

KREKELER LAW

REPORT



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OPENING DAY: The Brewers and Bankruptcy

April marks the annual opening of the baseball season. We would not have the Brewers in Wisconsin, though, if it were not for bankruptcy. The Brewers had been the Seattle Pilots, a franchise which operated for only one year before becoming the first major league baseball franchise to file bankruptcy.

The Pilots had problems from the outset, playing in a stadium which seated only about 25,000 fans. That stadium had no dome, and the cool, damp weather of the Pacific Northwest discouraged attendance. A poorly selected team roster did not help either.

The team filed for bankruptcy in 1970. As part of those proceedings the team was sold to then-35-year-old millionaire car salesman, Bud Selig, and he moved the team to Milwaukee.

Since then, four other major league franchises have filed for bankruptcy. They are the Baltimore Orioles, Chicago Cubs, Texas Rangers, and Los Angeles Dodgers. All of them currently field teams in the same cities they were based out of prior to filing. Bankruptcy often permits businesses to remain in business, by restructuring their debts.



THE BABE AND BANKRUPTCY

April 27th is Babe Ruth Day, but The Babe might never have become a New York Yankee if not for the bankruptcy filed by the owner of the Baltimore Orioles. (Those Baltimore Orioles played in the American League and actually have no connection to the current day team.)

Unfortunately, these Orioles had stiff competition from the Baltimore Terrapins of the Federal League.

The Terrapins played right across the street from the Orioles' field. Owner Jack Dunn found it very difficult to compete, and seemingly could not get people to come to the ballpark. One day, Babe Ruth pitched a no hitter, viewed by only 12 paying customers.

The 1914 season ended with Dunn broke and facing bankruptcy.

Dunn needed cash to make payroll, and then Boston Red Sox owner, Joe Lannin, purchased Ruth for only \$3,000.

Ruth began his home-run streak and was later sold to the New York Yankees. Although Red Sox fans may still be angry about what is perhaps the worst trade in baseball history, it was really bankruptcy that moved Ruth from the Orioles.

BANKRUPTCY TOURISM

Antwane Mace (and David Krekeler)



In recent years, an increased number of international insolvencies have created a phenomenon known as “Bankruptcy Tourism.” Bankruptcy Tourism refers to a type of global forum shopping, whereby residents of one country temporarily relocate to another country (or jurisdiction) for the sole purpose of taking advantage of the new country’s bankruptcy laws. This practice is becoming especially popular among European nations such as Ireland, Germany, and the United Kingdom.

The UK remains the most popular destination for European bankruptcy tourists because of its favorable bankruptcy laws. In 2004, the UK reduced its bankruptcy period from 3 years to 1 year. As such, those who file for bankruptcy in the UK are legally discharged from their debts within 12 months of filing.

For comparison, Ireland’s Bankruptcy Act requires debtor to endure up to an 8-year bankruptcy period during which the debtor would have to continue paying his creditors before his debts are deemed legally discharged. Similarly, Germany imposes a minimum 6-year period before an individual can legally have their debts forgiven.

These discrepancies make certain venues more attractive for filing for bankruptcy than others. The United Kingdom has emerged as the preferred destination for bankruptcy tourists because applicants are only required to prove that their “Centre of Main Economic Interest” is in the UK.

This means that so long as the debtor can demonstrate that either they reside in the UK, or the UK is the home of their business, they can take advantage of that country’s more lenient bankruptcy laws.

Although establishing a Centre of Main Economic Interest is the primary requirement for filing a bankruptcy in the UK, UK judges have stepped up their level of investigation to weed out suspicious claims. These judges have caught on to this concept of bankruptcy forum shopping, and are reviewing claims with closer scrutiny to see whether people switched their Centre based on “substance” or an “illusion.” This requires digging deeper into the circumstances surrounding the debtor’s move to the UK. If the court determines that such a move was purely motivated by a desire to obtain an easier bankruptcy, the court will either refuse to assume jurisdiction, or will annul a previously entered bankruptcy judgment.

In sum, Bankruptcy Tourism offers debtors an opportunity to manipulate the bankruptcy process by temporarily leaving their native country, filing in a more favorable jurisdiction, and then returning to their homecountry.

Here in the U.S., debtors generally have no waiting period at all before receiving a discharge of debt. Forum shopping still exists to a very small degree for when it comes to protecting assets. Different states have different sets of exemptions.

Different judges, even in the same states, often rule differently on various issues. It is vitally important to know how laws and rules vary from district to district, as well as how a particular judge will likely rule. Be sure your law firm is experienced in any issue you may face. Nothing beats experience.

*******Have you paid your utility bill?*******

April 15 is not just tax day in Wisconsin. It is also the day that the Winter Moratorium on utility disconnection is lifted. Act now if you have unpaid utilities and face disconnection. Here at Krekeler Strother, we have experience working with the utility companies to keep your life, and your utilities, up and running.

BANKRUPTCY AND YOUR TAX REFUND

April 15 is tax day, when our returns are due. Unfortunately, I almost always have to file an extension. For anyone contemplating a bankruptcy filing though, there are some very good reasons to not seek an extension and to get those returns filed on time.

If you are entitled to a refund, we want to protect that refund for you. Anyone filing bankruptcy is entitled to keep certain kinds and types of property. Federal exemption laws include a wild card category which can be used to protect the refunds. But Wisconsin exemption laws do not protect tax refunds, and do not have a wildcard category. So debtors using Wisconsin exemptions should get their refunds and then use that cash or move it into assets which will be exempt in the Bankruptcy.

