

BANKRUPTCY

Chapter 7

*Volunteer Lawyers Program
Alabama State Bar*

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PREFACE

The following is an outline intended to give the general practitioner a grasp on the central issues and themes which may or may not arise in a particular voluntary Chapter 7 proceeding. It is in no way intended to be a sole reference, but rather to be used in conjunction with other works which are found in the Appendix.

Honorable George S. Wright, Editor

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CHAPTER 7

I. The Basics

Bankruptcy is a proceeding brought in a United States bankruptcy court seeking relief from creditors. Title 28 of the United States Code designates bankruptcy courts as a unit of district courts. The Bankruptcy Code is Title 11 of the United States Code. Proceedings in a bankruptcy court are governed by the Rules of Bankruptcy Procedure. There are five types of bankruptcy, each very different from the others: Chapter 7 ("liquidation"), Chapter 9 ("municipal bankruptcy"), Chapter 11 ("corporate reorganization"), Chapter 12 ("farm reorganization"), and Chapter 13 ("rehabilitation"). This manual will cover only Chapter 7. Chapters 1, 3, and 5 of Title 11 apply to all types of bankruptcy, while Chapter 7 only applies to Chapter 7 bankruptcies.

II. Initial Considerations

a. The Initial Interview

The most crucial job for an attorney who is representing a client contemplating bankruptcy, is to immediately ascertain the client's goals and to recommend the proper form of bankruptcy which will suit the client's needs. Prior to the initial interview, counsel should have special familiarity with the following United States and State of Alabama Code sections:

- 11 U.S.C. § 101 - definition of an insider
- 11 U.S.C. § 101 - definition of insolvency
- 11 U.S.C. § 103 - applicability of chapters
- 11 U.S.C. § 109 - who may be a debtor
- 11 U.S.C. § 329 - debtor transactions with attorneys
- 11 U.S.C. § 343 - examination of the debtor
- 11 U.S.C. § 344 - self incrimination; immunity
- 11 U.S.C. § 362 - automatic stay
- 11 U.S.C. § 364 - obtaining credit
- 11 U.S.C. § 365 - executory contracts and unexpired leases
- 11 U.S.C. § 366 - utility service
- 11 U.S.C. § 503 - allowance of administrative expenses
- 11 U.S.C. § 507 - priorities
- 11 U.S.C. § 521 - debtor's duties
- 11 U.S.C. § 523 - exceptions to discharge

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- 11 U.S.C. § 524 - effect of discharge
- 11 U.S.C. § 541 - property of the estate
- 11 U.S.C. §§ 544, 545, 547, 548 and 549 - trustee's avoidance powers
- 11 U.S.C. § 553 - setoff
- 11 U.S.C. § 722 - redemption
- 11 U.S.C. § 727 - discharge

- 28 U.S.C. § 157 - procedures
- 28 U.S.C. § 586 - duties of U.S. Trustee
- 28 U.S.C. § 1334 - jurisdiction
- 28 U.S.C. §§ 1408, 1409 and 1412 - venue
- 28 U.S.C. § 1452 - removal
- 28 U.S.C. § 1930 - filing fees

State of Alabama Exemptions

- Ala. Code §6-10-11 (1975)

Exemptions in Federal Bankruptcy

In cases instituted under the provisions of Title 11 of the United States Code entitled "Bankruptcy", there shall be exempt from the property of the estate of an individual only that property and income which is exempt under the laws of the state of Alabama and under federal laws other than Subsection (d) of Section 522 of said Title 11 of the United States Code.

- Ala. Code §6-10-2 (1975)

\$5,000 & 160 Acre Homestead

- Ala. Code §6-10-5 (1975)

Family Cemetery Lots

- Ala. Code §6-10-6 (1975)

Wearing Apparel, Family Pictures and Books

- Ala. Code §6-10-6 (1975)

\$3,000 Personalty

- Ala. Code §6-10-7 (1975)

Wages, Salary or Other Compensation for Personal Services

(75% of gross) Wages up to 100% can be claimed exempt claiming 75% under the wage exemption with the 25% balance claimed exempt under \$3,000 personal property exemption (§6-10-6). See Holley v. Crow, 335 So.2d 1123 (Ala. Civ. App. 1978) Note: The use of the Federal Wages Restriction on Garnishment (15 U.S.C. §1673) is better in that it exempts 75% of the disposable earnings (earnings after deductions required by law)

as compared to §6-10-7 which exempts 75% of gross earnings.

