

New Year, New Laws

Q: I refinanced my home loan secured by a first deed of trust, and it has been in the short sale process since December 2010. Can the lender go after the balance due on the note not covered by the short sale proceeds?

A: SB 931 became the law on Jan. 1, 2011. This law prohibits a lender holding a first deed of trust for a dwelling of one-to-four units to demand the unpaid balance due on the loan from the borrower after the lender has approved the short sale in writing. This law covers purchase money or a refinance so long as the property is secured by a first deed of trust and not a junior lien. The statute is silent as to what triggers this law (e.g., signing of the purchase contract, the lender's approval, or the close of escrow).

However, the language of the statute ties the prohibition with the lender's written consent. Despite the purchase contract being signed in 2010, it seems reasonable that if the lender gives the written approval in 2011, the lender is bound by the prohibition and cannot go after the balance due on the note.

While we discussed some new California and federal laws in the January/February 2011 issue, here are several additional new laws of interest to REALTORS®.

Tenant Protection for Domestic Violence

Victim: SB 782 (effective Jan. 1, 2011). A residential landlord cannot terminate or fail to renew a tenancy if the tenant or a household member of the tenant has experienced domestic violence, sexual assault, or stalking as specified in the statute. This law generally applies only if the person restrained from contact with the tenant or household member by court order or named in a police report is not also a tenant of the same dwelling unit. However, landlords may evict domestic violence and stalking victims if there are complaints of noise, fighting, or repeated visits from the police to a victim's residence, even though they are the result of crimes committed against the victim. In addition, the landlord may evict a tenant if the tenant allows the restrained person to visit the property or the landlord reasonably believes that the presence of the restrained person poses a physical threat to other tenants, guests, or other invitees, or violates a tenant's right to quiet possession. Under these circumstances, the landlord may serve a three-day notice to correct or quit. To further ensure safe housing for victims, this law also requires that, for leases entered into after Jan. 1, 2011, a landlord must change the exterior locks of a protected tenant's dwelling unit within 24 hours after the tenant provides a written request and supporting court or police documentation.

Unlawful Detainer of Commercial Tenant:

AB 1263 (effective Jan. 1, 2011). Section 1162

of the California Code of Civil Procedure previously specified the various methods of serving an unlawful detainer notice on any tenant. This law adds a subsection specifically for service of process on commercial tenants. The methods are as follows: (1) delivering a copy to the tenant personally, (2) if the tenant is absent from the commercial property, leaving a copy with some person of suitable age and discretion at the property and sending a copy to the property through the mail, or (3) if neither the tenant nor a person of suitable age or discretion is found, affixing the copy in a conspicuous place on the property and sending a copy through the mail.

Notice to Quit Cover Page: SB 1149 (effective Jan. 1, 2011 until Jan. 1, 2013). Any Notice to Quit served to a tenant of residential property within one year after a foreclosure sale must include a separate cover page containing specific statutory language found in the newly added California Code of Civil Procedure Section 1161c. This law adds the restriction that, except for limited persons, the court clerk may not permit access to records of an unlawful detainer action if the tenant prevails within 60 days of the filing.

Unlawful Renting of Dwelling Unit: AB 1800 (effective Jan. 1, 2011). Under California Penal Code Section 602.9, it's a misdemeanor for a person to claim ownership or take possession of someone else's residential property for the purpose of renting or leasing it to another without the consent of the owner. This new law increases the penalties for this offense to a maximum of \$2,500 or imprisonment in a county jail not exceeding one year, or both fine and imprisonment. ♦

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