MATTHEW SHAPIRO

GETTING THE JOB DONE: KEYS TO BUSINESS SUCCESS

Attorney offers tips on deficiency judgments

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DAYTONA BEACH — Those who lose their home to foreclosure often find themselves facing an additional blow.

If the foreclosure sale is for less than the amount needed to pay off the mortgage loan, it can result in a deficiency judgment against the borrower, meaning that person will still owe money on a property he or she no longer owns.

Matthew Shapiro, an associate attorney at Rice & Rose Law Firm in Daytona Beach, said recent changes in the law are producing an increase of deficiency judgments throughout the Volusia-Flagler area, but said there are steps that those facing foreclosure can take to alleviate its effects.

Shapiro recently spoke with The News-Journal about those steps:

When was the law changed regarding deficiency judgments and how has that affected your clients?

The most recent major change to foreclosure proceedings happened on July 1, 2013, when House Bill 87, the Florida Fair Foreclosure Act, became law.

Although (it) changed many areas of foreclosure law, the time period within which a plaintiff could bring a deficiency judgment was significantly shortened. Specifically, it went from five years from the date of the sale to one year from the date of the sale. If the sale was prior to the enactment of the new law, the mortgage holder was given until July 1, 2014, or their claim was waived. For clients who were foreclosed prior to July 1, 2013, it has been both a blessing and a curse.

While some have been able to walk away with minimal financial impact due to the sunset of the plaintiff's claim, others were shocked to be served with a secondary lawsuit just as they were beginning to recover financially. Those who have recently been foreclosed are used to tales from friends and neighbors stating that they "walked away from the mortgage with little immediate financial consequence." That is simply not the case with this wave of foreclosures as clients are now having to shift assets in order to make themselves less appealing to debt collection agencies. People want to invest and grow their money, but it is difficult to do that when facing a deficiency judgment.

When did you start seeing an increase in clients who have lenders pursuing deficiency judgments?

There was a large wave in the first quarter of 2014 just prior to the expiration of the rights established before the change in the law.

Our firm alone worked with dozens of clients and many of these cases are still working their way through the court system. Plaintiff's are now filing for deficiency judgments within a few months of the foreclosure sale leading to a steady stream of borrowers seeking protection.

How has that affected people who are foreclosed on and their ability to repurchase homes?

If the individual does not require financing then the deficiency is actually difficult to collect. One of the best ways to shield money is to purchase a new property and then seek homestead protection. The former plaintiff will not be able to force a sale and the asset will be shielded. For those who do not have cash, or cannot homestead a property, the deficiency judgment is very damaging. Most lenders will not provide financing; their credit is damaged even further, and they are hesitant to disclose their true financial worth for fear of garnishment, levy, or other forms of debt collection.

What affect do you think that will have on the housing market?

The inability, or reduced ability, to purchase property is certainly a hindrance when it comes to a housing recovery. I think the more pressing issue is the overall impact on the economy. Rather than investing in businesses and commerce, many people are shielding or hiding their assets from creditors.

What options does a person have if a lender pursues a lawsuit against them?

There are essentially three options. 1. The person can fight the deficiency lawsuit using expert to testimony to establish that the property was worth more than the lender claims. 2. The person can negotiate a settlement by generally paying between 20 and 30 cents on the dollar, 3, The person can attempt to shield their assets from the creditor.

If a plaintiff pursues a lawsuit against a borrower and they have no money, what options does a plaintiff have?

If the borrower truly has no money, and no paycheck to garnish, the plaintiff will obtain the judgment and wait for a change in the borrower's finances. Judgments can last up to 20 years, and in certain cases beyond that. Borrowers need to be careful not to ignore a judgment as they [the borrower] may become collectible years down the road.