

INSIDE
What Real Estate
Agents Won't Tell You!

Deficiency Judgments

The Truth Behind The Short Sale!

The Truth About Short Sales And Deficiency Judgments



**Learn What You Need To Know To Successfully
Complete A Short Sale And Avoid Foreclosure
Without Getting Hit With A Deficiency Judgment**

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Today, here on Real Estate Radio USA we have a special guest with us who is going to discuss deficiency judgments and set the record straight regarding them.

If you are in foreclosure and you're considering a short sale, you more than likely have heard a lot about deficiency judgments and how they may affect you in regards to a short sale.

Unfortunately, a lot of what you have heard regarding deficiency judgments is wrong and the information that is being bandied about by a lot of real estate agents and the media is just plain false.

So we decided to interview and speak to an attorney who is renowned for his work with short sales and deficiency judgments. Today we speak with Erik Wesoloski of the law firm, Wesoloski and Carlson. So before we begin let us outline the credential of Atty. Erik Wesoloski.



In 2009 Erik Wesoloski was give a prestigious award by the Dade County Bar Association for his humanitarian efforts in helping homeowners fight foreclosure and keep their homes. So much of his work was done in Pro Bono fashion (he donated his time freely).

Mr. Wesoloski of Wesoloski Carlson, P.A., handles scores of matters for pro bono foreclosure clients who are unable to hire their own attorney. He has expended hundreds of hours defending countless cases, lecturing colleagues frequently and mentoring others often.

A dedicated attorney, Mr. Wesoloski uses his legal expertise, critical thinking and law firm resources to help victims of foreclosure.



About Erik Wesoloski

Erik Wesoloski is a shareholder of Wesoloski Carlson, P.A. He graduated from The University of North Carolina at Chapel Hill School of Law in May 2001, and he is licensed to practice law in the State of Florida. Mr. Wesoloski's law practice concentrates in real estate litigation and real estate transactions. He also has extensive experience in commercial and residential loan works-outs and advises both corporate and individual clients on debtor/creditor law issues.

Erik has a Master in Latin American Studies from The University of Texas at Austin and a Master in History from Emory University. Erik also received a Bachelor in Arts from Emory University. Erik began his career in the corporate practice group of Kilpatrick Stockton LLP and in 2003 became a founding shareholder of Wesoloski Carlson, P.A. Mr. Wesoloski is fluent in Spanish and proficient in Portuguese.

- Closed over 500 real estate transactions in Florida valued at over \$200 million
- Successfully represented numerous corporate and individual clients in real estate litigation matters
- Worked on the due diligence of a \$100 million acquisition by a S&P 500 company
- Advised numerous startup companies on incorporation; drafting incorporation documents, joint venture agreements and key officer employment agreements
- Negotiated complex bank loan work-outs valued above \$100 million

Education

- B.A., Emory University (1996)
- Study program at Fundaçao Getulio Vargas in Sao Paulo, Brazil
- M.A. in Latin American Studies, University of Texas at Austin (1998)
- Dean's list Fall 1998, study program at Iberoamericana University, Mexico City, Mexico
- J.D., The University of North Carolina at Chapel Hill School of Law (2001)
- M.A in History, Emory University (1996)

Bar Admissions & Affiliations

- Florida Bar (2001)
- U.S. District Court for the Southern District of Florida
- U.S. District Court for the Middle District of Florida
- U.S. District Court for the Northern District of Florida
- U.S. Bankruptcy Court
- Florida Bar Association
- Dade County Bar Association
- American Bar Association
- Florida Puerto Rican Bar Association

The Interview



Barry Johnson: All right, now joining us is Erik Wesoloski from Wesoloski Carlson. It's a law firm with offices in Miami and New York. Erik, thanks for joining us today.

Erik Wesoloski: Thank you for having me.

Q ■ What Is A Deficiency Judgment?

Barry Johnson: A lot of talk about what's going on with these deficiency judgments. Let's go ahead and answer all those questions today. Start off and let us know – what is a deficiency judgment?



Erik Wesoloski: Well, deficiency judgment results from a judgment of foreclosure where the foreclosing plaintiff (which is usually a bank) doesn't obtain full payment for their loan from selling the underlying security, so, in other words, from selling the house, and so that balance that's left over between what was owed and what the bank actually gets from auctioning or selling the property after an auction is a deficiency, and they're able to go and enforce that through what's called a deficiency judgment.

