

Session #1:

COMMUNITY LAND TRUST'S GUIDE TO SB 1079

**PREPARING CLTS TO ACQUIRE PROPERTIES BEFORE OR DURING TRUSTEE
SALE, UTILIZING SENATE BILL 1079 + FUNDING FROM HCD'S FORECLOSURE
INTERVENTION & HOUSING PRESERVATION PROGRAM (FIHPP)**

**Prepared by The California Endowment Community Land Trust Cohort
in conjunction with California Community Land Trust Network**

**August 24th, 2023 – 3:00-5:00pm
Richard Hurlburt/IMPACT & Sandra McNeill/Sandra McNeill Consulting**

The California Endowment Community Land Trust Cohort



T.R.U.S.T.
SOUTH LA
TENEMOS QUE RECLAMAR Y UNIDOS SALVAR LA TIERRA



El Sereno Community Land Trust
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BEVERLY-VERMONT
COMMUNITY
LAND TRUST



RichmondLAND
LOCAL ACTION IN NEIGHBORHOOD DEVELOPMENT

BACKGROUND ON SB 1079

And subsequent actions by California's legislature



SB 1079, AB 1837, & FIHPP:

- In September 2021, Governor Newsom signed into law **Senate Bill 1079**, authored by Senator Nancy Skinner to address problems in the trustee sale process
- The law can provide an **opportunity** for CLTs to purchase properties at below market values during a trustee sale
- In 2022, California Community Land Trust Network (CACLTN) sponsored **AB 1837** by Assemblymember Mia Bonta, to resolve implementation gaps in SB 1079: bad actors have taken advantage of lax SB 1079 enforcement and legislative loopholes to sideline residents and mission-driven nonprofits and flip properties for a profit.
- CACLTN) successfully advocated for **Foreclosure Intervention Housing Preservation Program (FIHPP)** which provides funding for a broader array of buildings, including 1-25 unit properties “at risk” of foreclosure or subject to a notice of default.



AGENDA & INTROS



WELCOME & THE PLAN FOR TODAY

NOTICE: Today's session will be recorded, to share via California Community Land Trust Network

OBJECTIVES FOR SESSION #1

- Address The California Endowment CLT Cohort's desire to collectively prepare for Foreclosure Intervention and Housing Preservation Program (FIHPP)
- Create resource for the broader California CLT community -- to maximize community ownership opportunities and address speculative activities across the state
- Gain or deepen understanding of SB 1079
- Learn about process to identify and assess properties, and to acquire before a property goes to auction
- Set up for Session #2 on 9/21/23, when we will cover the Trustee Sale process
- Introduce **CLT's Guide to SB 1079**, incl. toolkit, glossary and checklists



AGENDA

- I. Background
- II. Overview of CLT's Guide to SB 1079
- III. The Basics about Trustee Sales
- IV. Phase #1: Identification & Assessment
- V. Phase #2: Acquisition before property goes to auction
- VI. Wrap Up



Introductions

- Name, Pronouns, Organization, & Title or Role

Plus:

- One person per org:
One thing about SB 1079 that you learned from Sustainable Economies Law Center (SELC) training or from another credible source

OVERVIEW OF COMMUNITY LAND TRUST'S GUIDE TO SB 1079





Tools in the Toolkit:

Toolkit -- [LINK](#)

Appendix:

- A: Glossary -- [LINK](#)
- B: Flowchart for Civil Code § 2924m(c) -- [LINK](#)
- C: General Rules About Lien Priority -- [LINK](#)
- D: Additional Resources -- [LINK](#)
- F: Checklists -- [LINK](#)
 - Identify Viable Prospects, Assessment, Letter to Occupants, Try to Buy from the Current Owner, Prepare and Bid at the Live Auction



CLTs Guide to SB 1079

01

Introduction to SB
1079 (Civil Code
§ 2924m)

02

Preparing To
Purchase Residential
Properties in
Foreclosure

03

Negotiate With the
Owner, If Possible

04

Title Search and
Examination

05

Purchasing at the
Trustee Sale under
Civil Code § 2924m

06

After the Trustee
Sale





- Abstract of title
- Bona Fide Purchaser (BFP)
- Chain of title
- Credit bidding
- Deed in lieu
- Deed of trust
- Eligible bidder
- Eligible tenant buyer
- Equity
- First loan
- Flipping
- Grant deed
- Grantee
- Grantor
- Grantor-grantee index
- Home Equity Conversion Mortgage (HECM)
- Junior lien
- Junior loan
- Lien
- Lis pendens
- Note
- Notice of Default (NOD)
- Notice of Trustee Sale (NTS)
- Preforeclosure
- Preliminary title report
- Prospective owner-occupant
- Quitclaim deed
- Reconveyance
- Redemption
- Reinstatement
- Release
- Reverse mortgage
- Second loan
- Senior loan
- Short sale
- Super priority
- Title insurance
- Title plant
- Title search
- Trust deed
- Trustee
- Trustee's deed
- Trustee sale



THE BASICS



What's Different about Trustee Sales Under 1079?

