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California Amends Anti-Deficiency Laws

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The California Legislature amended its major real estate anti-deficiency laws—Code of Civil Procedure §§580b and 580d—effective January 1, 2014. The amendments have been a subject of concern, but their objective, and likely effect, is limited.

CCP §580b, as currently written, says that “No deficiency judgment shall lie in any event for the following:” and then describes certain types of transactions including a deed of trust given to a lender to secure a loan made to finance the purchase of a dwelling for not more than four families which was in fact used to pay all or part of the purchase price of that dwelling, occupied entirely or in part by the purchaser.

CCP §580d, as currently written, says that “No judgment shall be rendered for any deficiency upon a note secured by a deed of trust or mortgage upon real property” following a nonjudicial foreclosure sale.

As construed by the courts, these provisions mean that a personal judgment may not be rendered against the debtor on the obligation secured by a deed of trust in the specified circumstances. The courts and other statutes have held that the creditor’s right to proceed against other collateral pledged to secure the obligation, or against guarantors of the obligation who have waived certain statutory protections, are not barred by these anti-deficiency laws.¹

Apparently, a practice developed among some creditors to contact debtors who were part of the class protected by the anti-deficiency laws, and seek to get them to make payments on the deficiency remaining after a nonjudicial foreclosure on their property. Some creditors would also continue to report the debts as delinquent on debtors’ credit reports. The creditors stated they were entitled to take these actions because the debt remained due and owing even if it could not be enforced in court. Some debtors, being unaware that the debt was legally unenforceable, would make payments to those creditors.

The author of California SB 426, and the consumer groups sponsoring it, believed that this was contrary to the purpose of the anti-deficiency laws and sought to prohibit it. The bill, as originally introduced and as originally passed by the Senate on May 6, 2013 by a vote of 23-11, would have amended CCP §§580b and 580d to add that no deficiency “shall be owed or collected” in the circumstances covered by those statutes, but without any limiting provisions. That would have addressed the concerns of the bill’s author and the consumer groups supporting the bill, but would have adversely affected the ability of creditors to collect from other collateral that secured the obligation or to collect from guarantors of the obligation. In the absence of some

contrary provision in the law, if the principal obligation is no longer owed, then any additional collateral is worthless because there is no longer any debt to be secured, and any guaranty is worthless because there is no longer any debt to be guaranteed.

Through efforts of the California Bankers Association and other organizations, the bill was amended to state that “The fact that no deficiency shall be owed or collected under the circumstances set forth in [CCP §§580b and 580d] does not affect the liability that a guarantor, pledgor, or other surety might otherwise have with respect to the deficiency, or that might otherwise be satisfied in whole or in part from other collateral pledged to secure the obligation that is the subject of the deficiency.”

The bill also made nonsubstantive changes in CCP §580b. In the Legislature’s 2012 session, that statute had been amended to give anti-deficiency protection to refinances of loans that would be considered “purchase money” loans under the statute, but would not be considered “purchase money” to the extent that the refinancing included a new advance of principal.

The bill, as amended, passed the Assembly and Senate with only one “no” vote, and was signed by the Governor.²



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¹ See, e.g., Uniform Commercial Code §9604 (other personal property collateral); *Dreyfuss v. Union Bank of California*, 24 Cal.4th 400 (2000) (other real property collateral); Civil Code §2856 (guarantors).

² The Legislative Counsel’s Digest to the bill unfortunately is confusing and does not accurately describe the purpose or effect of the bill. The Digest states “Existing law provides that no deficiency judgment shall lie following a judicial foreclosure with respect to certain enumerated circumstances” and “This bill would prohibit a deficiency from being owed or collected following a judicial foreclosure with respect to the enumerated circumstances. The bill also would prohibit a deficiency from being owed or collected for a deficiency on a note secured by a deed of trust or mortgage on real property or an estate for years therein, as specified.” Although those statements are correct in some circumstances, they imply a scope to the anti-deficiency statutes broader than they actually have. CCP §580b bars deficiency judgments on obligations within its scope, regardless of whether the foreclosure was judicial or nonjudicial. CCP §580d applies only to nonjudicial foreclosures.