



WSSFC 2025

Substantive Track – Session 2

Busting Bankruptcy Myths: What Every Lawyer Should Know About Bankruptcy

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About the Presenters...

Since 2005, attorney **Eliza M. Reyes** has focused on representation of debtors, creditors, trustees, landlords, tenants, investors and most other parties in interest with issues before the bankruptcy, federal and state courts; including individual and commercial bankruptcy filings under Chapters 7, 13, 12, and 11; objections to discharge; fraudulent transfer issues; asset valuation issues; adversary proceedings; defense of foreclosure actions; debt collection; contract disputes; real estate matters; and individual, agricultural and commercial reorganizations. She is a member of the Bankruptcy, Insolvency, and Creditors' Rights Section and the Solo and Small Firm Section of the State Bar of Wisconsin. Eliza has also been a presenter at conferences on various topics related to financial matters and bankruptcy and is the author of the Creditor/Debtor Chapter of the Wisconsin Attorney's Desk Reference 2018, published by Pinnacle Books, and the Creditors' Rights & Remedies chapter of Marital Property Law in Wisconsin, also published by Pinnacle Books. Eliza is a 1991 graduate of the University of Wisconsin-Milwaukee with a degree in Mass Communication/Journalism, and she received her J.D. from The John Marshall Law School in 1997.

Eric A. Ristau is a shareholder with Laffey, Sebranek, Auby & Ristau, S.C. in Madison and Sun Prairie, Wisconsin. He concentrates his practice in creditor's rights and collections, real estate, and estate planning, and enjoys representing a wide array of clients, including local financial institutions, businesses in many industries, and individuals. Eric is a member of the State Bar of Wisconsin, the Western District Bankruptcy Bar Association, and the Bankruptcy, Insolvency, and Creditors' Rights Section of the State Bar of Wisconsin. In addition to his legal practice, Eric recently concluded a 7-year stint on the Board of Directors of REACH-A-Child, Inc., a Madison-area non-profit which assists first responders to aid children in crisis, and is currently looking for new volunteering opportunities. Eric received his undergraduate degree from the University of Wisconsin - Eau Claire and his J.D. from the University of Wisconsin-Madison.

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BUSTING BANKRUPTCY MYTHS: WHAT EVERY LAWYER SHOULD KNOW

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MYTH #1

Potential Bankruptcy Debtors Should Stop Paying ALL Their Creditors In Preparation For Filing

Myth Debunked - Potential bankruptcy debtors, whether they are consumer debtors seeking to discharge debts incurred for a household purpose, or any size of business or agricultural operation attempting to reorganize, need to know which of their creditors they should CONTINUE paying while preparing for a bankruptcy filing.

- If possible, potential consumer debtors should continue paying their regular household expenses such as their utility bills and insurance premiums. Obligations such as child support and maintenance payments should also continue to be paid prior to the filing of a consumer bankruptcy. More importantly, if a potential bankruptcy filing is not to address arrearages on secured debts such as a mortgage loan or an auto loan, consumer debtors should also continue to pay those debts as they come due.
- Agricultural or business operations, if possible, should also continue paying regular monthly expenses of operating the business or farming operation such as employee wages, contributions to employee benefit programs, withholdings, tax obligations, utility bills and insurance premiums.
- Similar to consumer debtors, if agricultural or business operations have secured obligations or obligations pursuant to unexpired leases which are NOT in arrears and are NOT the reason for the bankruptcy filing, potential agricultural or business debtors should continue to pay those debts as they come due.
- With regard to vendors or suppliers of a farming or business operation, payments to these creditors should not be disturbed if the payment is for a debt incurred in the ordinary course of business of the potential debtor and the creditor; payment was made in the ordinary course of business or financial affairs of the debtor and the creditor; and the payment was made according to ordinary business terms.

The Creditors Consumer Debtors Should Continue Paying If Possible (this list assumes that the potential debtor is not in arrears on these debts):

- Home mortgage lender
- Auto loan lender
- Residential landlord
- Condominium dues (non-dischargeable if incurred post-petition)
- Utility bills
- Current tax liabilities
- Student loans
- Insurance premiums
- Child support payments
- Maintenance payments

The Creditors Agricultural/Business Debtors Should Continue Paying If Possible (this list assumes that the potential debtor is not in arrears on these debts):

- Employee wages
- All withholding from employee wages
- Secured loans, i.e. real estate loans
- Commercial landlord
- Auto loan lender
- Equipment loan lender
- Equipment lease payments
- Current tax liabilities, including trust fund taxes and sales taxes
- Insurance premiums
- Utility bills
- Critical Vendors/Suppliers
- Employee Benefit Plans

For Agricultural/Business/Consumer Debtors who are in arrears with their secured lenders (such as auto, equipment and mortgage lenders), landlords and taxing authorities, if possible, the following creditors should continue to receive payments:

- Employee wages
- All withholding from employee wages
- Insurance premiums
- Utility Bills
- Student Loans
- Critical Vendors/Suppliers
- Condominium Dues (non-dischargeable if incurred post-petition)

BUT SEE MYTH #3 FOR CREDITORS WHO SHOULD NOT RECEIVE PAYMENTS!

Applicable Statutes:

Employee Wages/Contributions to Employee Benefit Plans:

11 U.S. Code § 507(a)(4)

(a) The following expenses and claims have priority in the following order:

(4) Fourth, allowed unsecured claims, but only to the extent of \$13,650 for each individual or corporation, as the case may be, earned within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first, for—

(A) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual; or

(B) sales commissions earned by an individual or by a corporation with only 1 employee, acting as an independent contractor in the sale of goods or services for the debtor in the ordinary course of the debtor's business if, and only if, during the 12 months preceding that date, at least 75 percent of the amount that the individual or corporation

earned by acting as an independent contractor in the sale of goods or services was earned from the debtor.

(5) Fifth, allowed unsecured claims for contributions to an employee benefit plan—

(A) arising from services rendered within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first; but only

(B) for each such plan, to the extent of—

(i) the number of employees covered by each such plan multiplied by \$10,000;² less

(ii) the aggregate amount paid to such employees under paragraph (4) of this subsection, plus the aggregate amount paid by the estate on behalf of such employees to any other employee benefit plan.

Wis. Stat. § 109.03 When Wages Payable; Pay Orders

(1) REQUIRED FREQUENCY OF PAYMENTS. Every employer shall as often as monthly pay to every employee engaged in the employer's business, except those employees engaged in logging operations and farm labor, all wages earned by the employee to a day not more than 31 days prior to the date of payment. Employees engaged in logging operations and farm labor shall be paid all earned wages no less often than at regular quarterly intervals. Any employee who is absent at the time fixed for payment or who for any other reason is not paid at that time shall be paid thereafter at any time upon 6 days' demand. The required frequency of wage payments provided in this subsection does not apply to any of the following:

[Limited categories excluded from § 109.03 include: employees covered under a valid collective bargaining agreement, certain school district or private school employees, employees of the University of Wisconsin System, other than university staff, employees who receive compensatory time off in lieu of overtime pursuant to § 103.025, and certain part-time fire fighter or emergency medical services practitioners.]

(5) ENFORCEMENT. Except as provided in sub. (1), no employer may by special contract with employees or by any other means secure exemption from this section. **Each employee shall have a right of action against any employer for the full amount of the employee's wages due on each regular pay day as provided in this section and for increased wages as provided in s. 109.11 (2), in any court of competent jurisdiction.** An employee may bring an action against an employer under this subsection without first filing a wage claim with the department under s. 109.09 (1). **An employee who brings an action against an employer under this subsection shall have a lien upon all property of the employer, real or personal, located in this state as described in s. 109.09 (2).**

Wis. Stat. § 109.09 Wage claims, Collection

(1) The department shall investigate and attempt equitably to adjust controversies between employers and employees as to alleged wage claims. The department may receive and investigate any wage claim that is filed with the department, or received by the department under s. [109.10 \(4\)](#), no later than 2 years after the date the wages are due. The department

may, after receiving a wage claim, investigate any wages due from the employer against whom the claim is filed to any employee during the period commencing 2 years before the date the claim is filed. The department shall enforce this chapter and s. [66.0903](#), 2013 stats., s. [103.49](#), 2013 stats., s. [229.8275](#), 2013 stats., and s. [16.856](#), 2015 stats., and ss. [103.02](#), [103.82](#), and [104.12](#). In pursuance of this duty, the department may sue the employer on behalf of the employee to collect any wage claim or wage deficiency and ss. [109.03 \(6\)](#) and [109.11 \(2\)](#) and [\(3\)](#) shall apply to such actions. Except for actions under s. [109.10](#), the department may refer such an action to the district attorney of the county in which the violation occurs for prosecution and collection and the district attorney shall commence an action in the circuit court having appropriate jurisdiction. Any number of wage claims or wage deficiencies against the same employer may be joined in a single proceeding, but the court may order separate trials or hearings. In actions that are referred to a district attorney under this subsection, any taxable costs recovered by the district attorney shall be paid into the general fund of the county in which the violation occurs and used by that county to meet its financial responsibility under s. [978.13 \(2\) \(b\)](#) for the operation of the office of the district attorney who prosecuted the action.

(2)

(a) The department of workforce development, under its authority under sub. [\(1\)](#) to maintain actions for the benefit of employees, or an employee who brings an action under s. [109.03 \(5\)](#) shall have a lien upon all property of the employer, real or personal, located in this state for the full amount of any wage claim or wage deficiency.

(b)

1. A lien under par. [\(a\)](#) upon real property takes effect when the department of workforce development or employee files a notice of the lien with the clerk of the circuit court of the county in which the services or some part of the services were performed, pays the fee specified in s. [814.61 \(5\)](#) to that clerk of circuit court and serves a copy of that petition on the employer by personal service in the same manner as a summons is served under s. [801.11](#) or by certified mail with a return receipt requested. The clerk of circuit court shall enter the notice of the lien on the judgment and lien docket kept under s. [779.07](#).

2. A lien under par. [\(a\)](#) upon personal property takes effect when the department of workforce development or employee files notice of the lien in the same manner, form, and place as financing statements are filed under subch. [V of ch. 409](#) regarding debtors who are located in this state, pays the same fee provided in s. [409.525](#) for filing financing statements, and serves a copy of the notice on the employer by personal service in the same manner as a summons is served under s. [801.11](#) or by certified mail with a return receipt requested. The department of financial institutions shall place the notice of the lien in the same file as financing statements are filed under subch. [V of ch. 409](#).

3. The department of workforce development or employee must file the notice under subd. [1](#) or [2](#) within 2 years after the date on which the wages were due. The notice shall specify the nature of the claim and the amount claimed, describe the property upon which the claim is made and state that the person filing the notice claims a lien on that property.

(c)

1. In this paragraph:

a. "Commercial lending institution" has the meaning given for "financial institution" in s. [234.01 \(5k\)](#).

b. "Financial institution" has the meaning given in s. [69.30 \(1\) \(b\)](#).

1m. A lien under par. [\(a\)](#) takes precedence over all other debts, judgments, decrees, liens, or mortgages against the employer, except a lien of a commercial lending institution as provided in subd. [2.](#) and [3.](#) or a lien under s. [292.31 \(8\) \(i\)](#) or [292.81](#), regardless of whether those other debts, judgments, decrees, liens, or mortgages originate before or after the lien under par. [\(a\)](#) takes effect. A lien under par. [\(a\)](#) may be enforced in the manner provided in ss. [779.09](#) to [779.12](#), [779.20](#), and [779.21](#), insofar as those provisions are applicable. The lien ceases to exist if the department of workforce development or the employee does not bring an action to enforce the lien within the period prescribed in s. [893.44](#) for the underlying wage claim.

2. Except as provided in this subdivision, a lien under par. [\(a\)](#) does not take precedence over a lien of a commercial lending institution against the employer that originates before the lien under par. [\(a\)](#) takes effect. Subject to subd. [3.](#), a lien under par. [\(a\)](#) takes precedence over a lien of a commercial lending institution against the employer that originates before the lien under par. [\(a\)](#) takes effect only as to the first \$3,000 of unpaid wages covered under the lien that are earned by an employee within the 6 months preceding the date on which the employee files the wage claim under sub. [\(1\)](#) or brings the action under s. [109.03 \(5\)](#) or the date on which the department receives the wage claim under s. [109.10 \(4\) \(a\)](#), whichever is applicable.

3. Notwithstanding subd. [2.](#), a lien of a financial institution that exists on November 30, 2003, and that originates before a lien under par. [\(a\)](#) takes effect takes precedence over the lien under par. [\(a\)](#), and a lien of a financial institution for any amount advanced by the financial institution after a lien under par. [\(a\)](#) takes effect under a contract entered into before December 1, 2003, including any extension or renewal of such a contract, takes precedence over the lien under par. [\(a\)](#). Notwithstanding subd. [2.](#), a lien under par. [\(a\)](#) that exists on November 30, 2003, takes precedence over a lien of a commercial lending institution that is not a financial institution, regardless of whether the lien of the commercial lending institution originates before or after the lien under par. [\(a\)](#) takes effect.

Condominium Dues:

11 U.S.C. § 523

- (a) A discharge under section [727](#), [1141](#), [1192 \[1\]](#) 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—

[...]

(16) for a fee or assessment that becomes due and payable after the order for relief to a membership association with respect to the debtor's interest in a unit that has condominium ownership, in a share of a cooperative corporation, or a lot in a homeowners association, for as long as the debtor or the trustee has a legal, equitable, or possessory ownership interest in such unit, such corporation, or such lot, but nothing in this paragraph shall except from discharge the debt of a debtor for a membership

association fee or assessment for a period arising before entry of the order for relief in a pending or subsequent bankruptcy case;

Utility Bills:

11 U.S.C. § 366

(a) Except as provided in subsections (b) and (c) of this section, a utility may not alter, refuse, or discontinue service to, or discriminate against, the trustee or the debtor solely on the basis of the commencement of a case under this title or that a debt owed by the debtor to such utility for service rendered before the order for relief was not paid when due.

(b) Such utility may alter, refuse, or discontinue service if neither the trustee nor the debtor, within 20 days after the date of the order for relief, furnishes adequate [assurance of payment](#), in the form of a deposit or other security, for service after such date. On request of a party in interest and after notice and a hearing, the court may order reasonable modification of the amount of the deposit or other security necessary to provide adequate [assurance of payment](#).

(c)

(1)

(A) For purposes of this subsection, the term “[assurance of payment](#)” means—

- (i) a cash deposit;
- (ii) a letter of credit;
- (iii) a certificate of deposit;
- (iv) a surety bond;
- (v) a prepayment of utility consumption; or
- (vi) another form of security that is mutually agreed on between the utility and the debtor or the trustee.

(B) For purposes of this subsection an administrative expense priority shall not constitute an [assurance of payment](#).

(2) Subject to paragraphs (3) and (4), with respect to a case filed under chapter 11, a utility referred to in subsection (a) may alter, refuse, or discontinue utility service, if during the 30-day period beginning on the date of the filing of the petition, the utility does not receive from the debtor or the trustee adequate [assurance of payment](#) for utility service that is satisfactory to the utility.

(3)

(A) On request of a party in interest and after notice and a hearing, the court may order modification of the amount of an [assurance of payment](#) under paragraph (2).

(B) In making a determination under this paragraph whether an [assurance of payment](#) is adequate, the court may not consider—

- (i) the absence of security before the date of the filing of the petition;
- (ii) the payment by the debtor of charges for utility service in a timely manner before the date of the filing of the petition; or
- (iii) the availability of an administrative expense priority.

(4) Notwithstanding any other provision of law, with respect to a case subject to this subsection, a utility may recover or set off against a security deposit provided to the utility by the debtor before the date of the filing of the petition without notice or order of the court.

(d) Notwithstanding any other provision of this section, a utility may not alter, refuse, or discontinue service to a debtor who does not furnish adequate [assurance of payment](#) under this section if the debtor—

(1) is an individual;

(2) makes a payment to the utility for any debt owed to the utility for service provided during the 20-day period beginning on the date of the order for relief; and

(3) after the date on which the 20-day period beginning on the date of the order for relief ends, makes a payment to the utility for services provided during the pendency of case when such a payment becomes due.

Domestic Support Obligations:

11 U.S.C. § 507(a)(1)

(a) The following expenses and claims have priority in the following order:

(1) First:

(A) Allowed unsecured claims for domestic support obligations that, as of the date of the filing of the petition in a case under this title, are owed to or recoverable by a spouse, former spouse, or child of the debtor, or such child's parent, legal guardian, or responsible relative, without regard to whether the claim is filed by such person or is filed by a governmental unit on behalf of such person, on the condition that funds received under this paragraph by a governmental unit under this title after the date of the filing of the petition shall be applied and distributed in accordance with applicable nonbankruptcy law.

(B) Subject to claims under subparagraph (A), allowed unsecured claims for domestic support obligations that, as of the date of the filing of the petition, are assigned by a spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative to a governmental unit (unless such obligation is assigned voluntarily by the spouse, former spouse, child, parent, legal guardian, or responsible relative of the child for the purpose of collecting the debt) or are owed directly to or recoverable by a governmental unit under applicable nonbankruptcy law, on the condition that funds received under this paragraph by a governmental unit under this title after the date of the filing of the petition shall be applied and distributed in accordance with applicable nonbankruptcy law.

MYTH #2

A Bankruptcy Filing Will ALSO Stop Collection Efforts Against Guarantors and/or Co-Signers Who Are Not Debtors in Bankruptcy

Myth Debunked – With very few exceptions, creditors can continue to collect against any party who is not a debtor in bankruptcy who is liable for a debt with a party who has filed a bankruptcy.

Chapter 7 and Chapter 11 Cases:

THERE IS NO CO-DEBTOR STAY IN CHAPTER 7 AND CHAPTER 11 CASES!!!

Chapter 12 and Chapter 13 Cases:

- Generally, in Chapter 12 and Chapter 13 cases, a creditor may not act, start, or continue any civil action to collect all or any part of a *consumer* debt of the debtor from any individual who is also liable for the debt with the debtor. 11 U.S.C. §§ 1201, 1301.
- There are exceptions to the general rule regarding the co-debtor stay in Chapter 12 and 13 cases as follows:
 - The co-debtor became liable for a secured debt of the debtor in the ordinary course of the co-debtor's business; and
 - The case is closed, dismissed or reconverted to a case under Chapter 7.

