

CODE OF CIVIL PROCEDURE 577 - 582

Deficiency Judgments, Deed Of Trust Or Mortgage, Real Property

Included: Excerpts 580 A-D, Select Definitions and Complete Text of CCP 577-582

Excerpts from 580 A-D

580a. (excerpts) Any such action must be brought within three months of the time of sale under the deed of trust or mortgage.

No judgment shall be rendered in any such action until the real property or interest therein has first been sold pursuant to the terms of the deed of trust or mortgage.

580b. (excerpts) **No deficiency judgment** shall lie in any event after a sale of real property or an estate for years therein for failure of the purchaser to complete his or her contract of sale, ... or under a deed of trust or mortgage on a dwelling for not more than four families given to a lender to secure repayment of a loan which was in fact **used to pay all or part of the purchase price of that dwelling** occupied, entirely or in part, by the purchaser.

Where both a chattel mortgage and a deed of trust or mortgage have been given to secure payment of the balance of the combined purchase price of both real and personal property, **no deficiency judgment shall lie at any time under any one thereof** if no deficiency judgment would lie under the deed of trust or mortgage on the real property or estate for years therein.

580c. (excerpts) In all cases where existing deeds of trust or mortgages are judicially foreclosed, the mortgagor or trustor may be required to pay only such amount as trustee's or attorney's fees for processing the judicial foreclosure as the court may find reasonable.

580d. (excerpts) **No judgment shall be rendered for any deficiency** upon a note secured by a deed of trust or mortgage upon real property or an estate for years therein hereafter executed in any case in which the real property or estate for years therein **has been sold by the mortgagee or trustee under power of sale contained in the mortgage or deed of trust.**

Select Definitions:

Deed of Trust = A three-party instrument securing a loan or other obligation. The three parties are borrower, trustee, and beneficiary, as opposed to a mortgage with which there are only two parties (borrower and lender).

Mortgage = From the Old French "dead pledge," meaning the pledge ends (dies) either when the obligation is fulfilled or the property is taken through foreclosure.

Civil Code Sec. 2920 provides this definition: "A mortgage is a contract by which specific property, including an estate for years in real property, is hypothecated for the performance of an act, without the necessity of a change of possession."

Chattel Mortgage = Are referred to as secured transactions, used mainly for movable personal property and governed in most states by Article 9 of the [Uniform Commercial Code](#).

Deficiency = A deficiency is "the difference between the amount of the indebtedness and the fair market value of the property..." *Garretson v. Post* (2007) 156 Cal. App. 4th 1508, 1516.

Judgment = The final determination of the rights of the parties in an action or proceeding.

Mortgagor or Trustor - Individual or company who borrows money to purchase a piece of real property.

Complete Text of California Civil Procedure SECTION 577-582.5

CALIFORNIA CODES
CODE OF CIVIL PROCEDURE
SECTION 577-582.5 (Complete Text)

577. A judgment is the final determination of the rights of the parties in an action or proceeding.

577.5. In any judgment, or execution upon such judgment, the amount shall be computed and stated in dollars and cents, rejecting fractions.

578. Judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants; and it may, when the justice of the case requires it, determine the ultimate rights of the parties on each side, as between themselves.

579. In an action against several defendants, the Court may, in its discretion, render judgment against one or more of them, leaving the action to proceed against the others, whenever a several judgment is proper.

580. (a) The relief granted to the plaintiff, if there is no answer, cannot exceed that demanded in the complaint, in the statement required by Section 425.11, or in the statement provided for by Section 425.115; but in any other case, the court may grant the plaintiff any relief consistent with the case made by the complaint and embraced within the issue. The court may impose liability, regardless of whether the theory upon which liability is sought to be imposed involves legal or equitable principles.

(b) Notwithstanding subdivision (a), the following types of relief may not be granted in a limited civil case:

(1) Relief exceeding the maximum amount in controversy for a limited civil case as provided in Section 85, exclusive of attorney's fees, interest, and costs.

(2) A permanent injunction, except as otherwise authorized by statute.

