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## **Winter 2012**

**Welcome to the NEWSLETTER of Fisher's Law Office, providing you with legal information you can use in your everyday life.**

### **Here are some of the latest trends in foreclosure.**

Increasingly banks are turning their attention to their rotten loan portfolios and attempting to follow through on foreclosures.

Most foreclosure cases follow the following five steps:

- 1)** The homeowner defaults and receives a 30 day notice to catch up the loan or suffer a lawsuit for foreclosure;
- 2)** After 12 months, a lawsuit is filed and a complaint is served on the homeowner;
- 3)** The homeowner's attorney files a motion to dismiss or an answer to the complaint and raises affirmative defenses;
- 4)** The bank then files a "motion for summary judgment" along with affidavits for the amount due and an affidavit of attorney's fees. The homeowner files an affidavit to establish a genuine issue of fact to stop the summary judgment;
- 5)** The last step is a trial. At the trial the bank representative will come into court and testify about the default and The court judgment at the property courthouse in later.



usually enters a the trial and orders sold at the 30 to 120 days

### **What's changed about the process of foreclosure?**

What's changed is that banks are increasingly seeking "Deficiency Judgments" against owners of commercial property who default on real estate loans.

Here's how it works:

- The foreclosure goes through and the bank buys the property at the court-house sale for \$100.00.
- The bank than files a motion for "deficiency judgment" against the debtor and presents evidence including appraisals that indicate what the market value of the property was on the day of the foreclosure sale.
- The homeowner presents evidence of what the property was worth on the day of the foreclosure sale including evidence that the property was worth more than the loan balance on that day.
- The judge makes a decision as to the property's market value on the day of the foreclosure sale. For example if the debt on the mortgage was \$250,000 and the court found that the market value of the property on the day of the foreclosure sale was \$150,000 then a judgment is entered against the debtor for \$100,000.

### **What happens next?**

The next step is the collection process in which the debtor must submit to a "deposition in aid of execution" which all of his assets and liabilities are disclosed in a deposition in front of a court reporter. The bank then makes a decision on whether it wishes to seize property from the debtor through garnishment or attachment.

Often the bank will have a writ of garnishment issued and seize the money in the bank account owned by the debtor or seize the wages of the debtor to pay the deficiency judgment.

## **How can the homeowner stop the seizure of a bank account after a deficiency judgment is rendered?**

Florida is probably one of the most generous States in the union when it comes to providing exemptions from seizure of assets by creditors. Some of these provisions include the following:

- 1)** Florida Statute 222.11 exempts wages from garnishment for a head of a family. A head of a family is a person who is providing more than one half of the support for a child or rather dependent such as a wife.
- 2)** Florida Statute 222.13 makes cash portion of life insurance policies exempt from seizure by creditors.
- 3)** Florida Statute 222.061 provides a process for exempting personal property from seizure by creditors. Specifically the statute requires that the debtor make an "inventory" of his personal property that he wishes to be exempt. The inventory should show the fair market value of the property listed and shall have an affidavit attached certifying that the inventory contains a correct list of all personal property owned by the debtor in this State and that the value shown is the fair value of the property. The debtor then designates the property listed on the schedule on which an exemption is claimed. The original inventory and affidavit are filed with the court and the copy is mailed to the judgment creditor and to the sheriff. If the creditor does not file an objection within 5 days the clerk of the court immediately shall send the case file to the court issuing the writ of garnishment and the court shall promptly issue and order exempting the items claimed from seizure by the creditor. On the other hand if an objection is filed the court shall automatically schedule an evidentiary hearing to determine the validity of the objection and to enter and order thereon.

The amount of the exemption in Florida for personal property is \$4,000 if the debtor does not

have a homestead exemption. Other exemptions include the following: the debtor is entitled to a \$1,000 value of a single motor vehicle and a full exemption for any professionally prescribed health aids such as a wheelchair.

Also any refunds from the internal revenue service are exempt from creditors unless the amount is owed for child support or spousal support.

**Moral to the story?** You may be exempt from having your assets seized, particularly if you are supporting a family in the state of Florida.

## **What are some unfair things in federal and state law that need to be changed?**

Probably one of the most exploited loopholes in federal law is the interest rate trick. Under federal law if a bank is based in a state which has no limit on interest rates charged on credit cards that bank can charge Florida residents an almost unlimited amount of interest on credit card debts.

