

AMENDED IN SENATE APRIL 4, 2011

AMENDED IN SENATE MARCH 21, 2011

SENATE BILL

No. 458

Introduced by Senator Corbett

(Principal coauthor: ~~Senator Correa~~ coauthors: *Senators Correa and Vargas*)

(Coauthors: Assembly Members Blumenfield and Skinner)

February 16, 2011

An act to amend Section ~~580b~~ 580e of the Code of Civil Procedure, relating to mortgages, *and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 458, as amended, Corbett. Mortgages: deficiency judgments.

Existing law prohibits 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. Existing law provides 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. Existing law specifies 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. Existing law makes these provisions inapplicable if the trustor or mortgagor is a corporation or political subdivision of the state.

This bill would expand those provisions to prohibit a deficiency judgment upon a note secured by a deed of trust or mortgage for a dwelling of not more than 4 units in any case in which the trustor or mortgagor sells the dwelling for a sale price less than the remaining amount of the indebtedness outstanding at the time of sale, in accordance with the written consent of the holder of the deed of trust or mortgage. The bill would provide, following the voluntary transfer of title to a buyer, as specified, and the tender of the sale proceeds, the rights, remedies, and obligations of any holder, beneficiary, mortgagee, trustor, mortgagor, obligor, obligee, or guarantor of the note, deed of trust, or mortgage, and with respect to any other property that secures the note, shall be treated and determined as if the dwelling had been sold through foreclosure under a power of sale, as specified. The bill would provide that these provisions are inapplicable if the trustor or mortgagor is a corporation, limited liability company, limited partnership, or political subdivision of the state. The provisions would also be inapplicable to any deed of trust, mortgage, or other lien given to secure the payment of bonds or other evidence of indebtedness authorized, or permitted to be issued, by the Commissioner of Corporations, or that is made by a public utility subject to the Public Utilities Act. The bill would provide that any purported waiver of these provisions shall be void and against public policy.

This bill would declare that it is to take effect immediately as an urgency statute.

~~Existing law prohibits a deficiency judgment upon a sale of real property or an estate for years for failure of the purchaser to complete the contract of sale or satisfy the obligation underlying a mortgage or trust deed given to secure payment in specific circumstances, including if the loan was on a dwelling, as specified, and the loan was, in fact, used to pay all or part of the purchase price of the dwelling.~~

~~This bill would provide that a loan used to pay all or part of the purchase price of real property or an estate for years includes a subsequent loan, mortgage, or deed of trust that refinances or modifies the original loan, but only to the extent that the subsequent loan, mortgage, or deed of trust was acquisition indebtedness, as defined.~~

~~Vote: majority $\frac{2}{3}$. 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 of the Code of Civil Procedure is*
2 *amended to read:*

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

14 (b) *Following the voluntary transfer of title to a buyer by grant*
15 *deed or by other document of conveyance recorded in the county*
16 *where all or part of the real property is located and the tender to*
17 *the mortgagee, beneficiary, or the agent of the mortgagee or*
18 *beneficiary of the sale proceeds, as agreed, the rights, remedies,*
19 *and obligations of any holder, beneficiary, mortgagee, trustor,*
20 *mortgagor, obligor, obligee, or guarantor of the note, deed of*
21 *trust, or mortgage, and with respect to any other property that*
22 *secures the note, shall be treated and determined as if the dwelling*
23 *had been sold through foreclosure under a power of sale contained*
24 *in the deed of trust or mortgage for a price equal to the sale*
25 *proceeds received by the holder, in the manner contemplated by*
26 *Section 580d.*

27 ~~(b)~~

28 (c) If the trustor or mortgagor commits either fraud with respect
29 to the sale of, or waste with respect to, the real property that secures
30 the ~~first~~ deed of trust or ~~first~~ mortgage, this section shall not limit
31 the ability of the holder of the ~~first~~ deed of trust or ~~first~~ mortgage
32 to seek damages and use existing rights and remedies against the
33 trustor or mortgagor or any third party for fraud or waste.

34 ~~(e)~~

35 (d) This section shall not apply if the trustor or mortgagor is a
36 corporation, *limited liability company, limited partnership,* or
37 political subdivision of the state.

1 (e) This section shall not apply to any deed of trust, mortgage,
2 or other lien given to secure the payment of bonds or other
3 evidence of indebtedness authorized, or permitted to be issued, by
4 the Commissioner of Corporations, or that is made by a public
5 utility subject to the Public Utilities Act (Part 1 (commencing with
6 Section 201) of Division 1 of the Public Utilities Code).

7 (f) Any purported waiver of subdivision (a) or (b) shall be void
8 and against public policy.

9 SEC. 2. This act is an urgency statute necessary for the
10 immediate preservation of the public peace, health, or safety within
11 the meaning of Article IV of the Constitution and shall go into
12 immediate effect. The facts constituting the necessity are:

13 In order to mitigate the impact of the ongoing foreclosure crisis
14 and to encourage the approval of short sales as an alternative to
15 foreclosure, it is necessary that this act take effect immediately.

16 SECTION 1. Section 580b of the Code of Civil Procedure is
17 amended to read:

18 ~~580b. A deficiency judgment shall not lie in any event after a~~
19 ~~sale of real property or an estate for years therein for failure of the~~
20 ~~purchaser to complete his or her contract of sale, or under a deed~~
21 ~~of trust or mortgage given to the vendor to secure payment of the~~
22 ~~balance of the purchase price of that real property or estate for~~
23 ~~years therein, or under a deed of trust or mortgage on a dwelling~~
24 ~~for not more than four families given to a lender to secure~~
25 ~~repayment of a loan that was in fact used to pay all or part of the~~
26 ~~purchase price of that dwelling occupied, entirely or in part, by~~
27 ~~the purchaser.~~

28 If both a chattel mortgage and a deed of trust or mortgage have
29 been given to secure payment of the balance of the combined
30 purchase price of both real and personal property, a deficiency
31 judgment shall not lie at any time under any one thereof if no
32 deficiency judgment would not lie under the deed of trust or
33 mortgage on the real property or estate for years therein.

34 For purposes of this section, a loan used to pay all or part of the
35 purchase price of real property or an estate for years shall include
36 any subsequent loan, mortgage, or deed of trust that refinances or
37 modifies the original loan, but only to the extent that the subsequent
38 loan, mortgage, or deed of trust is acquisition indebtedness as

1 defined in Section 163(h)(3)(B) of Title 26 of the United States
2 Code.

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