

by Linda Northrup and Karen Luong

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In fighting a potential foreclosure, the time to act is *before* the sale takes place

The subprime lending crisis continues to expand, and foreclosures are rising at an alarming rate. RealtyTrac, Inc., recently reported that the number of foreclosure filings in the third quarter of 2007 nearly doubled from last year nationwide, and California cities dominate metropolitan foreclosure rates.¹ As a result, attorneys in many practice areas can expect calls from existing and potential clients affected by a foreclosure. Attorneys may need to advise clients faced with a foreclosure notice or, even more dire, determine what relief is available for a client whose property has already been sold at a foreclosure sale. Knowledge of the basic requirements and timelines applic-

able to foreclosure sales and the narrow but increasingly relevant avenues available in California for setting aside foreclosure sales will be useful to legal practitioners in many diverse areas of practice.²

In most cases, a property can be sold at foreclosure in a matter of months. When responding to a foreclosure, therefore, timing is critical. Before the foreclosure sale, the client still has hope of seeking injunctive relief to delay an improperly noticed foreclosure sale or one based on fraud.³ However, after the sale has been conducted, a client seeking to avoid foreclosure is usually out of options. If the foreclosure sale is final, and the client's property is sold to a bona fide purchaser for value,⁴ the client will be unable to

recover the property, even if the default and foreclosure sale were improperly noticed. Even if the purchaser is purported not to be bona fide, attacking a completed foreclosure sale is an extremely difficult process that may prove too costly for most clients.

Therefore, the first advice counsel should give to a client facing foreclosure is to act quickly during the time before a foreclosure sale to determine whether the foreclosing party has followed all statutorily required procedures. Failure to take timely action may

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permanently bar the client from seeking redress after the foreclosure sale—and may expose the attorney to a malpractice suit.

Since contesting a foreclosure is often a time-consuming and complicated process, the potential costs incurred may be prohibitive. Clients facing foreclosure are typically in difficult financial straits and may not be able to afford the fees of their attorneys, experts, and investigators over a long legal battle. Moreover, if the borrower loses the action and the loan documents contain a clause granting attorney's fees to the prevailing party or a clause granting fees on collection, the borrower could also be required to pay the attorney's fees of the foreclosing party. If this liability arises post-foreclosure, antideficiency statutes will not protect the borrower. Attorneys need to ask their clients—and themselves—whether fighting the foreclosure will ultimately do the client more harm than good, given the legal fees and costs involved.

One way to avoid the time and expense associated with the lender conducting a foreclosure, and the borrower challenging it, is to attempt a negotiated solution with the lender, such as a loan workout, a forbearance agreement, a deed in lieu of foreclosure, a consensual sale of the property, a refinancing of the property, or filing bankruptcy to invoke the automatic stay and delay the foreclosure. Attempts at a negotiated solution can and should be undertaken in addition to conducting the necessary investigations and diligence for challenging a sale. Counsel should be familiar with these approaches and be prepared to discuss them with the client.

If possible, the borrower should seek to cure the default. By statute, the trustor under a deed of trust securing a loan⁵ may cure a default and avoid a foreclosure sale by paying the defaulted balance due to the lender (but not the full accelerated balance) plus reasonable costs and expenses of enforcement.⁶ The borrower may reinstate the loan anytime up to five days prior to the foreclosure sale. This may be accomplished by a new recorded notice of sale or by postponement at a scheduled sale.⁷

The foreclosing beneficiary has the duty to provide, upon demand, a payoff demand statement clearly setting forth the amount that must be paid to reinstate the loan.⁸ If the foreclosing beneficiary fails to provide this statement, the trustor can pay the amount the trustor reasonably thinks is due and seek an injunction of the foreclosure sale, in addition to recovering attorney's fees and costs.⁹ If the borrower does not seek an injunction and the property is sold at foreclosure to a bona fide purchaser, the borrower's remedies become almost nonexistent.