If you owe taxes, we want to know how much you owe. We often can find ways to get those taxes paid, in the bankruptcy case, sometimes using assets that would not be protected. Other times, we can help you get an affordable payment plan.

The general rule is that income taxes can be discharged 3 years after the return was due, if the return was timely filed. Today I dealt with a client whose 2011 tax return was filed under extension. If the return had been filed without extension, we could file her bankruptcy now and discharge these taxes. Instead, she will have to wait to file until after October 15. In the meantime, her taxes and assets are subject to levy.

Finally, another reason to file returns timely is because income taxes can never be discharged if the returns are not filed. No discharge if no return is filed. These rules are complex, so contact us if you need help dealing with taxes. And get those returns filed timely.

- The penalty for filing late is usually 5 percent of the unpaid taxes for each month or part of a month that a return is late. This penalty will not exceed 25 percent of your unpaid taxes.
- If you file your return more than 60 days after the due date or extended due date, the minimum penalty is the smaller of \$135 or 100 percent of the unpaid tax.
- If you do not pay your taxes by the due date, you will generally have to pay a failure-to-pay penalty of ½ of 1 percent of your unpaid taxes for each month or part of a month after the due date that the taxes are not paid. This penalty can be as much as 25 percent of your unpaid taxes.

WHERE'S KREKELER?

David Krekeler is on a panel of very experienced attorneys that will present a 2 day series called “**Build Your Practice: Bankruptcy Basics**”. The first day will cover *The Basics of Filing Chapter 7 and Chapter 13 cases*.

David will cover in detail:

- The Means Test,
- Bankruptcy estate,
- Differences between Chapter 7 and Chapter 13 and how to select the appropriate chapter for your client,
- Exemptions,
- The Automatic Stay,
- General Procedures and Timelines,
- The role of the Chapter 13 Trustee,
- Trustee disbursements, and
- Timing of filing for Chapter 13

The second day of the series will cover *Beyond the Basics of Chapter 7 and Chapter 13*.

David will cover in detail:

- Marriage, Divorce and Bankruptcy,
- Chapter 13 Lien avoidance,
- Objections to Claims in 13,
- Chapter 13 Plans,
- Preferences,
- Fraudulent Transfers, and
- Attorney Fees and Getting Paid

Another great learning tool of this series are the sessions where the presenters role play Bankruptcy settings to present real scenarios. David will play a role in the mock Trustee meeting and will also play a role in the mock Motion Hearing. This series attracts a large number of attendees and is a great educational opportunity.

I CAN'T GET NO SATISFACTION

Jennifer Limbach (and David Krekeler)

A client came to us with a concern about his mortgage loan. He had settled his loan with the bank, but never received any assurance that the bank actually satisfied the mortgage.

Not knowing whether the bank still had a mortgage on his home could have led to unnecessary and exasperating problems when he tried to sell the house. A buyer on the verge of completing a deal might understandably balk at the realization that another institution appeared to have a financial claim on the home. A profitable deal could sour or disintegrate entirely if the parties were pressed for time to clear up the misunderstanding.

Our client's lender, when questioned about the mortgage, simply sent him a letter saying that he had a zero account balance on his loan. It was clearly another form letter that did little to answer his question. Rather than state whether or not the lender had recorded a satisfaction of mortgage, it advised that any repossessed property was no longer his to own.

Whether selling a home, refinancing with another lender, paying off a mortgage, or, like this borrower, settling a debt; borrowers have the right to demand speedy attention to their mortgage loans. Wisconsin's mortgage satisfaction laws require mortgage lenders to record satisfactions of mortgages and respond to requests for payoff amounts in a timely fashion. The laws also provide penalties for those who ignore or fail to meet these standards.

The laws apply to both residential and non-residential real estate mortgages. In either event, a lender must respond to a payoff request within seven business days for a residential mortgage and a reasonably longer period of time for non-residential mortgages. The lender must also submit a satisfaction of mortgage for recording within 30 days of receiving full payment or performance of the secured obligation. A failure to meet either of these requirements can subject the lender to liability for the actual damages the borrower incurs, plus attorney's fees, court costs, and \$500 additional penalty.

We advised our client of these requirements and our client did get his satisfaction. And he did so without having to go to the Court. Borrowers who suspect that their lender has not properly released their mortgage should contact their lender and demand proof that the satisfaction has been recorded. If a lender is unable to demonstrate the borrower still has not met the criteria for satisfying the mortgage or that the lender has in fact recorded the satisfaction of mortgage, borrowers should contact an attorney.

NOTE: Similar rules apply to lien releases on vehicles and other personal property. Contact us for details.

I BET YOU DIDN'T KNOW:

98% of people that file Bankruptcy do not lose any property to the Bankruptcy Trustee. What does this mean?

It means they get to keep everything that they had before the Bankruptcy.

Contact one of our experts today if you know someone that is financially burdened.

We can help them fall into this 98%.

Have a question?

Idea for a future article?

Unsubscribe?

Contact Deanna at dgajewski@ks-lawfirm.com.

None of the above is intended as legal advice for your particular situation. Questions should be addressed to attorneys admitted to practice law within your state. David Krekeler is a lawyer admitted to practice in Wisconsin, focusing on bankruptcy and debt relief.

He may be reached by email at jdkrek@ks-lawfirm.com, or by calling 608-258-8555. We are a debt relief agency.