



News Flash

July 22, 2011

On July 11, 2011 Governor Brown signed into effect Senate Bill 458 (Chapter 82, Statutes of 2011) which took effect immediately. The provisions of SB 458 expanded the previous statute which prohibited a first lien holder from filing a deficiency judgment against a seller after a short sale, and expanded this no recourse coverage to include any junior loans secured against a dwelling of not more than four units. SB 458 also included a provision which prohibits a lender from requiring a seller to make any additional payments above and beyond the sales proceeds including a cash contribution at closing.

Among other things, SB 458 specifically:

- Provides that the lender cannot obtain a deficiency judgment for any loan, without regard for purchase money or non-purchase money status or loan seniority, for loans secured by a deed of trust or mortgage on a dwelling of not more than four units, where the seller has voluntarily sold the property for less than what is owed and the sale proceeds have been paid to the lender in accordance with the parties' agreement.
- Provides that the anti-deficiency provisions cannot be waived.
- Prohibits a short sale lender from requiring seller funds be deposited to closing as part of the short sale agreement, specifically, that a lender "shall not require the trustor, mortgagor or maker of the note to pay any additional compensation, aside from the proceeds of the sale, in exchange for the written consent to the sale."
- Allows the lender to retain existing rights and remedies for recovery if the borrower has committed fraud or waste.
- Does not apply to commercial loans made to legal entities (where the borrower is a corporation, limited liability company, limited partnership or political subdivision of the state) or where a loan is secured by mixed collateral, such as a residential 1-4 unit property and a commercial property, thus allowing the lender to retain any rights under applicable laws to proceed against the other collateral to the same extent as if the dwelling had been sold by non-judicial foreclosure.

Escrow agents are reminded they are a neutral third party and cannot provide legal advice. It is up to the lender to ensure they are in compliance with State Law. Escrow agents' responsibility is to ensure they are closing their transaction pursuant to the terms described in short pay approval letters and in accordance with the mutual instructions from the principals of the transaction. Escrow agents are encouraged to consult their senior advisers and legal counsel where needed and should be alert to the potential for changes to terms or to the lender's short sale agreements in current transactions that may be affected.

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