MYTH(S) #3

Potential Debtors Can “Gift” or “Transfer” Their Assets to Third Parties Without Receiving Fair Consideration For Those Assets Prior to Filing to Protect Those Assets from a Bankruptcy Trustee; Potential Debtors Can Pay “Preferred” Creditors, Such as Family Members Prior to Filing for Antecedent Debts; the Bankruptcy Trustee Won’t Be Able to Learn of These Gifts or Transfers and/or Payments

Myth(s) Debunked

- A debtor in bankruptcy is required to disclose any property the debtor sold, traded or otherwise transferred to anyone, other than property transferred in the ordinary course of the debtor’s business or financial affairs, within two (2) years before the debtor filed for bankruptcy. A debtor is also required to (1) disclose to whom the property was transferred, (2) provide a description and the value of the property transferred, (3) provide a description of any property or payment received or debts paid in exchange for the property transferred, and (4) disclose the date the transfer was made.
- A debtor whose debts are primarily consumer debts, i.e. debts incurred primarily for a personal, family, or household purpose, is required to disclose any creditor to whom the debtor paid a total of \$600 or more, and the total amount paid to that creditor during the 90 days before filing for bankruptcy (NOTE – child support payments and alimony/maintenance payments do not have to be included in this disclosure).
- A debtor whose debts are not primarily consumer debts is required to disclose any creditor to whom the debtor paid a total of \$6,825.00 or more, and the total amount paid to that creditor during the 90 days before filing for bankruptcy ((NOTE – child support payments and alimony/maintenance payments do not have to be included in this disclosure).
- A debtor is required to disclose any payments made within one (1) year before filing for bankruptcy to any relatives, general partners, relatives of any general partners, partnerships of which the debtor is a partner, corporations of which the debtor is an officer, director, person in control, or owner of 20% or more of their voting securities, and any managing agent, including one for a business the debtor operates as a sole proprietor.
- A debtor is required to disclose any payments made within one (1) year before filing for bankruptcy on account of a debt that benefited an insider.

Applicable Statutes:

11 U.S.C. § 547 Preferences

(a) In this section—

(1) “[inventory](#)” means personal property leased or furnished, held for sale or lease, or to be furnished under a contract for service, raw materials, work in process, or materials

used or consumed in a business, including farm products such as crops or livestock, held for sale or lease;

(2) “[new value](#)” means money or money’s worth in goods, services, or new credit, or release by a transferee of property previously transferred to such transferee in a transaction that is neither void nor voidable by the debtor or the trustee under any applicable law, including proceeds of such property, but does not include an obligation substituted for an existing obligation;

(3) “[receivable](#)” means right to payment, whether or not such right has been earned by performance; and

(4) a debt for a tax is incurred on the day when such tax is last payable without penalty, including any extension.

(b) Except as provided in subsections (c), (i), and (j) of this section, the trustee may, based on reasonable due diligence in the circumstances of the case and taking into account a party’s known or reasonably knowable affirmative defenses under subsection (c), avoid any transfer of an interest of the debtor in property—

(1) to or for the benefit of a creditor;

(2) for or on account of an antecedent debt owed by the debtor before such transfer was made;

(3) made while the debtor was insolvent;

(4) made—

(A) on or within 90 days before the date of the filing of the petition; or

(B) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and

(5) that enables such creditor to receive more than such creditor would receive if—

(A) the case were a case under [chapter 7 of this title](#);

(B) the transfer had not been made; and

(C) such creditor received payment of such debt to the extent provided by the provisions of this title.

(c) The trustee may not avoid under this section a transfer—

(1) to the extent that such transfer was—

(A) intended by the debtor and the creditor to or for whose benefit such transfer was made to be a contemporaneous exchange for [new value](#) given to the debtor; and

(B) in fact a substantially contemporaneous exchange;

(2) to the extent that such transfer was in payment of a debt incurred by the debtor in the ordinary course of business or financial affairs of the debtor and the transferee, and such transfer was—

(A) made in the ordinary course of business or financial affairs of the debtor and the transferee; or

(B) made according to ordinary business terms;

(3) that creates a security interest in property acquired by the debtor—

(A) to the extent such security interest secures [new value](#) that was—

(i) given at or after the signing of a security agreement that contains a description of such property as collateral;

- (ii) given by or on behalf of the secured party under such agreement;
 - (iii) given to enable the debtor to acquire such property; and
 - (iv) in fact used by the debtor to acquire such property; and
- (B) that is perfected on or before 30 days after the debtor receives possession of such property;
- (4) to or for the benefit of a creditor, to the extent that, after such transfer, such creditor gave [new value](#) to or for the benefit of the debtor—
 - (A) not secured by an otherwise unavoidable security interest; and
 - (B) on account of which [new value](#) the debtor did not make an otherwise unavoidable transfer to or for the benefit of such creditor;
- (5) that creates a perfected security interest in [inventory](#) or a [receivable](#) or the proceeds of either, except to the extent that the aggregate of all such transfers to the transferee caused a reduction, as of the date of the filing of the petition and to the prejudice of other creditors holding unsecured claims, of any amount by which the debt secured by such security interest exceeded the value of all security interests for such debt on the later of—
 - (A)
 - (i) with respect to a transfer to which subsection (b)(4)(A) of this section applies, 90 days before the date of the filing of the petition; or
 - (ii) with respect to a transfer to which subsection (b)(4)(B) of this section applies, one year before the date of the filing of the petition; or
 - (B) the date on which [new value](#) was first given under the security agreement creating such security interest;
- (6) that is the fixing of a statutory lien that is not avoidable under [section 545 of this title](#);
- (7) to the extent such transfer was a bona fide payment of a debt for a domestic support obligation;
- (8) if, in a case filed by an individual debtor whose debts are primarily consumer debts, the aggregate value of all property that constitutes or is affected by such transfer is less than \$600; or
- (9) if, in a case filed by a debtor whose debts are not primarily consumer debts, the aggregate value of all property that constitutes or is affected by such transfer is less than \$5,000.[\[1\]](#)

(d) The trustee may avoid a transfer of an interest in property of the debtor transferred to or for the benefit of a surety to secure reimbursement of such a surety that furnished a bond or other obligation to dissolve a judicial lien that would have been avoidable by the trustee under subsection (b) of this section. The liability of such surety under such bond or obligation shall be discharged to the extent of the value of such property recovered by the trustee or the amount paid to the trustee.

[...]

(f) For the purposes of this section, the debtor is presumed to have been insolvent on and during the 90 days immediately preceding the date of the filing of the petition.

11 U.S.C. § 548 Fraudulent Transfers

(a)

(1) The trustee may avoid any transfer (including any transfer to or for the benefit of an insider under an employment contract) of an interest of the debtor in property, or any obligation (including any obligation to or for the benefit of an insider under an employment contract) incurred by the debtor, that was made or incurred on or within 2 years before the date of the filing of the petition, if the debtor voluntarily or involuntarily—

(A) made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted; or

(B)

(i) received less than a reasonably equivalent [value](#) in exchange for such transfer or obligation; and

(ii)

(I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation;

(II) was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the debtor was an unreasonably small capital;

(III) intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor's ability to pay as such debts matured; or

(IV) made such transfer to or for the benefit of an insider, or incurred such obligation to or for the benefit of an insider, under an employment contract and not in the ordinary course of business.

[...]

(b) The trustee of a partnership debtor may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, that was made or incurred on or within 2 years before the date of the filing of the petition, to a general partner in the debtor, if the debtor was insolvent on the date such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation.

(c) Except to the extent that a transfer or obligation voidable under this section is voidable under section [544](#), [545](#), or [547](#) of this title, a transferee or obligee of such a transfer or obligation that takes for [value](#) and in good faith has a lien on or may retain any interest transferred or may enforce any obligation incurred, as the case may be, to the extent that such transferee or obligee gave [value](#) to the debtor in exchange for such transfer or obligation.

(1) In addition to any transfer that the trustee may otherwise avoid, the trustee may avoid any transfer of an interest of the debtor in property that was made on or within 10 years before the date of the filing of the petition, if—

(A) such transfer was made to a self-settled trust or similar device;

- (B) such transfer was by the debtor;
 - (C) the debtor is a beneficiary of such trust or similar device; and
 - (D) the debtor made such transfer with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made, indebted.
- (2) For the purposes of this subsection, a transfer includes a transfer made in anticipation of any money judgment, settlement, civil penalty, equitable order, or criminal fine incurred by, or which the debtor believed would be incurred by—
- (A) any violation of the securities laws (as defined in section 3(a)(47) of the [Securities Exchange Act of 1934 \(15 U.S.C. 78c\(a\)\(47\)\)](#)), any State securities laws, or any regulation or order issued under Federal securities laws or State securities laws; or
 - (B) fraud, deceit, or manipulation in a fiduciary capacity or in connection with the purchase or sale of any security registered under section 12 or 15(d) of the [Securities Exchange Act of 1934 \(15 U.S.C. 78l and 78o\(d\)\)](#) or under section 6 of the [Securities Act of 1933 \(15 U.S.C. 77f\)](#).

11 U.S.C. § 550 Liability Of Transferee Of Avoided Transfer

- (a) Except as otherwise provided in this section, to the extent that a transfer is avoided under section [544](#), [545](#), [547](#), [548](#), [549](#), [553\(b\)](#), or [724\(a\)](#) of this title, the trustee may recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property, from—
- (1) the initial transferee of such transfer or the entity for whose benefit such transfer was made; or
 - (2) any immediate or mediate transferee of such initial transferee.
- (b) The trustee may not recover under section [\[1\]](#) (a)(2) of this section from—
- (1) a transferee that takes for value, including satisfaction or securing of a present or antecedent debt, in good faith, and without knowledge of the voidability of the transfer avoided; or
 - (2) any immediate or mediate good faith transferee of such transferee.
- (c) If a transfer made between 90 days and one year before the filing of the petition—
- (1) is avoided under [section 547\(b\) of this title](#); and
 - (2) was made for the benefit of a creditor that at the time of such transfer was an insider; the trustee may not recover under subsection (a) from a transferee that is not an insider.
- (d) The trustee is entitled to only a single satisfaction under subsection (a) of this section.
- (e)
- (1) A good faith transferee from whom the trustee may recover under subsection (a) of this section has a lien on the property recovered to secure the lesser of—

(A) the cost, to such transferee, of any improvement made after the transfer, less the amount of any profit realized by or accruing to such transferee from such property; and

(B) any increase in the value of such property as a result of such improvement, of the property transferred.

(2) In this subsection, “improvement” includes—

(A) physical additions or changes to the property transferred;

(B) repairs to such property;

(C) payment of any tax on such property;

(D) payment of any debt secured by a lien on such property that is superior or equal to the rights of the trustee; and

(E) preservation of such property.

(f) An action or proceeding under this section may not be commenced after the earlier of—

(1) one year after the avoidance of the transfer on account of which recovery under this section is sought; or

(2) the time the case is closed or dismissed.

MYTH #4

Filing bankruptcy permanently stops all creditor collection actions against the debtor.

Myth Debunked – A debtor's bankruptcy filing implements the automatic stay under 11 U.S.C. § 362, staying most, but not all, creditors from taking further action to collect against the Debtor.

However, there are exceptions to the stay under 11 U.S.C. § 362(b).

Secondly, creditors can obtain relief from the automatic stay if a creditor properly files and serves a Motion for Relief from the Automatic Stay, and a bankruptcy judge grants the Motion. Then, the creditor will be able to continue collection efforts against the debtor.

Examples of what the automatic stay can (at least temporarily) prevent:

- The advancement of pending lawsuits
- Certain eviction actions
- Utility or phone disconnections
- Wage garnishments
- Collection communications, including phone calls, letters, in-person attempts to contact the debtor
- Bank account garnishments
- Replevin actions
- Foreclosure actions
- Student loan collections
- Filing of certain involuntary liens, such as judgment liens

Examples of actions that are NOT stayed by the automatic stay:

- Criminal proceedings
- Child support actions
- Certain divorce proceedings
- Certain tax proceedings or levies
- Certain eviction actions
- Multiple bankruptcy filings by the debtor may result in no automatic stay at all

Practice Tip: It is important to understand the statutes from the Bankruptcy Code and/or to consult with a competent bankruptcy attorney about the automatic stay. There are many different time frames and deadlines and in some situations, there is no automatic stay at all. *See* 11 U.S.C. § 362(c)(3) and (c)(4).

THE AUTOMATIC STAY

11 U.S.C. § 362

Overview of the Automatic Stay.

- Pursuant to the U.S. Bankruptcy Code, the automatic stay is an automatic injunction that stops actions by creditors, with certain exceptions, to collect debts from a debtor who filed for relief under the bankruptcy code. Pursuant to Section 362 of the Bankruptcy Code, the stay begins at the moment when the debtor files a bankruptcy petition.

What actions are stayed by the automatic stay? *See* 11 U.S.C. § 362(a)

- Beginning or continuing a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the debtor's bankruptcy, or to recover a claim against the debtor that arose before the commencement of the debtor's bankruptcy case;
- Enforcing a judgment obtained before the commencement of the debtor's bankruptcy case against the debtor or against property of the estate;
- Any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;
- Any act to create, perfect, or enforce any lien against property of the estate;
- Any act to create, perfect, or enforce against property of the debtor any lien that secures a claim that arose before the commencement of the debtor's bankruptcy case;
- Any act to collect, assess, or recover a claim against the debtor that arose before the commencement of debtor's bankruptcy case;
- The setoff of any debt owing to the debtor that arose before the commencement of the debtor's bankruptcy case against any claim against the debtor; and
- The commencement or continuation of a proceeding before the United States Tax Court concerning a corporate debtor's tax liability for a taxable period the bankruptcy court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title.

What actions are NOT stayed by the automatic stay? See 11 U.S.C. § 362(b)

- **Criminal Actions**

- Generally speaking, continuation of criminal actions brought against the debtor pre-petition are not stayed; the post-petition commencement of a criminal action against the debtor also is not stayed.
- The filing of a bankruptcy case will not stay a criminal proceeding against the debtor, including criminal traffic violations.
- But, arrest warrants issued in post-judgment civil collection actions, are likely stayed by the automatic stay because they are not premised on a criminal action. See *In re Daniels*, 316 B.R. 342 (Bankr. D. Idaho 2004); *In re Galmore*, 390 B.R. 901 (Bankr. N.D. Indiana 2008). In these cases, the creditor was found to have violated the stay because it did not take any action to terminate an arrest warrant issued pre-petition in connection with the creditor's efforts to enforce a pre-petition judgment.

- **Landlord/Tenant Matters**

- Residential landlords may evict a tenant from possession of leased residential property post-petition without relief from stay only if the landlord had obtained a judgment for possession of the property pre-petition.

- **Contempt Actions**

- Generally, criminal contempt actions are not stayed by the automatic stay.
- If the contempt proceeding is intended to uphold the dignity of the court, rather than to coerce payment, it is not stayed. See 11 U.S.C. § 362(b)(1). See also, *SEC v. Bilzerian*, 131 F. Supp. 2d 10 (D.D.C. 2001).
- But, generally, civil contempt actions are stayed by the automatic stay.

- **Child Support/Post-Divorce Matters**

- Post-petition wages are not property of the estate in a Chapter 7 case, meaning an ex-spouse can both continue an action for a determination that the debtor owes child support or maintenance AND can collect child support or maintenance from the Chapter 7 debtor's post-petition wages without violating the automatic stay.
- BUT, Post-petition wages ARE property of the estate in Chapter 13, See 11 U.S.C. 1306(a)(2), which until 2005, prohibited attempts to collect child support or maintenance from the debtor's post-petition wages without first obtaining relief from the automatic stay, but the 2005 amendments to the Bankruptcy Code added Section 362(b)(2)(C), which excepts from the automatic stay judicially or administratively ordered wage assignments in payment of child support or maintenance.

- BUT: Bankruptcy courts may be disinclined to grant relief from stay to a creditor whose collection actions will interfere with the debtor's ability to make his plan payments.
- A QDRO can be entered post-divorce and post-petition without violating the automatic stay as long as the family court awarded/divided the retirement plan benefits in an order entered pre- bankruptcy petition. In re Brown, 168 B.R. 331 (Bankr. N.D. Illinois 1994); In re Zick, 123 B.R. 825 (Bankr. E.D. Wisconsin 1990).
- **Repeat bankruptcy filers**
 - If a debtor filed bankruptcy, it is dismissed and then the debtor files another bankruptcy within one year of the dismissal of the first case, there is a presumption that the second case was filed in bad faith, and the automatic stay will expire after only 30 days, unless the debtor obtains a court order continuing the stay (11 U.S.C. § 362(c)(3)).
 - If the debtor filed two or more bankruptcies in the previous year, and then files a third bankruptcy, the same presumption of bad faith exists, and the automatic stay will not take effect at all upon the third filing (11 U.S.C. § 362(c)(4)).
 - The debtor may file a motion with the court and ask for the automatic stay to be imposed. The standard is clear and convincing evidence that you filed the most recent bankruptcy in good faith.

MYTH #5

A residential landlord that has obtained a judgment for eviction against the debtor prior to the debtor's bankruptcy filing must obtain relief from the automatic stay before continuing the eviction action.

Myth Debunked – A landlord for a residential property may continue the eviction process (but not for pre-petition monetary damages) without obtaining relief from the automatic stay if the judgment for possession of the property was obtained pre-petition.

Practice Tip: Landlords often choose to obtain an order for relief from the stay as reassurance they are not in violation of the automatic stay provisions of the bankruptcy code.

Failure of a creditor to properly obtain relief from the automatic stay can result in a debtor being awarded damages and fees as a result of the creditor's stay violation.

- Residential landlords may evict a tenant from possession of leased residential property post-petition without relief from stay only if the landlord had obtained a judgment for possession of the property pre-petition. § 362(b)(22).
- If the landlord has not obtained a judgment for possession of the residential property pre-petition, the landlord cannot continue the eviction action post-petition without first obtaining relief from the stay.
- However, even if the landlord had obtained a judgment for possession of residential property pre-petition, the landlord cannot pursue pre-petition monetary claims against the residential tenant without first obtaining relief from the stay (which relief would not likely be granted by the bankruptcy court if the monetary damage claim is dischargeable in the debtor's bankruptcy case).
- Commercial tenancies: Section 362(b)(10) of the Bankruptcy Code permits a landlord of nonresidential commercial space to take possession of the real property post-petition if the commercial lease had "terminated by the expiration of the stated term of the lease" before commencement of, or during the, bankruptcy case.
- "Termination by expiration of the stated term of the lease" may occur by other means than expiration of the original lease term; it can also occur by termination of the lease under the terms of the lease itself and/or state law. *In re West Pine Construction Co.*, 80 B.R. 315 (Bankr. E.D. Pennsylvania 1987) (caution: the court in *West Pine* did state that a mere possessory interest on the part of the commercial tenant *could* create an interest protected by the automatic stay under 362(a)(3), but found that the commercial tenant had removed itself from possession of the commercial property pre-petition);
- Further caution: in *In re Marcott*, 30 B.R. 633 (Bankr. W.D. Wisconsin 1983), the court held that "mere possession of property has been found to be a scintilla of equitable interest

adequate to come within the bankruptcy estate and the protection of Section 362(a)(3)." (internal quotations omitted). *Marcott* did not involve an expired non-residential lease, but its holding warrants caution in proceeding to take possession of nonresidential real property without relief from stay.

