



# ORCA TALES

"We can tell you more about them than their mother"

## YOUR TENANT FILES BANKRUPTCY!!!

There are three types of bankruptcies that will apply in regard to a tenancy. They are Chapter 7, Chapter 11 and Chapter 13.

Following is a brief outline of each Chapter:

### Chapter 7

This form of bankruptcy is where a debtor (your tenant) files with the bankruptcy court to completely discharge all of their unsecured debts UP TO THE DATE OF FILING. Rent is an unsecured debt and can be included in the bankruptcy, including the full month in which the debtor files the bankruptcy. If the tenant was on a lease they could include the lease in their filing. At the time of the filing of the petition the court will send out a notice which will usually advise you as to whether there are any assets in this bankruptcy. If there is, then you should file a claim. It would depend on the debt to asset ratio as to how much you would receive on the dollar. However, the vast majority of Chapter 7 Bankruptcy cases are "no asset" cases, meaning that there are no assets for unsecured creditors to reach due to the State or Federal exemptions allowed to debtor.

### Chapter 11

This is used primarily when the debtor (tenant) is in business. It gives the debtor time to recognize and hopefully save the business in the process. If it is a "business" filing and the rental unit is not used as the business premises it could be argued that this form of bankruptcy filing would not cover a residential landlord/tenant relationship.

### Chapter 13

This is commonly known as the "Wage Earner Plan". In this plan the debtor (tenant) by filing a plan with the court, and making payments on the debts through the Bankruptcy Trustee is protected from the debtors bringing legal action.

In a Chapter 13 the debtor usually does not make 100% repayment, but makes prorated payments. The plan must be the debtor's "best effort" which generally means that 70% to 100% of the rent would be paid directly into the Trustee's office. You can object to the plan, but this must be done in writing and served and filed fourteen (14) days before the Creditor's meeting.

During the process of a Chapter 13, if the tenant continues to rent from you, you can have the current rent paid through the plan or receive it directly from the tenant. The prior rent that had been included in the plan would be received over a period of time as funds became available.

\*\*\*Courtesy of LT Services, Inc. [www.ltservices.net](http://www.ltservices.net)

**In Celebration of Labor Day, our office will be closed Monday, September 5th, 2005**

## ORCA WISDOM



On Pre-Eviction Notices always include the City and State where the unit is located.

## Bankruptcy Change Here At Last!

The Bankruptcy Abuse Prevention & Consumer Protection Act of 2005 (BAPCPA) will have the most substantial changes for the Bankruptcy Code since 1978! Here are some of those changes being amended October 17, 2005:

Credit counseling session will be required by all individual debtors prior to filing a bankruptcy. In addition; the debtor must complete a financial management course before receiving a bankruptcy discharge.

A debtor's attorney will need to certify that they have performed a reasonable investigation of the debtors assets to be sure that the bankruptcy is not an abuse under Section 707(b).

As much as 10% of debtors filing a Chapter 7 could be shifted to a Chapter 13 if a new complicated "means test" shows that the debtor can repay unsecured claims.

If the debtor's income is equal to or greater than the state median income then the Chapter 13 plan would be extended from the current 3 year repayment plan to a 5 year plan.

The time between Chapter 7 filings is extended from 6 to 8 years, and a debtor must wait two years between Chapter 13 filings, and 3 years after receiving a discharge under Chapter 7, 11(business).

The new law also stiffens the rules about the discharge of debt incurred for the purchases of luxury goods or services, and cash advances taken shortly before declaring bankruptcy.

## What People in the Know are Saying about ORCA...

"I just wanted to take a minute to say "Thank You Very Much!" You always go the extra mile for us...in your efforts to dig to the bottom of the information pile! Like a "diplomatic pit bull" you don't let go...but persist with a smile in your voice. We really appreciate the ORCA team...of which you must be the poster child! Again, Thank you and Best Wishes."

\*G. Cochran of Cochran Pacific

## PREMISES LIABILITY FOR VIOLENT CRIMES

It is no secret that multifamily housing residents in the US can sue a landlord or property manager for injuries received during a violent criminal assault on an apartment premises. The demand for money damages can go into the millions for alleged physical and psychological injuries.

In recent years, the jury awards have been do lucrative that the American Trial Lawyers Association now has an annual training seminar in Phoenix that teaches other Plaintiff lawyers how to prevail against landlords and property managers.

### THE LITIGATION NIGHTMARE

During a lawsuit, an apartment property is viewed under a judicial microscope, in a highly public forum. Your most confidential business records must be produced, if so ordered by the court. I know landlords who have literally turned their management offices upside-down looking for the requested documents. Even worse, is when these records get passed on to other Plaintiff lawyers during the course of a subsequent lawsuit. Several property management careers have ended due to previously undisclosed indiscretions that were uncovered during the intense scrutiny of management backgrounds. The process has a way of bringing out the worst flaws in property management because of the focus on the negative issues and imperfect decision-making.

### DEFECTIVE CONDITIONS

The largest jury awards usually involve stranger-to-stranger sexual assaults that occur inside of an apartment unit. The question of access into the unit is always the focal point at issue.

Victim studies tell us that most rapists gain access through unlocked doors and windows. When a lawsuit is filed, however, the allegation often is that the door or window locking hardware was defective and allowed the rapist access. As you can imagine, it would be difficult to defend against such a claim without having solid documentation of the actual condition of the door and door locks prior to the incident.

### POSITIVE DOCUMENTATION

The best time to test and document the condition of door and window locks and latches is during the unit walk-through with the incoming and outgoing residents. The leasing consultant and the new resident should test each lock and latch and document that the devices work properly and are in good condition. It's not enough to generally state that all locks and latches are "okay". A better plan is to list the location and condition of each device. For example, list the condition of the sliding glass door and the bedroom window latches separately.

By modifying your existing walk-through form, you can easily document the incoming and outgoing condition of the hardware with each resident. If you supply secondary sliding door and window blocking devices and anti-lift devices, their presence and condition should also be noted on the form.

The form should have a resident statement certifying that they have examined and tested each device and found them in good working order. You should also add a line where the resident agrees to use the locking devices at all times and will report any defects immediately.

This procedure, coupled with good key control and lock maintenance, will protect your residents better and drastically reduce your exposure from lawsuits in this area.

*Visit the [www.CrimeDoctor.com](http://www.CrimeDoctor.com) for more information.*

## NEW SUPREME COURT RULING AND BUILDING OWNERS' LIABILITY

In June of 2005, the Supreme Court of Washington published a case that affects all local building owners and managers. From now on, when a tenant sues a building owner for personal injuries or property damage due to noxious fumes, the building owner will get no help from its insurance company if the policy contains a "pollution exclusion."

In the case of *Quadrant Corporation V. American States Insurance Company*, a tenant in an apartment building was overcome by fumes and became ill after a repair contractor applied sealant to a nearby deck. After the tenant sued the owners, the owners filed a claim with their insurance company. The insurance company denied coverage, citing the "pollution exclusion." Because of the Washington Supreme Court's recent ruling, the owners are now stuck with the entire bill, including legal fees, damages for the tenant's injuries, and their own business losses for repair costs and loss of rent.

Just think of it. Next time you paint your building, caulk your windows, resurface your parking spaces, spray for bugs – or use any chemical whatsoever – you could be sued for personal injury damages and you will get no help from your insurance company.

*Information provided by: [Levy Von Beck & Associates, www.levy-law.com](http://www.levy-law.com)*