You Have Been Served!

Black & LoBello Newsletter **Volume 1.2 2009**

The Basics of Bankruptcy

James E. Herbe, Esq.

In its simplest terms, bankruptcy is an opportunity to adjust the relationship between you, and your creditors. The reasons people declare bankruptcy are varied. They may have acquired large medical bills, have large credit card debt, divorce debt, and housing problems. Bankruptcy can be a way to buy time if one is having his home foreclosed upon or car repossessed. While in bankruptcy, many of the outstanding debts will be forgiven and certain property is exempted from the bankruptcy process.

Bankruptcy Chapters

There are six types of bankruptcy under the bankruptcy code:

Chapter 7: Basic liquidation for individuals and businesses

Chapter 9: Municipal bankruptcy

Chapter 11: Rehabilitation or reorganization, used primarily by business debtors, but sometimes by individuals with substantial debts and assets

Chapter 12: Rehabilitation for family farmers and fishermen

Chapter 13: Rehabilitation with a payment plan for individuals with a regular source of income

Chapter 15: Ancillary and other international cases

The most common types of bankruptcy for individuals are Chapters 7 and 13. Corporations and other business entities file under Chapters 7 or 11.

In Chapter 7, a debtor surrenders non-exempt property to a bankruptcy trustee. The trustee liquidates the property and distributes the proceeds to the debtor's unsecured creditors. The debtor is entitled to a discharge of his/her "consumer debts." Certain debts such as alimony, child support, student loans and taxes are forbidden from discharge. Generally, the rights of secured creditors to their collateral continue, even though the debt is discharged. For example, absent some arrangement by a debtor to surrender a car to "reaffirm" a debt, the creditor with a security interest in the debtor's car may repossess the car even if the debt to the creditor is discharged.

In Chapter 13, the debtor retains ownership and possession of all assets, but must allocate future income to repaying creditors, generally over a period of three to five years. The amount of payment and the period of the repayment plan depend upon a variety of factors, including the value of the debtor's property and the amount of a debtor's income and expenses. Secured creditors are given higher priority and greater payment than unsecured creditors.

In Chapter 11, the debtor retains ownership and control of its assets and is re-termed a debtor in possession (DIP). The DIP runs the day-to-day operations of the business while creditors and in order to negotiate and compute a restructuring plan. If a debtor is able to meet certain requirements with the Bankruptcy Court, creditors are permitted to vote on the proposed plan. If a plan is confirmed by the creditors, the debt will continue to operate and pay its debts under the terms of the confirmed plan. If a specified majority of creditors do not vote to confirm a plan, additional requirements may be imposed by the court to confirm the plan.

The law offices of Black & LoBello are committed to providing excellent bankruptcy representation for our clients during their times of financial difficulty. If you wish to speak to an attorney concerning your case, please contact our office to schedule a consultation.

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In This Issue

We're interested in your opinion. If you have any suggestions about how we can improve *You Have Been Served!*, please let us know by contacting your Black & LoBello attorney or email the editor at *editor@blacklobellolaw.com*.

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Attorney Spotlight with

Tisha Black-Chernine, Esq.

Merina Berkey, Junior Editor, sits with Tisha Black-Chernine, Esq., Managing Partner of Black & LoBello, for a candid interview.

MB: Tisha, when did you start up Black & LoBello, and what was your inspiration to have your own firm?
TBC: Black & LoBello opened on May 15, 2000. Michele and I wanted to avoid the corporate firm structure and have the freedom to counsel our clients at reasonable rates.

MB: What are your primary practice areas?
TBC: General business, corporations, real property (commercial and residential) and banking.
MB: How many years have you been practicing law?
TBC: Twelve
MB: How would you describe your leadership style?
TBC: Friendly dictatorship.
MB: During the course of managing your own firm, what has been the biggest business challenge you have faced?
TBC: Building a team of talented people.
MB: What would your best business advice be to all of our readers?
TBC: Nothing works like hard work.
MB: What inspired you to get into the business of practicing law?
TBC: I prefer to be tested, constantly. Being a lawyer is not a 9 to 5 career. You cannot simply shut off the lights at 5 and leave your clients' issues on the desk. To be a successful lawyer, you must constantly update your information base, hone your skills and attend to your clients; it requires a mental and physical stamina that is challenging and exciting.
MB: What is the most important thing you have learned from your mentors?
TBC: If you do not enjoy your career, you will go to work everyday.
MB: What are your top five favorite movies?
TBC: A Patch of Blue, Tombstone, My Fair Lady, Predator and Citizen Kane.
MB: Why were you given your particular name by your parents?
TBC: The story is not glamorous. My mother's home economic teacher had a daughter named Tisha Renee'. She liked the name.
MB: What book are you reading right now?
TBC: Depression Economics by Paul Krugman

Asset Protection

Carlos L. McDade, Esq.

"Asset protection" means using legal planning to reduce the risk to your assets from personal and business liabilities. Who needs asset protection? The answer is "everybody". What type of asset protection you use depends on your own unique situation.

