

“Arizona’s new foreclosure laws... a turn back to the wild wild west?!?”

BURNS AND BURNS, P.C. IS AN AV RATED LAW FIRM THAT REPRESENTS MULTI-GENERATIONAL FAMILIES AND BUSINESS OWNERS WITH THEIR ASSET PROTECTION, REAL ESTATE, AND ESTATE PLANNING NEEDS.

Property Owners Face New Foreclosure Liability

It has long been settled in Arizona that following a foreclosure, a lender cannot seek a deficiency from the borrower if the property falls under the protections of A.R.S. § 33-814(G), commonly referred to as Arizona’s Anti-Deficiency Statute. While the legality of Arizona’s Anti-Deficiency Statute has never been called into question, its application has. As a result, the application of Arizona’s Anti-Deficiency statute has become a hotly contested issue between lenders (i.e. banks) looking to minimize the Statute’s protections and the borrowers looking to expand them. While the pendulum of protections had been swinging in the favor of borrowers, the tide appears to have changed in the direction of the lenders following the recent Arizona Court of Appeals decision in *BMO Harris v. Wildwood, et al.*

In *BMO Harris v. Wildwood*, the question before the court was whether Arizona’s Anti-Deficiency Statute applies to vacant land where the property owner simply “intended” to build a “dwelling” on the property but had not taken any steps in furtherance of this intent. Prior to this ruling, the owners of vacant land facing foreclosure relied on the protections afforded them under *M&I Marshall & Hsley Bank v. Mueller*. In *Mueller*, the court ruled in relevant part that a property owner’s “intent” to personally utilize the property as a dwelling (ie: build a house) was sufficient to warrant protection under Arizona’s Anti-Deficiency Statute. However, in *Wildwood*, the court effectively reversed the ruling in *Mueller* by ruling that vacant land is not afforded protection under Arizona’s Anti-Deficiency Statute and that a borrower’s mere intent to construct a dwelling on the vacant property is irrelevant.

Although the Court effectively ruled in favor of lenders by limiting the application of Arizona’s Anti-Deficiency Statute, the Court did provide some guidance for borrowers faced with this situation. Specifically, although an owner’s “intent to build a dwelling” alone is not sufficient to trigger Ant-Deficiency Statute protections, the court stated that it would look to other factors, including: 1) the length of time between the property’s purchase and the execution of building contracts on the property; 2) the existence of multiple properties the borrower intended to occupy; and 3) the borrower’s stated intent on any loan documents.

Borrowers faced with this situation should immediately seek legal counsel to help ensure they qualify for the protections of Arizona’s Anti-Deficiency Statute. Failure to do so could result in the issuance of a default judgment against them.

About the Author
Scott F. Burns, Esq.

Scott F. Burns, Esq. is an Arizona attorney and licensed real estate broker whose clientele includes business owners and property owners desirous of protecting their personal and professional legacies through the use of asset protection and real estate legal strategies.

For Additional Information
www.B-BLAW.com

Material presented herein are for informational purposes only and are not intended to constitute legal advice, to be a legal opinion or create an attorney client relationship for the reader or any specific person. Estate and Tax planning is fact specific and requires consultation with a tax or legal advisor before undertaking any course of action.