (7) Communities with high foreclosure rates suffer increased blight and crime rates.
- (8) Foreclosures depress housing and commercial real estate prices, imposing significant costs on third parties, including home and business owners.
- (9) When families have to relocate, community ties are cut, affecting schools, health care, religious congregations, and voluntary organizations.
- (10) Providing homeowners facing foreclosure with the ability to remain in their homes while paying rent at a fair market rate will reduce these and other harmful impacts of foreclosure.

Section 2. Right to Rent Home Subject to Foreclosure.

(a) Exercise of Right—If, at any time after notice under subsection (b) for an eligible mortgage is provided to the eligible mortgagor and before the commencement of the 7-day period that ends on the first date that the foreclosing creditor may first commence or execute such foreclosure pursuant to such notice, the eligible mortgagor under the eligible mortgage that is subject to such foreclosure provides notice in accordance with section 3, notwithstanding such foreclosure or any other interests in the property, the eligible mortgagor may, at the sole option of the eligible mortgagor, continue to occupy the foreclosed property during the [INSERT time period] period that begins upon the commencement of such occupancy, subject to the requirements of subsection (c).

(b) Limitation on Timing of Foreclosure; Notice of Default and Right To Rent—Notwithstanding any other provision of law or any contract, a foreclosure of an eligible mortgage may not be commenced or executed before the expiration of the 28-day period beginning upon the receipt, by the eligible mortgagor, of written notice provided by the foreclosing creditor for the mortgage that—

- (1) clearly states that—
 - (A) the eligible mortgagor is in default on the mortgage; and
 - (B) foreclosure on the mortgage may or will be commenced on account of such default;
- (2) clearly states that the eligible mortgagor has the right, notwithstanding foreclosure, to continue to occupy the foreclosed property in accordance with this Act, and sets forth the terms of such occupancy under subsections (a) and (c); and
- (3) identifies the first date, pursuant to this section and any other provisions of law and contract, that such foreclosure may be commenced.

(c) Terms of Periodic Tenancy—Occupancy, by an eligible mortgagor, of a foreclosed property pursuant to subsection (a) shall be under a periodic month-to-month tenancy under which the owner of the property may terminate the tenancy for material breach but shall have no authority, at will, to terminate the tenancy during the occupancy pursuant to subsection (a) if the mortgagor—

- (1) timely pays to the owner of the foreclosed property rent on a monthly basis in the amount of the fair market rent for the property determined in accordance with section 4; and
- (2) uses property as the principal residence of the mortgagor.

Section 3. Required Notice. With respect to an eligible mortgage for which notice under subsection (b) has been provided, notice in accordance with this section is notice that—

- (1) is made in writing;
- (2) is submitted to—
 - (A) the court having jurisdiction and venue to conduct the covered foreclosure proceeding for the eligible mortgage or, in the case of nonjudicial foreclosure, the court in which an action is brought pursuant to section 5; and
 - (B) the foreclosing creditor; and
- (3) states that the eligible mortgagor is exercising the authority under section 2(a) to continue to occupy the foreclosed property.

Section 4. Determination of Fair Market Rent.

(a) Initial Determination—For purposes of this Act, the fair market rent for a foreclosed property involved in a covered foreclosure proceeding shall be the amount that is determined by an independent appraiser who is licensed or certified, as applicable, to conduct appraisals in the jurisdiction in which the property is located, who shall be appointed for such purpose by the court conducting such proceeding or hearing an action pursuant to section 5.

(b) Periodic Adjustments—The fair market rent determined under subsection (a) for a foreclosed property shall be adjusted annually to reflect changes in the owners' equivalent rent of primary residence component, for the appropriate city, region, or class of city, as available, of the Consumer Price Index for All Urban Consumers of the Bureau of Labor Statistics of the Department of Labor.