Although reinstatement usually occurs when the borrower tenders the necessary payment, the borrower and the lender can also make an agreement that will result in reinstatement of the loan.¹⁰ In *Bank of America, N.A. v. La Jolla Group II*, the court determined that a property sale at foreclosure could be set aside upon proof that the borrower entered into an agreement with the lender to cure the default. The court held that the trustee's deed delivered to the purchaser "was properly cancelled as void because the sale was conducted in violation of an agreement between the trustor and the beneficiary to cure the default and reinstate the loan—i.e., the beneficiary had no right to exercise the power of sale."¹¹

Borrowers also have the right to redeem the property by paying the full amount owed on the mortgage to the foreclosing creditor any time before the sale.¹² Reinstatement requires that a borrower cure the default and resume loan payments; redemption, on the other hand, requires full payment of the outstanding balance of the loan plus any interest and penalties.

If the borrower disputes the amount demanded by the foreclosing lender, the borrower may seek an injunction until the court determines the amount the borrower needs to pay to reinstate the loan, or the borrower may pay the disputed amount and sue the lender to recover the excess.¹³ However, counsel should consider the costs of seeking injunctive relief or suing for a disputed excess, as the legal fees may exceed any disputed amount.

Procedural Rules

Strict requirements govern the notice and posting procedures prior to a foreclosure sale.¹⁴ Only after all the notice and posting procedures are strictly followed may the foreclosure sale be validly conducted. Therefore, counsel should work with the client to gather all notices sent to the borrower and to research all published and posted notices, then compare these notices and their timing with the statutory requirements. Injunctive relief may be available to delay the foreclosure sale if the foreclosing party has failed to adhere to the strict statutory provisions governing mandatory deadlines for the notice and conduct of a foreclosure sale. However, if there is no objection to the defective notice and the property is sold at foreclosure to a bona fide purchaser for value, a conclusive presumption of the validity of the sale applies and is extremely difficult to overcome.

Counsel should also immediately ascertain whether injunctive relief may be available to forestall the foreclosure process for reasons other than notice and conduct of the sale process. Relief can be obtained, for example, on the basis that no default actually exists,¹⁵

if the underlying trust deed is fraudulent or otherwise invalid,¹⁶ or because the lender charged unlawful penalties.¹⁷ In the absence of these avenues, client and counsel may return to an examination of timeliness of notice.

An attorney with a client facing foreclosure should carefully examine the timeliness requirements of Civil Code Section 2924 and its following sections. When a borrower defaults on payment of a deed of trust, the lender who chooses to foreclose nonjudicially must start by recording a notice of default, sometimes referred to as an NOD, in the office of the county recorder where the property subject to the lien is located.¹⁸ A notice of default recorded prematurely—that is, before the debtor is actually in default—has no legal effect.¹⁹ Additionally, if there is no default and the property is subsequently sold in foreclosure, the borrower can set the sale aside based on the fact that there was no default from the outset.²⁰ The notice of default is the trigger to the foreclosure process, as the foreclosure sale cannot be noticed until three months after a valid notice of default has been recorded.²¹

The notice of default must include 1) a statement identifying the mortgage or deed of trust being foreclosed by stating the name or names of the trustor or trustors (borrowers) and giving the book and page, or instrument number, in which the mortgage or deed of trust is recorded or a description of the mortgaged or trust property,²² 2) a statement that a default has occurred in the obligation for which the lien is security,²³ 3) a statement describing each default actually known to the foreclosing party and of its election to sell the property to satisfy the obligation secured by the lien,²⁴ and 4) if the default is curable under Section 2924c of the Civil Code, the statement specified in that section that identifies the borrower's rights to cure the default and reinstate the loan.²⁵

If any of the above requirements for the notice of default and allowance of reinstatement or redemption have not been met, counsel can seek injunctive relief on the basis of noncompliance with the statute, and the foreclosure process can be delayed until proper notice is given.²⁶ In addition, if a borrower receives (or lender sends) notice of a foreclosure sale less than three months after the notice of default, counsel can seek injunctive relief.²⁷

The foreclosing party or other person authorized to record the notice of default or the notice of sale²⁸ must also provide other statutorily specified notices (by registered or certified mail with postage prepaid) to various parties to the underlying transactions (including junior lienholders) and third parties who have for any reason caused their

names to be recorded either in the deed of trust for notice purposes or by recording a separate request for notice in the public records in which the deed of trust was recorded. Deadlines for such notice vary according to the party notified. Counsel should check to ensure that the foreclosing party has fully complied with the statutory notice requirements.