(3) A determination of title to real property.

(4) Declaratory relief, except as authorized by Section 86.

580a. Whenever a money judgment is sought for the balance due upon an obligation for the payment of which a deed of trust or mortgage with power of sale upon real property or any interest therein was given as security, following the exercise of the power of sale in such deed of trust or mortgage, the plaintiff shall set forth in his or her complaint the entire amount of the indebtedness which was secured by the deed of trust or mortgage at the time of sale, the amount for which the real property or interest therein was sold and

the fair market value thereof at the date of sale and the date of that sale. Upon the application of either party made at least 10 days before the time of trial the court shall, and upon its own motion the court at any time may, appoint one of the probate referees provided for by law to appraise the property or the interest therein sold as of the time of sale. The referee shall file his or her appraisal with the clerk and that appraisal shall be admissible in evidence. The referee shall take and subscribe an oath to be attached to the appraisal that he or she has truly, honestly and impartially appraised the property to the best of his or her knowledge and ability. Any referee so appointed may be called and examined as a witness by any party or by the court itself. The court must fix the compensation of the referee in an amount as determined by the court to be reasonable, but those fees shall not exceed similar fees for similar services in the community where the services are rendered, which may be taxed and allowed in like manner as other costs. Before rendering any judgment the court shall find the fair market value of the real property, or interest therein sold, at the time of sale. The court may render judgment for not more than the amount by which the entire amount of the indebtedness due at the time of sale exceeded the fair market value of the real property or interest therein sold at the time of sale with interest thereon from the date of the sale; provided, however, that in no event shall the amount of the judgment, exclusive of interest after the date of sale, exceed the difference between the amount for which the property was sold and the entire amount of the indebtedness secured by the deed of trust or mortgage. Any such action must be brought within three months of the time of sale under the deed of trust or mortgage. No judgment shall be rendered in any such action until the real property or interest therein has first been sold pursuant to the terms of the deed of trust or mortgage, unless the real property or interest therein has become valueless.

580b. No deficiency judgment shall lie in any event after a sale of real property or an estate for years therein for failure of the purchaser to complete his or her contract of sale, or under a deed of trust or mortgage given to the vendor to secure payment of the balance of the purchase price of that real property or estate for years therein, or under a deed of trust or mortgage on a dwelling for not more than four families given to a lender to secure repayment of a loan which was in fact used to pay all or part of the purchase price of that dwelling occupied, entirely or in part, by the purchaser.

Where both a chattel mortgage and a deed of trust or mortgage have been given to secure payment of the balance of the combined purchase price of both real and personal property, no deficiency judgment shall lie at any time under any one thereof if no deficiency judgment would lie under the deed of trust or mortgage on the real property or estate for years therein.

580c. In all cases where existing deeds of trust or mortgages are judicially foreclosed, unless a different amount is set up in the mortgage or deed of trust, and in all cases of mortgages and deeds of trust executed after this act takes effect, the mortgagor or trustor may be required to pay only such amount as trustee's or attorney's

fees for processing the judicial foreclosure as the court may find reasonable and also the actual cost of publishing, recording, mailing and posting notices, litigation guarantee, and litigation cost of suit.

580d. No judgment shall be rendered for any deficiency upon a note secured by a deed of trust or mortgage upon real property or an estate for years therein hereafter executed in any case in which the real property or estate for years therein has been sold by the mortgagee or trustee under power of sale contained in the mortgage or deed of trust.

This section does not apply to any deed of trust, mortgage or other lien given to secure the payment of bonds or other evidences of indebtedness authorized or permitted to be issued by the Commissioner of Corporations, or which 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).

580.5. (a) For purposes of this section:

(1) "Beneficiary" means a "beneficiary" as defined in paragraph (3) of subdivision (a) of Section 5102 of the Commercial Code.

(2) "Issuer" means an "issuer" as defined in paragraph (9) of subdivision (a) of Section 5102 of the Commercial Code.

