Title Chat

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President Bush Signs Bankruptcy Reform

In April President Bush signed into law bankruptcy reform legislation to become effective in October 2005. As we are now just learning all of the provisions of this legislation, we thought it timely to Chat about these provisions in general terms and to become more specific in later Chats if the legislation has a direct influence on real estate transactions. In no particular order of importance the legislation provides that:

1. An individual cannot file a bankruptcy petition unless he/she receives credit counseling within 180 days prior to filing. In addition, before the person can receive a bankruptcy discharge in a Chapter 7 or 13 case, the person must complete a financial management course.

2. The time period that a person who receives a discharge in a bankruptcy case must wait before filing a subsequent bankruptcy petition has been extended.
    a. A Chapter 7 proceeding cannot be filed within eight years after receiving a discharge in a previous bankruptcy.
    b. A Chapter 13 debtor will not be eligible for discharge if he had obtained a discharge in a Chapter 7, 11, or 12 proceeding within four years prior to the Chapter 13 filing, or if he had obtained a discharge in a Chapter 13 case filed within the past two years.

3. To qualify for state or local exemptions, the person must have established domicile in the state where the case is filed 730 days (two years) before the filing. It will now be more difficult to move from one state to another to claim homestead exemptions. Any value added to a homestead resulting from the disposition of nonexempt property within ten years of filing the case with the intent to defraud creditors, will not be protected by a state homestead exemption. Also any value in excess of $125,000 added to a homestead within 1,215 days before filing will not be protected by a state homestead exemption unless it represents proceeds acquired from the sale of another homestead. Lastly there is an absolute $125,000 cap on the homestead exemption if the debtor was involved in activities that violated securities or RICO laws, caused physical harm to a person(s) or death, etc.

4. A creditor will now be allowed 30 days to perfect a lien.

5. The ability to have an automatic stay in a bankruptcy case where the debtor was a debtor in a previous case has been limited.

As more is learned about this legislation, we will include it in later Chats. Because of travel and other plans there will not be a separate June Chat. We will resume in July-August.

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