

Date of Hearing: April 5, 2010

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Mike Eng, Chair

AB 1720 (Galgiani) – As Amended: March 25, 2010

SUBJECT: Buyer's Choice Act.

SUMMARY: Makes clarifying changes to the Buyer's Choice Act. Specifically, this bill:

- 1) Creates the California "Buyer's Choice Act" notification form to be provided by the seller who has acquired property at foreclosure sale to the buyer.
- 2) Prohibits a seller from conditioning approval of the sale of residential real property acquired at foreclosure sale on the selection of title insurance and escrow services made by the buyer specified on the form.

EXISTING STATE LAW

- 1) Specifies that the Department of Corporations (DOC) has the authority to enforce licenses it finds to have violated any provision of Real Estate Settlement Procedures Act (RESPA), as amended (12 U.S.C. Sec. 2601 et seq.), or its regulations. [Financial Code Section, 17425]
- 2) Establishes the Buyer's Choice Act which prohibits a seller of residential real property improved by four or fewer dwelling units from requiring directly or indirectly as a condition of selling the property that title insurance or escrow services be purchased by the buyer from a particular title insurer or escrow agent. Sunsets on January 1, 2015. [Civil Code Section, 1103.20 et seq.]
- 3) Defines "Seller" as a mortgagee or beneficiary under a deed of trust who acquired title to residential real property improved by four or fewer dwelling units at a foreclosure sale, including a trustee, agent, officer, or other employee of any mortgagee or beneficiary.
- 4) Provides a seller who violates the Buyer's Choice Act shall be liable to a buyer in an amount equal to three times all charges made for the title insurance or escrow services.

EXISTING FEDERAL LAW

- 1) Authorizes federally-chartered financial institutions to engage in the business of mortgage lending, brokering, and servicing and governs the rules under which such activities may be conducted under a wide variety of laws, including, but not limited to, the Home Ownership and Equity Protection Act (HOEPA), RESPA, Truth in Lending Act (TILA), Home Mortgage Disclosure Act (HMDA), and regulations that interpret those acts (most notably Regulation C, which interprets the Home Mortgage Disclosure Act and Regulation Z, which interprets the Truth in Lending Act).
- 2) Establishes RESPA, which regulates transactions between buyers, sellers, and mortgagees involving "settlement services" (including title insurance and escrow services). This Act generally requires that borrowers receive certain timely disclosures relating to the costs of

those settlement services, and prohibits certain practices on the part of a mortgagee that increases the costs of settlement services. (12 U.S.C Sec. 2601 et seq.)

- 3) Enacts section 9 of RESPA to prohibit a seller from requiring the home buyer to use a particular title insurance company, either directly or indirectly, as a condition of sale. Buyers may sue a seller who violates this provision for an amount equal to three times all charges made for the title insurance.
- 4) Authorizes under section 9 of RESPA that individuals have one year to bring a private right of action to enforce violations. Lawsuits may be brought in any federal district court in the district in which the property is located or where the violation is alleged to have occurred. U.S. Housing and Urban Development, a State Attorney General or State Insurance Commissioner may bring an injunctive action to enforce violations within three years.

FISCAL EFFECT: Unknown

COMMENTS:

AB 1720 cleans up recently enacted legislation, AB 957, which took effect in October 2009. This measure pertains to residential real property acquired at foreclosure sale. Residential real property becomes bank-owned property, if at a trustee's sale no one bids over and above the opening bid then the property will revert back to the lender or servicer who placed the opening bid. The lender then sells or auctions off the property at a later date. AB 957 prohibits the seller from conditioning the sale of residential real property acquired at foreclosure sale on the basis of what title insurance or escrow agent the buyer chooses. If a written notice is provided by the seller stating the buyer's right to choose, the buyer could continue to choose the seller's recommended title and escrow services. AB 1720 creates a standard form that must be given by the seller to the buyer when purchasing residential real property acquired at foreclosure sale that explains the buyer's right to choose their own title and escrow services.

This measure takes a step forward in ensuring buyers are aware of their right to choose their own title and escrow services. Although AB 957 requires a written notice to be provided by the seller to the buyer; AB 957 was silent as to what should be included in the written notice. The author has found that the written notices provided still sway buyers to use the seller's recommended title and escrow services. AB 1720 does not prohibit sellers from offering to pay for the title and escrow services if the buyer uses their recommended choices, nor does the bill pertain to the issue of asset managers raised in the author's letter. The author addressed this issue in a letter written to Representative Dennis Cardoza on March 10, 2010 which stated "banks and agencies are often represented by asset managers that are not only independent of them, but are located primarily out of state and do not hold either real estate or businesses licenses in California. These asset managers hire local realtors to sell the properties and are the only contact with the owners of the foreclosed properties."

If enacted, AB 1720 would establish a standard form that must be used with all transactions pertaining to residential real property acquired at foreclosure sale. A standard form has the potential to eliminate any confusion between the buyer and seller as well as further clarify state and federal law regarding these transactions.

The Buyer's Choice Act notification form may also be a necessary tool to help both DOC and the Department of Real Estate enforce the law. Up to this point, DOC and the DRE have not received any formal complaints regarding sellers conditioning the sale of residential real property acquired at foreclosure sale on whether the buyer uses their title and escrow services.

NEED FOR THE BILL: According to the Author, "The Buyers Choice Act" AB 957 is currently being manipulated by banks and asset management companies. These institutions have found a loophole in the current law, which they are using to gain an unfair advantage in the realty market which unduly, harms homebuyers and local businesses alike. This loophole defeats the primary purposes of AB 957, the loophole negatively affects the bill's intent to prohibit a seller of residential property from requiring or influencing the buyer to use an escrow service company or purchase title insurance chosen by the seller."

According to the sponsor, the Escrow Institute of California, "AB 1720 is a necessary bill to address some ambiguities in last year's legislation that has created some confusion among the various real estate professionals but more importantly among buyer's of REO Bank Owned forecloses properties. We have witnessed for too many examples of disclosure forms provided by the REO Bank Owned Sellers that are sometimes unnecessarily complex and therefore may be misleading to a buyer as to the law and their options to choose their own settlement service providers."

PREVIOUS LEGISLATION: AB 957 ((Galgiani) Chapter 264, Statutes of 2009) established the Buyer's Choice Act which prohibits a seller of residential real property from requiring the buyer to purchase title insurance or escrow services while also prohibiting a seller of residential real property from disapproving the use of a title or escrow company chosen by a buyer. A seller who violates these provisions would be liable to the buyer for an amount equal to 3 times all charges made for the title insurance or escrow services.

REGISTERED SUPPORT / OPPOSITION:

Support

Escrow Institute of California (Sponsor)  
American Federation of State, County and Municipal Employees (AFSCME)

Opposition

None on file.

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