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CITY ATTORNEY

REPORT NO. R 22-0039
FEB 16 2022

REPORT RE:

DRAFT ORDINANCE AMENDING THE FORECLOSURE REGISTRY PROGRAM, ARTICLE 4 OF CHAPTER XVI OF THE LOS ANGELES MUNICIPAL CODE, TO PROVIDE FOR EXEMPTIONS FROM ITS REQUIREMENTS FOR GOVERNMENTAL ENTITIES AND NATURAL PERSONS, TO ESTABLISH A FORMAL APPEALS PROCESS, AND TO MAKE OTHER TECHNICAL CHANGES

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, CA 90012

Council File No. 12-0647-S6

Honorable Members:

Pursuant to your request, this Office has prepared and now transmits for your consideration, approved as to form and legality, the enclosed draft ordinance. The ordinance would amend Article 4 of Chapter XVI of the Los Angeles Municipal Code, the Foreclosure Registry Program, to provide for exemptions from its requirements for governmental entities and natural persons, to establish a formal appeals process, as well as to make other technical changes.

Background and History

The Foreclosure Registry Program (Los Angeles Municipal Code (LAMC) Section 164.00, et seq.) (FRP) was enacted by the City Council in 2010 (CF 09-0365) in the wake of the nation's foreclosure crisis. The purpose behind the FRP is to prevent blight by maintaining a registry of residential property in foreclosure in order to ensure that

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lenders maintain foreclosed properties in the City of Los Angeles. The FRP requires lenders to register residential properties with the Los Angeles Housing Department's Foreclosure Registry within 30 days of recording a Notice of Default (NOD). The annual registration fee is $155. The FRP also provides for a monthly inspection requirement. If the lender fails to comply with the registration and/or inspection requirements, a Notice of Non-Compliance (NNC) is issued, and a penalty in the amount of $250 per day (not to exceed $100,000 per property per violation) may be assessed.

<u>Ordinance Provisions Adding Exemption from the Requirements of the FRP for Individual Lenders</u>

Since the FRP was enacted, LAHD has found that very few foreclosures have been initiated by small-scale individual lenders who are natural persons. Because these lenders are not involved in the lending industry at a professional level, they generally do not have the same resources as major banks and financial institutions to comply with the requirements of the FRP and may experience financial hardship in response to the penalties assessed for violations of the FRP. Moreover, there have been no reports of blight for the foreclosed properties registered by these individual lenders.

In light of these factors, the draft ordinance adds Sections 164.02.L and 164.11 to define an "individual lender" as "a natural person who is a beneficiary of a deed of trust" and to provide for a retroactive exemption of individual lenders from the requirements of the FRP, respectively. Under the proposed ordinance, any individual asserting this exemption may be required to demonstrate to the City's satisfaction that they are exempt.

<u>Ordinance Provisions Adding Exemption from the Requirements of the FRP for Governmental Entities</u>

Given the legal impact of the case, *Federal Housing Financing Agency v. City of Chicago*, 962 F. Supp.2d 1044 (N.D. Ill. 2013), the draft ordinance adds Section 164.10 to exempt from the requirements of the FRP any property in foreclosure for which the beneficiary of the deed of trust is a governmental entity, as well as property owned by a governmental entity. Under the draft ordinance, any entity asserting this exemption may be required to demonstrate to the City's satisfaction that it is exempt.

<u>Ordinance Provisions Establishing a Formal Appeals Process</u>

Currently, upon a request from a lender, LAHD will conduct a review of any fees and/or penalties assessed against the lender under the FRP, and if it is determined that the fees and/or penalties were erroneously assessed, a fee and/or penalty waiver is processed. The draft ordinance adds Section 164.12 to establish a formal process by which a lender may appeal the assessment of fees and/or penalties under the FRP.

Other Technical Amendments

The draft ordinance makes a number of technical amendments which provide additional clarity to the FRP, including revisions of LAMC Sections 164.02, 164.03, 164.04, 164.06, and 164.09.

Council Rule 38

Pursuant to Council Rule 38, a copy of the draft ordinance was sent to the Los Angeles Housing Department, with a request that any comments be transmitted directly to Council or its Committees when this matter is considered.

If you have any questions regarding this matter, please contact Deputy City Attorney Catherine V. Perry at (213) 922-8538 or Assistant City Attorney Craig Takenaka at (213) 922-7759. They or another member of this Office will be available when you consider this matter to answer questions you may have.

Sincerely,

MICHAEL N. FEUER, City Attorney

By
DAVID MICHAELSON
Chief Assistant City Attorney

DM:CVP:gs
Transmittal