

Testimony on behalf of Auction.com

George Lane, Chief Legal Officer, et al

Pennsylvania House Bill 1896

April 27, 2022

Greetings Chairwoman Brown, Democratic Chairman Sturla and members of the Pennsylvania House of Representatives Urban Affairs Committee. The following testimony is submitted to you on behalf of Auction.com in relation to HB 1896. We appreciate your willingness to engage with us on this topic. Auction.com has provided expertise in real estate sales, including foreclosure sales and online sales, in all states across our nation and executed more than 550,000 foreclosure sales over the last 10 years. Our team of over 700 professionals nationwide and here in Pennsylvania provide unrivaled service to our clients and the communities in which we serve. We hope to be a continued resource to the legislature as you move to consider favorable passage of HB 1896.

HB 1896 seeks to improve the foreclosure sale process by (1) allowing plaintiffs in a foreclosure case to request a foreclosure sale be conducted by a private selling officer (“PSO”), (2) provide important framework and authority for foreclosure sales to be conducted online by sheriffs and/or PSOs, and (3) set out important parameters and basic requirements around conducting foreclosure sales online to ensure sales are conducted properly. Important to note is that HB 1896 does not expedite or alter the pre-sale foreclosure process or negatively impact any loss mitigation efforts. HB 1896 focuses solely on the sale proceedings once a property is set to be sold as a foreclosure by the court, providing important guidelines and parameters around conducting sale on an online platform as well as utilization of a PSOs and online vendors. This bill does not impact or alter any loss mitigation requirements or other legal processes required today prior to a property being sold at a foreclosure auction.

By adding a PSO option, HB 1896 allows for multiple qualified vendors to conduct foreclosure sale services, in addition to the sheriffs, which has proven in other jurisdictions to provide material benefits such as increased availability of sale services, increased exposure of properties, higher bidder participation and increased bidding competition for properties at foreclosure sales. As a result, multi-vendor states show higher sale rates and better sale price execution, returning properties back into the market faster which helps maintain overall market prices. Selling more properties at the foreclosure sale at market prices provides important benefits including: promoting community stabilization, decreasing neighborhood blight, and benefiting debtors by lowering deficiency amounts and, in some cases, returning higher surplus funds.

#### Ensuring Qualified PSOs and Online Vendors Are Conducting Sales

HB 1896 requires that PSOs and online vendors performing foreclosure auctions meet certain requirements so that sales are conducted in a commercially reasonable and professional manner that helps ensure sales are conducted fairly, validly, and protected from error or potential fraud.

HB 1896 requires PSOs and third-party online vendors conducting foreclosure sales to hold both auction and real estate licenses in Pennsylvania so such entities and individuals have auctioneering and real estate expertise. Conducting real estate auctions, including in an online environment, can be somewhat complex

and requires specific know-how to market and conduct sales effectively and validly. This is especially true for foreclosure sales, which are unique and governed by specific state laws.

### Structure for Online Sale Capability Creates Acceptable Process and Minimum Requirements to Protect the Foreclosure Sale Process

HB 1896 sets important parameters for conducting online foreclosure sales and establishes certain requirements aimed to help avoid potential negative impacts which could result from improperly conducted sales. These requirements create an acceptable standard and guardrails for conducting online sales while promoting the integrity of the process and validity of the sale. Among these guidelines is the licensing requirement for PSOs and online vendors previously mentioned. HB 1896 seeks to promote best practices for conducting online sales by setting minimum requirements that include: real-time bid feedback to all bidders, registration and bidder ID requirements, anti-sniping bidding protections, no fee required for bidders to access sale information, establishing a secure online bidding environment and a minimum bidding window of at least 2 hours to ensure all interested bidders are afforded an opportunity to bid.

Furthermore, HB 1896 sets out limitations on fees charged to the foreclosure case by PSOs and online vendors, which includes a cap on such fee, and a prohibition on charging buyer's premiums, a mechanism that can substantially impact the buying power of bidders and decrease the sale price of the property which would have a negative impact on the debtor. Implementing these minimum protection measures helps maintain the integrity of the sale and limit opportunities for abuse.

