Legislation Limiting Investor Purchases of Residential Properties

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Issue

Have any states enacted or considered legislation limiting private investors' ability to purchase residential investment properties?

Summary

We identified one state that has enacted legislation impacting private investors' ability to purchase residential investment properties. In 2020, California adopted a law (SB 1079) that generally prevents investors from bulk-purchasing foreclosed homes and provides certain prospective owner-occupants, nonprofits, and government entities with the opportunity to make competing offers for these homes. The Ohio legislature is currently considering a similar measure (SB 334). Additionally, California legislators recently considered a bill that would have imposed an additional net capital gain tax on the profits from residential properties resold within seven years after purchase, with certain exceptions (AB 1771). The Minnesota legislature also recently considered a bill that would have imposed an excise tax on corporate entities' purchase of owner-occupied homes, with certain exceptions (HF 2880).

In addition to the state legislation identified above, recently introduced federal legislation would establish a real estate transfer tax, set at 100% of a single-family home's sale price, charged to certain large investors who purchase a single-family home (HR 8582). It would exempt those purchasing a home (1) for use as a principal residence or (2) pursuant to government affordable housing programs.

The White House also recently instituted several policies concerning the sale of federally backed and federally owned homes in an attempt to make more single-family homes available to individuals, families, and nonprofits, rather than large investors.

State Legislation

California

Homes for Homeowners, Not Corporations Bill

In 2020, California adopted SB 1079 (amended by AB 175 (2021) and AB 1837 (2022)), referred to as the "Homes for Homeowners, Not Corporations Bill." This legislation modifies the state's non-judicial foreclosure procedure to generally (1) prevent investors from bulk-purchasing foreclosed homes and (2) provide eligible bidders (e.g., certain prospective owner-occupants, nonprofits, and government entities) with the opportunity to make competing offers for these homes. Specifically, the law, among other things, does the following:

1. prohibits trustees from bundling properties for sale at foreclosure auctions and instead generally requires that each property be bid on separately (Cal. Civ. Code § 2924g(a)(4));
2. increases the maximum civil fines government entities can impose on property owners that fail to maintain vacant, residential properties purchased through a foreclosure sale (Cal. Civ. Code § 2929.3); and
3. generally provides eligible bidders (see below) up to 45 days after a foreclosure auction to make an offer for the home that matches or exceeds the highest auction bid by an entity that does not qualify as a prospective owner-occupant (Cal. Civ. Code § 2924m).

Under the law, "eligible bidders" generally include tenants, prospective owner-occupants (i.e., an individual who presents an affidavit or declaration that he or she will occupy the property as their primary residence for at least one year), community land trusts, and certain government entities, nonprofits, and housing cooperatives. To qualify, a tenant must provide evidence demonstrating that he or she occupied the home as their primary residence under a lease agreement entered into before a notice of default was recorded against the property (Cal. Civ. Code § 2924m(a)). AB 1837 made numerous changes to the law, including requiring that any property purchased by an eligible bidder that is a private entity be subject to a recorded covenant ensuring that it be sold or rented at a price affordable to lower income households for a period of at least 30 years. It also extends the law's sunset date to January 1, 2031.

The Ohio legislature is currently considering similar legislation (SB 334).

The California Housing Speculation Act

During the 2022 legislative session, the California legislature considered AB 1771, known as the "California Housing Speculation Act." The bill would have generally imposed an additional net capital gain tax on the profits from residential properties resold within seven years after purchase, with certain exceptions (e.g., certain affordable housing, subdivided properties, and first primary residences). Under the bill, the tax would have equaled 25% of the net capital gain on homes resold three years or less after the initial purchase, with stepped down rates applying for each additional year; the tax would not apply to homes resold after more than seven years.

The bill also would have created the Speculation Recapture Community Reinvestment Fund and deposited revenues from the new tax into the fund. It would have required specified portions of the fund to be allocated to counties, cities, and school districts for various uses (e.g., affordable housing production, infrastructure, transit or active transportation projects, and community facilities). These allocations would be made proportionally based on the percentage of money in the fund generated from sales within the jurisdiction of these entities.

Minnesota

During the 2021-2022 legislative session, the Minnesota legislature considered HF 2880, which would have generally imposed an excise tax on a corporate entity's purchase of a residential, owner-occupied home (single-family, duplex, or triplex), with certain exceptions. The tax rate would have been tiered, with different rates applying to portions of the home sale price falling within set value ranges. The bill would have exempted specified entities from the tax, including nonprofits, community land trusts, and corporate entities owning less than four properties.

Federal Legislation and Policies

In July 2022, federal legislation known as the "Saving Homes from Acquisition by Private Equity (SHAPE) Act" was introduced (HR 8582). If passed, it would establish a federal real estate transfer tax, set at 100% of a single-family home's sale price, charged to certain large investors who purchase a single-family home (defined as U.S.-based properties with one or two dwelling units). Under the act, large investors are generally those with at least $20 million in assets, excluding government entities and organizations described in section 501(c) of the Internal Revenue Code (e.g., nonprofits). The act exempts large investors that purchase a home (1) for use as a primary residence or (2) pursuant to a government program that provides housing to low-income individuals. Additionally, the act appropriates all revenue from the tax to the U.S. Department of Housing's (HUD) Housing Trust Fund. This fund provides grants to states to produce and preserve affordable housing for low-income households.

Additionally, the White House recently instituted several policies concerning the sale of federally backed and federally owned homes in an attempt to make more single-family homes available to individuals, families, and nonprofits, rather than large investors. A September 2021 press release describes these efforts, which include the following:

1. establishing guidelines for an exclusivity period during which only government entities, owner-occupant buyers, and HUD-approved nonprofits (i.e., not investors) may bid on certain foreclosed properties that were formerly insured by the Federal Housing Administration;

2. promoting the sale of distressed HUD properties to certain housing nonprofits and community organizations by increasing the share of defaulted FHA-insured mortgage notes that are earmarked for sale to these entities; and

3. expanding the exclusivity period for HUD single-family real-estate owned (REO) property sales and improving related outreach efforts to nonprofits, local governments, and other interested community organizations.

Background: Investor Purchases of Single-Family Homes

According to a Pew *Stateline* analysis of CoreLogic home sales data, investors bought 24% of all single-family houses sold nationwide in 2021 (since 2012, annual rates have ranged between 15% and 16%). The share of investor home purchases in Connecticut in 2021 was 14% (representing 5,910 homes). South Dakota, at 10%, was the only state with a lower share of investor purchases than Connecticut. The states with the highest share of investor purchases were Georgia (33%), Arizona (31%), Nevada (30%), Texas (29%), and California (29%). Though Connecticut's share of investor home purchases was well below the national figure, like most states, it did experience a substantial increase (56%) in investor purchases from 2020 to 2021.

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