Q ■ Is The Final Judgment Of Foreclosure The Same As The Deficiency Judgment?

Barry Johnson: Okay. Now, we all pretty much know that these are associated with foreclosures. Is the final judgment of foreclosure the same as the deficiency judgment?

Erik Wesoloski: No, actually, it's very different. The final judgment for foreclosure basically enters the judgment amount and allows the foreclosing plaintiff (again, which is usually a bank) the right to auction the property (which is the underlying security) to pay off the loan. And so, what happens is, again, when the bank auctions the





property, if it doesn't sell for enough, which is very, very common in this market because so many properties are under water, that resulting deficiency then can turn into a deficiency judgment, but the bank has to continue to enforce it in the same action.

I think what's also important to note – because I think this program is national – it's not in every state. There are states that are called title states and states that are called lien states. In lien states, like the state of Florida, a foreclosing lender – well,

basically, a lender has only got a security interest in the property, and for them to go about obtaining the right to auction the property, they have to go through the judicial system, and that's why they end up with a judgment and then a deficiency judgment.

Now, there are other states, like California, for example, where a bank does not need to go through the foreclosure system to obtain title to do the foreclosure auction, and in those states, typically, a deficiency judgment



cannot be obtained by the bank and can't be enforced. So, basically, it's like – it's one or the other. In a state like California, the bank can essentially go through the foreclosure very quickly by just setting the sale, but they can't get a deficiency, whereas in a state like Florida, they have to go through the judicial – the civil court judicial system, and it takes a very long time (typically, more than a year), but then they do have right to a deficiency and a deficiency judgment.

Q ■ Who Is The Person Or Entity Who Is Obtaining The Deficiency Or The Deficiency Judgment?

Barry Johnson: Okay. Now, keeping it simple – and wanna make sure everybody understands – who is the person who is obtaining the deficiency or the deficiency judgment?

Erik Wesoloski: It's the bank that obtains it. Essentially, what they need to do is they can go about obtaining a deficiency judgment two ways. **And first of all, they can't do this – they can't obtain it, again, until after the auction, okay?**



Barry Johnson: Okay.

Erik Wesoloski: So, after the judgment, they then go to auction the property. After that, after they see what the property sold for, or if it didn't sell, they – the bank takes the title back, and as an REO, they try and sell it. Whatever they sell it for, then they determine what the balance was. Once that balance is determined, they can take this to the court and ask the court to enter a deficiency judgment in their favor. So, it's after auction.

Now, there is one other way they can go about getting a deficiency judgment, but it's not as common, and that's in some cases where property is not sellable, they can actually take an appraisal to the judge and show this was the value of the property upon assuming the security, you know, assuming the property because it did not sell, and based on that, we believe our deficiency amount is X, and we want the court to enter a deficiency judgment in that amount.

Barry Johnson: Okay. Just so I understand and we have everybody out there that understands, I have a final judgment of foreclosure in the amount of \$300,000.00. Let's say that, okay?

Erik Wesoloski: Okay.



Barry Johnson: The bank forecloses on me, and at the foreclosure auction, the bank takes the property back. They have to resell the property and only realize, let's say, \$150,000.00. So, between that \$300,000.00 that I owed in the deficiency – I'm sorry, the final judgment of foreclosure and the \$150,000.00 they sold it for, there's still a \$150,000.00 gap. That is what they would be petitioning for?



Erik Wesoloski: Yes. That's what they'd go after you for.

Barry Johnson: Okay.

Erik Wesoloski: And it actually is pretty serious because once they're able to obtain a deficiency judgment, that's where they've got a certain amount of power and can make life very uncomfortable. They can essentially subject the debtor to go through what's called a forensic audit where they have to go on the record as far as what assets they have, and if they do have assets, they can take that judgment and lien the other assets.

If they don't have assets but do have income, they can then take it to their employer and garnish wages. So, it is pretty scary, and it is ugly and, unfortunately, something that we're seeing in our offices, many clients that are coming to us for bankruptcy protection to then wipe out a deficiency judgment after a foreclosure.



Barry Johnson: Gotcha.

Erik Wesoloski: Because the – I say unfortunate but also fortunately because at least there is the **bankruptcy protection afforded by our bankruptcy system that can wipe out a deficiency judgment.**

Q ■ How Much Discretion Does The Judge Have?

