



Bankruptcy Law For Businesses

Course #4177A

Business

2 Credit Hours

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BUSINESS LAW FOR BUSINESS

This course discusses the different chapters under the Bankruptcy Code that are applicable to businesses. The Bankruptcy Code is codified as Title II of the United States Code. It is the uniform federal law that governs all bankruptcy cases. There is a bankruptcy court for each judicial district in the country. Federal bankruptcy courts have exclusive jurisdiction over cases involving personal and business bankruptcy.

LEARNING ASSIGNMENTS AND OBJECTIVES

As a result of studying each assignment, you should be able to meet the objectives listed below each individual assignment.

SUBJECTS

Chapter 1: Liquidation Under Chapter 7 Of The Bankruptcy Code

Chapter 2: Reorganization Under Chapter 11 Bankruptcy

Chapter 3: Taxes And Bankruptcy

Study the course materials from pages 1 to 44

Complete the review questions at the end of each chapter

Answer the exam questions 1 to 10

Objectives:

- Recall characteristics of a chapter 7 bankruptcy.
- Identify the provisions of chapter 11 bankruptcy
- Identify the filing requirements of a bankruptcy filing.

NOTICE

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EXAM OUTLINE

- **TEST FORMAT:** The final exam for this course consists of 10 multiple-choice questions and is based specifically on the information covered in the course materials.
- **ACCESS FINAL EXAM:** Log in to your account and click Take Exam. A copy of the final exam is provided at the end of these course materials for your convenience, however you must submit your answers online to receive credit for the course.
- **LICENSE RENEWAL INFORMATION:** This course qualifies for **2** CPE hours.
- **PROCESSING:** You will receive the score for your final exam immediately after it is submitted. A score of 70% or better is required to pass.
- **CERTIFICATE OF COMPLETION:** Will be available in your account to view online or print. If you do not pass an exam, it can be retaken free of charge.

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CHAPTER 1: LIQUIDATION UNDER CHAPTER 7 OF THE BANKRUPTCY CODE

Chapter Objective

After completing this chapter, you should be able to:

- Recall characteristics of a chapter 7 bankruptcy.

I. AN OVERVIEW OF CHAPTER 7 BANKRUPTCY

Chapter 7 of the United States Bankruptcy Code is the Bankruptcy Code's "liquidation" chapter. It is a needs-based system. It is used primarily by individuals who wish to free themselves of debt simply and inexpensively, but it may also be used by businesses that wish to liquidate and terminate the business. Under chapter 7, a business stops all operations and goes completely out of business. In order to qualify for relief under chapter 7 of the Bankruptcy Code, the debtor must be an individual, a partnership, or a corporation. Certain types of entities are ineligible for chapter 7 protection, including railroads, domestic insurance companies, and banks.

In a chapter 7 case, a debtor receives an immediate unconditional discharge of personal liability for certain debts in exchange for relinquishing the debtor's nonexempt assets to the bankruptcy trustee for liquidation and distribution to creditors. Under the Bankruptcy Code, only an individual may obtain a chapter 7 discharge. Thus, corporations and LLC's are not eligible to receive a discharge under chapter 7.

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; however, 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.

II. ALTERNATIVES TO CHAPTER 7 RELIEF

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. Chapter 11 bankruptcy is discussed in the next chapter. Sole proprietorships may also

be eligible for relief under chapter 13 of the Bankruptcy Code. This course does not discuss the specifics of chapter 13 bankruptcy, because this section of the code is available to individuals and not businesses.

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. 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. Abuse is presumed if the debtor's aggregate current monthly income over 5 years, net of certain statutorily allowed expenses, is more than (i) \$12,850, or (ii) 25% of the debtor's nonpriority unsecured debt, as long as that amount is at least \$7,700. 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. Unless the debtor overcomes the presumption of abuse, the case will generally be converted to chapter 13 (with the debtor's consent) or will be dismissed.

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

III. 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. 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. 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).

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. 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. 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. 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.

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., utilities, taxes, transportation, etc.

Filing a petition under chapter 7 “automatically stays” (stops) most collection actions against the debtor or the debtor's property. 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 later) 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 order for relief. 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. If spouses have filed a joint petition, both spouses 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.

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 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. Thus, the debtor will not be permitted to convert the case repeatedly from one chapter to another. 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. Currently, the difference is \$922. There is no fee for converting from chapter 7 to chapter 13.