

AMENDED IN SENATE MARCH 25, 2010

AMENDED IN SENATE MARCH 15, 2010

SENATE BILL

No. 931

Introduced by Senator Ducheny

February 2, 2010

An act to add Section 580e to the Code of Civil Procedure, relating to mortgages.

LEGISLATIVE COUNSEL'S DIGEST

SB 931, as amended, Ducheny. Mortgages: deficiency judgments.

Existing law authorizes an action for a deficiency judgment for the balance due upon an obligation for the payment of which a deed of trust or mortgage with power of sale upon real property or any interest therein was given as security, as specified. Existing law prohibits a deficiency judgment in any case in which the real property or an estate for years therein has been sold by the mortgagee or trustee under power of sale contained in the mortgage or deed of trust.

This bill would prohibit a deficiency judgment under a note secured by a first deed of trust or first mortgage for a dwelling of not more than 4 units in any case in which the trustor or mortgagor sells the dwelling for less than the remaining amount of the indebtedness due at the time of sale with the written consent of the holder of the first deed of trust or first mortgage. The bill would provide that written consent of the holder of the first deed of trust or first mortgage to that sale shall obligate that holder to accept the sale proceeds as full payment and to fully discharge the remaining amount of the indebtedness on the first deed of trust or first mortgage. *The bill would specify that those provisions would not limit the ability of the holder of the first deed of trust or first mortgage to seek damages and use existing rights and remedies against*

the trustor or mortgagor or any 3rd party for fraud or waste if the trustor or mortgagor commits either fraud with respect to the sale of, or waste with respect to, the real property that secures that deed of trust or mortgage.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 580e is added to the Code of Civil
2 Procedure, to read:

3 580e. (a) No judgment shall be rendered for any deficiency
4 under a note secured by a first deed of trust or first mortgage for
5 a dwelling of not more than four units, in any case in which the
6 trustor or mortgagor sells the dwelling for less than the remaining
7 amount of the indebtedness due at the time of sale with the written
8 consent of the holder of the first deed of trust or first mortgage.
9 Written consent of the holder of the first deed of trust or first
10 mortgage to that sale shall obligate that holder to accept the sale
11 proceeds as full payment and to fully discharge the remaining
12 amount of the indebtedness on the first deed of trust or first
13 mortgage.

14 (b) *If the trustor or mortgagor commits either fraud with respect*
15 *to the sale of, or waste with respect to, the real property that*
16 *secures the first deed of trust or first mortgage, this section shall*
17 *not limit the ability of the holder of the first deed of trust or first*
18 *mortgage to seek damages and use existing rights and remedies*
19 *against the trustor or mortgagor or any third party for fraud or*
20 *waste.*