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# Keeping Homes Off the Auction Block: California Limits Foreclosures by Homeowners Associations

Niki Zupanic

## Code Sections Affected

Civil Code §§ 1363.001, 1367.4, 1367.5 (new), 1365.1, 1367.1 (amended), 1366.3 (repealed); Code of Civil Procedure §§ 729.035 (new), 116.540 (amended).  
SB 137 (Ducheny); 2005 STAT. Ch. 452.

## I. INTRODUCTION

One dollar and fifty cents was all that stood between homeownership and homelessness for Anita and Thomas Radcliff.<sup>1</sup> In early 2003 the couple moved into a home their sons built for them, located in Copperopolis, California.<sup>2</sup> The home was part of a common interest development (CID),<sup>3</sup> a type of housing development governed by a homeowners association and restricted by various covenants and conditions.<sup>4</sup> After the Radcliffs failed to pay an annual association fee of \$120, their CID initiated collection proceedings for the delinquent assessment.<sup>5</sup> Anita Radcliff quickly hand-delivered a check for the annual fee, plus collection costs, but the check was \$1.50 less than the total charges the CID sought and the collection agency the association hired returned the Radcliffs' check.<sup>6</sup>

Less than a year after moving into their new home, the Radcliffs were confronted<sup>7</sup> with what has been called the "extreme hammer of nonjudicial foreclosure."<sup>8</sup> Within months, the addition of collection charges and attorneys' fees increased the Radcliffs' debt to nearly \$2,000.<sup>9</sup> When they failed to pay in time, their \$285,000 home was sold at auction for a high bid of just \$70,000.<sup>10</sup>

What happened to the Radcliffs is just one example of CIDs using nonjudicial foreclosures<sup>11</sup> to collect relatively small debts.<sup>12</sup> According to one study of five

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1. Jim Wasserman, *For Want of \$120, House Was Lost: More Homeowners Associations Using Foreclosure as Tool to Collect Dues*, MILWAUKEE J. SENTINEL, Feb. 22, 2004, at F1.

2. *Id.*

3. *Id.*

4. See ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT, COMMITTEE ANALYSIS OF SB 137, at 3-4 (June 29, 2005) (describing the defining characteristics of CIDs).

5. Wasserman, *supra* note 1.

6. *Id.*

7. *Id.*

8. ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT, COMMITTEE ANALYSIS OF SB 137, at 4 (June 29, 2005).

9. Wasserman, *supra* note 1.

10. *Id.*

11. Compare BLACK'S LAW DICTIONARY 674 (8th ed. 2004) (defining "nonjudicial foreclosure," also called "power-of-sale foreclosure," as "[a] foreclosure process by which . . . property is sold at a nonjudicial public sale by a public official, the mortgagee, or a trustee, without the stringent notice requirements, procedural

northern California counties, “the average debt in [CID] foreclosure actions was \$2,557, including collection costs.”<sup>13</sup>

In response to the Radcliffs’ case and others like it, the California Legislature passed Chapter 452.<sup>14</sup> By limiting the instances in which nonjudicial foreclosure may be used to collect delinquent assessments owed to a CID<sup>15</sup> and creating a right of redemption for foreclosed homes,<sup>16</sup> the law aims to protect the equity that owners have amassed in their homes.<sup>17</sup>

## II. LEGAL BACKGROUND

According to an informal survey of California homeowners associations, nearly 150 homes in California were sold for delinquent assessments between 1999 and 2004.<sup>18</sup> That number represents a very small fraction of the nearly 20,000 foreclosure filings made during that same time period.<sup>19</sup> Regardless of the relatively low incidence of foreclosure sales, as compared to foreclosure filings, the harshness of the penalty led many to question the wisdom of allowing homeowners associations to foreclose on homes for such small amounts.<sup>20</sup>

As early as 2002, the Legislature contemplated imposing a threshold for foreclosure actions by homeowners associations, originally seeking to prohibit foreclosures for debts below \$5,000.<sup>21</sup> Eventually, the Legislature settled on tinkering

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burdens, or delays of a judicial foreclosure”), with BLACK’S LAW DICTIONARY 674 (8th ed. 2004) (defining “judicial foreclosure” as “[a] costly and time-consuming foreclosure method by which the mortgaged property is sold through a court proceeding requiring many standard legal steps such as the filing of a complaint, service of process, notice, and a hearing”). See generally CAL. CIV. PROC. CODE § 726 (West 1982 & Supp. 2005) (declaring that judicial foreclosure is the primary remedy for collection of debt secured by a real property mortgage).

