

Understanding Deficiency Judgments

Question: If a home has been sold at a sheriff's sale, but the sale price wasn't enough to cover the debt, can the creditor seek a personal deficiency judgment?

A **deficiency judgment** is a judgment lien against a borrower whose foreclosure sale did not produce sufficient funds to pay the mortgage in full. As a general rule, if the first mortgage is foreclosed by advertisement (the most typical type of foreclosure in Minnesota), there will be no deficiency judgment.

Foreclosure by Advertisement: NO Deficiency Judgment

In Minnesota, a lender or lien holder can obtain a deficiency judgment, but only in limited circumstances. The law is written so that a lender **may** obtain a deficiency judgment against the homeowner if the amount received from a foreclosure sale is less than the amount remaining unpaid on the mortgage.¹ However, a "deficiency judgment is **not allowed** if a mortgage is foreclosed by advertisement . . . and has a redemption period of six months or five weeks."²

Since most foreclosure sales in Minnesota are by advertisement, and most homeowners get a six month or five week redemption period, most foreclosed homeowners will not have a deficiency judgment against them. If, however, the property is agricultural property, a deficiency judgment can be sought even if it was foreclosed by advertisement. This is because agricultural property is afforded a one year redemption period.

Foreclosure by Action: Possible Deficiency Judgment

If a lender decides to foreclose on the property in court rather than by advertisement, this could result in a potential deficiency judgment. However, this is a rare occurrence in Minnesota. If you are served with a summons and complaint in a foreclosure action, you are being foreclosed upon by action. You have 20 days to answer the plaintiff's complaint, so seek legal advice immediately.

Since a deficiency judgment is allowed if the home is foreclosed as the result of court action, the balance of the unpaid debt "may be executed and satisfied in the same manner as a personal judgment against the [homeowner]."³ The deficiency judgment is not automatic; a lender must seek a deficiency judgment order from the court.

Important Note about Multiple Mortgages

When a mortgage is foreclosed by advertisement, the foreclosing lender has no right to seek a deficiency judgment on **that** mortgage. However, if you have multiple mortgages, a junior lien holder could choose to sue and seek a deficiency judgment for the amount due under the junior lien.⁴ If you have multiple mortgages, including a home equity line of credit, consult a foreclosure counselor or legal professional for information about how this impacts the foreclosure.

*Note: This page provides general information and is not meant to be legal advice.
Consult a competent legal professional or tax adviser for advice specific to your situation.*

¹ MINN. STAT. § 582.30, subd. 1 (a) (2008).

² MINN. STAT. § 582.30, subd. 2 (2008).

³ MINN. STAT. § 581.09 (2008).

⁴ MINN. STAT. § 582.30 (2008).