

Why You Don't Owe the Money

By: Neil Garfield, Esq., December 8, 2008.

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OK it's complicated. But I have distilled it down to a few sound bites that more or less capture the basic truth of why you don't owe the money on that mortgage note, credit card, student loan, auto loan, furniture loan etc. Even small businesses might not owe their small business loans.

There are exceptions and you should consult with counsel licensed in your state before acting or making any decision on this. And the facts of any particular case do vary, but for the most part I believe the following list applies to nearly all debt in the U.S., secured, unsecured, guaranteed, not guaranteed.

Nearly all of this is based upon the presumption of one or both of two factors being present: predatory loan practices and/or securitization of the loan. And you probably won't be able to assert yourself properly without having a FULL review of your mortgage or loan circumstances (not merely the narrow TILA audit)... Without looking at the totality of the circumstances the TILA Audit is worth only a small refund and is not likely to get you rescission or a meaningful modification of the loan.

1. You don't owe it — you only think you do and THEY want to keep you thinking that way so you'll sign a new deal ("modification") and release your defenses and claims. Your "lender" was paid in full by the mortgage wholesaler, who was paid by the investment banker and investors who were bailed out by insurers and the Federal Government with your own tax money. There is no debt left. Zero.
2. To enforce an obligation a creditor must prove the obligation. They can't. But in non-judicial states, foreclosing parties get around it by NOT going to court — they try to put the burden on the homeowner to convert it to judicial. If you can get something filed in the property records, like a reconveyance through power of attorney (after presenting them with an extensive qualified written request), then you shift the burden back on them.
3. It is highly likely that the bankruptcy code will be changed very soon: allowing judges to write down mortgages to reflect present fair market values in the housing market. Even that, though is a double payment to the people who sold you your mortgage or other loan, because they have already been paid.
4. It is highly likely that with or without changes in the bankruptcy code, the modification of mortgages will be required — not with the current offers of increasing your enslavement to 40 years and lowering interest rates for a while, but with substantial reductions in the principal due on the note, the interest rate, 30 year fixed etc.
5. We here at www.livinglies.wordpress.com have not seen a single case go to trial in thousands of cases we have tracked. The harder the homeowner fights the better the results. The "lenders" either disappear, dismiss their claims, or enter into settlement agreements satisfactory to the homeowner.

Note & Disclaimer from Quest Funding Services: Being in default of your mortgage risks your biggest personal investment...your home. Don't take Mr. Garfield's caution, to hire your own attorney, lightly. Make sure you hire "a lawyer who 'get's it'". That is, a lawyer with experience &/or knowledge about foreclosure defense. It is hard enough when, even, many judges do not understand the theories behind these defenses, and the lawyers have to, basically, educate the judges. We are talking about complicated legal theory and opinion regarding the laws of equity, property ownership, securities law, contract law, etc. Certainly, you have the right to defend yourself. But, that right is useless if the judge cuts you off after a few words because he realizes that you don't understand the very legal defenses you are attempting to use, explain and stand behind. Remember this saying: "Even a lawyer, who represents himself, has a fool for a client." Don't be a fool. Don't represent yourself when your home is "on the line." The above comments by Mr. Garfield should only serve to enlighten you that you may have a chance to save your home...but only if you have the right, talented, professional standing by your side.