



September 2, 2020

The Honorable Gavin Newsom, Governor
California State Capitol
Sacramento, CA 95814

RE: AB 2463 (Wicks) – Preventing Foreclosure On Unsecured Debts –REQUEST FOR SIGNATURE

Dear Governor Newsom:

The organizations included in this letter are proud to support AB 2463, which would protect borrowers from having their home forcibly sold in order to satisfy a judgment for a consumer debt that was not secured by the home at the time the debt was incurred. The bill would prevent loss of housing and catastrophic financial harm during a time of unprecedented economic peril in our state.

Although the practice has not previously been widespread, an increasing number of low income legal clients face foreclosure based on debts that were not secured by a debtor's home when those debts were incurred. These debts include credit card debt, medical debt, student loan debt, auto loan debt, pawnshop debt, home appliance debt, and many other types of debts that have nothing to do with a person's home and were not priced when made to account for the availability of recourse against a home. This bill would ensure that in most circumstances creditors cannot foreclose on a family's home for debts that are unrelated to that home.

AB 2463 Addresses an Egregious and Growing Problem in California

AB 2463 tackles the problem identified in a recently released report, *Unsecured Debts: Insecure Communities*(http://ebclc.org/wp-content/uploads/2020/03/Forced-Sales-ofHomes_Unsecured-Debts-Insecure-Communities-EBCLC-Report-1.pdf).

To briefly summarize the report's findings: Low-income homeowners have been subject to having their homes forcibly sold by creditors for judgments on debts as low as \$625. California's homestead exemption, which is theoretically supposed to protect homeowners from this danger, protects too low an amount to save the majority of California's homeowners.¹ Worse, creditors have repeatedly tried to sell the wrong person's home, even after they were given proof that they had the wrong person.

¹ Code Civ. Pro. § 704.730 provides that most homeowners are entitled to protect \$75,000 of equity in their home. In certain circumstances, that amount may increase to either \$100,000 or \$175,000. However, when the median home value is over \$600,000, even the highest amount of the homestead exemption is insufficient to protect homeowners. This is particularly true for older

adult homeowners who may have lived in their homes for many years and may owe little to no money on their mortgage.

A disproportionate number of the homeowners who have been targeted by this practice are people of color and seniors. Small-debt foreclosure is contributing to the wealth-stripping of California's most vulnerable communities.

One example of the need for this bill involves a family who recently lost their home in Compton because of a \$20,000 credit card debt which was opened through identity theft. The supposed account holder, an 80-year-old woman, passed away a month before the lawsuit was filed. The creditor claims it somehow served her personally anyway, and obtained a default judgment. The home was ultimately sold in March 2020, because the family could not afford to pay an attorney to help them navigate the legal system.

Another example comes from Los Angeles, where a family who had a \$2,000 judgment entered against them for an unpaid credit card had their \$640,000 home sold to an institutional investor for \$14,000. The family was never served with the lawsuit, and the house was not even the alleged debtor's property.

The practice of forcibly selling a person's home to collect an unsecured consumer debt is not limited to the Los Angeles area. Creditors have initiated this legal process in every region of California, from Butte County to Imperial County. They have tried to take homes from people who never owed the alleged debt. And creditors routinely threaten to take the family home to collect alleged debts, prompting low-income homeowners such as seniors and people with disabilities to skip necessities like food and medicine in order to pay these debts that had nothing to do with their homes.

The Bill Is Carefully Tailored To Protect Homeowners From A Predatory Debt Collection Practice

AB 2463 is carefully targeted at an unscrupulous debt collection tactic that needs to be stopped. The sponsor and author have engaged in discussions about the bill with stakeholders to ensure that the measure does not interfere with existing legitimate industry practices.

1. AB 2463 Does Not Prevent A Person From Voluntarily Using Their Home As Collateral

Homeowners and property owners can continue to leverage their property for credit and other purposes under AB 2463. The bill does not alter any creditor's or debtor's rights or obligations when entering into or enforcing a secured transaction. This means mortgages, HOA liens, retail installment sales contracts, mechanic's liens, and other debts that are secured by the property will continue uninterrupted.

This bill only affects judgments for debts that are not secured by the borrower's home. Some of those debts came with high interest rates – and whatever the rate, they were priced based in part on the fact that the loan was not secured by the borrower's home. Despite the fact that the lack of collateral was figured into the interest rate, certain debt collectors and creditors have tried to have it both ways, threatening to forcibly sell families' homes to collect on debts that were not secured by the home when made. As noted above, on multiple occasions the collectors have carried through on that threat.