(3) "Letter of credit" means a "letter of credit" as defined in paragraph (10) of subdivision (a) of Section 5102 of the Commercial Code whether or not the engagement is governed by Division 5 (commencing with Section 5101) of the Commercial Code.

(b) With respect to an obligation which is secured by a mortgage or a deed of trust upon real property or an estate for years therein and which is also supported by a letter of credit, neither the presentment, receipt of payment, or enforcement of a draft or demand for payment under the letter of credit by the beneficiary of the letter of credit nor the honor or payment of, or the demand for reimbursement, receipt of reimbursement or enforcement of any contractual, statutory or other reimbursement obligation relating to, the letter of credit by the issuer of the letter of credit shall, whether done before or after the judicial or nonjudicial foreclosure of the mortgage or deed of trust or conveyance in lieu thereof, constitute any of the following:

(1) An action within the meaning of subdivision (a) of Section 726, or a failure to comply with any other statutory or judicial requirement to proceed first against security.

(2) A money judgment for a deficiency or a deficiency judgment within the meaning of Section 580a, 580b, or 580d, or subdivision (b) of Section 726, or the functional equivalent of any such judgment.

(3) A violation of Section 580a, 580b, 580d, or 726.

580.7. (a) For purposes of this section:

(1) "Beneficiary" means a "beneficiary" as defined in paragraph (3) of subdivision (a) of Section 5102 of the Commercial Code.

(2) "Customer" means an "applicant" as defined in paragraph (2) of subdivision (a) of Section 5102 of the Commercial Code.

(3) "Letter of credit" means a "letter of credit" as defined in paragraph (10) of subdivision (a) of Section 5102 of the Commercial

Code whether or not the engagement is governed by Division 5 (commencing with Section 5101) of the Commercial Code.

(b) No letter of credit shall be enforceable by any party thereto in a loan transaction in which all of the following circumstances exist:

- (1) The customer is a natural person.
- (2) The letter of credit is issued to the beneficiary to avoid a default of the existing loan.
- (3) The existing loan is secured by a purchase money deed of trust or purchase money mortgage on real property containing one to four residential units, at least one of which is owned and occupied, or was intended at the time the existing loan was made, to be occupied by the customer.
- (4) The letter of credit is issued after the effective date of this section.

581. (a) As used in this section:

- (1) "Action" means any civil action or special proceeding.
- (2) "Complaint" means a complaint and a cross-complaint.
- (3) "Court" means the court in which the action is pending.
- (4) "Defendant" includes a cross-defendant.
- (5) "Plaintiff" includes a cross-complainant.
- (6) "Trial." A trial shall be deemed to actually commence at the beginning of the opening statement or argument of any party or his or her counsel, or if there is no opening statement, then at the time of the administering of the oath or affirmation to the first witness, or the introduction of any evidence.

(b) An action may be dismissed in any of the following instances:

- (1) With or without prejudice, upon written request of the plaintiff to the clerk, filed with papers in the case, or by oral or written request to the court at any time before the actual commencement of trial, upon payment of the costs, if any.
- (2) With or without prejudice, by any party upon the written consent of all other parties.
- (3) By the court, without prejudice, when no party appears for trial following 30 days' notice of time and place of trial.
- (4) By the court, without prejudice, when dismissal is made pursuant to the applicable provisions of Chapter 1.5 (commencing with Section 583.110).
- (5) By the court, without prejudice, when either party fails to appear on the trial and the other party appears and asks for dismissal.
- (c) A plaintiff may dismiss his or her complaint, or any cause of action asserted in it, in its entirety, or as to any defendant or defendants, with or without prejudice prior to the actual commencement of trial.
- (d) Except as otherwise provided in subdivision (e), the court shall dismiss the complaint, or any cause of action asserted in it, in its entirety or as to any defendant, with prejudice, when upon the trial and before the final submission of the case, the plaintiff abandons it.
- (e) After the actual commencement of trial, the court shall dismiss the complaint, or any causes of action asserted in it, in its entirety or as to any defendants, with prejudice, if the plaintiff requests a dismissal, unless all affected parties to the trial consent to dismissal without prejudice or by order of the court dismissing the same without prejudice on a showing of good cause.
- (f) The court may dismiss the complaint as to that defendant when:

(1) Except where Section 597 applies, after a demurrer to the complaint is sustained without leave to amend and either party moves for dismissal.

