Basic Real Estate Rule of Thumb: What About Bankruptcy Proceedings?

by Isaac Benmergui, Esq on September 10, 2014

It's as if we're opening up a whole new can of worms here, in that this presents the question of a possible course of action presented by a debtor: what about bankruptcy? Can a debtor file for bankruptcy as a way to alleviate the issue and somehow not have to vacate the premises? Interesting questions.

The point of bankruptcy was to try and cover all debts, hence eliminating any need for a writ of possession, successfully vacating a debtor, or a tenant, from a real estate property. There's, yet again, just one other problem, though. Such a bankruptcy court can look at the situation and say that a final judgment for possession, or even an issuance of a writ of possession doesn't necessarily constitute a lease termination. This means that even when a writ of possession or judgment of possession has been issued by a court, a debtor or tenant can actually still assume the lease as that hasn't effectively terminated the contract.

This then means a tenant can still have a chance in paying any real estate arrears, albeit with interest, and continue the lease as usual. Bad news for a landlord, obviously. This was further buttressed by the fact that under state law, generally speaking a tenant still doesn't lose possession of a property until the writ is properly executed. The *judgment* isn't the same as the *execution*, in other words.

Until that execution occurs, a tenant could do his or her very best to catch up on the rent payments. Typically there would be a deadline at that point. What happens if a tenant or debtor manages to make up the lost payments? You'll see….

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