



# THE FLORIDA BAR

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## Consumer Protection in a Minute For release during Consumer Protection Week - March 6-12, 2011

### Mortgage foreclosure

Foreclosure is the process in which the lender of mortgage money takes control of the mortgaged property and sells it to raise money to pay on the debt created by the Note. In Florida, mortgage foreclosure is a judicial process. This means it is a lawsuit, similar to other kinds of lawsuits. It is formal and potentially complex. The point of a judicial foreclosure is for the lender to obtain from the court a judgment in foreclosure, and the right to hold a sale of the mortgaged property. The court is involved in the foreclosure process all the way through. So, if a borrower feels there is something wrong or improper occurring, he or she can raise those issues within the judicial foreclosure proceeding.

Most people don't realize that, even after a foreclosed property is sold, they might still owe money to the lender. If the market value of the property is less than the amount owed on the mortgage debt, then the lender can obtain what is called a deficiency judgment for the difference against the original borrower. Since the foreclosing plaintiff has five years after the foreclosure judgment to even begin pursuing a deficiency judgment, many people who think their mortgage problem is behind them do not realize they have overlooked this serious problem.

Florida has the second highest foreclosure rate in the United States. Florida mortgages are heavily upside down and Florida law makes the process of pursuing deficiency judgments quite simple.

So, what should you do to avoid a deficiency judgment? The answer to this question differs widely depending on all the details of your particular situation. The worst possible thing is to do nothing. Be careful! There are many scams which are dangerous and promises that are untrue. You may have options you know nothing about, but as the process moves forward toward foreclosure and then toward deficiency judgment, the options that you may have disappear if you are not careful to preserve them. Careful analysis by a knowledgeable attorney who understands both foreclosure defense and bankruptcy is necessary, to determine and protect your rights.

For more information about borrower's rights in foreclosure, and assistance in locating an attorney in your area, go to the Florida Bar's web site at [www.floridabar.org](http://www.floridabar.org).