Simultaneous with the registered or certified mail notices, the trustee or mortgagee (lender) must mail an additional copy by first class mail to the same address and execute and retain an affidavit that notice was mailed. Note that the statute does not require that the first class letter be actually received. An affidavit of the mailer establishes conclusive presumption of mailing, absent some proof of fraud.

After at least three months have passed after the date the notice of default was properly filed, the mortgagee desiring to continue the foreclosure process must give notice, including the specific time and place, of the foreclosure sale. Lenders may notice a foreclosure sale years after the default date—the court in *Ung v. Koehler* held that foreclosure was not barred even though the trustee waited over four years after the maturity date of the obligation had passed.²⁹

The notice of sale must include: 1) the trustee's name, street address in California (which may reflect an agent of the trustee), and California telephone number, 2) the time of sale and the street address where the sale will be held (often on the courthouse steps), 3) the name of the original trustor, 4) the verbatim text of the lengthy statement in Civil Code Section 2924(c)(3), 5) a description of the property, including its street address and a county assessor's parcel number, 6) a statement of the total amount of the unpaid balance of the obligation secured by the property to be sold, and 7) a reasonable, good faith estimate of costs, expenses, and advances at the time of the initial publication of the notice of sale.³⁰ If the sale of the property involves real property and personal property or fixtures, the notice of sale must, in addition to other requirements of the Civil Code, contain a description of the personal property or fixtures to be sold.³¹ Civil Code Section 2924f delineates the requirements for noticing, posting, publication, and recording of a foreclosure sale notice. The notice of

sale must be recorded with the recorder of the county in which the property is located at least 14 days prior to the date of sale.³²

In addition to mailing, notice of the sale must be posted in writing at least 20 days before the date of sale in a conspicuous place on the property to be sold, and in either a public place in the city where the property is to be sold (if the property is to be sold in a city), or a public place in the judicial district



in which the property is to be sold. Notice of the sale must also be published once a week for three consecutive calendar weeks in a newspaper of general circulation published in the city in which the property is located. Counsel for a client facing foreclosure should investigate whether the mortgagee or trustee has completed these tasks and seek injunctive relief if not.

Civil Code Section 2924 sets forth the procedures governing the conduct of a foreclosure sale, including who can bid, where the sale must be held, bids prior to sale, and other requirements. It is illegal for anyone to attempt to improperly influence a foreclosure sale, including offering to accept or actually accepting any consideration of any type not to bid, or fixing or restraining bidding in any manner.³³ In cases in which the sale has been improperly influenced, counsel can seek to have the sale set aside. Aside from serving as a basis for setting aside a sale, improperly influencing a foreclosure sale carries penalties of up to \$10,000 and imprisonment, in addition to civil remedies.³⁴ There are many ways a lender can be found to have improperly

influenced a bid at foreclosure, even if inadvertently, so counsel should review the facts leading up to a sale, including communications the lender may have had with the borrower and with third parties in the days prior to a sale, to determine if any improper activities have occurred.

Challenging a Sale

Setting aside a completed foreclosure sale is extremely difficult. Public policy strongly favors the finality of foreclosure sales.³⁵ Once a deed reciting that all legal requirements have been satisfied is delivered to a buyer at a foreclosure sale, there is a presumption of the validity of the sale. In the case of a BFP,³⁶ this presumption is conclusive.³⁷ Additionally, an action to set aside a foreclosure sale is an action in equity, ordinarily with no right to a jury trial.³⁸ Nevertheless, if clients do not contact a lawyer until after the foreclosure sale has been completed, or if the attorney has exhausted all avenues to delay the sale, counsel and the client may consider undertaking the expense and effort to have the sale set aside.

