

Subject **Fraud in bankruptcy - the Kuhn epic**  
From Morgan King's Law Letter # 26 <morgan@morganking.com>  
To <morgan@morganking.com>  
Reply-To <morgan@morganking.com>  
Date 2017-02-21 08:04



And see remarks on the McCoy Late Filed Returns issue at Excerpts below.

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**MORGAN D. KING EDITOR**

# The King Law Letter

**NEWS - EVENTS - UPDATES FOR BANKRUPTCY AND TAX PROFESSIONALS  
& CONSUMER PROTECTION ATTORNEYS**

**LAW LETTER NO. 26 February 20 2017**

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## Lien Avoidance and Stripping

**Runtime: 97 minutes**

As a general rule, liens survive a bankruptcy discharge but often creditors' liens are at risk of avoidance or of being stripped. This On-Demand Webinar will examine the various means and methods used by debtors and trustees to strip or avoid creditors' liens on real and personal property during a debtor's bankruptcy. The program will address value issues and strategy associated with protecting against debtor's avoidance powers in Chapters 7 and 13 as well as the trustee's avoidance powers including use of the "strong arm" provision, preferential transfers, fraudulent transfers and state law lien avoidance.

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## Fundamentals of Lien Stripping

**Runtime 83 minutes**

The ability to strip a lien off of real estate, motor vehicles, or all of the debtor's property is a major aspect of bankruptcy. Whether you represent a debtor or creditor in a bankruptcy case, it is crucial to understand lien stripping. The ability to strip a lien off of real estate, motor vehicles, or all of the debtor's property is a major aspect of bankruptcy, so everyone needs to be prepared. If you represent a debtor and miss the opportunity, it could mean malpractice for you as the attorney. If you represent a creditor whose lien can potentially be stripped, you need to be able to explain what the debtor can do to their account, how, why, and what happens next. This topic will explain the methods, tips, tricks, and many other important aspects of lien stripping.

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## Pre-Bankruptcy Repossession

**Runtime 86 minutes**

How are your rights as a creditor affected when the borrower (debtor) files a bankruptcy? A number of creditors seeking to enforce their rights to seize assets subject their lien rights frequently do not know how their rights are affected when the borrower (debtor) files a bankruptcy after the creditor has repossessed the collateral for the loan. In addition, creditors who may also have judgment liens will understand when a judgment creditor is secured and how the filing of the bankruptcy may affect their rights. This topic will educate the creditor on their rights and allow the creditor to effectively work with the creditor attorney to protect personal property that has been repossessed prior to the filing of a bankruptcy.

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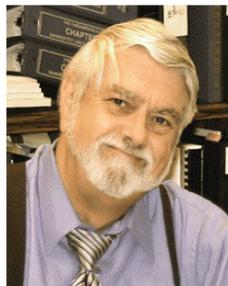
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- *Have clients with delinquent taxes?*
- *Are the taxes dischargeable?*
- *Have you calculated the tolling events correctly?*
- *Have tolling events for the 2-year rule been addressed?*
- *Does the tax transcript tell the whole story?*
- *Red-flags on the transcripts*
- *Has the client told you the whole story?*
- *If not dischargeable now, then when?*
- *Are there "sleeping assessment" flags?*
- *Can the tax liens be stripped?*
- *Can the liens be attacked on other grounds?*
- *Pending offer-in-compromise?*
- *How about innocent spouse?*

Morgan D. King  
of the California Bar

- *McCoy rule or the Beard test?*
- *Where does equitable tolling come in?*
- *Is there an "equivalent report or notice" issue?*
- *Is there a state "piggy-back" tax issue?*
- *Is the client's conduct "evasion"?*
- *Are there red-flags for evasion?*
- *State income tax issues?*
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**LETTER # 26  
EXCERPT FROM**

*King's*  
**Fundamentals  
Of Consumer Bankruptcy Law & Practice**

**Book Release 2016 # 2  
KingLawPublishing.com**

**KING'S FUNDAMENTALS OF CONSUMER BANKRUPTCY LAW & PRACTICE**

**¶ 1.3(c) Bankruptcy Reform**

**Add:**

Congress devoted considerable attention to bankruptcy reform that culminated in the Reform Act of 2005. Much of what absorbed the legislators' attention was examples of bankruptcy fraud, or at least what looked like fraud.

