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ZERO-BALANCE REPORTING OF MORTGAGE DEBT POST-BANKRUPTCY

The zero-balance approach to reporting post-bankruptcy discharged loans is, with some dissent, the prevailing view required of furnishers by the courts. The authors discuss the majority and minority views, and point out that zero-balance reporting may create inaccuracy when debtors continue to make mortgage payments post-discharge in order to avoid foreclosure. They suggest that the CFPB and the courts reconsider the wholesale zero-balance approach.

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The recent spike in Fair Credit Report Act (FCRA)¹ litigation is undeniable — the number of newly filed FCRA cases has increased from approximately 1,500 in 2007 to nearly 4,000 in 2016.² One of the key factors contributing to this rise is the substantial increase in personal bankruptcies filed in the aftermath of the 2008 housing market crash and subsequent recession.³

Although bankruptcy filings have now receded to their pre-recession levels, the surge in filings and subsequent discharges have resulted in more frequent clashes between debtors and furnishers of information (oftentimes lenders and servicers of residential mortgage loans) regarding post-discharge reporting. Those clashes are ongoing.

¹ 15 U.S.C. §§ 1681 *et seq.*

² <https://webrecon.com/2016-year-in-review-fdcpa-down-fcra-tepa-up/> (last visited August 30, 2017).

³ Personal bankruptcies increased from 934,009 in 2008 to 1,512,989 in 2010. U.S. Courts Website, <http://www.uscourts.gov/news/2012/08/03/bankruptcy-filings-continue-decline> (last visited August 30, 2017). Although personal bankruptcies have now returned to below their pre-recession levels (*id.*), FCRA claims arising from those bankruptcies are a lagging indicator because debtors do not generally file FCRA actions until their bankruptcy proceedings are complete.

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Generally speaking, when a debtor with a consumer loan secured by a mortgage on real property files for bankruptcy and receives a discharge, there are three primary dispositions for the loan and the property. Some debtors reaffirm their obligation under the loan in the bankruptcy proceedings, so the loan is unaffected by the bankruptcy discharge. Other debtors abandon the property as part of the bankruptcy proceedings (often referred to as “surrendering the property”) and allow the lender to take title to the property, through foreclosure or otherwise, without objection (either pre- or post-discharge). A third set of debtors obtain a discharge of their personal liability on the loan, but remain in the

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