

[ShareThis](#) [Reprints & Permissions](#) [Print](#)

## Mortgage Meltdown

Foreclosed homeowners may still have debt to pay

October 23, 2009

By: Paola Iuspa-Abbott

**J**eff Baum is at the forefront of a real estate industry trend that is sure to cause more pain for homeowners who thought they had left their troubles behind.

Baum, a principal with Green Circle Capital Group in Boca Raton, brokers the sale of nonperforming residential debt between lenders and investors. Those investors buy the debt with the intention of collecting from the former homeowners.

"I've made quite a bit of my living over the last two, three years selling deficiency balance paper," said Baum,

A deficiency balance is the portion of the mortgage loan that wasn't covered by the sale of the home. That debt becomes an unsecured note similar to other consumer debt such as credit cards.

Hedge funds, servicing companies and collection agencies pay cents on the dollar for the unsecured debt. Their collection efforts mean more problems for former homeowners who failed to pay off their mortgages after a short sale or a foreclosure during the 2-year-long residential real estate crisis.

Investors will likely be more aggressive than lenders in going after the debt "to get a more advantageous rate of return than the larger institution would be willing to put the effort in," said Baum, who formerly worked in SunTrust Bank's residential mortgage-backed securities unit.

Mortgage holders or the debt buyers have up to five years from the time the loan goes into default to sue to collect the debt.

The practice has its critics within the lending industry. Miami-based Republic Federal Bank doesn't sell deficiency debt, said Jim Angleton, the bank's senior vice president. But Angleton predicts other lenders will seize the opportunity.

"As the market declines, it is going to be more in vogue: institutions trying to sell the debt and debt collectors trying to create another niche for themselves," he said. "Those [debt collectors] are not even bottom feeders, they are subterranean feeders. They are in the Dracula mode of blood sucking."

Republic doesn't go after borrowers for deficiencies unless they have other assets that can be tapped into, Angleton said. In about 25 percent of the cases, the bank goes to court to get deficiency judgments, he said.

### COLLECTION CRISIS

Real estate attorney Daniel Kaskel said many people who lost their homes may face a collection crisis.

Last month, one of his clients closed on a short sale that generated enough money to cover most of the first mortgage of about \$245,000. But proceeds of the sale weren't enough to pay off a second mortgage of about \$174,000, said Kaskel, with Sachs Sax Caplan in Boca Raton.

Chase, which held the second mortgage, agreed to release its lien from the property for the sale to close, but it held the borrower responsible for the deficiency, according to Chase's letter to Kaskel's client.

If Chase sells that deficiency debt to a debt collector, the former homeowner can expect to have to come up with the money plus interest.

"I make my clients aware of this [threat,]" Kaskel said. "In some situations, they would rather do the short sale, move on and worry about any deficiency when they get a phone call from a debt collector."

If his client hadn't done the short sale, the house would have been lost to foreclosure and the client would have ended up owing the balance on the first and second mortgage, he said.

"In a short sale, at least the seller has some control over it," said Kaskel, who negotiates with lenders on behalf of doctors, lawyers and other professionals that make more than \$300,000 a year.

His clients worry about being pursued by debt collectors because many have other assets that could be targeted to satisfy a



Daniel Kaskel

RELATED STORIES ...

[Read more Condo Meltdown stories...](#)

deficiency, he said.

"These are not [economic] hardship cases," he said. "These are people who do not want to remain in a situation where it will take eight years of paying the mortgage for their homes to be worth what the mortgage is worth," he said.

## **DEFICIENCY JUDGMENTS**

After winning a foreclosure action, a lender has up to five years to ask a judge to declare a deficiency judgment. The judgment amount is the difference between the loan and the market value of the home on the day it sold at a foreclosure auction.

Once they are awarded the judgment, lenders can sell it to debt collectors, said Miami attorney Lewis Cohen, a partner with Cohen & Bobota. Many of his clients are banks.

"A bank usually would walk away from the debt rather than throw more money to collect something that is uncollectable," he said. "So, why not sell it for 25 cents on the dollar?"

Judgments are good for 20 years, and while people may be broke now, their financial situations could improve in the next two decades, said Richard Zaretsky, a West Palm Beach foreclosure defense lawyer. The dormant debt may come back to haunt them, he said.

Judgment holders, like collection agencies, can force people into court yearly to disclose their finances, said Zaretsky.

Attorney Thomas Willis, with Shuster & Saben in Miami, says the problem will increase over the years.

"Can you imagine, as people's finances are beginning to improve — boom! — they get hit with a collection action for tens if not hundreds of thousands of dollars," he said. "You are going see a lot of people having to declare bankruptcy."

Since the only way to deal with a deficiency judgment is to pay the debt holder or declare bankruptcy, that's already happening, according to Miami bankruptcy attorney Joel Tabas, with Tabas Freedman Soloff Miller & Brown.

"A lot of people are filing bankruptcy to get out of the deficiency obligation," he said.

The best way distressed sellers can protect themselves is to negotiate a reduction in the deficiency balance or persuade lenders to waive their rights to collect deficiencies.

Miami real estate broker Ross Milroy recently brokered a short sale in which Bank of America demanded the seller sign a note for \$25,000 to cover a loan deficiency.

The seller, who owned a condo in the Grandview Palace in North Bay Village, showed the lender that he was unemployed and disclosed his limited financial resources.

"So they waived the \$25,000 note, and we proceeded to close," said Milroy, managing broker of Miami Angel Properties.

Willis, with Shuster & Saben, said sellers need to be aggressive with banks.

"Your bargaining position is much better if you pro-actively try and resolve the situation now rather than waiting later down the road," he said.

## **INFLEXIBLE LENDERS**

Some lenders won't bend, said Davie real estate broker Patty Da Silva. Recently, a client found a buyer for a home for about \$181,000. The property had a mortgage for nearly \$500,000. The lender approved the sale but held the seller liable for the outstanding balance, said Da Silva, owner of Green Realty Properties.

Her client could be subject to a judgment, she said.

Baum said many people, including attorneys, are not aware of the sellers' rights and obligations. A homeowner that walks away from a property is still responsible for the debt, he said.

"A lot of times, I run into individuals who let their properties go into foreclosure or did a short sale and they think they are released from their obligations," he said. "But they are not."

Paola Iuspa-Abbott can be reached at  
piuspa@alm.com or at (305) 347-6657.

***Daniel Kaskel photo by Melanie Bell***

Your Name:

Comments:

Type your comment here.

Search the [archive](#) for more stories.

**Back To:**

- [Today's top stories.](#)
- [More business stories.](#)
- [More legal stories.](#)

Incisive Media takes copyright infringement seriously. YOU MAY NOT DISTRIBUTE THIS STORY, ELECTRONIC OR OTHERWISE, WITHOUT OUR PERMISSION. You may print or purchase this story from our archives for your personal use only. In order to obtain reprint permission rights, please contact Sue Viera at 305-347-6621 or 800-777-7300 ext. 6621. If you need a subscription, please call 1--877-347-6682.