



# Memorandum

**TO: RULES AND OPEN GOVERNMENT COMMITTEE**

**FROM: Leslye Krutko**

**SUBJECT: SEE BELOW**

**DATE: April 10, 2008**

Approved

Date

4-11-08

Council District: Citywide  
SNI: N/A

**SUBJECT: SUPPORT FOR FORECLOSURE PROTECTION LEGISLATION: SB 1137 (PERATA) -RESIDENTIAL MORTGAGE LOANS, AB 2586 (TORRICO) - TENANT NOTIFICATION, AND SUPPORT FOR AB 2509 (GALGIANI) - MORTGAGE GUARANTEE PROGRAM, IF AMENDED**

## RECOMMENDATION

The Housing Department recommends that:

1. The Mayor and City Council support SB 1137 (Perata), AB 2586 (Torrigo), and support AB 2509 (Galgiani) if amended.
2. The Committee provide a one-week turn around for Mayor and City Council review.

## OUTCOME

If the Rules and Open Government Committee and the Mayor and City Council accept staff's recommendation, the City's State lobbyist may begin seeking support for SB 1137, AB 2509, and AB 2586.

## BACKGROUND

The 2007-2008 State Legislative cycle has featured many bills that address the subprime lending crisis. Three of these bills are of particular interest to the City's Affordable Housing programs. An analysis of SB 1137, AB 2509, and AB 2586 are attached to this memo for the Rules and Open Government Committee consideration.

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Subject: SUPPORT STATE LEGISLATION: SB 1137, AB 2509, AND SUPPORT FOR AB 2586 IF AMENDED

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### ANALYSIS

A fact sheet and analysis of SB 1137, AB 2509, and AB 2586 are attached.

### PUBLIC OUTREACH/INTEREST

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This legislative item does not meet any of the above criteria.

### COORDINATION

This memorandum was coordinated with the Intergovernmental Relations Director in the City Manager's Office.

### POLICY ALIGNMENT

The attached fact sheet and analysis is consistent with the Council-adopted 2008 Legislative Guiding Principles, and the Council-adopted guidelines.

### CEQA

Not a project

  
LESLYE KRUTKO  
Director of Housing

For more information call Melissa Whatley, Policy Manager, at (408) 975-4418

Attachments (3)

## SB 1137 (Perata) - Residential Mortgage Loans

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*What's the issue the bill is trying to resolve?*

SB 1137 is Senator Don Perata's (D-Oakland) latest effort to provide quick relief to the communities and homeowners across California affected by the foreclosure crisis. Specifically, the bill requires:

- Lenders to contact borrowers in person or by phone before filing a notice of default, to discuss possible solutions. The lender must provide the borrower a list of U.S. Department of Housing and Urban Development certified credit counselors available to assist borrowers.
- Lenders must provide tenants with a written notice in six different languages, once a notice of sale has been posted on a property.
- Residential tenants must be notified 60 days in advance of any eviction created by a foreclosure, instead of the current 30 days.
- Until January 1, 2013 financial institutions must maintain properties that they have taken over by foreclosure or face a \$1,000 per day fine. "Failure to maintain" includes permitting excessive foliage growth that diminishes the value of surrounding properties, allowing trespassers or squatters, or permitting mosquito larva to grow in standing water. The bill does not pre-empt local ordinances or just-cause.

*How would the passage of this bill affect San José?*

SB 1137 provides necessary protections as the foreclosure crisis continues to hurt many homeowners and communities. Since February 2008 in California, there have been 17,000 homes sold from foreclosure, 19,000 homeowners received notices of sale, and an additional 37,000 homeowners received notices of default. According to research conducted by RealtyTrac, the San José/Sunnyvale/Santa Clara metro area ranked fifty-first in the top 100 metro areas for foreclosure rates in 2007. San José/ Santa Clara County experienced 4,197 foreclosure filings, a 105% increase from the first half of 2006.

Foreclosed homes are also potential public health and safety risks when they become vacant or are abandoned. These homes may quickly become public nuisances when they fall under neglect or disrepair, blighting neighborhoods and lowering property values. Such homes may also attract vandalism, squatters, or criminal activity, or become a site for illegal house parties. As the percentage of foreclosed homes have dramatically increased in San José in the past year, it has become even more important to ensure that foreclosures do not contribute to neighborhood decline. SB 1137's measures will minimize the foreclosure rate, thereby reducing the incidence of neglected vacant homes. If a foreclosed home does become vacant, SB 1137 will ensure that the lender maintains the home and prevents it from becoming a public nuisance and safety risk.

SB 1137 requires accountability from mortgage lenders/originators and protects homeowners in San José by providing tools homeowners need to avoid foreclosure while protecting neighborhoods from suffering when properties are taken over by lenders. Additionally, the

legislation requires notification of foreclosure for residential tenants and gives additional time for tenants to move from foreclosed property. According to ForeclosureRadar.com (which tracks California foreclosure auctions) in California, 22 percent of the properties lost to foreclosure this year were not owner-occupied. SB 1137 provides additional time for tenants who are in danger of losing their homes as a result of a landlord's failure to pay the mortgage on the property.