Barry Johnson:

Right. Now, how much discretion does the judge have? And if, for some reason, if they go in for a deficiency judgment before the judge – I assume it's a petition, so you have to petition a judge – do I get to represent myself or have an attorney represent me and say, "Hey, listen, judge, I think they could've sold it for more perhaps" or "My house was never really worth that in the first place"? Is there any recourse or is the judge basically at the mercy of the numbers?



Erik Wesoloski:

Well, to a certain extent, he is at the mercy of the numbers, but you do have a fighting chance. We've had several fights for clients in our office where the bank brought in appraisals to justify a certain amount, and we felt those appraisals were grossly undervalued. Like the bank was trying to double-dip, in essence, trying to auction the property at one price and then get a larger deficiency amount to try and collect from the client at another price. And so, we brought in our own appraisals and it was a contest on value. So, to a certain extent, the judge is probably gonna defer to experts as far as what the value is or was at the time of the auction.

Barry Johnson:

Sure.

Erik Wesoloski:

But they do have quite an amount of discretion as far as entering the deficiency judgment.

Q ■ How Long Does The Bank Have To Actually File The Deficiency Judgment?

Barry Johnson:

Now, how long does the bank have to actually file the deficiency judgment? And I ask this because sometimes when the bank will go to auction and take the property back, they've gotta sell it on the open market as an REO. As you know, things aren't moving that quickly out on the real estate market right now, so, say it takes a while for it to



sell. Is there a statute of limitations – that they have to file within a certain amount of time?

Erik Wesoloski:

Well, the statute of limitations runs on this at four years, but there's something more important and something that we've been known to do for our clients, which is, again, the benefit of having an attorney on your side in these cases,



and that is if the bank does not move forward after 12 months of obtaining judgment and does not go for a deficiency judgment within those 12 months, we're typically able to enter a motion in the court to administratively dissolve the case for lack of prosecution. And typically, we're able to obtain that anywhere between

12 to 24 months after judgment, and so, it's one way to nullify the effect of a deficiency judgment.

I'll also mention one other thing that's pretty important to bring up, and that's that many times the deficiency right is something that can be settled (or a/k/a negotiated) with opposing counsel prior to judgment being entered.

Barry Johnson:

Okay.

Erik Wesoloski:

There's a tactic that we use in our office very successfully, which is essentially we're trading time, you know, and speed of getting the asset back to the bank in exchange for a waiver of deficiency. And in essence, the way it works is like this: Even after judgment is entered, a foreclosure judgment, there are many tactics that we can use in the civil litigation case to delay the auction and delay the bank actually getting the asset.

And – at least in our market in south Florida, we have a very good reputation as strong defense – foreclosure defense litigators, and most opposing counsels know this, and so they know what we can do as far as frustrating their ability to get this asset.



So, essentially what we'll do in many cases where it's in our client's best interests, we'll go ahead and say, "Look, bank, we'll agree to a 30-day sale date. Go ahead and auction the asset very quickly or turn it into an REO very

quickly, but in exchange, give us a waiver of deficiency." And I'll tell you, it's about a 50-50. About 60 percent of the time, we get that through, and it's great because at that point, once the client actually loses the property, the nightmare is over because the real nightmare of the deficiency judgment is that the nightmare is – it's never-ending.

Barry Johnson: Just keeps coming.

Erik Wesoloski: And then, you know, many times, it just ends up culminating in a bankruptcy if there's nothing else that can be done.

Q ■ If A Bank Or A Lender Is Successful In Getting The Deficiency Judgment. What Can They Do To Collect?

Barry Johnson: Okay, say they're successful, a bank or a lender is successful in getting the deficiency judgment. What can they do to collect? I mean can you get a collection agency to start calling you? I mean what's the power of this deficiency judgment?

Erik Wesoloski: Well, again, it is very powerful. The most typical thing that a bank will do after they obtain a deficiency judgment is they'll ask the debtor to go through what's called a forensic deposition.

I say "ask" because usually they do first ask, but then they can actually, through order of the court, force the debtor to go through this.



Now, they have to go under oath and declare what assets they have or income they have, and depending on whether they have assets or income or both, they can either lien – use this judgment as a lien against the assets so they'll eventually collect it, you know, if the debtor ever refi's then or tries to sell that asset or be garnished wages.

