Short Sale Deficiencies

find the article at: "http://www.car.org/legal/foreclosure-short-sale-folder/short-sale-deficiencies/"

Member Legal Services
Tel (213) 739-8282
Fax (213) 480-7724
January 26, 2011

The California Legislature recently enacted Senate Bill 931 generally prohibiting a deficiency judgment after a short sale for first trust deed lenders of one-to-four residential units. The following charts are easy-to-use reference guides for REALTORS® and their clients to determine the general applicability of anti-deficiency rules for short sales and foreclosures. These charts do not cover all aspects of any individual case or situation.

Short Sale Deficiencies Fact Sheet	
General Rule	Unless otherwise exempt, no judgment shall be rendered for a deficiency for a first trust deed lender of one-to-four residential units if the borrower sells for less than the amount owed with the lender's written consent. A first trust deed lender's written consent shall obligate the lender to accept the sale proceeds as full payment and to fully discharge the remaining debt on the first trust deed.
Effective Date	January 1, 2011
Applicability	First deed of trust for a dwelling of not more than four units.
Exceptions	Exceptions include: • Junior liens • Lender seeking damages for fraud or waste; • Borrower is a corporation; or • Borrower is a political subdivision of the state.
C.A.R. Standard Form	C.A.R.'s Short Sale Information and Advisory (Form SSIA) paragraph 4A2 discloses this law to sellers and buyers.
Practice Tip	Regardless of the law, it would be prudent for a borrower to obtain the lender's agreement to release the borrower from liability for the

	balance due on the note in writing and signed by the lender.
Legal Authority	The full text of SB 931, which adds section 580e to the California Code of Civil Procedure, is available at http://www.car.org/legal/2011-new-laws/.

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

Type of Loan	After Short Sale	After Judicial Foreclosure*
First Trust Deed	Yes	Yes, if purchase-money and owner-occupied
Second Trust Deed	No	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
Nonowner-Occupied Home	Yes	No

*Note: Certain exceptions may apply, including wiped-out junior liens, fraud, and bad faith waste. Also no deficiency judgment shall be rendered if a lender forecloses by trustee's sale (CCP § 580d) or if a loan is seller-financed (CCP § 580b). See C.A.R.'s legal article entitled Deficiency Judgments and California Law, available for C.A.R. members at http://qa car.org.

This chart is just one of the many legal publications and services offered by C.A.R. to its members. For a complete listing of C.A.R.'s legal products and services, please visit www.car.org.

Readers who require specific advice should consult an attorney. C.A.R. members requiring legal assistance may contact C.A.R.'s Member Legal Hotline at (213) 739 8282, Monday through Friday, 9:00 a.m. to 6:00 p.m. and Saturday, from 10 a.m. to 2 p.m. C.A.R. members who are broker-owners, office managers, or Designated REALTORS® may contact the Member Legal Hotline at (213) 739 8350 to receive expedited service. Members may also submit online requests to speak with an attorney on the Member Legal Hotline by going to http://www.car.org/legal/legal-hotline-access/. Written correspondence should be addressed to:

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

Copyright© 2011, CALIFORNIA ASSOCIATION OF REALTORS® (C.A.R.). Permission is granted to C.A.R. members only to reprint and use this material for non-commercial purposes provided credit is given to the C.A.R. Legal Department. Other reproduction or use is strictly prohibited without the express written permission of the C.A.R. Legal Department. All rights reserved. Written by Stella H. Ling, Esq.

The information contained herein is believed accurate as of January 26, 2011. 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.

Terms and Conditions Privacy Policy Permission to Reprint Site Map Copyright © 2011 CALIFORNIA ASSOCIATION OF REALTORS®