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Bankruptcy Is Not the End – Revisited

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About this time last year, in the July 31, 2009 issue of the firm's E-Newsletter, we discussed the massive increase in bankruptcy filings during the 12 month period ending June 30, 2009 as compared to that same time period ending June 30, 2008. If you recall, the rate of increased filings at that time was over 88%. Today we can report that the number of filings over this past year has slowed, but unfortunately, not by much. According to the Administrative Office of the United States Courts, filings in Arizona have increased by almost 70% during the 12 months ending March 31, 2010 as compared to the same period one year prior -- to a total of 37,890 filings. And the fact is that the rate of increased filings over that time is higher in Arizona than any other district in the country. As a result, it is important for Arizona community association decision makers to have a basic understanding of bankruptcy law.

Since October of 2005, Section 523(a)(16) of the Bankruptcy Code has provided that as long as a debtor has ownership of property (legal, equitable, or possessory interest) in an association, that debtor remains liable for the post-petition charges. The "petition" date is the date the bankruptcy is filed. The result is that even if a debtor has received a discharge from the bankruptcy court for pre-bankruptcy debt, until the debtor is no longer the owner of the property, he or she remains liable for assessments and certain other charges that accrue from the date of filing bankruptcy (or date of conversion of the case to another chapter).

Arizona courts and bankruptcy debtors' attorneys are becoming more educated on these issues as evidenced by a recent article in the Arizona Republic published April 26, 2010. That article and the issues presented in it are even gaining national attention as evidenced by a California bankruptcy attorney's blog entry dated April 27, 2010 as well as various social media channels. The issue brought to light in the Arizona Republic article is that because bank foreclosures can take well over a year to finalize, the bankruptcy debtor may remain the owner of the property within the community for quite some time. Because of limitations in CC&Rs and state law, most Arizona associations are unable to pursue banks and have no option but to pursue the record owner. Boards of associations have a duty to collect assessments, leaving no other option but to pursue the debtor.

Bankruptcy is a fact of life for community associations in Arizona and they should not simply give up upon learning of a bankruptcy filing. Associations can seek recovery of the post-petition charges through a variety of ways. As the

appropriate action depends greatly on the association's governing documents and the specific details of the bankruptcy, a community association should discuss the matter with its legal counsel on a case-by-case basis.

For questions on bankruptcy matters, contact Chad Miesen, James Hazlewood, paralegal Debbie Young, or any attorney in our office.

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