

# Title

## FREQUENTLY ASKED ^ QUESTIONS

December 2011

**Q Does a discharge in bankruptcy automatically “wipe out” judgment liens on real estate which was owned by the bankrupt debtor prior to filing his/her petition in bankruptcy?**

A No, the discharge only eliminates the bankrupt debtor’s personal liability on the judgment; it does not effect the lien of the judgment on real estate owned by the debtor prior to filing the Bankruptcy proceeding.

A Superior Court judgment against a person or entity who owns real property creates two sources of recovery – the judgment debtor individually (his/her personal property) and the judgment debtor’s real property. A discharge in bankruptcy only relieves the bankrupt debtor of personal liability on a judgment debt. Unless the bankruptcy court avoids or specifically eliminates the judgment lien in the bankruptcy proceeding, the judgment’s status as a lien on real estate owned by the bankrupt debtor is unaffected by a discharge in bankruptcy.

The leading case on this issue in New Jersey is Furnival Machinery Company v. King, et al., 142 N.J. Super 251 (App. Div, 1976).

Accordingly, where title was vested in an individual or entity prior to their filing a petition in bankruptcy the discharge thereunder in and of itself cannot be a basis for the elimination of judgments against the individual or entity and those judgments must be set up as exceptions to title regardless of whether or not the creditor was listed as a creditor in the bankruptcy.

These judgments are addressed in the usual way – discharge, release, etc. In addition, a debtor may avail themselves of the statutory procedure for cancellation of judgments after a discharge in bankruptcy (NJSA 2A:16-49.1) however such application is not failsafe and the assistance of a member of our underwriting staff should be sought where an order under this statute is being provided as the basis for removal of a judgment.

As always, feel free to address any questions to a member of our underwriting staff.