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## New Law Regarding Short Sales Goes Into Immediate Effect: No Deficiency Judgments

On July 11, 2011, Governor Brown signed into law SB 458, a new bill that extends the reach of California's anti-deficiency law so that a lender can no longer pursue a residential borrower for a deficiency when the lender agrees to a short sale. Because SB 458 was an "urgency bill," it became effective almost immediately, on July 15, 2011.

On September 30, 2010, then-Governor Schwarzenegger signed into law SB 931 that for the first time prohibited lenders in California from pursuing borrowers for deficiencies on first mortgages if the collateral consisted of residential property of four units or less and the property was sold through a short sale. A "short sale" is a tripartite (three part) agreement between a seller, buyer and mortgage lender, whereby the property is sold at a price that is less than the amount of the secured debt. The lender agrees to accept a discounted payoff to remove the mortgage from the property. The "deficiency" is the difference between the amount of the debt and what the bank collects from the proceeds of the sale.

Since the 1930s, when a series of California anti-deficiency laws were enacted, lenders have been prohibited from collecting or pursuing collection of deficiencies following foreclosure sales. However, these laws did not apply to short sales until Governor Schwarzenegger signed SB 931 into law. It went into effect on January 1, 2011 and is known as Code of Civil Procedure Section 580e ("CCP 580e"). This anti-deficiency law has now been expanded so that residential mortgage borrowers are even more insulated against potential liability for deficiencies.

When CCP 580e first went into effect, it only applied to individual borrowers (not corporations) and only to first mortgages. CCP 580e has been amended so that the anti-deficiency protection applies to all 1-4 unit residential mortgages where the lender consents to a short sale, whether the loan is secured by a mortgage that is in first position or is subordinate to other mortgages. However, the new amendments also add new restrictions; it now expressly excludes sales where the borrower is a limited partnership or LLC, as well as sales where the borrower is a corporation.