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## Welcome to **C.A.R. Legal Live Webinar**

- Our webinar will begin at 1 p.m.
- Handout for today's presentation is available on the *Legal Live* webpage at [www.car.org/legal/legal-live-webinars/](http://www.car.org/legal/legal-live-webinars/).
- To get audio when webinar begins, turn on the volume on your computer speakers or dial in using information on attendee console. If you experience audio problems with your computer speakers, please try dialing in instead.



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## **C.A.R. Legal Live Webinar**

### Short Sale Update



**Stella H. Ling, Esq.**  
C.A.R. Managing Senior Counsel  
February 7, 2011

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### Today's Agenda Short Sale Update

- Short Sale Deficiencies.
- HAFAs Update.
- Prescreening Short Sales.
- Questions.



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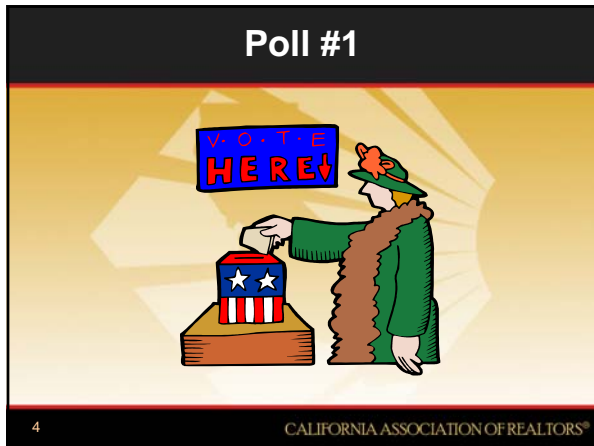
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## A. Short Sale Deficiencies

- General Rule: No deficiency judgment after a short sale for a first trust deed lender of one-to-four residential units.
- Effective Date: January 1, 2011.

Source: California Code of Civil Procedure § 580e (aka Senate Bill 931) at [www.leginfo.ca.gov](http://www.leginfo.ca.gov).

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## Case Study

### Fact Pattern

1. Borrowers have a \$400,000 mortgage loan.
2. Borrowers sell property for \$300,000 (FMV).
3. Lender approves short sale, but requires Borrowers to sign \$30,000 promissory note.
4. Borrowers sign \$30,000 promissory note and close escrow.
5. Borrowers do not pay the note.
6. Lender sues Borrowers for payment on \$30,000 promissory note.



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## Lender's Arguments

### The Court Should Enforce Promissory Note.

- Simple contract case.
- Lender justifiably relied on Borrowers' promise to repay \$30,000 to Lender's own detriment.
- New law prohibits short sale deficiencies, not promissory notes.

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## Lender's Arguments (Cont'd)

### Exhibit A

"No judgment shall be rendered for any deficiency under a note secured by a first deed of trust or first mortgage for a dwelling of not more than four 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. 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."

*Legal Authority:* California Code of Civil Procedure § 580e (aka SB 931) at [www.leginfo.ca.gov](http://www.leginfo.ca.gov).

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## Borrower's Arguments

### Court Should Not Enforce Promissory Note.

- Lender is attempting end run around consumer protection law.
- Borrowers thought they had no choice.
- Borrowers under duress with looming foreclosure.
- No deficiency judgment if property had gone to foreclosure by trustee's sale.



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## Poll #2 You Be the Judge



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## Possible Reasons For Signing Promissory Note

- It's a good deal.
- Avoid possible deficiency judgment following foreclosure.
- Not concerned about judgment.
- Protect assets and income.
- Need to move on.



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## B. HAFA Update



### Background

- Participating lender pre-approves short sale.
- Borrower given at least 4 months to market and sell the property using a **licensed real estate professional**.
- Borrower is fully released from liability for loan.
- Government pays out monetary incentives, including \$3,000 to borrower for relocation expenses.
- Limited applicability:
  - Principal residence first trust deed up to \$729,750 (other restrictions apply).
  - Borrower must be eligible for, but unable to complete HAMP loan modification; and
  - Borrower evaluated based on the lender's own written guidelines.

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## B. HAFA Update (Cont'd)



### New Provisions

- Effective February 1, 2011.
- Lender need not verify certain financial information anymore.
- Principal residence may be vacant or rented for the last 12 months (if borrower has not purchased another home).
- No 6% maximum cap for payments up to \$6,000 to subordinate lien holders.

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<https://www.hmpadmin.com/portal/programs/docs/hafa/sd1018.pdf>



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Counselor Escalation Process - Windows Internet Explorer

https://www.propnet.com/california/escalation.asp

Home Affordable Modification Program

ABOUT PROGRAM LEARNING CENTER RESOURCES NEWS CONTACT US

Counselor Escalation Process

Step 1 Step 2

Contact the Appraisal Escalation Team

If escalating to senior management does not resolve the issue, escalate the issue using the following contact table:

Escalator	Determination of Loan is CDE - Owned	Contact & Information
Private New Loans	<a href="http://www.CreditRisk.com">www.CreditRisk.com</a> Email: <a href="mailto:cs@creditrisk.com">cs@creditrisk.com</a>	Phone: 1-800-774-6688 Email: <a href="mailto:CA_Center@CreditRisk.com">CA_Center@CreditRisk.com</a>
Private New Loans	<a href="http://www.CreditRisk.com">www.CreditRisk.com</a> Email: <a href="mailto:cs@creditrisk.com">cs@creditrisk.com</a>	Phone: 1-800-774-6688 Email: <a href="mailto:CA_Center@CreditRisk.com">CA_Center@CreditRisk.com</a>
Non-CDE Loans	-	HAMP Escalation Center Phone: 1-800-539-4939 Fax: 1-415-637-1332 Email: <a href="mailto:CAEscalation@Propnet.com">CAEscalation@Propnet.com</a>

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### C. Prescreening Short Sales

- A. Seller.
  - Hardship.
  - Alternatives to Short Sales.
  - Credit, tax, personal liability.
  - Motivated.
- B. Lender/Loan.
  - Streamlined procedure.
  - Cooperative.
  - Investors.
- C. Property, including other liens.
- D. Sales Contract.
- E. Other.



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### Poll #3



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## Questions?

- To ask a question, type it in chat box on attendee console.
- If your question involves a current transaction with another agent, please direct that question to the Legal Hotline at (213) 739-8282.
- Sorry, but we may not get to everyone's questions.



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## Continue Learning About Short Sales

### Register for a course from C.A.R. Education

- **Short Sales:**
  - Certified HAFA Specialist (CHS)
  - NAR's Short Sales and Foreclosures Certification (SFR)
  - Distressed Properties – *Accredited for 4 hours of CE*
- **REO:**
  - Mastering REOs & Broker Price Opinion – *Accredited for 4 hours of CE*
  - Residential REO Buyer Specialist – *Accredited for 6 hours of CE*

Visit [www.car.org/education](http://www.car.org/education) for more information



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## Announcements

### C.A.R. Legal Live Webinar

<http://www.car.org/legal/legal-live-webinars/>

- Recorded version of this webinar should be available later today.
- Next monthly webinar:

**Terminating Tenancies**  
**March 7, 2011**



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## Thank You!



For legal questions, C.A.R. members may call our Legal Hotline at (213) 739-8282 or write to "Contact Us" at [www.car.org](http://www.car.org).

If you have any suggestions or comments about this webinar, e-mail [stella@car.org](mailto:stella@car.org) or answer the survey at the end of this webinar.

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