**SB 1323 Summary**
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## Two Foreclosure Tracks

SB 1323 proposes creating two alternative foreclosure tracks depending on whether the borrower has more or less than 10% equity in the property (to be determined by an appraiser hired by the foreclosure trustee). If the borrower has less than 10% equity, the trustee will follow the traditional foreclosure process. But, if the borrower has 10% or more of equity in the property, the trustee must follow the new "equity sale process."

## *The New "Equity Sale" Foreclosure Process*

If the borrower has 10% or more of equity, the ***trustee*** must, among other things, hire a real estate agent to list the property, field qualified offers, compare competing offers, pick an offer and see the sale through the close of escrow. If there are no qualified offers within 30 day days, the trustee is authorized to reduce the asking price by between 4-6%. In total, there are four (4) 30 day periods with similar reductions. If the property has not sold after 120 days and four (4) reductions in price, the trustee can renotice the foreclosure and go to sale at least 20 days later.

## The New "Equity Sale" Process is Ripe with Problems

There are way too many potential issues created by the "equity sale" process to cover in a short update, but below are just a few off the top of my head:

- How does the trustee appraise the property if the borrower won't provide access?
- What happens to the pending "equity sale" if the borrower files bankruptcy?
- What if the borrower is still working on loss mitigation?
- What is the borrower is also trying to sell the property during this time?
- Under this process, the borrower could buy the property from the trustee – how is that possible?
- How will the trustee know what is owed on other liens to determine if the "equity threshold" is met?
- What buyers in their right mind will be brave enough to navigate this process (other than investors, sales to who the lawmakers have been actively trying to discourage for years)?
- Qualified offers can be contingent on financing (delay) and a property inspection (what if the BR won't cooperate).
- Applies to commercial properties, non-borrower owned properties, tenant occupied properties and even vacant land.