BANKRUPTCY ISSUE

LOOSE BROWN ATTORNEYS

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The Bankruptcy Option

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Arizona's economy is struggling through a perfect storm caused by the implosion of the construction and real estate industries and exacerbated by record high unemployment.

Many people are struggling to pay their day-to-day expenses and, in some cases, they must choose between paying an "upside down" mortgage or their living expenses. For some, bankruptcy can provide much needed relief from these turbulent economic times, but many choose to avoid bankruptcy--for a variety of reasons--or they simply wait too long to take action. This article addresses some of the most common misconceptions people have regarding bankruptcy, and shows how bankruptcy alternatives, such as short sales and loan modifications, frequently make matters worse and serve as mere preludes to an eventual bankruptcy filing.

Five Common Misconceptions:

1. I Will Automatically Lose My House if I File for Bankruptcy.

Many people mistakenly think they will lose their home if they file for bankruptcy. A debtor who files for bankruptcy can, however, usually keep his or her home as long as they are current on their monthly payments. In fact, a debtor can often go through a bankruptcy, reaffirm his primary mortgage, fully discharge his second mortgage, and come out still owning his home and immediately building equity. This can be the key to getting back on track to financial success.

2. I Should Try to Work With My Lender to Modify My Loan.

Lenders are quick to offer a loan modification program for two primary reasons: 1) many lenders receive a fee from the federal government for each loan modification they make, and 2) the loan "modification" typically involves keeping intact the

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Exploitation of Client's Elderly Mother by Client's Brother Results in Forfeiture of Brother's Estate Benefits

We represented one of two adult children of a Phoenix widow, who passed away at the age of 85. Our client's unmarried brother lived with their mother for several years before her death, in the mother's Phoenix house. Our client is a resident of California, and given the geographic distance, he had only minimum personal contact with his mother prior to her death. Our client's mother left a will, in which she left her estate to our client and his brother in equal shares. The principal asset of the mother's estate was her house.

After his mother's passing, our client discovered that approximately three months before her death, while she was suffering from advanced dementia, she signed a deed transferring title to her house to his brother. At the time, their mother was in a long-term care facility and the brother was living in her house. The brother kept the property transfer secret from our client during their mother's lifetime. Our client also discovered that his brother had facilitated the property transfer, by taking his mother to a lawyer to execute and record the property deed. In our estimation, our client's brother had violated the Adult Protective Services Act, by exploiting his mother and transferring her property to himself during her lifetime. Accordingly, we filed a lawsuit to undo the property transfer.

About the same time, our client's brother was arrested by the FBI and was charged with armed bank robbery with

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first and second mortgages, temporarily reducing the monthly payments and adding years of extra payments to the end of the loan. In many cases, the lender merely extends the life of the loan (thus collecting additional interest), and receives a check from the federal government for doing so. This may be a good deal for the lender, but it is not always a good deal for the borrower.

In addition, lenders will almost always require a borrower to go into default for up to three months prior to considering a loan modification request. Because the borrower is then in default, the lender has the right to start a trustee's sale to sell the borrower's home in the event the loan modification request is denied. Clients bring us stories of this troublesome situation all too often, thinking they were in the middle of a loan modification process and that the lender, therefore, could not foreclose on their home. Unfortunately, the lender is within its legal rights to do so.

3. If My Lender Approves a Short Sale, My Mortgage Debt Will be Forgiven.

A "short sale" is the sale of a house for less than the amount owed on the mortgage or mortgages. A short sale requires the lender's permission. The standard short sale agreement proposed by most lenders is typically not fully understood by the borrower and may include a provision waiving the borrower's protections under Arizona's anti-deficiency statutes. In a short sale transaction, without proper documentation and legal counsel, an otherwise unenforceable deficiency claim can become a significant liability. Obviously, this is exactly the opposite result sought by people going through a short sale and, in the end, may actually force the borrower to file for bankruptcy.

