# Effective Legal Office Administration

## Lesson 13 – Bankruptcy

# WORKBOOK

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# Bankruptcy

LESSON 13

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## Bankruptcy – Overview

- Understanding Bankruptcy
- The Bankruptcy Code
  - Chapter 7
  - Chapter 11
  - Chapter 13
- Types of Debt

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## The Basics

- Bankruptcy - A legal procedure for dealing with debt problems of individuals and businesses; specifically, a case filed under one of the chapters of title 11 of the United States Code (the Bankruptcy Code)
- Your office will represent one of the following:
- Debtor – Person (or organization) who has filed for relief under the bankruptcy code
- Creditor - One to whom the debtor owes money or who claims to be owed money by the debtor.
- The goal of the Bankruptcy Code is twofold:
  - Provide some protection for creditors by setting forth a process as to how the assets that remain in possession of a debtor will be divided
  - Define the rights of the debtor as to their obligations to their creditors

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## The Basics

- The code provides differing rules for individual and businesses
- Three main types of bankruptcy in the code:

### Chapter 7

- liquidation of assets for businesses and individuals

### Chapter 11

- reorganization for businesses

### Chapter 13

- reorganization for individuals

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## Filing a Chapter 7 Case

- Chapter 7 – provides for liquidation and a 'fresh start'
  - Liquidation is the sale of a debtor's nonexempt property and the distribution of the proceeds to creditors.
  - The goal is for Debtor to enter the bankruptcy process, pay off creditors to the extent possible with non-exempt property and then, if a business, to close the business; or, if an individual, to start over again with a clean slate
  - This is sometimes referred to as a "fresh start" bankruptcy for individuals
  - Non-exempt Property: Exempt property is certain property owned by an individual debtor that the Bankruptcy Code or applicable state law permits the debtor to keep from unsecured creditors.
    - For example, in some states the debtor may be able to exempt all or a portion of the equity in the debtor's primary residence (homestead exemption), or some or all "tools of the trade" used by the debtor to make a living (i.e., auto tools for an auto mechanic or dental tools for a dentist).
    - The availability and amount of property the debtor may exempt depends on the state the debtor lives in.

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## The Chapter 7 Case

Typical Chapter 7 Process:

Filing – the case is begun with a filing of a “petition in bankruptcy”

- In addition to the petition, the debtor must also file with the court:
  - schedules of assets and liabilities;
  - a schedule of current income and expenditures;
  - a statement of financial affairs;
  - and a schedule of executory contracts and unexpired leases.
  - Individual debtors with primarily consumer debts have additional document filing requirements. Including:
    - 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

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## Means Testing

The means test is required for anyone desiring to file a Chapter 7 bankruptcy case.

- This is an income-based test designed to ensure that the benefits of a Chapter 7 discharge are accessed only by those who truly cannot afford to pay back their debts.
- If your client is left with little disposable income each month to pay bills, they will likely be able to file Chapter 7 bankruptcy and discharge their unsecured debts.

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## The Automatic Stay & 341 Meeting

1. Automatic Stay – occurs immediately upon filing, as an operation of law no additional action must be taken by the debtor. this prevents creditors from taking any further actions to collect from the debtor without court permission
2. The court schedules a Creditors Meeting (341 Meeting of Creditors)– most likely the only appearance, this is before the bankruptcy trustee (not a judge and not in a courtroom). The debtor is asked about their debts and swears to the completeness and truthfulness of the petition.

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## During the Chapter 7

- Distribution – if there are any available assets, the bankruptcy trustee pays creditors equally from the sale of assets. In most cases, there are not assets and creditors receive nothing.
- Discharge – A release of a debtor from personal liability for certain dischargeable debts set forth in the Bankruptcy Code.
  - A discharge releases a debtor from personal liability for certain debts known as dischargeable debts and prevents the creditors owed those debts from taking any action against the debtor to collect the debts.
  - The discharge also prohibits creditors from communicating with the debtor regarding the debt, including telephone calls, letters, and personal contact.
- Some obligations of the debtor are not subject to discharge – they will remain after the bankruptcy. These are listed in the Code.
- One area where debtors get into trouble is failure to list a creditor. If the creditor was not notified of the bankruptcy, the debt will not be discharged and the debtor is still liable for the debt.

