

MORTGAGE LENDER ENTITLED TO SALE PROCEEDS AFTER FORECLOSURE

Question: After we refinanced our Mesa home three years ago, my husband was badly injured in a car accident and lost his job. We no longer could afford the mortgage payments and lost our home to foreclosure by the bank. The bank's representative says that our home is now their real-estate owned ("REO") property. In our neighborhood, the home prices are finally appreciating, and when the bank sells our home, the bank should be able to make a profit. Are we entitled to any of this profit?

Answer: A foreclosure sale is generally a public auction by the bank on the "courthouse steps," or at the office of a title company. In the past few years there have been more investors purchasing homes at foreclosure sales. If an investor purchases a home at the foreclosure sale, and the purchase price is in excess of the bank's mortgage loan and foreclosure costs, and there are no other liens on the home, there are excess proceeds. The homeowner should be entitled to those excess proceeds.

The only "buyer" at a foreclosure sale, however, is typically still the bank. The "purchase price" of the bank is simply a "credit bid" in the amount of the mortgage loan and the foreclosure costs. The bank then has a deed to the home, and the home is REO property on the balance sheet of the bank. If the bank thereafter sells the home to a buyer, the bank is entitled to all of the sale proceeds, just like any other seller of a home. Therefore, in your situation the bank will be entitled to all of the sale proceeds, including any "profit," from the sale of your home.

Note: Sales of bank-owned homes are generally 10 percent to 15 percent below market value. Banks are not in the business of owning homes and just want to "dump" the property as quickly as possible.