New Jersey N2K Hour:

Need To Know Impacts of Bankruptcy

Webex Presentation: July 17, 2018

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FEATURING:



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- This program has been approved for 1 standard credit hour of continuing legal education [CLE] credit for attorneys by the New Jersey Supreme Court.
 - Confirmation/Attendance certificates will be e-mailed to NJ attorneys following the program.
- This program has been approved for 1 standard credit hour of continuing education [CE] credit for New Jersey Licensed Title Insurance Producers



What You N2K About The Impacts of Bankruptcy





Your Search Contains a Bankruptcy Return

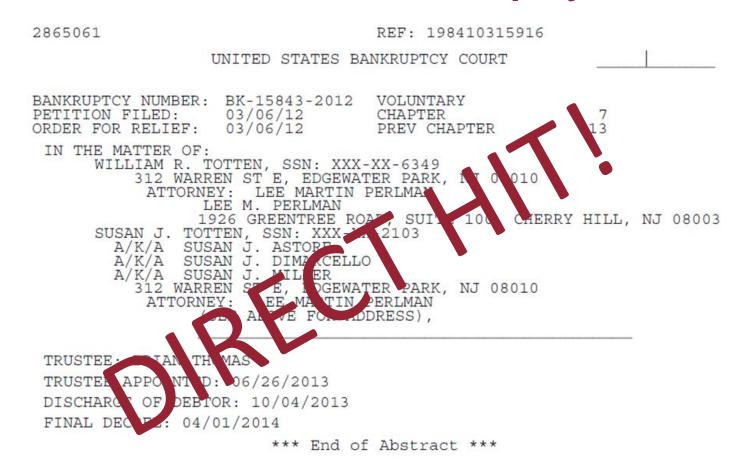
2865061 REF: 198410315916 UNITED STATES BANKRUPTCY COURT BANKRUPTCY NUMBER: BK-15843-2012 VOLUNTARY PETITION FILED: 03/06/12 CHAPTER ORDER FOR RELIEF: 03/06/12 PREV CHAPTER IN THE MATTER OF: WILLIAM R. TOTTEN, SSN: XXX-XX-6349 312 WARREN ST E, EDGEWATER PARK, NJ 08010 ATTORNEY: LEE MARTIN PERLMAN LEE M. PERLMAN 1926 GREENTREE ROAD, SUITE 100, CHERRY HILL, NJ 08003 SUSAN J. TOTTEN, SSN: XXX-XX-2103 A/K/A SUSAN J. ASTORE A/K/A SUSAN J. DIMARCELLO A/K/A SUSAN J. MILLER 312 WARREN ST E, EDGEWATER PARK, NJ 08010 ATTORNEY: LEE MARTIN PERLMAN (SEE ABOVE FOR ADDRESS), TRUSTEE: BRIAN THOMAS TRUSTEE APPOINTED: 06/26/2013 DISCHARGE OF DEBTOR: 10/04/2013 FINAL DECREE: 04/01/2014 *** End of Abstract ***

The property being sold is:

