



Municipal Law News

September 2013

DON'T THROW AWAY BANKRUPTCY NOTICES

-Ronald D. Richards & Patricia J. Scott

Due to the recent economic downturn, many municipalities have received notice of a bankruptcy regarding one of its residents or businesses. Perhaps you have thrown that notice away assuming "all is lost."

Below is a short, basic primer on bankruptcies – including reasons to give special care to any mail you receive about a bankruptcy case and how to protect a municipality's interests that otherwise might be harmed during a bankruptcy.

WHAT IS VOLUNTARY BANKRUPTCY?

Bankruptcy is filed by an individual or business to obtain financial relief. The person or business filing bankruptcy is referred to as a "debtor."

ARE THERE DIFFERENT TYPES OF BANKRUPTCIES?

Yes. There are basically two types of bankruptcy cases: (1) liquidation; and (2) reorganization. The first type, a Chapter 7 liquidation case, totally eliminates the debtor's debt (except for very limited debts that cannot be eliminated). The second type, reorganization, a Chapter 13 for individuals and a Chapter 11 for businesses, reorganizes the debtor's debt and provides partial debt relief.

CAN A BANKRUPTCY CASE ELIMINATE DEBT THE DEBTOR OWES?

Yes. Any debt that the debtor owes can be affected in a bankruptcy case. This could include, for example, installment loans, account receivables, and taxes. A few debts cannot be

eliminated, such as certain, specific tax debts. Whether various tax debts can be eliminated depends on the type of tax and the tax's due date. Some tax debt, such as a tax lien, may be eliminated (i.e. the debtor need not pay all of it) as to the debtor, but still remains attached to the debtor's property.

CAN A BANKRUPTCY CASE IMPACT OWNERSHIP OR ANYTHING ELSE OTHER THAN A DEBT?

Yes. A bankruptcy case could also put at risk interests in property - such as personal property - the municipality may own but which is in the possession of the debtor. This includes interests the municipality may have in the debtor's property. In short, every interest that a municipality has that is related to the debtor is potentially at risk in a bankruptcy.

HOW DO YOU FIND OUT THERE IS A BANKRUPTCY FILING THAT POTENTIALLY AFFECTS YOUR INTERESTS?

The simplest answer is either by mail or word of mouth. By law, if a debtor owes a municipality money, the debtor must list the municipality as a creditor in its bankruptcy filing. Assuming the debtor does so, the municipality will receive documents from the bankruptcy court identifying the bankruptcy and noting how the debtor seeks to dispose of a debt owed or an item in which the municipality claims an interest. Bankruptcy courts issue various documents, but the most common that a municipality might receive regarding a debtor's bankruptcy filing are the following:

continued on page 2 | [Don't Throw Away Bankruptcy Notices](#)

Notice of Bankruptcy Filing: If the debtor lists the municipality as a creditor to whom the debtor owes money, the court will send the municipality a notice of bankruptcy;

Notices of Dividends, Motions for Relief From Stay, Debtor's Plan: A municipality could receive a notice of possible dividends, a motion for relief from stay, or a debtor's reorganization plan. The debtor's plan generally relates to how the debtor intends to pay its creditors – i.e., how the payments will take place, how much the payments will be, at what interest rate, and over what marking period of time.

Each bankruptcy notice should be given careful attention and forwarded to a bankruptcy attorney to evaluate.

WHAT IF THE DEBTOR DOES NOT LIST THE MUNICIPALITY AS A CREDITOR?

If the debtor does not list the municipality as an entity to which the debtor owes money, then the municipality will not receive any notice, even if the municipality is owed money. For that reason, a municipality must stay aware of the financial status of a person or company with whom it is doing business. If you hear news of a person or company filing bankruptcy, you can either investigate further, or ask an attorney to do a quick search of bankruptcy court cases.

WHAT SHOULD A MUNICIPALITY DO IF IT RECEIVES NOTICE OF A BANKRUPTCY?

If you receive notice of a bankruptcy, you should immediately contact an attorney with bankruptcy experience. This is necessary because bankruptcy cases have many deadlines and are extremely time-sensitive. Although each bankruptcy case is different, often there is minimal attorney time needed to protect your interests. For example, if the debtor lists the municipality in the plan and the payment terms are acceptable, then minimal attorney time may be required. Next, the municipality

must stop collection efforts against the debtor. From the moment a bankruptcy case is filed, bankruptcy laws require that all entities to which the debtor owes money must stop collection efforts. This does not necessarily mean that the municipality is giving up its claim to money owed. Rather, the municipality must pursue money owed through the bankruptcy case. The municipality should contact an attorney to determine how to proceed in the bankruptcy case to collect any debt owed.

WHAT COULD HAPPEN IF A MUNICIPALITY RECEIVES NOTICE OF A BANKRUPTCY BUT DOES NOTHING?

Many potentially unfavorable things may happen if quick action is not taken. If the debtor proposes to pay less than what the debtor owes, then the municipality's right to object may be lost if the municipality does not respond or misses the deadline to respond. Likewise, failure to respond timely could cause the municipality to lose its entire interest in the property possessed by the debtor (e.g., vehicle or property).