- Ala. Code §27-14-29 (1975)

Life Insurance (Proceeds and Cash Surrender Value)

§6-10-8 is narrower in scope in that it is limited to husband, wife and children situations. Recommend use of §27-14-29 as it is broader and provides that insurance on life of "any person" is exempt. Also, under §27-14-29(c) cash surrender value is specifically exempt. Conclusion: Exempt against creditors of: Owner-yes, Insured-yes, Beneficiary-no

- Ala. Code §27-14-31 (1975)

Disability Insurance (maximum \$250/mo.)

- Ala. Code §27-14-32 (1975)

Annuity Contracts (Maximum \$250/mo.)

- Ala. Code §16-25-23 (1975)

Pensions and Retirement Benefits

Benefits from various employee pension systems: §16-25-23 Teachers Retirement System, §26-21-77 Benefits and annuities of state and local peace officers. §36-27-28 Benefits under the State Employee's Retirement System.

- Ala. Code §27-34-27 (1975)

Fraternal Society Benefits

- Ala. Code §38-4-8 (1975)

Public Assistance Benefits

- Ala. Code §25-4-140, 53(b) (1975)

Unemployment Compensation

Benefits and employee contributions to unemployment trust fund.

- Ala. Code §25-5-86 (1975)

Workmen's Compensation

Coal Miner's "Black lung" §25-5-179

- Ala. Code §10-8-72(3) (1975)

Partnership Property

Uniform Partnership Act exempts partner's interest in specific partnership property, except claim for partnership debts.

Miscellaneous Federal Exemptions

- 15 U.S.C. §1673

Disposable earnings (earnings after deductions required by law) 75% or 30 times federal minimum hourly wage per week.

- 10 U.S.C. §1440 (1979)

Armed Forces. Annuities based on retired or retainer pay.

- 5 U.S.C. §8346 (1980)

- Federal Civil Service Retirement, money under, exemption from execution, levy, garnishment, etc.
- 50 U.S.C. §403 or 263 (1981)
 - Central Intelligence Agency Retirement and Disability Fund, money under, exemption from execution, or Central Intelligence Agency Retirement Act of 1964 for Certain Employees.
- 43 U.S.C. §175 (1980)
 - Acquired homesteads from pre-patent debts.
- 33 U.S.C. §916 (1980)
 - Longshoremen's and Harbor Worker's Compensation Act, money under, exemption from claims of creditors.
- 42 U.S.C. §407
 - Social Security Act. Payments on claims are exempt.
- 22 U.S.C. §4060(c)
 - Foreign Service Retirement and Disability System, money under, exemption from attachment or execution.
- 28 U.S.C. §376
 - Annuities for survivors of certain judicial officials of the United States, exemption from execution.
- 33 U.S.C. §775 (1980)
 - Lighthouse service employees, benefits to widows of persons retired or eligible for retirement, exemption from execution.
- 38 U.S.C. §562 (1981)
 - Veterans pensions, Medal of Honor holders, exemption from execution.
- 42 U.S.C. §3796 (1986)
 - Public Safety Officer's Death Benefits, money paid, exemption from execution.
- 42 U.S.C. §1717
 - Injury or Death Compensation payments from War Risk Hazards.
- 45 U.S.C. §228(L)
 - Railroad Retirement Act annuities and pensions.
 - Railroad Unemployment Insurance 45 U.S.C. 352(E).
- 46 U.S.C. §601
 - Wages of Merchant Seaman, fisherman and apprentices.
- 38 U.S.C. §3101(a) (Supp. 1983)
 - Veterans Administration benefits including pensions, life insurance and disability benefits. Note: Not exempt from levy under 26 U.S.C. §633 et seq., i.e. seizure of property for collection of taxes.
- 38 U.S.C. §770(g)
 - Veteran's group life insurance benefits and serviceman's group life insurance benefits. Note: Not exempt from levy under 26 U.S.C. §6331 et seq., i.e.