(2) Except where Section 597 applies, after a demurrer to the complaint is sustained with leave to amend, the plaintiff fails to amend it within the time allowed by the court and either party moves for dismissal.

(3) After a motion to strike the whole of a complaint is granted without leave to amend and either party moves for dismissal.

(4) After a motion to strike the whole of a complaint or portion thereof is granted with leave to amend the plaintiff fails to amend it within the time allowed by the court and either party moves for dismissal.

(g) The court may dismiss without prejudice the complaint in whole, or as to that defendant, when dismissal is made under the applicable provisions of Chapter 1.5 (commencing with Section 583.110).

(h) The court may dismiss without prejudice the complaint in whole, or as to that defendant, when dismissal is made pursuant to Section 418.10.

(i) No dismissal of an action may be made or entered, or both, under paragraph (1) of subdivision (b) where affirmative relief has been sought by the cross-complaint of a defendant or if there is a motion pending for an order transferring the action to another court under the provisions of Section 396b.

(j) No dismissal may be made or entered, or both, under paragraph (1) or (2) of subdivision (b) except upon the written consent of the attorney for the party or parties applying therefor, or if consent of the attorney is not obtained, upon order of dismissal by the court after notice to the attorney.

(k) No action may be dismissed which has been determined to be a class action under the provisions of this code unless and until notice that the court deems adequate has been given and the court orders the dismissal.

(l) The court may dismiss, without prejudice, the complaint in whole, or as to that defendant when either party fails to appear at the trial and the other party appears and asks for the dismissal.

(m) The provisions of this section shall not be deemed to be an exclusive enumeration of the court's power to dismiss an action or dismiss a complaint as to a defendant.

581c. (a) Only after, and not before, the plaintiff has completed his or her opening statement, or after the presentation of his or her evidence in a trial by jury, the defendant, without waiving his or her right to offer evidence in the event the motion is not granted, may move for a judgment of nonsuit.

(b) If it appears that the evidence presented, or to be presented, supports the granting of the motion as to some but not all of the issues involved in the action, the court shall grant the motion as to those issues and the action shall proceed as to the issues remaining. Despite the granting of the motion, no final judgment shall be entered prior to the termination of the action, but the final judgment in the action shall, in addition to any matters determined in the trial, award judgment as determined by the motion herein provided for.

(c) If the motion is granted, unless the court in its order for judgment otherwise specifies, the judgment of nonsuit operates as an adjudication upon the merits.

(d) In actions which arise out of an injury to the person or to property, when a motion for judgment of nonsuit was granted on the basis that the defendant was without fault, no other defendant during trial, over plaintiff's objection, may attempt to attribute fault to or comment on the absence or involvement of the defendant who was granted the motion.

581d. A written dismissal of an action shall be entered in the clerk's register and is effective for all purposes when so entered. All dismissals ordered by the court shall be in the form of a written order signed by the court and filed in the action and those orders when so filed shall constitute judgments and be effective for all purposes, and the clerk shall note those judgments in the register of actions in the case.

582. In all other cases judgment shall be rendered on the merits.

582.5. In a limited civil case in which the defendant has appeared, if the judgment or order is for the payment of money by the defendant, the defendant shall pay the judgment immediately or at any time and upon terms and conditions, including installment payments, that the court may prescribe. The court may amend the terms and conditions for payment of the judgment or order at any time to provide for installment payments for good cause upon motion by a party and notice to all affected parties, regardless of the nature of the underlying debt and regardless of whether the moving party appeared before entry of the judgment or order. In any determination regarding the imposition of terms and conditions upon the payment of the judgment, the court shall consider any factors that would be relevant to the determination of a claim for exemption pursuant to Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 or the examination of a debtor pursuant to Article 2 (commencing with Section 708.110) of Chapter 6 of Division 2 of Title 9.