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How to Explain Equity Skimming

Understanding Section 697.08, F.S.

Quite a bit of confusion is packed into the very brief section 697.08 of the Florida Statutes, the law in place making equity skimming an illegal practice in Florida. Under section 697.08, F.S., equity skimming is defined as "purchasing, within a 3-year period, two or more single-family dwellings, two-family dwellings, three-family dwellings or four-family dwellings (or a combination of those) that are subject to a loan that is in default at the time of purchase *or* within 1 year after the time of purchase, which loan is secured by a mortgage or deed of trust *and* failing to make payments under the mortgage or deed of trust when due, regardless of whether the purchaser is obligated on the loan, and apply or authorize the application of rents from such dwellings for the person's own use."

It's much easier to understand the statute if you imagine explaining equity skimming to a client or potential client. Consider asking your client a few questions. Has an investor offered to buy your home, and are you in default in making the payment for the home with your lender? Do you have equity in your home because you made payments on it for a period of time before being unable to meet the payment obligation and going into default? Has the investor offered to purchase your home for what is owed on it to your lender rather than its fair market value, thereby not paying you for any equity you have in your home? Has the investor also offered to lease your home back to you so that you won't have to move?

A 'yes' answer to all of these questions is a red flag that the investor may be involved in an equity skimming. Equity skimming occurs when the investor convinces the homeowner to sell the home for what is owed to the lender rather than for fair market value. Generally, the investor simultaneously convinces the homeowner to enter into a lease agreement for the homeowner to remain in the home and make rent/lease payments to the investor. Once the homeowner begins making lease payments, the investor pockets that money and fails to make payments on a loan for the property. The practice is a type of mortgage rescue scheme.

The investor purchases the home for the amount owed to the lender, rather than the home's actual fair market value, thereby striping away the equity from the homeowner for his own benefit. The investor also has the added bonus of having the homeowner remain in the home as a tenant, paying a monthly lease amount, which the investor keeps for himself. The scheme works because homeowners facing foreclosure feel desperate and don't understand the ramifications of such a sale. The homeowner may feel it's better to sell the home to an investor rather than face foreclosure. Because the investor fails to disclose to the homeowners his or her true intentions, the homeowner is deprived of valuable information that he needs to make the best decision about selling his home before his default turns into a foreclosure.

In Florida, a person commits a third degree felony of he or she engages in the practice of equity skimming. The lawful purchase of a home in default may be accomplished and could be a great benefit to the homeowner, but must be done with fairness to all parties and not skewed to the investor's benefit, which includes required disclosures so the homeowner may make an informed decision about a sale.

Click to read the statute