### PSO Foreclosure Sale Model Has Proven Successful

As stated, the PSO model introduces a multi-vendor approach to foreclosure sales. States where foreclosure sales may be conducted by multiple vendors, similar to a PSO-type model, consistently perform significantly better with higher foreclosure sales rates and foreclosure sale price to property value ratios.

A multi-vendor/PSO model has proven successful in (i) increasing marketing and exposure of properties going to sale; (ii) expanding local bidder participation; (iii) maximizing sale price, surplus funds, and sales to third-party buyers, as opposed to reverting to the lender; and (iv) expediting the return of properties back into the market. These benefits to the sale directly promote neighborhood stabilization and help reduce neighborhood blight by returning properties back to the market faster, which allows them to be renovated and occupied by owner-occupants at a higher rate (*See Figure 1*).

The foreclosure sales rate to third party buyers in multi-vendor states increased from 36.8% in 2019 to 57.8% in 2021, a 21-point gain. Conversely, the foreclosure sale rate to third-party buyers in single-vendor states, typically judicial states with a designated sale agent, only increased from 32.6% in 2019 to 49.7% in 2021, a lesser 17-point gain<sup>1</sup>. Multi-vendor states outperformed single-vendor states by 4.2 points in 2019 and 8.1 points in 2021 (*See Figure 2*). Multi-vendor/PSO-type models promote more competition and availability among sale agents that allow such jurisdictions to be better positioned to handle increased foreclosure sale volume. Further, these numbers dictate that multi-vendor/PSO states successfully increase exposure of these sales, bidder participation and sale price to more align with the market.

The ability to reach a broader group of people through the use of additional marketing by PSOs increases the likelihood that a property will sell for its optimal value. Currently the typical form of marketing on a

foreclosure sale in Pennsylvania is the posting of handbills and publication of the sale in the newspaper. This method of publication reaches a limited number of people, many of whom are likely already foreclosure purchasers and institutional investors.

PSO marketing can extend to public facing websites, email marketing, and advertisements to key buyers, including a focus on local buyers. This type of marketing goes above and beyond the traditional foreclosure newspaper ad and expands the buyer base to include bidders who do not rely on print as well as those who may not be privy to the foreclosure sale process. Bidders will likely have access to additional information such as property photos, property characteristics (bed count, bath count, square footage, etc.), property valuation information, area information, and property title reports that enable them to more effectively conduct property due diligence and bid with confidence.

The expanded marketing and access to information provided by PSOs grows the local bidder presence at foreclosure auctions as well as helps explain the foreclosure sale process which has historically been difficult to access.

Additional PSO benefits include:

- Higher Engagement with Local Investors: 98% of buyers are small, local investors, who purchase 5 or fewer properties per year and 81% buy properties within driving distance of where they live (100 miles)<sup>ii</sup>
- Reduced Neighborhood Blight: Property resales occur 18% faster (~ 61 days less time) vs properties that revert to the lender at foreclosure sale and then are sold to a third party through the REO process<sup>iii</sup>
- Neighborhood Stabilization: 70% of properties are sold to owner-occupants vs. 52% of properties revert at foreclosure and sold through the REO process<sup>iv</sup>

#### Utilization of a Multi-Vendor Sale Process Reduces Blight

As evidenced in the *Financial Impact of Blight on the Tri-COG Communities Executive Summary*, it is well-established that a property in foreclosure decreases the value of surrounding properties, creating community blight, and diminishing the amount of property taxes paid. It is essential that once a property is to be sold at foreclosure sale the process is efficient and timely while at the same time preserving the ability of the debtor to capitalize on any equity that may remain in the property. In Pennsylvania, that process can take months or even years to come to fruition. All the while the property remains stagnant or deteriorating either vacant or with an occupant unable to upkeep the structure. With the addition of the moratoriums imposed due to the COVID-19 pandemic, there has been a tremendous increase in the delays in the foreclosure process.