12. See ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT, COMMITTEE ANALYSIS OF SB 137, at 4-5 (June 29, 2005) (noting news reports of other instances in which owners lost their homes due to delinquent assessments).

13. See Press Release, Cal. Sen. Denise Ducheny, Senator Ducheny’s Homeowner Protection Bill Passes Off Senate Floor 36-2 (May 26, 2005) (citing a study conducted by Sentinel Fair Housing) (on file with the *McGeorge Law Review*).

14. See ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT, COMMITTEE ANALYSIS OF SB 137, at 4-5 (June 29, 2005) (citing the plight of the Radcliffs and other California homeowners as the impetus for this new law); see also ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF SB 137, at 4-5 (June 21, 2005) (discussing the Radcliffs’ case and noting the bill’s design “to prevent such injustices”).

15. CAL. CIV. PROC. CODE § 1367.4(b) (enacted by Chapter 452).

16. *Id.* § 1367.4(c)(4); CAL. CIV. PROC. CODE § 729.035 (enacted by Chapter 452).

17. See ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF SB 137, at 4 (June 21, 2005) (commenting on the bill’s purpose of protecting homeowners’ equity and noting the frequency with which homes are sold for “shockingly small fractions[s] of [their] actual value”).

18. Jim Wasserman, *California Reviews Nonjudicial Foreclosure*, CHARLESTON GAZETTE (W.Va.), Aug. 9, 2004, at 2C.

19. *Id.*

20. *Id.*

21. See SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 2598, at 2 (June 29, 2004) (recounting the history of AB 2289 (2002), which at one time included a \$5,000 threshold for initiation of foreclosure proceedings).

with notice provisions<sup>22</sup> and implementing more meaningful options for alternative dispute resolution,<sup>23</sup> while more ambitious attempts to limit the use of foreclosure proceedings failed.<sup>24</sup>

The ability of a homeowners association to foreclose on homes within the development stems from the association's authority to levy assessments on each of the homes contained within the development to cover the costs associated with managing the development.<sup>25</sup> Assessments become delinquent if not paid within fifteen days of their due date.<sup>26</sup> Once an assessment becomes delinquent, the homeowners association is entitled to recover not only the amount of the assessment, but collection costs, attorneys' fees, late charges, and interest.<sup>27</sup>

Delinquent assessments are a debt of individual homeowners and a homeowners association may place a lien on the homeowners' property to collect that debt.<sup>28</sup> Prior to recording any lien, existing law requires an association to provide a specific notice to delinquent homeowners, detailing the amount owed and describing the lien enforcement process.<sup>29</sup> That notice must include a statement informing delinquent homeowners that the owners have a right to meet with the association's board of directors to initiate a payment plan.<sup>30</sup>

Thirty days after a lien is recorded, an association may enforce it by any lawful means,<sup>31</sup> including nonjudicial foreclosure. Any foreclosure sale to collect on delinquent assessments must be conducted in the same manner as foreclosures conducted to collect on defaulted mortgages.<sup>32</sup> That process requires the homeowners association to provide adequate notice to delinquent homeowners at least thirty days before the sale<sup>33</sup> and allows the delinquent homeowners the opportunity to cure the default, and thereby avoid foreclosure, by paying the assessments and related costs up to five days before the sale.<sup>34</sup>

22. *Id.*

23. See ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF SB 137, at 7 (June 21, 2005) (describing Chapter 754, Statutes of 2004, which revised the alternative dispute resolution procedures available to delinquent homeowners).

24. See *id.* at 5 (comparing Chapter 452 to previous attempts to impose limitations on foreclosure sales); see also SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 2598, at 2 (June 29, 2004) (describing an earlier attempt to impose a \$5,000 threshold for initiation of foreclosure proceedings).

25. CAL. CIV. CODE § 1366(a) (West Supp. 2005).

26. *Id.* § 1366(e).

