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

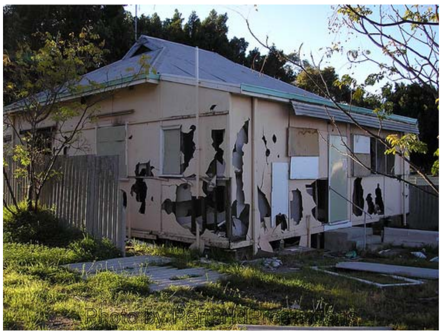
Over

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?

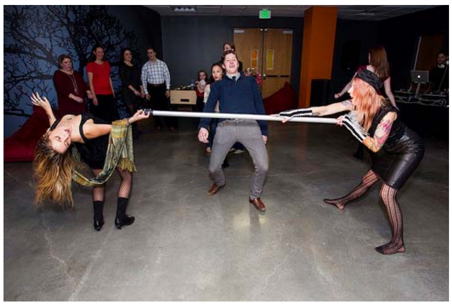


The Surrender Limbo

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?



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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.

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