Your personal assets include your home, cars, savings and investments and personal property. If someone obtains a personal judgment from a court against you, nearly all of your assets may be at risk. However, not everyone needs an expensive asset protection plan. Some of your property is protected by the law up to maximum values. Personal property such as household furniture, clothing, some jewelry and some business assets are protected from creditors.

Much of your remaining property is not protected, but you can protect some of it by taking simple actions. For example, Nevada's "homestead law" can protect your home if it is eligible and properly registered, and most states have some sort of homestead protection. You can protect yourself against personal liability by purchasing liability insurance. Be aware that your insurance company may not pay the claim against you if it is determined an accident was your own fault or the amount claimed is greater than the coverage of your policy. If you can spare some of your savings, you can give limited gifts to relatives, charities or others and reduce your vulnerability.

Another alternative is placing your assets in a trust. With this, you can transfer ownership of assets to a trustee, who can be directed to use the assets for your benefit. Typically, a trustee may use trust assets for the beneficiary's health, welfare, maintenance and education, but a trust is not limited to those uses or required to include them. Some provide protection for minor children after the death of their parents, some provide support for disabled or incompetent persons, and some serve to protect assets until the beneficiary is mature enough to handle them. Some trusts can provide protection against creditors. Trusts are also used in tax planning to separate assets out of the testamentary estate and the probate process, and may also reduce estate taxes.

Business assets can include accounts receivable, inventory, savings and machinery and equipment. Liability may attach against any or all of those assets. In addition, a business owner may incur personal liability for business debts if the business is created as a sole proprietorship or a partnership. Business entities such as corporations and limited liability companies can limit the personal liability of a business owner or investor if used correctly. There are many other forms of business entities and each one has its own type of legal requirements, tax treatment, limitations on liability and other positive and negative characteristics. The proper use of these rules can protect your personal resources from your business creditors.

Black & LoBello is proud to welcome John D. Jones, Esq.

Nevada Board Certified Family Law Specialist

John D. Jones joins us after a combined ten years working alongside Israel L. Kunin and James J. Jimmerson. Mr. Jones has extensive experience in trials involving all areas of family law, and complex financial issues associated with divorce proceedings, with particular expertise in business valuation, stock options and child custody. Mr. Jones also has considerable experience in complex civil litigation. Mr. Jones earned his Bachelor of Arts Degree in English from Dickinson College in Carlisle, Pennsylvania and was awarded his Juris Doctor from the University of Pittsburgh in 1993. In 2002, Mr. Jones became a graduate of the prestigious American Bar Association Family Law Section, Trial Advocacy Institute. Mr. Jones is one of only seventeen Board Certified Family Law Specialists in Nevada. Only eight Board Certified Family Law Specialists have offices in Las Vegas. Mr. Jones practices primarily in domestic relations and family law.

BLACK & LOBELLO
ATTORNEYS AT LAW

Mortgage Relief

Ronald E. Gillette, Esq.

Las Vegas is amongst the highest cities in terms of foreclosures in the country. Hundreds of homeowners are defaulting on their payments every month. For homeowners who are upside down on their mortgages and can no longer make their mortgage payments (due to job loss, divorce, or an option ARM that is resetting at higher interest rates), foreclosure has been the predominant method for banks dealing with such situations. Foreclosures are typically not good for homeowners because a foreclosure will remain on your credit record for at least 10 years. However, banks and other lending institutions are now beginning to become overwhelmed by the sheer size of the foreclosure portfolios they have to manage. As a result, they are beginning to accept alternatives to foreclosure that can be quite beneficial to homeowners by allowing them to remain in their homes and avoid negative credit reporting. Some of the alternatives are:

Loan Modification – Banks and other lending institutions are increasingly open to re-negotiating the terms of many loans. In some cases, terms have been modified to reduce the principal and interest rate, as well as extend the due date of the loan and lock in an adjustable rate on terms more affordable to homeowners. Some lenders will take the late payments into a new or separate loan. In today's financial market, every term is negotiable as both lenders and homeowners are adjusting to an uncertain economy. It is time that homeowners benefit from the financial bailout and let the current climate work to their benefit.

Forbearance – Banks and other lending institutions are also willing to allow homeowners a sort of "grace period" or "time out" where no payments are required for a period of time and the principal and interest is tacked on at the end of the loan.

Short Sale – A short sale is a bank-approved sale at less than the amount owed to the bank on the loan. short sales are advantageous in that the homeowners avoid the negative credit reporting (if agreed by the lender to note the loan as "paid in full" rather than considering it a "charge-off") but can have negative tax consequences. Most often, the banks report the difference in the sale price versus the loan amount as income to the homeowners because they received the benefit of the difference. Unless negotiated to avoid the negative consequences, a short sale may not be advisable to some homeowners.

Relief at this time from the financial bailout is unclear. The treasury department reports $335 billion has been allocated from the first half of the bailout program. The main goal of the program is to get financial institutions to lend money more freely again. The current U.S. administration has focused mainly on voluntary industry efforts to modify loans, and those have not stopped the surge in foreclosures.