- Practice Tip: The conservative approach in a case involving any uncertainty as to whether the nonresidential lease of real property had expired by its terms prior to or during the bankruptcy case, is for commercial landlord to file a motion for relief from stay prior to removing the commercial tenant from possession.

MYTH #6

A creditor does not need to obtain relief from the automatic stay before a court can conduct a motion for summary judgment hearing in a pending foreclosure case against the debtor.

Myth Debunked – The automatic stay prohibits the foreclosing creditor from advancing the foreclosure lawsuit until it files a motion for relief from the automatic stay with the bankruptcy court and obtains a court order for relief from the stay.

The creditor must show that keeping the automatic stay in place will cause the creditor to lose money and provide no financial benefit or harm to other creditors.

A debtor may oppose such a motion and must provide evidence to illustrate that: the debtor's real estate has an equity cushion which could be used to pay creditors or that the debtor can reorganize and the property is necessary for effective reorganization.

Practice Tip: Beware of post-petition actions in furtherance of a foreclosure action. Stay violations may include obtaining a foreclosure judgment, noticing or conducting a foreclosure sale, confirming a foreclosure sale, or executing a deed after a sheriff sale without first obtaining relief from the automatic stay.

Motions for Relief from the Automatic Stay – *See* 11 U.S.C. § 362(d)

- Upon the filing of a bankruptcy case, assuming the stay arises, a secured creditor, cannot assert its rights in its collateral if that collateral is property of the estate without first obtaining an order from the bankruptcy court granting it relief from the automatic stay.
- A creditor's entitlement to request relief from the automatic stay is promulgated by 11 U.S.C. § 362(d) as follows:
 - (d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay--
 - (1) for cause including the lack of adequate protection of an interest in property of such party in interest;
 - (2) with respect to a stay of an act against property under subsection (a) of this section, if—
 - (A) the debtor does not have an equity in such property; and
 - (B) such property is not necessary to an effective reorganization;
 - (4) with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, and defraud creditors that involved either--
 - (A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or

(B) multiple bankruptcy filings affecting such real property. If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording. § 362(d)

- The burdens of proof on most motions for relief from stay typically are as follows:
 - the party requesting relief (typically a creditor) bears the burden of proof on the issue of the debtor's equity in the property; and
 - the party opposing the relief (typically the debtor) has the burden of proof on all other issues, including whether the property is necessary for an effective reorganization. 11 U.S.C. § 362(g)(1)&(2).
- The most commonly cited grounds in motions for relief from stay are:
 - Lack of adequate protection;
 - The debtor does not have insurance covering the property.
 - No equity in the property in the property and the property is not necessary for an effective reorganization (court has to find both for creditor to win).

Violation of the automatic stay issues: *See* 11 U.S.C. § 362(k)

- Acts in violation of the automatic stay are void.
- In action to recover damages for violation of automatic stay, the court must first determine whether there was a violation of the stay. If the court finds a stay violation occurred, it must then determine whether the violation was willful and whether debtor is entitled to damages.
- Willful violation of automatic stay supporting award of damages does not require specific intent to violate stay.
- Party can be subject to liability for willful violation of automatic stay if it engages in conduct which violates automatic stay with knowledge that bankruptcy petition has been filed.
- Actual damages, including costs and attorneys' fees, and in some circumstances punitive damages, can be awarded if a violation of the automatic stay is found to be willful.

MYTH #7

Creditors never get paid after a bankruptcy case is filed. They might as well just ignore and throw away the notices they receive and try to recoup their losses .

Myth Debunked – Bankruptcy is intended to benefit the honest but unfortunate debtor. Depending on a creditor's interest in the debtor's bankruptcy estate, and the type of bankruptcy case filed, a creditor may be entitled to payments or the return of collateral or inventory sold.

What to do when your clients get a Notice of Bankruptcy Case?

- I. **TELL THEM TO STOP ANY AND ALL COLLECTION EFFORTS AGAINST THE DEBTOR (at least temporarily)!**
- II. Have them send you the Notice of Bankruptcy Case ASAP. Once you have verified the identity of the debtor, the Notice of Bankruptcy will tell you many other things:

What type of bankruptcy case is it?

- Chapter 7 – Liquidation Bankruptcy. A Chapter 7 can be filed by an individual, corporation, or a partnership. It is the liquidation chapter of the Bankruptcy Code.
 - Individual debtors can exempt (keep) certain property. A trustee is appointed to collect and sell all non-exempt property, with the proceeds distributed to pay the debtor's creditors.
 - To qualify for Chapter 7, individual debtors whose debts are mostly consumer debts must take a "means test." If the debtor's income is in excess of certain thresholds, the debtor may not be eligible for relief under Chapter 7.
 - If there are not non-exempt assets that can be sold, the case will colloquially be referred to as a "no-asset case." Creditors will not need to file a proof of claim in a no-asset case. If there are non-exempt assets (jackpot!) then creditors will need to file a proof of claim, and will receive a pro rata distribution based on the amount of their claim. Sometimes a no-asset case will turn into an asset case if an asset is "discovered" or determined to be non-exempt. In such event the Court will send out a notice, which will include the deadline for creditors to file a proof of claim.
 - Individual debtors are eligible to receive a discharge of their debts. Corporations and partnerships are not eligible to receive a discharge.
- Chapter 12 – Adjustment of Debts of a Family Farmer or Fisherman with Regular Annual Income.
 - To qualify as a family farmer, the debtor must have debt of less than \$10 million, and a certain portion of the debtor's income must come from the operation of a farming business. Family farmers propose a plan to repay their creditors over a period of time from future income, which must be approved by the court. Plan payments are made through a chapter 12 trustee who also monitors the debtor's farming operations while the case is pending.
- Chapter 13 – Adjustment of Debts of an Individual with Regular Income.

- Chapter 13 is the debt repayment chapter for individuals with regular income, including individuals who operate sole proprietorships. corporations and partnerships are not eligible to file under Chapter 13.
 - 11 U.S.C. § 109(e) includes a debt limit. An individual must have “noncontingent, liquidated, unsecured debts of less than \$526,700 and noncontingent, liquidated, secured debts of less than \$1,580,125.”¹
 - Individuals are permitted to keep their property by repaying creditors out of their future income. Debtors propose a repayment plan lasting 3-5 years, which must be approved by the Court. The amounts set forth in the plan must be paid to the chapter 13 trustee who distributes the funds for a small fee. Some debts, however, may be paid outside the plan – typically larger regular payments like mortgage payments and condo association assessments.
 - Many debts that cannot be discharged can still be paid over time in a chapter 13 plan. After completion of payments under the plan, chapter 13 debtors receive a discharge of most debts.
- Chapter 11 – Reorganization
 - Typically businesses who desire to continue operating the business and repay creditors through a court-approved plan or reorganization. Or want relief from creditors so it can be sold in an orderly fashion.
 - Individuals whose debts exceed the debt limits (see Ch. 13 section above) are also eligible to reorganize under Chapter 11.
 - Under a confirmed Chapter 11 plan, a debtor can do the following:
 - Reduce its debts by repaying only a portion of its obligations;
 - Terminate burdensome contracts and leases;
 - Recover assets; and
 - Rescale its operations in order to return to profitability.
- SubChapter V Chapter 11 – Small Business Reorganization.
 - This is a new (as of February 2020) option for eligible small businesses who need to file bankruptcy but desire to avoid the substantial initial and ongoing expenses required in a Chapter 11 bankruptcy case. It incorporates many of the sections of Chapter 11, but modifies others to make the reporting less onerous.
 - The debtor remains in possession and control of business operations. A “Sub V Trustee” is appointed to facilitate with creation of an acceptable Plan. In some ways the Sub V Trustee acts as a go-between the debtor and creditors. The Plan can be between 3 and 5 years long. Debtors can “cram down” a plan no agreement is reached, and if it complies with Bankruptcy Code requirements.
- Other Less-Common Chapters.
 - Chapter 9 – Municipality Bankruptcy
 - Chapter 15 – Ancillary and other Cross-Border Cases

¹ The Chapter 13 debt limits are adjusted every three years under 11 U.S.C. § 104(a). The limits set forth herein reflect the adjustment which occurred on April 1, 2025.

What else is important on the Notice of Bankruptcy Case?

- Case Filing Date. Future deadlines are calculated based on the filing date. The filing date is also important when you determine the mounts to include on your client's proof of claim.
- Case number.
- Debtor's identity. Pay special attention to the name(s) of the debtor(s). Does the name match what is on your client's account? Is the account a business or individual account?

NOTE: The Notice (which is mailed) may contain the debtor's social security number. This is not an error, but is included to assist with identification of the debtor and accounts. Copies

- Filing Attorney (if any). The debtor's attorney's contact information is included. This is so you know who to yell at (kidding!).
- Bankruptcy Trustee.
 - Chapter 7 Panel Trustee. The primary focus is to identify and liquidate a debtor's non-exempt assets for the benefit of unsecured creditors. The trustee is paid per case, and from a percentage of assets distributed to unsecured creditors. Other duties are set forth in 11 U.S.C. § 704.
 - Standing Chapter 12/13 Trustee. The primary role is to examine the debtor's proposed plan and determine compliance with applicable Bankruptcy Code requirements. They also receive and distribute payments made "within the Plan." They are paid a percentage of the payments they disburse to creditors (which is why mortgage and other large payments are paid "outside the Plan").
 - A bankruptcy trustee is appointed to assist with case administration and to make sure that the initial filing and other legal requirements are followed. There typically is not an appointed trustee in Chapter 11 cases, as the debtor continues to operate the business as a "Debtor in possession."
- Meeting of Creditors. The Meeting of Creditors (a/k/a "the 341 Meeting") is conducted by the Trustee (as applicable) to determine, among other things, if the debtor is eligible to continue in bankruptcy. The Trustee officiates the meeting and begins by asking the debtor(s) a series of standard questions, and then questions specific to their jobs, business, assets, etc. Once the Trustee has asked their questions, creditors in attendance are provided an opportunity to question the debtor about its collateral, assets in the debtor's possession, etc. If your client has questions, this is the time to ask them. Some trustees will limit the amount of questions you can ask, but some will let you question the debtor extensively (you can also set up a FRBP 2004 examination, which is like a deposition, but it requires court approval by motion, and is generally much more arduous and expensive).

NOTE: It is not uncommon for a 341 Meeting to be continued to a future date if, for instance, the Trustee requests additional information or documentation. However, do not rely on the continued 341 Meeting to ask your questions to the debtor, as they are commonly "completed" before that future date if the debtor provides the requested information or documentation.

- Dischargeability and Exemption Deadlines. Some debts are or may be nondischargeable. This is a fact-intensive analysis. Similarly, if you believe the debtor is not eligible to receive a discharge of all of its debts (not just a particular debt), you must take action prior to the deadlines listed in the Notice. Objections to whether an asset is exempt must be filed within 30 days after the conclusion of the 341 Meeting. If you miss this deadline, you cannot file any objections.
- Proof of Claim Deadline. Your client's proof of claim must set forth the debt owed as of the Petition Date. Make sure to calendar the proof of claim deadline and file your client's proof of claim before it expires.
 - Asset Chapter 7 cases. The deadline will appear on the Notice.
 - No-Asset Chapter 7 cases. No deadline will appear on the Notice. If assets are later discovered, the Court will send out a notice which will include a deadline to file.
 - Chapter 11 cases. A separate notice of the deadline is issued to creditors.
 - Chapter 12 cases. The deadline appears on the Notice.
 - Chapter 13 cases. The deadline appears on the Notice.

TIP #1: No need to file a proof of claim right away. Calendar a reminder at least 1 month prior to the proof of claim deadline in the event the case is dismissed early on. This also allows you time to get the proof of claim in order (inevitably your client will be “unavailable” or the documents needed will be “missing” if you ask immediately before the deadline). That said, if you represent a mortgage lender it may be helpful to the Trustee if you file prior to the § 341 meeting of creditors, especially if there are pre-Petition payments due.

- III. Determine your client's interest in the case. Are they a secured or unsecured creditor? Are they a co-debtor? Are they a former spouse?
- a. Secured creditors are generally those who have a perfected security interest in some asset(s) of the debtor. Secured creditors are in a better position than unsecured creditors to get paid (e.g., payments under a plan, payment from sale of collateral, or payment as return of collateral). If they are a secured creditor and it is a Chapter 11, 12, or 13 case:
 - i. They should be receiving adequate protection payments – or contact the debtor's attorney to get those started.
 - ii. Confirm that the collateral is insured.
 - iii. Confirm real estate taxes are paid current (if applicable).
 - iv. Make sure debtor is not misusing cash collateral.

TIP #2: Make sure to confirm perfection of your client's security interest (e.g., mortgage is properly recorded in the proper county, UCC financing statement describes the collateral and has been continued). Unperfected security interests are at risk of being avoided by the Trustee, and your client's claim will then be treated as an unsecured creditor.

- b. Unsecured creditors may or may not get paid, depending on the type of case (asset vs. no-asset Chapter 7), contents of the debtor's plan (Chapter 11, 12, and 13), and other factors.

- c. Co-Debtors under Chapters 12 or 13 receive protection in the form of the automatic stay under § 362 as to consumer debts. There is no co-debtor stay in Chapter 7 cases.
- d. Some obligations to a former spouse, such as child support or maintenance (“Domestic Support Obligations” or “DSOs”), are priority debts in a Chapter 7 case. File a claim for the DSO if you are instructed to do so.
- e. Landlords. If the debtor is a business and they lease real estate, a landlord who is a creditor is entitled to certain protections. Unpaid rents and other lease obligations due *pre-Petition* are treated as an unsecured claim, but obligations due *post-Petition* are treated as “administrative expenses” and are entitled to priority over general unsecured claims. Debtor tenants are required to perform all post-Petition lease obligations until they either assume or reject the lease, a decision which must be made within 60 days of the Petition Date (unless extended by the Bankruptcy Court). Even if a debtor tenant rejects a lease they are required to pay all post-Petition lease obligations in full.

TIP #3: When you are ready to file your client’s proof of claim, include all documentation as to the basis of the claim – the note, security agreement, documentation of perfection, court order showing DSO, itemized accounting, citation to any statutory lien claims, etc. The more you include, the less likely it will be objected to.

- IV. File a Notice of Appearance or Request for notices under FBRP 2002(g)². This allows you to receive notification of all events occurring in the case through the PACER system (similar to Wisconsin’s eFiling system).
- V. Pull the Debtor’s Bankruptcy Petition and Schedules.
 - a. The Petition will be due immediately. In some cases the Schedules are not filed until later.
 - b. Review them to determine how your client’s debt is scheduled (secured vs. unsecured vs. priority).
 - c. Does your client know of any assets that are “missed” or omitted from the Schedules? If so, you may want to contact the debtor’s attorney or, if egregious, the appointed Trustee and US Trustee.
 - d. Compare the values listed for the debt to your client and your client’s collateral to what your client believes to be owed. Don’t take the debtor’s word as far as value.
- VI. Contact a Reputable Bankruptcy Attorney.

TIP #4: If you do not work on bankruptcy cases regularly, get one to work with you as co-counsel, or to take over representation of your client in the bankruptcy case. Like many other areas, bankruptcy practice is full of specific rules and customs that may trip up the well-intentioned but unknowing lawyer.

² The Bankruptcy Courts utilize their own civil procedure rules, which are similar to the Federal Rules of Civil Procedure, but different in many ways. The Federal Rules of Bankruptcy Procedure can be found here: <https://www.law.cornell.edu/rules/frbp>.

Basics and Overview of Chapters 7, 11, 12, and 13 of the United States Bankruptcy Code

Source: United States Courts website at <https://www.uscourts.gov/court-programs/bankruptcy/bankruptcy-basics>

See Myth #7 for Additional Information on each of the Chapters of the Bankruptcy Code

Chapter 7 - Bankruptcy Basics

This chapter of the Bankruptcy Code provides for "liquidation" - the sale of a debtor's nonexempt property and the distribution of the proceeds to creditors.

Alternatives to Chapter 7

Debtors should be aware that there are several alternatives to chapter 7 relief. For example, debtors who are engaged in business, including corporations, partnerships, and sole proprietorships, may prefer to remain in business and avoid liquidation. Such debtors should consider filing a petition under chapter 11 of the Bankruptcy Code. Under chapter 11, the debtor may seek an adjustment of debts, either by reducing the debt or by extending the time for repayment, or may seek a more comprehensive reorganization. Sole proprietorships may also be eligible for relief under chapter 13 of the Bankruptcy Code.

In addition, individual debtors who have regular income may seek an adjustment of debts under chapter 13 of the Bankruptcy Code. A particular advantage of chapter 13 is that it provides individual debtors with an opportunity to save their homes from foreclosure by allowing them to "catch up" past due payments through a payment plan. Moreover, the court may dismiss a chapter 7 case filed by an individual whose debts are primarily consumer rather than business debts if the court finds that the granting of relief would be an abuse of chapter 7. 11 U.S.C. § 707(b).

If the debtor's "current monthly income" is more than the state median, the Bankruptcy Code requires application of a "means test" to determine whether the chapter 7 filing is presumptively abusive. Abuse is presumed if the debtor's current monthly income over 5 years, net of certain statutorily allowed expenses and secured debt payments, is not less than the lesser of (i) 25% of the debtor's nonpriority unsecured debt, or \$10,275, whichever is greater, or (ii) \$17,150. The debtor may rebut a presumption of abuse only by a showing of special circumstances that justify additional expenses or adjustments of current monthly income.

Debtors should also be aware that out-of-court agreements with creditors or debt counseling services may provide an alternative to a bankruptcy filing.