- seizure of property for collection of taxes.
- 10 U.S.C. §1450(i) (1979)
Military Survivor Benefit Plan annuities.
- 10 U.S.C. §1035(d) (1979)
Deposits made in U.S. servicemen's savings institutions by servicemen while on permanent duty assignment outside the U.S. and its possessions.
- 50 U.S.C. Appx. §§523, 524 (1981)
Soldier's and Sailor's Civil Relief, stay of execution of judgments, attachments, etc. ("Soldier's and Sailor's Civil Relief Act of 1940").

b. Questioning the Client

The following questions should be asked during the initial interview:

Background

- Why did you decide to come to see me?
- Are you being sued by anyone? Has anyone garnished, seized or levied on any of your property? If property has been seized, when did the seizure occur, what was seized and what was its value?

Fundamentals/Eligibility

- What property do you have an interest in?
- What debts do you owe? Are they secured or unsecured?
- Are you married, single or divorced?
- What is your income?
- What are your living expenses (or business-operating expenses)?
- What property do you want to keep?
- Are you behind on any of your payments to creditors?
- Is there anyone who has signed on a loan or obligation with you?
- Are you a party to any leases or executory contracts?
- What is your relationship with your creditors?

Dischargeability/Avoidance Issues

- Have you ever filed bankruptcy before?
- Have you given anyone financial statements in the past six years? If so, to whom were they given? When? Did a creditor extend credit or renew a loan after you gave them a financial statement?
- Have you transferred any real estate to anyone in the last ten years? Have you transferred any personal property to anyone within the last six years?

If any transfers have occurred, what was transferred, what was its value, and what did you receive for the transfer? Was the transferee related to you by blood or marriage?

- Have you made any purchases on credit within the last 45 days? If so, what did you purchase and why?
- Have you engaged in any conduct that may cause someone to charge that you committed a fraud? See 11 U.S.C. 523(a)(2)(A).
- Do you have any student loans?
- Have you ever been involved in an accident where it was determined that you were driving under the influence of alcohol, drugs or some other substance?
- Do you owe any money to any taxing authority? If so, how old are the taxes and what type are they?

Venue 28 U.S.C. §§ 1408, 1409, 1412

- Where do you live (city and county)? How long have you lived there?

Clients Expectations

- Do you think you need to file a bankruptcy case? What do you think a bankruptcy case will do for you?

III. Whether or Not to File Bankruptcy

a. Considerations *favoring* filing bankruptcy include:

1. That filing immediately stops or prevents (at least temporarily) almost all lawsuits, repossessions, foreclosures, garnishments, evictions, utility shut-offs and other debt collection activities.¹
2. The debtor may be able to recover property which has already been lost.²
3. Bankruptcy can eliminate all dischargeable debts, so that the debtor will no longer be liable for them.
4. The debtor's property may be encumbered by liens which are avoidable in bankruptcy.
5. The debtor may also be able to retain or recover a driver's license suspended for inability to pay damages from an auto accident.

b. Considerations *against* filing bankruptcy include:

1. The possibility that the debtor is already judgment-proof, so that filing will result

¹ 11 U.S.C. 362 Automatic Stay

² See generally trustee's avoidance powers 11 U.S.C. §§ 544, 545, 547, 548, and 553.

in no benefit.

2. Bankruptcy can become expensive; in addition to the \$209 filing fee the debtor may have to pay attorney fees.
3. Certain debts are not dischargeable in bankruptcy and must be paid out.
4. The property the debtor wants to keep may be encumbered by a lien which cannot be avoided in bankruptcy, and the debtor may not have sufficient income to remedy any default in bankruptcy.
5. The debtor may have property that creditors do not know about which the debtor could not protect in bankruptcy.
6. Bankruptcy can remain on the debtor's record for 10 years (Ch. 7).
7. If a debtor has meritorious defense to debts, bankruptcy may not be necessary.
8. Consider whether the debtor expects to incur substantial debts within the foreseeable future.

c. Chapter 7, 9, 11, 12, or 13: Which is the Proper Choice for the Client?

Once the attorney has gathered all the necessary information from the client and advised the client on the advantages and disadvantages of filing bankruptcy, the next step is to decide which form of relief is the most appropriate.³

Chapter 7 (11 U.S.C. 109(b)) "Straight Liquidation"

Anyone who may be a debtor under the Code may be a debtor under Ch. 7 except for railroads, insurance companies, banks, and savings institutions. A debtor may be placed voluntarily or involuntarily into Ch. 7. Discharge in Ch. 7 is only available for individuals not corporations. A married couple may file a joint petition under 11 U.S.C. 302.

