CALIFORNIA ASSOCIATION OF REALTORS®

HOMEOWNER LIABILITY AFTER FORECLOSURE

FROM YOUR REALTOR® . . .

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Foreclosure has many harsh realities. Even if you lose your home through foreclosure, you may still be personally responsible for the difference between your mortgage loan balance and what your property is worth. This difference owed to your lender is also called a deficiency judgment. California's anti-deficiency rules may protect you from personal liability, but it depends on your particular circumstances.

Determining whether California's anti-deficiency protections apply to your situation can get complicated. But it's a big deal. If your lender obtains a deficiency judgment against you, you will be legally obligated to pay that amount of money. If you don't pay, your lender may enforce the judgment by, among other things, garnishing your wages, levying your bank accounts, and attaching judgment liens against any real property you may own. Considering your personal liability after foreclosure is also critical when you're weighing the pros and cons of foreclosure as against your other options, such as selling your property, getting a loan modification, or filing bankruptcy.

To help you determine whether you are protected against personal liability, here are basic explanations for some of the major anti-deficiency protections, as well as situations where the protections do not apply:

I. Protections Against Personal Liability	II. Situations Where Protections Do Not Apply
You may be protected against a deficiency judgment if you fall within any of the circumstances below. However, you may not be protected if you also fall within any of the situations in Section II on the right: Trustee's Sale: You are generally protected against a deficiency judgment from your lender if that lender elects to foreclose by a trustee's sale. California has two types of foreclosures -- judicial foreclosure through a civil lawsuit and non-judicial foreclosure using a trustee's sale. Most lenders in California opt to foreclose by trustee's sales. Purchase-Money Loan: You are generally protected against a deficiency judgment if your lender forecloses on a mortgage loan that you originally obtained to purchase an owner-occupied dwelling of not more than four units. You may not be protected, however, if you refinanced the purchase-money loan. Seller Financing: You are generally protected against a deficiency judgment for seller financing. Short Sale: If you sell your property in a short sale transaction, you can protect yourself from personal liability (even for a wiped out junior lender) by successfully negotiating for your lender to accept a loan payoff for less than what's owed and to give you a written release from any personal liability for the shortfall.	You may not be protected against personal liability under any of the following circumstances: Wiped Out Junior: If you have two mortgage loans and the senior lender forecloses by a trustee's sale, you may not be protected against a deficiency judgment brought by an unpaid junior lender whose security interest was wiped out by that foreclosure. Loan Fraud: If you made any misrepresentations to your lender (e.g., overstated your income on your original loan application), you may be personally liable for loan fraud regardless of the anti-deficiency protections. Bad Faith Waste: If you intentionally damage or destroy the property by action or inaction, you may be personally liable for committing bad faith waste, regardless of the anti-deficiency protections. FHA and VA Loans: If you have a loan insured or guaranteed by Federal Housing Administration (FHA) or the Veteran's Administration (VA), you may be personally liable regardless of the anti-deficiency protections. Federal law governing FHA and VA loans may override California's anti-deficiency rules.