27. *Id.*

28. *Id.* § 1367.

29. *Id.* § 1367.1(a) (amended by Chapter 452).

30. *Id.* § 1367.1(a), (c).

31. *Id.* § 1367(b), (e) (West Supp. 2005).

32. *Id.*

33. *Id.* § 2924c (West 1993).

34. *Id.* § 2924c(e).

## III. CHAPTER 452

Chapter 452 significantly restricts homeowners associations' use of foreclosure proceedings to collect delinquent assessments from individual homeowners.<sup>35</sup> The new statute removes the homeowners associations' ability to foreclose on homes unless the individual homeowner owes more than \$1,800 in delinquent assessments or has been delinquent for over twelve months.<sup>36</sup> Even for delinquent assessments that meet this threshold, homeowners associations must still comply with new requirements for notice to delinquent owners<sup>37</sup> and may need to participate in alternative dispute resolution proceedings prior to foreclosing.<sup>38</sup>

The most notable change Chapter 452 makes is its denial of foreclosure proceedings as a means of collecting assessment debts of less than \$1,800 that are delinquent for less than one year.<sup>39</sup> To collect delinquent assessments under that threshold amount, homeowners associations have two options: 1) record a lien that may not be foreclosed upon until the delinquent assessments reach \$1,800 or are delinquent for at least one year<sup>40</sup> or 2) file an action in small claims court.<sup>41</sup> A judgment in a small claims court may include not only the delinquent assessments, but any fees, late charges, and interest that the court deems appropriate.<sup>42</sup>

If the delinquent assessments are over \$1,800 or have continued for more than one year, an association may proceed with a foreclosure,<sup>43</sup> provided that certain conditions are met: all foreclosures require associations to give greater notice to delinquent owners,<sup>44</sup> necessitate a vote of the board of directors,<sup>45</sup> and may require the board of directors to participate in some form of alternative dispute resolution at the homeowner's request.<sup>46</sup> Those alternative dispute resolution programs include participation in a "meet and confer" process<sup>47</sup> and a more formal arbitration process, which a neutral third party mediates.<sup>48</sup> Both types of alternative dispute resolution

35. *Id.* § 1367.4 (enacted by Chapter 452).

36. *Id.* § 1367.4(b).

37. *Id.* § 1365.1(b) (amended by Chapter 452), 1367.4(c)(3) (enacted by Chapter 452) (requiring personal service to delinquent owners of a notice regarding the homeowners association's decision to foreclose and providing a more detailed annual notice to all homeowners that discusses the delinquency and foreclosure process).

38. *Id.* § 1367.1(c)(1) (amended by Chapter 452) (requiring homeowners associations to participate in alternative dispute resolution upon the delinquent owner's request).

39. *Id.* § 1367.4(b) (enacted by Chapter 452).

40. *Id.* § 1367.4(b)(2).

41. *Id.* § 1367.4(b)(1).

42. *Id.* § 1367.4(b)(1)(B).

43. *Id.* § 1367.4(c).

44. *Id.* § 1365.1(b) (amended by Chapter 452), 1367.4(c)(3) (enacted by Chapter 452).

45. *Id.* § 1367.4(c)(2) (enacted by Chapter 452).

46. *Id.* § 1367.1(c)(1) (amended by Chapter 452).

47. *Id.*; see also *id.* § 1363.840 (West Supp. 2005) (establishing minimum guidelines for a "meet and confer" process, including a requirement that "[t]he parties shall meet promptly at a mutually convenient time and place, explain their positions to each other, and confer in good faith in an effort to resolve the dispute").

