

A Changing Course:
Foreclosure, Bankruptcy and
Your Association

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Association Law
Seminar & Expo

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LENDER FORECLOSURE

- **What is Lender Foreclosure?**

- When a bank, lender or its assignee sells real property at an auction under its power of sale in the loan agreement, because the borrower defaulted and failed to make the required loan payments.
- In Georgia, foreclosure is usually by non-judicial sale.
- From the first notice to the purchase at auction, the non-judicial foreclosure process takes as little as 40 days.



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LENDER FORECLOSURE

- Nationally, 1 in 10 homes are in some stage of foreclosure.
- Las Vegas is the worst nationally with 12% of all real estate in foreclosure proceedings.
- Foreclosure is a reality of the real estate market that will take time to change.



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LENDER FORECLOSURE

- **What happens to the other liens on the property's title?**
 - Mortgage Lenders almost always have the highest priority lien on a home's title.
 - When a Mortgage Lender forecloses its lien, and sells the home at auction, all inferior liens are “wiped out.”
 - The new owner takes the property without any liens.



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LENDER FORECLOSURE

Foreclosure brings *Good News*
and *Bad News* for Associations



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LENDER FORECLOSURE

- ***Bad News:***

- Debt owed to Association is no longer secured by a lien (except a judgment).
- You may have a vacant property on your hands.
- Foreclosures and re-sales at reduced prices drive down property values for neighborhoods.



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LENDER FORECLOSURE

- ***Good News:***

- New owner comes who will pay assessments--
Stop the bleeding!
- Association debt is a personal obligation, so you can still go after the former homeowner... if it's a wise business decision.
- Property will likely be fixed-up.



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LENDER FORECLOSURE

Dude, Where's My Lien?

- Lender Foreclosure wipes out liens that were filed after the mortgage.
- Association can collect pre-foreclosure debt from previous homeowner... *BUT*
- Association can collect **ONLY** post-foreclosure assessments from new owner including the Lender.



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LENDER FORECLOSURE

- Ledger:

- January 2010 - \$100.00
- February 2010 - \$100.00
- March 2010 - \$100.00

- April 2010 - \$100.00
- May 2010 - \$100.00
- June 2010 - \$100.00

FORECLOSURE



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LENDER FORECLOSURE

- **Why is this taking so long?!**

- Typically, only 30% of advertised foreclosures get called for sale.

- Modifications:

- Helping Families Save Their Homes Act of 2009
 - Home Affordable Modification Program (HAMP)
 - Home Affordable Refinance Program (HARP)



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LENDER FORECLOSURE

- **If the property foreclosed, why is the tenant still there?**
 - Protecting Tenants at Foreclosure Act (2009)
 - Bona Fide tenant can stay in the property for the term of the lease.
 - If there is no lease, tenant can stay for 90 days.
 - If property is sold to someone who intends to occupy the house, the tenant still has 90 days to vacate.



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LENDER FORECLOSURE

- **Title Problems Delay Foreclosure**
 - Minor problems, like legal descriptions.
 - Major problems:
 - Lawsuit for Reformation of Deed
 - Lawsuit for Quiet Title (incorrect cancellations)
 - Stubbornly litigious borrowers.

- **And...**



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LENDER FORECLOSURE

Most foreclosures are stopped by

BANKRUPTCY!!!



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The logo consists of a stylized 'W' and 'C' intertwined, with a blue and black color scheme.

HOMEOWNER BANKRUPTCY

- ONE in 50 Georgia households declared bankruptcy between January and November 2009.
- Georgia has the 3rd highest personal bankruptcy rate in the country, only behind Nevada and Tennessee.
- Bankruptcies in Georgia increased 22% for the first 11 months of 2009 over 2008.



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HOMEOWNER BANKRUPTCY

- The Automatic Stay



- Stops all collection efforts by the Association and other creditors.
- Split your ledger between pre-petition debt and post-petition debt.



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HOMEOWNER BANKRUPTCY

January – November 2009

- More than HALF of Georgians who filed bankruptcy filed under Chapter 7.
- 47% of Georgians filing bankruptcies filed under Chapter 13.



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HOMEOWNER BANKRUPTCY

■ Chapter 7 Bankruptcy

- Liquidation of Debt
- Bankruptcy Abuse Prevention and Consumer Protection Act of 2005
 - Changed standards for filing bankruptcy.
 - If you want to clear out your debts, you have to give up your house.



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HOMEOWNER BANKRUPTCY

- **What does Chapter 7 Bankruptcy mean for Associations?**

- Very likely that the property will be foreclosed.
- The pre-petition debt will likely be wiped out at discharge.
- If the property is foreclosed, then the pre-petition and post-petition debts become uncollectible.



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HOMEOWNER BANKRUPTCY

■ Chapter 13 - Reorganization of Debt

- Sell off assets to pay certain debt.
- Pay off other debts over 5 years.
- Must continue to pay post-petition assessments as they come due.
- Must also make pre-petition payments according to schedule set in the Plan.
- If not, Association is entitled to “relief from stay.”



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HOMEOWNER BANKRUPTCY

- **Bankruptcy Process**

- As soon as you receive notice of a bankruptcy, let us know.
- We will file a proof of claim on behalf of the Association, letting the Trustee know how much is owed.



