

This is the twenty-ninth in my series of newsletters. Due to your great interest, I plan to continue this quarterly report for my clients.

WHEN DOES A SHERIFF SALE ACTUALLY OCCUR?

Under 11 USC 1322 (1), a debtor is allowed to cure a default on a mortgage until the property is "sold at a foreclosure sale". There has been a tremendous split among the Bankruptcy Judges concerning when the property is actually "sold".

In a recent District Court case, In Re Randall, 263 B.R. 200 (Bankruptcy D.N.J. 2001), Judge Cooper held that a debtor's right to cure a mortgage default under Section 1322 does not end until the Sheriff delivers the deed to the successful bidder. Judge Cooper looked to NJ State law, which holds that the debtor's right and title to the property, is not terminated until delivery of the deed.

To bolster Judge Cooper's argument in Randall, one can also look to CKC Condominium Association Inc. v Summit Bank, 335 N.J. Super 385 (App Div 2000). The issue in CKC Condominium Association was which date is considered the purchase date in a Sheriff's sale, i.e. the date the bid is made or the date the Sheriff delivered the deed to the purchaser? In this case the Appellate Division followed the "deed transfer" rule by holding that the date of delivery of the deed constituted the date of purchase of a condominium following a Sheriff's sale.

Even with this trend in the law, these 2 cases are not binding on Bankruptcy Judges that accept the gavel rule, i.e. the property is considered sold at the date of the foreclosure sale when the gavel goes down. Our highest Circuit Court has not ruled on this issue and appeals could be very costly.

My rule of thumb is always file your Bankruptcy petition before the date of the Sheriff sale or you may not be able to reinstate your mortgage and save your home.

CONGRESS IS CLOSING IN ON BANKRUPTCY REFORM

One of the major issues blocking passage of the Bankruptcy Reform Act was the homestead exemption. Certain states such as Florida and Texas allowed a debtor to keep their home regardless of its value. However, in light of the Enron debacle, Congress limited the homestead exemption to a \$125,000 cap if they have been convicted of a felony, caused death or serious injury to someone, or owe debts because of securities or other types of financial fraud.

The last issue to be worked out is a provision in the Senate's bill which would prevent anyone convicted of blocking access to an abortion clinic from filing bankruptcy to avoid paying fines. As soon as this one issue is resolved, the new law will go into effect.

Even though nobody knows exactly what will be in the bill, certain provisions appear that they will be in the bill; The new bill will include the means tests as previously discussed, there will be a limitation of cramming down consumer goods and a restriction on the homestead exemption. Finally, the new law will lower the presumption for fraud for luxury goods and services.

This is a very harsh bill and will have extremely detrimental consequences for consumers who are hit hard due to no fault of their own. Bankruptcy will still be available but there will be a lot more hoops to jump.

If you have any questions about the pending law or any other matter, always feel free to contact me.

LET ME ANSWER ALL YOUR QUESTIONS

We are a full service law firm that wants to service your needs.

Besides helping people with financial problems, our office helps people with all types of motor vehicle violations, work related injuries and any other personal injuries.

As my law practice continues to grow, I hope to help you in all areas of the law where I have helped my other clients. Remember that even if I am not familiar with a specific area of the law, I work with other lawyers who are well qualified to handle these matters. Therefore, if you have any question on any legal matter whatsoever, please ask me about it.

IF YOU LIKE MY WORK, SPREAD THE WORD.

I appreciate the confidence my clients show by referring new business to me. Such referrals are my largest and best source of new clients. Please let me know if you have a friend or relative who needs legal assistance or who would like to receive one of my quarterly newsletters.

I sincerely appreciate all the referrals from so many of you over the past several years. Thank you for your continued confidence and good will.

If you would like me to speak at your organization or place of worship, feel free to contact me.

Steven N. Taieb has been Board Certified in Consumer Bankruptcy Law by the American Board of Certification since 1994. He has helped over 5000 people resolve their legal problems.