

## **Borrower's Surrender in Bankruptcy Resolves Contested Foreclosure**

As an example of the conflicting and contrasting court rulings on the effect of surrender in bankruptcy ([see our prior update](#)), the District Court of Appeal of the State of Florida, Fifth District, recently dismissed a borrower's appeal from a final judgment of foreclosure because the borrower admitted during the course of his bankruptcy proceeding that he owed the mortgage debt and stated his intention to surrender the mortgaged property.

A copy of the opinion is available at: [Link to Opinion](#).

A mortgage loan borrower filed for bankruptcy relief while his appeal of a foreclosure action was pending in state court. The mortgagee filed copies of the relevant bankruptcy pleadings with the appellate court, and the appellate court granted the mortgagee's motion to take judicial notice of these documents.

The Fifth DCA pointed out that the bankruptcy court entered an order confirming the debt and the borrower's surrender of the property. Citing a bankruptcy court ruling from the Middle District of Florida (*In re Metzler*, 530 B.R. 894, 900 (Bankr. M.D. Fla. 2015)), the Fifth DCA then dismissed the appeal.

In so ruling, the Fifth DCA held that **in bankruptcy “the term ‘surrender’ means that a debtor must relinquish secured property and make it available to the secured creditor by refraining from taking any overt act that impedes a secured creditor’s ability to foreclose its interest in secured property.”**

The Appellate Court concluded that the borrower's “actions and the orders of the bankruptcy court have fully resolved this matter.”