Foreclosure Nightmare:
Lenders May Come After You for the Balance Due

by
Richard Fonfrias, J.D.

If you thought foreclosure was the end of your legal nightmare, think again.

After a bank forecloses on your home, it sells your home at public auction. And the sad part is that in a down real estate market, the bank may not be able to sell your home to cover the full amount of your mortgage.

You're Invited to Call or E-mail.

"If you have questions about bankruptcy, foreclosure, credit card debt, loan modifications,

tax liens or other financial problems, please send your e-mail today to

rich@chicagomoneylawyer.com

RICHARD FONFRIAS, J.D.

Chicago's Financial Rescue & Bankruptcy Lawyer

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Founder & Managing Partner

FONFRIAS LAW GROUP, LLC

First National Plaza ❖ 70 West Madison Street, Suite 1400 ❖ Chicago, Illinois 60602
Telephone 312-969-0730 ❖ Facsimile 312-624-7954 ❖ www.chicagomoneylawyer.com

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The difference between the amount you owed on your mortgage -- and the amount the bank got at auction -- is called the "deficiency." And it takes little effort on the bank's part to convert the deficiency into a "deficiency judgment" against you.

What's worse, even if you got the bank's approval to sell your home for less than the mortgage, the bank can still come after you for the difference.

In today's poor real estate market, many homeowners are not able to sell their homes for enough money to cover the amount owed on the mortgage. As a result, they are selling their home "short" or the lender is foreclosing, either of which can result in a deficiency judgment against the homeowner.

For example:

A real estate agent in Virginia negotiated a short sale with her lender when she and her husband -- due to financial setbacks -- could no longer make the payments. She understood that the bank's agreement to the short sale meant she and her husband would not be liable for the deficiency, if any. Then she received a letter from the bank's lawyer demanding the balance due, $65,000. As a result, she and her husband filed for bankruptcy because they could not pay the amount demanded by the bank.

With the increase in home foreclosures, more and more banks are going after the deficiencies owed by previous homeowners. Factors that determine whether a bank will pursue you for the deficiency judgment include the state in which you live -- what other types of liens are against the property, such as a home equity loan (second mortgage) -- and what other assets you own.

When banks do credit and asset checks, if they see that the homeowner is behind on all payments, they may decide not to pursue the person any further. But if the homeowner is behind only on his house payments -- often signaling their intention to let the bank foreclose -- the bank may come after the homeowner and seize other assets, such as having the person's wages garnished.

Another problem rearing its ugly head is the fact that banks have sold many of these foreclosure accounts to collection agencies and third parties at a substantial discount. So you may receive a call now -- or in a few years -- from a company you've never heard of. Only then will you discover that they own the deficiency judgment against you, which they bought from your bank.

Here's what makes this problem worse.

The bank or collection agency doesn't have to get a deficiency judgment against you right now. They can wait a year or two -- or even longer. Then, after your personal finances have improved, they demand payment on this long-forgotten judgment.

What's more, banks and collection agencies now pursue borrowers even for relatively small amounts, like $25,000.

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And even if the borrowers sold the home, that doesn't mean they're in the clear. This is because a mortgage usually has two parts: (1) the pledge of collateral, which is the home, and (2) the borrowers' promise to pay off the loan.

So even if the lender released the property liens for a short sale, the lender doesn't have to release the borrower from his promise to pay. After the home is sold, the debt -- once secured by the home -- simply becomes an unsecured debt.

Here's how to make sure you don't get into trouble with deficiency judgments:

Tip #1: Once you have arranged a short sale with your lender, make sure you look carefully at all documents you're asked to sign. In the pile of paperwork, banks often ask you to sign a confession that states that you still owe the debt. And with your signature on that document, the lender simply goes to court and converts your confession into a deficiency judgment.

Tip #2: When negotiating with your bank, make sure you get a release from any further obligation on the mortgage. This prevents a future deficiency judgment.

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Tip #3: If a lender forecloses on your home and you have not negotiated a release from further obligation, talk with a bankruptcy lawyer. In many cases, it pays to file bankruptcy because that will erase the bank's right to pursue you for any deficiency.

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