

Home Foreclosed But the Debt Remains: Bankruptcy & Foreclosure

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The other day in the [Wall Street Journal](#) there was an article about home owners who have lost their homes through [foreclosure](#) only to then be sued by the bank for the balance owed. During my bankruptcy consultations I often hear of families that have lost their home to foreclosure and now they are being hounded by the bank, often for very large sums of money over \$100,000. If a home sells at auction and the purchase price is less than what you owe on it, an unpaid balance remains. This is known as a deficiency. In 41 states the banks are allowed to then sue their prior customer for the balance owed.

Arizona is one of the 9 states that has an anti-deficiency statute. This law essentially prohibits the bank from suing you after the home has foreclosed so long as certain criteria exist. In a nut shell, so long as your home was a single family residence or condo, on less than 2.5 acres of land, the home was actually occupied at some point, and the loan on the home was used to actually purchase the home ("purchase money"), then in most cases the bank will not be able to pursue you after the foreclosure sale. However, if not all the criteria are met, then the bank can sue you after the sale.

The most common scenario I see where the bank actually files a [lawsuit](#) is when there is a second mortgage or home equity line of credit (HELOC) that was used to pay off other debt or buy a boat, etc. Such loans are clearly not purchase money and the bank can go after that money after the foreclosure sale. Often when the bank files suit in these scenarios the result is an immediate bankruptcy filing. Bankruptcy, and particularly a [Chapter 7 bankruptcy](#), will eliminate any deficiency that may be owing and will further stop any lawsuit that has been filed. Even if the bank has pursued the case all the way to a judgment, the bankruptcy filing will eliminate the debt.

If you have been through a foreclosure and are now receiving [collection calls](#) or have even been sued your prior bank, give me a call and we can go over your options. Sometimes the bank is pursuing you despite the protections provided by Arizona's anti-deficiency laws and a simple letter will clear up the problem. For others bankruptcy may be the only way to avoid a large judgment and potential [garnishment of wages](#). My bankruptcy consultations are always free. Give me a call at (480) 420-4028 or via email at john@skibalaw.com.