MCRC The Voice For Maryland Consumers
MARYLAND CONSUMER RIGHTS COALITION
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HB 274
Frequently Asked Questions

1. What is a 'deficiency' judgement?

- When a homeowner loses a home in a foreclosure, short-sale, or deed in lieu of sale and he or she owes more on the mortgage than the house sells for, that person is left with a deficiency.
- Lenders may sue the former homeowner to recover the deficiency.
- If the court finds in favor of the mortgage holder, the judgement will be listed on the individual's credit report for seven years, which will hurt that person's financial recovery.
- Moreover, the individual could be exposed to collection actions or wage garnishments to recoup the full amount owed until the judgement is paid in full.
- Lenders do more than recover the deficiency though -- they also recoup interest on the debt that compounds monthly. This compounding interest can double or triple the size of the debt.

2. Why is this a problem?

- Former homeowners may be pursued 12 years after they lost their home, when they are rebuilding their credit and assets. The pursuit of the deficiency may cause them to file bankruptcy, further damaging their credit and possibly leading to wage garnishments and costing them their hard-won assets.
- **Banks have 12 years to pursue a deficiency in Maryland -- this is one of the longest timelines in the country.**

3. Is it really a problem in Maryland?

- Yes. Since 2008, at least 400 Maryland residents have been pursued for deficiencies --120 in 2012 and 57 in the first half of 2013.
- **Pursuit of deficiencies has grown more than 600% between 2006-2012.**
- In 2006, the 19 deficiencies pursued totaled $432,115 while in 2012 the 120 cases totaled $13.6 million.
- In September 2013, the FHFA urged Fannie Mae to improve its ability to pursue deficiencies -- this guidance means Fannie Mae is likely to increase its pursuit of deficiencies.
- A June 2013, Washington Post analysis found 144 cases of bankruptcy filed in Maryland after homeowners received a court order for deficiency. In 25% (or 36) of these cases, the former homeowner had wages or assets garnished.
- One Annapolis law firm has taken on 80 bankruptcy cases in the past four months, all of which involve deficiency judgements.
- **This is a real, and growing concern for Maryland residents.**

4. Shouldn't the former homeowner have known better?

- The majority of homeowners going through foreclosure are not represented by attorneys and don't understand that that once they lose their home, they can still be pursued for this debt.
- These homeowners are unaware that they can request that the deficiency be waived.

5. Shouldn't these individuals still be held responsible for paying their debts?

- **HB 274 does NOT prohibit banks from pursuing deficiencies, it simply reduces the amount of time banks have to decide whether to pursue deficiencies.**
- If mortgage holders choose to pursue the deficiencies, individuals will have to respond to these attempts to collect, but it is better for the individual to be aware of this issue after 6 months rather than after 11 years.

6. Isn't 180 days too little time for the banks to really pursue these debts?

- No. Many states have far shorter timelines than Maryland. Thirteen states have shorter timelines than HB 274 proposes. Deficiency judgements are still sought in those states.
- The FHFA believes deficiency judgements can be pursued very quickly. A September 2013 audit states that:

> "*OIG believes that FHFA and Fannie Mae are in a position to improve vendors' ability to act within the timeframes set by statutes of limitations, even those in the 10 states with the shortest statutes of limitation, by having vendors more quickly assemble documents and information needed (before and after foreclosure) to evaluate and pursue borrowers with the ability to repay deficiencies, particularly strategic defaulters*." (Office of the Inspector General, FHFA Audit, p. 2, September 2013).

7. Won't this push more people into bankruptcy rather than help them?

- It is possible that if banks decide to pursue more deficiencies, more individuals may opt to file for bankruptcy. But it is better for someone's credit and financial recovery to file for bankruptcy and face foreclosure in the same time period than to face foreclosure, then work for years to rebuild their assets and credit, only to have it all taken away by a deficiency judgment a decade after foreclosure. The latter scenario is far worse for homeowners.
- But a more likely scenario is that if a former homeowner knows within 6 months that they will be pursued, they can work with an attorney to reduce the debt and/or develop a payment plan.

8. What do other states do?

- More than 10 states bar the collection of deficiency judgements.
- Twelve states require that a deficiency judgement be brought within three months of a foreclosure sale.
- Illinois, Kansas, and South Carolina require that the deficiency be sought at the time of the foreclosure.
- Washington, D.C. requires that a deficiency judgement be brought within 30 days of a foreclosure sale while Pennsylvania requires 180 days.

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