



First American

“Back to Basics”

December 19, 2003

TO: All *First American* Agents in New Jersey

RE: **Back to Basics, Vol. 3: Bankruptcy, Discharges and Liens**

How many times have you heard the statement, “I declared bankruptcy, so that judgment lien should be removed”? This assertion is probably the most misunderstood bankruptcy issue we face each day. The Back to Basics rule is that the debtor’s receipt of a routine, garden-variety discharge in a bankruptcy proceeding **DOES NOT DISCHARGE LIENS**. Generally, a discharge in bankruptcy extends to the debtor’s personal liability to pay certain debts. This discharge does not, however, extend to the debtor’s property.

The courts provide two procedures during the bankruptcy proceedings to discharge liens. The first and most common is an order to sell the property “free and clear of liens.” The second method used by the debtor to discharge a lien is based on a claim that the judgment lien impairs the debtor’s Homestead Exemption, but this relief is rarely granted.

If the debtor completes the bankruptcy proceeding and obtains his discharge of liability, a State Statutory procedure (N.J.S.A. 2A:16-49.1) permits the debtor to apply to the Superior Court to obtain the discharge of liens related to forgiven debts, once a period of one (1) year has elapsed from the issuance of the debtor’s discharge. These actions may result in the issuance of a Court Order canceling the lien or judgment, which must be recorded in the County land records or filed in the Superior Court Clerk’s Office in Trenton, depending on the location of the original lien.

Therefore, if you are closing a transaction wherein a completed bankruptcy proceeding is found in a party’s history, and that discharged party requests that you omit certain judgments, please require one of the following:

1. An Order approving the sale free and clear of liens, or
2. An Order avoiding the lien(s) from either the Bankruptcy Court or the Superior Court, or
3. A release of lien or a warrant of satisfaction executed by the creditor.

Of course, any statement of a black-letter rule invites a challenge because there is “an exception to every rule.” You should never hesitate to contact a member of *First American’s* underwriting staff to discuss a possible exception to the Basics rule addressed in this memo.

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