High on the list of examples was that of former Commissioner of Baseball, Bowie Kuhn.

Kuhn was an attorney who for many years served as the "Commissioner" of major league baseball, and who subsequently return to practice of law in New York in a partnership, Myerson & Kuhn. After several years the partnership filed bankruptcy, an Kuhn's partner was charged with criminal tax evasion and defrauding clients with inflated billings. Kuhn was not charged with similar offenses.

## Kuhn Files Bankruptcy

If you fail financially you can file bankruptcy. But there is no way to file moral bankruptcy. An example of his lack of ethics was how he treated Charlie Finley, the former owner of the Oakland A's baseball team, that Sports Illustrated stated was the greatest baseball team of the century. Kuhn had a history of harassing and interfering in the baseball affairs of the A's during the Finley era. In the opinion of many, his meddling was without justification.

But Charlie was an insurance salesman, and the "unseen hand," Charlie's cousin, Carl Finley, was a school principal. Neither had a background in professional baseball. Baseball's old-boy group was embarrassed that a crude-talking insurance salesman and school principal who spoke Latin could accomplish what they did. In the case of Baseball Commissioner Bowie Kuhn it was just jealousy. Oh, how Kuhn wanted to be Charlie! How he wished he could build winning teams! But he never would. Never could.

The thing that used to eat the Finley's about Kuhn was his smug self-righteousness. And, as time went on, his consuming hypocrisy.

Kuhn overlooked no opportunity to take potshots at Charlie Finley, most of them on a personal level. He was so morally superior! But, if Charlie was a son-of-a-bitch, he was an honest son-of-a-bitch. He didn't lie. He didn't turn a blind eye to steroids. He paid his bills, or at least made an honest effort to pay them. And, he never filed for bankruptcy

But Kuhn? Kuhn's law partner had big tax problems, which was one of the causes of the firm filing bankruptcy in 1989.

As the partnership collapsed into litigation and criminal prosecutions, Kuhn took the opportunity to file bankruptcy himself. He walked away owing huge sums of money to a lot of people who had trusted him. He showed no remorse, no shame. It was all just business.

Kuhn didn't just wash away what he owed people. He found a way he could do it and keep his wealth legally protected.

On the eve of filing personal bankruptcy, Kuhn bought a \$2 million home in Florida. He did not have to surrender the home to the bankruptcy trustee. As bankruptcy attorneys know, the Florida homestead has no limits.

The loophole he found is that there are two states in which you can file bankruptcy, give the finger to your creditors, and still keep your home, no matter how much equity you have in it. You can walk away rich, while you screw the people who trusted you with credit. That was a cunning way to put \$1 million of his wealth out of the hands of his creditors and the bankruptcy court. Those states are Texas and Florida.



Before filing the bankruptcy he sold his lavish home in Ridgewood, New Jersey, and with the proceeds bought the mansion in Florida. He then filed bankruptcy.

And then he went into hiding.

An order in the partnership bankruptcy remarked on the impression " ... that this Court was condoning his conduct in moving his assets to Florida in an apparent effort to shield those assets from creditor claims under the liberal Florida exemption laws," which the court remarked " ... appears improper."

Wrote the New York Times ... "The quest for Bowie Kuhn continues. Lawyers for the creditors of Myerson & Kuhn, the former baseball commissioner's bankrupt law firm, have been trying to track him down." The Times continued, "Mr. Kuhn is running from his troubles."

A book on the history of bankruptcy cites the Kuhn bankruptcy as an example of how rich debtors take advantage of the loophole. Testimony on the Floor of the U.S. Senate on March 01, 2005, in connection with the proposed Bankruptcy Reform Act:

"A favorite example is Bowie Kuhn, the former commissioner of baseball, who bought a \$2 million house in Florida. Kuhn's creditors got only pennies on the dollar when he subsequently filed for bankruptcy, while Kuhn himself kept the house and his enviable lifestyle. The exemption that made all this possible dates back to the nineteenth century as does the general astonishment that a debtor has so much protection against his creditors."

And yet this is the man who called Charlie "an embarrassment to baseball."

