



## Ask the TITLEMAN™ #228

Q & A

**John T. Lotardo, Attorney-at-Law**

***Q. Do you know if Arizona is a "recourse" state? We're flat broke and now we're losing our home to foreclosure. Can the bank come back after us for a deficiency? It really stinks that we have to lose our home, move and then they can come after us for more. Talk about kicking you while you're down!***

A. Most of the time, you're okay. Purchase money single family residential loans on 2 1/2 acres or less are non-recourse per the anti deficiency statute. That means once they foreclose on your home, they should not be able to go after you for the difference between the value they get for your home and the amount you owe under the mortgage. But the loan and collateral have to qualify under the statute. Watch out if you took out a loan for something other than that- say if you opened a credit line to buy that new Mustang GT sitting in the driveway or for that dream trip to Maui. If the property is subject to a deficiency action, the lender would still need to comply with the requirements regarding giving proper notice, timing to assert the claim against you, etc.

***Q. I have just received a Purchase Contract (AAR) that has been signed digitally by the Seller. Is that okay?***

A. Ah, the electronic age. Texting, IM, and e-commerce across the globe have impacted how we do business. There are many laws in place dealing with the electronic signing of documents. The AAR purchase contract does permit the signing to be done electronically.

***Q. I was in escrow to sell my house and it fell out due to the buyers not being able to fund. Three weeks after escrow was cancelled, the escrow company recorded the deed of trust to the buyers by accident. (No payment was made.) They stated they inadvertently transposed some numbers and recorded the wrong deed of trust. Is the escrow company liable for all this mess?***

A. I'm not sure what has transpired since your mail, but I'm sure to say these things happen does not bring you any solace. I get the impression you believe that the escrow company is not going to work on this. Have they refused get a release or record an affidavit of its erroneous recording? I'm not sure what mess has occurred in the way of damages to you since clearly the lender wouldn't/couldn't/shouldn't foreclose on your home since it was a mistake just as you say. I would give the escrow company an opportunity to work on it. Over the nearly 20 years being a part of this industry, I have come to expect that my comrades usually help out where they can and do the right thing.

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