Price execution rates for multi-vendor states typically outperform that of a single vendor state, demonstrating that utilizing a PSO may enhance the sale price of the properties in Pennsylvania. Whereas in 2021, multi-vendor states capitalized on a price/value ratio of 76.8%, single vendor states were over 13 points less at 67.7% (See *Figure 3*). The 13-point difference in 2021 is up from a 10% delta the year prior. Increased price execution is evidence that the increased efforts employed by a PSO directly benefit the sale price of a property.

Providing this option for use of a PSO will also enable sales to be completed quicker, more sales to third-party purchasers, and the bidder base to expand beyond what you would historically find at Pennsylvania

foreclosure sales. Foreclosure sales that utilize a multi-vendor approach consistently show that the property is auctioned in a timelier manner, often to local investors. Multi-vendor states have an average of 74% resale to owner occupants versus 69% in single vendor states. As the years pass, this delta gets larger – in 2017, multi-vendor states outperformed single vendor by a mere 3%. This percent jumped to 11% in 2019, the last full calendar year before foreclosures were impacted by moratoriums resulting from the COVID-19 pandemic<sup>v</sup>. The time savings between sale and occupancy decreases neighborhood blight and lessens the number of properties sitting vacant. The data clearly demonstrates that sales conducted by multiple vendors outperform those with a single vendor. HB 1896 has the potential to have a significant positive impact on the State of Pennsylvania and its citizens.

Thank you all greatly for your attention in this matter. As experts in the field of foreclosure sales, it is the strong belief of Auction.com and the professionals that work with us that enactment of HB 1896 will greatly improve foreclosure sale results while maintaining loss mitigation standards, decrease time homes are left vacant thereby reducing neighborhood blight, and providing the necessary safeguards to ensure a fair and transparent foreclosure sale process.

EXHIBIT A

FIGURE 1: Multi-Vendor states more often end up in the hands of owner occupants.<sup>vi</sup>