*What is staff's Proposed Position?*

Staff recommends support for SB 1137. The legislation provides protections and tools for homeowners facing foreclosure and provides protections for tenants and neighborhoods.

*Who are the bill's supporters and opponents?*

As of March 28, 2008, staff has not identified any supporters or opponents. The bill is expected to receive bipartisan support.

*What is the current status of the measure?*

SB 1137 was passed by the Senate Committee on Banking, Finance, and Insurance on April 2, 2008 and was re-referred to the Senate Appropriations Committee.

## AB 2509 (Galgiani) – Housing Finance: Mortgage Guarantee Program

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*What's the issue the bill is trying to resolve?*

AB 2509 establishes the Homeownership Preservation Mortgage Guarantee Program, which allows qualified homeowners to refinance into an affordable fixed-rate home loan with favorable terms. The California Housing Finance Agency (CALHFA) will establish and administer the Program, which would be funded at \$50 million dollars.

Redevelopment agencies, nonprofit community lenders, and small business financial development corporations will be eligible for these funds, which can be used to provide loan guarantees from borrowers and upon approval of an application, issue a loan guarantee. The goal of the program is to help borrowers refinance predatory loans.

AB 2509 allows lenders who participate in the Homeownership Preservation Mortgage Guarantee Program to receive favorable credit under the federal Community Reinvestment Act.

*How would the passage of this bill affect San José?*

Since February 2008 in California, there have been 17,000 homes sold from foreclosure, 19,000 homeowners received notices of sale, and an additional 37,000 homeowners received notices of default. According to research conducted by RealtyTrac, the San José/Sunnyvale/Santa Clara metro area ranked fifty-first in the top 100 metro areas for foreclosure rates in 2007. San José/Santa Clara County experienced 4,197 foreclosure filings, a 105% increase from the first half of 2006.

AB 2509 provides a new option for homeowners by establishing the Homeownership Preservation Mortgage Guarantee Program. The new funding allows income-qualified owner-occupants, who do not have an equity home loan, to refinance into an affordable fixed rate home loan with more favorable terms. As a result, homeowners will be able to avoid foreclosure.

*What is staff's Proposed Position?*

Staff recommends that the City support AB 2509 if amended. The legislation allows qualified homeowners the opportunity to refinance into an affordable fixed rate home loans, and provides a structure for CalHFA to monitor the application and approval process. However, it is unclear whether or not AB 2509 will provide assistance to homebuyers who purchased their homes with Home Equity Line of Credits (HELOCs).

Staff supports amendments to AB 2509 that would provide clarity as to whether or not assistance would be provided to homebuyers who purchased their homes at the height of the housing market using HELOCs as second loans, in order to avoid paying private mortgage insurance (PMI). In the Bay Area, many homebuyers utilize HELOCs as a way to purchase their homes and avoid PMI. These homebuyers have never borrowed against their home, and instead obtained HELOCs as part of the overall purchase transaction. It is not clear whether or not they

would be eligible for assistance under the Homeownership Preservation Mortgage Guarantee Program.

*Who are the bill's supporters and opponents?*

As of April 6, 2008, there is no registered support or opposition.

*What is the current status of the measure?*

AB 2509 was introduced on February 22, 2008 and referred to the Assembly Committee on Banking and Finance. The bill will be heard in committee on April 7, 2008.

## AB 2586 (Torricco) – Residential Tenancies

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*What's the issue the bill is trying to resolve?*

Assemblymember Torricco introduced AB 2586 to enhance protections for tenants who live in properties that will be or have been foreclosed. Investors own many of the units facing foreclosure. AB 2586 requires a notice to be mailed and posted 60 days before a foreclosure eviction to inform tenants of their rights. The legislation would also require utilities to notify tenants of shutoffs and to establish procedures for tenants to set up service in their own name without paying the landlord's previous balance. The tenant would then be allowed to deduct those payments from their rent. Additionally, the legislation revises existing State law and allows tenants to reclaim their security deposits from the landlord whether or not the termination of the landlord's interest in the property was voluntary or involuntary.

*How would the passage of this bill affect San José?*

AB 2586 will aid San José renters who may lose their residences due to foreclosures. Currently, until a sign notifying the owner of a foreclosure sale is posted on the property, many tenants are unaware they are about to lose their housing. Renters are caught off guard through no fault of their own and often have to scramble to find a new place to live. Many are not recovering security deposits in enough time to secure other housing. AB 2586 will provide tenants with additional time to find new housing and clarify issues such as notice requirements, utility shutoffs, and security deposits.

*What is staff's Proposed Position?*

Staff recommends that the City support AB 2586 in order to provide protections for renters.

*Who are the bill's supporters and opponents?*

AB 2586 is sponsored by Western Center on Law and Poverty and as of April 6, 2008 there is no registered opposition.

*What is the current status of the measure?*

AB 2586 was referred to the Assembly Judiciary Committee and was passed from on April 2, 2008. The bill was re-referred to the Assembly Utilities and Commerce Committee and will be heard on April 14, 2008.