Today, Bowie Kuhn is in the Baseball Hall of Fame. Charlie Finley, one of the all-time most successful MLB owners in history, who built what Sports Illustrated called the greatest baseball team of the century, is not.

Go Figure.

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p.s. The author was prompted to add this story to his book, *Fundamentals*, on the occasion of his wife's book, *FinleyBall*, being published and appearing in bookstores across the country. Nancy Finley King basically grew up in the stadiums in Kansas City and Oakland. See more at [FinleyBall.com](http://FinleyBall.com).

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LETTER # 26

THE LAW & CASE  
HOTWIRE

## King's Discharging Taxes in Consumer Bankruptcy cases

¶ 2.4(f)(10), (11), (12).

### TAX RETURNS FILED AFTER THE IRS HAS FILED SUBSTITUTES FOR RETURN

The question has been raised, can a tax liability be discharged after the IRS has filed a "substitute for return" ("SFR")?

The answer is, yes.

The filing of an SFR, by itself, has no bearing on the validity of a subsequently (late) filed tax return, or the dischargeability of the taxes.

It may be safely assumed that any case addressing the validity of a late-filed tax return began with the filing of an SFR: *Briggs v. United States* (In re Briggs) (Bankr. N.D. Ga., 2014).

In circuits that have adopted what is typically called "the McCoy rule," the filing of an SFR means the taxpayer did not file his/her tax returns in a timely manner, to wit, missed the deadline to file (April 15, or October 15), and hence the tax return is invalid and the tax is not dischargeable for failure to satisfy the 2-year rule prescribed at 11 U.S.C. 523(a)(1)(B)(i) or (ii). *In re McCoy*, 666 F.3d 924 (5th Cir.2012).

But, it is the fact that the return was filed late that presents the problem, not the appearance of an SFR on the Account Transcript. As explained below, a number of courts have held that a late tax return, filed after an SFR is filed, was nevertheless a valid return for discharge purposes.

Hence, we need to look at the consequences of a return filed late. The McCoy rule has been adopted in only 3 circuits (1st., 5th. and 10th circuits).

Typically the courts in non-McCoy states have rejected or bypassed the McCoy rule and continued to follow what may be called the "Beard rule" (*Beard v. Comm'r of Internal Revenue*, 82 T.C. 766 (1984), aff'd. 793 F.2d 139 (6th Cir. 1986)).

Under the Beard rule, the late-filed tax return filed after an SFR has been posted may be deemed valid if the circumstances of the tardy filing amount to "... an honest and reasonable attempt to satisfy the tax laws."

And, this may result in the return being deemed valid notwithstanding that an SFR was filed.

Several cases in which the returns were filed late and the IRS filed SFRs, have weighed the *Beard* criteria in favor of the debtor and found the returns to be valid. See e.g., *In re Colsen*, 446 F.3d 836 (8th Cir., 2006), *In re Davis*, \_\_ B.R. \_\_ (Bankr.N.J. 2015) (unpublished), *McGrew v. Internal Revenue Serv.* (In re McGrew) (Bankr. N.D. Iowa, 2016), *In re Ridgway* (Bankr. CT 2005) (a pre-BAPCA case, so its relevance to the late filed return issue may be lesser).

Other cases have held, in essence, that a determination of whether the 4 prongs of *Beard* have been satisfied must be the subject of a trial. "... the debtor should have an opportunity to make a specific factual showing that his or her late submissions were a reasonable attempt to comply with the tax law." *Briggs v. United States* (In re Briggs) (Bankr. N.D. Ga., 2014) (quoting *Rushing v. United States* (In re Rushing), 273 B.R. 22



, 227 (Bankr. D. Ariz. 2001).

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## HELD: STUDENT LOANS DISCHARGED BASED ON 4 FACTORS

This case brought to our attention by Craig Andresen, Esq. Bloomington, MN

*Williams v. Nat'l Collegiate Student Loan Trust \_ B.R. \_ (Bankr.Wash. 2017)*

In this case the court held that making the debtor pay the student loans would cause hardship, based on 4 factors in the case:

1. Limited employment and earning potential
2. Showed good faith by entering into an income-based repayment plan, notwithstanding that she was unable to make any of the payments;
3. Time between due date to pay on the loans, and filing bankruptcy; she did not "rush" into filing bankruptcy as soon as the payments came due.
4. Serious and partially disabling health problems. due to her chronic and progressive health problems.