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## Chapter 11 Cases

- Chapter 11 – this is also known as a “reorganization” filing
  - This is normally used by companies that are encountering financial difficulties and just need to work out a plan with their creditors to allow them time to get control of their finances
  - This chapter of the Bankruptcy Code provides (generally) for reorganization, usually involving a corporation or partnership.
  - A chapter 11 debtor usually proposes a plan of reorganization to keep its business alive and to pay creditors over time.
  - At the end of the Chapter 11 process, the company intends to continue to operate as a business
  - A plan is developed to pay off creditors at a rate over time that allows the company to remain in operation

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## Chapter 13 Cases

- Chapter 13 – is available only to individuals, this allows the individual to enter into a plan to repay their debts to creditors
  - This chapter 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.
  - An individual may enter a Chapter 13 plan, and later, if it appears the plan will fail, convert the filing to a Chapter 7.
    - The Court may order a case converted or a Creditor may request this
  - The process requires filing a plan to repay debts over several years, up to 5, to the greatest extent possible.
  - After the expiration of the plan, most unpaid debts are then discharged and considered no longer owed.
  - Many Chapter 13 filings fail and end up converting to Chapter 7

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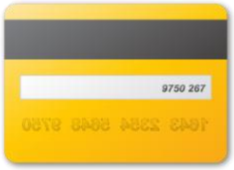
## Types of Debt

- Secured and Unsecured
- Secured Debt is debt that is secured by some type of collateral
  - Auto loan
  - Mortgage
    - Option to Reaffirm
- Unsecured Debt is not secured by any collateral, based only upon promise to pay (sometimes referred to as signature loans)
  - Personal loans
  - Credit cards



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## Dischargeable and Non-Dischargeable Debt

- Dischargeable and Non-Dischargeable
  - Dischargeable debts
    - You are no longer obligated to pay these debts and creditors cannot come after you in an attempt to collect them
      - Credit cards
      - Medical bills
      - Personal loans
      - Utility bills
  - Non-dischargeable debts
    - Certain debts that may not be eliminated in the bankruptcy process
    - You are still responsible for paying these debts after you receive a discharge
    - Most of these debts are automatically excepted from discharge without any additional action by the creditor
      - Child support or alimony
      - Criminal fines & restitution
      - Some tax obligations
      - Student loans

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## Bankruptcy – Review

- Understanding Bankruptcy
- The Bankruptcy Code
  - Chapter 7
  - Chapter 11
  - Chapter 13
- Types of Debt

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# Questions

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# Answers

## Review Questions:

1. Which of the following is a liquidation type of bankruptcy?
   A. Chapter 13
   B. Chapter10
   C. Chapter 7
   D. Chapter 5

2. True or False: If a legal secretary works in a consumer bankruptcy office, he may spend a lot of time working on petitions.
   A. True
   B. False

3. True or False: The minute a debtor files a bankruptcy petition, the people they owe can no longer contact them about paying their bills.
   A. True
   B. False

4. After the petition is filed, the debtor must go to court for a hearing before the trustee. Your office will get notice of this meeting from the court which must be calendared for the attorney to appear. What is this meeting commonly referred to as?
   A. The ‘254’ meeting
   B. The ‘622’ meeting
   C. The ‘911’ meeting
   D. The ‘341’ meeting

5. True or False: An unsecured debt is one that is not backed up by collateral of any kind.
   A. True
   B. False

6. Ultimately, the debtor in a bankruptcy case wants to get to the end of the case where the court will issue a _________. This is basically an order from the court that frees the debtor from the debts and says that the creditors can never again ask them to pay.
   A. Determination
   B. Discharge
   C. Dispensation
   D. Distinction

7. True or False: Any debts of any kind can be discharged.
   A. True
   B. False

## Answer Key:

1. C
   Chapter 7 is an opportunity for a person or business to liquidate whatever assets they have, use those to pay off their outstanding debts, and then either shut down their business or start fresh as a person without those prior debts.

2. A
   True. The bankruptcy petition is the first document filed in a bankruptcy case and this is something prepared by the attorney's staff.

3. A
   True. Once the petition is filed, what's called the 'Automatic Stay' becomes effective and this is a protection for the debtor. If a creditor makes any attempt to get a debtor to pay them without court approval while the Automatic Stay is in effect, they can get into very big trouble.

4. D
   The 341 Meeting of Creditors is commonly used for a meeting where the creditors and the bankruptcy trustee may question the debtor. Questions could include asking the reasons they are unable to pay their bills and what assets they have that can be sold by the trustee to pay the people they owe.

5. A
   True. A secured debt is one that is backed by collateral that can be repossessed, like a car or a house. But an unsecured debt is one that has nothing but the debtor's signature guaranteeing that they will pay.

6. B
   Once a debtor has received a discharge, the debts are eliminated and they are forever discharged from having to pay.

7. B
   False. There are certain types of debts that cannot be discharged like child support, student loans, and criminal restitution payments. These will survive a bankruptcy.