Background

A chapter 7 bankruptcy case does not involve the filing of a plan of repayment as in chapter 13. Instead, the bankruptcy trustee gathers and sells the debtor's nonexempt assets and uses the proceeds of such assets to pay holders of claims (creditors) in accordance with the provisions of the Bankruptcy Code. Part of the debtor's property may be subject to liens and mortgages that pledge the property to other creditors. In addition, the Bankruptcy Code will allow the debtor to keep certain "exempt" property; but a trustee will liquidate the debtor's remaining assets. Accordingly, potential debtors should realize that the filing of a petition under chapter 7 may result in the loss of property.

Chapter 7 Eligibility

To qualify for relief under chapter 7 of the Bankruptcy Code, the debtor may be an individual, a partnership, or a corporation or other business entity. 11 U.S.C. §§ 101(41), 109(b). Subject to the means test described above for individual debtors, relief is available under chapter 7 irrespective of the amount of the debtor's debts or whether the debtor is solvent or insolvent. An individual cannot file under chapter 7 or any other chapter, however, if during the preceding 180 days a prior bankruptcy petition was dismissed due to the debtor's willful failure to appear before the court or comply with orders of the court, or the debtor voluntarily dismissed the previous case after creditors sought relief from the bankruptcy court to recover property upon which they hold liens. 11 U.S.C. §§ 109(g), 362(d) and (e). In addition, no individual may be a debtor under chapter 7 or any chapter of the Bankruptcy Code unless he or she has, within 180 days before filing, received credit counseling from an approved credit counseling agency either in an individual or group briefing. 11 U.S.C. §§ 109, 111. There are exceptions in emergency situations or where the U.S. trustee (or bankruptcy administrator) has determined that there are insufficient approved agencies to provide the required counseling. If a debt management plan is developed during required credit counseling, it must be filed with the court.

One of the primary purposes of bankruptcy is to discharge certain debts to give an honest individual debtor a "fresh start." The debtor has no liability for discharged debts. In a chapter 7 case, however, a discharge is only available to individual debtors, not to partnerships or corporations. 11 U.S.C. § 727(a)(1). Although an individual chapter 7 case usually results in a discharge of debts, the right to a discharge is not absolute, and some types of debts are not discharged. Moreover, a bankruptcy discharge does not extinguish a lien on property.

How Chapter 7 Works

A chapter 7 case begins with the debtor filing a petition with the bankruptcy court serving the area where the individual lives or where the business debtor is organized or has its principal place of business or principal assets. (3) In addition to the petition, the debtor must also file with the court: (1) schedules of assets and liabilities; (2) a schedule of current income and expenditures; (3) a statement of financial affairs; and (4) a schedule of executory contracts and unexpired leases. Fed. R. Bankr. P. 1007(b). Debtors must also provide the assigned case trustee with a copy of the tax return or transcripts for the most recent tax year as well as tax returns filed during the case (including tax returns for prior years that had not been filed when the case began). 11 U.S.C. § 521. Individual debtors with primarily consumer debts have additional document filing requirements. They must file: a certificate of credit counseling and a copy of any debt repayment plan developed through credit counseling; evidence of payment from employers, if any, received 60 days before filing; a statement of monthly net income and any anticipated increase in income or expenses after filing; and a record of any interest the debtor has in federal or state qualified education or tuition accounts. Id. A husband and wife may file a joint petition or individual petitions. 11 U.S.C. § 302(a). Even if filing jointly, a husband and wife are subject to all the document filing requirements of individual debtors. (The Official Forms may be purchased at legal stationery stores or [download](#). They are not available from the court.)

The courts must charge a \$245 case filing fee, a \$75 miscellaneous administrative fee, and a \$15 trustee surcharge. Normally, the fees must be paid to the clerk of the court upon filing. With the court's permission, however, individual debtors may pay in installments. 28 U.S.C. § 1930(a); Fed. R. Bankr. P. 1006(b); Bankruptcy Court Miscellaneous Fee Schedule, Item 8. The number of installments is limited to four, and the debtor must make the final installment no later than 120 days after filing the petition. Fed. R. Bankr. P. 1006. For cause shown, the court may extend the time of any installment, provided that the last installment is paid not later than 180 days after filing the petition. Id. The debtor may also pay the \$75 administrative fee and the \$15 trustee surcharge in installments. If a joint petition is filed, only one filing fee, one administrative fee, and one trustee surcharge are charged. Debtors should be aware that failure to pay these fees may result in dismissal of the case. 11 U.S.C. § 707(a).

If the debtor's income is less than 150% of the poverty level (as defined in the Bankruptcy Code), and the debtor is unable to pay the chapter 7 fees even in installments, the court may waive the requirement that the fees be paid. 28 U.S.C. § 1930(f).

In order to complete the Official Bankruptcy Forms that make up the petition, statement of financial affairs, and schedules, the debtor must provide the following information:

1. A list of all creditors and the amount and nature of their claims;
2. The source, amount, and frequency of the debtor's income;
3. A list of all of the debtor's property; and
4. A detailed list of the debtor's monthly living expenses, i.e., food, clothing, shelter, utilities, taxes, transportation, medicine, etc.

Married individuals must gather this information for their spouse regardless of whether they are filing a joint petition, separate individual petitions, or even if only one spouse is filing. In a situation where only one spouse files, the income and expenses of the non-filing spouse are required so that the court, the trustee and creditors can evaluate the household's financial position.

Among the schedules that an individual debtor will file is a schedule of "exempt" property. The Bankruptcy Code allows an individual debtor (4) to protect some property from the claims of creditors because it is exempt under federal bankruptcy law or under the laws of the debtor's home state. 11 U.S.C. § 522(b). Many states have taken advantage of a provision in the Bankruptcy Code that permits each state to adopt its own exemption law in place of the federal exemptions. In other jurisdictions, the individual debtor has the option of choosing between a federal package of exemptions or the exemptions available under state law. Thus, whether certain property is exempt and may be kept by the debtor is often a question of state law. The debtor should consult an attorney to determine the exemptions available in the state where the debtor lives.

Filing a petition under chapter 7 "automatically stays" (stops) most collection actions against the debtor or the debtor's property. 11 U.S.C. § 362. But filing the petition does not stay certain types of actions listed under 11 U.S.C. § 362(b), and the stay may be effective only for a short time in some situations. The stay arises by operation of law and requires no judicial action. As long as the stay is in effect, creditors generally may not initiate or continue lawsuits, wage garnishments, or even telephone calls demanding payments. The bankruptcy clerk gives notice of the bankruptcy case to all creditors whose names and addresses are provided by the debtor.

Between 21 and 40 days after the petition is filed, the case trustee (described below) will hold a meeting of creditors. If the U.S. trustee or bankruptcy administrator (5) schedules the meeting at a place that does not have regular U.S. trustee or bankruptcy administrator staffing, the meeting may be held no more than 60 days after the order for relief. Fed. R. Bankr. P. 2003(a). During this meeting, the trustee puts the debtor under oath, and both the trustee and creditors may ask questions. The debtor must attend the meeting and answer questions regarding the debtor's financial affairs and property. 11 U.S.C. § 343. If a husband and wife have filed a joint petition, they both must attend the creditors' meeting and answer questions. Within 10 days of the

creditors' meeting, the U.S. trustee will report to the court whether the case should be presumed to be an abuse under the means test described in 11 U.S.C. § 704(b).

It is important for the debtor to cooperate with the trustee and to provide any financial records or documents that the trustee requests. The Bankruptcy Code requires the trustee to ask the debtor questions at the meeting of creditors to ensure that the debtor is aware of the potential consequences of seeking a discharge in bankruptcy such as the effect on credit history, the ability to file a petition under a different chapter, the effect of receiving a discharge, and the effect of reaffirming a debt. Some trustees provide written information on these topics at or before the meeting to ensure that the debtor is aware of this information. In order to preserve their independent judgment, bankruptcy judges are prohibited from attending the meeting of creditors. 11 U.S.C. § 341(c).

In order to accord the debtor complete relief, the Bankruptcy Code allows the debtor to convert a chapter 7 case to a case under chapter 11, 12, or 13 (6) as long as the debtor is eligible to be a debtor under the new chapter. However, a condition of the debtor's voluntary conversion is that the case has not previously been converted to chapter 7 from another chapter. 11 U.S.C. § 706(a). Thus, the debtor will not be permitted to convert the case repeatedly from one chapter to another.

Role of the Case Trustee

When a chapter 7 petition is filed, the U.S. trustee (or the bankruptcy court in Alabama and North Carolina) appoints an impartial case trustee to administer the case and liquidate the debtor's nonexempt assets. 11 U.S.C. §§ 701, 704. If all the debtor's assets are exempt or subject to valid liens, the trustee will normally file a "no asset" report with the court, and there will be no distribution to unsecured creditors. Most chapter 7 cases involving individual debtors are no asset cases. But if the case appears to be an "asset" case at the outset, unsecured creditors (7) must file their claims with the court within 90 days after the first date set for the meeting of creditors. Fed. R. Bankr. P. 3002(c). A governmental unit, however, has 180 days from the date the case is filed to file a claim. 11 U.S.C. § 502(b)(9). In the typical no asset chapter 7 case, there is no need for creditors to file proofs of claim because there will be no distribution. If the trustee later recovers assets for distribution to unsecured creditors, the Bankruptcy Court will provide notice to creditors and will allow additional time to file proofs of claim. Although a secured creditor does not need to file a proof of claim in a chapter 7 case to preserve its security interest or lien, there may be other reasons to file a claim. A creditor in a chapter 7 case who has a lien on the debtor's property should consult an attorney for advice.

Commencement of a bankruptcy case creates an "estate." The estate technically becomes the temporary legal owner of all the debtor's property. It consists of all legal or equitable interests of the debtor in property as of the commencement of the case, including property owned or held by another person if the debtor has an interest in the property. Generally speaking, the debtor's creditors are paid from nonexempt property of the estate.

The primary role of a chapter 7 trustee in an asset case is to liquidate the debtor's nonexempt assets in a manner that maximizes the return to the debtor's unsecured creditors. The trustee accomplishes this by selling the debtor's property if it is free and clear of liens (as long as the property is not exempt) or if it is worth more than any security interest or lien attached to the property and any exemption that the debtor holds in the property. The trustee may also attempt to recover money or property under the trustee's "avoiding powers." The trustee's avoiding powers include the power to: set aside preferential transfers made to creditors within 90 days before the petition; undo security interests and other prepetition transfers of property that were not properly perfected under nonbankruptcy law at the time of the petition; and pursue nonbankruptcy claims such as fraudulent conveyance and bulk transfer remedies available under state law. In addition, if the debtor is a business, the bankruptcy court may authorize the trustee to operate the business for a limited period of time, if such operation will benefit creditors and enhance the liquidation of the estate. 11 U.S.C. § 721.

Section 726 of the Bankruptcy Code governs the distribution of the property of the estate. Under § 726, there are six classes of claims; and each class must be paid in full before the next lower class is paid anything. The debtor is only paid if all other classes of claims have been paid in full. Accordingly, the debtor is not particularly interested in the trustee's disposition of the estate assets, except with respect to the payment of those debts which for some reason are not dischargeable in the bankruptcy case. The individual debtor's primary concerns in a chapter 7 case are to retain exempt property and to receive a discharge that covers as many debts as possible.

The Chapter 7 Discharge

A discharge releases individual debtors from personal liability for most debts and prevents the creditors owed those debts from taking any collection actions against the debtor. Because a chapter 7 discharge is subject to many exceptions, debtors should consult competent legal counsel before filing to discuss the scope of the discharge. Generally, excluding cases that are dismissed or converted, individual debtors receive a discharge in more than 99 percent of chapter 7 cases. In most cases, unless a party in interest files a complaint objecting to the discharge or a motion to extend the time to object, the bankruptcy court will issue a discharge

order relatively early in the case – generally, 60 to 90 days after the date first set for the meeting of creditors. Fed. R. Bankr. P. 4004(c).

The grounds for denying an individual debtor a discharge in a chapter 7 case are narrow and are construed against the moving party. Among other reasons, the court may deny the debtor a discharge if it finds that the debtor: failed to keep or produce adequate books or financial records; failed to explain satisfactorily any loss of assets; committed a bankruptcy crime such as perjury; failed to obey a lawful order of the bankruptcy court; fraudulently transferred, concealed, or destroyed property that would have become property of the estate; or failed to complete an approved instructional course concerning financial management. 11 U.S.C. § 727; Fed. R. Bankr. P. 4005.

Secured creditors may retain some rights to seize property securing an underlying debt even after a discharge is granted. Depending on individual circumstances, if a debtor wishes to keep certain secured property (such as an automobile), he or she may decide to "reaffirm" the debt. A reaffirmation is an agreement between the debtor and the creditor that the debtor will remain liable and will pay all or a portion of the money owed, even though the debt would otherwise be discharged in the bankruptcy. In return, the creditor promises that it will not repossess or take back the automobile or other property so long as the debtor continues to pay the debt.

If the debtor decides to reaffirm a debt, he or she must do so before the discharge is entered. The debtor must sign a written reaffirmation agreement and file it with the court. 11 U.S.C. § 524(c). The Bankruptcy Code requires that reaffirmation agreements contain an extensive set of disclosures described in 11 U.S.C. § 524(k). Among other things, the disclosures must advise the debtor of the amount of the debt being reaffirmed and how it is calculated and that reaffirmation means that the debtor's personal liability for that debt will not be discharged in the bankruptcy. The disclosures also require the debtor to sign and file a statement of his or her current income and expenses which shows that the balance of income paying expenses is sufficient to pay the reaffirmed debt. If the balance is not enough to pay the debt to be reaffirmed, there is a presumption of undue hardship, and the court may decide not to approve the reaffirmation agreement. Unless the debtor is represented by an attorney, the bankruptcy judge must approve the reaffirmation agreement.

If the debtor was represented by an attorney in connection with the reaffirmation agreement, the attorney must certify in writing that he or she advised the debtor of the legal effect and consequences of the agreement, including a default under the agreement. The attorney must also certify that the debtor was fully informed and voluntarily made the agreement and that reaffirmation of the debt will not create an undue hardship for the debtor or the debtor's dependants. 11 U.S.C. § 524(k). The Bankruptcy Code requires a reaffirmation hearing if the

debtor has not been represented by an attorney during the negotiating of the agreement, or if the court disapproves the reaffirmation agreement. 11 U.S.C. § 524(d) and (m). The debtor may repay any debt voluntarily, however, whether or not a reaffirmation agreement exists. 11 U.S.C. § 524(f).

An individual receives a discharge for most of his or her debts in a chapter 7 bankruptcy case. A creditor may no longer initiate or continue any legal or other action against the debtor to collect a discharged debt. But not all of an individual's debts are discharged in chapter 7. Debts not discharged include debts for alimony and child support, certain taxes, debts for certain educational benefit overpayments or loans made or guaranteed by a governmental unit, debts for willful and malicious injury by the debtor to another entity or to the property of another entity, debts for death or personal injury caused by the debtor's operation of a motor vehicle while the debtor was intoxicated from alcohol or other substances, and debts for certain criminal restitution orders. 11 U.S.C. § 523(a). The debtor will continue to be liable for these types of debts to the extent that they are not paid in the chapter 7 case. Debts for money or property obtained by false pretenses, debts for fraud or defalcation while acting in a fiduciary capacity, and debts for willful and malicious injury by the debtor to another entity or to the property of another entity will be discharged unless a creditor timely files and prevails in an action to have such debts declared nondischargeable. 11 U.S.C. § 523(c); Fed. R. Bankr. P. 4007(c).

The court may revoke a chapter 7 discharge on the request of the trustee, a creditor, or the U.S. trustee if the discharge was obtained through fraud by the debtor, if the debtor acquired property that is property of the estate and knowingly and fraudulently failed to report the acquisition of such property or to surrender the property to the trustee, or if the debtor (without a satisfactory explanation) makes a material misstatement or fails to provide documents or other information in connection with an audit of the debtor's case. 11 U.S.C. § 727(d).

Notes

1. The "current monthly income" received by the debtor is a defined term in the Bankruptcy Code and means the average monthly income received over the six calendar months before commencement of the bankruptcy case, including regular contributions to household expenses from nondebtors and including income from the debtor's spouse if the petition is a joint petition, but not including social security income or certain payments made because the debtor is the victim of certain crimes. 11 U.S.C. § 101(10A).
2. To determine whether a presumption of abuse arises, all individual debtors with primarily consumer debts who file a chapter 7 case must complete Official

Bankruptcy Form B22A, entitled "Statement of Current Monthly Income and Means Test Calculation - For Use in Chapter 7." (The Official Forms may be purchased at legal stationery stores or downloaded from the internet at www.uscourts.gov/bkforms/index.html. They are not available from the court.)

3. An involuntary chapter 7 case may be commenced under certain circumstances by a petition filed by creditors holding claims against the debtor. 11 U.S.C. § 303.
4. Each debtor in a joint case (both husband and wife) can claim exemptions under the federal bankruptcy laws. 11 U.S.C. § 522(m).
5. In North Carolina and Alabama, bankruptcy administrators perform similar functions that U.S. trustees perform in the remaining 48 states. These duties include establishing a panel of private trustees to serve as trustees in chapter 7 cases and supervising the administration of cases and trustees in cases under chapters 7, 11, 12, and 13 of the Bankruptcy Code. The bankruptcy administrator program is administered by the Administrative Office of the United States Courts, while the U.S. trustee program is administered by the Department of Justice. For purposes of this publication, references to U.S. trustees are also applicable to bankruptcy administrators.
6. A fee is charged for converting, on request of the debtor, a case under chapter 7 to a case under chapter 11. The fee charged is the difference between the filing fee for a chapter 7 and the filing fee for a chapter 11. 28 U.S.C. § 1930(a). Currently, the difference is \$922. Id. There is no fee for converting from chapter 7 to chapter 13.
7. Unsecured debts generally may be defined as those for which the extension of credit was based purely upon an evaluation by the creditor of the debtor's ability to pay, as opposed to secured debts, for which the extension of credit was based upon the creditor's right to seize collateral on default, in addition to the debtor's ability to pay.

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Chapter 11 - Bankruptcy Basics

Chapter 11 of the Bankruptcy Code generally provides for reorganization, usually involving a corporation or partnership. A Chapter 11 debtor usually proposes a plan of reorganization to keep its business alive and pay creditors over time. People in business or individuals also can seek relief in Chapter 11.

Background

A case filed under chapter 11 of the United States Bankruptcy Code is frequently referred to as a "reorganization" bankruptcy. Usually, the debtor remains "in possession," has the powers and duties of a trustee, may continue to operate its business, and may, with court approval, borrow new money. A plan of reorganization is proposed, creditors whose rights are affected may vote on the plan, and the plan may be confirmed by the court if it gets the required votes and satisfies certain legal requirements.

