

What is a deficiency, and what is a deficiency that relates to a residential mortgage?

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A deficiency is the word typically used in the insolvency realm to refer to the amount of money that remains due after the collateral in a secured loan is applied to the total balance due. For the average consumer, a deficiency can arise with the two most common types of secured loans, an auto loan and a residential mortgage. With an auto loan, this typically means the amount due after a car is repossessed and then sold. With a residential mortgage, it is the same, the amount due after the house is foreclosed on and sold.

The significant fact to understand is that in Massachusetts, deficiencies are permitted by law, and that this is not the case in many other states. In general, there is a great deal of information on the Internet posted by well intentioned people on the issue of foreclosure and deficiencies and what to do to defend a foreclosure. Much of the information on this subject is based on another state's law, or people's own experience as they understood it, or is geared for another angle of how the law applies to the particular facts for that person. This is why the Internet may be OK to gather ideas, but not to rely on to take action in legal matters. Understand there is no substitute to getting quality legal advice, which in general is the application of the law to specific facts by a professional.

In Massachusetts, there are a number of considerations when evaluating issues concerning defending foreclosures and/or evaluating deficiency issues. One being whether the required statutory notice was sent, and another being whether it was adequate. Mass. Gen. Laws c.244 § 17B. Finally, there is whether the notice was sent to the correct address. Bead Portfolio, LLC v. Follayttar, 47 Mass. App. Ct. 533 (1999). However, as stated, if you are evaluating the issues and attempting to decide what to do with respect to foreclosure and/or deficiency matters, it is best to obtain quality legal advice, which again is the application of the law to specific facts by a professional.

In the event that you are considering obtaining legal advice about foreclosure and/or deficiency issues in Massachusetts law, feel free to give us a call.

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