Surrendering Encumbered Property

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Surrender Considerations for Debtors

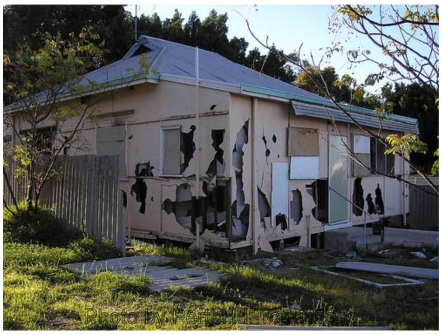
1. Underwater Loans
2. Affordability
3. Home or Car Unnecessary
4. Simplify to Start Over

The question: How can a Debtor successfully avoid ongoing expenses, like homeowners' assessments and maintenance?

Surrender Considerations for Creditors

1. Property Marketability
2. Title Issues
3. Unpaid Taxes / HOA
4. Maintenance
5. Judicial Foreclosure?
6. Stay Violation?

The question: How can the collateral be recovered and do I want it back?

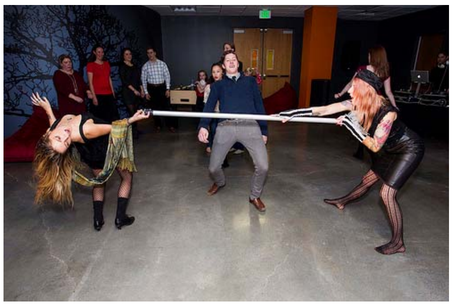


The Surrender Limbo

Problems a debtor faces when a lender won’t foreclose:

1. Post-petition HOA fees
2. Post-petition Taxes
3. Local Ordinances and Fines
4. Damage claims

HOW CAN A DEBTOR ESCAPE SURRENDER LIMBO?



OPTION 1: Chapter 7 (it doesn't help)

- The trustee, not the debtor, controls estate property.
- § 554(a): "[T]he trustee may abandon any property of the estate . . . that is of inconsequential value and benefit to the estate."
- If the property can't be sold for more than the mortgage, the trustee will abandon it, and the debtor will remain as owner, subject to ongoing charges.

OPTION 1: Chapter 7 (it doesn't help)

- But wait – there's more!
- § 523(a)(16): The Chapter 7 discharge does not cover postpetition homeowners association fees.
- Thus, in Chapter 7 after discharge prior to sale or foreclosure, Debtor is personally liable for all the costs of ownership other than the mortgage loan.

Title search: Surrendering Encumbered Property

Also available as part of the eCourse
2017 Consumer Bankruptcy eConference

First appeared as part of the conference materials for the
13th Annual Consumer Bankruptcy Practice session
"Surrender Issues and Vesting Issues"