



Stein Law, PLC Recent Developments

August 2009

Investor's Anti-Deficiency Deficiency

Substantial changes to Arizona's anti-deficiency law are coming. On July 10, 2009, Arizona Governor Brewer signed SB 1271 into law, which is effective September 30, 2009. This law will have a profound impact on developers and investors of Arizona's residential real estate market. In the meantime, many questions have arisen about the new law's meaning.

Current law: Under the current law (A.R.S. § 33-814), lenders are prohibited from seeking a deficiency judgment where the trust property is 2.5 acres or less and is used as a single one-family or single two-family dwelling.

New law (effective September 30, 2009): SB 1271 amends A.R.S. § 33-814(G) to require that for a borrower to get the benefit of the anti-deficiency protection, the borrower under the deed of trust must have "utilized" the property for six consecutive months and a certificate of occupancy must have been issued. The law also places the burden of proof on the borrower to prove that the statutory requirements have been satisfied to prohibit a deficiency judgment. Many borrowers will not be able to hand the keys back to a lender and just walk away. They will remain liable for an amount equal to the difference between the outstanding amount of the loan (plus costs) and the higher of either a court determined fair market value of the trust property or the sale price at the trustee's sale.

Questions and Uncertainty. The new law was aimed at protecting small community banks from losses resulting from unsold speculative new homes. However, the only thing certain with this new law is the great deal of uncertainty that surrounds its unintended consequences. Central to these questions is what it means for the property to be utilized by the trustor. Is this a requirement for owner-occupancy? Is the property being utilized if it is a rental property occupied by tenants? What if the property was purchased for use by a family member? What will be required to prove occupancy? What if the property is in an Arizona jurisdiction, such as Mesa, that does not issue a certificate of occupancy?

Where Do We Go From Here? Representatives from the Governor's office met with Arizona legislators and real-estate advocates this past week to try and find a workable solution to the issues raised by the new law. Many, including Arizona State Senator Steve Pierce - a sponsor of the bill, have called for its absolute repeal.

Until there is clarity, lending and real estate professionals are in search of answers regarding the consequences of the new law. We help real estate investors and developers understand the issues this new law may bring about, to plan and protect them from deficiency judgments and reach their long term business and personal goals.

For the latest information about Arizona's anti-deficiency laws and how it will impact you, please contact **Scott J. Stein** at (480) 889-8948 / scott@steinlawplc.com and visit www.steinlawplc.com.

Upcoming Speaking Engagements

Scott J. Stein will be presenting a small business boot camp seminar hosted by DeVry University (www.devry.edu) on Friday, August 7, 2009 (<http://tiny.cc/JOcRz>) on the various business types and their respective advantages, disadvantages and the procedures for forming each type.

Scott J. Stein will be speaking at the Valley of the Sun Jewish Community Center (www.vosjcc.org) on August 20th and discussing commercial loan workouts and modifications and ways in which commercial landlords and tenants are agreeing to modify and revise existing commercial leases.

In the News

Scott J. Stein was featured in the ARIZONA REALTOR® MAGAZINE (<http://www.aaronline.com/azr>) August 2009 Edition, in an article entitled "Five Questions to Ask a Short Sale Seller," which is based on the course he presented with Michelle Lind in June. The article includes a short audio segment of Mr. Stein's presentation which is available to listen to at <http://aarnews.com/tempazr/august2009-azr.pdf>. Digital copies of the

article are available upon request.

An article by Scott J. Stein entitled "*Lenders Modify Commercial Loans*" was featured in the Jewish News of Greater Phoenix, on July 3, 2009. The article can be viewed at: <http://www.jewishaz.com/issues/story.mv?090703+lenders>.

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