- Before SB 1079, trustee sales -- commonly referred to as 'auctions' -- were over in minutes. The last and highest cash or 'credit bidder' would win. Only flippers and banks really had a chance.
- Now, the live auction portion is the same, but for properties with 1-4 residential units certain "eligible bidders" have different kinds of priority.
- The trustee sale is SOMETIMES, but not always, extended for 15 or up to 45 days after the public auction for eligible bidders to bid.

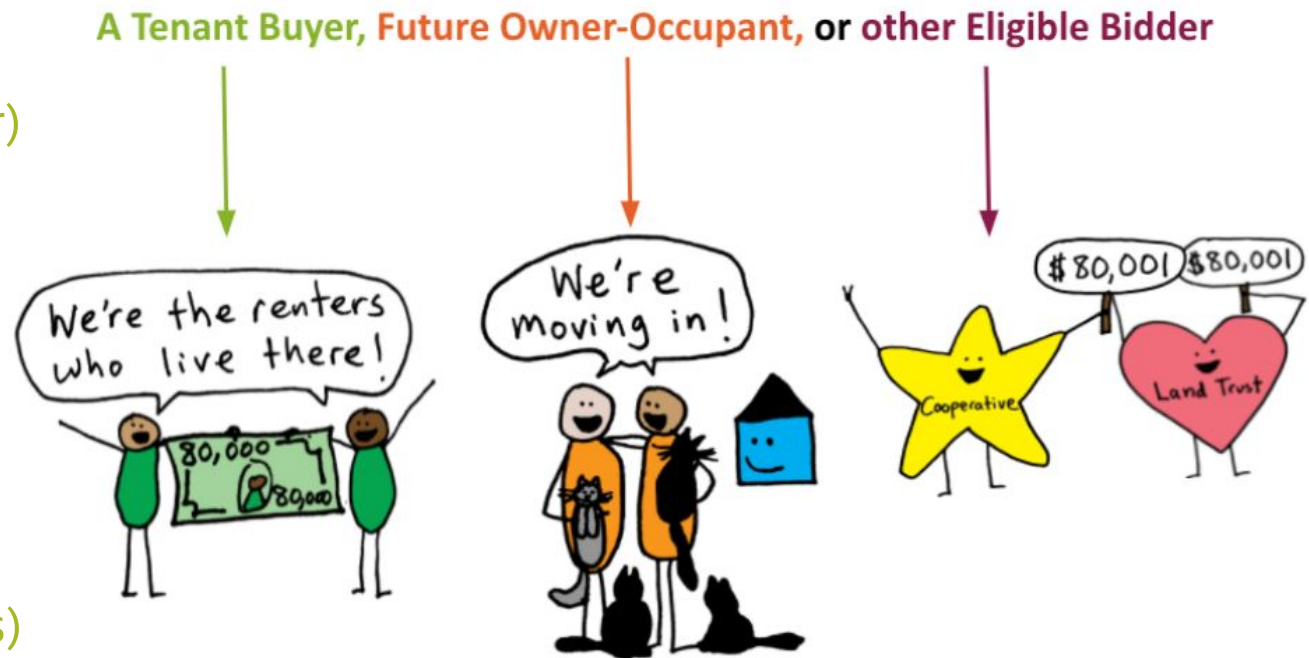
Eligible bidders are:

- eligible tenant buyer
- prospective owner-occupant
- nonprofit association, nonprofit corporation, or cooperative corporation in which an eligible tenant buyer is a voting member or director
- an eligible nonprofit corporation with specific attributes
- a limited liability company wholly owned by one or more eligible nonprofit corporations
- a community land trust
- a limited equity housing cooperative
- a government agency



Key Players in SB 1079:

- **Lender/Beneficiary** (credit bidder)
- **Prospective Owner-Occupant** (priority bidder)
- **Representative of All Eligible Tenant Buyers** (priority bidder)
- **Eligible Tenant Buyer** (may qualify as PROO or RAETB)
- **Entity Bidders** (non-profits, CLTs, and LEHCs (subject to affordable housing title restrictions)
- **State & Local Branches of Gov't**



Graphics courtesy of [Sustainable Economies Law Center \(SELC\)'s SB 1079 Legal Toolkit](#)

- **Trustee** - in a deed of trust loan agreement, a third party who holds title to a real property as security for the repayment of a loan; and in the event of default, has the power to sell the property, with a fiduciary responsibility to both borrower and lender.