This is true even though Florida law makes it a felony to charge over 25% interest on loans. Until the United States federal government changes the federal law Floridians will continue to be oppressed by out of state banks that charge high rates of interest while hiding behind the exemption provided by the United States preemption statutes.

## **Child support goes to the government.**

If you receive welfare and child support, watch out: the government can intercept your child support to repay the government for the benefits your children receive. This law encourages men to not support their children because the money they pay in child support doesn't go for the support of the child. Also, this rule further impoverishes an already impoverished family and works to harm children.

## **Florida's child support hearing officers can not award visitation to fathers.**

It's true. Florida's special child courts and their child support hearing officers unfortunately *do not* have jurisdiction to award visitation rights to a father!

Therefore a father can be found to be indebted for a large amount of child support and yet have no right

to ask the court to allow him to visit with the child. In order to do this he must file a *counter-claim* in circuit court and ask a family law judge to award him visitation or other custodial rights. The average wage earner cannot afford this and is therefore forever precluded from having rights to visit his child. This is another unfair law on Florida's books that needs to be changed.

## What do you do when someone dies?

The following 5 steps are essential if a loved one dies:

**1)** Call other relatives and let them know what has happened to the loved one and make arrangements for all relatives to attend the funeral or other service. Also make certain that any pets are taken care of and that no animals are left in a closed home where a deceased person lived.



attend the funeral or make certain that any pets are taken care of and are left in a closed home where a deceased person lived.

**2)** Secure the home where the person lived to make certain that there is no potential for fire or any other hazards on the property where the person lived.

**3)** Locate the will and give it to an attorney who can file it with the court. Typically wills are filed within 10 days of death with the court.

**4)** When you seek the advice of an attorney, bring him the following documents:

- The death certificate.
- A paid funeral bill
- A will
- A list of debts and assets of the decedent.
- The name address and telephone number of all heirs shown on the will.
- A list of any special wishes the decedent had regarding disposition of his or her property such as a personal property list referenced by the decedent's last will and testament.

**5)** Watch the decedent's mail to identify any debts or accounts that the decedent left behind.

## Case of the month: Our client avoids losing his house to a homeowner association.

Our client fell behind in his payments to a homeowner's association that charged a monthly assessment for upkeep of common areas of the neighborhood where his house was located.

Under Florida law, before homeowner's association can file a lien it must give 45 days written notice to the homeowner of its intention to file the lien and it must give 45 days written warning before filing a lawsuit against a homeowner. In our client's case the homeowner's association failed to give 45 days notice that it intended to lien his property.

Thereafter when the homeowner's association sued to foreclose its lien it lost the case because of failure to give proper notice.

## Moral to the story?

If you receive any notices from a homeowner's association pay close attention to the correspondence. Bring the correspondence to your lawyer. There may be a chance to avoid a lawsuit by simply catching up the back payments. On the other hand if you are sued but never received any notices prior to the filing of the lawsuit or the filing of the lien against you then see a lawyer and explain the situation to him. You may not owe the homeowner's association anything. In our case the homeowner's association was required to pay all of our client's attorney's fees in defending against the erroneous lawsuit.

## Special Offer

For Fisher's Law Office clients  
Discount on Last Will & Testament

Normally \$350:

Only \$175

(All wills also include a free health care surrogate and living will document.)

Expires 3/15/2013

**Education:**

1977

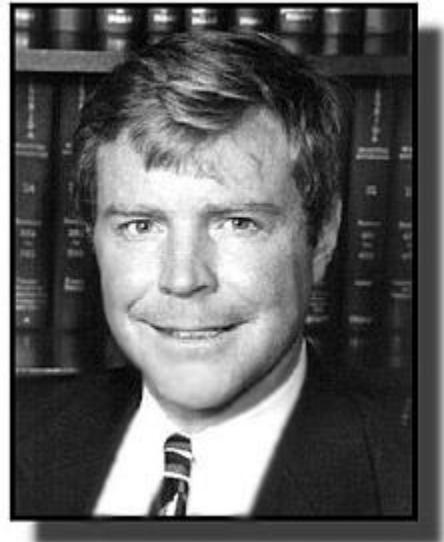
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