Increase in Annual Gifting

Generally, a person may give to any other person an amount up to the "Annual Exclusion Amount" without incurring federal gift-tax consequences. The Annual Exclusion Amount increased in 2006 to $12,000; it was previously $11,000. This is an excellent tool to incrementally pass wealth to younger generations while avoiding federal transfer taxes. A gift-tax return must be filed with the IRS to report gifts that exceed the Annual Exclusion Amount.

Attorney Spotlight

Aaron Weiner elected to the Anti-Defamation League Board.

Harvey Cooper has joined the Human Resources Association of the Midlands.

Congratulations to **Howard Kaslow and John Herdzina** for being selected by your peers to be included in the 2006 edition of *The Best Lawyers in America* for Corporate Law. Howard Kaslow is one of a distinguished group of attorneys who have been listed in Best Lawyers for ten years or longer.

This newsletter is published by the law firm of Abrahams Kaslow & Cassman LLP to inform our clients and friends about both legal developments and news about our firm. This newsletter is not intended to provide legal advice on specific subjects, but rather provide insight into legal developments and issues. Please consult with legal counsel before taking action on matters covered in this newsletter. If you would like further information or would like to be added to our mailing list, please contact Debbie Watson at 402-392-1250 or email dwatson@akclaw.com.

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Legal
Perspectives
from Abrahams Kaslow & Cassman LLP

First Quarter 2006

To File or Not To File: When Bankruptcy Makes Sense for Troubled Businesses

By Nicholas T. Dafney

From the record-setting 2,043,535 bankruptcy petitions that were filed, to the enactment of the Bankruptcy Abuse and Consumer Protection Act, the year 2005 marked one of the most significant years in bankruptcy history.

Despite all the new rules and regulations and the overall change in the bankruptcy landscape, one of the most important decisions facing a troubled and financially-strapped business has generally not been affected: whether to reorganize the business or wind-up the business, inside or outside of bankruptcy.

For many businesses, the protections and rehabilitation possibilities made available through a Chapter 11 bankruptcy reorganization initially appear very attractive. After all, a Chapter 11 bankruptcy reorganization typically allows the business owners, directors and officers to remain in control of the business during the reorganization process while preventing the filing or enforcement of creditor actions. Business owners must recognize, however, that there are limitations on the benefits of a reorganization, and that in many circumstances the costs and time commitments necessary to effectively reorganize a business outweigh the benefits.

In order to determine whether a reorganization is the right option, businesses first need to understand what a Chapter 11 reorganization can and cannot do. A reorganization cannot: increase gross revenue, create a market for goods or services, or bridge the gap between the skills and resources available to business owners and the skills and resources necessary to continue the business. A reorganization can: allow a business to reject leases and contracts which are no longer beneficial, prevent the loss of assets and cash to creditors through collection actions and garnishment, and free up cash which would otherwise be used to service old debt rather than fund current operations.

Businesses with significant assets, strong markets and prospects for their goods and/or services and with the financial ability and strong management to endure the expenses and time commitments required for a successful reorganization can benefit greatly from the protections and restructuring tools available to them in a Chapter 11 reorganization. Reorganization is not the right choice for businesses that have no substantial assets or that have debts which are so substantial and overwhelming that restructuring them is not feasible.

(Continued on page 2)

Welcome Laurie Hellbusch

Laurie E. Hellbusch

We are pleased to introduce Laurie Hellbusch. Laurie clerked for the firm throughout law school and became an associate of the firm upon graduation. She will focus her practice on civil litigation and employment law.

Prior to law school, Laurie worked for Accenture in Chicago and Minneapolis as a computer programmer/analyst and was responsible for coding pricing and payment systems for Accenture clients in the retail industry. Following her employment with Accenture, she worked in the area of professional recruiting, leading the formation of a permanent placement division of a temporary staffing company in Chicago.

Laurie obtained a Bachelor of Science in Business Management with an emphasis in Human Resources from Iowa State University, completing two internships in human resources during college. She received her Juris Doctor with a certification in Labor and Employment Law from the University of Nebraska College of Law.

What Exactly Is A Deed?

Very simply, a deed is the document by which title to real estate is transferred. The person who transfers or conveys real estate is commonly called the "grantor" and the person who receives title to the real estate is commonly called the "grantee". Deeds are recorded in the Register of Deeds Office in the county in which the real estate is located. In order to be in recordable form, the deed must be signed by the grantor, with the grantor's signature notarized, and must contain a description of the real estate being conveyed.

The most common type of deed is a warranty deed. In a warranty deed, the grantor warrants that he or she has marketable title to the real estate being conveyed, and will defend claims against the grantor's title. There are two types of warranty deeds; a general warranty deed and a special warranty deed. In a general warranty deed, the grantor warrants that he or she has marketable title to the real estate and will defend title against the claims of all persons, even against persons who have claims which arose prior to the time grantor had title to the real estate. In a special warranty deed, the grantor also warrants that he or she has marketable title to the real estate, but in a special warranty deed the grantor agrees to only defend title against the claims of persons for the period of time the grantor held title to the property.

Another common type of deed is a quitclaim deed. In a quitclaim deed, the grantor transfers to the grantee any right, title and interest the grantor has in the real estate, if any. Unlike a warranty deed, the grantor makes no warranty of title in a quitclaim deed.