About Trustee Sales

California mortgage loans typically involve two documents:

- NOTE: the borrower's promise to pay back the loan on certain terms
- DEED OF TRUST: functions as security for the note and typically has three parties:
 - the **trustor** (borrower)
 - the **beneficiary** (lender)
 - a neutral third party known as the **trustee**
- The trustee holds a power of sale. If the borrower defaults on the loan, the beneficiary (lender) may demand the trustee sell the property at a **trustee sale**.

- A **trustee sale** is an out-of-court (non-judicial) foreclosure, a speedy and harsh remedy created in state law for the benefit of lenders.
- When a borrower breaches the loan agreement, the trustee sells the property to recover the debt owed to the lender.
- State law mandates a timeline of events and notices before a trustee sale
- If the loan is still in default, the beneficiary instructs the trustee to record a **notice of default (NOD)**, giving the borrower 90 days to bring the loan current.
- If the borrower fails to bring the loan current, the trustee may record a **notice of trustee sale (NTS)**
- The borrower has rights (1) to catch up on the loan payments and have the loan reinstated, or (2) to pay off the loan in full -- but both have time limits.
- It is not the trustee's job to obtain market value for the property, to promote affordable housing, or to prevent displacement.
- The purpose of the trustee sale is to quickly recover funds for the lender.



Q&A ...& BREATHE



PHASE #1: IDENTIFICATION & ASSESSMENT



PHASE #1: IDENTIFICATION AND
ASSESSMENT

Preparing To Purchase Residential Properties in Foreclosure



Identifying Properties Eligible for FIHPP

See CACLTN's FIHPP materials and trainings for more details!

“Foreclosure risk intervention sale”

Sale of a 1 to 25 unit residential real property that is not owner occupied and that exhibits indicators of foreclosure risk - including by not limited to:

- (1) mortgage delinquency of at least 90 days
- (2) delinquency on two or more property tax payments [County Tax Collector]
- (3) owner of the property is a debtor in a bankruptcy proceeding [PACER, U.S. Court Records]
- (4) tenant-initiated litigation against the owner re: habitability [Tenant lawyers, eviction defense clinics, legal aid, elderly legal services, CDCs]
- (5) local government has deemed the property partially or fully uninhabitable. [City/County Dept. Bldg Inspn, Recorded orders of abatement]

“Preforeclosure intervention sale”

Sale of a 1 to 25 unit residential real property that is subject to a recorded notice of default by a trustee representing a beneficiary at the time of the sale. (May be occupied by the defaulting owner/borrower.)

At the Trustee Sale

Real property subject to a trustee's sale pursuant to C.C. 2924m: an eligible bidder has made a bid or states intention to bid using FIHPP funds.



Choose A Point to Start Monitoring Buildings



- **At-Risk** (as defined by FIHPP): monitor websites, referrals from tenants/organizers. Key: Is owner willing to sell?
- **Preforeclosure** (when a notice of default is recorded): monitor County Recorder's office for NODs or set up PropertyRadar.com to email alerts
- **Notice of Trustee Sale (NTS)**: A CLT could choose to wait until this point, to not waste resources on a default that is cured, saving the CLT's resources. The NTS gives at least a 20 day notice of when the sale is scheduled to occur. The opportunity to negotiate with the owner would be short. The CLT could bid at the live auction and/or during an extended bidding if triggered by 1079.
- **After Auction:** For 1-4 residential properties, CLT would wait until a day or two after the trustee sale live auction, then contact the trustee and ask if the sale is subject to extended bidding under SB 1079/C.C. 2924m.
 - ◆ All such properties are subject to additional bidding *unless the last and highest bidder at the live auction timely submitted an affidavit stating they are a "prospective owner occupant."*
 - ◆ Could be effective way to pick up small residential properties below market prices, while devoting fewer resources to monitoring.