4. I Should Pursue a So-called "Strategic" Foreclosure.

We frequently hear cases where a person strategically allowed their home to be foreclosed on. In reality, there is nothing "strategic" about such a decision. A foreclosure is, in our opinion, always a less desirable alternative than bankruptcy. In fact, in evaluating a person's creditworthiness, a foreclosure on a credit report generally is worse than a bankruptcy or a tax debt. In our experience, a lender would prefer to work with a borrower who filed for bankruptcy protection, rather than with one who has a foreclosure on his record.

5. It is Better to Settle My Credit Card Debt Than to Discharge it.

A common pitfall for people with credit card debt is to negotiate relief on their own, or through one of the many debt relief agencies advertising on radio and late-night television. These debt relief agencies generally charge a hefty fee, and often do not accomplish the desired result. Even when the debtor or debt relief agency successfully negotiates a compromise settlement of credit card debt, the debtor may be subject to income tax liability on the canceled or forgiven debt. In a bankruptcy proceeding, however, a debtor can frequently eliminate all credit card debt without incurring tax liability.

Bankruptcy is not an option in every case. If, however, you are having financial difficulties and think bankruptcy might be an alternative for you, or if you simply would like to know your legal rights, please contact us to schedule a no-obligation consultation.

Required Notice: We are a debt relief agency. We help people file for bankruptcy relief under the Bankruptcy Code.

50% of homes in Arizona are underwater.
Is yours one of them?

You are invited to attend a free workshop sponsored by Loose, Brown & Associates, P.C., at which the following topics will be discussed:

• Short Sales • Foreclosures • Loan Modifications
• 1st Mortgages vs. 2nd Mortgages • Bankruptcy
• Debt Relief Options

The workshops will be conducted by experienced attorneys, who will be happy to answer your questions either during the workshop, or afterward in private.

Seating is limited.
To secure your place at one of these workshops, please contact Kelly House, 602.971.4800 / 520.615.3100, or email: kelly@loosebrown.com
and make a reservation today.

Phoenix Workshop:	**Tucson Workshop:**
Saturday, October 30, 2010	Saturday, October 16, 2010
10:00-11:00 a.m.	10:00-11:00 a.m.
Embassy Suites	Embassy Suites
4415 Paradise Village Parkway S.	3110 E. Skyline Dr.
Phoenix, AZ	Tucson, AZ

LOOSE BROWN ATTORNEYS **Welcomes**

We are pleased to announce that ***Ana Newell*** has joined the firm as a certified legal assistant. Ana brings with her over 20 years of legal experience in the fields of civil litigation, trial work, complex business transactions, real estate exchanges and syndication, corporate law, and family law. Ana possesses excellent communication skills, and she prides herself on superior attention to detail. Ana resides with her family in Scottsdale.

We are pleased to announce that ***Jesse Callahan*** has joined the firm as an associate attorney. Jesse practices in the areas of bankruptcy, commercial and civil litigation, construction law, business law, real estate, surety law, and debt matters. Jesse graduated with honors from the University of Arizona College of Law in 2007, and he has been in private practice since then. Jesse is a member of the Construction Law Section of the State Bar of Arizona, and since 2005 he has been a member of the State Bar's Volunteer Lawyers Program. Jesse will be working out of the firm's offices in Phoenix and Tucson.

Case Summaries

Elderly Mother (continued from page 1)

the use of a purported bomb. While in prison awaiting trial, the brother was in contact with at least one person to whom he provided a key to the house, and he asked that person to remove personal property from the premises. In addition, the brother announced his intention to place a lien on the house in order to retain private legal counsel in connection with the pending bank robbery charges. Based on this information, we successfully obtained a restraining order from the court, prohibiting the brother from transferring or encumbering the property until the lawsuit was concluded.

In the lawsuit, we alleged that, at the time of the property transfer, our client's mother was unable to protect herself from exploitation by her adult son because of physical or mental impairment, that the son was in a position of trust and confidence to his mother, and in that position, he did not observe the standard of care in dealing with his mother's assets that would be observed by a prudent person dealing with the property of another, but instead acted for his own self-interest and not for his mother's benefit. We also alleged that, at the time of the property transfer, the son by intimidation or deception, knowingly took control, title, use, or management over his mother's assets with the intent to permanently deprive her of them.

