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Query

Under Florida law, what are a secured creditor's procedural requirements and strategic considerations when pursuing residential mortgage foreclosure where the borrower has filed a Chapter 11 bankruptcy petition, including automatic stay relief standards under 11 U.S.C. § 362, the interaction between Florida's homestead exemption and the bankruptcy estate, and post-foreclosure deficiency judgment rights under Florida Statute § 702.06?

Confidence, Coverage & Methodology

✓ Overall Confidence: Moderate-to-High

High on the Florida statutory framework (Chapter 702) and the text of 11 U.S.C. § 362. Moderate on the interaction between Florida's constitutional homestead and the bankruptcy estate because no Eleventh Circuit or Florida Supreme Court decision directly on point was located in the case-law sources currently available.

Authority layers used: Florida statutes (Fla. Stat. §§ 702.01-702.12, including 702.06, 702.10, and 702.12); federal bankruptcy statutes (11 U.S.C. § 362) and Federal Rule of Bankruptcy Procedure 4001; and one Florida Supreme Court decision on foreclosure tolling (*Bartram v. U.S. Bank*).

Coverage limitation: No directly on-point appellate decision regarding the interplay between § 702.06's owner-occupied deficiency cap and a Chapter 11 discharge was located. The analysis ties back to statutory text and general Florida foreclosure principles.

Direct holdings vs. inferences: Statutory requirements come directly from cited authorities. Strategic recommendations are inferences applied to the fact pattern.

Bottom Line

In Florida, a secured residential mortgagee facing a Chapter 11 borrower should seek stay relief under 11 U.S.C. § 362(d)(1) (for cause / lack of adequate protection) or § 362(d)(2) (no equity + not necessary for effective reorganization), recognize that a Florida homestead typically enters the estate but remains exemptible, and preserve deficiency rights under Fla. Stat. § 702.06 — where, for owner-occupied property, the deficiency is statutorily capped at judgment amount minus fair market value at sale.

Direct Answer

Procedural Framework

When a Florida residential borrower files Chapter 11, 11 U.S.C. § 362(a) immediately halts the state-court foreclosure. The mortgagee's primary tool is a motion for relief from the automatic stay under § 362(d), filed under Fed. R. Bankr. P. 4001 and heard within the 30-day window of § 362(e). Common grounds include:

- **§ 362(d)(1)** — "for cause, including lack of adequate protection" (non-payment, deteriorating property, lapsed insurance)
- **§ 362(d)(2)** — no equity and the property is not necessary for an effective reorganization
- **§ 362(d)(3)** — single-asset real estate (generally unavailable for owner-occupied homestead because § 101(51)(B) excludes residential property with fewer than 4 units)
- **§ 362(d)(4)** — in rem relief where the filing is part of a scheme to delay, hinder, or defraud

Burdens are allocated by § 362(g): the creditor carries the burden on equity; the debtor carries it on all other issues.

Homestead and the Estate

Upon filing, the debtor's legal and equitable interests — including the Florida homestead — become property of the estate under 11 U.S.C. § 541, but the debtor may claim the Florida constitutional homestead exemption. The exemption shields equity from most unsecured creditors, but it does not impair the mortgagee's consensual lien; the mortgage can still be enforced through foreclosure once the stay is lifted or through the plan.

Post-Foreclosure Deficiency

Fla. Stat. § 702.06 places the entry of a deficiency decree within the "sound discretion of the court," but for owner-occupied residential property, the deficiency amount may not exceed the difference between the judgment amount and the fair market value of the property on the date of sale, with a rebuttable presumption of owner-occupancy where a homestead tax exemption appears on the certified rolls before the foreclosure filing. The deficiency statute of limitations is one year from issuance of the certificate of title for sales on or after July 1, 2013 (Fla. Stat. § 95.11). Any in personam deficiency claim will be affected by the Chapter 11 discharge.

Jurisdiction Snapshot

Layer	Authority
State	Florida (statewide)
Statutory	Chapter 702, Fla. Stat.; Art. X, § 4, Fla. Const.
Federal	11 U.S.C. §§ 362, 541, 506, 1129; Fed. R. Bankr. P. 4001
Courts	U.S. Bankruptcy Courts (M.D., S.D., N.D. Fla.); FL Circuit Courts; FL DCAs; 11th Cir.

