

Starting January, 1, 2011 a seller's first trust deed lender cannot obtain a short sale deficiency judgment against the seller after a short sale. Providing written consent to a short sale shall obligate the first trust deed lender to accept the sales proceeds as full payment and discharge of the remaining amount owed on the loan. This law pertains to first trust deeds secured by one-to-four unit residential properties and does not have to be owner occupied. It does not apply to junior liens and does not limit the lender from seeking damages for fraud or waste by the borrower.

Many banks have been unrelenting in their short sale approval letter verbiage on refinances, saying they will follow state laws to pursue a deficiency judgment. California lawyers sometimes argue that even if the loan was purchase money and exempt from a deficiency, such language in the short sale approval letter allowed the bank to pursue sellers after closing a short sale because the approval letter changed the status of the loan. California short sale sellers with a first mortgage will no longer have to worry about a deficiency judgment after a short sale.

Changes to the existing law under [SB 931 anti-deficiency judgment](#) prohibits a lender from receiving a judgment for deficiency after a short sale on first mortgages or deeds of trust.

The reason this bill was added is because under the current law, homeowners were provided more deficiency protection under a foreclosure than a short sale. This bill provides the same deficiency protections.

Changes to Existing Law SB 931

Existing law prohibits a deficiency judgment after a sale of real property under a purchase money mortgage or deed of trust that secures a residential dwelling of not more than four units.

Existing law prohibits a deficiency judgment on a note secured by a deed of trust or mortgage in any case in which the property has been sold by the mortgagee or trustee under a power of sale contained in the mortgage or deed of trust.

SB 931 would prohibit a judgment for any deficiency under a note secured by a first mortgage or deed of trust in any case where the trustor or mortgagor sells the dwelling for less than the remaining amount of indebtedness (short sale) due at the time of sale. SB 931 would apply the prohibition only if the sale is with the written consent of the holder of the first deed of trust or first mortgage.

SB 931 would state that the consent of the holder of the first deed of trust or first mortgage to that sale obligates that holder to accept the sale proceeds as full payment and to fully discharge the remaining amount of indebtedness.

SB 931 would further provide that 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 first mortgage or deed of trust, the above prohibition shall not limit the ability of the holder of the first deed of trust or mortgage to seek damages and use existing rights and remedies as specified.

