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# ABENDROTH & RUSSELL, P.C.

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## Welcome

It has been approximately a year since sweeping changes in the Federal bankruptcy laws went into effect. This newsletter contains information about how those changes affect homeowners, landlords, creditors, and small business owners.

In firm news, Coreen Long in our real estate department retired after five years with ABENDROTH & RUSSELL, P.C. She recently married and will be spending time with her new husband. We will all miss Coreen and wish her well.

Our goal is to inform you about different legal topics that may affect you. This information is not a substitute for legal advice, but we hope that we can provide you with information that is interesting and topical. ★

MARK U. ABENDROTH  
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## New Bankruptcy Laws

2005 saw what was arguably the most sweeping revision of the United States Bankruptcy Code ever implemented. The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 was designed to stem the tide of new bankruptcy filings.

Cumulatively, the changes evidenced a major shift in how the Code treats debtors and creditors in bankruptcy. These changes can be broadly summarized as requiring increased accountability and responsibility for debtors and increased protection and expedited remedies for creditors.

Prior to the implementation of these changes (and barring actual fraud on the part of the debtor), there was a presumption that debtors were entitled to have their debts discharged in bankruptcy. That presumption no longer exists. Instead, debtors must "qualify" in order to have their debts discharged.

One factor in determining whether debtors qualify for bankruptcy is "means testing." Means testing is a process whereby the income and expenses of a hypothetical debtor are weighed against that of the actual debtor seeking relief. If income is at or below the average, debtors may qualify for a "Chapter 7" (liquidation) bankruptcy. Debtors whose income is above the standard are generally required to repay at least a portion of their debts through a structured "Chapter 13" bankruptcy repayment plan.

In addition, debtors are now required to consult an approved credit counseling agency and attempt to resolve their debts outside of bankruptcy prior to filing. Even debtors who qualify to liquidate their debts are required to

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**New Bankruptcy Laws**

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participate in financial training as a prerequisite to having their debts discharged. The idea behind this requirement is to educate debtors so that they will be more fiscally responsible in the future.

For creditors, the changes provide expanded remedies. Debtors are now required to surrender security collateral if they are not willing to enter into binding agreements reaffirming the debt in accordance with the terms of their original agreement. Additionally, the automatic stay expires automatically if the debtor fails to reaffirm or surrender collateral within a statutorily-mandated time frame. Other changes increase restrictions upon debtors who use credit to obtain money, goods, or services in close proximity to a bankruptcy filing.

It will likely be several years before we fully realize the impact these changes have upon bankruptcy filings in the United States. It is safe to say, however, that regardless of whether you are a debtor or creditor, protecting your rights starts with seeking good advice and legal counsel. ★

Consumer bankruptcy cases plunged to a 20-year low in the first three months of 2006, reflecting the passage of a tough new bankruptcy law last year. But the pace of new filings is already on the rise.

Courts now see an average of 2,000 new filings a day – four times the number that were filed in November 2005 after the bankruptcy law went into effect. If filings continue to rise at anything like this rate, we could see close to 1 million filings by the end of the year. ★

## Mortgage Foreclosures

Lenders who make loans that are secured by the borrower's real estate are entitled to a mortgage. A mortgage is a security instrument that gives the lender an interest in the property. It creates a priority lien that can be enforced if the homeowner defaults on the repayment. A mortgage essentially makes the property collateral for the repayment of the loan.

ABENDROTH & RUSSELL, P.C. specializes in defaulted loans and workouts that will assert the creditor's rights and maximize its recovery. We are well versed in the specific laws and legal techniques associated with distressed real estate loans, including:

- Judicial mortgage foreclosure
- Non-judicial foreclosure options
- Consent foreclosure
- Deed in lieu of foreclosure
- Single asset bankruptcy
- Lifting bankruptcy stays
- Penetrating bad faith filing
- Restructurings
- Debt to equity conversions
- Debt sales
- Mortgagee in possession
- Non-recourse carve-out analysis and collection
- Ground lease terminations

ABENDROTH & RUSSELL, P.C. can assist a lending institution with the negotiating and documenting the restructure of the loan, as well

Mortgage Foreclosures

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### *Legal Humor*

One day, a pastor saw a parishioner named Matt walking slowly out of church. Matt was dejected, disheveled, and looked terrible. "Matthew," asked the pastor, "what's the matter?"

"Well, Pastor, my business is shot, I'm losing my house, and my wife says she is going to leave me and take the kids if I don't straighten things out. I just don't know what to do."

"Matthew, find the answer in the Bible," the pastor replied.

Four months later, the pastor saw Matt coming out of church, only this time, he was wearing a new suit, a nice hat, lighting a big cigar, and stepping into a brand new car.

"Matt, you look great! Did you follow my advice?"

"I did, Pastor. I went home that day and decided to open the Bible and to follow the advice I read. So I opened the Bible and the first phrase I saw said 'Matthew Chapter 7'."

as assisting with the restructuring; pre-negotiation agreements and disclaimer letters; holding arrangements during workout negotiations; analyzing the positions, exposures, and potential workout benefits of various parties; dealing with special servicers; cash flow arrangements; forbearance and moratoriums; liability limitations, releases and realizations of collateral; future advances; rating agency requirements and approvals; risks of substantive consolidation; use of administrative consolidation; tax considerations; standstill agreements; bankruptcy risks; use of escrows and reserves; environmental concerns; lender liability exposures arising from negotiations; third-party involvement; title insurance considerations; management pending the workout closing; negotiation formats, performance schedules, "drop dead" dates, interim reporting requirements and access agreements.