Key Florida Statutes

- **Fla. Stat. § 702.01** — Mortgages must be foreclosed in equity; counterclaims are severed
- **Fla. Stat. § 702.015** — Complaint must allege plaintiff holds original note or is person entitled to enforce under § 673.3011
- **Fla. Stat. § 702.06** — Deficiency decree: discretionary; owner-occupied cap at judgment minus FMV; rebuttable homestead-tax presumption; one-year limitations period
- **Fla. Stat. § 702.10** — Order-to-show-cause for expedited foreclosure (payment-during-pendency not available for owner-occupied residences)
- **Fla. Stat. § 702.11** — Adequate protections for lost, destroyed, or stolen notes
- **Fla. Stat. § 702.12** — Bankruptcy filings (e.g., Statement of Intention to surrender) usable as admissions; rebuttable presumption of waiver of defenses upon confirmed surrender
- **Fla. Stat. § 95.11** — One-year deficiency limitations period from certificate of title issuance

Key Federal Bankruptcy Authority

- **11 U.S.C. § 362(a)** — Automatic stay of judicial actions and lien enforcement
- **11 U.S.C. § 362(d)(1)** — Relief for cause, including lack of adequate protection
- **11 U.S.C. § 362(d)(2)** — Relief where debtor lacks equity and property not necessary for reorganization
- **11 U.S.C. § 362(d)(3)** — SARE relief (excludes owner-occupied <4 units per § 101(51)(B))
- **11 U.S.C. § 362(d)(4)** — In rem relief for serial bad-faith filings
- **11 U.S.C. § 362(e)** — Preliminary hearing within 30 days or stay terminates
- **11 U.S.C. § 362(g)** — Burden allocation: creditor proves equity; debtor proves all else
- **Fed. R. Bankr. P. 4001** — Motion practice; automatic 14-day stay of relief orders

Case Law

Bartram v. U.S. Bank, 211 So. 3d 1009 (Fla. 2016) — Dismissal of foreclosure decelerates the loan; lender may file successive foreclosure after dismissal without violating the five-year limitations period, provided the subsequent default is post-dismissal. Relevant because a Chapter 11 filing can toll or reshape the limitations clock.

Strategic Considerations for the Secured Creditor

- **File a proof of claim promptly.** Preserve the secured claim with note, mortgage, and assignment chain — mirroring § 702.015 standing allegations.
- **Choose the right § 362(d) theory.** § 362(d)(1) is the workhorse for residential cases. § 362(d)(2) is powerful where debt exceeds value. § 362(d)(3) SARE is generally unavailable for owner-occupied 1–4 family residences.
- **Demand adequate protection early.** Request periodic payments equal to interest on collateral value to establish the record for stay relief if payments lapse.
- **Leverage § 702.12 in parallel state-court litigation.** If bankruptcy filings evidence intent to surrender, that filing becomes admissible as an admission and may support waiver of defenses.
- **Protect deficiency rights.** Ensure the plan does not extinguish deficiency; note § 702.06's owner-occupied cap; obtain a reliable date-of-sale appraisal; observe the one-year limitations period.
- **Watch the 14-day Rule 4001 stay.** Any order granting stay relief is automatically stayed 14 days unless the court orders otherwise — build into foreclosure-sale calendar.

Practical Takeaways

1. Open two parallel workstreams: (a) bankruptcy (proof of claim, stay-relief motion, plan objections) and (b) state foreclosure preservation (ensure § 702.015 compliance, preserve § 702.06 deficiency language).
2. Build the adequate-protection record from day one; missed postpetition payments and lapsed insurance are the cleanest § 362(d)(1) facts.
3. If the debtor's bankruptcy schedules signal surrender, use § 702.12 offensively in Florida circuit court.
4. Do not assume § 362(d)(3) (SARE) — it generally will not fit an owner-occupied homestead.
5. Calendar the one-year post-sale deficiency window and the § 702.06 FMV proof requirements.

Suggested Follow-Up Questions

1. Is the property currently owner-occupied (with a homestead tax exemption on the certified rolls), or has the debtor relocated — affecting the § 702.06 cap and § 702.10(2)(i) payment-during-pendency remedy?
2. Does the borrower's Chapter 11 plan propose cure-and-reinstatement, cramdown, or surrender — each of which materially changes the secured creditor's stay-relief posture and deficiency strategy?