CONSIDER THIS:

It takes time and resources to monitor foreclosures, evaluate buildings, and engage residents.

Most mortgages in default are ultimately reinstated, so there is no trustee sale.

CLTs may want to partner, and/or set up a joint foreclosure monitoring system.

Successful acquisitions will likely depend on resident participation.



Initial Look at Loan & Lien Priority on Property Radar

We'll learn more in
a later training
about how to use



- Property Radar provides an accessible but **incomplete** look at the property's title.
- Look at **loan priority**: which loan(s) are in foreclosure, and what liens will be on title after the trustee sale.
- At auction, the winning bidder's title will "**relate back**" to the date when the underlying deed of trust was recorded.
- Generally, senior/earlier liens remain on title and the winning bidder will take title subject to those liens. Junior/subordinate liens are extinguished.
- **BUYER BEWARE:** A trustee sale based on a deed of trust securing a later recorded "second" loan will not extinguish an earlier created and recorded "first" loan -- and the buyer is responsible for satisfying the first loan!
- Do not rely solely on info provided by Property Radar.



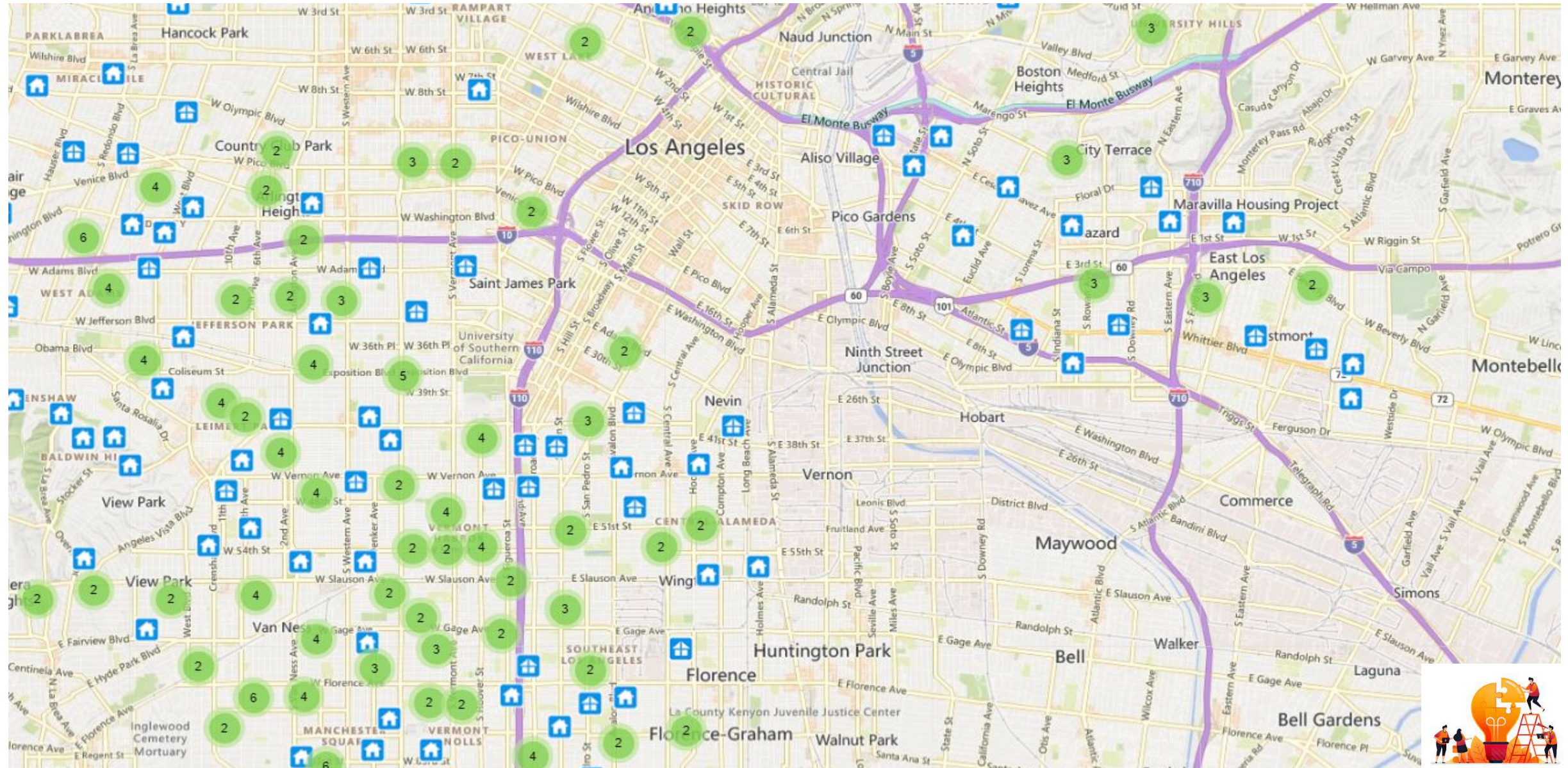


USING A CHECKLIST: “IDENTIFY VIABLE PROSPECTS” - [LINK](#)

