

THE DEPARTMENT OF DEFENSE SAYS IF YOU LOSE YOUR HOME YOU WILL LOSE YOUR CLEARANCE

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While the Obama Administration says it is trying to save jobs, stave off foreclosures, fight real estate fraud, and help small businesses survive, the Department of Defense is doing just the opposite. It is revoking the security clearances of people who lose their real estate to foreclosure, even when the loss was caused by fraud, and even though they are protected by state antideficiency laws that absolve the homeowner from further debt on the foreclosure.

An office under the Secretary of Defense, the Defense Office of Hearings and Appeals (DOHA), has recently ruled that a person who owned and lost residential properties in foreclosure as a result of being the victim of a real estate scam would lose his security clearance. This ruling came despite the person having a security clearance for thirty years with an otherwise impeccable record. As a result, his company, which specializes in highly technical defense communications work, can no longer perform any defense contracts, and his thirty employees are in danger of being laid off.

The individual, a successful businessman running a small defense contracting company, bought a number of residential properties at the height of the real estate boom. He discovered after he went to closing, that the properties were not owned by the supposed seller who, along with the real estate agent, the property appraiser and the mortgage broker engaged in a massive fraud to overvalue the properties, provide false rental information, list phony tenants, and market overpriced loans. Immediately after the closing, the supposed owner filed for bankruptcy and the rest of the conspirators disappeared, skimming over a million dollars from the scheme.

Although the buyer tried to honor his commitments to the banks, they refused to renegotiate the loans. Being unable to make the inflated payments the buyer defaulted, the properties went into foreclosure, and they were sold. Under the antideficiency law of Arizona where the properties were located, once the banks foreclosed, the buyer was absolved of any further obligation. Simply stated he owed nothing more on the loans. Nevertheless the banks reported the unpaid balances as debts on the buyer's credit report.

As a result, the Department of Defense proposed to revoke the buyer's security clearance, citing his "excessive debt" on the foreclosed loans. A DOHA Administrative

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Judge understood that under the Arizona antideficiency law there was no longer any debt and ruled in the buyer's favor (in DOHA Case No. 07-16841). Department of Defense counsel appealed the decision to DOHA's Appeal Board, arguing that the buyer was still obligated on the debt regardless of Arizona's antideficiency statute. The Appeal Board, reversed the Administrative Judge ruling that:

The Judge's favorable decision relied, to a large extent, on her finding that (1) the broker deceived Applicant into purchasing the houses and (2) the state's anti-deficiency laws prevent a lender from collecting from a homeowner the difference between the amount realized at a foreclosure sale and the remaining balance of the home loan. On the latter point, reliance on the non-collectability of a debt does not constitute a good faith effort to resolve that debt within the meaning of the [security] Directive.

On reconsideration on February 24, 2009, the Appeal Board concluded it could reach no other result.

What this ruling means is that, even if you are the victim of a fraud that causes you to lose your home in a foreclosure, you no longer have any debt under state law, you are still working and able to support your family, you have had an impeccable record for thirty years of holding a security clearance, and even though thirty other people are dependent on your continuing to hold a clearance so your business can continue, the Department of Defense will still revoke your clearance, resulting in the loss of your business, and the loss of jobs of others who depend on you.

It appears that the Department of Defense has not gotten the Obama Administration's message about minimizing the impact of foreclosures, fighting real estate fraud, saving jobs, and helping small businesses to survive. Some guidance needs to trickle down from the White House.

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