

Senate Bill 931 (SB 931) pertaining to California **Short Sale** Deficiencies was signed by the Governor on September 30th. Beginning January 1st, 2011 any first mortgages that accept a short sale will not be able to obtain a deficiency judgment against a seller after the completion of a [short sale](#). If a lender provides written consent to a short sale on a first mortgage, the lender must accept the sales proceeds as full payment and discharge the remaining balance due on the loan. The new law will apply to all first mortgage loans secured by one to four residential units, including purchase money, hard money and refinanced loans. The new law does not prevent the lender from seeking damages for fraud or waste by the borrower.

The legislative counsel's summary of the bill follows:

"This bill would prohibit 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 (owner) 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. The bill would provide 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. "

The new law only applies to mortgages in the first lien position. It is still very important for any borrowers with a second lien to get in writing that any future deficiency rights are waived. While many attorneys believe that if a second mortgage is purchase money, that the seller will be protected under the non-recourse laws, there has not been any definitive case law to reflect this.

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Senate Bill 458 (SB 458) extends the protections of **SB 931** (2010), to ensure that any lender that agrees to a short sale must accept the agreed upon short sale payment as payment in full of the outstanding balance of all loans. Under previous law (SB 931 of 2010), a first mortgage holder could accept an agreed-upon short sale payment as full payment for the outstanding balance of the loan, but unfortunately, the rule did not apply to junior lien holders. SB 458 extends the protections of SB 931 to junior liens.

"The signing of this bill is a victory for California homeowners who have been forced to short sell their home only to find that the lender will pursue them after the short sale closes, and demand an additional payment to subsidize the difference," said C.A.R. President Beth L. Pearce. "SB 458 brings closure and certainty to the short sale process and ensures that once a lender has agreed to accept a short sale payment on a property, all lienholders – those in first position and in junior positions – will consider the outstanding balance as paid in full and the homeowner will not be held responsible for any additional payments on the property."

SB 458 contains an urgency clause making it effective upon signing.

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CALIFORNIA CODE FOR CIVIL PROCEDURE SECTION 580e

(a) No judgment shall be rendered for any deficiency under a note secured by a first deed of trust or first mortgage for a dwelling of not more than four 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. 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.

b) If the trustor or mortgagor commits either fraud with respect to the sale of, or waste with respect to, the real property that secures the first deed of trust or first mortgage, this section shall 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 third party for fraud or waste.

(c) This section shall not apply if the trustor or mortgagor is a corporation or political subdivision of the state.