For associations concerned with owner bankruptcies, quarterly assessments are preferred over annual assessments as post-petition assessments are not dischargeable.

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Under Florida law, it is better for an HOA to charge installment dues over the course of a year rather than allow for a lump sum payment at the beginning of each year. This is because post-petition debts, including post-petition HOA fees, are not dischargeable in a bankruptcy.

Chapter 7, under Title 11 of the United States Code, states that "A discharge relieves the debtor from all debts that arose prior to the filing of the bankruptcy petition," except as provided in § 523 of the Code. 11 U.S.C. § 727(b). After an appellate circuit split involving HOA fees during the mid-1990s, Congress amended §523. Then, in 2005, Congress further modified that amendment through the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA), which changed the language of § 523(a)(16).

The language of 11 U.S.C. § 523(a)(16) now provides an exception to discharge "for a fee or assessment that becomes due and payable *after* the order for relief to a membership association with respect to the debtor's interest in a . . . homeowners' association, *for as long as the debtor . . . has a legal, equitable or possessory ownership interest in such unit . . .*" In other words, any HOA fees that come due after the bankruptcy filing (post-petition) are not discharged, and the debtor is still liable for those dues as long as he continues to have a "legal, equitable or possessory ownership interest in such unit." 11 U.S.C. § 523(a)(16); see also Ariane Holtschlag, *Assessing § 523(A)(16),* Am. Bankr. Inst. J. 16, 17 (June 2012).

According to Florida law, homeowners' association agreements are covenants running with the land. § 720.301(4) FLA STAT. (2012). This means it doesn't matter if the contract between the HOA and the homeowner was signed prior to the bankruptcy filing, what matters is whether the homeowner still has an interest in the land after the bankruptcy filing. Therefore, the determining factor, concerning HOA fees that come due after the bankruptcy filing, is whether the debtor is either living in the property or if the property is still titled in the debtor's name. If the answer is yes to either of those two, then in Florida, the debtor is still liable for those post-petition HOA fees because that HOA agreement is not a pre-petition contract that is discharged in bankruptcy, but rather, is a covenant running with the land.

In conclusion, when it comes to Florida homeowners' associations looking to protect their interests in the event of a homeowner bankruptcy, installment HOA fees are preferable to a one-time yearly fee. In fact, the smaller the time frame for charging fees the better (quarterly is better than yearly, and monthly is better than quarterly). This is because if a homeowner files for bankruptcy in March, for example, any HOA fees due after March are not discharged, but are considered a valid post-petition debt as long as the homeowner retains an interest in the property.