

Debt Relief



ATTY. LAWRENCE YANG

Compare bankruptcy discharge /foreclosure/short sale

SEVERAL clients have once again asked me questions that actually involve the distinction between the legal effects of a bankruptcy discharge, a foreclosure and a short sale. Consequently, there is confusion about these 3 concepts. Let's start with defining each concept. A bankruptcy discharge is a court order from a bankruptcy court discharging or wiping out debt. A foreclosure is the legal process involved when a secured creditor takes the collateral back when debtor has defaulted on the loan. A short sale happens when a secured creditor agrees to accept an amount that is less than what is owed when the property is sold. To illustrate:

friend for \$20,000. Client files for Chapter 7 bankruptcy and subsequently obtains a discharge from the court. Client decides that he does not want to keep the house because he lost his job. Bank A eventually takes the house back because client has not paid the mortgage for one year by foreclosure on the house. At the foreclosure auction, Obama buys the house for \$200,000. Can Bank A sue client to collect the difference between \$300,000, the amount owed to Bank A, and \$200,000, the amount Obama paid for the house? No. There are 2 reasons. If the house was located in California and the foreclosure was extrajudicial, there is no foreclosure deficiency in California. The bankruptcy court ordered the debt discharged and wiped out. Can Bank B sue client to collect \$50,000 which has not been paid? No. The reason is that the court discharged this debt. Can personal friend sue client to collect \$20,000? No. The debt is discharged in bankruptcy. A further question is this: Can Bank A, Bank B or personal friend treat these debts as uncollectible bad debts and give client a 1099 thereby making these amounts

income of client? No. The reason is a discharged debt cannot be forgiven because it was discharged in bankruptcy and there is nothing to forgive. What happens to the real estate tax? Real estate taxes which accrued before and up to date of filing of bankruptcy are discharged. Real estate taxes that accrue after date of filing of bankruptcy up to foreclosure sale date are not discharged. How about homeowner association fees? If client lived in this house, the HOA fees before and up to date of filing are discharged. HOA fees from filing date to foreclosure sale date are not discharged. HOA fees for rentals are not discharged irrespective of time period. What happens if debtor does not have a bankruptcy discharge? Can Bank A sue debtor for \$100,000 because Obama only paid Bank A \$200,000 when \$300,000 was owed by debtor? If the house is in California and it was extra judicially foreclosed, the answer is No because there is no foreclosure deficiency under such circumstances. If the foreclosure was judicial, the answer is YES. If the house is in Florida, the answer is YES because most

foreclosures there are judicial. Can Bank B sue debtor for \$50,000? YES, because debtor signed 2 documents, a mortgage and a promissory note. The foreclosure by Bank A nullified the mortgage, but the promissory note is unaffected and remains valid. Can personal friend sue debtor for \$20,000? Yes, because the promissory note remains valid even though the house is

gone. Can Bank A, B and personal friend give debtor a 1099 for amounts forgiven if they decide to forgive debtor? Yes, because these debts are not discharged in bankruptcy. Does it make sense to short sale house if you are going to file for bankruptcy? NO. Bankruptcy wipes out all debts; therefore there is no need for a short sale. With a bankruptcy discharge,

debtor owes nothing to Bank A, B and personal friend; therefore short sale has no purpose. ***
Lawrence Bautista Yang specializes in bankruptcy, business, real estate and civil litigation and has successfully represented more than five thousand clients in California. Please call Angie, Barbara or Jess at (626) 284-1142 for an appointment at 1000 S. Fremont Ave., Bldg. A-1 Suite 1125 Unit 58, Alhambra, CA 91803. (Advertising Supplement)

Who inspires...

PAGE B3  *Bing: As a life coach, I'm particularly interested in work/life balance. How do you achieve this for yourself? How does your values help you balance what is important to you? How do you relax?*
Efren: I've learned to manage my time. I created my own boundaries and have set my limits. I have shared my loads to my co-volunteers and have cut back on spending time with unimportant things that eat up my schedule. When things get tough, I pause for a while, lay everything aside and take a well-

deserved break. Many people are spending enough time at work and enough time with their families, friends, and other things that they don't have enough time left for themselves. *Bing: How do you convert feelings of hopelessness into positive action? How did you celebrate Father's Day? Do you have any special guidance for fathers?*
Efren: There is always hope but there's a main problem that needs to be addressed: the loss of the desire to learn and the intense desire to have money that for me is so dangerous. How can one have material wealth without earning for it using education as

a strong base? Others like hunger, sickness, and illiteracy are far outweighed by the lack of right values. I sincerely believe that if you value what's right and do what's best then the rest will follow. Of course there's a huge need to address homelessness, hunger, illiteracy, and sickness but one's soul has to be healthy and his values should be attuned to God. You'll never lose hope when your hope is in God. I made some treat for my father and spent time with him. *Bing: The global economy is particularly hard on poor people and those who have just managed to get by before the downturn. Do you have any inspirational words to offer in regard to the economic* **PAGE B6**

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