48. *Id.* § 1367.1(c)(1)(B) (amended by Chapter 452).

were already established means for resolving other types of disputes in common interest developments.<sup>49</sup> However, Chapter 452 now requires homeowners associations to give notice of the “meet and confer” program to delinquent owners and to participate in the program upon the owners’ request before an association may file a lien.<sup>50</sup> Similarly, before they may initiate any foreclosure, homeowners associations must notify delinquent owners of the mediation program and participate in mediation upon the owners’ request.<sup>51</sup> The decision to participate in either or both programs rests solely with the delinquent owners.<sup>52</sup> The only limitation on the alternative dispute resolution process is that an owner may not request binding arbitration if the homeowners association intends to initiate a judicial foreclosure.<sup>53</sup>

Finally, Chapter 452 provides a ninety-day right of redemption<sup>54</sup> period whenever a homeowners association uses nonjudicial foreclosure to collect delinquent assessments.<sup>55</sup> Under Chapter 452, delinquent owners may redeem their property within ninety days of the nonjudicial foreclosure sale.<sup>56</sup>

#### IV. ANALYSIS OF THE NEW LAW

Approximately eight million Californians live in a home located within a CID. Of those eight million, the vast majority will never face the possibility of losing their home in a nonjudicial foreclosure proceeding.<sup>57</sup> But for those that do, such as the Radcliffs, the consequences can be dire.<sup>58</sup>

Chapter 452 reflects the Legislature’s determination that smaller debts are best handled by debt-collection methods other than nonjudicial foreclosure.<sup>59</sup> Supporters

49. See *id.* §§ 1363.810, 1369.510 (West Supp. 2005) (providing alternative dispute resolution procedures for any “dispute between an association and a member involving their rights, duties, or liabilities under [the Davis-Stirling Common Interest Development Act], under the Nonprofit Mutual Benefit Corporation Law . . . , or under the governing documents of the common interest development”).

50. *Id.* § 1367.1(c)(1)(A) (amended by Chapter 452).

51. *Id.* § 1367.1(c)(1)(B).

52. *Id.*

53. *Id.* (providing that binding arbitration shall not be available when a homeowners association is seeking a judicial foreclosure).

54. See BLACK’S LAW DICTIONARY 1304 (8th ed. 2004) (defining “statutory redemption” as “[t]he statutory right of a defaulting mortgagor to recover property, within a specified period, after a foreclosure or tax sale, by paying the outstanding debt or charges”).

55. CAL. CIV. CODE § 1367.4(c)(4) (enacted by Chapter 452); CAL. CIV. PROC. CODE § 729.035 (enacted by Chapter 452).

56. CAL. CIV. CODE § 1367.4(c)(4) (enacted by Chapter 452); CAL. CIV. PROC. CODE § 729.035 (enacted by Chapter 452).

57. ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT, COMMITTEE ANALYSIS OF SB 137, at 5 (June 29, 2005) (“[O]pponents have suggested that less than 1% of homes that are the subject of delinquent assessments are nonjudicially foreclosed upon”).

58. See ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF SB 137, at 4-5 (June 21, 2005) (commenting on the frequency with which homes are sold for “shockingly small fractions[s] of [their] actual value” and how homeowners lose their home and the equity they held in it).

59. Josh Grossberg, *Bills Try to Curb Homeowner Associations*, DAILY BREEZE (Torrance, Cal.), Aug. 25, 1004, at A1 (on file with the *McGeorge Law Review*).

of Chapter 452 acknowledge that homeowners associations must collect dues from their members.<sup>60</sup> However, critics of the former practice of allowing associations to foreclose to collect small debts argue that foreclosure is an extreme measure<sup>61</sup> and that other collection methods, such as small claims court, are more appropriate for debts as low as \$1,800.<sup>62</sup> “[Homeowners associations] need to look at other debt collection procedures before they go to these extreme measures,” said the author of the bill, Senator Denise Ducheny. And as one critic of the former foreclosure process commented, “[i]f you don’t pay your credit card, what do you do? They take you to court. They’re not going to take your house away. . . . There are other ways of getting the money.”<sup>63</sup>

### A. *Protecting Equity, Protecting Seniors*

The most frequently cited reason for providing greater protection in this area is the fact that a home is one of the most valuable assets a person may ever own.<sup>64</sup> In addition to losing their homes, delinquent homeowners may lose any equity they have built up over the years, resulting in what one supporter of Chapter 452 calls a “double tragedy.”<sup>65</sup> Chapter 452 provides greater protection of a homeowner’s equity in two ways: first, by limiting the incidence of nonjudicial foreclosure overall,<sup>66</sup> and second, by imposing a right of redemption.<sup>67</sup> The right of redemption established in Chapter 452 responds to the concern that homes were being sold for far less than their true value.<sup>68</sup> Once a home has been sold at a foreclosure auction, the homeowner receives any sale proceeds in excess of the amount owed to the association.<sup>69</sup> However, because minimum bid prices typically equal the amount owed, homes are often sold for relatively small amounts of money, returning very little equity to homeowners.<sup>70</sup> The right of redemption allows homeowners one last opportunity to keep the equity they have accumulated.

