naplesnews.com
Printer-friendly story
Read more at naplesnews.com

Foreclosure deficiency judgments on the rise in Lee County

By LAURA LAYDEN

Originally published 06:56 p.m., September 1, 2010
Updated 08:58 a.m., September 2, 2010

Homeowners beware.

Even after losing your home to foreclosure, the lender or a debt collector may come knocking at your door, looking for money.

In Lee County, deficiency judgments are on the rise. Nationally, they have been too.

These judgments come after a foreclosure sale. With them, lenders in Florida have the legal right to collect the difference between what was owed on a mortgage and the fair market value of the property on the day of the auction.

The value of the property is based on a current appraisal.

“The bank has to support a deficiency judgment,” said Ronald Webster, a real estate attorney on Marco Island.

“Obviously, banks have a lot of appraisers in their pockets,” he said. “So at times it can be self serving.”

In August, Lee County saw a spike in deficiency judgments. There were 51, the highest monthly number recorded this year, according to the Lee County Clerk’s Office. In July, there were 32 of them in the county.

“Not a happy situation,” said Charlie Green, Lee County’s Clerk of the Courts.

From January through August, there were 179 deficiency judgments in the county. Last month, there were another 43 motions filed for deficiency judgments.

“You are going to see a lot of these,” said Jeff Tumbarello, director of the Southwest Florida Real Estate Investors Association.

With new foreclosure filings slowing in Lee County that gives lenders more time to focus on the deficiency judgments, he said.

“They are supposed to go after these people,” Tumbarello said. “That is the way these things work.”

There were 865 new foreclosure cases filed in Lee County in August, according to the Lee County Clerk’s Office. That was up from 778 in July, but down from 929 in June.

At the peak of the foreclosure crisis, monthly filings in the county surpassed 2,600. In August 2009, there were 1,626 new cases filed – nearly twice as many as the same month this year.

Nationally, investors and debt collectors are buying up deficiency judgments for pennies on the dollar and are going after borrowers. “It’s going to be the next wave,” Tumbarello said. “A lot of people think it’s not coming.”

Roy Oppenheim, a leading foreclosure defense attorney in Florida, represents many homeowners in the state who are facing deficiency judgments. There has been legislation proposed to try to limit them in Florida, but it has gone nowhere, he said.

Some states don’t allow the judgments.

Most often, banks pursue deficiency judgments when they are the buyers at the auction, Oppenheim said. He estimates that lenders are getting the judgments on less than five percent of foreclosed properties in Florida today. “But it’s creeping up,” he said.

The best way to avoid such judgments is to fight a foreclosure every step of the way, and not to just allow a bank to take your property, Oppenheim said.

“There are defenses,” he said. “There are lots of defenses. The bank took too long. They shouldn’t have foreclosed in the first place. Their appraisals are wrong. They’ve been paid by third-party sources. They are double dipping.”

A short sale if often the best answer, Oppenheim said. In a short sale, the property is sold to another buyer for less than the mortgage amount, but the sellers can negotiate an agreement with the lender to not go after them for more money, he said.

“You walk away. You’re done. Your hands are clean,” Oppenheim said.

Even if there’s a deficiency in a short sale, it’s not the same as a deficiency judgment after a foreclosure sale.

“With a deficiency judgment, they can garnish your wages, seize your bank account and seize your car and make your life miserable,” Oppenheim said.

With a deficiency judgment, the lender or whoever buys it, can go after the debt for 20 years.

“The real concern is that people aren’t out of harm,” Webster said.

The bank has one year to file a motion for a deficiency judgement after a foreclosure sale. But it has up to five years to file a new lawsuit, seeking a deficiency amount, Webster said.

Often, it’s the smaller community banks that are more aggressive about getting the judgments, he said.

“I call it the elephant in the room,” said Kevin Jursinski, a Fort Myers real estate attorney.

In the old days, he said, this wasn’t a big problem for troubled homeowners because they put down bigger down payments and their properties were increasing in value.

Connect with Laura Layden at www.naplesnews.com/staff/laura_layden.