And so, it's pretty powerful and it's very serious, and the only tried-and-true way we know to completely wipe it out is with a Chapter 7 bankruptcy.

Q ■ If The Bank Does Get A Deficiency Judgment Against Me, How long do they last?

Barry Johnson: Now, say I don't go the bankruptcy route but I, unfortunately, do get a deficiency judgment against me.

How long do they last? I mean is it basically gonna be on my record for the next 100 years 'til I pay it off or –?

Erik Wesoloski: Well, it could be there a very long time. I mean according to Florida lien law, I mean they could lien – use the judgment lien against one of your assets for ten years, and if the bank renews it after that ten years, they can renew it for another ten years. So, it could be out there for 20 years.

Barry Johnson: Wow. That's a long time.

Erik Wesoloski: It is a long time.



Q ■ How Can I Prevent From Getting A Deficiency Judgment

Barry Johnson: Now, how – I know the simple answer to this question, but how can I prevent from getting a deficiency judgment besides the – pay your bills?

Erik Wesoloski: I would say what you'd wanna do is really attack the issues of the loan first, outside of foreclosure, and the way you can do it is either (a) if you do have some income, try and negotiate a loan modification.



If that is not a possibility, then definitely hire a realtor and go through a short sale. In a short sale scenario, the actual foreclosure action goes away. **The short sale – the short payoff, once it's received by the bank, will result in what's called a voluntary dismissal of the case so there is no deficiency judgment and there's no possibility of it even being issued.**

Q ■ Now, I'm Doing A Short Sale Right Now. Are There Any Specific Documents That I Need To Have In Place?

Barry Johnson: Now, I'm doing a short sale right now. Are there any specific documents I need to have in place to ensure this fact?

Erik Wesoloski: Well, there is one issue that I think you're alluding to, and that's – yes, in the short sale approval, you're gonna wanna see that it says essentially **full satisfaction** and/or any balance gonna be issued as a 1099-C, a debt forgiveness income statement because there is something that's become very, very common, especially with second-lien-holder-position short sale approvals, and that's that these banks have been agreeing issue lien releases for a nominal sum of money that the first lender allows them to receive at the short sale closing and then keeping the debtor basically on the hook for the entire balance after that small amount is paid off.



So, they issue a lien release so the closing can take place – you know, removing the lien from the property, but the debtor is still on the hook, and that's called a deficiency balance.

Now, it's not a deficiency judgment but this is where you're probably hearing or reading in articles that many people are getting phone calls from collection agencies after a short sale closing saying they owe a certain amount of money, and so, in that regard, this is a different subject, you know, almost entirely than a deficiency judgment, but it's equally as serious because you're now done with the asset, the debtor doesn't

own it anymore, they've moved on with their lives, and all of a sudden they're getting collection agency phone calls saying you owe all this money.

Barry Johnson: Sure.

Erik Wesoloski: And again, I hate to say this, but the only way you can for certain wipe it out at the smallest cost would be a bankruptcy filing, although our office is extremely busy right now with post-short sale debt settlements because that amount of money owed is now an unsecured amount, **and unsecured debts can typically be settled for pennies on the dollar.**

Q ■ It Seems That Homeowners Are Being Misled By Some Title Companies And Real Estate Agents Who Really Don't Seem To Be Knowing What They Are Doing In Regards To Properly Structuring A Short Sale. Is This Really The Case?

Barry Johnson: You're right. As I understand it, and a lot of people I work with, the title company and the real estate agents usually involved in short sales, their main focus usually is to get a real estate transaction done.

Erik Wesoloski: Yeah.

Barry Johnson: They really don't have the knowledge and experience to – if they get a short sale payoff letter, that's what they're looking for. That's what they want. And then they tell the client, "Hey, your short sale has been approved." The client doesn't know any different, so is this what is happening?

Erik Wesoloski: Yes, it's very common, and this is why it's very, very important to have an independent advisor (namely, an attorney) review your documents because we will see many, many debtors that will go to real estate agents or title companies that will process this paper for free because they have a financial interest in the transaction, and then when the documents come, they just say, "Sign on the dotted line and let's get it closed" (again, because they wanna see their commission or title fees) but the reality of the situation is it might not be in the best interests of the client to accept it, and it's not always non-negotiable.