60. Jim Wasserman, *Panel OKs Bill to Ban Foreclosures Over Small Debts*, *CONTRA COSTA TIMES* (Walnut Creek, Cal.), Mar. 30, 2005, at F4 [hereinafter *Panel OKs Bill*] (on file with the *McGeorge Law Review*).

61. ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT, COMMITTEE ANALYSIS OF SB 137, at 4 (June 29, 2005) (calling nonjudicial foreclosure an “extreme hammer”).

62. *Id.* at 6 (touting the advantages of a small claims court action for debt recovery).

63. Grossberg, *supra* note 59 (quoting a supporter of the bill).

64. See ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT, COMMITTEE ANALYSIS OF SB 137, at 5 (June 29, 2005) (relaying the argument of the California Association of Retired Americans that Chapter 452 “protects the most valuable asset that seniors own, their homes and the equity they have built up”).

65. Letter from Norma P. Garcia, Senior Att’y, Consumers Union, to Senator Denise Ducheny, Cal. State Senate, at 2 (Aug. 3, 2005) (on file with the *McGeorge Law Review*).

66. CAL. CIV. CODE § 1367.4(b) (enacted by Chapter 452).

67. *Id.* § 1367.4(c)(4).

68. ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF SB 137, at 4 (June 21, 2005).

69. *Id.*

70. See *id.* (stating that homes were “usually sold for an all-too-often shockingly small fraction of [their] actual value”).

The equity protection provisions of Chapter 452 particularly appealed to groups advocating for California seniors and retirees.<sup>71</sup> As the California Congress of Seniors noted, Chapter 452 “protects homeowner equity, the bedrock of financial security for the senior homeowner.”<sup>72</sup> Seniors may have an even more difficult time recovering from a foreclosure because they are not well-positioned to earn and save, once again, the equity lost in a foreclosure sale.<sup>73</sup>

### B. *Extreme Examples, Extreme Measures?*

As shocking as the Radcliffs’ case is, opponents of Chapter 452 contend such cases are extremely rare<sup>74</sup> and do not warrant the limitations enacted under Chapter 452.<sup>75</sup> Opponents of the new law center their arguments on three main points: Chapter 452 will encourage delinquency by removing an important tool for enforcing assessment obligations,<sup>76</sup> increase costs and financial risks for associations and other homeowners in the CIDs,<sup>77</sup> and limit the pool of potential buyers at foreclosure sales.<sup>78</sup> Some point out that the cases the proponents of Chapter 452 cited all involved instances of delinquent homeowners ignoring notices from their associations that warned about the possibility of foreclosure.<sup>79</sup> When comparing the relative fault of the delinquent homeowners and the other owners within the community who do pay

71. Letter from Gary Passmore, Legis. Coordinator, Cong. of Cal. Seniors, to Senator Denise Ducheny, Cal. State Senate (Mar. 21, 2005) (on file with the *McGeorge Law Review*); Letter from Jacki Fox Ruby, Legislative Dir., Cal. Alliance for Retired Ams., to Assembly Member Gene Mullin, Cal. State Assembly (June 24, 2005) (on file with the *McGeorge Law Review*).

72. Letter from Gary Passmore to Senator Denise Ducheny, *supra* note 71, at 1.

73. See Letter from Norma P. Garcia to Senator Denise Ducheny, *supra* note 65, at 2 (noting that foreclosures affect seniors more profoundly “because they are the least likely to recover from such an economic loss and are in the worst position to rebuild their lives and economic self-sufficiency”).

74. Letter from Mike Belote, Cal. Advoc., on Behalf of United Trustees Ass’n, to Assembly Comm. on Housing & Cmty. Dev., Cal. State Assembly, at 1 (June 24, 2005).