How Chapter 11 Works

A chapter 11 case begins with the filing of a petition with the bankruptcy court serving the area where the debtor has a domicile, residence, or principal place of business. A petition may be a voluntary petition, which is filed by the debtor, or it may be an involuntary petition, which is filed by creditors that meet certain requirements. 11 U.S.C. §§ 301, 303. A voluntary petition must adhere to the format of Form B 101 of the Official Forms prescribed by the Judicial Conference of the United States. Unless the court orders otherwise, the debtor also must file with the court:

1. schedules of assets and liabilities;
2. a schedule of current income and expenditures;
3. a schedule of executory contracts and unexpired leases; and
4. a statement of financial affairs. Fed. R. Bankr. P. 1007(b).

If the debtor is an individual (or a married couple filing jointly), there are additional document filing requirements. Such debtors must file: a certificate of credit counseling and a copy of any debt repayment plan developed through credit counseling; evidence of payment from employers, if any, received 60 days before filing; a statement of monthly net income and any anticipated increase in income or expenses after filing; and a record of any interest the debtor has in federal or state qualified education or tuition accounts. 11 U.S.C. § 521. A married couple may file a joint petition or individual petitions. 11 U.S.C. § 302(a). ([Download the official forms.](#))

An individual cannot file under chapter 11 or any other chapter if, during the preceding 180 days, a prior bankruptcy petition was dismissed due to the debtor's willful failure to appear before the court or comply with orders of the court, or was voluntarily dismissed after creditors sought relief from the bankruptcy court to recover property upon which they hold liens. 11 U.S.C. §§ 109(g), 362(d)-(e). In addition, no individual may be a debtor under chapter 11 or any chapter of the Bankruptcy Code unless he or she has, within 180 days before filing, received credit counseling from an approved credit counseling agency either in an individual or group briefing. 11 U.S.C. §§ 109, 111. There are exceptions in emergency situations or where the U.S. trustee (or bankruptcy administrator) has determined that there are insufficient approved agencies to provide the required counseling. If a debt management plan is developed during required credit counseling, it must be filed with the court.

The courts are required to charge a \$1,167 case filing fee and a \$571 miscellaneous administrative fee. The fees must be paid to the clerk of the court upon filing or may, with the court's permission, be paid by individual debtors in installments. 28 U.S.C. § 1930(a); Fed. R. Bankr. P. 1006(b); Bankruptcy Court Miscellaneous Fee Schedule, Item 8. Fed. R. Bankr. P. 1006(b) limits to four the number of installments for the filing fee. The final installment must be paid not later than 120 days after filing the petition. For cause shown, the court may extend the time of any installment, provided that the last installment is paid not later than 180 days after the filing of the petition. Fed. R. Bankr. P. 1006(b). The \$571 administrative fee may be paid in installments in the same manner as the filing fee. If a joint petition is filed, only one filing fee and one administrative fee are charged. Debtors should be aware that failure to pay these fees may result in dismissal of the case. 11 U.S.C. § 1112(b)(10).

The voluntary petition will include standard information concerning the debtor's name(s), social security number or tax identification number, residence, location of principal assets (if a business), the debtor's plan or intention to file a plan, and a request for relief under the appropriate chapter of the Bankruptcy Code. Upon filing a voluntary petition for relief under chapter 11 or, in an involuntary case, the entry of an order for relief, the debtor automatically assumes an additional identity as the "debtor in possession." 11 U.S.C. § 1101. The term refers to a debtor that keeps possession and control of its assets while undergoing a reorganization under

chapter 11, without the appointment of a case trustee. A debtor will remain a debtor in possession until the debtor's plan of reorganization is confirmed, the debtor's case is dismissed or converted to chapter 7, or a chapter 11 trustee is appointed. The appointment or election of a trustee occurs only in a small number of cases. Generally, the debtor, as "debtor in possession," operates the business and performs many of the functions that a trustee performs in cases under other chapters. 11 U.S.C. § 1107(a).

Generally, a written disclosure statement and a plan of reorganization must be filed with the court. 11 U.S.C. §§ 1121, 1125. The disclosure statement is a document that must contain information concerning the assets, liabilities, and business affairs of the debtor sufficient to enable a creditor to make an informed judgment about the debtor's plan of reorganization. 11 U.S.C. § 1125. The information required is governed by judicial discretion and the circumstances of the case. The contents of the plan must include a classification of claims and must specify how each class of claims will be treated under the plan. 11 U.S.C. § 1123. Creditors whose claims are "impaired," i.e., those whose contractual rights are to be modified or who will be paid less than the full value of their claims under the plan, vote on the plan by ballot. 11 U.S.C. § 1126. After the disclosure statement is approved by the court and the ballots are collected and tallied, the court will conduct a confirmation hearing to determine whether to confirm the plan. 11 U.S.C. § 1128.

In the case of individuals, chapter 11 bears some similarities to chapter 13. For example, property of the estate for an individual debtor includes the debtor's earnings and property acquired by the debtor after filing until the case is closed, dismissed or converted; funding of the plan may be from the debtor's future earnings; and the plan cannot be confirmed over a creditor's objection without committing all of the debtor's disposable income over five years unless the plan pays the claim in full, with interest, over a shorter period of time. 11 U.S.C. §§ 1115, 1123(a)(8), 1129(a)(15).

The Chapter 11 Debtor in Possession

Chapter 11 is typically used to reorganize a business, which may be a corporation, sole proprietorship, or partnership. A corporation exists separate and apart from its owners, the stockholders. The chapter 11 bankruptcy case of a corporation (corporation as debtor) does not put the personal assets of the stockholders at risk other than the value of their investment in the company's stock. A sole proprietorship (owner as debtor), on the other hand, does not have an identity separate and distinct from its owner(s). Accordingly, a bankruptcy case involving a sole proprietorship includes both the business and personal assets of the owners-debtors. Like a corporation, a partnership exists separate and apart from its partners. In a partnership

bankruptcy case (partnership as debtor), however, the partners' personal assets may, in some cases, be used to pay creditors in the bankruptcy case or the partners, themselves, may be forced to file for bankruptcy protection.

Section 1107 of the Bankruptcy Code places the debtor in possession in the position of a fiduciary, with the rights and powers of a chapter 11 trustee, and it requires the debtor to perform of all but the investigative functions and duties of a trustee. These duties, set forth in the Bankruptcy Code and Federal Rules of Bankruptcy Procedure, include accounting for property, examining and objecting to claims, and filing informational reports as required by the court and the U.S. trustee or bankruptcy administrator (discussed below), such as monthly operating reports. 11 U.S.C. §§ 1106, 1107; Fed. R. Bankr. P. 2015(a). The debtor in possession also has many of the other powers and duties of a trustee, including the right, with the court's approval, to employ attorneys, accountants, appraisers, auctioneers, or other professional persons to assist the debtor during its bankruptcy case. Other responsibilities include filing tax returns and reports which are either necessary or ordered by the court after confirmation, such as a final accounting. The U.S. trustee is responsible for monitoring the compliance of the debtor in possession with the reporting requirements.

Railroad reorganizations have specific requirements under subchapter IV of chapter 11, which will not be addressed here. In addition, stock and commodity brokers are prohibited from filing under chapter 11 and are restricted to chapter 7. 11 U.S.C. § 109(d).

The Small Business Case and Small Business Debtors

The Bankruptcy Code allows small business debtors to file for relief under two different special categories of chapter 11 intended to streamline processes and reduce costs. The first, referred to as a small business case (by definition in 11 U.S.C. § 101(51C)), was created in 2005 by the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA), and the second, referred to as subchapter V, was created in 2019 by the Small Business Reorganization Act (SBRA). A debtor may elect either of these two options based on certain eligibility criteria. Both small business and subchapter V cases are treated differently than a traditional chapter 11 case primarily due to accelerated deadlines and the speed with which the plan is confirmed.

In order to file a small business or subchapter V case, the debtor must be engaged in commercial or business activities (other than primarily owning or operating a single piece of real property) with combined total secured and unsecured debts of \$3,424,000 or less, not less than 50 percent of which arose from the commercial or business activities of the debtor. For both types of small

business cases the combined total of secured and unsecured debts must be owed as of the date of filing for bankruptcy relief.

In addition to accelerated deadlines and faster plan confirmation, small business and subchapter V cases have other key differences from ordinary chapter 11 cases: a creditors' committee is not automatically appointed and instead will only be appointed upon a showing of cause, 11 U.S.C. § 1102(a)(3), and the debtor or debtor in possession has additional duties, 11 U.S.C. § 1116.

In both small business cases and subchapter V cases, the debtor must, among other things, attach its most recent balance sheet, statement of operations, cash-flow statement and Federal income tax return to the petition, or provide a statement under oath explaining the absence of such documents, and must attend meetings scheduled by the court or the U.S. trustee through senior management personnel and counsel. The debtor must make ongoing filings with the court concerning its profitability and projected cash receipts and disbursements and must report whether it is in compliance with the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure and whether it has paid its taxes and filed its tax returns. 11 U.S.C. §§ 308, 1116, 1187.

In contrast to subchapter V and other chapter 11 debtors, debtors in small business cases are subject to additional oversight by the U.S. trustee. Early in the case, the debtor must attend an "initial debtor interview" with the U.S. trustee at which time the U.S. trustee will evaluate the debtor's viability, inquire about the debtor's business plan, and explain certain debtor obligations including the debtor's responsibility to file various reports. 28 U.S.C. § 586(a)(7). The U.S. trustee will also monitor the activities of the debtor during the case to identify as promptly as possible whether the debtor will be unable to confirm a plan.

In a subchapter V case, a trustee will be appointed to administer the debtor's estate and oversee its reorganization. The trustee's role in a subchapter V case is similar to that of a chapter 12 or 13 trustee: facilitating the development of and overseeing the debtor's plan of reorganization; appearing at major hearings; investigate the debtor's conduct, assets and liabilities, financial condition, and the operation of the debtor's business as a going concern; and ensuring that payments are made under the plan. 11 U.S.C. § 1183. The U.S. trustee has the same oversight responsibilities as ordinary chapter 11 cases. 28 U.S.C. § 586.

Because certain filing deadlines are different and extensions are more difficult to obtain, a small business case normally proceeds more quickly than other chapter 11 cases. In a small business case, only the debtor may file a plan during the first 180 days after the case is filed. 11 U.S.C. § 1121(e). This "exclusivity period" may be extended by the court, but only to 300 days, and only if the debtor demonstrates by a preponderance of the evidence that the court will confirm a plan within a reasonable period of time. In a subchapter V small business case, only the debtor may

file a plan. 11 U.S.C. § 1189. In other chapter 11 cases, however, the court may extend the exclusivity period "for cause" up to 18 months. Another example of the faster pace of small business and subchapter V cases is that the debtor may not need to file a separate disclosure statement if the court determines that adequate information is contained in the plan. 11 U.S.C. §§ 1125(f), 1181, 1187. In a traditional chapter 11 case, the debtor must file a separate disclosure statement. 11 U.S.C. § 1125.

Subchapter V cases go beyond other chapter 11 and small business cases by allowing for relaxed plan confirmation requirements. Plans can be confirmed as long as they do not discriminate unfairly, are fair and equitable with respect to each class of claims or interests, provide that all projected disposable income of the debtor (or equivalent value) is paid into the plan for a three to five year period. 11 U.S.C. § 1191.

The Single Asset Real Estate Debtor

Single asset real estate debtors are subject to special provisions of the Bankruptcy Code. The term "single asset real estate" is defined as "a single property or project, other than residential real property with fewer than four residential units, which generates substantially all of the gross income of a debtor who is not a family farmer and on which no substantial business is being conducted by a debtor other than the business of operating the real property and activities incidental." 11 U.S.C. § 101(51B). The Bankruptcy Code provides circumstances under which creditors of a single asset real estate debtor may obtain relief from the automatic stay which are not available to creditors in ordinary bankruptcy cases. 11 U.S.C. § 362(d). On request of a creditor with a claim secured by the single asset real estate and after notice and a hearing, the court will grant relief from the automatic stay to the creditor unless the debtor files a feasible plan of reorganization or begins making interest payments to the creditor within 90 days from the date of the filing of the case, or within 30 days of the court's determination that the case is a single asset real estate case. The interest payments must be equal to the non-default contract interest rate on the value of the creditor's interest in the real estate. 11 U.S.C. § 362(d)(3).

Single asset real estate cases are ineligible for the small business or subchapter V election. 11 U.S.C. § 101(51D), 1182(1)(A).

The U.S. Trustee or Bankruptcy Administrator

The U.S. trustee plays a major role in monitoring the progress of a chapter 11 case and supervising its administration. The U.S. trustee is responsible for monitoring the debtor in possession's operation of the business and the submission of operating reports and fees.

Additionally, the U.S. trustee monitors applications for compensation and reimbursement by professionals, plans and disclosure statements filed with the court, and creditors' committees. The U.S. trustee conducts a meeting of the creditors, often referred to as the "section 341 meeting," in a chapter 11 case. 11 U.S.C. § 341. The U.S. trustee and creditors may question the debtor under oath at the section 341 meeting concerning the debtor's acts, conduct, property, and the administration of the case.

The U.S. trustee also imposes certain requirements on the debtor in possession concerning matters such as reporting its monthly income and operating expenses, establishing new bank accounts, and paying current employee withholding and other taxes. By law, the debtor in possession must pay a quarterly fee to the U.S. trustee for each quarter of a year until the case is converted or dismissed. 28 U.S.C. § 1930(a)(6). The amount of the fee, which may range from \$325 to \$30,000, depends on the amount of the debtor's disbursements during each quarter. Should a debtor in possession fail to comply with the reporting requirements of the U.S. trustee or orders of the bankruptcy court, or fail to take the appropriate steps to bring the case to confirmation, the U.S. trustee may file a motion with the court to have the debtor's chapter 11 case converted to another chapter of the Bankruptcy Code or to have the case dismissed.

In North Carolina and Alabama, bankruptcy administrators perform similar functions that U.S. trustees perform in the remaining forty-eight states. The bankruptcy administrator program is administered by the Administrative Office of the United States Courts, while the U.S. trustee program is administered by the Department of Justice. For purposes of this publication, references to U.S. trustees are also applicable to bankruptcy administrators.

Creditors' Committees

Creditors' committees can play a major role in chapter 11 cases. The committee is appointed by the U.S. trustee and ordinarily consists of unsecured creditors who hold the seven largest unsecured claims against the debtor. 11 U.S.C. § 1102. Among other things, the committee: consults with the debtor in possession on administration of the case; investigates the debtor's conduct and operation of the business; and participates in formulating a plan. 11 U.S.C. § 1103. A creditors' committee may, with the court's approval, hire an attorney or other professionals to assist in the performance of the committee's duties. A creditors' committee can be an important safeguard to the proper management of the business by the debtor in possession.

Appointment or Election of a Case Trustee

Although the appointment of a case trustee is a rarity in a chapter 11 case, a party in interest or the U.S. trustee can request the appointment of a case trustee or examiner at any time prior to confirmation in a chapter 11 case. The court, on motion by a party in interest or the U.S. trustee and after notice and hearing, shall order the appointment of a case trustee for cause, including fraud, dishonesty, incompetence, or gross mismanagement, or if such an appointment is in the interest of creditors, any equity security holders, and other interests of the estate. 11 U.S.C. § 1104(a). Moreover, the U.S. trustee is required to move for appointment of a trustee if there are reasonable grounds to believe that any of the parties in control of the debtor "participated in actual fraud, dishonesty or criminal conduct in the management of the debtor or the debtor's financial reporting." 11 U.S.C. § 1104(e). The trustee is appointed by the U.S. trustee, after consultation with parties in interest and subject to the court's approval. Fed. R. Bankr. P. 2007.1. Alternatively, a trustee in a case may be elected if a party in interest requests the election of a trustee within 30 days after the court orders the appointment of a trustee. In that instance, the U.S. trustee convenes a meeting of creditors for the purpose of electing a person to serve as trustee in the case. 11 U.S.C. § 1104(b).

The case trustee is responsible for management of the property of the estate, operation of the debtor's business, and, if appropriate, the filing of a plan of reorganization. Section 1106 of the Bankruptcy Code requires the trustee to file a plan "as soon as practicable" or, alternatively, to file a report explaining why a plan will not be filed or to recommend that the case be converted to another chapter or dismissed. 11 U.S.C. § 1106(a)(5).

Upon the request of a party in interest or the U.S. trustee, the court may terminate the trustee's appointment and restore the debtor in possession to management of bankruptcy estate at any time before confirmation. 11 U.S.C. § 1105.

As discussed above, a trustee is appointed in each subchapter V case. 11 U.S.C. § 1183.

The Role of an Examiner

The appointment of an examiner in a chapter 11 case is rare. The role of an examiner is generally more limited than that of a trustee. The examiner is authorized to perform the investigatory functions of the trustee and is required to file a statement of any investigation conducted. If ordered to do so by the court, however, an examiner may carry out any other duties of a trustee that the court orders the debtor in possession not to perform. 11 U.S.C. § 1106. Each court has the authority to determine the duties of an examiner in each particular case. In some cases, the examiner may file a plan of reorganization, negotiate or help the parties negotiate, or review the debtor's schedules to determine whether some of the claims are improperly categorized. Sometimes, the examiner may be directed to determine if objections to any proofs of claim

should be filed or whether causes of action have sufficient merit so that further legal action should be taken. The examiner may not subsequently serve as a trustee in the case. 11 U.S.C. § 321.

Examiners may not be appointed in subchapter V cases. 11 U.S.C. § 1181(a) (making section 1106 inapplicable in subchapter V cases).

The Automatic Stay

The automatic stay provides a period of time in which all judgments, collection activities, foreclosures, and repossessions of property are suspended and may not be pursued by the creditors on any debt or claim that arose before the filing of the bankruptcy petition. As with cases under other chapters of the Bankruptcy Code, a stay of creditor actions against the chapter 11 debtor automatically goes into effect when the bankruptcy petition is filed. 11 U.S.C. § 362(a). The filing of a petition, however, does not operate as a stay for certain types of actions listed under 11 U.S.C. § 362(b). The stay provides a breathing spell for the debtor, during which negotiations can take place to try to resolve the difficulties in the debtor's financial situation.

Under specific circumstances, the secured creditor can obtain an order from the court granting relief from the automatic stay. For example, when the debtor has no equity in the property and the property is not necessary for an effective reorganization, the secured creditor can seek an order of the court lifting the stay to permit the creditor to foreclose on the property, sell it, and apply the proceeds to the debt. 11 U.S.C. § 362(d).