Many times, if you do get a short sale approval that says this bank is just offering a lien release, you can go back to that bank and say, "Hey, look, we're not gonna take this.

What can we do?" Sometimes they want a little more money that the first liener might pay or the buyer might pay.

Sometimes you might be able to negotiate a very small promissory note. We've seen promissory notes of ten percent of the balance of the loan – a lot better than being held to the entire deficiency. There are different things that can be done that would be in the best interests of the debtor client to get it closed.

But yes, in general, you wanna be wary of third parties that only have a financial interest in the transaction 'cause they're always gonna say, "Yes, close right away."



Q ■ Can I Be Subject To A Deficiency Judgment If I Do A Short Sale And Have Someone That Doesn't Watch My Back?

Barry Johnson: Right. Okay. So, point blank, I can be subject to a deficiency if I do a short sale and have someone that doesn't watch my back?

Erik Wesoloski: Yeah, completely, and I'd say it's very, very common now. Very common.

It wasn't so much so in 2008, even the beginning of 2009, but by the end of 2009, especially with those people that had 80/20s where the second loan had to be settled as well at a short sale closing, this lien release with a deficiency has become – I don't wanna say the industry standard, but very common. Very common.



Q ■ Are There Certain Questions I Should Ask My Real Estate Agent To See If They Know What They Are Doing?

Barry Johnson:

Now, if I'm getting into a short sale and I'm interviewing agents, of course I wanna have an attorney, but I want the negotiations – if the realtor is gonna be handling the negotiations, I want them to go right, too. Is there – certain questions I should ask my real estate agent to see if they know about this or –?

Erik Wesoloski:

Yeah, I mean you'll wanna ask their experience level as far as how many short sales they've done, what's their success rate been, what do they do when they're faced with a situation like a lien release with full deficiency balance, are they being advised by an attorney separately as well.

If it's a title company, do they have an attorney on staff? At least in Florida, that's not a necessity. There's a separate title insurance agency licensing arrangement with the Florida Department of Insurance.

So, you might wanna ask them these questions 'cause they're very, very pertinent. **In this world of foreclosures and civil lawsuits, you definitely want someone on board with litigation experience in addition to mortgage and real estate knowledge.**



Q ■ Could You Explain To Us A Little Bit About The 1099 And The Difference Between That Being Issued And A Deficiency Judgment?

Barry Johnson:

Sure. Now, you mentioned before about a 1099. That's been coming up for years. Could you explain to us a little bit about the 1099 and the difference between that being issued and a deficiency judgment?

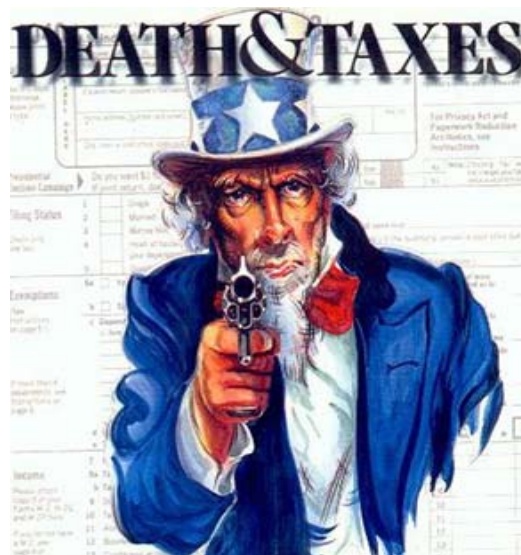
Erik Wesoloski:

Sure. If there's not a deficiency balance after a short sale, typically the bank will expense in their books that difference. So, that example you gave, let's say, wasn't an REO but an actual short sale where the debtor owed \$300,000.00, they sell it at \$150,000.00, and there's a \$150,000.00 balance.

That balance, in most short sales, the lender will expense it, meaning they write it off, and they'll issue what's called a debt forgiveness 1099 or a 1099-C to the debtor the following January, and that goes straight to income.

Now, the important thing is that for most people facing this situation, they're gonna be able to counterbalance that income reflection they have to put on their tax return, on their 1040, come tax time, and there are many ways you can get rid of this – possible tax liability caused by this, what they call phantom income, because they get it on paper but they never really got it in their pocket.

