

**New Jersey  
N2K Hour:**

**The Impacts of  
Bankruptcy on  
Title in NJ**

Webex Presentation,  
February 9, 2021

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# What is a Bankruptcy?

- When an individual or entity is unable to repay their debts to creditors, they can initiate a legal proceeding to seek relief from some or all of their debts.
- The legal proceeding simultaneously provides creditors an opportunity for repayment.
- A bankruptcy is handled in federal courts, and the process begins when a debtor files a petition in that court to seek relief.
- All the debtor's assets are then measured and evaluated, and the assets may be used to repay a portion of the outstanding debt.

# 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      | 7  |
| ORDER FOR RELIEF:  | 03/06/12      | PREV CHAPTER | 13 |

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),

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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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# 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?

- 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 one major 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 individuals 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 (cont.)

- 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 (cont.)

- 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.

# The Automatic Stay

## 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

## The Automatic Stay (cont.)

### Maritime Electric Co., Inc., v UJB

### 959 F.2d 1194 (3<sup>rd</sup> Cir. 1991)

- “Automatic Stay” serves several purposes: It gives 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.

## The Automatic Stay (cont.)

- 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 (cont.)

- 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.



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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 there must be an Order 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 an 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 states ‘free and clear’.
- Never omit property taxes or other municipal liens
- Any Order may be appealed within 14 days, unless the court orders otherwise.

# 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 (cont.)

- **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 (cont.)

### 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.

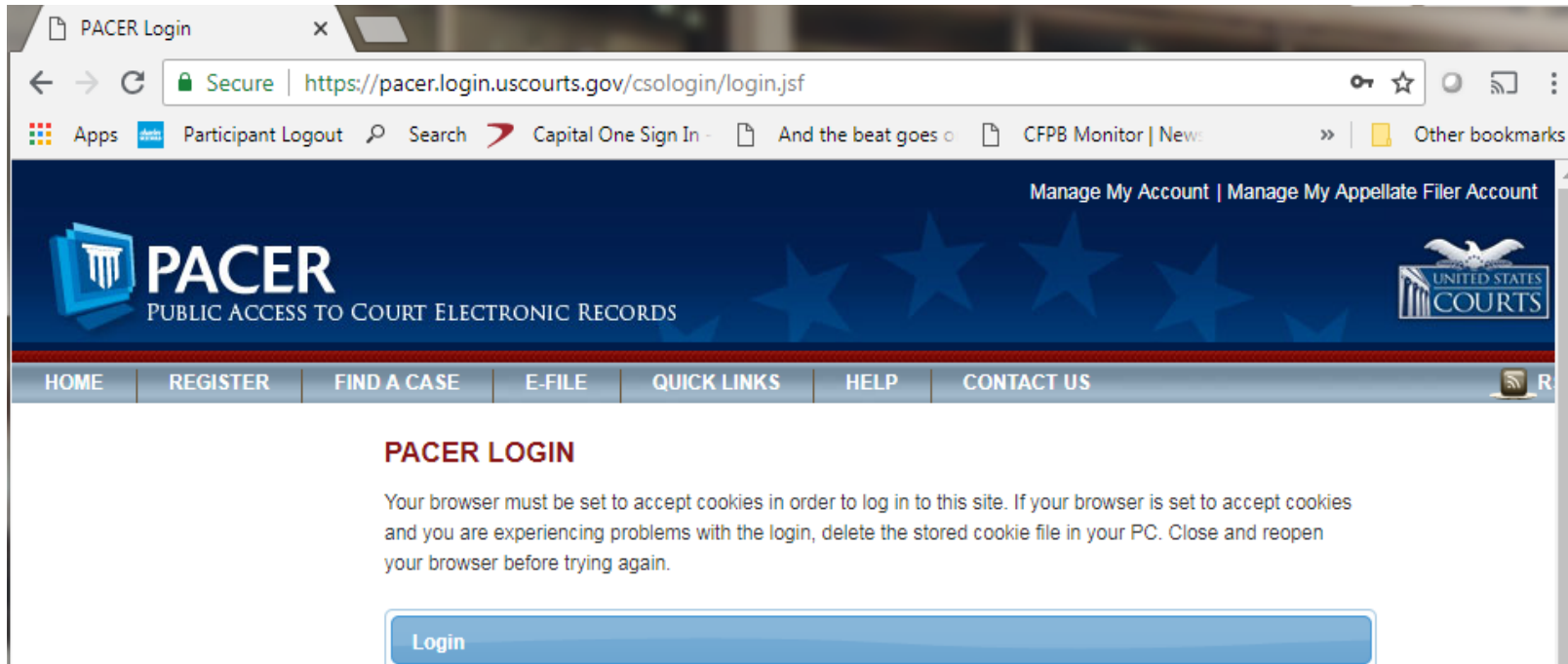
Fraudulent Transfers may be set aside.

## Creditors Rights Issues (cont.)

- **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.

# Verify All Bankruptcy Information



The screenshot shows a web browser window with the title "PACER Login" and the URL "https://pacer.login.uscourts.gov/csologin/login.jsf". The browser's address bar shows "Secure" and "https://pacer.login.uscourts.gov/csologin/login.jsf". The browser's bookmark bar includes "Apps", "Participant Logout", "Search", "Capital One Sign In", "And the beat goes", "CFPB Monitor | New", and "Other bookmarks". The page header features the PACER logo (Public Access to Court Electronic Records) and the United States Courts logo. The navigation menu includes "HOME", "REGISTER", "FIND A CASE", "E-FILE", "QUICK LINKS", "HELP", and "CONTACT US". The main content area displays the "PACER LOGIN" heading and a message: "Your browser must be set to accept cookies in order to log in to this site. If your browser is set to accept cookies and you are experiencing problems with the login, delete the stored cookie file in your PC. Close and reopen your browser before trying again." Below the message is a blue "Login" button.

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

## Wrap-Up and Review

- A bankruptcy is a legal proceeding in which an individual or entity that is unable to repay their debts, files a petition to seek relief from some or all of their debts.
- There are 4 types of bankruptcies that we are primarily concerned with, which consist of Chapter 7, Chapter 11, Chapter 12, and Chapter 13.
- A bankruptcy only discharges a debtor from personal liability from the creditor's lien, unless a motion under **11 USC §522(f)** has been granted to strip the lien from the debtor's real property.
- In NJ, an alternative motion procedure under **N.J.S.A. 2A:16-49.1** can be used to strip a lien from the debtor's real property one year after a bankruptcy discharge is issued.

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# Virtual Underwriter

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Please mark your calendars for our:

## March N2K HOUR

Tuesday

March 9th

11:00AM