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## Borrowers Who Lost Their Residence At A Foreclosure Sale May Sue Their Bank Based On A Bank Representative's Oral Promise To Postpone The Foreclosure Sale

In *Garcia v. World Savings, FSB*, \_\_\_ Cal. App.4th \_\_\_ (April 9, 2010), the Second District Court of Appeal ruled that borrowers who lost their residence through a nonjudicial foreclosure sale may sue their bank under the equitable doctrine of promissory estoppel based upon a bank officer's broken oral promise to postpone the foreclosure sale.

### Facts

When Mr. and Mrs. Garcia fell behind on their mortgage payments for their residence, World Savings commenced nonjudicial foreclosure proceedings. Prior to the date scheduled for the foreclosure sale, the Garcias requested a postponement of the sale representing to World Savings that they had conditional loan approval for a new loan that would allow them to cure the arrearages. After a number of postponements, the foreclosure sale was set for August 30, 2007. The Garcias alleged that before the foreclosure sale their mortgage broker left voice mail messages with a World Savings foreclosure officer stating that the loan would close after the August 30, 2007 sale date and that the Garcias needed the further postponement promised by the World Savings foreclosure officer. The World Savings foreclosure officer never responded to the voice mail messages. The residence was sold to a third party at the foreclosure sale on August 30, 2007. Unaware of the foreclosure sale, the Garcias closed their new loan and sent to World Savings a check in an amount sufficient to cure the loan arrearages. World Savings returned the check to the Garcias uncashed. When efforts to resolve the foreclosure sale were not successful, the Garcias sued World Savings.

### Decision

In their lawsuit, the Garcias alleged causes of action against World Savings for wrongful foreclosure, breach of contract, unfair business practices and promissory estoppel. The trial

court granted the motion of World Savings for summary judgment on all causes of action. The Appellate Court upheld the trial court's summary judgment on all causes of action except the promissory estoppel cause of action. Regarding promissory estoppel, the Appellate Court found that the World Savings foreclosure officer made an oral promise to postpone the foreclosure sale upon which the Garcias relied to their detriment. The Appellate Court found that the foreclosure officer's failure to respond to the voice mail messages left by the mortgage broker could reasonably be viewed as an affirmative response that the foreclosure sale would be postponed. The Appellate Court found that although there was no consideration given for the promise to postpone the foreclosure sale, no consideration was required. Detrimental reliance supports a promissory estoppel cause of action in the absence of consideration. The Appellate Court found detrimental reliance based on the new loan the Garcias obtained at a high interest secured by other properties they owned. The District Court of Appeal remanded the matter back to the trial court for further proceedings and awarded the Garcias their costs on appeal.

### Questions

If you have any questions concerning the content of this Legal Alert, please contact the following from our office, or the attorney with whom you normally consult.

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