The foregoing is a very simple description of common types of deeds and their main differences. However, deeds can contain complex reservations of rights and interests and other matters. Consequently, one should seek the counsel of an experienced real estate attorney to determine what type of deed and/or provisions in a deed are appropriate in a given circumstance.

If you have any questions regarding deeds or other real estate matters, please call our office at 392-1250.

To File or Not to File *(continued from page 1)*

For businesses that require little capital to start-up or have few assets, the business owners are better off liquidating the business, in or out of bankruptcy, and starting over in a fresh entity.

If a business reorganization under Chapter 11 does not make sense, then a business must decide if it is in its best interest to liquidate its assets and wind up its business by filing a Chapter 7 bankruptcy, or to simply close its doors, sell off its assets and terminate its corporate existence. Because filing bankruptcy will cause an already financially-strapped business to incur additional expenses, and because a bankruptcy will require significant time commitments and trigger additional fiduciary obligations on the part of the business officers and directors, filing a Chapter 7 bankruptcy only makes sense in certain circumstances.

The most common situations in which a Chapter 7 makes sense are the following:

- When lawsuits against the company are beginning to mount and the company wants to use the protections offered by a Chapter 7 to prevent the progression of the lawsuits. Even before lawsuits have been filed, if a company knows that lawsuits are imminent, a Chapter 7 may discourage creditor suits, which is especially beneficial to a company's officers and directors because the lawsuits that arise near the end of a company's existence have a tendency to name the officers and shareholders personally, regardless of whether they are legally liable for the debt.

- When it is beneficial to have a Chapter 7 bankruptcy trustee appointed to preside over the liquidation of the company's assets, which will free up the company's officers and directors to seek new employment, and to allow for an orderly and structured liquidation of the company's assets.

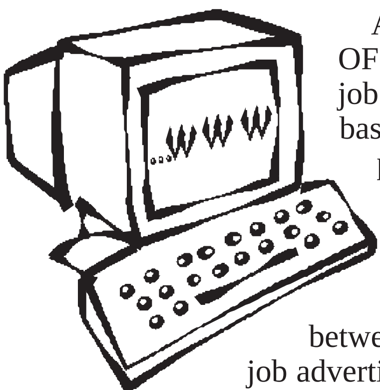
- When one or more creditors are in a position to lien or attach assets of the company which could otherwise be used to pay debts for which the company's shareholders and/or officers are personally liable, such as leases or other obligations that are personally guaranteed.

There is no clear-cut answer to whether a business should reorganize under Chapter 11, liquidate under Chapter 7 or liquidate on its own outside of bankruptcy. The decision must be made on a case-by-case basis, and depends upon many factors, including the value and nature of the assets, the attitudes of creditors and the availability and strength of management to successfully oversee the process.

AK&C can assist business owners in deciding whether bankruptcy is the right option and can assist in the reorganization or liquidation process. Business owners who are faced with this decision are encouraged to contact AK&C as early in the process as possible.

New Federal Contractors Internet Applications Regulations

The Office of Federal Contract Compliance Programs (OFCCP) has issued new final rules that take effect in February 2006 regulating how job applicants using the Internet and other electronic means are to be treated. OFCCP regulations require covered federal contractors to obtain, where possible, gender, race and ethnicity data on applicants and employees in connection with administering their affirmative action plans, and to supply it to OFCCP on request. OFCCP uses contractor data to identify which workplaces to investigate for possible systemic employment discrimination. When OFCCP initiates a compliance audit, it asks the contractor to provide gender, race and ethnicity data on applicants and hires, and then it decides, based in part on its statistical analysis of that data, whether to conduct an on-site audit.



A key feature of the new OFCCP rules is that only a job applicant who meets the basic requirements for a particular position should be considered an applicant for the position. That makes an important distinction between someone who sees a job advertised on a web site and e-mails a resume and someone who e-mails an organization expressing a general interest in work. Thus, if a company accepts any applications from electronic means, it can treat such applications the same way it treats applications received from more traditional methods, such as letter mail.

As published in the Federal Register, the regulation says that "Internet Applicant" means any individual satisfying all four of the following criteria:

- The individual submits an expression of interest in employment through the Internet or related electronic data technologies.

- The contractor considers the individual for employment in a particular position.

- The individual's expression of interest indicates the individual possesses the basic qualifications for the position.

- The individual at no point in the contractor's selection process prior to receiving an offer of employment from the contractor removes himself or herself from further consideration or otherwise indicates that he or she is no longer interested in the position.

The regulation offers the following example of how the rule works:

> "Contractor A posts on its web site an opening for a Mechanical Engineer position and encourages potential applicants to complete an on-line profile if they are interested in being considered for that position. The web site also advises potential applicants that they can send a hard copy resume to the HR Manager with a cover letter identifying the position for which they would like to be considered. Because Contractor A considers both Internet and traditional expressions of interest for the Mechanical Engineer position, both the individuals who completed a personal profile and those who sent a paper resume and cover letter to Contractor A meet this part of the definition of Internet Applicant for this position."

The rules appear to say that as long as you have posted this job on your web site, no matter how anybody expresses interest in a position, they're an applicant if they have the minimum qualifications for the job. Thus, employers should be very clear in their job advertising about what the minimum qualifications are for a position.

Unfortunately, the EEOC and other agencies considering similar regulations have yet to indicate whether they will follow the OFCCP's rules. It is not clear when their proposed rules and definition of who is an Internet job applicant will become final, and in what form.

If you have any questions, please contact our employment law attorneys at 392-1250.