The Bankruptcy Code permits applications for fees to be made by certain professionals during the case. Thus, a trustee, a debtor's attorney, or any professional person appointed by the court may apply to the court at intervals of 120 days for interim compensation and reimbursement payments. In very large cases with extensive legal work, the court may permit more frequent applications. Although professional fees may be paid if authorized by the court, the debtor cannot make payments to professional creditors on prepetition obligations, i.e., obligations which arose before the filing of the bankruptcy petition. The ordinary expenses of the ongoing business, however, continue to be paid.

Who Can File a Plan

The debtor (except for a "small business debtor") has a 120-day period during which it has an exclusive right to file a plan. 11 U.S.C. § 1121(b). This exclusivity period may be extended or reduced by the court. But in no event may the exclusivity period, including all extensions, be

longer than 18 months. 11 U.S.C. § 1121(d). After the exclusivity period has expired, a creditor or the case trustee may file a competing plan. The U.S. trustee may not file a plan. 11 U.S.C. § 307.

A chapter 11 case may continue for many years unless the court, the U.S. trustee, the committee, or another party in interest acts to ensure the case's timely resolution. The creditors' right to file a competing plan provides incentive for the debtor to file a plan within the exclusivity period and acts as a check on excessive delay in the case.

Only the debtor may file a plan in a subchapter V case. 11 U.S.C. § 1189.

Avoidable Transfers

The debtor in possession or the trustee, as the case may be, has what are called "avoiding" powers. These powers may be used to undo a transfer of money or property made during a certain period of time before the filing of the bankruptcy petition. By avoiding a particular transfer of property, the debtor in possession can cancel the transaction and force the return or "disgorgement" of the payments or property, which then are available to pay all creditors. Generally, and subject to various defenses, the power to avoid transfers is effective against transfers made by the debtor within 90 days before filing the petition. But transfers to "insiders" (i.e., relatives, general partners, and directors or officers of the debtor) made up to a year before filing may be avoided. 11 U.S.C. §§ 101(31), 101(54), 547, 548. In addition, under 11 U.S.C. § 544, the trustee is authorized to avoid transfers under applicable state law, which often provides for longer time periods. Avoiding powers prevent unfair prepetition payments to one creditor at the expense of all other creditors.

Cash Collateral, Adequate Protection, and Operating Capital

Although the preparation, confirmation, and implementation of a plan of reorganization is at the heart of a chapter 11 case, other issues may arise that must be addressed by the debtor in possession. The debtor in possession may use, sell, or lease property of the estate in the ordinary course of its business, without prior approval, unless the court orders otherwise. 11 U.S.C. § 363(c). If the intended sale or use is outside the ordinary course of its business, the debtor must obtain permission from the court.

A debtor in possession may not use "cash collateral" without the consent of the secured party or authorization by the court, which must first examine whether the interest of the secured party is adequately protected. 11 U.S.C. § 363. Section 363 defines "cash collateral" as cash, negotiable

instruments, documents of title, securities, deposit accounts, or other cash equivalents, whenever acquired, in which the estate and an entity other than the estate have an interest. It includes the proceeds, products, offspring, rents, or profits of property and the fees, charges, accounts or payments for the use or occupancy of rooms and other public facilities in hotels, motels, or other lodging properties subject to a creditor's security interest.

When "cash collateral" is used (spent), the secured creditors are entitled to receive additional protection under section 363 of the Bankruptcy Code. The debtor in possession must file a motion requesting an order from the court authorizing the use of the cash collateral. Pending consent of the secured creditor or court authorization for the debtor in possession's use of cash collateral, the debtor in possession must segregate and account for all cash collateral in its possession. 11 U.S.C. § 363(c)(4). A party with an interest in property being used by the debtor may request that the court prohibit or condition this use to the extent necessary to provide "adequate protection" to the creditor.

Adequate protection may be required to protect the value of the creditor's interest in the property being used by the debtor in possession. This is especially important when there is a decrease in value of the property. The debtor may make periodic or lump sum cash payments or provide an additional or replacement lien that will result in the creditor's property interest being adequately protected. 11 U.S.C. § 361.

When a chapter 11 debtor needs operating capital, it may be able to obtain it from a lender by giving the lender a court-approved "superpriority" over other unsecured creditors or a lien on property of the estate. 11 U.S.C. § 364.

Motions

Before confirmation of a plan, several activities may take place in a chapter 11 case. Continued operation of the debtor's business may lead to the filing of a number of contested motions. The most common are those seeking relief from the automatic stay, the use of cash collateral, or to obtain credit. There may also be litigation over executory (i.e., unfulfilled) contracts and unexpired leases and the assumption or rejection of those executory contracts and unexpired leases by the debtor in possession. 11 U.S.C. § 365. Delays in formulating, filing, and obtaining confirmation of a plan often prompt creditors to file motions for relief from stay, to convert the case to chapter 7, or to dismiss the case altogether.

Adversary Proceedings

Frequently, the debtor in possession will institute a lawsuit, known as an adversary proceeding, to recover money or property for the estate. Adversary proceedings may take the form of lien avoidance actions, actions to avoid preferences, actions to avoid fraudulent transfers, or actions to avoid post-petition transfers. These proceedings are governed by Part VII of the Federal Rules of Bankruptcy Procedure. At times, a creditors' committee may be authorized by the bankruptcy court to pursue these actions against insiders of the debtor if the plan provides for the committee to do so or if the debtor has refused a demand to do so. Creditors may also initiate adversary proceedings by filing complaints to determine the validity or priority of a lien, revoke an order confirming a plan, determine the dischargeability of a debt, obtain an injunction, or subordinate a claim of another creditor.

Claims

The Bankruptcy Code defines a claim as: (1) a right to payment; (2) or a right to an equitable remedy for a failure of performance if the breach gives rise to a right to payment. 11 U.S.C. § 101(5). Generally, any creditor whose claim is not scheduled (i.e., listed by the debtor on the debtor's schedules) or is scheduled as disputed, contingent, or unliquidated must file a proof of claim (and attach evidence documenting the claim) in order to be treated as a creditor for purposes of voting on the plan and distribution under it. Fed. R. Bankr. P. 3003(c)(2). But filing a proof of claim is not necessary if the creditor's claim is scheduled (but is not listed as disputed, contingent, or unliquidated by the debtor) because the debtor's schedules are deemed to constitute evidence of the validity and amount of those claims. 11 U.S.C. § 1111. If a scheduled creditor chooses to file a claim, a properly filed proof of claim supersedes any scheduling of that claim. Fed. R. Bankr. P. 3003(c)(4). It is the responsibility of the creditor to determine whether the claim is accurately listed on the debtor's schedules. The debtor must provide notification to those creditors whose names are added and whose claims are listed as a result of an amendment to the schedules. The notification also should advise such creditors of their right to file proofs of claim and that their failure to do so may prevent them from voting upon the debtor's plan of reorganization or participating in any distribution under that plan. When a debtor amends the schedule of liabilities to add a creditor or change the status of any claims to disputed, contingent, or unliquidated, the debtor must provide notice of the amendment to any entity affected. Fed. R. Bankr. P. 1009(a).

Equity Security Holders

An equity security holder is a holder of an equity security of the debtor. Examples of an equity security are a share in a corporation, an interest of a limited partner in a limited partnership, or a

right to purchase, sell, or subscribe to a share, security, or interest of a share in a corporation or an interest in a limited partnership. 11 U.S.C. § 101(16), (17). An equity security holder may vote on the plan of reorganization and may file a proof of interest, rather than a proof of claim. A proof of interest is deemed filed for any interest that appears in the debtor's schedules, unless it is scheduled as disputed, contingent, or unliquidated. 11 U.S.C. § 1111. An equity security holder whose interest is not scheduled or is scheduled as disputed, contingent, or unliquidated must file a proof of interest in order to be treated as a creditor for purposes of voting on the plan and distribution under it. Fed. R. Bankr. P. 3003(c)(2). A properly filed proof of interest supersedes any scheduling of that interest. Fed. R. Bankr. P. 3003(c)(4). Generally, most of the provisions that apply to proofs of claim, as discussed above, are also applicable to proofs of interest.

Conversion or Dismissal

A debtor in a case under chapter 11 has a one-time absolute right to convert the chapter 11 case to a case under chapter 7 unless: (1) the debtor is not a debtor in possession; (2) the case originally was commenced as an involuntary case under chapter 11; or (3) the case was converted to a case under chapter 11 other than at the debtor's request. 11 U.S.C. § 1112(a). A debtor in a chapter 11 case does not have an absolute right to have the case dismissed upon request.

A party in interest may file a motion to dismiss or convert a chapter 11 case to a chapter 7 case "for cause." Generally, if cause is established after notice and hearing, the court must convert or dismiss the case (whichever is in the best interests of creditors and the estate) unless it specifically finds that the requested conversion or dismissal is not in the best interest of creditors and the estate. 11 U.S.C. § 1112(b). Alternatively, the court may decide that appointment of a chapter 11 trustee or an examiner is in the best interests of creditors and the estate. 11 U.S.C. § 1104(a)(3). Section 1112(b)(4) of the Bankruptcy Code sets forth numerous examples of cause that would support dismissal or conversion. For example, the moving party may establish cause by showing that there is substantial or continuing loss to the estate and the absence of a reasonable likelihood of rehabilitation; gross mismanagement of the estate; failure to maintain insurance that poses a risk to the estate or the public; or unauthorized use of cash collateral that is substantially harmful to a creditor.

Cause for dismissal or conversion also includes an unexcused failure to timely compliance with reporting and filing requirements; failure to attend the meeting of creditors or attend an examination without good cause; failure to timely provide information to the U.S. trustee; and failure to timely pay post-petition taxes or timely file post-petition returns Fed. R. Bankr. P. 2004. Additionally, failure to file a disclosure statement or to file and confirm a plan within the time

fixed by the Bankruptcy Code or order of the court; inability to effectuate a plan; denial or revocation of confirmation; inability to consummate a confirmed plan represent "cause" for dismissal under the statute. In an individual case, failure of the debtor to pay post-petition domestic support obligations constitutes "cause" for dismissal or conversion.

Section 1112(c) of the Bankruptcy Code provides an important exception to the conversion process in a chapter 11 case. Under this provision, the court is prohibited from converting a case involving a farmer or charitable institution to a liquidation case under chapter 7 unless the debt or requests the conversion.

The Disclosure Statement

Generally, the debtor (or any plan proponent) must file and get court approval of a written disclosure statement before there can be a vote on the plan of reorganization. The disclosure statement must provide "adequate information" concerning the affairs of the debtor to enable the holder of a claim or interest to make an informed judgment about the plan. 11 U.S.C. § 1125. In a small business case, however, the court may determine that the plan itself contains adequate information and that a separate disclosure statement is unnecessary. 11 U.S.C. § 1125(f). A disclosure statement is not required in a subchapter V case unless otherwise ordered by the court for cause. 11 U.S.C. § 1181(b). After the disclosure statement is filed, the court must hold a hearing to determine whether the disclosure statement should be approved. Acceptance or rejection of a plan usually cannot be solicited until the court has first approved the written disclosure statement. 11 U.S.C. § 1125(b). An exception to this rule exists if the initial solicitation of the party occurred before the bankruptcy filing, as would be the case in so-called "prepackaged" bankruptcy plans (i.e., where the debtor negotiates a plan with significant creditor constituencies before filing for bankruptcy). Continued post-filing solicitation of such parties is not prohibited. After the court approves the disclosure statement, the debtor or proponent of a plan can begin to solicit acceptances of the plan, and creditors may also solicit rejections of the plan.

Upon approval of a disclosure statement, the plan proponent must mail the following to the U.S. trustee and all creditors and equity security holders: (1) the plan, or a court approved summary of the plan; (2) the disclosure statement approved by the court; (3) notice of the time within which acceptances and rejections of the plan may be filed; and (4) such other information as the court may direct, including any opinion of the court approving the disclosure statement or a court-approved summary of the opinion. Fed. R. Bankr. P. 3017(d). In addition, the debtor must mail to the creditors and equity security holders entitled to vote on the plan or plans: (1) notice of the time fixed for filing objections; (2) notice of the date and time for the hearing on

confirmation of the plan; and (3) a ballot for accepting or rejecting the plan and, if appropriate, a designation for the creditors to identify their preference among competing plans. *Id.* But in a small business case, if a disclosure statement is filed, the court may conditionally approve a disclosure statement subject to final approval after notice and a combined disclosure statement/plan confirmation hearing. 11 U.S.C. § 1125(f).

Acceptance of the Plan of Reorganization

As noted earlier, only the debtor may file a plan of reorganization during the first 120-day period after the petition is filed (or after entry of the order for relief, if an involuntary petition was filed). The court may grant extension of this exclusive period up to 18 months after the petition date. In addition, the debtor has 180 days after the petition date or entry of the order for relief to obtain acceptances of its plan. 11 U.S.C. § 1121. The court may extend (up to 20 months) or reduce this acceptance exclusive period for cause. 11 U.S.C. § 1121(d). In practice, debtors typically seek extensions of both the plan filing and plan acceptance deadlines at the same time so that any order sought from the court allows the debtor two months to seek acceptances after filing a plan before any competing plan can be filed.

If the exclusive period expires before the debtor has filed and obtained acceptance of a plan, other parties in interest in a case, such as the creditors' committee or a creditor, may file a plan. Such a plan may compete with a plan filed by another party in interest or by the debtor. If a trustee is appointed, the trustee must file a plan, a report explaining why the trustee will not file a plan, or a recommendation for conversion or dismissal of the case. 11 U.S.C. § 1106(a)(5). A proponent of a plan is subject to the same requirements as the debtor with respect to disclosure and solicitation.

In a chapter 11 case, a liquidating plan is permissible. Such a plan often allows the debtor in possession to liquidate the business under more economically advantageous circumstances than a chapter 7 liquidation. It also permits the creditors to take a more active role in fashioning the liquidation of the assets and the distribution of the proceeds than in a chapter 7 case.

Section 1123(a) of the Bankruptcy Code lists the mandatory provisions of a chapter 11 plan, and section 1123(b) lists the discretionary provisions. Section 1123(a)(1) provides that a chapter 11 plan must designate classes of claims and interests for treatment under the reorganization. Generally, a plan will classify claim holders as secured creditors, unsecured creditors entitled to priority, general unsecured creditors, and equity security holders.

Under section 1126(c) of the Bankruptcy Code, an entire class of claims is deemed to accept a plan if the plan is accepted by creditors that hold at least two-thirds in amount and more than

one-half in number of the allowed claims in the class. Under section 1129(a)(10), if there are impaired classes of claims, the court cannot confirm a plan unless it has been accepted by at least one class of non-insiders who hold impaired claims (i.e., claims that are not going to be paid completely or in which some legal, equitable, or contractual right is altered). Moreover, under section 1126(f), holders of unimpaired claims are deemed to have accepted the plan.

Under section 1127(a) of the Bankruptcy Code, the plan proponent may modify the plan at any time before confirmation, but the plan as modified must meet all the requirements of chapter 11. When there is a proposed modification after balloting has been conducted, and the court finds after a hearing that the proposed modification does not adversely affect the treatment of any creditor who has not accepted the modification in writing, the modification is deemed to have been accepted by all creditors who previously accepted the plan. Fed. R. Bankr. P. 3019. If it is determined that the proposed modification does have an adverse effect on the claims of non-consenting creditors, then another balloting must take place.

Because more than one plan may be submitted to the creditors for approval, every proposed plan and modification must be dated and identified with the name of the entity or entities submitting the plan or modification. Fed. R. Bankr. P. 3016(b). When competing plans are presented that meet the requirements for confirmation, the court must consider the preferences of the creditors and equity security holders in determining which plan to confirm.

Any party in interest may file an objection to confirmation of a plan. The Bankruptcy Code requires the court, after notice, to hold a hearing on confirmation of a plan. If no objection to confirmation has been timely filed, the Bankruptcy Code allows the court to determine whether the plan has been proposed in good faith and according to law. Fed. R. Bankr. P. 3020(b)(2). Before confirmation can be granted, the court must be satisfied that there has been compliance with all the other requirements of confirmation set forth in section 1129 of the Bankruptcy Code, even in the absence of any objections. In order to confirm the plan, the court must find, among other things, that: (1) the plan is feasible; (2) it is proposed in good faith; and (3) the plan and the proponent of the plan are in compliance with the Bankruptcy Code. In order to satisfy the feasibility requirement, the court must find that confirmation of the plan is not likely to be followed by liquidation (unless the plan is a liquidating plan) or the need for further financial reorganization.

The Discharge

Section 1141(d)(1) generally provides that confirmation of a plan discharges a debtor from any debt that arose before the date of confirmation. After the plan is confirmed, the debtor is required to make plan payments and is bound by the provisions of the plan of reorganization.

The confirmed plan creates new contractual rights, replacing or superseding pre-bankruptcy contracts.

There are, of course, exceptions to the general rule that an order confirming a plan operates as a discharge. Confirmation of a plan of reorganization discharges any type of debtor – corporation, partnership, or individual – from most types of prepetition debts. It does not, however, discharge an individual debtor from any debt made nondischargeable by section 523 of the Bankruptcy Code. (1) Moreover, except in limited circumstances, a discharge is not available to an individual debtor unless and until all payments have been made under the plan. 11 U.S.C. § 1141(d)(5). Confirmation does not discharge the debtor if the plan is a liquidation plan, as opposed to one of reorganization, unless the debtor is an individual. When the debtor is an individual, confirmation of a liquidation plan will result in a discharge (after plan payments are made) unless grounds would exist for denying the debtor a discharge if the case were proceeding under chapter 7 instead of chapter 11. 11 U.S.C. §§ 727(a), 1141(d).

Postconfirmation Modification of the Plan

At any time after confirmation and before "substantial consummation" of a plan, the proponent of a plan may modify the plan if the modified plan would meet certain Bankruptcy Code requirements. 11 U.S.C. § 1127(b), 1193(b). This should be distinguished from preconfirmation modification of the plan. A modified postconfirmation plan does not automatically become the plan. A modified postconfirmation plan in a chapter 11 case becomes the plan only "if circumstances warrant such modification" and the court, after notice and hearing, confirms the plan as modified. If the debtor is an individual, the plan may be modified postconfirmation upon the request of the debtor, the trustee, the U.S. trustee, or the holder of an allowed unsecured claim to make adjustments to payments due under the plan. 11 U.S.C. § 1127(e).