A borrower can seek to set aside a sale on the basis that the underlying security instrument pursuant to which the sale is being noticed is itself invalid³⁹ or that there was collusion or fraud in the bidding process:⁴⁰ “The law has long provided that if a non-judicial foreclosure sale has been unfairly or unlawfully conducted, or is tainted by fraud, the trial court has the power to set it aside.”⁴¹ Such an order is proper if “there has been such a mistake that to allow [the foreclosure] to stand would be inequitable....” Sham bidding and the restriction of competition are condemned, and inadequacy of price coupled with other circumstances of fraud may constitute grounds for setting aside the sale.⁴²

If the purchaser is not a BFP, it may be possible to set aside the foreclosure sale on the basis of fraud or procedural irregularity in the notice or conduct of the sale. The first question to ask in determining BFP status is whether the buyer is an individual or a business. If the buyer is an individual, evidence of that individual's fraud may be difficult to obtain. In the case of a company, however, an important distinction exists if that company is in the business of purchasing properties at foreclosure sales. The court in *6 Angels, Inc.*

v. *Stuart-Wright Mortgage, Inc.*, stated that the fact that the buyer was a company in the business of purchasing properties at foreclosure sales was evidence that the buyer was not a BFP.⁴³

In *Estate of Yates*, the court dealt with an irregular foreclosure and articulated several factors for determining whether a buyer is a BFP. The court concluded that the buyer in that case was not a BFP based on two primary factors: First, the buyer was “in the business of purchasing properties in foreclosure and frequently attends foreclosure sales,” and second, the buyer had prior knowledge that the \$12,000 eventually offered for the property was substantially below the \$120,000 fair market value of the property.⁴⁴ *Melendrez v. D & I Investment, Inc.*, expanded on the decisions in *6 Angels* and *Yeats*, emphasizing that while the fact that a company in the business of purchasing properties at foreclosure sales is evidence that it is not a bona fide purchaser for value, this fact does not, by itself, amount to conclusive evidence that the buyer is not a BFP.⁴⁵ The court stated: “[T]he proper standard to determine whether a buyer at a foreclosure sale is a BFP is whether the buyer (1) purchased the property for value, and (2) had no knowledge or notice of the asserted rights of another...”⁴⁶ In a note, the court also observed: “[I]n evaluating whether a buyer at a trustee’s sale is a BFP, the buyer’s foreclosure sale experience may be considered in making the factual determination of whether he or she had knowledge or notice of the conflicting claim.”⁴⁷

If it can be established that the buyer is not a BFP, the validity of the foreclosure sale may be attacked on the grounds of procedural irregularities in the foreclosure. If the discrepancy between sale price and fair market value is great, even a slight irregularity in the notice or conduct of a foreclosure sale can be enough to set aside the sale as against a non-BFP:

[W]here the price obtained is greatly disproportionate to actual value, relief is authorized on very slight evidence of unfairness or irregularity involving any type of dishonesty, deception, or oppression operating to the prejudice of the judgment debtor...regardless of whether it amounts to legal fraud.... Where it appears that the gross inadequacy of price has resulted from the unfairness of the purchaser or the fact that he has taken undue advantage, the purchaser may be deemed guilty of fraud warranting the interposition of equity in favor of an owner who is without fault.⁴⁸

However, gross disparity in purchase price alone, even if coupled with the buyer’s non-BFP status, is not adequate grounds to attack

the validity of the sale. There must be a procedural irregularity or fraud (such as collusive bidding) in order to set aside the sale.⁴⁹ Also, in cases of illegal and fraudulent foreclosure sales, the borrower may be able to seek damages for interference with contractual rights.⁵⁰

It is important to note that just alleging, or even proving, any irregularity in the foreclosure process—no matter how small—does not assure a successful result in situations in which there are no other egregious facts. Any irregularity in which the borrower fails to show injury (mere sale of the property may not be sufficient injury if the borrower was otherwise truly in default and would have lost the property anyway once the defect was corrected)⁵¹ is at risk of leading to an unsuccessful challenge. As is the case generally with minor or technical defects in legal matters, claims opposing foreclosure that are based on minor problems do not usually find much sympathy with courts, and bringing such a claim may result in the client paying nonrecoverable legal fees, only worsening the client’s position.

