



SHORT SALE LAW SB 458

Governor Brown has signed Senate Bill 458 (Corbett) expanding anti-deficiency protection to all 1-4 residential mortgages or deeds of trust where the beneficiary consents to a short sale, whether a first deed of trust or a junior deed of trust. As an urgency bill, it became effective on July 15 when it was chaptered into law. The new law also limits the short sale anti-deficiency protections by excluding sales where the trustor is a limited partnership or LLC. Existing short sale law enacted in 2010 already excluded corporations.

The new law also clarifies the application of short sale law to multiple collateral situations by treating the short sale as a foreclosure under a power of sale for purposes of any other properties securing the note. This provision is meant to clarify that the short sale provisions do not impact multiple collateral loans.

Of particular importance to title and escrow companies, the bill prohibits a note holder from requiring the borrower to pay additional compensation, aside from sale “proceeds,” in exchange for the note holder agreeing to the short sale.

Two concerns have arisen with respect to the prohibition on additional compensation for consent to the short sale. One issue involves open escrows, and the second the meaning of the term “proceeds.” There may be open escrows where a lender consented to a short sale based on an agreement by the borrower to pay a fee or charge. The second issue

is whether the new law means “net proceeds” or “gross proceeds.” For instance, is the lender entitled to all the sale proceeds with the seller funding closing costs, or is it only the proceeds remaining after closing without the deposit of any seller funds into escrow?

The CLTA hosted a conference call recently with representatives of the lending, real estate and title community to discuss the bill. One of the sponsors of the new law, the California Association of Realtors, states that the intent is that “proceeds” mean net proceeds remaining after closing costs. Senator Corbett, who is the author of the law, may be asked by CLTA to submit a letter to the Senate Journal to make the intent clear.

The new law expands on short sale anti-deficiency legislation passed last year. Senate Bill 931 (Ducheny) was enacted last year in response to concerns that borrowers could have greater liability after a short sale than after a foreclosure. SB 931 prohibited a lender from obtaining a deficiency judgment as to a first mortgage or deed of trust following a short sale. Since SB 931 only applied to first mortgages, homeowners with more than one mortgage could still be liable to a junior noteholder after the short sale. The new law addresses that issue.

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