75. See Letter from Karen D. Conlon, President, Cal. Ass’n of Cmty. Managers, to Senator Denise Ducheny, Cal. State Senate at 1 (Mar. 22, 2005) (calling Chapter 452 “a knee-jerk reaction to a small number of incidents where the process may not have been followed correctly”); Letter from Norwood & Mattoch, on behalf of First Am. Corp., to Assembly Member Gene Mullin, Cal. State Assembly, at 2 (June 24, 2005) (arguing that Chapter 452 “proposes changes far beyond those necessary to stop a repeat of [the Radcliffs’ case]”); Letter from Craig C. Page, Vice President & Legis. Couns., Cal. Land Title Ass’n, to Senator Denise Ducheny, Cal. State Senate, at 1 (June 22, 2005) (contending that the incidents prompting the passage of Chapter 452 “do not make a convincing case for overhauling the nonjudicial foreclosure process”).

76. See Letter from Mike Belote to Assembly Comm. On Housing & Comm. Dev., *supra* note 74, at 2 (contending that “homeowners will feel less obligated to pay their . . . dues”); see also Conlon, *supra* note 75, at 2 (stating that Chapter 452 will “allow a homeowner to delay payment”).

77. Letter from Karen K. Conlon to Senator Denise Ducheny, *supra* note 75, at 1; Letter from James V. Fraker, Cmty. Manager, Shadowridge Owners’ Ass’n, to Assembly Member Gene Mullin, Cal. State Assembly (Mar. 24, 2005); Letter from Norwood & Mattoch to Assembly Member Gene Mullin, *supra* note 75.

78. Letter from Ronald M. Kingston, Cal. Ass’n of Realtors, to Assembly Member Gene Mullin, Cal. State Assembly, at 1 (June 22, 2005); Letter from Karen K. Conlon to Senator Denise Ducheny, *supra* note 75, at 3.

79. Letter from Craig C. Page to Senator Denise Ducheny, *supra* note 75, at 1.

their assessments on time, opponents contend that Chapter 452 unfairly places the burden of the uncollected assessments on innocent homeowners.<sup>80</sup>

While some opponents feel that foreclosure is an important tool for collecting unpaid assessments and should remain available for even small debts,<sup>81</sup> the debate over Chapter 452 eventually focused not on whether there would be a threshold, but on just how high that threshold should be.<sup>82</sup> Opponents contend that a high threshold allows delinquent homeowners to ignore their growing debts, while those costs are shifted to other owners in the community.<sup>83</sup> The threat of foreclosure can be a great motivation for delinquent homeowners to pay their assessments<sup>84</sup> and, without that enforcement tool, some opponents fear that delinquencies could continue for extended periods of time.<sup>85</sup> To address this possibility, amendments to the bill eventually added a one-year limit to the delinquency threshold,<sup>86</sup> eliminating the potential for protracted delinquencies.

Of course, any delinquency places a financial burden on associations and other homeowners within the CID.<sup>87</sup> Ultimately, that burden can take the form of higher assessments for other owners to cover the unpaid assessments and increased collection costs.<sup>88</sup> Additionally, unpaid assessments expose homeowners associations to financial risk and legal liability.<sup>89</sup> Greater financial risk can result from the unwillingness of commercial lending institutions to loan money to associations, thereby impacting the associations' ability to adequately fulfill their administrative and maintenance duties.<sup>90</sup> In turn, mismanagement, including the failure to collect assessments, can be grounds for a cause of action against an association for breach of contract or breach of fiduciary duty.<sup>91</sup>

80. Letter from Karen K. Conlon to Senator Denise Ducheny, *supra* note 75, at 1; Letter from James V. Fraker to Assembly Member Gene Mullin, *supra* note 77, at 1.

81. Letter from Craig C. Page to Senator Denise Ducheny, *supra* note 75; Letter from James V. Fraker to Assembly Member Gene Mullin, *supra* note 77; Letter from Norwood & Mattoch to Assembly Member Gene Mullin, *supra* note 75.

82. See Letter from Happy Chastain, Deputy Sec'y, Legis., State & Consumer Servs. Agency, to Senator Denise Ducheny, Cal. State Senate (June 28, 2005) (detailing amendments agreed to during negotiations between the agency and the author).