And basically, the main way that most of our clients are getting rid of this tax liability or potential tax liability is through what was called the 2007 Debt Forgiveness Act, which had a provision in there that up to debt forgiveness of \$2 million on the primary residence, the debtor doesn't have to recognize it at all on their tax return.



And so, many, many of our clients were in foreclosure and did a short sale on their primary home, and unless it was an extremely large home, for the most part, they're gonna be able to write that off.

Now, this provision thankfully was extended by the Obama administration with the HAMP Act that

they had passed last March.

It was going to expire on December 31st, 2009, you know, a month and a half ago, and instead, it's now extended through December 31st, 2012, so there's time for using this.



There are also a couple other ways that debtors can avert the possible tax consequences of 1099-C, and that is if they're insolvent.

They generally can get out of that liability and also if they're in the real estate industry and bought high and they're selling low, both

the gain and the loss might counteract each other as active gains and active losses.

But what I always recommend to my clients – and I would recommend it to anybody listening today – definitely talk to a tax advisor, talk to a CPA, talk to an accountant before you go forward with a short sale so you know what the consequences might be.

Q ■ Why Do The Banks Issue These 1099's?

Barry Johnson:

Now, you may not be able to answer this one, Erik, but I've gotta ask. With all the things you explained with the 2007 Debt Forgiveness Act and with the other ways (being insolvent) you can get away from this, why do the banks issue these 1099s? It doesn't sound like it's really doing anything.



Erik Wesoloski:

Well, that's because it's – you know, there's like a yin and a yang. Essentially, the banks get to expense it, so it's a loss on their books. They get to enjoy the benefit of reflecting that loss in their accounting. Now, that's the yin.

The yang is it's a gain on the debtor's side, and so, what the 2007 Act gives in these other exceptions is a release from the yang, essentially, and it gives the debtor a break, but the banks still get the benefit.

Barry Johnson: Okay, okay. So, the banks get the benefits tax-wise if they do it?

Erik Wesoloski: Yes.

Barry Johnson: Whether it's forgiven or not on the individual's?

Erik Wesoloski: On the debtor's side, yeah.

Q ■ We've Ben Hearing Horror Stories About The Second Or Third Lien Holders Asking The Borrower To Sign Promissory Notes. What's The Story Going On With This?

Barry Johnson: Okay. Now, you mentioned before about the phenomenon of promissory notes. A lot of the short sales that you write, a lot of the short sales I've been seeing, especially lately, the second or third lien holders are asking the borrower to sign promissory notes. Speak to that a little bit. What's the story going on with this? Are homeowners actually doing this?

Erik Wesoloski: Yeah, I mean they are, and in many cases, it does make sense. We'll always review a short sale approval with our client and make a decision on whether it's a good move to make or not.

In general, the types of promissory notes we're seeing the banks ask our clients to sign are for a very small portion of the balance of the debt owed.



I mean, to give you an example, a recent one was a \$200,000.00 second loan, and the bank asked our client to sign a \$20,000.00 promissory note at zero interest, payable principal only over ten years in order to go ahead with the lien release and the short sale.

We reviewed the total benefit of the transaction for our client and the consequences of having to pay this over time, and it made sense for the client. We definitely gave him the green light.

So, typically, we're seeing the promissory notes are small percentages of the former debt, and in general, it makes sense to the client to go ahead.

And I have to say, in some instances, although we don't condone this, it's just something that we see and experience from our clients, many times the clients, after the closing, may continue to be in a very distressed situation with personal – because of job loss or what have you and may not be able to pay the promissory note after the closing.



Well, at least at that point, it's an unsecured debt, and, like a credit card that's not being paid, that debt may eventually be sold to a collection agency, but typically, again, it can be settled at pennies on the dollar, so it may not be so bad after the closing.

Q ■ Now, If You Sign The Promissory Note, Can The Bank Still Come After You For A Deficiency On The Rest?

Barry Johnson:

Now, if I can just be sure – a lot of numbers getting thrown around and a lot of stuff. Say a second mortgage holder is owed \$100,000.00. They want to settle the debt but the first mortgage holder in the short sale will only allow \$10,000.00 to the second.

This leaves a \$90,000.00 deficit. They want you to sign a \$15,000.00 promissory note, thus leaving a \$75,000.00 deficit. Now, if you sign the promissory note, can they still come after you for a deficiency on the rest? Is that a possibility? And if you default on the promissory note, the \$15,000.00, does it open the floodgate for the rest of the note that maybe was forgiven before?