The central goal of Ch. 7 is the surrender and dissolution of the debtor's executable estate for the purpose of forming a fund to be applied to the payment of creditors. Unlike Chapter 13, Chapter 7 is suited for debtors who have no identifiable future source of income from which a plan can be proposed to pay off creditors.

After the filing of the petition, a Trustee is appointed who has the responsibility for collecting the debtor's nonexempt unencumbered assets, converting them to cash, and then distributing these proceeds to creditors who have filed claims with the court.

³ For an excellent discussion on the basics of Bankruptcy law and the differences between Chapters, See Blum, *Bankruptcy and Debtor/Creditor*, 1993 (Little, Brown & Company).

The debtor's fund is paid out according to the Bankruptcy Code's priority.⁴ Under Chapter 7, debts owed to unsecured creditor's after the fund has been exhausted are discharged. As to secured creditors, debtors in a Chapter 7 proceeding are able to enter into "Reaffirmation Agreements" with secured parties. These agreements essentially reaffirm the debt owed to that party and allows the debtor to continue to use the collateral instead of surrendering it.

Chapter 9 (11 U.S.C. 109(c))

Ch. 9 relief is confined to municipalities.

Chapter 11 (11 U.S.C. 109(d)) "Reorganization"

The eligibility requirements for Chapter 11 are the same as those regarding Chapter 7 except that railroads may file under Chapter 11 and commodity brokers and stockbrokers may not. A Chapter 11 debtor may be placed into bankruptcy either voluntarily or involuntarily. Under Chapter 11 "Reorganization," a plan is proposed by the debtor whose central goal is to eventually emerge from bankruptcy as a viable business entity. Unlike a Chapter 7 case where a trustee is appointed to manage the debtor's affairs, in a Chapter 11 proceeding the debtor corporation itself may act as a trustee with all of the same powers. In this context, the debtor is known as a "debtor in possession."

Chapter 13 (11 U.S.C. 109(e)) "Rehabilitation"

Only an individual with regular income may be a debtor under Ch. 13. A debtor may not involuntarily be placed into Chapter 13. Relief under Ch. 13 is only available to debtor's with relatively small estates. Under the code, as of the date of filing the petition, the debtor's noncontingent, liquidated unsecured debts must be less than \$290,525 and noncontingent liquidated secured debt must be less than \$871,550. A married couple may file a joint petition under 11 U.S.C. 302.

Chapter 12 (11 U.S.C. 109(f)) "Farm Reorganization"

Chapter 12 Relief is confined to family farmers.

⁴ See Estate - Liquidation - Distribution

IV. The Voluntary Chapter 7 Petition

Once a debtor has decided that filing for Chapter 7 is necessary, the debtor and his/her attorney must prepare a petition to submit to the bankruptcy court. As of the date of this publication, the filing fee for a Chapter 7 case is \$209. The debtor may apply to the court to pay the fee in up to four installments over a period of up to 120 days. See Bankruptcy Rule 1006(b). A debtor cannot proceed *in forma pauperis* in bankruptcy court.⁵

If it is essential that the debtor obtain relief from the bankruptcy court immediately, that is, for the automatic stay in §362 to take effect, the debtor can simply file a petition along with a matrix of creditors' names and addresses and an application to pay the filing fee in installments. See Bankruptcy Rule 1007(a)(1). The schedules which would normally accompany a petition must be filed within 15 days thereafter. If immediate relief is not necessary, it is wise to file the petition and the requisite initial forms at the same time. The following is a complete list of forms required to be submitted by the debtor to the bankruptcy court.

