



**COUNCIL AGENDA:** 5/8/2018  
**ITEM:** 2.15 (File ID: 18-666)

## *Memorandum*

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**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Toni J. Taber, CMC  
City Clerk

**SUBJECT:** SEE BELOW


**DATE:** May 3, 2018

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**SUBJECT:** SB 818 (Beall) Homeowner Bill of Rights Act 2018.

**RECOMMENDATION:** Re-affirm a position of support for SB 818 (Beall) Homeowners Bill of Rights 2018.



<b>EXPEDITED CITY COUNCIL ACTION REQUEST</b>			
<b>Department(s):</b>  Housing	<b>Date:</b>  4/25/2018	<b>Coordination:</b> City Attorney's Office City Manager's Office	<b>Dept. Approval:</b> /s/ Jacky Morales-Ferrand
			<b>CMO Approval:</b> 
<b>SUBJECT:</b> SB 818 (Beall) Homeowner Bill of Rights Act 2018			
<b>RECOMMENDED POSITION:</b> Support			
<b>RECOMMENDED ACTION:</b>			
<ol style="list-style-type: none"> <li>1. Pursuant to the City's streamlined bill process for responding quickly to legislative proposals, re-affirm a position of support for SB 818 (Beall) Homeowners Bill of Rights 2018.</li>   <li>2. Recommend a one-week turnaround to the May 8, 2018, City Council meeting so that the City's legislative representative can continue to advocate the City's position in support of SB 818.</li> </ol>			
<b>BILL SYNOPSIS:</b>			
<p>SB 818 (Beall), The Homeowners Bill of Rights Act for 2018, would reenact various provisions of the 2012 California Homeowner Bill of Rights Act that expired on January 1, 2018.</p> <p>SB 818 would prohibit an entity that forecloses on more than 175 real properties from recording a notice of default or notice of sale, or conducting a trustee's sale after a borrower submits a complete application for a first lien loan modification and that application is pending. The bill would grant a borrower 30 days to appeal if a loan modification is denied and would authorize the borrower to provide evidence that the mortgage servicer's determination was in error. During this appeal period, the Bill would prohibit a mortgage servicer from filing a notice of default, or if that notice has already been filed, from recording a notice of sale or conducting a trustee's sale. The Bill would require a mortgage servicer to send a written notice to the borrower that identifies the reasons for denial and that includes information about the denial that would be important for a borrower to be able to file an appeal.</p> <p>This Bill also contains several protections to help ensure that borrowers receive proper communication in advance of servicers' recording notices of default, and to prescribe procedures for communications during a loan modification process. The Bill would prevent servicers from declaring defaults while loan modifications or other alternatives to foreclosures are in process. It would also establish liabilities for violating the law and penalties and other enforcement mechanisms.</p>			
<b>IMPACTS TO CITY OF SAN JOSE:</b>			
<p>Senate Bill 818 would restore critical protections against dual tracking – when servicers simultaneously enter loan modification negotiations with homeowners while continuing foreclosure.</p> <p>In 2012, a San Francisco audit of 400 foreclosures determined almost all had processing issues with either legal violations or suspicious documentation. The issues ranged from failure to warn borrowers that they were</p>			

in default on their loans to institutions seizing properties in auctions without proper documentation of ownership. The report concluded about 84 percent of the files contained what appear to be violations of law.<sup>1</sup>

Shortly prior to the effective date of the Homeowner Bill of Rights, the *Mercury News* reported 517 foreclosure actions were canceled in Santa Clara County in the month October 2012. This was a 63 percent increase from the prior month. By comparison, 138 actual auctions of foreclosed properties occurred at that time.<sup>2</sup>

During the height of the foreclosure crisis in 2009, San José's owners experienced up to 1,380 foreclosure filings a month. It was in response to the foreclosure crisis that City Council approved revisions to the City's Investment Policy to add a section for Social Responsibility in relation to a financial institution's efforts toward foreclosure mitigation.

At the time, the Housing Department made the assessment that San José families face foreclosure mostly due to involuntary events, such as loss of employment or reduction in pay, or a loss of a family member. Preventing dual tracking and preserving the fair and transparent procedures from the Homeowner's Bill of Rights allows homeowners the opportunity to negotiate keeping their homes in times of crisis. The passage of SB 818 would continue to help prevent unnecessary foreclosures and potential homelessness in San José.

**POLICY ALIGNMENT:**

This bill aligns with the Council-approved *2018 Legislative Guiding Principles and Priorities* to:

- "Support legislation which strengthens rent stabilization and protects the rights and housing opportunities for residents of areas undergoing development and at risk of displacement"

**SUPPORTERS/OPPONENTS:**

Support:

- National Housing Law Project (co-sponsor)
- Housing and Economic Rights Advocates (co-sponsor)
- Attorney General Xavier Becerra
- California Asian Pacific Islander Chamber of Commerce
- California Asset Building Coalition
- California District Attorneys Association
- California Labor Federation
- California Low-Income Consumer Coalition
- California Nurses Association/National Nurses United
- California Reinvestment Coalition
- California Rural Legal Assistance Foundation
- CALPIRG
- Center for Responsible Lending
- City of West Hollywood
- Consumer Attorneys of California
- Consumers Union
- East Bay Community Law Center
- Elder Law & Advocacy
- Fair Housing Advocates of Northern California

<sup>1</sup> <https://www.nytimes.com/2012/02/16/business/california-audit-finds-broad-irregularities-in-foreclosures.html>

<sup>2</sup> <https://www.mercurynews.com/2012/11/13/bay-area-sees-big-increase-in-cancellation-of-foreclosure-auctions/>

- Fair Housing Council of Riverside County
- Faith and Community Empowerment
- Harouni Law Group
- Innovation & Sustainability PAC
- Law Foundation of Silicon Valley
- Law Offices of R. Grace Rodriguez
- Mission Economic Development Agency
- Neighborhood Partnership Housing Services
- New Economics for Women
- Private individual
- Public Counsel
- Public Law Center
- Richmond Neighborhood Housing Services
- Rural Community Assistance Corporation
- Santa Clara County Board of Supervisors
- Silicon Valley Community Foundation
- State Building and Construction Trades Council
- Sternberg Law Group
- UnidosUS
- Vantis Law Firm
- Western Center on Law and Poverty

Opposition:

- California Bankers Association
- California Chamber of Commerce
- California Financial Services Association
- California Land Title Association
- California Mortgage Bankers Association
- Civil Justice Association of CA

**STATUS OF BILL:**

SB 818 was re-referred to the Senate Judiciary Committee and is scheduled for a hearing on April 24, 2018.

**FOR QUESTIONS CONTACT:** Jacky Morales-Ferrand, Housing Director 408-535-3855