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When is Enough, Enough?

The Big Banks are Opposing C.A.R.'s Bill to Protect Borrowers

C.A.R. is sponsoring SB 1178 (Corbett) to extend anti-deficiency protections to homeowners who have refinanced "purchase money" loans and are now facing foreclosure. Most homeowners didn't even know that when they refinanced they lost their legal protections, and now may be personally liable for the difference between the value of the foreclosed property and the amount owed to the lender. SB 1178 will be voted on soon by the entire Senate.

One can't help but think, "when is enough, enough?" Banks have already foreclosed upon a family's home and now lenders can continue to hound them for additional payment. How much more money can today's families afford to pay when they've already lost their homes and most likely their jobs? Are they never to have the opportunity to begin again?

Action Item

Call Senator Mark DeSaulnier Today!

Urge your senator to vote "Yes" on SB 1178.

Call 1-800-672-3135 and enter your PIN number -- 161502757

Please ask your clients and others to call as well. They can use the same PIN number.

Background

California has protected borrowers from so called "deficiency" liability on their home mortgages since the 1930s, but the evolution of mortgage finance requires the statute to be updated.

Current law says that if a homeowner defaults on a mortgage used to purchase his or her home, the homeowner's liability on the mortgage is limited to the property itself. The law has worked well since the 1930s to protect borrowers, ensure the quality of loan underwriting and allow borrowers who are brought down by financial crisis to get back on their feet.

Unfortunately, the 1930s law does not extend the protection for purchase money mortgages to loans that re-finance the original purchase debt -- even if the re-finance was only to gain a lower interest rate. Recent years of low interest rates have induced tens of thousands of homeowners to re-finance their mortgages, yet almost no one realized that by re-financing their mortgages to obtain a lower rate, they were forfeiting their protections. These borrowers became **personally liable** for the balance of the loan.

C.A.R. is Sponsoring SB 1178 Because:

SB 1178 is fair. Home buyers, and lenders, entered into the purchase with the idea that

the mortgage would be non-recourse debt, and that the lender would look to the security (the house) itself to make good on the debt if the borrower cannot. It meets the legitimate expectation of the borrowers, who have no idea that they are losing this protection by a re-finance. Homeowners didn't know that their re-finance exposed them to personal liability, and new tax liability, on the note. It would be unfair to allow a lender, or someone that has purchased a note from a lender, to pursue the borrower beyond the value of the agreed upon security.

SB 1178 is consistent with the intent of the original law and simply updates it for modern times. Current law was intended to ensure that if someone lost their home to foreclosure, they wouldn't be liable for additional payment. Since the law was passed over 70 years ago, homeowners re-financing from the original loan to lower their interest rate has become commonplace. The 1930s legislature didn't anticipate how mortgages would change over time.

Lenders could pursue families to collect this "deficiency" debt years down the road. Under current law, lenders have up ten years to collect on the additional debt after a judgment has been entered on the foreclosure. Years after a family has lost their home, they could find themselves in even more financial trouble. Lenders could even sell these accounts to aggressive collection agencies or even bundle them into securities. The end result would be banks who didn't lend responsibly in the first place coming after families for even more money that they don't have.

SB 1178 does NOT apply to "cash-out" re-finances, unless the money was used to improve the home and it doesn't apply to HELOCs.

For More Information

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