



# Title Topics



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## New Bankruptcy Law Boon for Creditors, Bane for Debtors and Lawyers?

### President Signs Bill Making Debtors Pay More & Attorneys Responsible for Accuracy

### MERS To the Rescue

**According to some**, Congress had declared war on lawyers representing debtors in bankruptcy proceedings. While that sounds like a strident position, for many at the bankruptcy bar it seems to be for good reason.

Among concerns in the bill recently signed by President Bush is one requiring attorneys to vouch for the accuracy of their clients' financial schedules way beyond that which the old law required. For the first time, in a bankruptcy setting, attorney themselves could be responsible financially for their clients' misrepresentations.

According to a recent article in *New Jersey Lawyer*, many bankruptcy attorneys are opposed to these provisions and consider them "ludicrous." The new law requires attorneys to certify a debtor's ability to make future payments under a reaffirmation agreement which allows specific debts to survive the bankruptcy. These agreements usually arise when the debtors are in the middle of receiving services they want completed or do not want their car repossessed. In addition to providing liability and sanctions under certain circumstances to attorneys, the law forces attorneys who advertise bankruptcy services to identify themselves as "debt relief agencies."

The ABA is warning that the bill requires lawyers to comply with regulations that could interfere with the confidential attorney-client relationship. According to an ABA press release, "these provision would discourage many attorneys from agreeing to present debtors at all and would make bankruptcy representation unaffordable for countless numbers of Americans. In addition, these provisions would strongly discourage attorneys from providing essential *pro bono* bankruptcy services to the poor."

The new bankruptcy bill was pushed by the banking and credit card industry to stem what they claim to be mounting losses due to bankruptcy, and that too many people are able to escape their debts even though there is sufficient income to pay a portion of it.

At the heart of the law set to take effect in October is a so-called "means test" that many filers will be forced to undergo to prove they are worthy of erasing their debts. This will be one test that debtors will hope to fail because those who pass will be deemed to have the "means" to pay off more of their debts and will not be eligible for the most popular type of bankruptcy filing, a Chapter 7. Instead, debtors will be restricted to filing under Chapter 13, that allows debtors to keep more assets but is more costly and lengthy.

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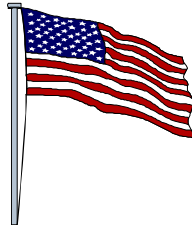
**How** many times have you opened a title commitment to find a mortgage held of record by Lender A but received a payoff letter from Lender B or Mortgage Server C. When the seller's attorney is questioned about the payoff letter, the remark usually comes back "well that's where the seller is making their payment." (Thanks for your help, counselor.)

You call our office to question whether it is safe to rely upon the payoff letter at the time of closing. Well, maybe, because if the holder of the mortgage is Mortgage Electronic Registration Systems, MERS for short, a quick answer to your question is just a toll-free phone call away.

MERS was formed several years ago to assist lenders in the sale of mortgages and the transfer of their servicing. MERS, acting as a nominee, holds the mortgage of record. Lenders may, therefore, sell the mortgage or transfer servicing without the need for a change in the record ownership of the mortgage.

How do you know MERS is involved? First, you will note the mortgagee is described as Mortgage

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**Bankruptcy...**

Debtors will trigger the means test if they make more than their state's median household income, adjusted for family size and inflation. In New Jersey \$55,932 was the median household income in 2003, according to the Census Bureau.

If income exceeds the median, the court then must use a combination of state and IRS standards to determine what are reasonable costs for housing, food and other living expenses. Debtors who have enough money left over to pay creditors at least \$6,000 over 5 years -- \$100 per month -- will be forced into Chapter 13.

Currently, judges set reasonable living expenses and determine how much debtors can afford to repay creditors.

It seem to us that it is the credit card industry that need reforming, not the bankruptcy code. Who has not been to the New York Auto Show or Yankee Stadium where the corridors are lined with people taking credit card applications to anybody with a pulse over the age of 18? While we are sure that there are arguments from both sides as to the need for bankruptcy law reform, it will be several years before we know if the new law has the affect intended by its drafters. By then, many New Jersey residents and their lawyers may be irreparably harmed.

**Conveying Title to Your LLC?****Don't Let Your Policy Die!**

Nothing is worse than finding out your clients do not have title coverage when they sell their property! Due to the tax and liability advantages of holding title in entities such as LLCs, many property owners who acquired title in their individual names are finding it pays to transfer title to an LLC. Sometimes, this happens months **after** title is acquired. However, the result of such a transfer is that the LLC is not an insured under the definitions of the title policy and when a problem arises, well, it's a problem.

Vested Title does have a way around this problem through the issuance of an endorsement that covers **successors in interest**. It's inexpensive and can save you and your client much aggravation when problems arise. Call us for more information.

**MERS**(Continued from page 1)

Electronic Registration Systems and the Lender is your bank. Further, you will note the appearance, usually near the top of the mortgage body of a number preceded by the phrase "MIN." In the mortgagee paragraph you will also find a toll free telephone number for you to use in order to ascertain the identity of the last servicer of the mortgage. By dialing the toll free number and entering the 18 digit MIN number appearing at the top of the mortgage, a voice message will tell you the name and contact information for the servicer and will fax you that information if you request it.

Another time that MERS is helpful is when you are faced with the seller's representation, "I paid-off the mortgage in January 2005." A quick telephone call to MERS will indicate whether servicing has been transferred or removed from the MERS system. While we suggest that you cannot rely 100 percent on that information to indicate weather a loan has been paid in full, it will still provide you with a name and number of the last server of record. A telephone call to that company should indicate quickly whether the mortgage is satisfied.

As we are seeing fewer assignments of mortgage being recorded, it seems that the MERS system is working.

If you should have any questions regarding MERS, you can check the MERS website at [www.mersinc.org](http://www.mersinc.org), or call us at Vested Title. We'll be glad to help.

**Vested Title Inc. — Our 24<sup>th</sup> Year****How to Contact Us:****Vested Title Inc.****648 Newark Avenue****P.O. Box 6453****Jersey City, NJ 07306****201-656-9220 201-656-4506 Fax****800-637-0251 in New Jersey****On the Web at****[www.vestedtitle.com](http://www.vestedtitle.com)****[vti@vested.com](mailto:vti@vested.com)****Susan L. Kruger, President****Stephen M. Flatow, Vice President & Counsel****Paul D. Kruger, Vice President & Manager****Diane R. Menard, Vice President-Sales****Jackie Stevens - Sales****Susan Ann Ryan - Sales****Michael Bellucci - Sales****Karen Miller - Policy Supervisor****Paula Tamburo - Title Officer**