A significant hurdle for many borrowers who might otherwise seek to attack a completed foreclosure sale based on fraud or irregularity is that the borrower in such a case must tender the outstanding indebtedness in order to cancel a voidable sale under a deed of trust.⁵² If a client does not have sufficient funds to tender the outstanding indebtedness, counsel can use negotiations to try leveraging any amount that might be recoverable from a lender to offset the required tender.

Deficiency Issues

A client facing foreclosure may not only lose property but also face a deficiency judgment. Counsel must ascertain whether antideficiency statutes will protect the client from having to pay this difference between the amount bid at the foreclosure sale (or the fair value of the property if the bid is lower than fair value) and the amount of the debt. Antideficiency statutes are a series of laws, two of which are of primary importance to clients facing foreclosure. One protects 1) those who borrow directly from the seller of a property and give the seller a lien and 2) those who borrow the purchase price on an owner-occupied single family property (a property improved with one to four residential units) and who have offered the property as security for the purchase money loan.⁵³ This law provides that the seller as lender or the third-party purchase money lender may not pursue the borrower individually for any deficiency under any circumstance (including after a judicial sale). The former residential property owner may have lost the property but can at least walk away from the foreclosure sale

without further monetary liability in most cases.⁵⁴ The second important antideficiency law protects all borrowers from a deficiency following a nonjudicial foreclosure sale when a deficiency judgment would have been possible if the foreclosure had been done judicially.⁵⁵

In *Brown v. Jensen*, the California Supreme Court extended the purchase money antideficiency protection by holding that purchase money junior lienholders could not bring actions on their notes after the security had become valueless because of a sale by the holder of the purchase money first deed of trust. Normally, a junior lienholder whose security is lost in the foreclosure sale by a senior lienholder (that is, a sold-out junior lienholder) still has the right to sue on the note to recover its debt. However, the *Brown* court stated:

The broad protection provision (Code Civ. Proc., § 580b) for purchase money trust deeds stands on a reasonable footing. A purchase money trust deed is not like an ordinary trust deed and note....With purchase money trust deeds...the character of the transaction must necessarily be determined at the time the trust deed is executed. Its nature is then fixed for all time and as so fixed no deficiency judgment may be obtained regardless of whether the security later becomes valueless.⁵⁶

The above scenario applies only when the junior lien was part of the original purchase transaction. Antideficiency protection applies to liens undertaken as part of the purchase transaction, even when more than one lien exists, as long as those liens were part of the purchase money mortgage.⁵⁷ However, if the sold-out junior lienholder’s trust deed is not a purchase money mortgage, the lienholder may be able to recover the deficiency against the borrower directly.⁵⁸ Therefore, whether the purchase money antideficiency statute applies to bar lienholders from collecting against the borrower depends on the individual facts of each case.

As the housing and credit slump continues, an increasing number of borrowers face foreclosure of their properties. Helping a client navigate through the maze of foreclosure deadlines and rules is a daunting task. Once a foreclosure sale has been completed, it becomes even more difficult to gain any sort of victory for the client. Because attacking a completed foreclosure sale is only available on extremely limited grounds, counsel should work hard at the beginning of the foreclosure process to avoid the undesirable (and many times unavailable) last resort of attacking a completed sale. The borrower’s likely financial difficulties—or presumably the borrower would not be in foreclosure—will be a com-

plicating factor, because challenging foreclosure costs money. There is no easy way out of the foreclosure process, but a thorough knowledge of the available avenues can help counsel navigate the maze, possibly obtaining a favorable result. ■

¹ Press Release, RealtyTrac, U.S. Foreclosure Activity Increases 2 Percent in October: Foreclosure Filings up 94 Percent from October 2006 (Nov. 29, 2007), available at <http://www.realtytrac.com/ContentManagement/pressrelease.aspx?ChannelID=9&ItemID=3664&acct=64847>. In light of the rising number of foreclosures, Congress is considering legislation to provide relief for the foreclosure crisis. However, the proposed legislation does not offer much help to homeowners who are already in default, and the effectiveness of the proposed legislation is yet to be determined.

