

LEGALLY SPEAKING

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What is Bankruptcy?



In today's turbulent economic times, more and more individuals are faced with the prospect of being unable to pay their debts at any time in the foreseeable future. In most circumstances, this results from either a loss of income or divorce or from illness. The Bankruptcy Code has been promulgated to give relief to the honest debtors.

Bankruptcy laws have been in existence throughout the ages. References exist as far back as the Old Testament. In England, the Statute of Bankrupts was enacted in 1542. Bankruptcy plays a significant role in the Dickens' novels, *Bleak House* and *The Pickwick Papers*. Abraham Lincoln, as a young prairie lawyer, filed bankruptcy petitions for clients. Author Mark Twain filed bankruptcy when a typesetting machine in which he had heavily invested, proved to be a failure. Despite having no legal obligation to do so, after emerging from bankruptcy, he voluntarily chose to pay all his debts in full from future earnings. Recent celebrity bankruptcies include actress Kim Basinger, football great Lawrence Taylor and Mick Fleetwood, one of the co-founders of the musical group Fleetwood Mac.

Bankruptcy is a Federal court process that can help individuals and businesses eliminate overwhelming debts or establish a plan to pay them. Individuals generally file either one of two types of bankruptcy: a Chapter 7 straight

bankruptcy or a Chapter 13 repayment plan. Businesses file either a Chapter 7 if they no longer wish to continue operations, or a Chapter 11 reorganization. There is also the seldom-used Chapter 12 which is for family farmers and fishermen.

In an individual Chapter 7, the bankruptcy court forgives most debts that are not secured by assets or property (such as a house or car). In addition, an individual is allowed to retain certain "exempt property" which generally includes all clothing, furniture and other personal possessions and a certain amount of equity in their home. A trustee is appointed to liquidate any non-exempt assets and to distribute the proceeds to creditors in accordance with the priorities described in the bankruptcy code. A Chapter 7 bankruptcy does not eliminate all debts. Alimony, child support, student loans and recent taxes are examples of those which can not be discharged in a bankruptcy.

Chapter 11 and Chapter 13 are both repayment plans, for businesses and individuals respectively. Here, the debtor is given a period of time to repay their debts. While the repayment plan is in effect, creditors are prohibited from taking any action to attempt to collect. In the event that there is a default on any secured debt, such as a home mortgage or an automobile loan, the repayment plan may include a provision allowing the debtor to cure that default over time.

John F. Bracaglia, Jr. has more than thirty years experience as a bankruptcy attorney. He has served as a Chapter 7 bankruptcy trustee and has represented both debtors and creditors in Chapter 7, 11 and 13 bankruptcies. If you, or someone you know, is currently experiencing financial problems or has been listed as a creditor in the bankruptcy of a third person, you should call Mr. Bracaglia to set up an appointment to discuss your rights. There are laws in effect to help you, and by all means, you should avail yourself of the opportunity to speak with a professional who is fully conversant with those laws.



Latest COAH News

On September 26, 2013, the New Jersey Supreme Court issued its opinion in the case In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, striking down the “growth share approach” promulgated by the Council on Affordable Housing (“COAH”) in 2004 to determine municipal affordable housing obligations. In short, the “growth share approach” combined statewide patterns of housing and employment growth with an examination of the historical and anticipated future growth of each municipality to determine each municipality’s affordable housing obligation. These rules resulted in significantly decreased affordable housing obligations for municipalities and encouraged municipalities to zone in a manner limiting growth, in order to reduce affordable housing obligations.

The Supreme Court held that these rules must be struck down as a whole and ordered COAH to promulgate new rules not incorporating the “growth share approach” within five months.

This decision is an important one for both municipalities and developers. All substantive certifications that had been granted under the prior rules are now void as a result of the rules being struck down in their entirety. Municipalities can expect their affordable housing obligations to increase under any new formula adopted by COAH. Municipalities will further be required to return to COAH for substantive certification under the new rules.

The demise of the old rules, which led to limited and inconsistent growth, represents a major victory for developers as well. Municipalities will be seeking new development to satisfy their increased affordable housing obligations. Additionally, those municipalities that fail to satisfy their anticipated increased affordable housing obligations will again be vulnerable to “builder’s remedy” suits to compel the construction of affordable housing. This decision creates tremendous opportunities and challenges for municipalities and developers alike.

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