

# LENDERS UPDATE™

## ALT & ASSOCIATES NEWSLETTER

A COMPLIMENTARY SERVICE TO THE MORTGAGE LENDING INDUSTRY

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## ANTI-DEFICIENCY PROHIBITIONS AND SHORT SALES

Many states have some form of anti-deficiency prohibitions after foreclosure sales. This means the right of a real estate secured creditor, after a foreclosure sale of its security, to attempt to collect any remaining deficiency between the value realized at foreclosure and the balance due on its obligation.

California not surprisingly, has its fair share. One of those is *California Code of Civil Procedure Section 580b (CCP 580b)* which prohibits a creditor from collecting any proceeds after a foreclosure sale of a purchase money mortgage except for the amount realized from the sale.

Can the creditor obtain a deficiency judgement in this scenario? The answer is no.

The statute has been extended largely through judicial action to other variations on this theme. The prohibition applies, for example, to 1<sup>st</sup> and junior liens where the proceeds of both loans are used as purchase money. Even if there is no security left for the junior lien upon which to foreclose, after foreclosure by the first, the junior lienholder is prohibited from pursuing collection of its obligation.

The question for today is whether the deficiency judgment prohibition applies not only when a creditor initiates a foreclosure sale, but also when a defaulting borrower arranges a short sale of the property. In other words, the borrower short sells the property for an amount that will not satisfy the existing lien on the property.

In 2012 the California legislature amended *CCP 580b* to bar a purchase money lender from obtaining a deficiency judgement against a defaulting home owner after a short sale. A short sale for purposes of this anti-deficiency prohibition is no different than a foreclosure sale.

This of course is the law as it applies as of the effective date of the amendment in 2012 and beyond.

What about *before* the amendment became effective?

In the case of *Carol Coker v. JPMorgan Chase Bank, S213137*, filed 1/21/16, the California Court of Appeals, and then the Supreme Court, found that the amendment would also apply to similar situations occurring before the amendment. Coker entered into a short sale of her condo for \$400,000. All of the proceeds went to the Chase loan and then Chase tried to collect the remaining balance on Coker's obligation of approximately \$116,000. Outside of arguing for a better and more knowledgeable review of the short sale agreement between Coker and Chase by an attorney or other professional, the two appellate courts found that any effort by Chase to recover the deficiency was prohibited and a waiver of *CCP 580b's* protection was un-enforceable.

The "protections apply after any sale, not just a foreclosure."

SO BEWARE, if you have a purchase money loan and you accept a short sale, that is all you are going to realize on your obligation.

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