83. Letter from Karen K. Conlon to Senator Denise Ducheny, *supra* note 75, at 1-2; Letter from James V. Fraker to Assembly Member Gene Mullin, *supra* note 77, at 1; Letter from Norwood & Mattoch to Assembly Member Gene Mullin, *supra* note 75, at 1.

84. Belote, *supra* note 74, at 1.

85. Letter from Karen K. Conlon to Senator Denise Ducheny, *supra* note 75, at 2.

86. CAL. CIV. CODE § 1367.4(b) (enacted by Chapter 452).

87. Letter from Karen K. Conlon to Senator Denise Ducheny, *supra* note 75, at 1; Letter from James V. Fraker to Assembly Member Gene Mullin, *supra* note 77; Letter from Norwood & Mattoch to Assembly Member Gene Mullin, *supra* note 75.

88. Letter from Karen K. Conlon to Senator Denise Ducheny

89. *Id.* at 2-3; Letter from James V. Fraker to Assembly Member Gene Mullin, *supra* note 77, at 2.

90. Letter from James V. Fraker to Assembly Member Gene Mullin, *supra* note 77, at 2.

91. Letter from Karen K. Conlon to Senator Denise Ducheny, *supra* note 75, at 2-3. See also *Raven's Cove Townhomes v. Knappe Dev. Co.*, 114 Cal. App. 3d 783, 800, 171 Cal. Rptr. 334 (1981) (holding that an association's actions or omissions leading to "mismanagement or nonmanagement [are] an independent ground for the breach of fiduciary duty").

While it may seem like an attenuated chain from an unpaid assessment of \$120 to financial ruin for the CID, opponents note that delinquent assessments in the aggregate certainly have an impact on the stability of homeowners associations, especially when statutes permit those delinquencies to continue for long periods.<sup>92</sup> Supporters of Chapter 452 do not seem to dispute the negative effect that delinquencies can have on associations and do not argue that delinquencies should remain uncollected.<sup>93</sup> Instead, the dispute centers on what tools are most suitable for collection of delinquent assessments and whether foreclosure is ever an appropriate remedy for collecting relatively small debts.<sup>94</sup>

Chapter 452's ninety-day right of redemption provision raises a final concern that foreclosure sales may become less attractive to potential buyers due to the risk of a home being redeemed after the sale.<sup>95</sup> However, considering that the Legislature amended Chapter 452 to remove a proposed minimum sale price of sixty-five percent of the home's appraised value,<sup>96</sup> foreclosure sales will continue to provide a significant bargain to potential homebuyers and should remain an affordable and attractive alternative in California's housing market.

## V. CONCLUSION

Chapter 452 takes significant steps toward protecting the most important investment that most people will make in their lives: the equity in their homes.<sup>97</sup> Given the relatively low incidence of nonjudicial foreclosures as a percentage of all CID delinquencies,<sup>98</sup> Chapter 452 may not impact a large number of homeowners. Still, placing a minimum threshold on the use of foreclosures will prevent the most egregious examples, such as the Radcliffs' case. It remains to be seen if the threshold chosen will provide a proper balance, protecting delinquent homeowners while not impinging too greatly on a homeowners association's ability to function effectively.

92. Letter from Karen K. Conlon to Senator Denise Ducheny, *supra* note 75; Letter from James V. Fraker to Assembly Member Gene Mullin, *supra* note 77; Letter from Norwood & Mattoch to Assembly Member Gene Mullin, *supra* note 75, at 2.

93. *Panel OKs Bill*, *supra* note 60.

94. ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF SB 137, at 1 (June 21, 2005).

95. See JOHN G. SPRANKLING, UNDERSTANDING PROPERTY LAW 353-54 (2000) (noting that risks associated with foreclosure sales, generally, and statutory redemption periods, specifically, make potential buyers more "reluctant to offer a fair market value bid at the sale").

96. See SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 137, at 3 (Sept. 1, 2005) (noting that amendments taken in the Assembly deleted a proposed sixty-five percent minimum bid price).

97. ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF SB 137, at 2 (June 21, 2005).

98. See ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT, COMMITTEE ANALYSIS OF SB 137, at 5 (June 29, 2005) ("[O]pponents have suggested that less than 1% of homes that are the subject of delinquent assessments are nonjudicially foreclosed upon.").