Petition - §301(Individual) & §302(Joint)
(Orig. +1)(U.S. Trustee +1)

- (1) Petition R. 1002, R. 1004(Partnership) Form No. 1
If individual consumer - Exhibit B - Attorney aff. \$30
- (2) \$200 Filing fee
Application & Order to pay fee in installments
R. 1006(b)(1)(2), Form 3 - No atty. fee until paid in full
R. 1006(b)(3)
- (3) Schedules of Assets & Liabilities
(Schedules A, B, D, E, & F)
R. 1007(b)(1), Form 6
- (4) Schedules of Executory Contracts & Unexpired Leases
R. 1006(b)(1), Form 6 (Schedule G)
- (5) Schedules of Current Income & Expenditures
R. 1001(b)(1), Form 6 (Schedule I & J)
- (6) Statement of Financial Affairs
R. 1006(b)(1), Form 7

⁵ Be sure to check local rules for possible variations.

- (7) Clerk's Notice to Individual Consumer Debtor(s)
§342(b) BK-122
- (8) Statement of Intention §521(2)
(If individual with consumer debt) (w/in 30 days of petition)
- (9) Attorney Fee Disclosure Statement
§329(a) (w/in 15 days of petition) R. 201(b)
- (10) Verification of Unsworn Declaration of Perjury
R. 1008 (If corporation or partnership - by agent)
- (11) Matrix of Creditors
(Listing debtor, attorney & all creditors in alphabetical order with address)

It is very important to check the local rules and obtain a copy of all required forms from your particular bankruptcy court to ensure that the filing is complete.

V. Procedure of Chapter 7 Case

Once a voluntary Chapter 7 petition (including required forms within 15 days) is filed, the court will grant the debtor an *order for relief*. The order for relief is deemed to have been entered at the time the petition is filed with the clerk. See §301 of the Code. More importantly however, this order will set in motion the standard procedure by which a Chapter 7 case normally resolved. The following is an outline of the initial stages of a sample case.

1. Petition Filed

- a. Automatic Stay §362 in effect.
- b. An interim trustee is appointed by U.S. Trustee. §701(a)
Trustee reviews debtor's petition and schedules. Determination is made whether debtor's case is an "Asset or No Asset Case." If assets are available to be liquidated, notice of such will be sent to creditors along with §341 notice of first meeting. Possible liquidation should alert creditors to file a proof of claim no later than 60 days after the first §341 meeting is scheduled. (See IV. (4) Trustee's Role)
- c. Statement of Intention must be filed *after* filing the petition but *before* the first meeting of creditors.
- d. Clerk sends out notice to creditors as per §341. Bankruptcy Rule 2003(a) provides that the court shall call a meeting of creditors to be held not less than 20 days nor more than 40 days after the order for relief.

2. First Meeting of Creditors

- a. If creditors are not satisfied with interim trustee, Rule 2003 authorizes them to elect another trustee in accordance with §702.
- b. Creditors who are eligible under §702 may also elect a committee to represent them under §705. (Unsecured creditors)
- c. Possible meeting of "equity security holders."
- d. Creditors may represent themselves as per Bankruptcy Rule 901(a), or may be represented by an attorney. They may not represent other creditors.
- e. 341 meetings are a perfect time for secured creditors to enter into a reaffirmation agreement as per §524(c).

3. Attendance at 341 Meeting

- a. Debtor's attendance mandatory §342.
- b. Failure to appear is grounds for dismissal of case §707.
- c. Debtor must submit to examination by the trustee and creditors. Scope is limited by Bankruptcy Rule 2004(b) to the "acts, conduct, or property or to the liabilities and financial condition of the debtor or to any matter which may affect the administration of the debtor's estate or to the debtor's right to discharge."
- d. Debtors may apply for immunity as per §344 under part V. title 18.
- e. Judge may not attend as per §341(c).

4. Trustee's Role

a. No Asset Case

The trustee is charged with examining the debtor, as well as reviewing the petition, schedules, and statement of affairs filed by the debtor. An inquiry is often made into any assets or liabilities which may not have been disclosed. If trustee concludes that there are no assets available to be liquidated, thereby which the proceeds may be distributed to the creditors, he/she will file a "No Asset Report" with bankruptcy court and the case will continue with little involvement by the trustee.

b. Asset Case

If on the other hand the trustee concludes that there are assets which are available to be liquidated, the debtor is required by §521(4) of the code to "immediately or as soon as practicable" surrender those assets to the trustee. The Clerk will be instructed to notify creditors of the existence of assets. Debtors who enter into reaffirmation agreements with secured parties will not have to surrender collateral to the trustee.

