

Deficiency Judgment after Foreclosure

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Now What?



Homeowners may still be on the hook, if there is still a difference between what they owed on their mortgage and what the bank sold the property for in foreclosure. A Deficiency Judgment is an unsecured money judgment against a borrower whose mortgage foreclosure sale did not produce sufficient funds to pay the underlying promissory note, or loan, in full. Deficiency Judgments are court orders that make you personally responsible for unpaid debt. Here are three of the most common questions asked about a Deficiency Judgment:

1 Can a lender get a Deficiency Judgment against me?

Yes, a lender can get a Deficiency Judgment against you. After foreclosure, the lender and their attorney would need to file a separate lawsuit/motion for a deficiency. At Court, the Lender will have to prove the property was indeed sold for less than the market value of the property.

You do have a right to oppose the lender's position. The use of a property appraisal or tax assessed value of the property is favorable. As a Borrower, one line of defense is to show the property was not sold at the market value.

2 What happens if I do get a Deficiency Judgment?

First, consult with an attorney. You will need representation to either settle or wipe out the deficiency. Lenders can come after your wages, garnish bank accounts and lien other properties. In addition, the judgment will show up on your credit report for seven years and affect your credit score adversely. Bankruptcy may be an option if a settlement cannot be reached with the lender. Again, consult with an attorney. Many attorneys do not charge for an initial consultation.

3 How can I avoid a Deficiency Judgment?

Stop the Foreclosure! A Loan Modification, Short sale, Deed in Lieu and/or Bankruptcy is ways to stop a Deficiency Judgment.

Lenders are still giving loan modifications. In my experience, as long as you can prove your ability to pay, you have a great

chance of qualifying for a loan modification. Even if you have been denied a modification, I suggest you have an attorney take a look what was provided to the lender.

Short sales and Deed in Lieu are two other ways to avoid a deficiency. Many times with both of these options the lender will waive their right to a deficiency. Both involve specific documentation that should be reviewed by an attorney. You want to make sure if the lender agrees to waive their right, you have it in writing.

Finally, if there is no other way to avoid the deficiency, Bankruptcy would be the next alternative.

Deficiency Judgments are ticking time bombs that can explode years after a homeowner loses their homes. Consult with an attorney and discuss your particular scenario. Not every homeowner will have the same option. A Loan modification is good for the homeowner that wants to keep their property. A short sale and/or deed in lieu are for the homeowner that can't keep the property, but wants to avoid foreclosure and/or any future deficiency. Last, Bankruptcy is for the homeowner that has no other choices.

Call my office for a free consultation at 305-254-4492 or email a request or comment to danias@fap-law.com.