312 Warren Street E Edgewater Park NJ

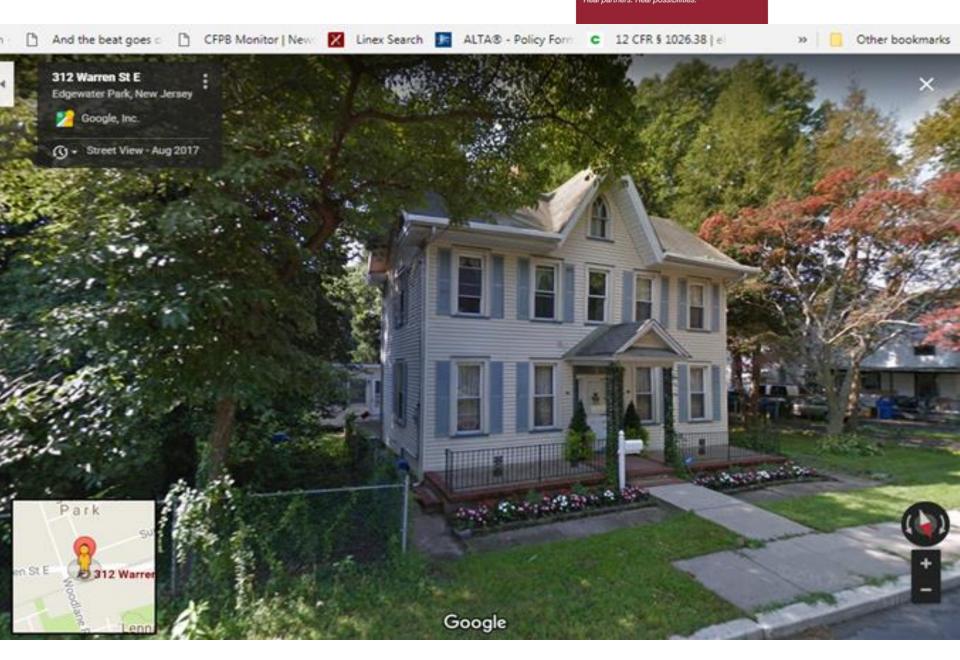


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The property being sold is:

312 Warren Street E Edgewater Park NJ





A Bankruptcy is not a lien

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It is NOTICE of the existence of a bankruptcy case.



Bankruptcy Return In Your Search? A Different Rules Apply

- The laws of the State of New Jersey apply to real estate located within New Jersey just as the State Laws of each of the 50 States govern local issues.
- But there is an exception to this rule: Bankruptcy a Federal statutory enactment.
- The power to enact laws dealing with Bankruptcy was granted to the United States Congress by the United States Constitution.
- Federal law takes priority over state law.
- Bankruptcy law changes the way we apply state law to real estate transactions.



Statutory Basis of Bankruptcy Law

- The first Bankruptcy Act was adopted in 1898. Lenience ultimately replaced debtors prison for folks whose debts exceeded their assets or who couldn't meet their financial obligations as they came due.
- The 1898 Bankruptcy Act remained in effect until the adoption of the Bankruptcy Reform Act of 1978.
- The 1978 Bankruptcy Code remained in effect until October of 2005 when the Bankruptcy Abuse Prevention & Consumer Protection Act of 2005 went into effect.



Bankruptcy Abuse Prevention & Consumer Protection Act of 2005

- A case may be dismissed for abuse, demonstrated by the totality of the circumstances or bad faith.
- Credit Counseling requirement added.
- Attorney accountability added: Attorney certifies having no knowledge, after an inquiry, that information in the petition is incorrect.
- Abusive creditor practices addressed.
- Domestic support obligations defined and made first priority and non-dischargeable.
- New disclosure requirements for debt relief agencies.



Bankruptcy Abuse Prevention & Consumer Protection Act of 2005

- New exceptions to the automatic stay for proceedings concerning child custody, domestic violence and divorce not involving division of property; garnishment to pay support; interception of tax refunds for domestic support obligations; and withholding of licenses from debtors who do not pay support.
- If a debtor files a new case after two or more dismissed cases were pending in the previous year, no automatic stay goes into effect, unless ordered by the Court, after notice and a hearing establishing that the latest case is filed in good faith.



Bankruptcy Abuse Prevention & Consumer Protection Act of 2005

- Maintenance and other fees arising with respect to a debtor's interest in a residential condominium, cooperative or homeowner's association are non-dischargeable for as long as the debtor has a legal, possessory, or equitable interest in such property.
- New repeat filings provisions for those seeking to abuse the automatic stay or file too often.
- Random audits imposed for 1 out of every 250 filings.
- Trustee can avoid fraudulent transfers made within two years before filing, rather than the prior one year period.



Differences Between Chapters 7, 11, 12 &13

Chapter 7 – Liquidation Bankruptcy, Straight Bankruptcy or No Asset Bankruptcy.

Wipes out personal obligation for dischargeable debts without any further/future payments.

Chapter 13 – Wage earner plan, where the debtor pays all or part of his/her debts over 3 to 5 years. Only available to individuals. Court approved/ordered plan must be paid in full to obtain a discharge.

Chapter 11 – Reorganization plan, business bankruptcy.

Chapter 12 – Farmers and Fishermen reorganization plan.



United States Code 11 USC § 362

One of the main functions of a bankruptcy filing is to stop all collection activity while the debtor attempts to get their affairs in order. The stop is referred to as a stay. Only with permission from the Bankruptcy Court will that stay be removed so a creditor can continue their collection efforts.

