

Senate Bill No. 458

CHAPTER 82

An act to amend Section 580e of the Code of Civil Procedure, relating to mortgages, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 11, 2011. Filed with
Secretary of State July 15, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

SB 458, Corbett. Mortgages: deficiency judgments.

Existing law prohibits a deficiency judgment under a note secured by a first deed of trust or first mortgage for a dwelling of not more than 4 units in any case in which the trustor or mortgagor sells the dwelling for less than the remaining amount of the indebtedness due at the time of sale with the written consent of the holder of the first deed of trust or first mortgage. Existing law provides that written consent of the holder of the first deed of trust or first mortgage to that sale shall obligate that holder to accept the sale proceeds as full payment and to fully discharge the remaining amount of the indebtedness on the first deed of trust or first mortgage. Existing law specifies that those provisions would not limit the ability of the holder of the first deed of trust or first mortgage to seek damages and use existing rights and remedies against the trustor or mortgagor or any 3rd party for fraud or waste if the trustor or mortgagor commits either fraud with respect to the sale of, or waste with respect to, the real property that secures that deed of trust or mortgage. Existing law makes these provisions inapplicable if the trustor or mortgagor is a corporation or political subdivision of the state.

This bill would expand those provisions to prohibit a deficiency judgment upon a note secured solely by a deed of trust or mortgage for a dwelling of not more than 4 units in any case in which the trustor or mortgagor sells the dwelling for a sale price less than the remaining amount of the indebtedness outstanding at the time of sale, in accordance with the written consent of the holder of the deed of trust or mortgage if the title has been voluntarily transferred to a buyer by grant deed or by other document that has been recorded and the proceeds of the sale are tendered as agreed. The bill would also provide that, in other circumstances, when the note is not secured solely by a deed of trust or mortgage for a dwelling of not more than 4 units, no judgment shall be rendered for any deficiency upon a note secured by a deed of trust or mortgage for a dwelling of not more than 4 units, if the trustor or mortgagor sells the dwelling for a sale price less than the remaining amount of the indebtedness, in accordance with the written consent of the holder of the deed of trust or mortgage. The bill would provide, following the sale, in accordance with the written consent, the voluntary transfer of

title to a buyer, as specified, and the tender of the sale proceeds, the rights, remedies, and obligations of any holder, beneficiary, mortgagee, trustor, mortgagor, obligor, obligee, or guarantor of the note, deed of trust, or mortgage, and with respect to any other property that secures the note, shall be treated and determined as if the dwelling had been sold through foreclosure under a power of sale, as specified. The bill would prohibit the holder of a note from requiring the trustor, mortgagor, or maker of the note to pay any additional compensation, aside from the proceeds of the sale, in exchange for the written consent to the sale. The bill would provide that these provisions are inapplicable if the trustor or mortgagor is a corporation, limited liability company, limited partnership, or political subdivision of the state. The provisions would also be inapplicable to any deed of trust, mortgage, or other lien given to secure the payment of bonds or other evidence of indebtedness authorized, or permitted to be issued, by the Commissioner of Corporations, or that is made by a public utility subject to the Public Utilities Act. The bill would provide that any purported waiver of these provisions shall be void and against public policy.

This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 580e of the Code of Civil Procedure is amended to read:

580e. (a) (1) No deficiency shall be owed or collected, and no deficiency judgment shall be requested or rendered for any deficiency upon a note secured solely by a deed of trust or mortgage for a dwelling of not more than four units, in any case in which the trustor or mortgagor sells the dwelling for a sale price less than the remaining amount of the indebtedness outstanding at the time of sale, in accordance with the written consent of the holder of the deed of trust or mortgage, provided that both of the following have occurred:

(A) Title has been voluntarily transferred to a buyer by grant deed or by other document of conveyance that has been recorded in the county where all or part of the real property is located.

(B) The proceeds of the sale have been tendered to the mortgagee, beneficiary, or the agent of the mortgagee or beneficiary, in accordance with the parties' agreement.

(2) In circumstances not described in paragraph (1), when a note is not secured solely by a deed of trust or mortgage for a dwelling of not more than four units, no judgment shall be rendered for any deficiency upon a note secured by a deed of trust or mortgage for a dwelling of not more than four units, if the trustor or mortgagor sells the dwelling for a sale price less than the remaining amount of the indebtedness outstanding at the time of sale, in accordance with the written consent of the holder of the deed of trust or mortgage. Following the sale, in accordance with the holder's written

consent, the voluntary transfer of title to a buyer by grant deed or by other document of conveyance recorded in the county where all or part of the real property is located, and the tender to the mortgagee, beneficiary, or the agent of the mortgagee or beneficiary of the sale proceeds, as agreed, the rights, remedies, and obligations of any holder, beneficiary, mortgagee, trustor, mortgagor, obligor, obligee, or guarantor of the note, deed of trust, or mortgage, and with respect to any other property that secures the note, shall be treated and determined as if the dwelling had been sold through foreclosure under a power of sale contained in the deed of trust or mortgage for a price equal to the sale proceeds received by the holder, in the manner contemplated by Section 580d.

(b) A holder of a note shall not require the trustor, mortgagor, or maker of the note to pay any additional compensation, aside from the proceeds of the sale, in exchange for the written consent to the sale.

(c) If the trustor or mortgagor commits either fraud with respect to the sale of, or waste with respect to, the real property that secures the deed of trust or mortgage, this section shall not limit the ability of the holder of the deed of trust or mortgage to seek damages and use existing rights and remedies against the trustor or mortgagor or any third party for fraud or waste.

(d) (1) This section shall not apply if the trustor or mortgagor is a corporation, limited liability company, limited partnership, or political subdivision of the state.

(2) This section shall not apply to any deed of trust, mortgage, or other lien given to secure the payment of bonds or other evidence of indebtedness authorized, or permitted to be issued, by the Commissioner of Corporations, or that is made by a public utility subject to the Public Utilities Act (Part 1 (commencing with Section 201) of Division 1 of the Public Utilities Code).

(e) Any purported waiver of subdivision (a) or (b) shall be void and against public policy.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to mitigate the impact of the ongoing foreclosure crisis and to encourage the approval of short sales as an alternative to foreclosure, it is necessary that this act take effect immediately.