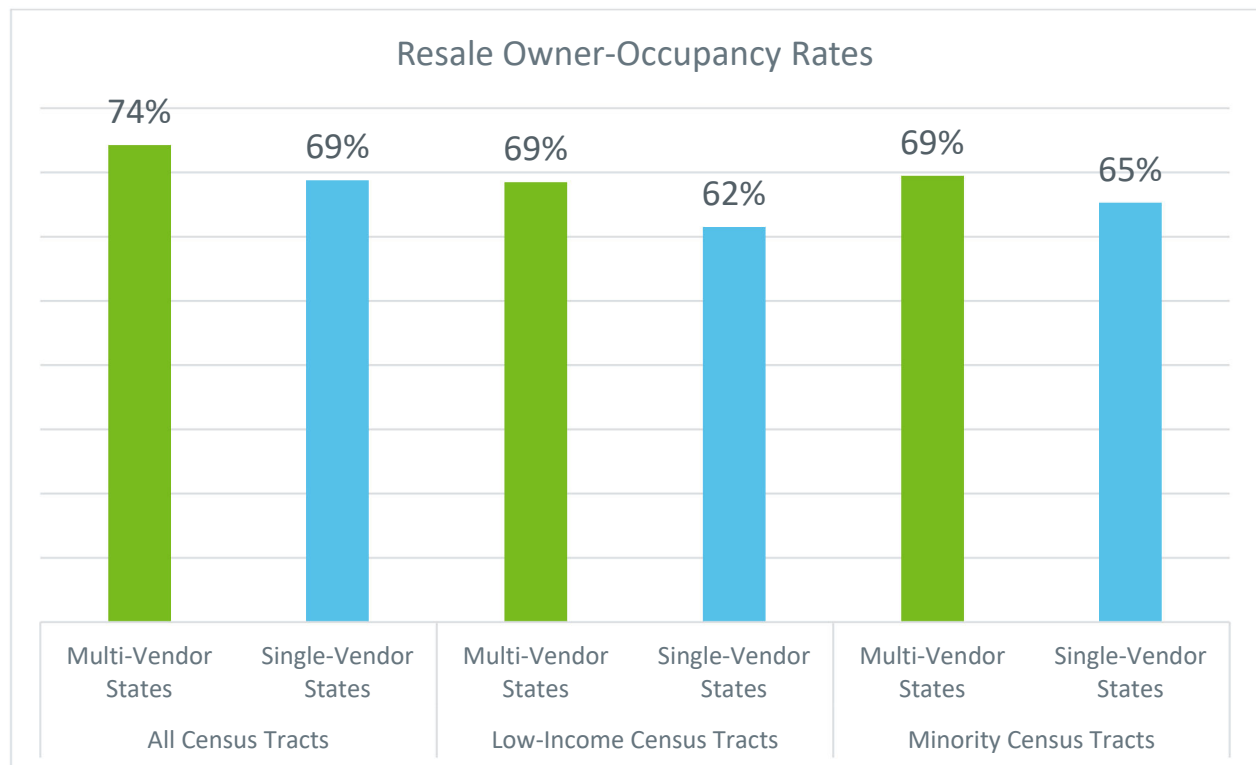


FIGURE 2: Foreclosure sale rate in multi-vendor states surpasses single vendor states<sup>vii</sup>

