

SPECIAL ARIZONA UPDATE BULLETIN

DECEMBER 2013!

Post Date: 2/4/2014

THE ARIZONA ANTI-DEFICIENCY LAW HAS CHANGED!

LATEST ARIZONA-ANTI-DEFICIENCY NEWS!: Quite some time after the Articles or Advisories on this site were originally written, Arizona Appellate Courts changed the Arizona anti-deficiency law in several respects that may in some cases contract or expand its coverage, depending upon the facts of each specific loan. These is major news in Arizona and you should know it if you practice or do business there. The below sets forth new case decisions which change those parts of this site's former Article and Advisories that state the old rules and thus updates and amends the older Articles or Advisories.

LEGAL CHANGES IN 2012: The law is always in a sea of change. There are two anti-deficiency cases that have recently been decided in Arizona, the M & I Bank vs. Mueller and the Helvetica Servicing vs. Pasquan cases, which may have a bearing on your rights and liabilities, but which are currently in the appeals processes or times, so their holdings are subject to change, as well. A summary of the changes: Mueller provides that even if a qualifying residential property was under construction, but not yet built and even still on a construction loan when default occurred, the debtor's **intent** to construct a home can be sufficient to protect the debtor under the anti-deficiency laws in Arizona, though a recent case still working through the Courts in December, 2013, has suggested that the "intent" must manifest itself beyond simply holding bare ground thinking one might build there someday. Helvetica provides, inter alia, that in those cases where loan monies are "blended" in the loan between those loan funds actually used to purchase the home and those loan funds that were paid out for other purposes, only the monies that went directly into purchase are protected by the anti-deficiency laws in Arizona. This seems to complete the question left open in the Beauvais and Mid-Kansas cases about blended or non-purchase money loan funds and changes this site's original Article's analyses about "blends" between purchase and non-purchase funds. At the time of this writing (May 25, 2012), Mueller has been appealed to the state Supreme Court and the time for a similar appeal on Helvetica is still open and it is possible it may be appealed to the Supreme Court as well. Always see an attorney if these fact and law questions apply, as this particular area is now under almost daily flux.

LENDER DISINFORMATION WARNING: In closing on a short-sale, your Bank may wrongfully try to attempt to collect additional money or a new promissory note from you over and above the short-sale proceeds, insisting that it can do so even on a non-deficiency loan because (the Bank falsely alleges) "the anti-deficiency statute only kicks in after a foreclosure and until it forecloses, you owe the debt personally" so that in a "pre-foreclosure short-sale, it can demand more money." **That assertion is UNTRUE and you should decline to do it.** All the Bank gets is the proceeds of the short sale. Demands that you waive your anti-deficiency protection and/or that you pay more money or sign a promissory note for the difference or other concessions, are barred in Arizona by the Arizona case of Baker v. Gardner, 160 Ariz. 98, 770 P.2d 766 (1988) [the landmark anti-deficiency case] and Forbach v. Steinfeld, 34 Ariz. 519, 526-527 (Ariz. 1928) [landmark case voiding waivers of consumer protections as violations of public policy] and other cases noted in this site's Articles, including the above new cases. It is bad faith and an unlawful Debt Collection Practice for the Bank, broker, attorney or a Debt Collector to even make such false assertions and demands. If this occurs, you should contact an attorney.

CHANGING LAWS: The anti-deficiency and other laws are in flux and what is law one day may be changed the next. This site is not always brought current to the exact hour. Always check with an attorney to determine the latest law before relying on any dated laws.