VI. Chapter 7 Section Analysis

- 701** Upon the entry of an order for relief an interim Trustee is appointed.
- 702** Creditors in Ch. 7 may elect a new trustee at the first meeting of creditors. If a new trustee is not elected, the interim trustee shall serve as the trustee in the case.
- 703** If a trustee dies, resigns fails to qualify or is removed, a new Trustee may be selected by the creditors. Pending such an election, an interim trustee may be appointed.
- 704** Chapter 7 Trustees are charged with the responsibility of: (1) collecting money and property of the estate; (2) accounting for all property received; (3) ensuring that the debtor carries through with his statement of intentions; (4) investigating the financial affairs of the debtor; (5) examining, and if advisable, objecting to proofs of claims; (6) opposing the debtor's discharge, if advisable; (7) furnishing information concerning the estate and its administration two parties in interest; (8) filing periodic reports and summaries of the operation of the debtor's business if its operation has been authorized; and (9) making final reports and final accountings of the administration of the debtors estate.
- 705** At the first meeting of creditors (341), certain creditors may elect a creditors committee of not less than three nor more than eleven creditors. The creditors committee so elected may consult with the Trustee in connection with the administration of the estate or make recommendations regarding the Trustee's performance of his duties.
- 706** A Chapter 7 debtor may, at any time, convert his case to one under Chapter 11, 12, or 13 if his case has not previously been converted under sec. 1112, 1307, or 1208. Parties in interest may request that a Chapter 7 case be converted to Chapter 11. A Chapter 7 case may not be converted to Chapter 12 or 13 unless the debtor requests such a conversion. Under no circumstances can a case be converted to another chapter unless the debtor is eligible for relief under the chapter to which the case is to be converted.
- 707** The court may dismiss a Chapter 7 case only after notice and hearing and only for cause. Cause includes unreasonable delay by the debtor that is prejudicial to creditors; non-payment of any fee; and failure to file schedules.
- 721** The court may authorize the trustee to operate the business of a debtor for a limited period of time if such operation is in the best interest of the estate and consistent

with the orderly liquidation of the estate.

- 722** A debtor may redeem tangible personal property intended primarily for personal, family or household use from securing a dischargeable consumer debt, if such property is exempted under 11 U.S.C. sec. 522 or has been abandoned under 11 U.S.C. 554, by paying the holder of the lien the amount of his secured claim. (Note: pursuant to 11 U.S.C. 506, a secured claim is allowable to the extent of the value of the collateral securing the lien.
- 723** In partnership cases, a Trustee has a claim against the general partners of the partnership for any amounts necessary to pay a 100% distribution.
- 724** Section 724 provides for a "tax lien carve-out." It is a distribution statute.
- 725** Trustee is required to dispose of any property in which an entity other than the estate has an interest, such as a lien, and that it be disposed of under another section of Title 11.
- 726** The method of distributing funds in a Chapter 7 case is determined by reference to 726. (See Estate-Liquidation-Distribution Sheet)
- 727** Section 727 provides that a debtor shall receive a discharge except in certain specified circumstances. Those circumstances include:
- the debtor is not an individual;
 - the debtor, with intent to hinder, delay or defraud a creditor has transferred, removed, destroyed, mutilated, or concealed (or permitted such conduct to occur) property of the debtor within one year of the filing of the case or after the date of the filing;
 - the debtor has concealed, destroyed or failed to keep records from which the debtor's financial condition may be ascertained;
 - the debtor knowingly made a false oath, presented a false claim, gave, offered, received or attempted to obtain money or property for acting or forbearing to act or withheld information from an officer of the estate records, books and papers related to the debtor's financial affair's;
 - the debtor failed satisfactorily to explain a loss of assets;
 - the debtor refuses to obey a lawful order of the court;

- the debtor has committed any of the acts specified above within a year of the filing of the petition;
- the debtor has been granted a discharge under section 1141 or under certain sections of the Bankruptcy Act in a case commenced within six years of the filing date;
- the debtor has been granted a discharge under section 1228 or 1328 in a case commenced within six years of the filing date, unless the debtor paid 100% of allowed unsecured claims, *or* the debtor paid at least 70% of such claims and the plan was proposed in good faith and was the debtor's best effort; or
- the court approves a written waiver of discharge.

