



Burr Alert: Finally a Bankruptcy Order Worth Celebrating: Obtaining Bankruptcy Court Orders Compelling Borrower's Surrender of Mortgaged Property

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One of the common yet troubling phenomena encountered in foreclosure litigation is an action heavily defended by a borrower who represented to a bankruptcy court that she would surrender the property and who obtained a discharge from liability on the strength of that representation. For a chapter 7 debtor, this representation is made in a Statement of Intention prepared pursuant to 11 USC § 521(a)(2) of the Bankruptcy Code and which requires the borrower to elect between surrender of the mortgaged property, reaffirmation of the debt or redemption of the property. For a chapter 13 debtor, this representation of surrender is made as part of the debtor's plan of reorganization under 11 USC § 1325(a)(5)(C). It had become routine for borrowers to designate that the secured property would be surrendered, then vigorously defend the foreclosure action once the bankruptcy case was closed. This appeared to be the accepted wisdom among practitioners on both sides of the bar.

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