

After a foreclosure, the lender may be entitled to a deficiency judgment for the difference between the amount owed on the mortgage and the value of the home. In New York, a lender seeking a default judgment must apply for one before the close of the case. It is important that homeowners talk to an attorney to understand whether or not the lender is seeking a deficiency judgment.

In most cases, the lender will not pursue the deficiency judgment in the foreclosure action, and some transactions require a release of liability for short sales and deeds-in-lieu. If a lender does decide to pursue a default judgment, the homeowner may wish to speak to a bankruptcy attorney.

There may be instances where a junior lien-holder such as a secondary mortgagee may want to sue on the mortgage note instead of instituting a foreclosure action because there is no remaining equity in the property to collect on outside of the more prioritized mortgages or liens. These lawsuits become judgments, and acts similarly to a deficiency judgment.

Taxes

In a short sale, deed-in-lieu, a modification with principal forgiveness, or after a foreclosure, borrowers may be taxed on the mortgage amount forgiven by the lender. The forgiven amount can be taxed as if it were income. To address these issues, the Mortgage Debt Relief Act of 2007 makes the forgiveness of mortgage debt by a lender a non-taxable event for many principal residences. The Act was extended until the end of 2016. Although not renewed for 2017 yet, the extension bill has been introduced in the Senate. Advocates should recommend clients consult with a CPA to determine their tax consequences, as many homeowners who experience a foreclosure are likely to be insolvent under IRS rules and will be not taxed for forgiveness of debt. An advocate should not make that determination for a client.

Tip

- If a client is dealing with other IRS, state, or municipality tax issues, advocates could refer them to the Department of Finance's [Taxpayer Advocate](#) at DOFTaxpayerAdvocate@finance.nyc.gov.
- Add language to advocate-client agreements stating that the client should seek advice from an accountant before doing a short sale or deed-in-lieu.