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L&J QUICKFACTS™
BANKRUPTCY

THE BASICS

- **PETITION:** Any bankruptcy begins with the filing of a petition in Federal Bankruptcy Court. Debts that accrued up to the date of the petition are included in the bankruptcy. The debtor remains responsible for any debts coming due after the date of the filing of the petition.
- **TRUSTEE:** When a bankruptcy petition is filed, a trustee is appointed by the court to oversee the bankruptcy petition.
- **AUTOMATIC STAY:** Once the petition is filed, the bankruptcy court issues a stay on all collection activities against the debtor. The automatic stay is a mandate for all creditors to discontinue collection efforts.
- **RELIEF OF STAY:** If the debtor fails to pay post-petition assessments, a creditor can seek a relief of stay. If an association obtains a relief of stay, it only allows the association to pursue a collection lawsuit for post-petition amounts. However, although the association may have rights to foreclose on its lien, the association cannot collect on the judgment or pursue any other collection remedies, such as garnishment.
- **DISCHARGE:** The bankruptcy is completed and all pre-petition amounts are wiped out or paid under a payment plan.
- **DISMISSAL:** The debtor does not qualify for bankruptcy or fails to meet the requirements of the court. The bankruptcy is not granted.

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COMMON TYPES OF BANKRUPTCY:

♦ **Chapter 7:** Debtors filing Chapter 7 generally have more liabilities than assets and cannot afford to pay all qualified creditors, even over time. As a result, the trustee typically calls for a liquidation of qualified assets to pay off the debtor's creditors. However, in most cases, there are not sufficient qualifying assets to pay creditors.

♦ **Chapter 13:** Debtors filing Chapter 13 generally have more assets than liabilities but cannot afford to pay all creditors at once. Chapter 13 debtors have regular income and can afford to pay qualified debtors over time. In Chapter 13, the trustee calls for a reorganization of the debtor's debts, with a court-approved repayment plan for payment to creditors. Repayment can be through either 3-year or 5-year plans. Debtors generally keep possession of their assets, such as their homes.

ASSOCIATION BANKRUPTCY CONCERNS:

♦ **Pre-Petition vs. Post-Petition Debt:** Debtors owe all amounts that come due after the date of filing a bankruptcy petition. Associations should maintain two separate ledgers for pre-petition and post-petition amounts.

♦ **Automatic Stay:** The bankruptcy stay is a very broad limitation on all creditors and prevents almost all collection activities against the debtor, including the following:

- Sending collection letters
- Initiating collection phone calls
- Filing or continuing a lawsuit
- Initiating or continuing foreclosure procedures
- Suspending amenity use, utilities, parking privileges, or voting privileges

♦ **Debtor's Intent to Surrender:** Debtors file a statement in the bankruptcy as to whether the debtor will keep the property or surrender it to the debtor's mortgage holder. The debtor's choice to surrender the property has no legally binding effect on the debtor's continued ownership of the property until the mortgage holder actually completes its foreclosure. Debtor will remain responsible for all assessments that come due until the property is transferred to the bank or other owner.

♦ **Association Lien:** Even though the debtor may be discharged or released from debts in bankruptcy, the association's lien generally survives bankruptcy.

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**Individual situations may vary. This document is not intended to use as specific legal advice.*