Postconfirmation Administration

Notwithstanding the entry of the confirmation order, the court has the authority to issue any other order necessary to administer the estate. Fed. R. Bankr. P. 3020(d). This authority would include the postconfirmation determination of objections to claims or adversary proceedings, which must be resolved before a plan can be fully consummated. Sections 1106(a)(7) and 1107(a) of the Bankruptcy Code require a debtor in possession or a trustee to report on the progress made in implementing a plan after confirmation. A chapter 11 trustee or debtor in possession has a number of responsibilities to perform after confirmation, including consummating the plan, reporting on the status of consummation, and applying for a final decree.

Revocation of the Confirmation Order

Revocation of the confirmation order is an undoing or cancellation of the confirmation of a plan. A request for revocation of confirmation, if made at all, must be made by a party in interest within 180 days of confirmation. The court, after notice and hearing, may revoke a confirmation order "if and only if the [confirmation] order was procured by fraud." 11 U.S.C. § 1144.

The Final Decree

Revocation of the confirmation order is an undoing or cancellation of the confirmation of a plan. A request for revocation of confirmation, if made at all, must be made by a party in interest within 180 days of confirmation. The court, after notice and hearing, may revoke a confirmation order "if and only if the [confirmation] order was procured by fraud." 11 U.S.C. § 1144.

Notes

1. Debts not discharged include debts for alimony and child support, certain taxes, debts for certain educational benefit overpayments or loans made or guaranteed by a governmental unit, debts for willful and malicious injury by the debtor to another entity or to the property of another entity, debts for death or personal injury caused by the debtor's operation of a motor vehicle while the debtor was intoxicated from alcohol or other substances, and debts for certain criminal restitution orders. 11 U.S.C. § 523(a). The debtor will continue to be liable for these types of debts to the extent that they are not paid in the chapter 11 case. Debts for money or property obtained by false pretenses, debts for fraud or defalcation while acting in a fiduciary capacity, and debts for willful and malicious injury by the debtor to another entity or to the property of another entity will be discharged unless a creditor timely files and prevails in an action to have such debts declared nondischargeable. 11 U.S.C. § 523(c); Fed. R. Bankr. P. 4007(c).

Chapter 12 - Bankruptcy Basics

Chapter 12 of the Bankruptcy Code provides for adjustment of debts of a "family farmer," or a "family fisherman" as those terms are defined in the U.S. Bankruptcy Code.

Background

Chapter 12 is designed for "family farmers" or "family fishermen" with "regular annual income." It enables financially distressed family farmers and fishermen to propose and carry out a plan to repay all or part of their debts. Under chapter 12, debtors propose a repayment plan to make installments to creditors over three to five years. Generally, the plan must provide for payments over three years unless the court approves a longer period "for cause." But unless the plan proposes to pay 100% of domestic support claims (i.e., child support and alimony) if any exist, it must be for five years and must include all of the debtor's disposable income. In no case may a plan provide for payments over a period longer than five years. 11 U.S.C. § 1222(b)-(c).

In tailoring bankruptcy law to meet the economic realities of family farming and the family fisherman, chapter 12 eliminates many of the barriers such debtors would face if seeking to reorganize under either chapter 11 or 13 of the Bankruptcy Code. For example, chapter 12 is more streamlined, less complicated, and less expensive than chapter 11, which is better suited to large corporate reorganizations. In addition, few family farmers or fishermen find chapter 13 to be advantageous because it is designed for wage earners who have smaller debts than those facing family farmers. In chapter 12, Congress sought to combine the features of the Bankruptcy Code which can provide a framework for successful family farmer and fisherman reorganizations.

The Bankruptcy Code provides that only a family farmer or family fisherman with "regular annual income" may file a petition for relief under chapter 12. 11 U.S.C. §§ 101(18), 101(19A), 109(f). The purpose of this requirement is to ensure that the debtor's annual income is sufficiently stable and regular to permit the debtor to make payments under a chapter 12 plan. But chapter 12 makes allowance for situations in which family farmers or fishermen have income

that is seasonal in nature. Relief under chapter 12 is voluntary, and only the debtor may file a petition under the chapter.

Under the Bankruptcy Code, "family farmers" and "family fishermen" fall into two categories: (1) an individual or individual and spouse and (2) a corporation or partnership. Farmers or fishermen falling into the first category must meet each of the following four criteria as of the date the petition is filed in order to qualify for relief under chapter 12:

1. The individual or individual and spouse must be engaged in a farming operation or a commercial fishing operation.
2. The total debts (secured and unsecured) must not exceed \$12,562,250 (if a family farmer) or \$2,568,000 (if a family fisherman).
3. If a family farmer, at least 50%, and, if family fisherman, at least 80%, of the total debts that are fixed in amount (exclusive of debt for the debtor's principal residence unless such debt arises out of a farming or commercial fishing operation) must arise out of a farming or commercial fishing operation.
4. More than 50% of the gross income of the individual or the individual and spouse for the preceding tax year (or, for family farmers only, for each of the 2nd and 3rd prior tax years) must have come from the farming or commercial fishing operation.

In order for a corporation or partnership to fall within the second category of debtors eligible to file as family farmers or family fishermen, the corporation or partnership must meet each of the following criteria as of the date of the filing of the petition:

1. More than one-half the outstanding stock or equity in the corporation or partnership must be owned by one family or by one family and its relatives.
2. The family or the family and its relatives must conduct the farming or commercial fishing operation.
3. More than 80% of the value of the corporate or partnership assets must be related to the farming or fishing operation.
4. The total indebtedness of the corporation or partnership must not exceed \$12,562,250 (if a farming operation) or \$2,568,000 (if a commercial fishing operation).
5. At least 50% for a farming operation or 80% for a fishing operation of the corporation's or partnership's total debts which are fixed in amount (exclusive of debt for a principal residence by a shareholder or partner unless such debt

arises out of a farming or commercial fishing operation) must arise out of the farming or fishing operation.

6. If the corporation issues stock, the stock cannot be publicly traded.

A debtor cannot file under chapter 12 (or any other chapter) if during the preceding 180 days a prior bankruptcy petition was dismissed due to the debtor's willful failure to appear before the court or comply with orders of the court or was voluntarily dismissed after creditors sought relief from the bankruptcy court to recover property upon which they hold liens. 11 U.S.C. §§ 109(g), 362(d) and (e). In addition, no individual may be a debtor under chapter 12 or any chapter of the Bankruptcy Code unless he or she has, within 180 days before filing, received credit counseling from an approved credit counseling agency either in an individual or group briefing. 11 U.S.C. §§ 109, 111. There are exceptions in emergency situations or where the U.S. trustee (or bankruptcy administrator) (1) has determined that there are insufficient approved agencies to provide the required counseling. If a debt management plan is developed during required credit counseling, it must be filed with the court.

How Chapter 12 Works

A chapter 12 case begins by filing a petition with the bankruptcy court serving the area where the individual lives or where the corporation or partnership debtor has its principal place of business or principal assets. Unless the court orders otherwise, the debtor also shall file with the court (1) schedules of assets and liabilities, (2) a schedule of current income and expenditures, (3) a schedule of executory contracts and unexpired leases, and (4) a statement of financial affairs. Fed. R. Bankr. P. 1007(b). A husband and wife may file a joint petition or individual petitions. 11 U.S.C. § 302(a). (The Official Forms may be purchased at legal stationery stores or downloaded from the Internet at www.uscourts.gov/bkforms/index.html. They are not available from the court.)

The courts must charge a \$200 case filing fee and a \$75 miscellaneous administrative fee. Normally the fees should be paid to the clerk of the court upon filing. With the court's permission, however, they may be paid in installments. 28 U.S.C. § 1930(a); Fed. R. Bankr. P. 1006(b); Bankruptcy Court Miscellaneous Fee Schedule, Item 8. The number of such installments is limited to four and the debtor must make the final installment no later than 120 days after filing the petition. Fed. R. Bankr. P. 1006(b). For cause shown, the court may extend the time of any installment, provided that the last installment is paid not later than 180 days after the filing of the petition. *Id.* The debtor may also pay the \$75 administrative fee in installments. If a joint petition is filed, only one filing fee and one administrative fee are charged. Debtors should be aware that failure to pay these fees may result in dismissal of the case. 11 U.S.C. § 1208(c)(2).

In order to complete the Official Bankruptcy Forms which make up the petition, statement of financial affairs, and schedules, the debtor will need to compile the following information:

1. A list of all creditors and the amounts and nature of their claims;
2. The source, amount, and frequency of the debtor's income;
3. A list of all of the debtor's property; and
4. A detailed list of the debtor's monthly farming and living expenses, i.e., food, shelter, utilities, taxes, transportation, medicine, feed, fertilizer, etc.

Married individuals must gather this information for each spouse regardless of whether they are filing a joint petition, separate individual petitions, or even if only one spouse is filing. In a situation where only one spouse files, the income and expenses of the non-filing spouse are required so that the court, the trustee, and the creditors can evaluate the household's financial position.

When a chapter 12 petition is filed, an impartial trustee is appointed to administer the case. 11 U.S.C. § 1202. In some districts, the U.S. trustee appoints a standing trustee to serve in all chapter 12 cases. 28 U.S.C. § 586(b). As in [chapter 13](#), the trustee both evaluates the case and serves as a disbursing agent, collecting payments from the debtor and making distributions to creditors. 11 U.S.C. § 1202.

Filing the petition under chapter 12 "automatically stays" (stops) most collection actions against the debtor or the debtor's property. 11 U.S.C. § 362. Filing the petition does not, however, stay certain types of actions listed under 11 U.S.C. § 362(b). The stay arises by operation of law and requires no judicial action. As long as the stay is in effect, creditors generally cannot initiate or continue any lawsuits, wage garnishments, or even telephone calls demanding payments. The bankruptcy clerk gives notice of the bankruptcy case to all creditors whose names and addresses are provided by the debtor.

Chapter 12 also contains a special automatic stay provision that protects co-debtors. Unless the bankruptcy court authorizes otherwise, a creditor may not seek to collect a "consumer debt" from any individual who is liable with the debtor. 11 U.S.C. § 1201(a). Consumer debts are those incurred by an individual primarily for a personal, family, or household purpose. 11 U.S.C. § 101(8).

Between 21 to 35 days after the petition is filed, the chapter 12 trustee will hold a "meeting of creditors." If the U.S. trustee or bankruptcy administrator schedules the meeting at a place that does not have regular U.S. trustee or bankruptcy administrator staffing, the meeting may be held no more than 60 days after the debtor files. During the meeting the trustee puts the debtor under oath and both the trustee and creditors may ask questions. The debtor must attend the meeting

and answer questions regarding the debtor's financial affairs and the proposed terms of the debtor's repayment plan. 11 U.S.C. § 343; Fed. R. Bankr. P. 4002. If a husband and wife have filed a joint petition, they both must attend the creditors' meeting. In order to preserve their independent judgment, bankruptcy judges are prohibited from attending. 11 U.S.C. § 341(c). The parties typically resolve problems with the plan either during or shortly after the creditors' meeting. Generally, the debtor can avoid problems by making sure that the petition and plan are complete and accurate, and by consulting with the trustee prior to the meeting.

In a chapter 12 case, to participate in distributions from the bankruptcy estate, unsecured creditors must file their claims with the court within 90 days after the first date set for the meeting of creditors. Fed. R. Bankr. P. 3002(c). A governmental unit, however, has 180 days from the date the case is filed file a proof of claim. 11 U.S.C. § 502(b)(9).

After the meeting of creditors, the debtor, the chapter 12 trustee, and interested creditors will attend a hearing on confirmation of the debtor's chapter 12 repayment plan.

The Chapter 12 Plan and Confirmation Hearing

Unless the court grants an extension, the debtor must file a plan of repayment with the petition or within 90 days after filing the petition. 11 U.S.C. § 1221. The plan, which must be submitted to the court for approval, provides for payments of fixed amounts to the trustee on a regular basis. The trustee then distributes the funds to creditors according to the terms of the plan, which typically offers creditors less than full payment on their claims.

There are three types of claims: priority, secured, and unsecured. Priority claims are those granted special status by the bankruptcy law, such as most taxes and the costs of bankruptcy proceeding. (2) Secured claims are those for which the creditor has the right to liquidate certain property if the debtor does not pay the underlying debt. In contrast to secured claims, unsecured claims are generally those for which the creditor has no special rights to collect against particular property owned by the debtor.

A chapter 12 plan usually lasts three to five years. It must provide for full payment of all priority claims, unless a priority creditor agrees to different treatment of the claim or, in the case of a domestic support obligation, unless the debtor contributes all "disposable income" - discussed below - to a five-year plan. 11 U.S.C. § 1222(a)(2), (4).

Secured creditors must be paid at least as much as the value of the collateral pledged for the debt. One of the features of Chapter 12 is that payments to secured creditors can sometimes continue longer than the three-to-five-year period of the plan. For example, if the debtor's

underlying debt obligation was scheduled to be paid over more than five years (i.e., an equipment loan or a mortgage), the debtor may be able to pay the loan off over the original loan repayment schedule as long as any arrearage is made up during the plan.

The plan does not have to pay unsecured claims in full, as long as it commits all of the debtor's projected "disposable income" (or property of equivalent value) to plan payments over a 3 to 5 year period, and as long as the unsecured creditors are to receive at least as much as they would receive if the debtor's nonexempt assets were liquidated under chapter 7. 11 U.S.C. § 1225.

"Disposable income" is defined as income not reasonably necessary for the maintenance or support of the debtor or dependents or for making payments needed to continue, preserve, and operate the debtor's business. 11 U.S.C. § 1225(b)(2).

Within 45 days after filing the plan, the presiding bankruptcy judge decides at a "confirmation hearing" whether the plan is feasible and meets the standards for confirmation under the Bankruptcy Code. 11 U.S.C. §§ 1224, 1225. Creditors, who receive 21 days' notice, may appear at the hearing and object to confirmation. Fed. R. Bankr. P. 2002(a)(8). While a variety of objections may be made, the typical arguments are that payments offered under the plan are less than creditors would receive if the debtor's assets were liquidated, or that the plan does not commit all of the debtor's disposable income for the three-to-five-year period of the plan.

If the court confirms the plan, the chapter 12 trustee will distribute funds received in accordance with the terms of the plan. 11 U.S.C. § 1226(a). If the court does not confirm the plan, the debtor may file a modified plan. 11 U.S.C. § 1223. The debtor may also convert the case to a liquidation under chapter 7. (3) 11 U.S.C. § 1208(a). If the debtor fails to confirm a plan and the case is dismissed, the court may authorize the trustee to keep some of the funds for costs, but the trustee must return all remaining funds to the debtor (other than funds already disbursed to creditors). 11 U.S.C. § 1226(a).

On occasion, changed circumstances will affect the debtor's ability to make plan payments. A creditor may object or threaten to object to a plan, or the debtor may inadvertently have failed to list all creditors. In such instances, the plan may be modified either before or after confirmation. 11 U.S.C. §§ 1223, 1229. Modification after confirmation is not limited to an initiative by the debtor, but may also be made at the request of the trustee or an unsecured creditor. 11 U.S.C. § 1229(a).

Making the Plan Work

The provisions of a confirmed plan bind the debtor and each creditor. 11 U.S.C. § 1227. Once the court confirms the plan, the debtor must make the plan succeed. The debtor must make regular

payments to the trustee, which will require adjustment to living on a fixed budget for a prolonged period. Furthermore, while confirmation of the plan entitles the debtor to retain property as long as payments are made, the debtor may not incur any significant new debt without consulting the trustee, because additional debt may compromise the debtor's ability to complete the plan. 11 U.S.C. §§ 1222(a)(1), 1227. In any event, failure to make the plan payments may result in dismissal of the case. 11 U.S.C. § 1208(c). In addition, the court may dismiss the case or convert the case to a liquidation case under chapter 7 of the Bankruptcy Code upon a showing that the debtor has committed fraud in connection with the case. 11 U.S.C. § 1208(d).

The Chapter 12 Discharge

The debtor will receive a discharge after completing all payments under the chapter 12 plan as long as the debtor certifies (if applicable) that all domestic support obligations that came due before making such certification have been paid. The discharge has the effect of releasing the debtor from all debts provided for by the plan allowed under section 503 or disallowed under section 502, with limited exceptions. Those creditors who were provided for in full or in part under the plan may no longer initiate or continue any legal or other action against the debtor to collect the discharged obligations.

Certain categories of debts are not discharged in chapter 12 proceedings. 11 U.S.C. § 1228(a). Those categories include debts for alimony and child support; money obtained through filing false financial statements; debts for willful and malicious injury to person or property; debts for death or personal injury caused by the debtor's operation of a motor vehicle while the debtor was intoxicated; and debts from fraud or defalcation while acting in a fiduciary capacity, embezzlement or larceny. The bankruptcy law regarding the scope of a chapter 12 discharge is complex, however, and debtors should consult competent legal counsel in this regard prior to filing. Those debts that will not be discharged should be paid in full under a plan. With respect to secured obligations, those debts may be paid beyond the end of the plan payment period and, accordingly, are not discharged.

Chapter 12 Hardship Discharge

The court may grant a "hardship discharge" to a chapter 12 debtor even though the debtor has failed to complete plan payments. 11 U.S.C. § 1228(b). Generally, a hardship discharge is available only to a debtor whose failure to complete plan payments is due to circumstances beyond the debtor's control and through no fault of the debtor. Creditors must have received at least as much as they would have received in a chapter 7 liquidation case, and the debtor must be unable to modify the plan. For example, injury or illness that precludes employment

sufficient to fund even a modified plan may serve as the basis for a hardship discharge. The hardship discharge does not apply to any debts that are nondischargeable in a chapter 7 case. 11 U.S.C. § 523.

Notes

1. In North Carolina and Alabama, bankruptcy administrators perform similar functions that U.S. trustees perform in the remaining forty-eight states. The bankruptcy administrator program is administered by the Administrative Office of the United States Courts, while the U.S. trustee program is administered by the Department of Justice. For purposes of this publication, references to U.S. trustees are also applicable to bankruptcy administrators.
2. Section 507 sets forth 10 categories of unsecured claims which Congress has, for public policy reasons, given priority of distribution over other unsecured claims.
3. A fee of \$60 is charged for converting a case under chapter 12 to a case under chapter 7.

Chapter 13 - Bankruptcy Basics

Chapter 13 of the Bankruptcy Code provides for adjustment of debts of an individual with regular income. Chapter 13 allows a debtor to keep property and pay debts over time, usually three to five years.

