

Short Sales, Deficiencies & Bankruptcy

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Over the last few weeks I have been seeing quite a few people who sold their home via short sale within the last two years who have now been sued by their old second mortgage company for the balance that was due after the short sale. Many here in Arizona have done research on their own or have received advice from a Realtor on Arizona's Anti-Deficiency statute (A.R.S. § 33-814(g)). It is vital to understand that the anti-deficiency statute only applies in a foreclosure setting — not a short sale.

Most short sales where there is a second mortgage on the property result in some type of negotiation in getting the bank to agree to a lesser amount as well as to release its lien so that the property may be sold. While some banks will accept a lesser amount and release the lien, some banks are only releasing the lien if the borrower agrees to sign a promissory note or other documentation wherein they agree to repay the second after the short sale is complete. Those who do not carefully review the documents related to their short sale may be unpleasantly surprised to find out down the road that the home they thought they had finally put in their past is coming back in the form of a law suit — usually for a substantial amount of money.

The main point of this post is to stress how important it is to get good advice when it comes to short sales and to review the documents very carefully before signing them. I am hearing repeatedly that people are getting advice that the Arizona Anti-Deficiency law applies to short sales and it simply doesn't. Buyer/Seller beware!

If you find yourself in a situation where you have the bank on the second mortgage suing you, bankruptcy is typically a good option. A Chapter 7 bankruptcy or a Chapter 13 bankruptcy will eliminate or “discharge” this type of debt completely.