

AMENDED IN ASSEMBLY JUNE 11, 2013

AMENDED IN SENATE APRIL 1, 2013

**SENATE BILL**

**No. 426**

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**Introduced by Senator Corbett**

February 21, 2013

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

LEGISLATIVE COUNSEL'S DIGEST

SB 426, as amended, 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. *The bill also would express the intent of the Legislature that these provisions would not impact existing law regarding the liability of a guarantor, pledgor, or other surety with respect to a deficiency, nor existing law regarding other collateral pledged to secure the obligation that is the subject of a deficiency.*

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. *The Legislature finds and declares that this*  
 2 *measure is not intended to and does not impact existing law*  
 3 *regarding the liability a guarantor, pledgor or other surety may*  
 4 *have with respect to a deficiency, nor does it impact existing law*  
 5 *regarding other collateral pledged to secure an obligation that is*  
 6 *the subject of a deficiency.*

7     ~~SECTION 1.~~

8     SEC. 2. Section 580b of the Code of Civil Procedure is  
 9 amended to read:

10     580b. (a) ~~No~~—*Except as provided in subdivision (c), no*  
 11 *deficiency shall be owed or collected, and no deficiency judgment*  
 12 *shall lie, for any of the following:*

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

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

18     (3) Under a deed of trust or mortgage on a dwelling for not more  
 19 than four families given to a lender to secure repayment of a loan  
 20 that was used to pay all or part of the purchase price of that  
 21 dwelling, occupied entirely or in part by the purchaser. For  
 22 purposes of subdivision (b), a loan described in this paragraph is  
 23 a “purchase money loan.”

24     (b) No deficiency shall be owed or collected, and no deficiency  
 25 judgment shall lie, on a loan, refinance, or other credit transaction  
 26 (collectively, a “credit transaction”) that is used to refinance a  
 27 purchase money loan, or subsequent refinances of a purchase  
 28 money loan, except to the extent that in a credit transaction the  
 29 lender or creditor advances new principal (hereafter “new  
 30 advance”) that is not applied to an obligation owed or to be owed  
 31 under the purchase money loan, or to fees, costs, or related  
 32 expenses of the credit transaction. A new credit transaction shall  
 33 be deemed to be a purchase money loan except as to the principal  
 34 amount of a new advance. For purposes of this section, any  
 35 payment of principal shall be deemed to be applied first to the

1 principal balance of the purchase money loan, and then to the  
2 principal balance of a new advance, and interest payments shall  
3 be applied to any interest due and owing. This subdivision applies  
4 only to credit transactions that are executed on or after January 1,  
5 2013.

6 *(c) The fact that no deficiency shall be owed or collected under*  
7 *the circumstances set forth in subdivisions (a) and (b) does not*  
8 *affect the liability that a guarantor, pledgor or other surety might*  
9 *otherwise have with respect to the deficiency, or that might*  
10 *otherwise be satisfied in whole or in part from other collateral*  
11 *pledged to secure the obligation that is the subject of the deficiency.*

12 ~~(e)~~  
13 *(d) When both a chattel mortgage and a deed of trust or*  
14 *mortgage have been given to secure payment of the balance of the*  
15 *combined purchase price of both real and personal property, no*  
16 *deficiency judgment shall lie under any one thereof if no deficiency*  
17 *judgment would lie under the deed of trust or mortgage on the real*  
18 *property or estate for years therein.*

19 ~~SEC. 2.~~

20 *SEC. 3.* Section 580d of the Code of Civil Procedure is  
21 amended to read:

22 580d. ~~(a) No~~ *Except as provided in subdivision (b), no*  
23 *deficiency shall be owed or collected, and no deficiency judgment*  
24 *shall be rendered for a deficiency on a note secured by a deed of*  
25 *trust or mortgage on real property or an estate for years therein*  
26 *executed in any case in which the real property or estate for years*  
27 *therein has been sold by the mortgagee or trustee under power of*  
28 *sale contained in the mortgage or deed of trust.*

29 *(b) The fact that no deficiency shall be owed or collected under*  
30 *the circumstances set forth in subdivision (a) does not affect the*  
31 *liability that a guarantor, pledgor or other surety might otherwise*  
32 *have with respect to the deficiency, or that might otherwise be*  
33 *satisfied in whole or in part from other collateral pledged to secure*  
34 *the obligation that is the subject of the deficiency.*

35 ~~(b)~~  
36 *(c) This section does not apply to a deed of trust, mortgage, or*  
37 *other lien given to secure the payment of bonds or other evidences*  
38 *of indebtedness authorized or permitted to be issued by the*  
39 *Commissioner of Corporations, or which is made by a public utility*

- 1 subject to the Public Utilities Act (Part 1 (commencing with Section
- 2 201) of Division 1 of the Public Utilities Code).

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