- (1) **Make rough estimate of total cost to purchase (TCP): \$_____**
 - ☐ The TCP at a trustee sale = opening bid + bid up + senior liens.
 - ☐ What active loans are there against the property?
 - ☐ What is the **position** of the loan in default?
 - ☐ What is the total amount due on the loan in default? (likely opening bid)
 - ☐ What senior liens will remain on the property? (prior & local taxes & assessments)
 - ☐ What junior liens will be extinguished by TS?
 - ☐ How high might the bidding go? (Many sell for opening bid + \$1, but can bid up to around [75-85% of FMV, minus total of senior liens] depending on level of uncertainty.)
- (2) **Then make rough estimate of fair market value (FMV): \$_____ (using knowledge of the local market and comparable sales information.)**
- (3) **Is TCP far enough below FMV to indicate the purchase is viable? If yes:**
 - ☐ Begin monitoring trustee sale date
 - ☐ Start ASSESSMENT.



EXERCISE: Using “Identifying a Viable Prospect” Checklist



EXERCISE: Using “Identifying a Viable Prospect” Checklist

(1) Make rough estimate of total cost to purchase (TCP): **\$206,699** (up to approx \$469k)

- ☐ The TCP at a trustee sale = opening bid + bid up + senior liens.
 $\$206,698 + \sim \$261,750 + 0 = \$468,750$ (75% of \$625,000)
- ☐ What active loans are there against the property? #1 & #2
- ☐ What is the **position** of the loan in default? #1
- ☐ What is the total amount due on the loan in default? (likely opening bid) \$206,698
- ☐ What senior liens will remain on the property? (prior & local taxes & assessments) none
- ☐ What junior liens will be extinguished by TS? #2 & #3
- ☐ How high might the bidding go? (Many sell for opening bid + \$1, but can bid up to around [75-85% of FMV, minus total of senior liens] depending on level of uncertainty.)



(2) Then make rough estimate of fair market value (FMV): **\$625,000** (using knowledge of the local market and comparable sales information.)

(3) Is TCP low enough to indicate the purchase is viable? If yes:

- ☐ Begin monitoring trustee sale date
- ☐ Start ASSESSMENT.





USING A CHECKLIST: “ASSESSMENT” - [LINK](#)

We're going to talk
more about
contacting current
residents in a minute

(1) Find out what you can about the property online:

- ☐ google the address
- ☐ google owner names
- ☐ look at the images over time in google maps
- ☐ find names & phone numbers of occupants
- ☐ check county tax assessor for names of taxpayers and whether delinquent
- ☐ look at MLS if available, or Zillow/Trulia/Realtor.com
- ☐ check city/county permit and complaint history for current code violations
- ☐ run the owner names on that county's Superior Court website

(2) Contact the occupants

- ☐ pay a service if necessary to get phone numbers
- ☐ visit the property and knock on doors (go in pairs and hand everyone a business card)
- ☐ gauge tenant level of interest and willingness to cooperate
- ☐ do they meet the CLT's criteria, such as for income level?
- ☐ what are the terms under which they presently occupy, rent/lease/other?
- ☐ will they sign an estoppel re current terms or new lease conditioned on purchase?





“ASSESSMENT” CHECKLIST, continued

- (3) **Look at the inside of the property if you can, and make an estimate of cost for short/long term repairs**
- (4) **Contact the owners**
 - ☐ will they consider selling?
 - ☐ do they have the ability and a plan to reinstate the loan?
 - ☐ if they occupy the property are they interested in remaining there as a tenant?
 - ☐ will they sign a release allowing their lender to communicate with you?
- (5) **If assessment is positive**
 - ☐ Alert FIHPP fund manager. Follow fund manager instructions re title examination.
 - ☐ (Order Abstract of Title and review with qualified title examiner or real estate attorney.)
- (6) **Keep monitoring the scheduled or potential trustee sale date**



Q&A ...& BREATHE





DISCUSSION:

Outreach to Residents & Collecting Info

What would be approaches to reaching out to residents?

