

They foreclosed...what's with the deficiency judgment?

Well, if there was ever a time when the expression “it’s not over until the fat lady sings” comes to mind, it would be in situations where a foreclosure has occurred.

Your life has been turned upside down. You get that dreaded notice of foreclosure and sometime thereafter the foreclosure sale takes place. Part of you breathes a sigh of relief, believing that it is at least over. You move on with your life, relocate your family, and start over. And then, seemingly out of nowhere, a couple of years later, you arrive home to find a lawsuit taped to your front door. You are being sued for \$80,000 by your former lender. They are coming after you for a deficiency judgment.

How did that happen? Well, the fact that you live in Virginia does not help. The Commonwealth is among the 30 states in the US that allows lenders to pursue borrowers for what are known as deficiency judgments. In fact, often times it is not even your former bank that is coming after you, but rather a third party collection agency. Banks sell many of these accounts to collection agencies and other third parties at a discount. And the entities who purchase these notes from the bank are not buying them unless they have the intentions of acting.

Let’s say the balance of the mortgage at the time the bank foreclosed was \$300,000 and at the foreclosure sale the bank sells the house for \$240,000, and the fees to the real estate agent and lawyer who handled the foreclosure for the bank was \$20,000, leaving the bank with \$220,000. Under this scenario the bank is \$80,000 short and is going to look to you to make them whole. When you signed that Note and Deed of Trust at closing upon purchasing your house, you did two things: you agreed to put up your house as collateral in the event that you defaulted on your mortgage payments and you assumed personal liability for the loan the bank was giving you. So, unless you were able to negotiate for a **release** of personal liability from your bank you remain personally liable for the balance of the loan despite the fact that your home was foreclosed.

What makes the situation especially sad is that some folks who face foreclosure are able to get through the process without having to file for bankruptcy. In other words, while many people facing foreclosure have also accumulated a great deal of other debt along the way, others have managed

to avoid doing so. And though the foreclosure sale is a huge blemish on your credit report, your credit score is still looking pretty decent since it has now been 2 years since the foreclosure sale and you have been paying all other bills on time. But now you are faced with this \$80,000 deficiency lawsuit, and regrettably, for most people, this will mean that now you will have to file for bankruptcy.

The moral of the story: I know you hate going to your dentist for that yearly check up, but you probably hate going to your dentist even more when it is a root canal that is needed. And I know that you hate going to your mechanic for that yearly maintenance work, but you probably hate going even more when a new radiator is needed. And I definitely know that you hate going to see an attorney...I think you know where I am going with this. An ounce of prevention is better than a pound of cure! Having an attorney or a HUD certified counseling agency at your side may help. You might be able to negotiate for a release of your personal obligation on the mortgage, or in the alternative, file for bankruptcy at the time the foreclosure is happening. The bankruptcy filing will discharge/wipe out your personal obligation on the mortgage (and other unsecured debt) and negate the possibility of a deficiency judgment from occurring in the future. Better now than later!