Please contact Attorneys Ronald D. Richards or Patricia J. Scott with any questions regarding bankruptcy. For the latest bankruptcy law news visit our Michigan Bankruptcy Blog: www.michbankruptcyblog.com/

UPCOMING MUNICIPAL EVENT:

Michigan Campaign Finance Law Webinar October 8, 2013

Attorney Eric Doster will be presenting a free webinar titled "What Municipalities need to know about Michigan Campaign Finance Law" from 10:30 a.m. to 11:30 a.m. Register now: <https://www1.gotomeeting.com/register/640415496>

NOTICE OF INSURANCE MARKETPLACE – DUE DATE APPROACHING

An October 1, 2013 deadline is looming for many employers to give employees written notices under the Patient Protection and Affordable Care Act (PPACA, commonly known as the health care reform act.)

WHAT DOES THE NOTICE DO?

The notices are intended to help employees evaluate health care options available through the online marketplace for health insurance created by PPACA.

WHICH EMPLOYERS NEED TO GIVE NOTICES? WHICH EMPLOYEES GET NOTICES?

Each employer that is subject to the Fair Labor Standards Act ("FLSA") must provide a written "Notice of Insurance Marketplace" ("Notice") to its employees. The Notice must be distributed to all current employees by October 1, 2013. This includes both full-time and part-time employees, whether or not the employees participate in the employer's health plan.

WHAT NEEDS TO BE IN THE NOTICE?

The Notice must include, for example:

- A description of the services that are provided by the Insurance Marketplace;
- Information regarding how the employee may contact the Marketplace to request assistance;
- A statement that the employee may be eligible for a premium assistance tax credit if the employer sponsors a health plan that does not provide minimum value; and
- A statement that the employee may lose any relevant employer contribution if the employee purchases health insurance coverage through the Marketplace.

The U.S. Department of Labor has published two model Notices that employers may use to satisfy the distribution requirement. One model Notice is for use by an employer that maintains a health plan for some or all of its employees. The other model Notice is for use by an employer that maintains no health plan for any of its employees. Each model Notice can be found on the U.S. Department of Labor's website.

HOW SHOULD NOTICES BE DISTRIBUTED?

The Notice may be provided by first class mail or electronically if certain requirements are met. A third party (such as a health plan's third party administrator) may provide the Notice on the employer's behalf provided that the Notice is distributed timely and includes the required information. Any new employee who is hired on or after October 1, 2013 must receive the Notice within 14 days of the date on which he or she begins employment.

Please contact your Foster Swift professional with any questions about the Notice of Insurance Marketplace. For more information check out our Health Care Law Blog: www.healthlawyersblog.com

WATCH WEBINAR RECORDINGS

Did you miss some of the Foster Swift webinar series for new officials? If so, don't worry. We've got you covered. Each webinar was recorded and is posted on fosterswift.com. Watch all six webinars on-demand. Just follow this link: <http://bit.ly/19Pmprn>



I BEG YOU TO RECONSIDER YOUR DISORDERLY PERSON ORDINANCE: Michigan’s Panhandling Statute Declared Unconstitutional

-Nichole Jongsma Derks

Beginning in 1929, Michigan law criminalized “begging in a public place.” MCL 750.167(1)(h). Recently, the Michigan anti-begging statute was struck down for violating the First Amendment, which protects free speech. In *Speet et al v Schuette*, the Sixth Circuit Court of Appeals ruled that Michigan’s anti-begging statute bans a substantial amount of activity that the First Amendment protects. Prior cases established that charitable solicitation is free speech protected by the First Amendment. In *Speet*, the Court adopted the reasoning that there is no “legally justifiable distinction” between “begging for one’s self and solicitation by organized charities.” *Id.* at 12 (citing the dissenting opinion in *Young v New York City Transit Authority*, 903 F2d 146, 164 (2nd Cir. 1990)).

In *Speet*, Michigan’s Attorney General argued that the money collected by vagrants is often used to support drug habits or continue alcohol abuse rather than to meet basic needs. He also argued that the people panhandling may not be homeless or veterans, as the panhandlers’ signs often fraudulently convey. The Sixth Circuit Court of Appeals recognized the Attorney General’s substantial government interests in protecting the public from fraud, crime, and undue annoyance. However, the Court concluded that a more narrowly tailored statute is necessary rather than punishing all begging activity.

Many municipalities have ordinances substantially similar to the state anti-begging statute. Please contact Foster Swift to review your local disorderly conduct ordinance to confirm whether it complies with the decision in *Speet*.

MUNICIPAL ATTORNEYS

GROUP LEADER

Anne M. Seuryneck
616.726.2240
aseuryneck@fosterswift.com

Michael R. Blum | 248.785.4722
Karl W. Butterer | 616.726.2212
Nichole J. Derks | 616.796.2516
James B. Doezema | 616.726.2205
Laura J. Genovich | 616.726.2238
Brian G. Goodenough | 517.371.8147
Lisa J. Hamameh | 248.539.9906

Richard L. Hillman | 517.371.8129
Michael D. Homier | 616.726.2230
John M. Kamins | 248.785.4727
Thomas R. Meagher | 517.371.8161
Brian J. Renaud | 248.539.9913
Ronald D. Richards | 517.371.8154

LANSING

FARMINGTON HILLS

GRAND RAPIDS

DETROIT

MARQUETTE

HOLLAND

Foster Swift Collins & Smith, PC **Municipal Law News** is intended for our clients and friends. This newsletter highlights specific areas of law. This communication is not legal advice. The reader should consult an attorney to determine how the information applies to any specific situation.

IRS Circular 230 Notice: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication is not intended to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing, or recommending to another party any transaction or matter addressed in this communication.

