

SURRENDERING AN ASSET

(HOME/AUTOMOBILE)

Occasionally in a bankruptcy case we indicate that a house or a car is to be “Surrendered.” When a person “surrenders” property in a bankruptcy case, you are really doing nothing than to indicate a willingness to let it go. It is then up to the secured creditor (auto lender / mortgage company, etc) to determine whether and when to take the surrendered property back. In addition, there is nothing that requires the lender to take it back.

The secured property is still yours to use until arrangements are made to take the property back. In the case of a vehicle, the creditor must arrange to have the vehicle properly repossessed or arrangements must be made between the lender and you (or your attorney) as to how the vehicle will be voluntarily turned over. Often, you will want to voluntarily make such arrangements simply to ensure that the vehicle is not repossessed and taken when you least expect it. Your attorney will likely want you to call the lender and ask them how they would prefer to have the vehicle returned to them. Often they will have you deliver the vehicle, empty and with keys, to a dealership that they have selected. Other lenders may simply want you to have the vehicle parked outside your home on a certain day so that they can have a repossession company pick it up at that time. Generally, it is expected that you will turn over “surrendered” vehicles within 45 days after your case is filed. However, while your bankruptcy case is still pending, unless the lender has worked out some voluntary agreement with you, they cannot repossess the vehicle without obtaining an order from the Bankruptcy Court. This involves filing a request with the Court entitled a Motion for Relief from Stay and waiting approximately 20 days for an Order to be signed. As a result, it may make sense to keep the car insured and licensed and continue to drive it (putting the miles on that car – not your other vehicle) until either the Order is obtained or until you have arranged to voluntarily turn it back. **DO NOT DRIVE IT UNLESS IT HAS CURRENT INSURANCE COVERING IT!**

In the case of a home (real estate), you can't simply give it back to the mortgage company. The property must still undergo legal and proper foreclosure proceedings. The lender cannot get you out of the home until this is completed. The fact that you have discharged your personal obligation to repay the mortgage in your bankruptcy case does not mean that the bank automatically or magically becomes the owner. Rather, the bank has to get title to the property either by foreclosure, deed-in-lieu of foreclosure, short sale, or other legal means. Unless the bank decides to commence such legal action and takes back title to the house, it's still legally yours. Although you are not paying the mortgage (or personally responsible for paying it), you do still own the property and you have the full right to occupy it, rent it or otherwise use it the way you previously could. However, since you are still the titled owner, you may still have to comply with all local laws regarding ownership. This may include keeping the sidewalks clear of debris and snow; trim the trees out front, and the like. As long as you still own the home, your city or town can still give fine you if you fail to do this. Finally, remember that as the owner, you can still be sued if someone hurts themselves due to negligence in keeping the property safe. If your homeowner's insurance is being paid by the mortgage company (supposedly through the monthly mortgage payments), chance are that they will continue to keep the property insured. However, they are more concerned with fire and damage to the structure. While you don't need

to worry about keeping fire and casualty insurance in place, you may want to consider retaining some form of liability insurance to cover you in the event of injury.

If we're talking about a condo or house with a homeowners' association then you're going to remain liable for all post-bankruptcy HOA charges. Once again, this is still legally your place. In the end, it's for you to realize the impact of your decision to surrender. Take the steps necessary to protect yourself, but also recognize that your liability for some things may not end until the deed is signed over.

IF YOU HAVE ANY PROPERTIES THAT ARE SUBJECT TO A HOMEOWNER'S ASSOCIATION: READ THIS!

If you currently own a home or rental property (whether it is already in foreclosure or not) and you have a homeowner's association (HOA), the association dues are your obligation until the home is sold to another person or a deed is transferred to a purchaser at the time of a foreclosure sale. It does not matter if you have moved out of the home, the dues are still owed by you until the property is sold to someone else. At that time, the new purchaser becomes obligated for future dues.

If you will be surrendering the home and allowing it to go to foreclosure, we can bankrupt any HOA dues that were owed up to the month in which your bankruptcy case is filed. However, homeowner's association dues are a bit like utility bills. The dues for each month (or quarter if paid quarterly) are a new debt owed each month. Thus, if the new debt is incurred for a month after your bankruptcy case is filed, it is a new post-petition debt that you will owe. The dues owed for months after your case is filed (up until the actual foreclosure sale of the property) will be your obligation. Homeowner's associations are currently facing hard times because of the economy and they will be quick to file a court lawsuit to collect these amounts if you do not keep them up to date. They will also add interest, late fees, lien fees, attorney fees and other costs permitted by the HOA documents up until the day that these newly owed amounts are paid. BE CAREFUL with the dues on any property that you still own when your bankruptcy case is filed.

If you will be keeping your real estate and continuing to make the payments on your mortgage, you must also keep up on all your homeowner's association dues. In this case, we cannot bankrupt the dues that you owe at the time the case is filed. These dues will be attached as a lien to your home and if you keep the home, you will eventually have to pay all of these dues (and all of the costs and fees that have been added). On the other hand, if you are surrendering the home, who cares if a lien is filed against the property ... the purchaser at the foreclosure sale will have to pay off the lien in this case (but remember that the HOA can still come after you for the dues incurred after filing up to the sale date).

A HINT: If you are surrendering a property, continue to live in it until as close to the actual foreclosure sale as possible. You will not be paying your mortgage, but you'll want to keep current on your HOA dues. If you think about it, this is cheap rent. If you have already moved out, remember that you still own the property until the sale occurs. After your bankruptcy is filed, rent the property to someone who can use a temporary home with cheap rent! BE SURE to

fully inform them that the lease may be short term since they may need to move out quickly when the actual foreclosure sale occurs. Use the small rental amount to ensure that you get the HOA dues paid! Remember, of course, that any rent needs to be reported as income on your tax returns.

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