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Welcome to the NEWSLETTER of Fisher's Law Office, providing you with legal information you can use in your everyday life. If you have any questions about any of the articles in this newsletter please don't hesitate to contact us.

BANKRUPTCY MISTAKE OF THE YEAR –

-Telling the Bankruptcy court you wish to surrender your home and then fighting to keep it in State foreclosure court.

In the David Failla and Donna N Failla Chapter 7 bankruptcy case (11-34324-BKC-PGH), the Hon. Judge Paul G. Hyman, Jr., a Florida bankruptcy judge, ruled that you may not promise to “surrender” your house in your bankruptcy filings and then fight to keep the house later in foreclosure court.

The judge punished the homeowners by threatening to vacate their Chapter 7 bankruptcy discharge (forgiveness of all their debts) if they didn't cease all defense to the foreclosure case.



Moral to the story?

Think very carefully before going bankrupt if you are in foreclosure! And if you do, consider the consequences of stating you will surrender your home when in fact you plan on fighting to keep your home.

SECOND AND THIRD FORECLOSURE CASES ARE THE NEW RAGE

Many clients find that because of the passage of time or other circumstances their first foreclosure case is dismissed by the judge.

If you win your foreclosure case be aware that banks have long memories and may try to sue you again. However, there are many issues that come up in subsequent foreclosure cases that pose a big problem for banks.

What is the problem?

For example, many banks are failing to send *new default notices* with the proper amounts that are due. Under the famous Schindler v. Bank of New York case (4D13-4A25 4th District Court of Appeal 2015 entered in April 2015) the court ruled that if a case is dismissed the first time and the dismissal is considered to be "an adjudication on the merits", the bank must send a new notice of default.

What is another problem?

Banks are also erroneously declaring the same default date in violation of the Court's edict in the famous Singleton v. Grey Marr Associates case, 882 So. 2d 1004 (Florida Supreme Court 2004) In that case the Florida Supreme Court ruled that the concept of “res judicata” (the thing is decided) does not bar a 2nd foreclosure action against the party so long as the 2nd lawsuit **alleges a new and different default date**. Our office is seeing a trend in which banks are suing for the second time and erroneously failing to declare another default date. If this happens the case is subject to

being dismissed under the “res judicata” doctrine.

Case of the Month

Our client gets divorced in one month and five days.

Our client was a wonderful man who had Parkinson’s disease. He had been a good saver during his career at a local telephone company. He was sued for divorce by his wife. He came to our office and asked how he could get divorced as quickly and efficiently as possible because his health was declining and he did not want the anxiety of going through divorce court for years on end.

What to do? Our client agreed to follow our advice and did the following:

1. He completed **financial disclosures immediately** and had our office serve his wife's attorneys with complete and full financial disclosure including a financial affidavit.
2. Our client agreed to **share the money** he had saved during the course of the marriage by offering to give his wife half his savings.
3. Our client allowed us to set a **quick mediation** in the case and we were able to schedule his case with an aggressive mediator who realized that the issues in the case needed to be resolved right away given our client’s health.
4. Lastly, the man’s wife although hostile, accepted the arguments we made at a mediation that if the case was drawn out our client may not be able to go to trial because he would be hospitalized due to his condition. (She apparently wanted to get divorced just as badly as our client.)
5. We settled the case and set an "uncontested hearing" before the judge a few days later ending the marriage.

Practice hint:

Florida’s rule of family law procedure 12.285 requires voluntary disclosure of finances such as providing copies of tax returns, bank statements, 401k statements, and a financial affidavit stating income, expenses and a balance sheet of what you own and owe.

If you are in a divorce be aware that you are required to **voluntarily provide all of your financial information** without being requested by the other side.

WHAT YOU NEED TO KNOW ABOUT GARNISHMENT



What is Garnishment?

Garnishment is a legal process for taking a debtor's money after a final judgment. Normally bank accounts and wages are targeted for seizure.

If you owe money on a judgment to a credit card company or other creditor, under Florida law, the creditor can ask the clerk of the court to issue a “writ of garnishment”. Once your bank is served with the writ, it automatically freezes up to double the amount of the judgment or the amount of the bank balance whichever is less.

As scary as garnishments are they are easily defeated in Florida.

How do you do that?

1. After the garnishment is issued the creditor is required to mail you a notice of garnishment which includes a “claim of exemption”.
2. You must immediately fill out the claim of exemption form and state the basis for your exemption

3. If you are supporting a child or a spouse (meaning you provide over half of the support for a child or spouse) then you can claim "head of household" status. Such persons are **exempt from wage garnishment** and money in bank accounts earned from working are also exempt.

4. You must deliver the form to the clerk of the court who will immediately set a hearing before a judge.

5. At the hearing the judge will ask questions about who you are supporting and how much you pay to support the dependent. If the amount you spend is **more than 50% of the cost for the spouse or child to live** the court is required to dissolve the writ of garnishment. Many clients ask an attorney to assist them with the process.

FINANCIAL REPRESION UPDATE

As anyone who owns a certificate of deposit knows that for the better part of the last decade the United States Federal Reserve Bank has kept interest rates at close to zero!

This policy of zero interest rates has hollowed out the finances of the working class in America because the interest earned on bank Certificates of Deposit is close to zero while inflation for the goods and services that the working class buys everyday continues to go up.

In sum, the working class can't get ahead with such low rates on bank CDs.

There is now some talk of raising interest rates.

Should account holders be excited?

Answer: No

The interest rate increase being talked about by the Federal Reserve is one quarter of one percent (.25%). This amount is still much less than the rate of inflation meaning that anyone who saves money in a bank is losing money in real terms, after inflation is accounted for.



Why is the Federal Reserve doing this?

Recently, the Federal Reserve has printed over \$4 trillion (\$4,000,000,000,000) and used the money to buy government bonds yielding around 2%. When rates "normalize" to 4% the value of the bonds on the Federal Reserve's balance sheet will **crash creating a loss to the United States Federal budget of over 1 trillion dollars**. The Federal Reserve does not want to admit this and does not want anyone in the working or middle class to be aware of the fact that they have printed money to buy over 4 trillion dollars of bonds in the last six or seven years. However the truth will come out when interest rates begin to normalize and go up to their normal rate. When this happens prepare to see Congress up in arms over the fact that the Federal Reserve's balance sheet has now been decimated as the value of its bonds plummet in value.

Public Records vs. Court Records-what's the difference?

Public records are records kept in every county courthouse of deeds, mortgages, and final judgments.

Therefore, when you look up your deed or mortgage, look in "Public Records" on the Clerk's web page.

Court records consist of dockets (a list of court papers filed in court cases.) If you want to check on the progress of your court case, look in "court records" on the clerk's webpage.

Call us if you have questions: Ralph B. Fisher
813-949-2749. We are happy to help you!

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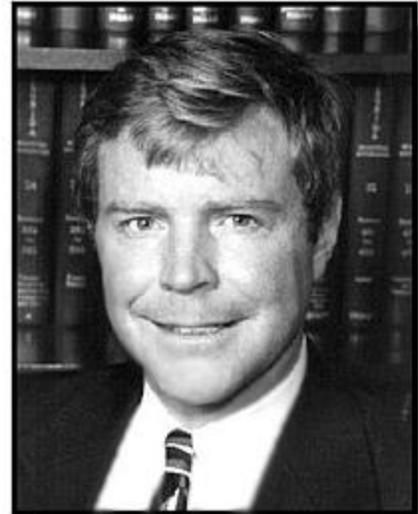
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