- Arises by operation of law; Stays most acts against the debtor, the debtor's property, and property of the estate; Prevents commencement or continuation of pending litigation; Prevents enforcement of judgments; Prevents perfection of liens against property of the estate or debtor.
- Applies to appeals
- Exception: Property Taxes



Maritime Electric Co., Inc., v UJB 959 F.2d 1194 (3rd Cir. 1991)

- "Automatic Stay" serves several purposes:
 It give the bankrupt a breathing spell from creditors by stopping all collection efforts, all harassment, and all foreclosure actions.
- It is "automatic" and applies irrespective of whether parties to a proceeding are aware that a petition has been filed.



- A judgment entered in violation of the automatic stay is void.
- It should nonetheless be shown and set up with a requirement that it be removed of record.
- Chance of a creditor claim in the future still exists.
- 11 USC §362(h) provides for the recovery of actual damages, costs and attorneys fees should a creditor refuse to sign a warrant to satisfy or otherwise have the judgment removed of record once the creditor is advised that their judgment was entered in violation of the automatic stay.



- The automatic stay remains in effect until:
 - The entry of an Order lifting the stay;
 - The entry of an Order closing the bankruptcy case;
 - The entry of an Order dismissing the bankruptcy case; or
 - The granting of a Discharge in bankruptcy.



Abandonment

11 USC § 554

- Trustee may abandon property that is burdensome or of inconsequential value and benefit to the bankrupt estate.
- Abandonment requires notice and a hearing.
- Scheduled but unadministered property is abandoned at bankruptcy case closure; unscheduled property remains property of the bankrupt estate.



Your Search Contains a Bankruptcy Return?

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HERE IS WHAT YOU NEED TO KNOW



If a Seller is in Bankruptcy - Chapter 7 or 13

- The Property being sold must be scheduled and administered.
- Both a Chapter 7 or a Chapter 13 must be closed, with a final decree closing the case and with no open judgments of record.
- All mortgages and other liens must be paid off and discharged.
- If the bankruptcy case is still open, a Bankruptcy Court Order authorizing the sale must be obtained.



If a Borrower is in Bankruptcy – Chapter 7 or 13

- The property being refinanced must be scheduled and administered.
- The bankruptcy case must be closed or an Order obtained approving of the new mortgage financing.
- If there is an open Chapter 13, obtain a payoff statement from the Trustee and payoff the balance of the plan at closing.
- Pay off all mortgages and other liens.
- Open judgments must be satisfied if lien has not been removed by Bankruptcy Court Order.



If a Purchaser is in Bankruptcy – Chapter 7 or 13

- The bankruptcy case must be closed by final decree.
- If a purchaser is in a active bankruptcy, a court order approving of the purchase transaction and mortgage must be obtained.

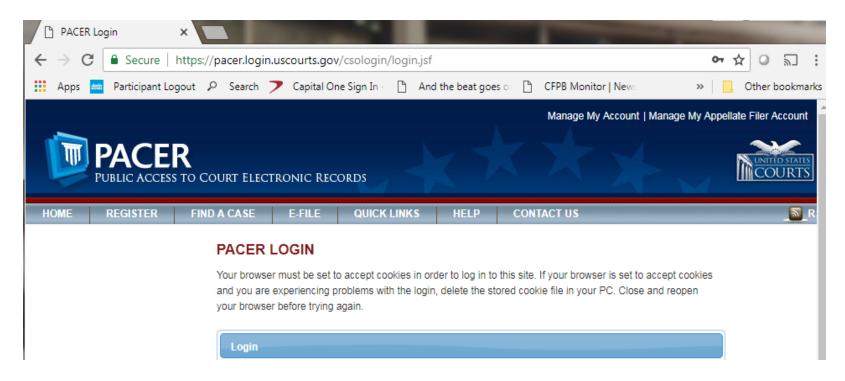


Order To Sell Free and Clear – Chapter 7 or 13

- Under certain circumstances, the bankruptcy trustee may sell estate property free and clear of liens or other interests.
- A sale will only be considered free and clear of liens if the notice of the proposed sale and the subsequent court order permitting the sale say 'free and clear'.
- Never omit property taxes or other municipal liens
- Any Order may be appealed within 14 days, unless the court orders otherwise.



Verify All Bankruptcy Information



http://pacer.psc.uscourts.gov/



Bankruptcy Discharge

- Releases the debtor from personal liability.
- The debtor is no longer legally required to pay any debts that are discharged.
- The discharge is a permanent order prohibiting the creditors of the debtor from taking any form of collection action on discharged debts, including legal action and communications with the debtor, such as telephone calls, letters, and personal contacts.



