



Client Alert

April 18, 2012

Supreme Court of Missouri Upholds Lenders' Rights to Obtain Full Deficiency Judgment

In an opinion issued on April 17, 2012, the Supreme Court of Missouri announced the proper measure of a deficiency judgment after a foreclosure sale is the loan balance less the amount paid for the property at a foreclosure sale. This decision affirmed a lender's entitlement to a full deficiency judgment following a foreclosure sale.

In *First Bank v. Fischer & Frichtel*, First Bank sought a deficiency judgment from its borrower after a foreclosure sale. The borrower defended by claiming the amount of First Bank's deficiency should be reduced by the fair market value of the property, not by the amount of First Bank's credit bid at the foreclosure sale. In making this defense, Fischer & Frichtel urged the court to change over 100 years of Missouri law with respect to the measure of deficiency judgments. The debate stalled numerous efforts by banks around the state to collect funds owed on defaulted loans. The court refused to follow a growing number of other states that employ the fair market value standard and a deafening chorus from sophisticated borrowers and guarantors urging Missouri to change its law. Rather, the court upheld the present law, holding that First Bank is entitled to a deficiency judgment in the amount of the loan balance (which includes principal, accrued interest, and attorneys fees) less the amount it credit bid at the foreclosure sale.

Armstrong Teasdale represented First Bank in the trial court, Court of Appeals, and Supreme Court. The attorneys in Armstrong Teasdale's Financial Services Group are experienced in vigorously pursuing claims on behalf of lenders and overcoming defenses lodged by creative borrowers.

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