Background

A chapter 13 bankruptcy is also called a wage earner's plan. It enables individuals with regular income to develop a plan to repay all or part of their debts. Under this chapter, debtors propose a repayment plan to make installments to creditors over three to five years. If the debtor's current monthly income is less than the applicable state median, the plan will be for three years unless the court approves a longer period "for cause." (1) If the debtor's current monthly income is greater than the applicable state median, the plan generally must be for five years. In no case may a plan provide for payments over a period longer than five years. 11 U.S.C. § 1322(d). During this time the law forbids creditors from starting or continuing collection efforts.

This chapter discusses six aspects of a chapter 13 proceeding: the advantages of choosing chapter 13, the chapter 13 eligibility requirements, how a chapter 13 proceeding works, making the plan work, and the special chapter 13 discharge.

Advantages of Chapter 13

Chapter 13 offers individuals a number of advantages over liquidation under chapter 7. Perhaps most significantly, chapter 13 offers individuals an opportunity to save their homes from foreclosure. By filing under this chapter, individuals can stop foreclosure proceedings and may cure delinquent mortgage payments over time. Nevertheless, they must still make all mortgage payments that come due during the chapter 13 plan on time. Another advantage of chapter 13 is that it allows individuals to reschedule secured debts (other than a mortgage for their primary residence) and extend them over the life of the chapter 13 plan. Doing this may lower the payments. Chapter 13 also has a special provision that protects third parties who are liable with

the debtor on "consumer debts." This provision may protect co-signers. Finally, chapter 13 acts like a consolidation loan under which the individual makes the plan payments to a chapter 13 trustee who then distributes payments to creditors. Individuals will have no direct contact with creditors while under chapter 13 protection.

Chapter 13 Eligibility

Any individual, even if self-employed or operating an unincorporated business, is eligible for chapter 13 relief as long as the individual's unsecured debts are less than \$526,700 and secured debts are less than \$1,580,125 as of the date of filing for bankruptcy relief. 11 U.S.C. § 109(e).

An individual cannot file under chapter 13 or any other chapter if, during the preceding 180 days, a prior bankruptcy petition was dismissed due to the debtor's willful failure to appear before the court or comply with orders of the court or was voluntarily dismissed after creditors sought relief from the bankruptcy court to recover property upon which they hold liens. 11 U.S.C. §§ 109(g), 362(d) and (e). In addition, no individual may be a debtor under chapter 13 or any chapter of the Bankruptcy Code unless he or she has, within 180 days before filing, received credit counseling from an approved credit counseling agency either in an individual or group briefing. 11 U.S.C. §§ 109, 111. There are exceptions in emergency situations or where the U.S. trustee (or bankruptcy administrator) has determined that there are insufficient approved agencies to provide the required counseling. If a debt management plan is developed during required credit counseling, it must be filed with the court.

How Chapter 13 Works

A chapter 13 case begins by filing a petition with the bankruptcy court serving the area where the debtor has a domicile or residence. Unless the court orders otherwise, the debtor must also file with the court: (1) schedules of assets and liabilities; (2) a schedule of current income and expenditures; (3) a schedule of executory contracts and unexpired leases; and (4) a statement of financial affairs. Fed. R. Bankr. P. 1007(b). The debtor must also file a certificate of credit counseling and a copy of any debt repayment plan developed through credit counseling; evidence of payment from employers, if any, received 60 days before filing; a statement of monthly net income and any anticipated increase in income or expenses after filing; and a record of any interest the debtor has in federal or state qualified education or tuition accounts. 11 U.S.C. § 521. The debtor must provide the chapter 13 case trustee with a copy of the tax return or transcripts for the most recent tax year as well as tax returns filed during the case (including tax returns for prior years that had not been filed when the case began). Id. A husband and wife may

file a joint petition or individual petitions. 11 U.S.C. § 302(a). (The Official Forms may be purchased at legal stationery stores or downloaded from the Internet at www.uscourts.gov/bkforms/index.html. They are not available from the court.)

The courts must charge a \$235 case filing fee and a \$75 miscellaneous administrative fee. Normally the fees must be paid to the clerk of the court upon filing. With the court's permission, however, they may be paid in installments. 28 U.S.C. § 1930(a); Fed. R. Bankr. P. 1006(b); Bankruptcy Court Miscellaneous Fee Schedule, Item 8. The number of installments is limited to four, and the debtor must make the final installment no later than 120 days after filing the petition. Fed. R. Bankr. P. 1006(b). For cause shown, the court may extend the time of any installment, as long as the last installment is paid no later than 180 days after filing the petition. Id. The debtor may also pay the \$75 administrative fee in installments. If a joint petition is filed, only one filing fee and one administrative fee are charged. Debtors should be aware that failure to pay these fees may result in dismissal of the case. 11 U.S.C. § 1307(c)(2).

In order to complete the Official Bankruptcy Forms that make up the petition, statement of financial affairs, and schedules, the debtor must compile the following information:

1. A list of all creditors and the amounts and nature of their claims;
2. The source, amount, and frequency of the debtor's income;
3. A list of all of the debtor's property; and
4. A detailed list of the debtor's monthly living expenses, i.e., food, clothing, shelter, utilities, taxes, transportation, medicine, etc.

Married individuals must gather this information for their spouse regardless of whether they are filing a joint petition, separate individual petitions, or even if only one spouse is filing. In a situation where only one spouse files, the income and expenses of the non-filing spouse is required so that the court, the trustee and creditors can evaluate the household's financial position.

When an individual files a chapter 13 petition, an impartial trustee is appointed to administer the case. 11 U.S.C. § 1302. In some districts, the U.S. trustee or bankruptcy administrator (2) appoints a standing trustee to serve in all chapter 13 cases. 28 U.S.C. § 586(b). The chapter 13 trustee both evaluates the case and serves as a disbursing agent, collecting payments from the debtor and making distributions to creditors. 11 U.S.C. § 1302(b).

Filing the petition under chapter 13 "automatically stays" (stops) most collection actions against the debtor or the debtor's property. 11 U.S.C. § 362. Filing the petition does not, however, stay certain types of actions listed under 11 U.S.C. § 362(b), and the stay may be effective only for a short time in some situations. The stay arises by operation of law and requires no judicial action.

As long as the stay is in effect, creditors generally may not initiate or continue lawsuits, wage garnishments, or even make telephone calls demanding payments. The bankruptcy clerk gives notice of the bankruptcy case to all creditors whose names and addresses are provided by the debtor.

Chapter 13 also contains a special automatic stay provision that protects co-debtors. Unless the bankruptcy court authorizes otherwise, a creditor may not seek to collect a "consumer debt" from any individual who is liable along with the debtor. 11 U.S.C. § 1301(a). Consumer debts are those incurred by an individual primarily for a personal, family, or household purpose. 11 U.S.C. § 101(8).

Individuals may use a chapter 13 proceeding to save their home from foreclosure. The automatic stay stops the foreclosure proceeding as soon as the individual files the chapter 13 petition. The individual may then bring the past-due payments current over a reasonable period of time. Nevertheless, the debtor may still lose the home if the mortgage company completes the foreclosure sale under state law before the debtor files the petition. 11 U.S.C. § 1322(c). The debtor may also lose the home if he or she fails to make the regular mortgage payments that come due after the chapter 13 filing.

Between 21 and 50 days after the debtor files the chapter 13 petition, the chapter 13 trustee will hold a meeting of creditors. If the U.S. trustee or bankruptcy administrator schedules the meeting at a place that does not have regular U.S. trustee or bankruptcy administrator staffing, the meeting may be held no more than 60 days after the debtor files. Fed. R. Bankr. P. 2003(a). During this meeting, the trustee places the debtor under oath, and both the trustee and creditors may ask questions. The debtor must attend the meeting and answer questions regarding his or her financial affairs and the proposed terms of the plan. 11 U.S.C. § 343. If a husband and wife file a joint petition, they both must attend the creditors' meeting and answer questions. In order to preserve their independent judgment, bankruptcy judges are prohibited from attending the creditors' meeting. 11 U.S.C. § 341(c). The parties typically resolve problems with the plan either during or shortly after the creditors' meeting. Generally, the debtor can avoid problems by making sure that the petition and plan are complete and accurate, and by consulting with the trustee prior to the meeting.

In a chapter 13 case, to participate in distributions from the bankruptcy estate, unsecured creditors must file their claims with the court within 90 days after the first date set for the meeting of creditors. Fed. R. Bankr. P. 3002(c). A governmental unit, however, has 180 days from the date the case is filed to file a proof of claim. 11 U.S.C. § 502(b)(9).

After the meeting of creditors, the debtor, the chapter 13 trustee, and those creditors who wish to attend will come to court for a hearing on the debtor's chapter 13 repayment plan.

The Chapter 13 Plan and Confirmation Hearing

Unless the court grants an extension, the debtor must file a repayment plan with the petition or within 14 days after the petition is filed. Fed. R. Bankr. P. 3015. A plan must be submitted for court approval and must provide for payments of fixed amounts to the trustee on a regular basis, typically biweekly or monthly. The trustee then distributes the funds to creditors according to the terms of the plan, which may offer creditors less than full payment on their claims.

There are three types of claims: priority, secured, and unsecured. Priority claims are those granted special status by the bankruptcy law, such as most taxes and the costs of bankruptcy proceeding. (3) Secured claims are those for which the creditor has the right take back certain property (i.e., the collateral) if the debtor does not pay the underlying debt. In contrast to secured claims, unsecured claims are generally those for which the creditor has no special rights to collect against particular property owned by the debtor.

The plan must pay priority claims in full unless a particular priority creditor agrees to different treatment of the claim or, in the case of a domestic support obligation, unless the debtor contributes all "disposable income" - discussed below - to a five-year plan. 11 U.S.C. § 1322(a).

If the debtor wants to keep the collateral securing a particular claim, the plan must provide that the holder of the secured claim receive at least the value of the collateral. If the obligation underlying the secured claim was used to buy the collateral (e.g., a car loan), and the debt was incurred within certain time frames before the bankruptcy filing, the plan must provide for full payment of the debt, not just the value of the collateral (which may be less due to depreciation). Payments to certain secured creditors (i.e., the home mortgage lender), may be made over the original loan repayment schedule (which may be longer than the plan) so long as any arrearage is made up during the plan. The debtor should consult an attorney to determine the proper treatment of secured claims in the plan.

The plan need not pay unsecured claims in full as long it provides that the debtor will pay all projected "disposable income" over an "applicable commitment period," and as long as unsecured creditors receive at least as much under the plan as they would receive if the debtor's assets were liquidated under chapter 7. 11 U.S.C. § 1325. In chapter 13, "disposable income" is income (other than child support payments received by the debtor) less amounts reasonably necessary for the maintenance or support of the debtor or dependents and less charitable contributions up to 15% of the debtor's gross income. If the debtor operates a business, the definition of disposable income excludes those amounts which are necessary for ordinary operating expenses. 11 U.S.C. § 1325(b)(2)(A) and (B). The "applicable commitment period" depends on the debtor's current monthly income. The applicable commitment period must be

three years if current monthly income is less than the state median for a family of the same size - and five years if the current monthly income is greater than a family of the same size. 11 U.S.C. § 1325(d). The plan may be less than the applicable commitment period (three or five years) only if unsecured debt is paid in full over a shorter period.

Within 30 days after filing the bankruptcy case, even if the plan has not yet been approved by the court, the debtor must start making plan payments to the trustee. 11 U.S.C. § 1326(a)(1). If any secured loan payments or lease payments come due before the debtor's plan is confirmed (typically home and automobile payments), the debtor must make adequate protection payments directly to the secured lender or lessor - deducting the amount paid from the amount that would otherwise be paid to the trustee. *Id.*

No later than 45 days after the meeting of creditors, the bankruptcy judge must hold a confirmation hearing and decide whether the plan is feasible and meets the standards for confirmation set forth in the Bankruptcy Code. 11 U.S.C. §§ 1324, 1325. Creditors will receive 28 days' notice of the hearing and may object to confirmation. Fed. R. Bankr. P. 2002(b). While a variety of objections may be made, the most frequent ones are that payments offered under the plan are less than creditors would receive if the debtor's assets were liquidated or that the debtor's plan does not commit all of the debtor's projected disposable income for the three or five year applicable commitment period.

If the court confirms the plan, the chapter 13 trustee will distribute funds received under the plan "as soon as is practicable." 11 U.S.C. § 1326(a)(2). If the court declines to confirm the plan, the debtor may file a modified plan. 11 U.S.C. § 1323. The debtor may also convert the case to a liquidation case under chapter 7. (4) 11 U.S.C. § 1307(a). If the court declines to confirm the plan or the modified plan and instead dismisses the case, the court may authorize the trustee to keep some funds for costs, but the trustee must return all remaining funds to the debtor (other than funds already disbursed or due to creditors). 11 U.S.C. § 1326(a)(2).

Occasionally, a change in circumstances may compromise the debtor's ability to make plan payments. For example, a creditor may object or threaten to object to a plan, or the debtor may inadvertently have failed to list all creditors. In such instances, the plan may be modified either before or after confirmation. 11 U.S.C. §§ 1323, 1329. Modification after confirmation is not limited to an initiative by the debtor, but may be at the request of the trustee or an unsecured creditor. 11 U.S.C. § 1329(a).

Making the Plan Work

The provisions of a confirmed plan bind the debtor and each creditor. 11 U.S.C. § 1327. Once the court confirms the plan, the debtor must make the plan succeed. The debtor must make regular payments to the trustee either directly or through payroll deduction, which will require adjustment to living on a fixed budget for a prolonged period. Furthermore, while confirmation of the plan entitles the debtor to retain property as long as payments are made, the debtor may not incur new debt without consulting the trustee, because additional debt may compromise the debtor's ability to complete the plan. 11 U.S.C. §§ 1305(c), 1322(a)(1), 1327.

A debtor may make plan payments through payroll deductions. This practice increases the likelihood that payments will be made on time and that the debtor will complete the plan. In any event, if the debtor fails to make the payments due under the confirmed plan, the court may dismiss the case or convert it to a liquidation case under chapter 7 of the Bankruptcy Code. 11 U.S.C. § 1307(c). The court may also dismiss or convert the debtor's case if the debtor fails to pay any post-filing domestic support obligations (i.e., child support, alimony), or fails to make required tax filings during the case. 11 U.S.C. §§ 1307(c) and (e), 1308, 521.

The Chapter 13 Discharge

The bankruptcy law regarding the scope of the chapter 13 discharge is complex and has recently undergone major changes. Therefore, debtors should consult competent legal counsel prior to filing regarding the scope of the chapter 13 discharge.

A chapter 13 debtor is entitled to a discharge upon completion of all payments under the chapter 13 plan so long as the debtor: (1) certifies (if applicable) that all domestic support obligations that came due prior to making such certification have been paid; (2) has not received a discharge in a prior case filed within a certain time frame (two years for prior chapter 13 cases and four years for prior chapter 7, 11 and 12 cases); and (3) has completed an approved course in financial management (if the U.S. trustee or bankruptcy administrator for the debtor's district has determined that such courses are available to the debtor). 11 U.S.C. § 1328. The court will not enter the discharge, however, until it determines, after notice and a hearing, that there is no reason to believe there is any pending proceeding that might give rise to a limitation on the debtor's homestead exemption. 11 U.S.C. § 1328(h).

The discharge releases the debtor from all debts provided for by the plan or disallowed (under section 502), with limited exceptions. Creditors provided for in full or in part under the chapter 13 plan may no longer initiate or continue any legal or other action against the debtor to collect the discharged obligations.

As a general rule, the discharge releases the debtor from all debts provided for by the plan or disallowed, with the exception of certain debts referenced in 11 U.S.C. § 1328. Debts not discharged in chapter 13 include certain long term obligations (such as a home mortgage), debts for alimony or child support, certain taxes, debts for most government funded or guaranteed educational loans or benefit overpayments, debts arising from death or personal injury caused by driving while intoxicated or under the influence of drugs, and debts for restitution or a criminal fine included in a sentence on the debtor's conviction of a crime. To the extent that they are not fully paid under the chapter 13 plan, the debtor will still be responsible for these debts after the bankruptcy case has concluded. Debts for money or property obtained by false pretenses, debts for fraud or defalcation while acting in a fiduciary capacity, and debts for restitution or damages awarded in a civil case for willful or malicious actions by the debtor that cause personal injury or death to a person will be discharged unless a creditor timely files and prevails in an action to have such debts declared nondischargeable. 11 U.S.C. §§ 1328, 523(c); Fed. R. Bankr. P. 4007(c).

The discharge in a chapter 13 case is somewhat broader than in a chapter 7 case. Debts dischargeable in a chapter 13, but not in chapter 7, include debts for willful and malicious injury to property (as opposed to a person), debts incurred to pay nondischargeable tax obligations, and debts arising from property settlements in divorce or separation proceedings. 11 U.S.C. § 1328(a).

The Chapter 13 Hardship Discharge

After confirmation of a plan, circumstances may arise that prevent the debtor from completing the plan. In such situations, the debtor may ask the court to grant a "hardship discharge." 11 U.S.C. § 1328(b). Generally, such a discharge is available only if: (1) the debtor's failure to complete plan payments is due to circumstances beyond the debtor's control and through no fault of the debtor; (2) creditors have received at least as much as they would have received in a chapter 7 liquidation case; and (3) modification of the plan is not possible. Injury or illness that precludes employment sufficient to fund even a modified plan may serve as the basis for a hardship discharge. The hardship discharge is more limited than the discharge described above and does not apply to any debts that are nondischargeable in a chapter 7 case. 11 U.S.C. § 523.

Notes

1. The "current monthly income" received by the debtor is a defined term in the Bankruptcy Code and means the average monthly income received over the six

calendar months before commencement of the bankruptcy case, including regular contributions to household expenses from nondebtors and including income from the debtor's spouse if the petition is a joint petition, but not including social security income or certain payments made because the debtor is the victim of certain crimes. 11 U.S.C. § 101(10A).

2. In North Carolina and Alabama, bankruptcy administrators perform similar functions that U.S. trustees perform in the remaining forty-eight states. The bankruptcy administrator program is administered by the Administrative Office of the United States Courts, while the U.S. trustee program is administered by the Department of Justice. For purposes of this publication, references to U.S. trustees are also applicable to bankruptcy administrators.
3. Section 507 sets forth 10 categories of unsecured claims which Congress has, for public policy reasons, given priority of distribution over other unsecured claims.
4. A fee of \$25 is charged for converting a case under chapter 13 to a case under chapter 7.