Erik Wesoloski:

Typically not. It's gonna depend on the documents, but typically you'll see that in the bank accepting the \$10,000.00 at the closing from the first lender and accepting the \$15,000.00 promissory note, their expensing that \$75,000.00.



So, they're gonna issue a 1099-C for the balance. And that is something important – I'm glad you brought that up 'cause that is a fine line that many of my clients are confused about when they come in to speak with us, and that's that the banks cannot double-dip.

They either hold their client to the deficiency and try to enforce it or they expense it. They can't expense and try to collect.

So, it's one or the other, and so, in a scenario like what you described, the bank would most likely expense the \$75,000.00 so if the debtor at a later date then defaulted on the \$15,000.00 promissory note, they've already on their accounting expensed the \$75,000.00, so there's nothing more to go after them for there.

Now, they may go after 'em for the balance of the \$15,000.00 note, but again, it's a much smaller debt.

Q ■ How Often Are You Seeing These Lenders Go After These Deficiency Judgments ?

Barry Johnson: Sure, of course. Now, you've been doing this a long time. You have a ton of clients, as I know, down here in south Florida. How often are you seeing these lenders go after these deficiency judgments – when they have the right to do so, of course?

Erik Wesoloski: **That's another very, very good question because at least in residential real estate with the very large lenders, we have to say it's rare. Very rare.**

We don't know why it's rare, though. We don't know if they're saving these up for a rainy day or collecting 'em all like the way they collected things into tranches that were sold on Wall Street.

Maybe they're collecting 'em and selling 'em to collection agencies, we don't know, but it's very rare to see the Bank of Americas and Chase WaMus and what have you go after

residential real estate clients with these deficiencies.

The typical case that we see – 'cause our firm also commercial work, we see commercial lenders going after shopping center owners or other commercial owners that are defaulting on their loans, we're seeing them go after deficiency judgments, and we also see small lenders, especially small private lenders be very aggressive in enforcing their deficiency rights.

But the large ones that deal primarily with the – the large banks that deal primarily with the foreclosure mill, the plaintiff foreclosure mill firms, we really don't see them enforcing it.



Q ■ Even Though They're Not Enforcing Their Rights To Some Deficiency Judgments, Do You See Any Trend Developing?

Barry Johnson: Now, even though they're not enforcing it, do you see a trend? I'm sure there have been a few. Do you see that tapering off? Do you see it growing? In your estimation, do you see this as something the banks would be picking up more and more?

Erik Wesoloski: That's a good question. Again, I think – especially with the recent news about deficiency judgments, I think it may be a little bit overrated because I don't think there's necessarily a – needs to be a warning cry for this. I don't think the banks are gonna be aggressively enforcing this.



We're seeing so many debtors post foreclosure filing bankruptcy and wiping out the bank's ability to enforce a deficiency anyway that it's gonna become probably maybe too expensive for them to try and enforce some of these deficiency judgments. So, I wouldn't be overly concerned.

I think the more concerning situation out there is on the negotiated settlements or the short sales and the second lenders that are giving these lien releases and then selling the balance to collection agencies.

We're hearing this from countless clients and countless potential clients that they're hearing from these collection agencies aggressively contacting them after a short sale or even –



forget about a short sale – we're hearing that many of the second lenders are just going straight to collection agencies in foreclosure scenarios.

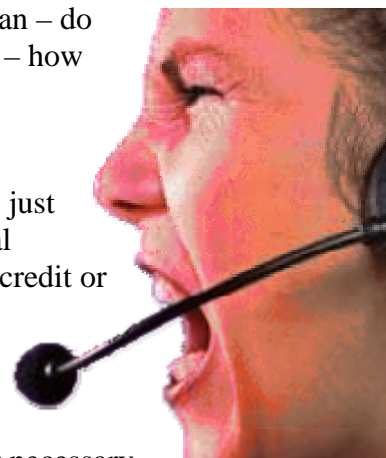
There was a time that both the first lender and the second lender would file for foreclosure, it took the banks a couple of years to figure out that the seconds were just throwing their money away on the lawsuits by filing because there was no equity to cover their position, and so, what many have been doing is either selling it to a collection agency or getting it to attorneys who are suing on the notes and not – and just bypassing the foreclosure process altogether.

