

Transferring Underwater Property – Vesting/Surrendering or Debt Payment: Does Either One Work?



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What we're going to discuss

The problem: Debtors can't afford their mortgage, but the home isn't worth as much as the mortgage balance—it's "underwater."

The question: Can debtors transfer the home to the mortgage holder to stop ongoing expenses, including maintenance, taxes, and homeowners association assessments?

1. Surrender plus vesting?

- § 1325(a)(5)(C) permits confirmation of a plan that “surrenders” collateral to the lien holder.
- § 1322(b)(9): allows a plan to “provide for the vesting of property of the estate . . . in . . . any . . . entity.”
- So far, there are 13 decisions dealing with surrender/vesting; all accept that vesting transfers ownership.
- But they disagree about whether “surrender” lets a plan impose vesting on an unwilling mortgagee.

1. Surrender plus vesting?

Surrender outside of § 1325(a)(5)(C): “surrender value”
521(a)(4): “surrender to the trustee all property”

- The 13 decisions.
- 1. *In re Rosa*, 495 B.R. at 524: “[V]esting in addition to surrender. . . is confirmable only if the first standard [of § 1325(a)(5)]—acceptance—is met.”
- Confirms the plan only because the mortgagee did not object.

1. Surrender plus vesting?

The 13 decisions.

- 2. *In re Rose*, 512 B.R. 790 (Bankr. W.D.N.C. 2014): similar result but greater protection to the mortgagee.
- If the mortgagee does not object to **vesting**, the debtor **must give the mortgagee a quitclaim deed**, effective only if the mortgagee fails to take action to refuse the deed within 60 days after receiving it.

1. Surrender plus vesting?

The 13 decisions.

- 3. *In re Watt*, 520 B.R. 834, 839 (Bankr. D. Or. 2014), allows surrender and non-consensual vesting:
- “[N]othing in . . . § 1322(b)(9) requires . . . consent. [A] plan . . . for **vesting** of property in a secured lender . . . **may be confirmed over the lender's objection.**”
- The **good faith** requirement of § 1325(a)(5) **prevents** the **transfer of negative-value property.**

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