

## **AK Bankruptcy Court Says Homeowner Can't Discharge Debts for HOA Dues After Filing of Bankruptcy Provided through HOA Member Services**

U.S. Bankruptcy Court, Eastern District of Arkansas Little Rock Division, decision (July 21, 2015).

This case involved the issue of whether homeowners' association fees and assessments that accrued after a homeowner had filed a Chapter 13 bankruptcy were dischargeable. The homeowner had purchased a property in a development governed by a homeowners' association in 2009. The property was subject to deed restrictions that included the provisions contained in the Declaration for the homeowners' association which had been recorded in 1975, which included the obligation of the property owner to pay assessments, late fees, and collection costs. The homeowner filed a Chapter 13 bankruptcy in October of 2010, and ceased making y payments for assessments to her homeowners association at that time. The homeowner then sought to have the debt owed to her homeowners' association for the unpaid assessments that had accrued since the filing of the Chapter 13 discharged in her bankruptcy. The homeowners' association did not file a proof of claim in the Chapter 13 for the delinquent post-petition assessments and did not seek to participate in the homeowner's bankruptcy case and Chapter 13 Plan.

The bankruptcy court ruled in favor of the homeowners' association after finding that the assessments that accrued after the filing of the bankruptcy in October of 2010 were post-petition obligations that "ran with the land" (due to the deed restrictions) for which no proof of claim had been filed by the association. Applying section 1305 of the Bankruptcy Code, the court determined that the post-petition fees and assessments owed to the association were debts that were not provided for under the homeowner's Chapter 13 plan, and accordingly, they were nondischargeable debts under section 1328(a) of the Bankruptcy Act.