Q ■ If I Sell My Property Via A Short Sale Does Anyone Have The Right To Call Me Based Upon A Short Payoff ?

Barry Johnson: Now, if I sell my property in short sale, how can – do they have to get a deficiency judgment first to – how can a collect or have the right to call me?

Erik Wesoloski: Well, in this scenario, it's not – the collection agency doesn't need a judgment per se, they're just collecting on a debt per the terms of a financial agreement, which was the second loan line of credit or the second loan HELOC, typically.

And so, just like a credit card collection agency has the right to collect, they would have the right to collect, and a judgment is not necessary for them to call and try and collect on that debt.



Q ■ Is There Anything Homeowners Nationwide Can Do To Make Sure They Do Not Have Deficiency Judgments Filed Against Them?

Barry Johnson: Well, you're based out of south Florida here with your offices in Miami, but I know you have offices in New York.

For homeowners in other states, you alluded to this and talked about it a little bit before, is there



anything that they can do to make sure they don't end up on the wrong end of a deficiency judgment, if you will?

Erik Wesoloski:

Yeah, well, again, it depends on the state's rules and statutes. One that's very similar to ours is, for example, Illinois. New York as well. They have similar foreclosure statutes where deficiency judgments can be enforced.

California is one where it's different. They can foreclosure faster, but they can't go after the deficiency.

Another state where I'm very proud of what the legislators recently did, in North Carolina, they recently passed a statute where if – they have similar statutes where the bank has to go through foreclosure to obtain the security, but if the security is related to a primary home and that's what's being foreclosed, there is no deficiency right, and that's a new statute as of, I believe, within the last six months. And so, although they have deficiency judgment rights there, on primary homes, it's now been excluded by statutes.



Q ■ As You Are A Florida Attorney, Are There Attorneys Across The Country That You Can Refer Homeowners To So That They Can Avoid Deficiency Judgments?

Barry Johnson:

Now, Erik, last question. We're gonna wrap it up right now, but if a homeowner needs legal help in navigating their way through all this, we

What if they're outside of Florida and they need an attorney? Is this something – they can call you or maybe you could point out some questions that they could ask their attorney so they know they're getting someone who's well versed in this field?



Erik Wesoloski: Of course. We have a very expansive referral network of attorneys, and we can be reached at our website, which is WesoloskiCarlson.com or also at (305) 329-1000, and if you are from out of state, we can refer you to attorneys in your state and to proper foreclosure, bankruptcy, or even short sale attorneys that can assist you.

Q ■ Can You Find Competent Short Sale And Deficiency Judgment Assistance If You Don't Have A Lot Of Money?

Barry Johnson: Now, what – I know I said "last question," Erik, but let me just say this: What if a homeowner – we all know that people that are gonna be doing short sales or are in this situation are usually in debt, don't have a lot of money, maybe not have a lot of income. What do you say to those when they tell you they can't afford an attorney? Should they just go to a realtor? I mean what do you say to those people?

Erik Wesoloski: Well, typically what we say is that our fees are so low, and we do payment plans of all sorts and types, that there really is no reason or excuse to not bring on proper counsel.

I mean there are attorneys in other fields that do charge by the hour and are very expensive, but we've been doing this a long time and have a lot of experience working with people in distress, and we have payment plans and low starter fees that really work for everybody's budget.

And so, I just wouldn't be – **I would advise them, go and seek proper counsel because you're not gonna get that from a realtor or a title company.**



So In Closing, I think It's Safe To Say That If You Don't Have Competent Representation In A Short Sale Transaction It could End Up Costing You Quite A Bit!

Barry Johnson: And if you don't get the proper counsel, it could end up costing you a heck of a lot more in the long run.

Erik Wesoloski: Exactly. It could cost a lot more.

Barry Johnson: Erik, I appreciate you joining us today. Everybody, Erik Wesoloski from Wesoloski Carlson.

Erik Wesoloski: Thank you, Barry. Have a good day.



We hope you found this report on deficiency judgments informative. If you are a homeowner facing foreclosure or a real estate agent trying to complete a short sale, I recommend that you visit our Short Sale Resource Center by clicking the image below.



Want To Know **How To Do A Short Sale**
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Here's an overview of what's covered in the lessons found in the Short Sales "By The Numbers" online video series.