(c) Redetermination—If the owner of a foreclosed property or the eligible mortgagor under the eligible mortgage requests the court described in subsection (a) to redetermine the fair market rent for a foreclosed property determined pursuant to this section (as such amount may have been adjusted pursuant to subsection (b)) and agrees to pay any costs of such redetermination (including costs of the appraisal involved), the court shall provide for redetermination of the fair market rent for the foreclosed property in the manner provided under subsection (a), except that no such redetermination shall be made pursuant to a request under this subsection made before the expiration of the 12-month period beginning upon the most recent redetermination conducted at the request of the same party.

Section 5. Nonjudicial Foreclosure Proceeding. In the case of any covered foreclosure proceeding that is not conducted or administered by a court, the eligible mortgagor may bring an action in an appropriate court of the State in which the foreclosed property is located for a determination of fair market rent for the foreclosed property for purposes of this Act, by filing notice in accordance with section 3 with such court and otherwise complying with the rules of such court.

Section 6. No Bar to Foreclosure. This Act may not be construed to delay, or otherwise modify, affect, or alter any right of a creditor under an eligible mortgage to foreclose on the mortgage and to sell the foreclosed property in connection with such foreclosure, except that the right of any owner of the property to possession of the property shall be subject to the leasehold interest established pursuant to section 2(c).

Section 7. Right to Restatement This Act may not be construed to affect any right of any eligible mortgagor to reinstatement of an eligible mortgage, including any right established under contract or State law.

Section 8. Definitions. For purposes of this Act, the following definitions apply:

(1) Covered Foreclosure Proceeding—The term 'covered foreclosure proceeding' means a foreclosure proceeding with respect to an eligible mortgage, and includes any foreclosure proceeding authorized under the law of the applicable State, including judicial and non-judicial foreclosure proceedings.

(2) Eligible Mortgagor—The term 'eligible mortgagor' means a mortgagor under an eligible mortgage.

(3) Eligible Mortgage—The term `eligible mortgage' means a mortgage—

- (A) on property that—
 - (i) is a single family property; and
 - (ii) has been used as the principal residence of the eligible mortgagor for a period of not less than 2 years immediately preceding the initiation of the covered foreclosure proceeding involved;
- (B) that was made in connection with the purchase of the property by the mortgagor for a purchase price that is less than the median purchase price for residences that are located in—
 - (i) the same metropolitan statistical area; or
 - (ii) if the property is not located in a metropolitan statistical area or information for the area is not available, the State; and
- (C) that was originated before July 1, 2007.

For purposes of subparagraph (B), the median purchase price of residences located within a metropolitan area or the State shall be determined according to information collected and made available by the National Association of Realtors for such area or the State for the most recently completed month for which such information is available.

(4) Foreclosed Property—The term `foreclosed property' means, with respect to a covered foreclosure proceeding, the single family property that is subject to the eligible mortgage being foreclosed under the proceeding.

(5) Foreclosing Creditor—The term `foreclosing creditor' means, with respect to a covered foreclosure proceeding, the creditor that is foreclosing the eligible mortgage through such proceeding.

(6) Owner—The term `owner' means, with respect to a foreclosed property, the person who has title to the property pursuant to the foreclosure proceeding for the property, and any successor or assign of such person.

(7) Single Family Property—The term `single family property' means—

- (A) a structure consisting of 1 to 4 dwelling units;
- (B) a dwelling unit in a multi-unit condominium property together with an undivided interest in the common areas and facilities serving the property; or
- (C) a dwelling unit in a multi-unit project for which purchase of stock or a membership interest entitles the purchaser to permanent occupancy of that unit.

Section 9. Applicability and Sunset.

(a) Applicability—Subject to subsection (b), this Act shall apply to any covered foreclosure proceeding that has not been finally adjudicated as of the date of the enactment of this Act.

(b) Sunset—This Act shall not apply to any foreclosure proceeding commenced after the expiration of the 5-year period beginning on the date of the enactment of this Act.