The court entered judgment in our client's favor, ruling that the brother had forfeited all benefits with respect to his mother's estate, including those benefits provided by her Last Will and Testament, and any right, title or interest in the house. In addition, our client was awarded attorney fees in the amount of $30,480, and costs in the amount of $1,160. Our client has since sold the house. ■

Man Thrown From ATV in Crash with Automobile

Three Surgeries Required to Repair Injured Hip and Knee; Case Settled for Policy Limits

Our client, a 33-year-old man, was seriously injured when the ATV that he was driving crested the top of a hill on a dirt road in North Scottsdale, and collided with an automobile head-on. Our client was not wearing a seatbelt, and consequently he was thrown approximately 30 feet from the ATV. He was taken from the scene of the accident by ambulance to the hospital, where it was determined that he had sustained a broken left shinbone, dislocated left knee, dislocated left hip, and a laceration of the right knee down to the kneecap. He underwent three separate surgeries to repair the multiple fractures and dislocations of his hip and knee. The surgeons placed numerous pins in his left hip, and a metal plate in his left shinbone. His medical expenses exceeded $200,000.

The sheriff's deputy who investigated the accident noted in his report that our client was driving "too fast for conditions" and "failed to keep in the proper lane," while, on the other hand, the driver of the automobile exhibited "no improper action" and was driving only "5-10mph" at the time of the collision. As a result of the officer's assessment, the insurance company representing the driver of the car contested liability. Our investigation showed, however, that each party was partially to blame for the accident, because each party failed to avoid the collision.

In Arizona, a police officer's opinions and conclusions contained in an accident report are inadmissible in court. Therefore, the insurance company would have been unable to use the sheriff's report as evidence at trial, and it was forced to eventually concede that the driver of the automobile was at least partially at fault for the accident. Given the severity of our client's injuries and the possibility of a permanent impairment, the insurance company offered to settle the claim for its full policy limit of $250,000. Our client accepted the settlement offer. In connection with the settlement, we successfully negotiated $160,000 in medical liens down to $32,000, which enabled our client to retain a significantly larger portion of the settlement. ■

Real Estate Deal Enriches One Partner at Expense of Other

Suit for Ill-gotten Profits Settled for Commercial Lot

We represented a Phoenix business owner in this case. One of our client's business associates, who will be referred to as Mr. B, informed our client that vacant land, consisting of approximately eight acres in Glendale, Arizona, was for sale at a very attractive price. Mr. B proposed to our client that they jointly purchase the property and then use, develop, or sell it at a profit. Our client agreed to the joint venture, because it appeared the sale price was below market value. Mr. B had already entered into an agreement for the purchase of the property, and he provided a copy of it to our client.

At Mr. B's request, our client wrote a check for $5,000 payable to Mr. B, for earnest money to be deposited into escrow for the purchase of the property. Several months later, while the property was still in escrow, our client wrote another check to Mr. B, in the amount of $2,800, for a "phase I" environmental survey of the property. Approximately a month later, Mr. B told our client that the Phase I environmental survey came back "dirty," and that the purchase of the property had therefore fallen through.

Unbeknownst to our client, Mr. B had formed a limited liability company on an expedited basis, and through the newly-formed company he secretly purchased the property. In two separate transactions during the ensuing 13 months, Mr. B sold the property for a profit of $1.3 million. Our client learned of the transactions from one of the purchasers approximately two years later. We filed suit against Mr. B and his wife for breach of contract, breach of fiduciary duties, and fraud. In the lawsuit, our client demanded half the profit from the sale of the property.

By mutual agreement, the parties participated in mediation shortly after the lawsuit was filed. By that time, however, the economy was in recession and Mr. B's financial condition had deteriorated significantly. Mr. B and his wife had essentially spent the profit from the property sale, and had very little cash left to settle the case. They did, however, own a commercial lot in Glendale having a value of $313,000, which they offered to settle the case. Our client accepted the settlement offer, and subsequently acquired title to the property. The lawsuit was dismissed. ■

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