² The vast majority of foreclosures in California are non-judicial. Judicial foreclosures are also possible here, but since they occur in a courtroom, borrowers receive the protection of the due process of litigation. Judicial foreclosures are authorized by Code of Civil Procedure §725a.

³ As foreclosures rise, so have fraudulent foreclosure prevention schemes, with elderly homeowners among the targets. See, e.g., <http://www.mortgagefraudblog.com>. A foreclosure may be subject to injunctive relief if procured by fraud.

⁴ See *infra* notes 23 and 30 and accompanying text.

⁵ The code sections regarding foreclosure refer to borrowers as trustors, mortgagors, and sometimes debtors, and lenders as beneficiaries or mortgagees. The trustee under the deed of trust is often a title company or professional foreclosure service provider.

⁶ Civ. CODE §2924c(a)(1) and (e).

⁷ Civ. CODE §2924c(e).

⁸ Civ. CODE §2924c(b)(1).

⁹ MILLER & STARR, CALIFORNIA REAL ESTATE §10:189; Civ. CODE §2924c(a)(1).

¹⁰ It is prudent to make sure any agreement to cure is in writing to avoid potential issues with the statute of frauds.

¹¹ THE RUTTER GROUP, CALIFORNIA PRACTICE GUIDE: REAL PROPERTY TRANSACTIONS ch. 6-I, §6:536.8 (citing Bank of America, N.A. v. La Jolla Group II, 129 Cal. App. 4th 706, 830 (2005)).

¹² Civ. CODE §2903 *et seq.*

¹³ Steffen v. Refrigeration Discount Corp., 91 Cal. App. 2d 494 (1949).

¹⁴ Civ. CODE §2924 *et seq.*

¹⁵ Bisno v. Sax, 175 Cal. App. 2d 714 (1959).

¹⁶ Daniels v. Williams, 125 Cal. App. 2d 310 (1954).

¹⁷ Baypoint Mortgage Corp. v. Crest Premium, 168 Cal. App. 3d 818, 828 (1985).

¹⁸ Civ. CODE §2924(a)(1).

¹⁹ Miller v. Cote, 127 Cal. App. 3d 888 (1982).

²⁰ Hauger v. Gates, 42 Cal. 2d 752 (1954).

²¹ Civ. CODE §2924b.

²² Civ. CODE §2924(a)(1)(A).

²³ Civ. CODE §2924(a)(1)(B).

²⁴ Civ. CODE §2924(a)(1)(C).

²⁵ Civ. CODE §2924(a)(1)(D). See also Civ. CODE §2924c.

²⁶ Lupertino v. Carbahal, 35 Cal. App. 3d 742 (1973).

²⁷ Civ. CODE §2924(a)(2); Civ. CODE §2924g.

²⁸ Notices are often recorded and served by foreclosure service firms hired by the lender. This does not affect the validity of the notices as long as the statutory requirements are met.

²⁹ Ung v. Koehler, 135 Cal. App. 4th 186 (2005).

³⁰ Civ. CODE §2924f(b)(1). An inaccurate statement of the amount does not affect the validity of any sale to a bona fide purchaser for value, nor does the failure to

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post the notice of sale on a door. *Id.*

³¹ Civ. CODE 2924f(b)(2).

³² Civ. CODE 2924f(b)(1).

³³ Civ. CODE §2924h(g).

