

## Author's Forward

On publication of this third edition, CEB had three books in its library of Real Property Secured Transactions: Real Estate Finance: Strategies and Forms; Real Estate Financing (???); and this one, Mortgage and Deed of Trust Practice. Although the other two books deal with the typical “front end” issues facing attorneys as they draft the documents for mortgage loan transactions, nevertheless this book is probably the one most readers should take up to first. Even though this volume is primarily concerned with the treatment of mortgage loans already in existence, it is only the attorney who appreciates the special difficulties in collecting (or resisting collection) of mortgage loans who can sensibly approach the negotiating and drafting considerations at the inception of the loan.

To newcomers, the preparation of mortgage loan documents may seem like an easy task because the debtor is expected obediently to sign all documents the creditor's lawyers have drafted. However, getting the documents signed is the easy part; enforcing their provisions is what is so hard. The legislature and the judiciary do not accept the premise that parties to a mortgage loan should be bound by what they have signed; freedom of contract defers to public policy (although discerning what that policy is remains a major mystery to most observers). Creditors – as initiators of most documents - can often only guess at whether the protective provisions of their paperwork will function effectively in this peculiar legal environment. This situation remains as true today as it was when the previous edition was published.

The most significant change of organization in this edition is the separating of the one-action rule and the antideficiency rules into separate chapters. These topics are each complex enough on their own as to warrant not adding in the risk of confusion between the two of them; I hope this division will make them easier to understand. Bankruptcy and income tax have been further integrated into the text, as these considerations loom more and more heavily over the entire field. Compensatingly, the inclusion of form provisions has been reduced, because of their availability in CEB's other publications.

I wish to thank Charles Hansen for the valuable practice tips he has added; because of them this book is far more useful than what a mere academic could have produced. And I am also grateful to the staff of CEB who put the text into final shape when - at the end - I was required to attend to other matters.

Finally, as always, I apologize for the cumbersome title of “California Mortgage and Deed of Trust Practice. Despite its awkwardness it is accurate since California attorneys have the odd habit of using deeds of trust and calling them mortgages. (And who can blame us for wanting to be known as a mortgage lawyers than as deed of trust attorneys?)

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