Judicial Lien Avoidance

- 11 USC §522(f) Is the provision that is used to remove judgment liens in the bankruptcy court. It is a part of the debtor's "Fresh Start".
- Only affects judgment liens/judicial liens, not mortgages.
- Allows avoiding liens to the extent they impair the debtor's exemption rights.
- There must be a lien to avoid.
- Judgments do not apply to after acquired property.



Judicial Lien Avoidance

- In Re Menell Judgment lien could only be avoided to the extent that it impaired the debtor's exemption in real property.
- Here, the judgment was larger than the debtor's exemption so the lien was only partially avoided.
- The federal bankruptcy exemptions:
 - \$23,675 for an individual filer;
 - Married filing a joint bankruptcy petition the homestead exemption is \$47,350.



Judicial Lien Avoidance – State Court

N.J.S.A. 2A:16-49.1

- Motion procedure.
- Application one year after bankruptcy discharge
- In Court where judgment was entered
- On notice to creditor

If the judgment was scheduled and discharged in bankruptcy, the Court will enter an Order removing the lien.



Judicial Lien Avoidance – State Court

N.J.S.A. 2A:16-49.1

- Associates v. Langston 565 A. 2d 702, 236 NJ Super. 236 (App. Div., 1989) for a review of the law in NJ regarding the removal of judgment liens after bankruptcy.
- REMEMBER: Bankruptcy Does Not Remove Judgment Liens; it only discharges personal liability.



Creditors Rights Issues

11 USC §548

FRAUDULENT TRANSFERS – Made with actual intent to defraud existing or future creditors (subjective); or Debtor receives less than reasonably equivalent value and one of three conditions exist:

1) Debtor was insolvent; 2) remaining capital was unreasonably small; or 3) future debts were beyond debtors ability to pay.

Fraudulent Transfers may be set aside.



Creditors Rights Issues

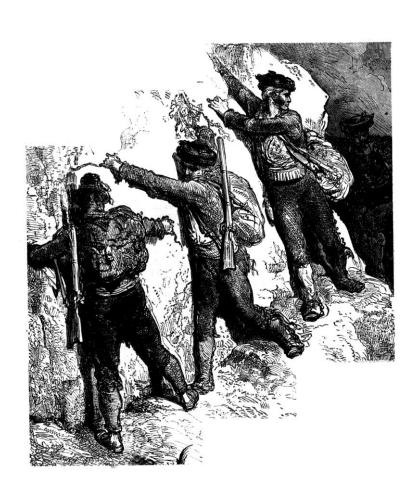
• 11 USC §549

 POSTPETITION TRANSFERS – Made after filing Bankruptcy petition; avoidable by trustee if not authorized by Court Order.

 That is why you must make sure that no bankruptcy is pending at the time of a sale.



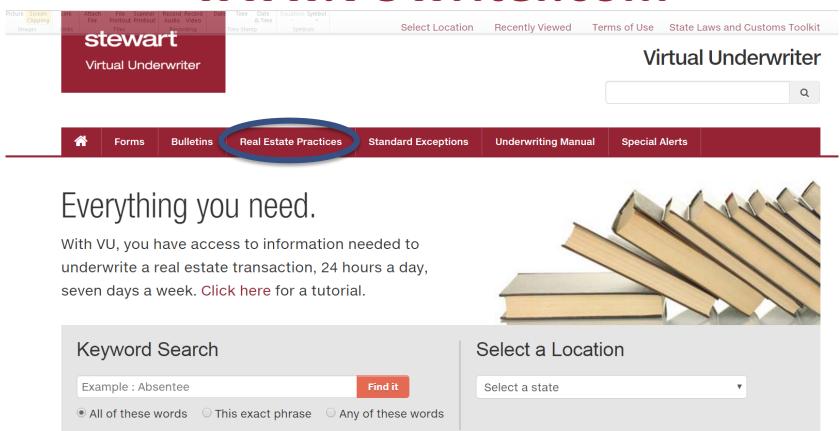
BANKRUPTCY?



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THANK YOU FOR JOINING US!

Please mark your calendars:

AUGUST N2K HOUR

Tuesday August 14th 10:00AM

Water Rights and Riparian Issues