



ESTABLISHED 1924

FARR LAW FIRM

FARR, FARR, EMERICH, HACKETT AND CARR, P.A.

e-law

Newsletter

WWW.FARR.COM

PERSONAL INJURY &
WRONGFUL DEATH

LITIGATION

ESTATE PLANNING

REAL ESTATE & TITLE
INSURANCE

MARITAL & FAMILY

ENVIRONMENTAL
& LAND USE

BUSINESS

ELDER LAW

ASSET PROTECTION

ATTORNEYS

EARL DRAYTON FARR, JR.
(Senior Counsel)

GUY S. EMERICH

JACK O. HACKETT II

MICHAEL P. HAYMANS

CHARLES T. BOYLE

DAROL H.M. CARR

DAVID A. HOLMES

GARY A. KAHLE

JENNIFER R. HOWELL

ROGER H. MILLER III

DOROTHY L. KORSZEN

WILL W. SUNTER

ERIC M. DECKER

INSULT TO INJURY: DEFICIENCY JUDGEMENTS

Roger H. Miller
August, 2009



With the unprecedented number of foreclosures, many people are concerned not just with losing their home or investment property, but also the potential for the lender to obtain a money judgment against them personally. This concern is legitimate, because most properties in foreclosure right now are not worth what is owed to the lender. As a result, even if the lender forecloses and the lender either recovers the collateral, or a third-party purchases the collateral at a foreclosure sale for less than is owed to the lender, the lender has the right to pursue a deficiency judgment.

A deficiency judgment is a money judgment against the borrowers that may be entered after the collateral has been sold. The amount of the money judgment is the difference between the foreclosure judgment amount and the greater of what the collateral is worth or what it sold for at the foreclosure sale. In the vast majority of foreclosures filed during this current real estate downturn, the foreclosing lender ends up purchasing the collateral at the foreclosure sale. Oftentimes, there are no other bidders at the foreclosure sale and the foreclosing lender purchases the property for \$100. That does not necessarily mean that a third party could have purchased the property by bidding more than \$100, because the lender could have continued to bid up to its judgment amount.

If the foreclosing lender purchases the collateral at the foreclosure sale and the property is worth less than the lender's judgment, the lender can pursue a deficiency judgment against the borrowers. The borrowers would be determined by who signed the promissory note(s), not necessarily who signed the mortgage. Frequently, less than all the owners of property borrow the funds; however, all of the property owners must sign the mortgage so as to create a lien on the real property to secure the sums



ESTABLISHED 1924

FARR LAW FIRM *Newsletter*

FARR, FARR, EMERICH, HACKETT AND CARR, P.A.

WWW.FARR.COM

PERSONAL INJURY &
WRONGFUL DEATH

LITIGATION

ESTATE PLANNING

REAL ESTATE & TITLE
INSURANCE

MARITAL & FAMILY

ENVIRONMENTAL
& LAND USE

BUSINESS

ELDER LAW

ASSET PROTECTION

borrowed. The parties who did not sign the promissory note but signed the mortgage, are not personally responsible to pay the loan back, but they have pledged the property as collateral by signing the mortgage. Therefore, if the borrower does not pay pursuant to the promissory note, the lender can foreclose the mortgage and force the sale of the property.

If the collateral, as of the day of the sale, is worth less than the judgment obtained by the lender, then the lender can file a motion and seek a deficiency judgment. The value of the property can be determined by testimony from an appraiser, Realtor or owner, as well as the amount the property sold for at the foreclosure. The value of the property is a factual issue and the parties may dispute the value of the property. If the value is disputed, the court will hold an evidentiary hearing and make a determination as to the value of the property based on the evidence presented at the hearing. Once the court has determined the value of the property, the court can enter a deficiency judgment in the amount of the difference between the final judgment in foreclosure and the value of the property.

As you can see, a party in foreclosure has more to worry about than simply losing the property, which is why anyone facing a foreclosure lawsuit should contact an attorney knowledgeable in foreclosures.

To subscribe to our monthly newsletters, please visit our website at www.FARR.com

This newsletter is for general information and education purposes only.

It is not offered as legal advice or legal opinion.

To the extent this message contains tax advice, the U.S. Treasury Department requires us to inform you that any advice in this letter is not intended or written by our firm to be used, and cannot be used by any taxpayer, for the purpose of avoiding any penalties that may be imposed under the Internal Revenue Code. Advice from our firm relating to Federal tax matters may not be used in promoting, marketing or recommending any entity, investment plan or arrangement to any taxpayer.

Punta Gorda Office:
99 Nesbit Street
Punta Gorda, FL 33950
Phone: 941.639.1158
Fax: 941.639.0028

Englewood Office:
33 S. Indiana Avenue
Englewood, FL 34223
Phone: 941.460.9334
Fax: 941.460.9443