

§9-1626. Action in which deficiency or surplus is in issue

(1). In an action arising from a transaction, other than a consumer transaction, in which the amount of a deficiency or surplus is in issue, the following rules apply.

(a). A secured party need not prove compliance with the provisions of this part relating to collection, enforcement, disposition or acceptance unless the debtor or a secondary obligor places the secured party's compliance in issue. [PL 1999, c. 699, Pt. A, §2 (NEW); PL 1999, c. 699, Pt. A, §4 (AFF).]

(b). If the secured party's compliance is placed in issue, the secured party has the burden of establishing that the collection, enforcement, disposition or acceptance was conducted in accordance with this part. [PL 1999, c. 699, Pt. A, §2 (NEW); PL 1999, c. 699, Pt. A, §4 (AFF).]

(c). Except as otherwise provided in section 9-1628, if a secured party fails to prove that the collection, enforcement, disposition or acceptance was conducted in accordance with the provisions of this part relating to collection, enforcement, disposition or acceptance, the liability of a debtor or a secondary obligor for a deficiency is limited to an amount by which the sum of the secured obligation, expenses and attorney's fees exceeds the greater of:

(i) The proceeds of the collection, enforcement, disposition or acceptance; or

(ii) The amount of proceeds that would have been realized had the noncomplying secured party proceeded in accordance with the provisions of this part relating to collection, enforcement, disposition or acceptance. [PL 1999, c. 699, Pt. A, §2 (NEW); PL 1999, c. 699, Pt. A, §4 (AFF).]

(d). For purposes of paragraph (c), subparagraph (ii), the amount of proceeds that would have been realized is equal to the sum of the secured obligation, expenses and attorney's fees unless the secured party proves that the amount is less than that sum. [PL 1999, c. 699, Pt. A, §2 (NEW); PL 1999, c. 699, Pt. A, §4 (AFF).]

(e). If a deficiency or surplus is calculated under section 9-1615, subsection (6), the debtor or obligor has the burden of establishing that the amount of proceeds of the disposition is significantly below the range of prices that a complying disposition to a person other than the secured party, a person related to the secured party or a secondary obligor would have brought. [PL 1999, c. 699, Pt. A, §2 (NEW); PL 1999, c. 699, Pt. A, §4 (AFF).]

[PL 1999, c. 699, Pt. A, §2 (NEW); PL 1999, c. 699, Pt. A, §4 (AFF).]

(2). In an action arising from a consumer transaction in which the amount of a deficiency or surplus is in issue, the following rules apply.

(a). If a secured party represents by affidavit that it has complied with the provisions of this Part relating to collection, enforcement, disposition or acceptance, the secured party need not further prove compliance unless the debtor or a secondary obligor places the secured party's compliance in issue. [PL 1999, c. 699, Pt. A, §2 (NEW); PL 1999, c. 699, Pt. A, §4 (AFF).]

(b). If the secured party's compliance is placed in issue, the secured party has the burden of establishing that the collection, enforcement, disposition or acceptance was conducted in accordance with this Part. [PL 1999, c. 699, Pt. A, §2 (NEW); PL 1999, c. 699, Pt. A, §4 (AFF).]

(c). Except as otherwise provided in section 9-1628, if a secured party fails to prove that the collection, enforcement, disposition or acceptance was conducted in accordance with the provisions of this Part relating to collection, enforcement, disposition or acceptance, neither the debtor nor a secondary obligor is liable for a deficiency. [PL 1999, c. 699, Pt. A, §2 (NEW); PL 1999, c. 699, Pt. A, §4 (AFF).]

[PL 1999, c. 699, Pt. A, §2 (NEW); PL 1999, c. 699, Pt. A, §4 (AFF).]

SECTION HISTORY

PL 1999, c. 699, §A2 (NEW). PL 1999, c. 699, §A4 (AFF).

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