2. AB 2463 Does Not Change The Rights Of Employees, Spouses, Children, The Government, Or Victims of Torts

The bill only prevents foreclosure on a judgment lien that originated with a consumer debt that was not secured by the borrower's home when it was incurred. The original creditors in those situations chose not to use the home as collateral. These creditors are predominantly large

financial institutions that are well positioned to wait for repayment until the home is sold or refinanced. And as outlined in the *Unsecured Debts, Insecure Communities* report, most of the judgment creditors who employ the forced sale process are debt buyers who voluntarily purchased consumer debt for pennies on the dollar, often after the debt has already been reduced to judgment.

AB 2463 will not affect the vast majority of judgments. Unpaid employees, as well as spouses and children entitled to financial support, can continue to use the current law to enforce their judgments. The government's ability to enforce its claims and judgments is also unaffected. And people who were harmed by the homeowner, whether intentionally or negligently, can continue to use existing law to enforce their judgments. Indeed, even financial institutions are exempted if they hold debts of more than \$75,000 at the time of judgment and the time of execution of the lien.

3. Loans Covered by the Bill Remain Collectible

Original creditors that chose to extend credit not secured by the borrower's home retain access to the rest of the Enforcement of Judgments Law (Code of Civil Procedure §§ 680.010 - 724.260). These creditors and their debt collectors can still foreclose on all other real property owned by the judgment debtor, such as vacation homes, investment properties, and more. They can garnish a judgment debtor's wages, or levy the judgment debtor's bank accounts. If the judgment debtor is receiving rent or other income – including from a judgment owned by the judgment debtor – the creditor can get an order assigning that income to the creditor. Judgment debtors with their own ongoing businesses are susceptible to till taps, or keeper levies. Valuable assets like stocks and brokerage accounts may still be taken by the creditor to pay the judgment.

Judgment creditors will even get paid when the family home is the only asset owned by a low-income judgment debtor, such as a senior living on social security, because AB 2463 only forbids *foreclosing* on a judgment lien that originated with an unsecured consumer debt. Creditors can still place a lien on the home. This prevents the homeowner from selling or refinancing the home without paying the lien – a lien which is gathering annual interest (usually at a well-above-market ten percent). If the homeowner passes away, the creditor can seek payment through the probate system, or get paid when the heirs sell or refinance the home.

As we hope the foregoing analysis makes clear, AB 2463 is a narrowly tailored bill, founded on evidence, which protects low-income homeowners from a serious harm that is perpetuating poverty and housing insecurity in our state. As detailed more thoroughly in *Unsecured Debts, Insecure Communities*, this bill will help combat the wealth-stripping occurring in California's communities of color. It will also provide much-needed comfort and security for our most vulnerable residents.

Thank you for your attention to this urgently needed bill. If you have any questions, please contact Dani Kando-Kaiser at dani@corbinandkaiser.com.

Sincerely,

California Low Income-Consumer Coalition, Ted Mermin, Director – Sponsor
National Consumer Law Center, Lauren Saunders, Associate Director
Consumer Federation of California, Robert Herrell, Executive Director
California Association of Realtors, Anna Buck, Legislative Advocate
Consumer Reports, Suzanne Martindale, Senior Policy Counsel
Center for Responsible Lending, Marisabel Torres, Director of California Policy
Centro Legal de la Raza, Carolina Martin Ramos, Director of Programs & Advocacy

Californians for Economic Justice, Suzanne Martindale, Member, Steering Committee
California Asset Building Coalition, Andrea Luquetta, Managing Director
California Reinvestment Coalition, Kevin Stein, Deputy Director
Housing & Economic Rights Advocates, Natalie Lyons, Senior Attorney
New Economics for Women, Maggie Cervantes, Executive Director
University of California, Irvine, Consumer Law Clinic, Stacey Tutt, Director
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Elder Law & Advocacy, Jaime Levine, Supervising Staff Attorney
Legal Society of San Bernardino, Michael White, Supervising Staff Attorney
Riverside Legal Aid, Ernie Reguly, Staff Attorney
Justice & Diversity Center of the Bar Association of SF, Desiree Nguyen-Orth, Supervising Attorney

cc: The Honorable Buffy Wicks