

Date of Hearing: June 20, 2011

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Mike Eng, Chair

SB 458 (Corbett) – As Amended: May 16, 2011

SENATE VOTE: 39-0

SUBJECT: Mortgages: deficiency judgments.

SUMMARY: Expands anti-deficiency protection for all residential mortgages or deeds of trust, provided that the holder of the mortgage or deed of trust consents to the short sale. Specifically, this bill:

- 1) Clarifies that anti-deficiency protections do not apply to commercial property loans.
- 2) Specifies that the holder of the note shall not require the trustor, mortgagor, or maker of the note to pay additional compensation, aside from sale proceeds, in exchange for consent to the sale.

EXISTING LAW

- 1) Provides for procedures by which a money judgment (a “deficiency judgment”) can be sought for the balance due on an obligation for the payment of which a deed of trust or mortgage was given as security. A court may render judgment for not more than the amount by which the entire amount of indebtedness due at the time of sale exceeded the fair market value of the real property or interest therein sold at the time of sale, with interest from the date of sale, as specified. (Code Civ. Proc. Sec. 580a.)
- 2) Prohibits a deficiency judgment after the sale of real property under a deed of trust or mortgage on a dwelling for not more than four families. That provision applies to loans that were used to pay all or a part of the purchase price of the dwelling that was occupied by the purchaser. (Code Civ. Proc. Sec. 580b.)
- 3) Prohibits a deficiency judgment on a note secured by a deed of trust or mortgage in any case in which the property has been sold by the mortgagee or trustee (lender) under a power of sale contained in the mortgage or deed of trust. (Code of Civ. Proc. Sec. 580d.)
- 4) Prohibits a deficiency judgment on a note secured by a first deed of trust or first mortgage on a dwelling of not more than four units where the dwelling is sold for less than the remaining amount of indebtedness due at the time of sale with the written consent of the holder of the first deed of trust or mortgage. Written consent of the holder obligates that holder to accept sale proceeds as full payment and to fully discharge the remaining amount of indebtedness. (Code Civ. Proc. Sec. 580e(a).)
- 5) Provides that if the mortgagee commits fraud with respect to the sale, or waste with respect to the real property, the above provision shall not limit the ability of the holder of the first deed of trust or mortgage to seek damages and use existing rights and remedies. (Code Civ. Proc. Sec. 580e(b).)

- 6) Specifies that the above protections do not apply if the trustor or mortgagor is a corporation or political subdivision of the state. (Code Civ. Proc. Sec. 580e(c).)

FISCAL EFFECT: None

COMMENTS:

According to the author,

“As the economic crisis continues to impact Californians, short sales offer an opportunity for a homeowner to avoid foreclosure. However, current law only affords ‘anti-deficiency’ protection for the first note or first deed of trust in the event of a short sale. Current law does not extend this anti-deficiency protection for junior notes when a short sale occurs (i.e. second mortgages)..”

“SB 458 (Corbett) builds upon the protections laid out in Section 580(e) of the Code of Civil Procedure by protecting homeowners from deficiency judgments in all loans on a home, not simply the first note.”

This bill builds on SB 931 (Ducheny), Chapter 701, Statutes of 2010, which first provided anti-deficiency protection for short sales. Code of Civil Procedure, Section 580e (created by SB 931) was intended to afford relief to borrowers when their mortgage was secured by simple parcels of real property containing one-to-four family unit homes. An unintended consequence of this law, is that it could be construed to hinder the recovery of some collateral used in a commercial loan, or it could provide a disincentive for the lender and borrower in a commercial loan from working out an agreement short of foreclosure. The reason for this complication is that many commercial loans require the borrower to pledge multiple forms of collateral, which in many cases would be residential property.

In addition to clarifying existing protections, this bill expands those protections to second liens on residential property. AB 458 would protect borrowers in non-judicial foreclosure from deficiency judgments resulting from a short sale so long as the property meets the residential property requirement and that the lender agrees in writing to the short sale. Short sales can be complex transactions requiring numerous parties to agree to receive less than the full amount owed on the property. In many cases, borrowers have been able to get a short sale agreement with their first and second lenders only to find the second lender requesting the leftover amount due on the loan. This bill would clear up this issue by ensuring that once the homeowner has signed a short sale agreement with a second lender, then they are free from further efforts to seek the deficient amount.

Related legislation. SB 412 (Vargas) is substantially similar to SB 458. The bill is currently in the Senate Judiciary Committee.

Prior legislation. SB 931 (Ducheny), Chapter 701, Statutes of 2010, passed the Senate Floor (35-0) on August 19, 2010.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Realtors
California Bankers Association
California Independent Bankers
California Mortgage Association
California Mortgage Bankers Association
California Rural Legal Assistance Foundation
United Trustees Association
Western Center on Law & Poverty

Opposition

None on file.

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