ABENDROTH & RUSSELL, P.C. can also help an owner ensure that his or her rights are enforced through the negotiation and that the lender is not engaging in predatory practices. A homeowner may be entitled to additional time to sell or refinance the house before the entry of judgment or before an execution sale. A qualified real estate lawyer and bankruptcy attorney can help an owner come to an agreement with a lender that best benefits both parties. If you are facing foreclosure, contact our firm to assist you with your defaulted loan workout today. ★



## ASK JACK

*Jack completed the seven years of education required for his J.D.(og) in just one year.*

**Q: How much security deposit can my landlord charge me?**

**A:** A landlord can only retain a security deposit that doesn't exceed two months' rent. Often, landlords will charge much less to compete with other apartment communities.

**Q: Do I get the interest that is earned on my security deposit?**

**A:** A landlord must hold a security deposit in an FDIC-insured account, although there is no requirement that it be an interest-bearing account. If the account does earn interest, the landlord keeps the interest for the first five years. After five years,

however, the interest accrues to the benefit of the tenant.

**Q: After I move out, when will I receive my security deposit?**

**A:** After a tenant vacates the property and provides the landlord with a forwarding address, the landlord has thirty days to either return the security deposit or provide an itemized written list of the deductions from the deposit.

**Q: What sort of things can the landlord deduct?**

**A:** If rent is unpaid, it will be deducted from the security deposit. Also, a landlord is entitled to restore the rental unit to its pre-rental condition, less ordinary wear and tear.

**Q: What is considered ordinary wear and tear?**

**A:** Good question. There is no list; it's entirely subjective. In general, however, the landlord cannot withhold your money for routine use,

obsolescence, basic cleaning, and repainting. The landlord can withhold the deposit for abuse, misuse, or negligence by the tenant that results in damage.

**Q: My lease contains a clause that says I have to shampoo the carpet. Isn't that basic cleaning?**

**A:** Yes. Routine use makes carpets dirty. Mandatory carpet cleaning charges are not enforceable.

**Q: What if my landlord doesn't give me my security deposit?**

**A:** If a landlord wrongfully withholds a security deposit, or doesn't give a proper disposition within 30 days, the landlord can be liable for the full return of the deposit, plus punitive damages and attorney's fees. ★

Have a question? E-mail it to [AskJack@ARPCLaw.com](mailto:AskJack@ARPCLaw.com)

# Pre-Closing Specialist

*A Focus on One of Our Departments*

The real estate department of ABENDROTH & RUSSELL, P.C. employs closers, pre-closers, and post-closers. All three have different responsibilities for individual files. All three must work together to ensure that a closing occurs correctly and on time.

When a lender places a file with our real estate department, the pre-closer is the person who confirms receipt of the new order and starts a file. The pre-closer is responsible for obtaining the customer information from the lender, including how the buyer wants to hold title and whether a spouse will join on the mortgage.

The pre-closer next orders an update of the abstract of title. After the abstract is updated and a title opinion is rendered by one of our attorneys, the pre-closer works with the seller's realtor or closing company to clear title objections. The pre-closer orders payoffs of the seller's mortgages and may obtain information about judgments and liens.

Before passing the file to a closer, the pre-closer confirms that the seller will deliver a fully-executed deed at the time of closing.

The pre-closer will usually have the most personal contact with the buyer and realtors. You can always count on our pre-closers to provide you with prompt and courteous attention to assure a smooth closing of your new home.

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## EMPLOYEE SPOTLIGHT



**Kathy Bennett**

**Kathy Bennett** is a closing assistant and pre-closer who is responsible for processing new real estate closing placements. She has been with ABENDROTH & RUSSELL, P.C. since 2003, and brings years of experience to our real estate department.

Kathy enjoys traveling and is a big fan of the seafood buffet in Turtle Bay, Wisconsin. She loves spending time with her four sons and four granddaughters.

# The Death of a Spouse

The death of a spouse can be one of life's most stressful events. In addition to coping with the loss of a loved one, there are many important decisions to make. The surviving spouse may have to take on new responsibilities, such as managing household finances or returning to work.

A surviving spouse's first task should be to locate the Will. The Will names an Executor to handle the administrative responsibilities of settling the estate, such as paying final bills, disbursing assets, and filing final income tax and estate tax returns. The Executor may be the surviving spouse or someone else. If there is no Will, the probate court will appoint someone to administer the estate. It is essential to hire an experienced attorney to assist with the probate process.

The Will isn't the only document required to settle an estate. Financial documents and information to file claims for insurance and other benefits are also needed, including:

- Death certificate
- Trust information
- Abstract of title to real estate
- Original stock certificates
- Information on bonds
- Financial account statements (bank accounts, investments, retirement accounts)
- Insurance policies
- Vehicle registration and insurance information
- Appraisals of any tangible personal property that has significant value, such as antiques, artwork, or collections

Even if a decedent and a surviving spouse owned most or all property jointly, there are still required legal steps that must be taken to finalize the estate. For example, title to jointly-owned real estate must be transferred to the survivor.

If you have suffered the loss of a spouse or other loved one, please contact ABENDROTH & RUSSELL, P.C. to assist you and to review your estate plan. ★