Ms. Williams suffers from type 2 diabetes with associated diabetic neuropathy, carpal tunnel syndrome, osteoarthritis in both knees, joint pain, high blood pressure, progressive retinal neuropathy, anxiety, and depression. Many of her health problems are chronic and progressive in nature. Her medication for arthritis only slows down the progress of the disease. There are some days that her health issues restrict her ability to leave her home. Ms. Williams' currently receives her health care at no charge through Apple Health, Washington's Medicaid program. She is 44 years old.

During that period, she entered into five private student loans for her own education. In 2005, she also co-signed on a student loan for her sister, who attended Prairie View A&M University in Prairie View, Texas.

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LETTER # 26  
IN OTHER NEWS

**Bankruptcy - Taxes - Consumer Protection**

## U.S. STUDENT LOAN DEBT RECORD HIGH

Total U.S. student debt hit a record \$1.31 trillion last year, the 18th consecutive year Americans' education debt rose, [according to](#) the Federal Reserve Bank of New York.

Outstanding loans taken out for higher education have doubled since 2009, data show. No other form of household debt has increased by as much since then. In fact, of the six major categories of consumer debt tracked by the New York Fed, only student loans and auto debt have increased since year-end 2008 (total auto loans are up 46 percent). Total household debt has fallen by 1 percent.

[CLICK FOR MORE STORY](#)

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## HOUSEHOLD DEBT HITS ALL-TIME HIGH

U.S. household debt hit near an all-time high in the fourth quarter, reaching \$12.58 trillion, as credit was more readily available for mortgage, auto and student loans, a Federal Reserve Bank of New York survey showed on Thursday.

Total debt was up \$460 billion from a year ago and is now just 0.8 percent below an all-time peak of \$12.68 trillion in the third quarter of 2008, before the worst of the financial crisis and deep recession.

But since the housing market-inspired meltdown, mortgages have accounted for a smaller share of overall loans.



"Since reaching a trough in mid-2013, the rebound in household debt has been led by student debt and auto debt, with only sluggish growth in mortgage debt," Wilbert van der Klaauw, a New York Fed senior vice president, said in the report.

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## IRS HAS BAD LUCK WITH PRIVATE TAX COLLECTORS

The Internal Revenue Service is notorious for its abysmal service. In 2015, the agency reported that criminals had "potentially accessed" more than 700,000 total accounts between 2014 and 2015. In 2016, IRS Commissioner John Koskinen told the Washington Post that they expect to answer 47 percent of calls - significant growth from the previous year's 37 percent.

As if privacy issues and poor customer service weren't evidence enough of the IRS's irresponsibility, the agency has recently re-adopted the use of private companies to help collect taxes. In 1996 and 2006, the IRS employed private companies to help collect delinquent tax debt. The program failed miserably both

times. Nevertheless, in a stunning feat of legislation blind to history, Congress again permitted the use of private tax collection by slipping it into the unrelated "Fixing America's Surface Transportation Act" in 2015.

Outsourcing collection to private companies might sound like an excellent way for the IRS to surrender some of its excess bureaucratic power and streamline its processes. But it actually creates substantial problems. A recent National Taxpayer Advocate report outlines several reasons why this is the case.

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## THE DIFFERENCE BETWEEN AN IRS OFFICER AND AN IRS AGENT

FROM DENNIS BRAGER, ESQ.  
Brager Tax Law Group

An IRS revenue agent's job is to conduct tax audits of individuals and businesses as well as trusts and non-profit organizations. Revenue agents generally conduct tax audits of the most complicated tax returns ranging from small "Schedule C" businesses to the largest multi-national corporations. They are also assigned to the IRS' Offshore Voluntary Compliance Program (OVDP) to determine whether the failure to file a Form TDF 9-22.1, Foreign Bank Account Report (FBAR) will be subject to FBAR penalties.