What other ways might we assess the condition of the property?

PHASE #2: ACQUISITION BEFORE PROPERTY GOES TO AUCTION

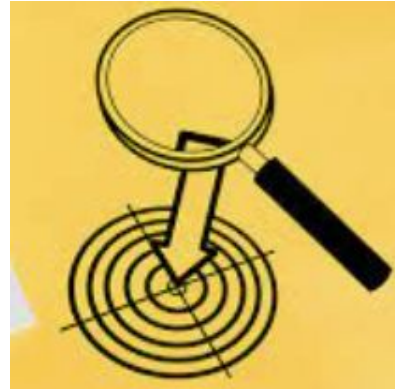


PHASE #2: ACQUISITION BEFORE
PROPERTY GOES TO AUCTION

Negotiate With
the Owner, If
Possible



Identify the Owner or Decision Maker



- Who is owner on record?:
 - ◆ *Check with tax assessor or recorder.*
- Is owner a business entity (partnership or LLC)?:
 - ◆ *See Secretary of State's website to identify a responsible person.*
- Property is held in trust?:
 - ◆ *Look for the trustee.*
- Rent paid to whom & where?:
 - ◆ *Ask the tenants.*

ABOUT REVERSE MORTGAGES:

Many buildings subject to a reverse mortgages -- or a Home Equity Conversion Mortgage (HECM) -- are sold at a trustee sale. There may be no way to buy them before the trustee sale auction.

How to find one:

- Recorder's website there is a reverse mortgage
- Read the Deed of Trust or find clues
- Look for a loan issued when the borrower was 62 or older.
- HECM loans are most common on SFRs, but also available on condos.

More 'About...':

- The borrower or surviving spouse must live in the home or the loan becomes due in full.
- The loan is usually not assumable -- except when its a VA, FHA or other federal government loan.



Look At the Owner's Equity

How to figure it out?:

- PropertyRadar.com or other sources will indicate the original amount of each loan.
- Dig deeper to find loan and lien amounts.
- Could try estimating amount still due based on type of loan and range of interest rates when the loan was issued.
- A notice of default will indicate how much was owed on that loan.
- There may rescission of the notice of default (NOD), suggesting the default was cured.
 - ◆ Get the owner's recent statements from the loan servicer. (Note: The owner may be willing to sign an authorization for loan servicer to release info directly to you.)

$$\begin{aligned} \text{Owner's Equity} = & \\ & (\text{market value of the building}) \\ & \text{minus} \\ & (\text{unpaid loans + liens} \\ & \text{secured by the property}). \end{aligned}$$



What to do about Negative Equity?:

- "Negative Equity means they owe as much or more than property is worth
- Can't sell property unless you + seller + lender(s) negotiate a **short sale**.
- CLT may be better off purchasing at the trustee sale - for what's owed on first loan(s), with junior loans extinguished.



Tips For Negotiating With the Owner Facing Foreclosure



- Research: Does owner have equity in property? Then able to sell without shorting or involving lenders.
- Learn what you can about the owner before talking to them
- Avoid the appearance of elder abuse by encouraging the seller to put you in touch with someone they trust
- Think outside the box!:
 - ◆ *Seller to keep living in the property as a tenant?*
 - ◆ *Wants a lifetime lease?.*
 - ◆ *CLT purchase's the land, and home/title remains with the seller -- with an affordable housing deed restriction?*
- Watch out for upcoming trustee sales. It may take weeks to negotiate the sale. In the meantime you don't want the owner to accidentally lose the property.

If you can't reach agreement with the owner:

- Check with FIHPP fund manager and consider whether you're better off bidding at a trustee sale.
- Best if the foreclosing loan is in first position.
- CLTs can bid on buildings of any size at the trustee sale, not just 1-4 residential units.





WRAP UP

- SB 1079 Session #2 on 9/21/23, 3pm-5pm
- Future Training Plans:
 - (1) Property Radar with Steve + strategy/planning for collaboration in Nov 2023
 - (2) Utilizing FIHPP financial analysis tools in Dec 2023 or Jan 2024
- Evaluation of Today's Training:
 - What worked?
 - What would you change?
- Share in the Chat:
 - "One outstanding question that I have is ..."
 - or
 - "I am still confused about..."