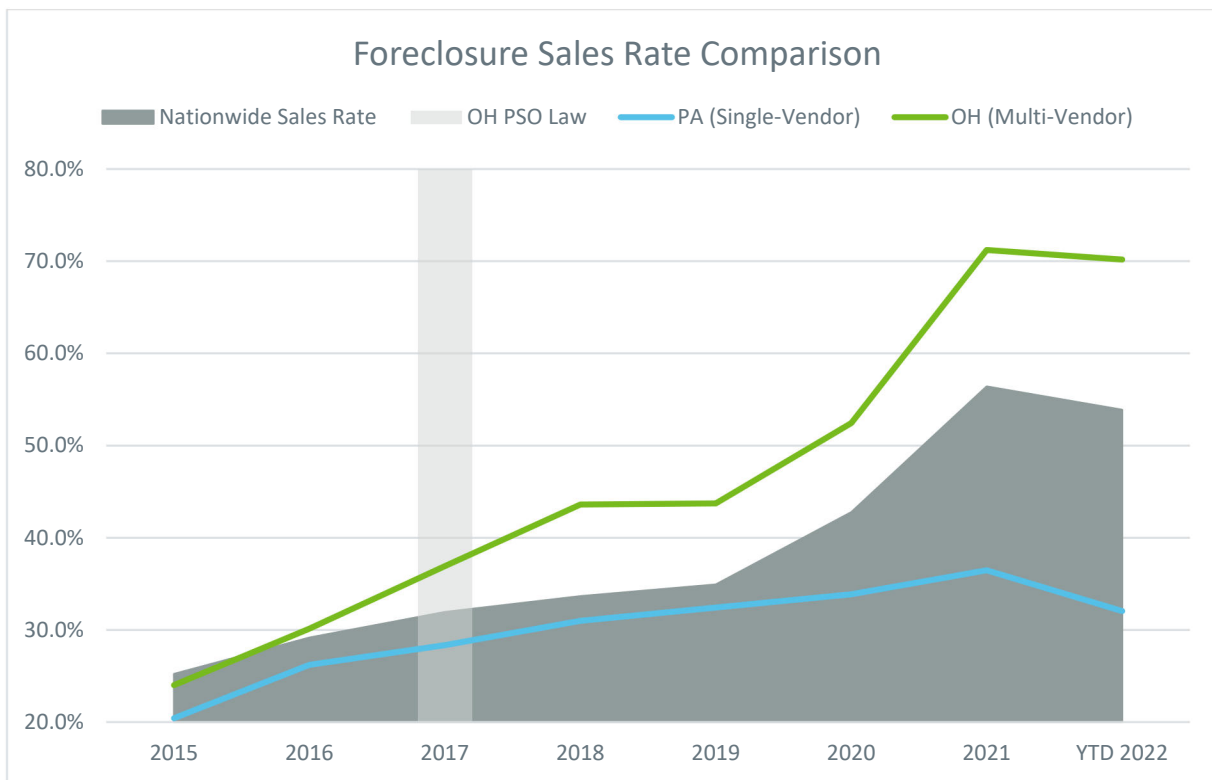
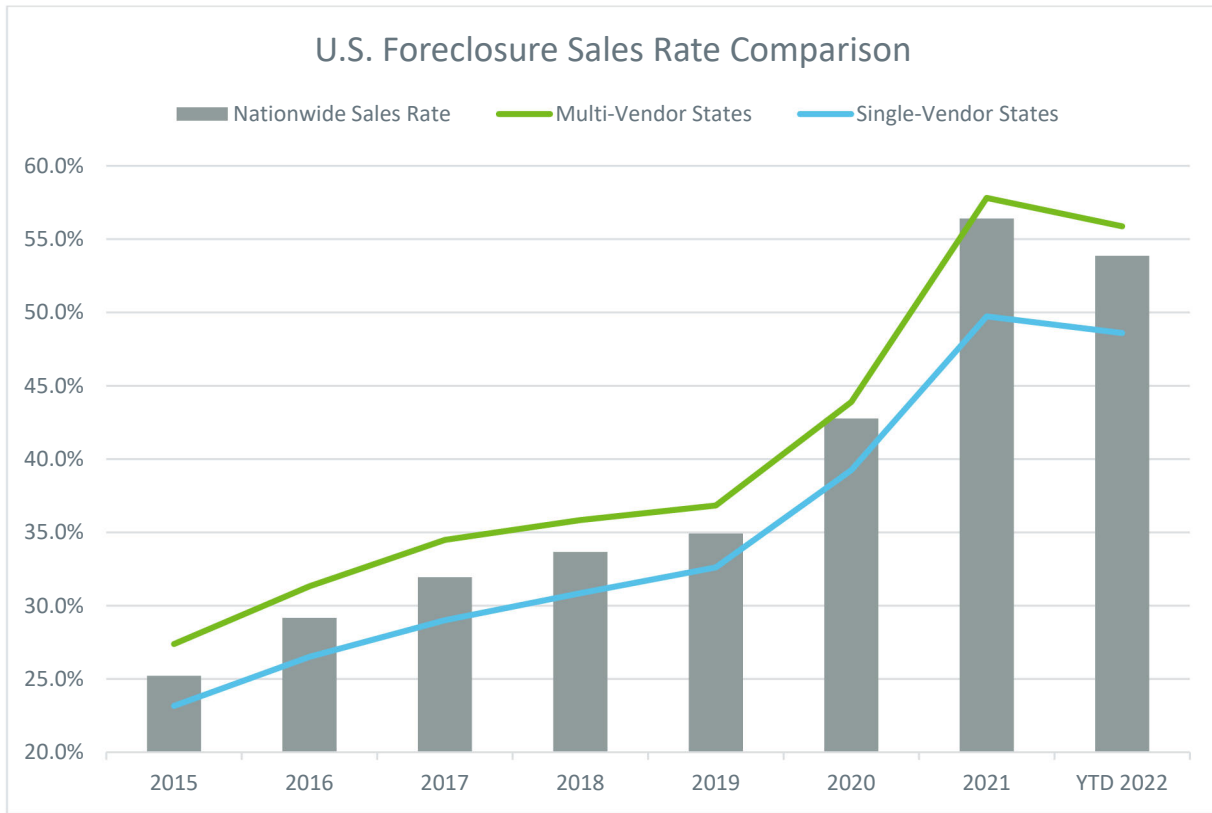
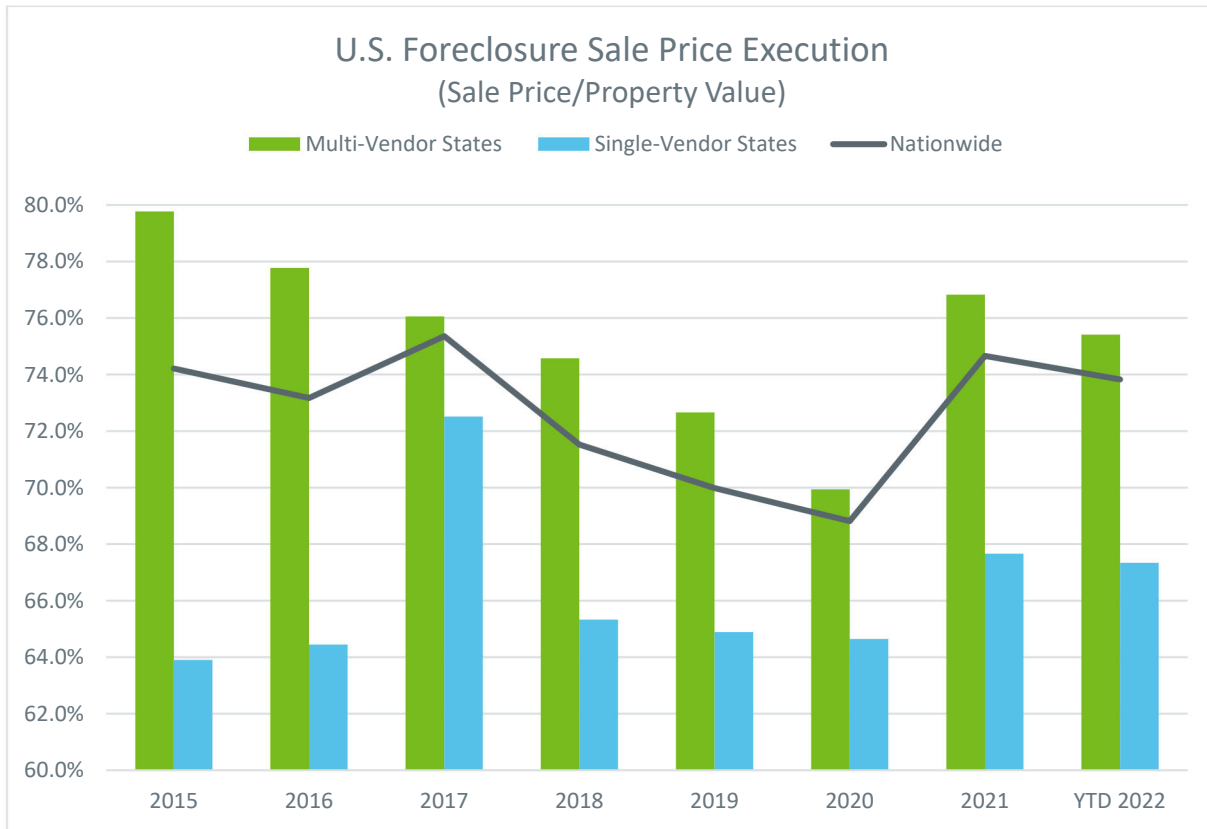


FIGURE 3: Foreclosure sale price execution in multi-vendor states surpasses single vendor states<sup>viii</sup>



<sup>i</sup> Source: Public record county recorder data from ATTOM Data Solutions

<sup>ii</sup> Source: Auction.com data

<sup>iii</sup> Source: Auction.com data, public record data from ATTOM Data Solutions (county recorder data and county tax assessor data)

<sup>iv</sup> Source: Auction.com data, public record data from ATTOM Data Solutions (county recorder data and county tax assessor data)

<sup>v</sup> Source: Auction.com data, public record data from ATTOM Data Solutions (county recorder data and county tax assessor data)

<sup>vi</sup> Source: Auction.com data, public record data from ATTOM Data Solutions (county recorder data and county tax assessor data)

<sup>vii</sup> Source: Public record county recorder data from ATTOM Data Solutions

<sup>viii</sup> Source: Public record county recorder data from ATTOM Data Solutions