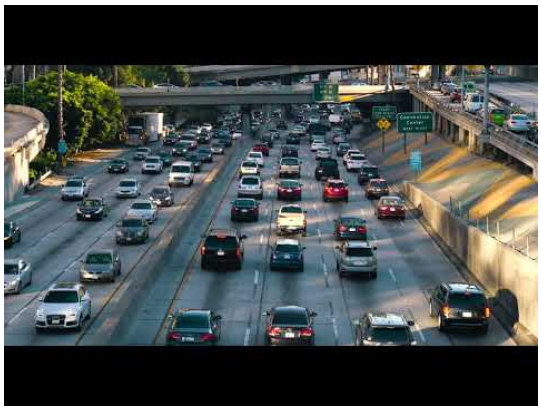
Possibly remarkably, among the most discouraging advancements in our ongoing foreclosure crisis relates to home loan loan providers' obstinate resistance to carry through with a foreclosure in a timely way. Many frequently, this circumstance occurs in a Chapter 7 Bankruptcy in which the debtor has figured out that it **century law inc address** remains in his or her best interest to surrender a home.

As we all know, mention anti-deficiency laws figure out whether a home loan lending institution might seek a shortage judgment after a foreclosure. We similarly know that a Personal bankruptcy Discharge will secure that property owner from such liability regardless of what the debtor's state statutes need to say worrying whether a home loan lender may look for a deficiency judgment.

While defense from post-foreclosure liability to the mortgage lending institution stays an effective benefit provided by the Personal bankruptcy Discharge, a fairly brand-new source of post-bankruptcy petition liability has developed in the last couple of years. One that our customers are all too often shocked by if we disregard to provide increasingly comprehensive recommendations before, during, and after the filing of a personal bankruptcy petition.

What I am speaking about, of course, are Homeowners Association charges, and to a lesser degree, local water and garbage fees. As we all need to understand well, such repeating costs accumulate post-petition, and specifically since they repeat post-petition, they constitute brand-new debt-- and as new financial obligation, the Personal bankruptcy Discharge has no effect whatsoever upon them.



The typical case involves a Chapter 7 personal bankruptcy debtor who chooses that she or he can not perhaps manage to keep a house. Possibly this debtor is a year or more in arrears on the very first mortgage. Maybe the debtor is today (as prevails here in California) $100,000 or more undersea on the property, and the lender has actually declined to offer a loan modification despite months of effort by the house owner. The home in all probability won't deserve the protected quantities owed on it for decades to come. The regular monthly payment has adjusted to an installment that is now sixty or seventy percent of the debtor's family income. This home should be given up.

The problem, obviously, is that surrender in bankruptcy does not correspond to a prompt foreclosure by the loan provider. In days past, state 3 or even just 2 years earlier, it would. However today, mortgage lending institutions simply don't desire the property on their books. I often think of an expert deep within the bowels of the mortgage lending institution's foreclosure department taking a look at a screen showing all the bank-owned homes in a provided postal code. This would be another one, and the bank does not desire another bank-owned residential or commercial property that it can not sell at half the quantity it lent simply four years earlier. We might go on and on about the recklessness of the bank's decision in having actually made that original loan, however that is another short article. Today the residential or commercial property is a hot potato, and there is nothing the debtor or the debtor's personal bankruptcy attorney can do to oblige the home loan loan provider to take title to the home.

Thus the conundrum. There are other parties involved here-- most notably, property owners associations. HOAs have in many locations seen their regular monthly dues plummet as more and more of their members have actually defaulted. Their ability to collect on overdue association fees was long believed to be secured by their capability to lien the property and foreclose. Even if their lien was subordinate to an initially, and even a second mortgage lien, in the days of home appreciation there was almost constantly enough equity in realty to make the HOA whole. However no more. Today HOAs often have no hope of recovering overdue from the equity in a foreclosed residential or commercial property.

So, where does this all leave the insolvency debtor who must surrender his/her home? In between the proverbial rock and a tough location. The lending institution may not foreclose and take the title for months, if not a year after the personal bankruptcy is submitted. The HOAs dues-- along with water, trash, and other municipal services-- continue to accrue on a monthly basis. The debtor has actually typically moved along and can not rent the home. But be guaranteed, the owner's liability for these repeating fees are not released by the insolvency as they emerge post-petition. And she or he will remain on the hook for brand-new, recurring costs till the bank finally takes control of the title to the residential or commercial property. HOAs will normally take legal action against the house owner post-discharge, and they'll aggressively seek lawyers' costs, interest, costs, and whatever else they can consider to recoup their losses. This can sometimes result in 10s of thousands of dollars of brand-new debt that the just recently insolvent debtor will have no hope of discharging for another 8 years, should she or he submit bankruptcy once again.

This issue would not arise if home mortgage loan providers would foreclose quickly in the context of an insolvency debtor who surrenders a home. We as personal bankruptcy attorneys can actually beg that lending institution to foreclose currently-- or, even better, accept a deed-in-lieu of foreclosure, however to no avail. They just don't want the residential or commercial property. What guidance, then, should we give to debtors in this scenario? The options are couple of. If the debtor can hold on until the property in fact forecloses prior to filing bankruptcy, this would remove the issue. However such a delay is not a high-end most debtors can afford. If this choice is not offered, the debtor needs to either reside in the property and continue to pay his/her HOA dues and local services or if the residential or commercial property is a second house, for instance, an attempt to lease the property to cover these ongoing expenses.

In the last analysis, the Insolvency Code never pondered this scenario. Nor did most states' statutes governing property owners' associations. A remedy under the Bankruptcy Code to oblige home loan loan providers to take title to surrendered real estate would be ideal, but offered the problems facing this Congress and its political orientation, we can comfortably say that the possibility of such a legal option is beyond remote.