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SB 1191 would hurt small rental property owners

By Alan Pentico
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If you borrowed to buy that North Park home as your principal residence, there's now state legislation to help you if a default or foreclosure looms. But if you bought the home as rental property — hoping to create some income to help you during retirement — and you fall into financial difficulty, you're going to be held to a different standard, and it will make your financial issues worse.

A recent media splash at the state Capitol featured lawmakers celebrating newly minted legislation that would put the brakes on foreclosures in California and, they proclaimed, set a new standard of borrower safeguards unrivaled anywhere in the country. Protecting borrowers and avoiding foreclosures, they announced, was the right policy.

But, the very next day, there were no television cameras to record many of the same celebrants casting their aye votes for Senate Bill 1191, a measure that would likely accelerate foreclosures and punish certain borrowers. How can that be?

On the surface, the goal of SB 1191 is honorable. According to the bill's author, it aims to alert would-be renters that the unit they're interested in renting is falling into foreclosure and, therefore, a long-term residency may be at risk. But the approach taken in the bill puts the measure at odds with the Legislature's goal of preventing foreclosures.

The bill picks a point in the so-called "foreclosure process" — the official notice of default — that is far too early to predict anything. Indeed, defaults rarely result in foreclosures as the principal parties — the borrower, the lender and, more recently, the government — are actively working to cure the default and avoid a "trustee sale" brought on by foreclosure.

Over the past year, the number of defaults in California averaged around 22,000 a month, according to ForeclosureRadar. By contrast, the number of actual foreclosure sales averaged about 3,000 per month, indicating most defaults are cured.

But SB 1191 ignores the facts and says a default (usually issued by a lender when a borrower has missed three consecutive mortgage payments) is tantamount to foreclosure. Ironically, by requiring owners to post its "good faith" warning to prospective renters so early in the process, it actually increases the likelihood that the property will tumble into foreclosure. Why? Because most would-be residents will always walk away from a warning that says "Danger ahead. Don't rent here." With no rental income, it will be virtually impossible for the property owner/borrower to recover.

To add insult to this injury, SB 1191 only applies to small rental property owners. The bill says, regardless of their conduct, owners of rental properties with five or more units are not affected.

In these times, it is not prudent to push small property owners into foreclosure and remove valuable rental housing stock from the market.

San Diego County Apartment Association lobbyists have urged the bill's author to amend the bill and will continue to oppose it until the sought-after amendments are agreed to.

Pentico is executive director of the San Diego County Apartment Association.