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Texas Supreme Court Denies Rehearing Relating To Deficiency Calculations

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As previously noted in this blog, in *PlainsCapital Bank v. Martin,* No. 13-0337, 2015 WL 1477904 (Tex. March 27, 2015), the Texas Supreme Court ruled that lenders can use a sales price received subsequent to a foreclosure sale, as well as their carry costs, to determine the fair market value of a property at the time of foreclosure.

On June 5, 2015, the Texas Supreme Court denied a Motion for Rehearing filed by Plaintiff William Martin asking the court to reconsider its previous ruling. In the motion, Martin claimed the Texas Supreme Court's interpretation of the Texas Property Code is at odds with the purpose of the statute, which is to substitute fair market value for a foreclosure price in calculating a deficiency claim. Martin further argued that the Texas Property Code is explicit in requiring that the fair market value be determined as of the date of a foreclosure sale.

Martin's Motion for Rehearing was denied without comment. However, the Texas Supreme Court's March 27 opinion already addressed the arguments raised in the Motion for Rehearing. In particular, the Texas Supreme Court noted that § 51.003(b)(5) of the Texas Property Code specifies that a trial court, when calculating the fair market value as of the date of the foreclosure sale, may consider evidence of "the necessity and amount of any discount to be applied to the future sales price." This factor is forward-looking, allowing the trial court to consider the price for which the lender eventually sells foreclosed property and to apply a discount, if appropriate, to determine a value as of the foreclosure sale date. If the Legislature did not intend for this statute to be forward-looking, § 51.003(b)(5) would be nonsensical because an unknown fair market value, which is the value being sought, cannot mathematically be determined by applying a discount to an unknown future sales price.

Based on this analysis, the Texas Supreme Court found that although it may seem odd to make the price for which property sold *after* foreclosure an integral component of competent evidence of the property's fair market value on the foreclosure sale date, that is clearly what the Legislature intended. For lenders, the take-away is that all post-foreclosure information, including the sales price and carry costs relating to foreclosed property, should be considered when determining fair market value at the time of foreclosure and to calculate any related deficiency.

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