[CLICK FOR MORE STORY](#)

## U.S. Trustee Program Reaches \$81.6 Million Settlement with Wells Fargo Bank N.A. to Protect Homeowners in Bankruptcy

**Settlement Addresses the Bank's Errors Affecting Nearly 68,000 Accounts of Homeowners in Bankruptcy**

The Department of Justice's U.S. Trustee Program has entered into a national

settlement agreement with Wells Fargo Bank N.A. (Wells Fargo) requiring Wells Fargo to pay \$81.6 million in remediation for its repeated failure to provide homeowners with legally required notices, thereby denying homeowners the opportunity to challenge the accuracy of mortgage payment increases. These failures violated federal bankruptcy rules that took effect in December 2011 and imposed more detailed disclosure requirements to ensure proper accounting of fees and charges on homeowners in bankruptcy.

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LETTER # 26

## **ROOKER FELDMAN - DESPERATE CONSUMER BANKRUPTCY LAWYER**

Over the years, Rooker has tried various marketing methods to promote his practice. And, among those methods, he has made some mistakes.

At one time his office was in an urban area that had a fairly large section of town occupied by Asian minorities, including Chinese. In fact, the city had its own "Little Chinatown." So, thinking smart, he placed an ad in the Chinese Yellow Pages, advertising bankruptcy services.

Immediately after the phone book came out, a call came in at the office. Bling, the hot dingbat front desk girl, took the call and buzzed Rooker.

"Mr. Feldman, we have a potential new client calling. Do you want to take the call?"

"Why don't you take a message, I'm in the middle of something."

"OkayFine," replied Bling.

An hour later Rooker walked out to the front desk and picked up Bling's note on the call. As he looked at it, he realized he couldn't read Bling's handwriting.

"Bling, I can't read your handwriting!"

"I did the best I could."

"What do you mean? Where's the name and phone number?"

"I have no clue," replied Bling. "I couldn't understand a word he said!"

"Bling - for goodness sake, you could have asked him to speak slower!"

"It wouldn't have made any difference."

"Why?"

"Because he was speaking in Chinese!"

In an instant Rocky realized that his entire investment in the Chinese Yellow Pages was a huge mistake. He shrugged his shoulders and returned to his office.

Several months later, he asked his loyal old paralegal, Lou, to place a large ad in the regular Yellow Pages, advertising for personal injury cases.

As the months went by, very few calls came in off the ad. Rooker had looked at the ad after it came out, and it looked okay to him. It focused on "big rig" accidents, and announced "Rooker "Big Rig" Feldman. When You Need a Big Rig of a Lawyer!"

Rocky got curious about why there were so few calls off the ad. He opened the phone book and turned to his ad.

In large print, it blared "*If you've been killed in an accident ...*"

He stared briefly in disbelief, and muttered, "Oh, Lou!" and tossed the book in the trash bin.

But Rooker Feldman does not give up easily.

He invested a fair amount of money and time designing a lovely brochure advertising his services for small businesses. It advertised "Partnership Agreements, Incorporation, Small Business Bankruptcy, Tax Relief, Business Litigation, and Business Debt Defense."

But, few calls came in.

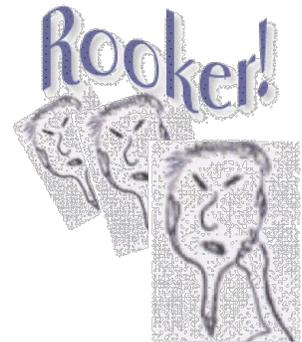
So, he did what he probably should have done first ... he hired some bright young folks to call and survey 200 local businesses and try to identify what they last used a lawyer for, and what legal services they thought they most needed.

After a week his callers typed up a nice, concise report on their findings, and left it on his desk. When he arrived the next morning, he eagerly studied the report. The results dismayed him. None of the answers mentioned any of the services he was offering!

Rather, what they almost all needed was *help collecting debts and receivables!* The last time most of them had hired a lawyer they did it to sue customers and clients for unpaid bills.

Rooker realized it was just the opposite of what he was offering ... helping small businesses get out of debt!

Did he want to become a debt collector?



**DESPERATE  
CONSUMER  
BANKRUPTCY  
ATTORNEY!**

No!

Wistfully, he tossed the report back on his desk, leaned back in his expensive leather chair, and gazed out the window ... the portal to his spirit cave, and sighed deeply.

World without end.

Amen.

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## CONTACT

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