MCRC The Voice For Maryland Consumers
MARYLAND CONSUMER RIGHTS COALITION
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Policy Brief: Deficiency Judgements

Jose Santos Benavides thought his nightmare was over in 2008 when his family lost their four-bedroom house in Rockville. He was wrong. More than three years later, Benavides still owes $115,000 on the house he no longer owns. The interest alone on the $115,000 is growing at an extremely high rate of $577 per day which will further deplete the meager earnings of Santos Benavides and his family.[1]

Santos Benavides is one of hundreds of Marylanders who have lost their homes and then been pursued for the debt left after the foreclosure. Lenders are collecting these debts -- called deficiency judgements -- at an increasing rate.

Marylanders who have lost their homes in foreclosure may be pursued for these deficiencies for up to 36 years -- even when the bank has already sold the home and is collecting payments on the new mortgage.

Deficiencies on the Rise in Maryland

In just six years, the number of former homeowners who have been pursued for deficiencies has increased more than 600% Since 2008, at least 400 Maryland residents have been pursued for deficiencies – including 120 in 2012 and 57 in the first half of 2013.

Year	Number of Deficiencies	Total Amount
2006	19	$432,115
2012	120	$13.6 million

In 2006, the 19 deficiencies totaled $432,115 while in 2012 the 120 cases totaled $13.6 million. A majority of deficiency collection cases were in Prince George's County, Baltimore City, and

[1] Kelly, Kimbriell "Lenders seek court actions against homeowners years after foreclosure," Washington Post, June 15, 2013.

Montgomery County – the parts of the state that have had the highest rates of families foreclosed upon during the housing crisis.

Not surprisingly, the average amount owed by homeowners varied greatly by county. Former homeowners in wealthier counties faced high levels of debt, while even smaller amounts of debt will also swell with compounding interest.

The median deficiency in Maryland is $88,000.

Average Deficiency By County*

County	# of cases	Average amount of deficiency
Montgomery County	69	$ 256,633.24
Cecil County	18	$ 180,988.00
Calvert County	3	$ 175,970.29
Kent County	2	$ 170,577.03
Grand Total	412	$ 147,770.37
Howard County	7	$ 132,801.91
Worcester County	13	$ 127,020.19
Prince George's County	97	$ 126,564.50
Dorchester County	12	$ 106,952.03
Washington County	11	$ 92,660.35
Harford County	3	$ 92,413.35
Baltimore County	56	$ 85,536.55
Garrett County	1	$ 83,344.24
Somerset County	3	$ 61,842.72
St. Mary's County	8	$ 45,515.05
Baltimore City	87	$ 23,443.97
Caroline County	3	$ 2,355.49
Allegany County	9	Not available
Queen Anne's County	6	Not available
Talbot County	4	Not available

* Debt amount does not include compound interest - just the principal owed on the mortgage.
* * Based on a review of court records of bankruptcy filings with deficiencies.

New federal policies are likely to accelerate the pursuit of these deficiencies. A September 2013 audit by the Inspector General of the Federal Housing Finance Agency (FHFA) recommends that Fannie Mae improve its ability to pursue deficiencies and finds that pursuing more deficiencies, where possible, makes strategic sense for the agency.[2]

The number of deficiencies has been rising and is likely to rise even more quickly with the push from the FHFA to collect more deficiencies more quickly.

[2] Federal Housing Finance Agency Office of Inspector General • AUD-2013-011 • September 24, 2013

The Process
When a homeowner loses a house in a foreclosure, short-sale, or deed in lieu of sale, and the individual owes more on the mortgage than the house sells for, that person is left with a deficiency. Financial institutions may waive this deficiency but, all too often, homeowners don't realize this is an option. The majority of homeowners going through foreclosure are not represented by attorneys and don't understand that that once they lose their home, they can still be pursued for this debt.

Lenders may sue the former homeowners to recover the deficiency. If the court finds in favor of the mortgage holder, the judgement will be listed on the individual's credit report for seven years, which will affect financial recovery. Moreover, the individual could be exposed to collection actions or wage garnishments to recoup the full amount owed until the judgement is paid in full.

Lenders do more than recover the deficiency though -- they also recoup interest on the debt, which compounds monthly at a median rate of $310 a month. This compounding interest can double or triple the size of the deficiency.

Maryland Law

Maryland has one of the longest timelines in the country for the pursuit of a deficiency. **Maryland law allows lenders & servicers up to 36 years to collect these debts from former homeowners.**

Maryland's Rule 14-216, "Sales of Property: Foreclosure of Lien Instruments," states that a secured party can file a motion within three years from the final ratification of the auditor's report on a foreclosure sale.

However, Maryland's Courts and Judicial Proceedings Article §5-102 provides a statute of limitations of 12 years for promissory notes or other instruments (including contracts) "under seal." Since mortgages and deeds of trust are almost always under seal, §5-102 allows for up to 12 years for the creditor to obtain a judgment.

In addition, financial institutions have another 12 years to collect, and a one-time renewal of that right for another 12 years **for a total of 36 years**. That's right -- lenders have 36 years to pursue a homeowner to collect a debt on a home that the individual lost years ago and the bank sold to someone else.

Consequences of a Lengthy Timeline

Thousands of Maryland families have already lost their homes through foreclosure or short sale, which damages their credit. The very long time that Maryland allows for pursuit of deficiencies means that families may be in the midst of rebuilding their assets and repairing their credit when they are hit with this debt – a debt that has grown as a result of compounding interest. This debt often pushes struggling families from fragile recovery into bankruptcy and forces families to begin again to rebuild their finances and repair their credit.

One Annapolis law firm has taken on 80 bankruptcy cases in the past four months, all of which involve deficiency judgements. A June 2013, Washington Post analysis found 144 cases of bankruptcy filed in Maryland after homeowners received a court order for deficiency. In 25% (or 36) of these cases, the former homeowner had his or her wages or assets garnished.

Some States Bar or Limit Deficiencies

- More than 10 states bar the collection of deficiency judgements.
- Twelve states require that a deficiency judgement be brought within three months of a foreclosure sale.
- Illinois, Kansas, and South Carolina require that the deficiency be sought at the time of the foreclosure.
- Washington, D.C. requires that a deficiency judgement be brought within 30 days of a foreclosure sale while Pennsylvania requires 180 days.

It's vital to our state's economic recovery that families be able to recover and rebuild their assets. Letting banks and debt collectors wait until a family has recovered to then sue them for tens or hundreds of thousands of dollars is bad public policy.

Maryland Needs New Rules on Deficiencies

Maryland should pass legislation to strike a better balance between the needs of working families and mortgage holders.

Maryland should pass new legislation to:
- reduce the timeline for mortgage holders to file to collect deficiencies from 36 years to 180 days.
- include all loans secured by the home in the scope of the legislation.
- include short-sales, deed-in-lieu, and cash-for-keys programs within the scope of the legislation.

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