



Short Sale Deficiencies Fact Sheet

Member Legal Services
Tel (213) 739-8282
Fax (213) 480-7724
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On July 15, 2011, the California legislature enacted a new law expanding the protection for a homeowner against personal liability after a short sale. In a short sale, a homeowner sells a property for less than the outstanding loan balance owed. The difference between what's owed on the mortgage loan and what the lender receives as a payoff is called a deficiency. The following charts are easy-to-use reference guides for REALTORS® and their clients to determine the general applicability of anti-deficiency protections for short sales and foreclosure. These charts do not cover all aspects of any individual case or situation.

Short Sale Deficiencies Fact Sheet	
General Rule	A mortgage lender is generally prohibited from pursuing a deficiency or deficiency judgment for a short sale involving a one-to-four residential unit property.
Prohibited Acts	Where applicable, a mortgage lender involved in a short sale is prohibited from engaging in any of the following acts: <ul style="list-style-type: none"> • Collecting a deficiency; • Having a borrower owe a deficiency; • Requesting a deficiency judgment; • Having a court render a deficiency judgment; or • Requiring the borrower to pay any additional compensation, aside from the proceeds of the sale, in exchange for written consent to a short sale. • Requiring the borrower to waive any of the above protections.
Applicability	A borrower is protected under this law if all of the following requirements are met, and no exception applies: <ul style="list-style-type: none"> • Mortgage loan is solely secured by a deed of trust; • Mortgage loan is for a one-to-four residential unit property; • Borrower sells for less than the outstanding loan balance owed; • Lender provides a written short sale approval; • Title voluntarily transfers to a buyer by grant deed or other conveyance document recorded in the county where the property is located; and • Proceeds of the sale have been tendered to the lender or lender's agent in accordance with the parties' agreement.
Exceptions	Exceptions include any of the following: <ul style="list-style-type: none"> • Lender seeking damages for fraud or waste; • Borrower is a corporation, LLC, or limited partnership; • Cross-collateralized loan (special rules apply); • Borrower is a political subdivision of the state; • Bond lien; or • Public utility lien.
Effective Date	July 15, 2011. The new law protects a borrower who closes escrow after the law came into effect on July 15, 2011. For short sales that closed escrow before July 15, 2011, the borrower may be protected for a first trust deed under the previous law or by asserting other legal arguments.
Practice Tip	Regardless of the law, it would be prudent for a borrower to obtain the lender's written and signed agreement to release the borrower from any and all liability for the mortgage loan, and to report "no deficiency balance" to the credit bureaus.
Legal Authority	The full text of Senate Bill 458 (codified as section 580e of the California Code of Civil Procedure) is available at www.leginfo.ca.gov .

**Short Sale v. Judicial Foreclosure
Is Homeowner (1-to-4 units) Generally Protected Against Deficiency?**

Type of Mortgage Loan	After Short Sale*	After Judicial Foreclosure*
First Trust Deed	Yes	Yes, if purchase-money and owner-occupied
Second or Other Junior Trust Deed	Yes	Yes, if purchase-money and owner-occupied
Purchase Money Loan	Yes	Yes, if owner-occupied
Rate-and-Term Refinance	Yes	No
Cash-Out Refinance	Yes	No
Owner Occupied Home	Yes	Yes, if purchase-money
Non-Owner Occupied Home	Yes	No

*Note: Certain exceptions may apply, including fraud, bad faith waste, and for foreclosures, a wiped-out junior lienholder when a senior lienholder forecloses. Also, no deficiency judgment shall be rendered if a lender forecloses by non-judicial foreclosure (or a trustee's sale) (CCP § 580d) or if a loan is seller financed (CCP § 580b). Although most lenders in California foreclose by non-judicial foreclosure, the decision to pursue judicial or non-judicial foreclosure is made by the lender, not borrower. For more information, C.A.R. offers our members other legal articles, including Short Sale Deficiencies, available at <http://qa.car.org>.

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CALIFORNIA ASSOCIATION OF REALTORS®
Member Legal Services
525 South Virgil Avenue
Los Angeles, California 90020

The information contained herein is believed accurate as of January 20, 2012. It is intended to provide general answers to general questions and is not intended as a substitute for individual legal advice. Advice in specific situations may differ depending upon a wide variety of factors. Therefore, readers with specific legal questions should seek the advice of an attorney. Written by Stella H. Ling, Esq.

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