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HOMEOWNER BANKRUPTCY

- If the homeowner is required to make pre-petition or post-petition payments, we will work with you to monitor the payments.
- If the homeowner becomes delinquent, we will file the appropriate motion with the bankruptcy court.
- We will seek an order from the bankruptcy court allowing the Association to foreclose its lien to pay off the debt.



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HOMEOWNER BANKRUPTCY

- **What's taking so long?!**
 - The bankruptcy court moves at its own pace.
 - Creditors have several months to file proofs of claim.
 - Almost all motions allow time for response and require a hearing.
 - Confirmation of a Chapter 13 plan can be put off multiple times to make sure that all creditors are properly covered.



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Foreclosure and Bankruptcy

■ What can Associations do?

- Don't panic!!!
- Work on payment plans with distressed owners before they declare bankruptcy or their lender forecloses.
- Don't be intimidated...
 - Post-foreclosure debt can still be collected.
 - Bankruptcy means that you'll get paid or get a new neighbor.

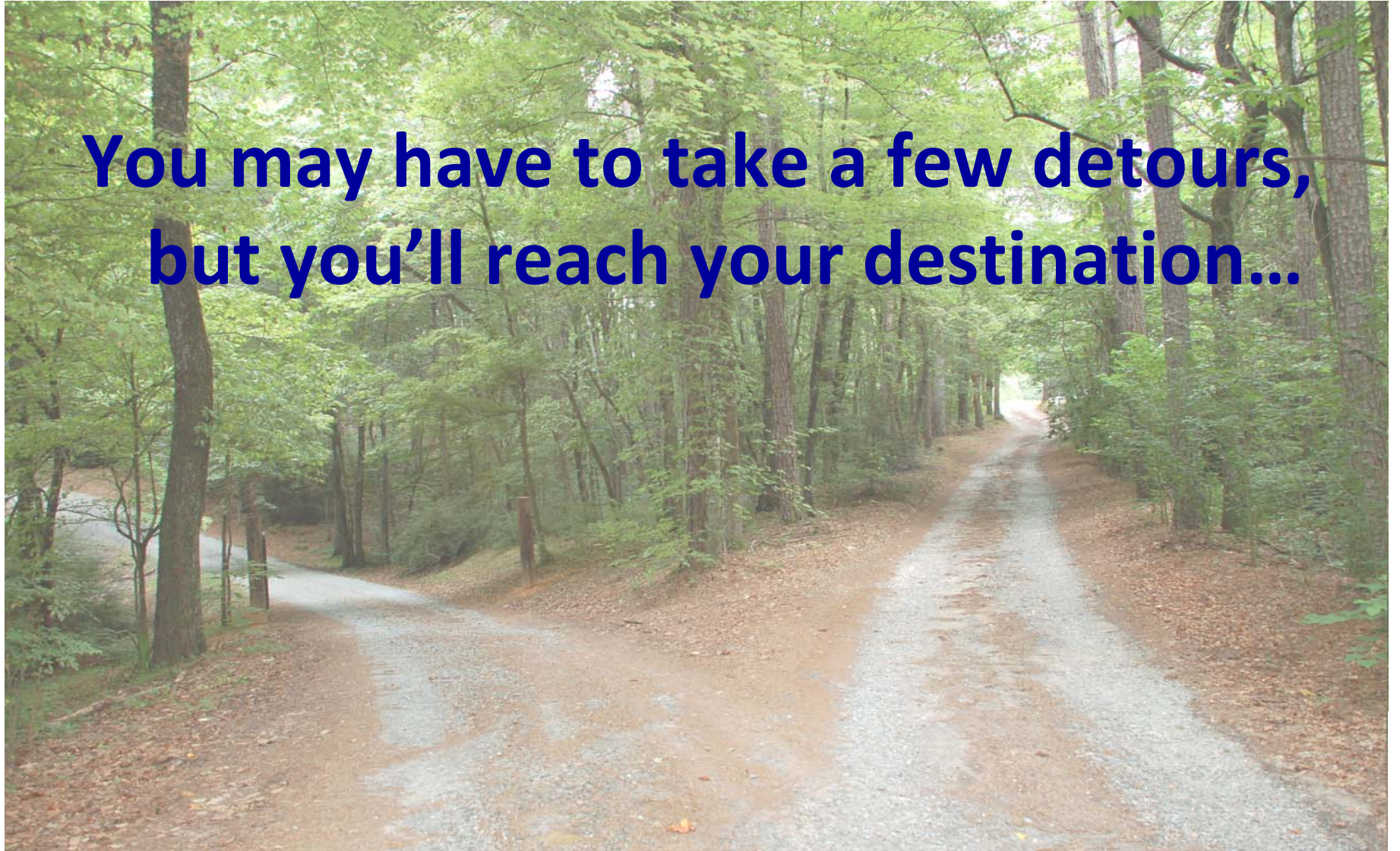


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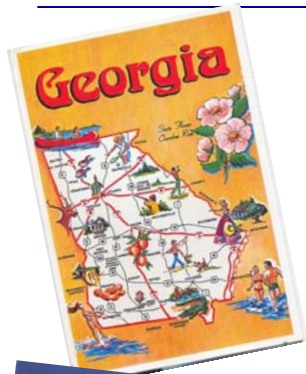
The logo consists of three stylized, overlapping shapes in blue and black, resembling a 'W' or a series of connected lines.

Foreclosure and Bankruptcy

**You may have to take a few detours,
but you'll reach your destination...**



Thank you!



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