**Bankruptcy Basics**

**Filing for bankruptcy no longer means an automatic stay to an eviction.**
There have been recent changes in the law, which make it easier for a residential landlord to proceed with an eviction. Even if the tenant is provided with a stay, it will be for a minimal amount of time.

The key statute is 11 USC § 362(b)(22): “…continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential property in which the debtor resides as a tenant under a lease or rental agreement and with respect to which the lessor has obtained before the date of the filing of the bankruptcy petition, a judgment for possession of such property against the debtor…” If this statute applies to your situation, an automatic stay does not apply.

**If the tenant is not behind in rent** **at the time of filing for bankruptcy**, the tenant must still continue to make rent payments when they are due. Further, you will probably not even be notified of your tenant’s bankruptcy, because you are not yet a creditor. This does not mean that the tenant may simply stop paying rent after filing a petition. However, there are additional steps a residential landlord must take if their tenant files a petition for bankruptcy and then proceeds to cease paying rent.

**If the tenant is already behind in rent** **at the time of filing for bankruptcy**, there are several different rules. Eventually, the landlord will be able to more easily evict the tenant in this scenario. The landlord may always file an action to have any stay of eviction lifted. If the landlord has already obtained a judgment for possession prior to the tenant filing for bankruptcy, the landlord may proceed with the eviction. In the end, the outcome will be much more favorable for the residential landlord. The leased premise is the property of the landlord and not part of the bankruptcy estate.

Further, there are provisions in the code which allow a landlord to proceed with an eviction if the tenant is involved in illegal behavior or causing damage to the property.

In every case, you will want to serve your tenant with appropriate notice the moment that they become late in their rent or have reached their lease. You want to make sure that you do not end up with the nightmare of providing free rent to a non-paying tenant for an extended period of time. Unfortunately, landlords go to Lawyers only after they have made some mistake which ends up costing them additional months with a non-paying tenant.

 **\*\* Get a Lawyer and get the tenant out as quickly as the law provides \*\***