



Community
Legal Services

Recovering Excess Proceeds After Foreclosure Of Your Home

In Arizona a home is typically foreclosed through a process known as a Trustee Sale. The Trustee holds an auction to sell the home in an attempt to recover the balance owed to the foreclosing lender.

During the downturn in the real estate market, the purchase price at auction was typically at or less than the loan balance owed to the lender. However, with the recent upturn in the real estate market, we are now seeing purchase prices that exceed the amount owed to the foreclosing lender. The amount by which the purchase price at auction exceeds the balance owed the foreclosing lender is known as Excess Proceeds. For example:

\$135,000	price paid at Trustee Sale auction
-\$100,000	loan balance owed to foreclosing lender at time of auction
\$35,000	Excess Proceeds

In the above example, \$100,000 from the sale proceeds goes to pay the amount owed to the foreclosing lender. The question is who is entitled to the remaining \$35,000 in Excess Proceeds? Generally, the Excess Proceeds first go to junior voluntary lienholders and then to the homeowner whose home was foreclosed.

Voluntary lienholders are lenders to whom the homeowner voluntarily gives an interest in the home. Two common examples are your mortgage company (both your primary home loan and your secondary home equity loan) and your homeowner's association. By signing a mortgage you voluntarily give the lender an interest in your home; and by purchasing a home within a community development you voluntarily give the homeowner's association an interest in your home.

Involuntary lienholders are creditors who sue to get a judgment against you. A common example is a credit card company that sues, gets a judgment against you for the amount owed on the credit card, and then records that judgment as a lien against your home.

Let's add a few facts to the example above. In addition to the \$100,000 loan being foreclosed, there is a 2nd mortgage for \$20,000 and a credit card judgment lien of \$20,000. Under this scenario, \$100,000 goes to pay the amount owed to the foreclosing lender, with the \$35,000 in Excess Proceeds being distributed as follows: \$20,000 to the 2nd mortgage (voluntary lienholder) and \$15,000 to the homeowner. The credit card company (involuntary lienholder) gets nothing.

So how does the foreclosed homeowner know if there are Excess Proceeds available? The Trustee is required to mail a notice to the homeowner's last known address. The problem is the last known address is usually the foreclosed property, which the homeowner has vacated without providing a forwarding address.

The homeowner, armed with the knowledge that a Trustee Sale can generate Excess Proceeds, should track the Trustee Sale process. Call the Trustee's office the day after the sale is scheduled to take place. Ask if the sale was postponed (the Trustee is not required to provide you written notice of the postponement) or completed? If postponed, ask for the new sale date. If completed, ask: are there Excess Proceeds from the sale? When will the Trustee be depositing the proceeds with the county treasurer and filing the required lawsuit? Inform the Trustee that you are the foreclosed homeowner and want to make a claim for the Excess Proceeds. Provide the Trustee with your new address and send a confirming letter (by both certified mail/return receipt requested and regular mail) to the Trustee with your new address and contact information.

Excess proceeds can remain on deposit with the county treasurer for up to 2 years. Certain deadlines begin to run when the Trustee deposits the Excess Proceeds and files the lawsuit. Upon receiving notice that the lawsuit has been filed, you should immediately contact one of the legal aid offices listed below for free legal help in recovering Excess Proceeds:

In Maricopa County, contact Community Legal Services at (602) 258-3434 or (800) 852--9075;

In Yavapai County, contact Community Legal Services at (928) 445-9240 or (800) 233-5114;

In Mohave and La Paz Counties, contact Community Legal Services at (928) 681--1177 or (800) 255-9031;

In Yuma County, contact Community Legal Services at (928) 782-7511 or (800) 424--7962.

This article provides general information about Excess Proceeds. It does not address your specific factual circumstances and should not be relied on as legal advice. Please contact an attorney for legal advice specific to your situation.