³⁴ *Id.*

³⁵ 6 Angels, Inc. v. Stuart-Wright Mortgage, Inc., 85 Cal. App. 4th 1279, 1287 (2001).

³⁶ A bona fide purchaser is a person who has acquired an interest in real property without knowledge or notice of a prior interest and who has parted with value in consideration for the interest. Horton v. Kyburz, 53 Cal. 2d 59, 65, 68 (1959). "The elements of bona fide purchase are payment of value, in good faith, and without actual or constructive notice of another's rights." 4 WITKIN, SUMMARY OF CALIFORNIA LAW, *Real Property* §206, at 411 (1987), *cited in* Gates Rubber Co. v. Ulman, 214 Cal. App. 3d 356, 364 (1989).

³⁷ Moeller v. Lien, 25 Cal. App. 4th 822 (1994).

³⁸ Raedeke v. Gibraltar Sav. & Loan Ass'n, 10 Cal. 3d 665 (1974).

³⁹ Stirton v. Pastor, 177 Cal. App. 2d 232 (1960).

⁴⁰ Lo v. Jensen, 88 Cal. App. 4th 1093 (2001).

⁴¹ *Id.* at 1096 (citing Bank of America Nat'l Trust & Sav. Ass'n v. Reidy, 15 Cal. 2d 243, 248 (1940)).

⁴² *Id.* (quoting Bank of America Nat'l Trust & Sav. Ass'n, 15 Cal. 2d at 248); *see also* Dealey v. East San Mateo Land Co., 21 Cal. App. 39 (1913); Packard v. Bird, 40 Cal. 378 (1870); Goodenow v. Ewer, 16 Cal. 461 (1860).

⁴³ 6 Angels, Inc., 85 Cal. App. 4th at 1286.

⁴⁴ Estate of Yates, 25 Cal. App. 4th 511 (1994).

⁴⁵ Melendrez v. D & I Inv., Inc., 127 Cal. App. 4th 1238 (2005).

⁴⁶ *Id.* at 1253 (italics in original).

⁴⁷ *Id.* at n.23.

⁴⁸ 30 CALIFORNIA JURISPRUDENCE 3D, *Enforcement of Judgments* §183 (citing Darden v. Reese, 88 Cal. App. 2d 904 (1948)).

⁴⁹ 6 Angels, Inc. v. Stuart-Wright Mortgage, Inc., 85 Cal. App. 4th 1284-85 (2001).

⁵⁰ Webber v. Inland Empire Invs., 74 Cal. App. 4th 884 (1999).

⁵¹ *See* Rauer v. Hertweck, 175 Cal. 278 (1917).

⁵² Karlsen v. American Sav. & Loan Ass'n, 15 Cal. App. 3d 112 (1971).

⁵³ CODE CIV. PROC. §580b.

⁵⁴ *Id.* Liability can accrue postforeclosure in certain circumstances when borrowers commit fraud or misrepresentation, environmentally contaminate a property, or commit bad faith waste (intentional injury to a property combined with a siphoning of profits away from the property).

⁵⁵ CODE CIV. PROC. §580d.

⁵⁶ Brown v. Jensen, 41 Cal. 2d 193, 197 (1953) (en banc).

⁵⁷ *See id.*

⁵⁸ In *Spangler v. Memel*, 7 Cal. 3d 603 (1972) (en banc), the purchaser took out a construction loan to build an office building in place of the two-story residence that existed on the land purchased from the seller. The California Supreme Court reaffirmed its ruling in *Brown v. Jensen* that Code of Civil Procedure §580b applied to sold-out junior lienholders holding a purchase money mortgage or deed of trust. *Id.* at 615. However, the court went on to recognize an exception to the rule, stating that §580b applies automatically only to a "standard" purchase money transaction, which it described as one in which the purchaser is going to continue the same or similar use of the property. *Id.* at 609-10. The court concluded that §580b does not automatically apply when the vendor agrees to subordinate its lien to the purchaser's construction loan because the purchaser does not intend to continue with the same use of the property. *Id.* at 614.