President Obama's Homeowner Affordability and Stability Plan, which became effective March 4, 2009, appears to be of no value to the majority of American homeowners. First, it is not mandatory that lenders participate in the program, although there are "substantial incentives" to the lenders for doing so. Second, in order to be eligible under this program, homeowners must stay current on their mortgage but have been unable to refinance to lower their interest rates because their homes have decreased in value. In addition, only those homes that are held in Fannie Mae or Freddie Mac portfolios or have been placed in a mortgaged backed security by Fannie or Freddie are eligible. Lastly, and the factor that will disqualify almost every American who is otherwise eligible, the homes value may not be less than 105% of what is owed on the new FIRST mortgage. To use the example illustrated by the Federal Government, if your home is worth $200,000, then the new first mortgage (including refinancing costs) must be $210,000 or less.

Practical issues present an even bigger problem. The lenders do not give priority to those who are current on their mortgages. The lenders are focused on dealing with the homes that have been foreclosed upon and are real estate owned (REO), as well as those in the foreclosure process with a sale date scheduled. They are charged with ridding their balance sheets of these non-performing or under-performing assets so as to avoid further downgrades in their stock. Therefore, the mortgages that are current are ignored since they support the lender balance sheets and stock performance.

In summary, the $275 billion dollars earmarked for this program most likely will not be put into play as the majority of Americans will never qualify under the plan, and lenders are not required to participate.

Are You Eligible for a Reduction in Alimony? If so, act NOW!

Michele T. LoBello, Esq. & John D. Jones, Esq.

Are you required to pay alimony to a former spouse? Are you having difficulty maintaining your monthly alimony obligation and your living expenses? Many who owe alimony have indeed seen their income, net worth and financial liquidity reduced significantly. If your income has decreased by at least twenty percent since your obligation was established, the court may likely grant a request to reduce or even eliminate your current alimony obligation based upon changed financial circumstances. If your ex-spouse has experienced any positive change in his or her financial position, your chances of obtaining a reduction or termination are even greater.

In either case, you should consult a family law attorney to review your divorce decree, evaluate the current obligation and changed financial circumstances, and to advise you as to whether you qualify to seek a reduction. Generally, an alimony obligation is modifiable unless it has been established pursuant to a marital settlement contract that specifically prohibits modification. Assuming you have a modifiable obligation, you should consult a family law attorney immediately to conduct this analysis as the court cannot retroactively modify alimony and will only modify as of the date of filing a motion.

Assuming your alimony obligation is modifiable and significant enough to warrant proceeding to formally seek reduction or elimination, you must determine the appropriate degree of modification. Your attorney will need to understand your present financial position and income and will ask you to complete a current financial disclosure form. You will need to educate your attorney not only as to your present financial circumstances, but also about your income and financial position at the time your alimony obligation was established and any changes thereafter. Also knowing of any changes in your ex-spouse's financial picture (positive or negative) will help your attorney assess the viability of succeeding on a motion to modify.

You should review your tax returns dating back to the year of divorce and possibly annual returns for each year since. Nevada law specifically requires the court to consider your income tax returns for the year preceding the filing of the motion to modify to determine whether your income "has been reduced to such a level" that you are "financially unable to pay the amount of alimony" ordered. NRS 125.150(7). However, the statute also allows the court to consider "any other factors the court considers relevant" in determining whether modification is appropriate.

Obviously, the court will be more likely to grant a request for reduction or elimination of alimony where income has been reduced and the obligor lacks the assets to supplement income. This fact will further support a request for reduction in alimony. However, each case is unique, and your particular circumstances will dictate what evidence your attorney will want to present to support your request.

Once the financial analysis is complete, your attorney will recommend the specific modification terms you should pursue. If you are armed with proof of the requisite diminished financial position, your attorney should attempt to informally and creatively negotiate a reduction or restructuring of the obligation to avoid the expense to both parties of participating in a full evidentiary hearing to adjudicate your request for reduction. A cost-benefit analysis should be the paramount consideration at all stages since your goal is to avoid spending more pursuing modification than the amount of your remaining obligation.

If you are already delinquent in support payments, you must consider current arrearages and factor this figure into any proposal to the court or to your ex-spouse for settlement. Accrued alimony obligations are not modifiable, so if you proceed to court to reduce your monthly payment amount, your ex-spouse will almost surely countermove seeking a judgment against you in the amount of the total unpaid obligation. You must evaluate how such a judgment will impact your financial position. Again, you should act and file the motion to reduce the alimony immediately to minimize the total amount you will owe if you are presently delinquent.

Finally, in evaluating whether to pursue modification, you must consider your judge. This is where your attorney's knowledge and experience will be critical. Nevada law mandates no formula for establishing the amount or duration of alimony. The same is true for considerations of modification or termination. Since the decision of whether to reduce or eliminate your obligation lies within the sole discretion of the court, your strategy must include a thorough evaluation of your judge's historical tendencies in making alimony decisions. Some judges are far more generous in awarding alimony than others.

The family law practitioners at Black & LoBello have over 30 combined years of experience practicing in the local family court. We have made hundreds of appearances and are well able to evaluate your case based upon not only this State's laws but also your assigned judge.

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