

Financial Services Blog

[Home](#)[About](#)[Contributors](#)[Services](#)[Contact](#)[Subscribe](#)

Search



About This Blog

BakerHostetler's Financial Services Blog is designed to provide insight and commentary on recent news and events affecting the financial services industry.

Stay Connected



 Subscribe By Email

Topics

[Blockchain](#)[Class Actions](#)[Co-investment](#)[Consumer Financial Protection Bureau](#)[Diversity Policy](#)[FACTA](#)[Fair Debt Collection Practices Act](#)[Fair Housing Act](#)[Financial Privacy](#)[Financial Technology](#)[Investigations](#)[Real Estate](#)[Restructuring](#)[Telephone Consumer Protection Act](#)[Uncategorized](#)

Archives



BakerHostetler Blogs

[Antitrust Advocate](#)[China-U.S. Trade Law](#)[Class Action Lawsuit Defense](#)

[HOME](#) > [UNCATEGORIZED](#) > [FLORIDA PASSES BILL TO STOP BANKRUPTCY DEBTORS FROM "HAVING THEIR CAKE AND EATING IT TOO"](#)

Florida Passes Bill to Stop Bankruptcy Debtors From "Having Their Cake and Eating It Too"



By [Patrick Lewis](#) on March 26, 2018
POSTED IN [UNCATEGORIZED](#)

On March 20, Florida Governor Rick Scott signed [Senate Bill 220](#) into law. The bill is designed to limit the ability of defendants in foreclosure proceedings to keep contesting the foreclosure after agreeing, in bankruptcy, to surrender the property to their lenders.

By way of background, when an individual debtor files for bankruptcy, whether under Chapter 7 (liquidation) or Chapter 13 (reorganization), the debtor is required to make a statement under penalty of perjury as to how the debtor proposes to handle property that secures a debt, such as a home or a car. Broadly speaking, the debtor can choose to surrender the property, to redeem the property (by paying off the debt), or to retain the property and make payments on the debt going forward.

Oftentimes, debtors choose to surrender the property to their lenders, which typically results in the debtor receiving a discharge of the associated debt. Once a debtor agrees to surrender it, a creditor can commence or continue foreclosure or other proceedings to recover and sell the property to attempt to satisfy the creditor's claim. In recent years, a number of Florida debtors attempted to "have their cake and eat it too" by agreeing to surrender their homes in bankruptcy, thereby obtaining a discharge of the mortgage debt – but then fighting later foreclosure proceedings in state court in an attempt to delay or prevent foreclosure. The result was troubling, as it would allow debtors to live essentially "rent free" in homes while the foreclosure wound slowly through the state judicial system.

Senate Bill 220 was designed to limit this abusive conduct. The bill permits lienholders in foreclosures to submit, in a state court foreclosure, any document the debtor filed under penalty of perjury in a bankruptcy proceeding as an admission by the debtor. It further creates a rebuttable presumption that the defendant has waived all defenses to a foreclosure proceeding if the debtor (1) filed a document in the bankruptcy evidencing an intent to surrender the property, (2) did not withdraw the document and (3) received a bankruptcy discharge or had a repayment plan under Chapter 13 confirmed that provided for surrender of the property. The statute, however, does not waive a defendant's right to raise defenses based on conduct of the lender that occurs after the defendant filed a notice of intent to surrender in the bankruptcy proceeding.

The new statute will apply to foreclosure cases filed on or after Oct. 1, 2018.

TAGS: [BANKRUPTCY](#), [FLORIDA](#), [FORECLOSURE PROCEEDINGS](#), [LENDERS](#), [SENATE BILL 220](#)



Copyright, Content, and Platforms
Data Privacy Monitor
Discovery Advocate
disputes.global
Employment Class Action Blog
Employment Law Spotlight
Global Tax Enforcement
Health Law Update
IP Intelligence Report
WealthDirector

Recent Updates

Florida Passes Bill to Stop Bankruptcy Debtors From “Having Their Cake and Eating It Too”

A Guide to U.S. Regulation of Cryptocurrencies and Cryptocurrency Exchanges

CFPB Publishes Five-Year Strategic Plan

FTC Reaches Settlement With Debt Collector; Imposes Financial Penalties and Other Remedies

SEC Acts on Cryptocurrencies and ICOs

Financial Services Blog

BakerHostetler

Atlanta, Chicago, Cincinnati, Cleveland, Columbus, Costa Mesa, Denver, Houston, Los Angeles, New York, Orlando, Philadelphia, Seattle, Washington, DC



[Privacy Policy](#) | [Disclaimer](#)

About BakerHostetler

Recognized as one of the top firms for client service, BakerHostetler is a leading national law firm that helps clients around the world to address their most complex and critical business and regulatory issues. With five core national practice groups – Business, Employment, Intellectual Property, Litigation and Tax – the firm has more than 940 lawyers located in 14 offices coast to coast. BakerHostetler is widely regarded as having one of the country's top 10 tax practices, a nationally recognized litigation practice, an award-winning data privacy practice and an industry-leading business practice. The firm is also recognized internationally for its groundbreaking work recovering more than \$11 billion in the Madoff Recovery Initiative, representing the SIPA Trustee for the liquidation of Bernard L. Madoff Investment Securities LLC. [Visit bakerlaw.com.](#)