

Introduced by Senator Corbett

February 21, 2013

An act to amend Sections 580b and 580e of the Code of Civil Procedure, relating to deficiency judgments.

LEGISLATIVE COUNSEL'S DIGEST

SB 426, as introduced, Corbett. Civil procedure: deficiency judgments.

Existing law provides that no deficiency judgment shall lie following a judicial foreclosure with respect to certain enumerated circumstances, including, among others, after a sale of real property or an estate for years therein for failure of the purchaser to complete his or her contract of sale. Existing law prohibits a judgment to be rendered for a deficiency on a note secured by a deed of trust or mortgage on real property or an estate for years therein, as specified.

This bill would prohibit a deficiency from being owed or collected following a judicial foreclosure with respect to the enumerated circumstances. The bill also would prohibit a deficiency from being owed or collected for a deficiency on a note secured by a deed of trust or mortgage on real property or an estate for years therein, as specified, and would make nonsubstantive changes to these provisions.

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 580b of the Code of Civil Procedure is
- 2 amended to read:

1 580b. (a) No deficiency *shall be owed or collected, and no*
 2 *deficiency judgment shall lie in any event for any of the following:*

3 (1) After a sale of real property or an estate for years therein
 4 for failure of the purchaser to complete his or her contract of sale.

5 (2) Under a deed of trust or mortgage given to the vendor to
 6 secure payment of the balance of the purchase price of that real
 7 property or estate for years therein.

8 (3) Under a deed of trust or mortgage on a dwelling for not more
 9 than four families given to a lender to secure repayment of a loan
 10 ~~which that was in fact~~ used to pay all or part of the purchase price
 11 of that dwelling, occupied entirely or in part by the purchaser.

12 ~~(b) For purposes of subdivision (e); (b), a loan described in this~~
 13 ~~paragraph (3) of subdivision (a) is a “purchase money loan.”~~

14 (e)

15 (b) No deficiency judgment shall lie ~~in any event on any~~ a loan,
 16 refinance, or other credit transaction (collectively, a “credit
 17 transaction”) ~~which that~~ is used to refinance a purchase money
 18 loan, or subsequent refinances of a purchase money loan, except
 19 to the extent that in a credit transaction; the lender or creditor
 20 advances new principal (hereafter “new advance”) ~~which that~~ is
 21 not applied to ~~any~~ an obligation owed or to be owed under the
 22 purchase money loan, or to fees, costs, or related expenses of the
 23 credit transaction. ~~Any~~ A new credit transaction shall be deemed
 24 to be a purchase money loan except as to the principal amount of
 25 ~~any~~ a new advance. For purposes of this section, any payment of
 26 principal shall be deemed to be applied first to the principal balance
 27 of the purchase money loan, and then to the principal balance of
 28 ~~any~~ a new advance, and interest payments shall be applied to any
 29 interest due and owing. ~~The provisions of this~~ *This* subdivision
 30 ~~shall applies only apply~~ to credit transactions that are executed on
 31 or after January 1, 2013.

32 ~~(d) Where~~

33 (c) *When* both a chattel mortgage and a deed of trust or mortgage
 34 have been given to secure payment of the balance of the combined
 35 purchase price of both real and personal property, no deficiency
 36 judgment shall lie ~~at any time~~ under any one thereof if no
 37 deficiency judgment would lie under the deed of trust or mortgage
 38 on the real property or estate for years therein.

39 SEC. 2. Section 580d of the Code of Civil Procedure is
 40 amended to read:

1 580d. ~~No~~(a) *No deficiency shall be owed or collected, and*
2 *no deficiency judgment shall be rendered for any a deficiency upon*
3 *on a note secured by a deed of trust or mortgage upon on real*
4 *property or an estate for years therein hereafter* executed in any
5 case in which the real property or estate for years therein has been
6 sold by the mortgagee or trustee under power of sale contained in
7 the mortgage or deed of trust.

8 **This**

9 (b) *This section does not apply to any a deed of trust, mortgage*
10 *mortgage, or other lien given to secure the payment of bonds or*
11 *other evidences of indebtedness authorized or permitted to be*
12 *issued by the Commissioner of Corporations, or which is made by*
13 *a public utility subject to the Public Utilities Act (Part 1*
14 *(commencing with Section 201) of Division 1 of the Public Utilities*
15 *Code).*