



Burr Alert: Is "MATERIALLY LESS" The Same As "GROSSLY INADEQUATE"?

Articles / Publications

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Background

The legislative solution crafted into Tenn. Code Ann. 35-5-118 created a rebuttable presumption that the amount bid at a foreclosure sale equaled the fair market value of the property. Debtors could overcome this presumption by showing that the bid was "materially less" than fair market value. The statute became effective September 1, 2010. Prior to that time, the standard for setting aside foreclosures was whether the bid amount was "grossly inadequate."

There has been much debate in legal circles as to whether the new statutory approach would pave the way for debtors to defeat or reduce deficiency judgments. In the only two cases decided since the act went into effect, both the Eastern and Middle Sections of the Court of Appeals have found in favor of the lenders.

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