

New Anti-Deficiency Legislation

Q: I have heard that the anti-deficiency legislation in California has been expanded. Can you shed some light on that?

A: Certainly, but first a bit of background. California has had anti-deficiency legislation since the early 1930s. California's Code of Civil Procedure ("CCP") Section 580b contains the "purchase money" protection, which provides, among other things, that there will be no deficiency judgment against a borrower under a deed of trust for an owner-occupied residential one- to-four dwelling where the loan proceeds were used to pay for all or part of such dwelling. 580b also applies to land sale contracts and seller financing.

CCP Section 580d addresses "non-judicial" foreclosures, and provides, among other things, that when a lender directs

the trustee to foreclose under the power of sale granted to the trustee under the deed of trust, then that lender cannot pursue any deficiency against the borrower/trustor if the sale did not generate enough sales proceeds to pay the lender in full. This protection applies only regarding the debt of the foreclosing lender. If there is a second deed of trust on the property and the first lender forecloses, CCP 580d only provides protection against deficiency judgments by the first lender. If the sales proceeds of such sales are insufficient to pay off the second lien, then the second lender is called a "foreclosed out junior lien holder." While the second lender loses its lien, it still holds the now unsecured

note. If the second loan qualifies for 580b protection (second loan was used to purchase an owner-occupied one-to-four residential property), then the second lender may *not* obtain any deficiency judgment regarding such loan, as the loan has "purchase money" protection. If it does not so qualify, then the second lender *can* sue directly on the note. Keep in mind that refinancing a purchase money loan causes it to lose its 580b protection, and the non-recourse loan becomes a recourse loan. Barring a deficiency judgment does not preclude attempts by a debt collector to collect the debt. It only means that one cannot go to court to enforce payment. Do not be fooled or harassed into paying a debt that cannot be enforced against you in a court of law.

CCP section 580b does not mention foreclosure, while 580d does, but neither expressly mentions short sales. Conse-

More on Anti-Deficiency

Q. Do the anti-deficiency protections extend to all liens on the property?

A. No, only to real estate mortgage liens. Judgment liens, tax liens and the like do not receive anti-deficiency protection.

Q. The borrower is a limited liability company. Does such a borrower receive the new anti-deficiency protections?

A. No, the new statute also expands the exceptions to protection, from only a corporation or a political subdivision of the state to also include limited liability companies and limited partnerships. The statute also enumerates other exceptions to protection.

Q. Can a lender require the seller to pay additional sums to the lender as a

condition to granting the consent?

A. No, subsection (b) of the statute prohibits the lender from requiring the trustor to pay any additional compensation, aside from the proceeds of the sale, in exchange for the written consent to the sale.

Q. Can the protections of the new statute be waived by a borrower/owner?

A. No, the protections of CCP Sections 580e(a) and (b) may not be waived by the trustor, and any such waiver is void as against public policy.

Q. Where can I find out more information about this new statute?

A. To read the text of the statute, go to: www.leginfo.ca.gov.

quently, prior to January of 2011, it was not clear whether any anti-deficiency protections were available to borrowers after short sales. Enter SB 931, which added CCP section 580e on Jan. 1, 2011, and made it clear that if a short sale was consented to in writing by a first lender on a residential one-to-four property, then no deficiency judgment could be obtained. The law applied to both owner-occupied and investment properties. It did not apply if the trustor was a corporation or a political subdivision of the state. The lender could still seek damages and other remedies against an owner who commits fraud in connection with the short sale or commits waste of the secured real property.

Effective July 15, 2011, this relatively new CCP section 580e was revised and expanded to provide that no deficiency will be owed, collected, requested, or rendered upon a note secured *solely* by a deed of trust on a dwelling of not more than four units, in a short sale where the written consent of the holder of the deed of trust has been obtained. The effect of the expansion was to include junior real estate mortgage liens within the protections of the anti-deficiency legislation. It also covers both owner-occupied and investment properties, and mortgage liens that have been refinanced. In all cases, the borrower must voluntarily transfer the property to a buyer and record the conveyance document in the appropriate county, and the proceeds of the sale must be tendered to the lender or the lender's agent in accordance with the agreement. The lender still retains its remedies for fraud and waste. For cross-collateralized property, the property that is not the subject of the short sale will be treated as if it has been foreclosed upon, and shall receive the protection of CCP Section 580d. ♦

Linda A. Kirios, Esq., is counsel to the CALIFORNIA ASSOCIATION of REALTORS®, presents commercial educational programs throughout California, and practices commercial real estate.

To read a new Legal Q & A on the subject:
Go to: www.car.org/legal/foreclosure-short-sale-folder/short-sale-deficiencies.

"How I Make \$128.35 Per Hour

Practicing Real Estate In Today's New Economy..."

Yes it's True – This Is Not Another Hyped-Up Story. Read Below How I Overcame Horrible Odds To Get My Business Back On Track and Multiply My New Client Volume, Referrals and Repeat Business...

My name is Vangie Berry and I'm a broker in Tavares, Florida. If you're fed up with the economy and its stranglehold on your life and income, then I'm certain my message could make a big improvement to your production and career.



Vangie Berry, REALTOR®
Tavares, Florida

In 2007, we were all caught off-guard by the housing market crash. With fewer closings each year, many agents simply gave up – "retiring," quitting or returning to work as a wage slave. But I did something different...

A few years ago, I discovered a new and unusual marketing strategy designed to create hyper-response for getting new clients, referrals and repeat business. I applied the strategy to my business, and in the last 12 months alone I've made \$181,274 in *personal* commissions – in a depressed market where average home prices are down 55%. I'm the most surprised of all, because I now work part-time and make more per hour than most doctors and lawyers.

Using this one simple method I now work with

quality clients who trust my judgment, actually close, and actively refer others just like themselves. I never cold prospect, work long hours, or chase people for business. Because of how easy this method works, I have a steady stream of motivated clients calling me before other agents. I even take one week off each month to RV and travel with my husband.

I know you're skeptical and probably struggling in today's economy (I was too), but I'm convinced any agent can use this method to get a lot more closings, maybe even more than me especially if you work full-time or have a larger practice. So I decided to reveal my strategy to our agent community in order to build an exclusive referral network that benefits us all.

If you'd like to learn a new and better way to practice real estate in today's economy then go to the site below right now, watch my short video, and instantly get the Free 34 page *Agent Marketing Guide* describing my strategy. Go there now, and you'll also receive a Special Invitation to my upcoming Free Webinar Training explaining my step-by-step method: **MyBestStrategy.com**

©2011 FCI, Inc.

SMART AND AFFORDABLE HEALTH INSURANCE OPTIONS

Guaranteed issue (no health questions) options available to both REALTOR® and affiliate members of all Local Real Estate Associations in California. Plans available from *California Real Estate Benefit Plan, CREBP®*

UnitedHealthcare®

Sample monthly rates for our most popular
\$40 Co-pay, \$1000 Deductible PPO plan.*

Area	Age 30-39	Age 40-49	Age 50-54
San Diego	\$324.09	\$435.21	\$602.99
Los Angeles	\$355.20	\$476.98	\$660.87
Sacramento	\$372.27	\$499.90	\$692.63

*All rates are residence zip code specific.

Many other lower cost options are available.
Call or email us for an immediate quote.

800-560-4146
danc@dcims.com
CA INS Lic. # 0745662

800-446-2663
broker@benefitsstore.com
CA INS Lic. # 0680704

www.BenefitsStore.com

Serving Local California Real Estate Associations since 1984