For the purpose of any state or local law imposing a tax on or measured by income, the filing of a Chapter 7 case creates a new taxable entity for an individual.

VII. Priorities

Estate - Liquidation - Distribution Chapter 7

1. Secured

Super Priority #1 - Operating business - obtaining credit §364(c)(1)

Super Priority #2 - Secured claims after adequate protection §507(b)

2. Priorities - §726(a)(1)

- | | |
|------------|--|
| §507(a)(1) | <u>Administrative Expenses</u> (Plus court costs & fees) |
| §503(b)(1) | Expenses of preserving the estate and taxes incurred |
| §503(b)(2) | Compensation of Officers (Trustees, examiners, professional person or debtor's attorney) |
| §503(b)(3) | Creditors, committees, custodian's expense |
| §503(b)(4) | Compensation of attorney or accountant |
| §503(b)(5) | Compensation of indenture trustee |

- §503(b)(6) Witness fees and mileage

- §726(b) Administrative expense in superseded 11 or 13
- §507(a)(2) Involuntary gap creditors
- §507(a)(3) Wage claims (up to \$4,650 & under 90 days)
- §507(a)(4) Contributions to employee benefit plans (\$4,650 & 180 days)
- §507(a)(5) Grain and fish (up to \$4,650)
- §507(a)(6) Layaway to \$2,100
- §507(a)(7) Claims of spouse or child for alimony or support
- §507(a)(8) Taxes
 - (a) Income
 - (i) Within 3 years
 - (ii) 240 day offer in compromise
 - (iii) Not assessed
 - (b) Property tax within one year
 - (c) Withholding trust fund
 - (d) Employment tax - 3 years
 - (e) Excise tax - 3 years
 - (f) Customs
 - (g) Penalty

3. Unsecured Claims

- §726(a)(2) Timely or excusably late
- §726(a)(3) Unexcused late
- §726(a)(4) Fine, penalty & punitive damages
- §726(a)(5) Post-petition interest
- §726(a)(6) Debtor

VIII. Initial Checklist For Counsel

- Admission to Practice

Make sure you are admitted to practice in bankruptcy court. Check the local rules in that district to determine requirements and procedures for admission. Attorney's may be admitted pro hac vice.

- Become Familiar With Bankruptcy Code and U.S. Code Sections. (See pages 1-5)

- Order of Petition and Schedules

Be sure to check with the bankruptcy court in your district as to the order in which it prefers the petition and schedules to be filed. Moreover, it is important to become

familiar with your bankruptcy court's "Local Rules."

- Be Aware of All Exemptions
- Be Sure All Debts Are Listed On Schedules!
 - ⊙ Disputed debts
 - ⊙ Nondischargeable debts
 - ⊙ Consigned debts
 - ⊙ Reaffirmed debts
 - ⊙ Loans from relatives
- * Debtor can amend a previously filed schedule
- Reaffirmation Process

It is important for counsel to be familiar with the process of reaffirmation in a Chapter 7 proceeding. Reaffirmation is the obligating of a debtor to pay an otherwise dischargeable debt. Reaffirmation does not happen automatically. Rather, the debtor must indicate his/her intention to reaffirm secured debts on the Statement of Intention which is filed with the petition for relief and schedules. See §521. If the debtor indicates that he/she plans to enter into a reaffirmation agreement with a particular secured creditor, that agreement must take place within 45 days after the filing of the statement. Note, however, that the debtor is not bound by the statement, which, in practice, is used primarily for information purposes. If the debtor does not reaffirm the secured debt (or redeems it by paying a lump sum) some cases have held that the debtor must surrender the collateral even if the debtor is not in default.

IX. Appendix

- Thomas A. Dorey, *Chapter 7 Bankruptcy Practice Pointers*, 65 N.Y. St. B.J. 45, (1993).
- Scott N. Brown, *Dealing With a Chapter 7 Trustee*, 29 Tenn. B.J. 24, (1993).
- C. William Schlosser, Jr., *Chapter 13 Bankruptcy as an Alternative To Chapter 7*, 18 Colo. Law 2089, (1989).
- Selinda A. Melnik, *Commencing a Voluntary Case Under Chapter 7 or 11*, Basics of Bankruptcy Law and Reorganization, Practising Law Institute, Order No. A4-4426, August-November, (1993).
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