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Bankruptcy (Quick Study Law)

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BANKRUPTCY

INTRODUCTION

BANKRUPTCY CODE OVERVIEW

Chapter 1: General Provisions
Chapter 2: Credit Administration
Chapter 3: Creditors, the Debtor, and the Estate
Chapter 4: Liquidation
Chapter 5: Adjustment of Debts of a Debtor
Chapter 6: Reorganization
Chapter 7: Adjustment of Debts of a Family Farmer with Regular Annual Income
Chapter 8: Adjustment of Debts of an Individual with Regular Income
Chapter 9: Ancillary and Other Cross-Border Cases
NOTES: Most law indicates "Bankruptcy Abuse Prevention and Consumer Protection Act of 2005" changes.
On April 20, 2005, President Bush signed into law the biggest revision of the U.S. bankruptcy laws in more than 75 years. The majority of these revisions went into effect 180 days after enactment, although some provisions went into effect immediately. Chapter 12 is amended by the new code because effective July 1, 2005.

FORMS OF BANKRUPTCY RELIEF

1. EXEMPTIONS
a. Bankruptcy petition may be filed by:
1. A municipality, or
2. Any "person" that resides in, owns, or has a place of business in property in the United States
a. The term "person" includes individuals, partnerships, and corporations (§541(a))
b. "Corporation" is defined by the code to include incorporated and unincorporated business associations, but does not include limited partnerships (§541(a))
Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 changes (§541)
1. A debtor who is an individual must obtain a briefing from an accredited credit-counseling agency within the 180-day period preceding the filing of the petition unless the individual is incarcerated, disabled, on active military duty in a war zone, or the individual certifies to the court that "urgent circumstances" prevented the debtor from obtaining counseling
2. Petition may be "discovered" indirectly via the court for failure to comply (§541(a)(2))
3. If debtor is an individual and case is dismissed and refilled within 1 year, automatic stay is subsequent case terminates 30 days post-order unless time extended by court (§541(a)(2))
4. Automatic stay unaffected in subsequently refilled case if petition is merely refiled (§541(a)(2))
2. Certificate disclosing services rendered and any debt settlement plan must be filed with bankruptcy petition (§541(a))
CHAPTER 7 (Liquidation)
1. Requirements for eligibility
a. Debtor must be a "person" and, if an individual, must comply with credit counseling requirement
b. Railroads, domestic and foreign insurance companies, and banking institutions are ineligible
2. Process
a. Debtor's pre-petition non-exempt property is liquidated by trustee; proceeds are distributed in order of priority to satisfy creditors' claims
b. Individual debtor's pre-petition debts are discharged providing "fresh start"; business debtor reverts operation
CHAPTER 11 (Reorganization)
1. Requirements for eligibility
a. Debtor must be a "person" and, if an individual, must comply with credit counseling requirement

b. Railroads are eligible for Chapter 11; stockholders, commodity brokers, domestic and foreign insurance companies, and banking institutions (except an insured state member bank) are ineligible
2. Primarily used by businesses
3. Process
a. Debtor negotiates with creditors and attempts to restructure its debts in an effort to financially reorganize
b. Debtor retains all assets and continues to use, sell, or lease property (§363)
c. Creditors paid pursuant to "plan of reorganization"

CHAPTER 13 (Rehabilitation for Individuals)

a. Available to individuals only; corporations and partnerships are ineligible
b. Debtor must have "income sufficiently stable and regular to enable such individual to make payments under a (Chapter 13) plan"; this may include public assistance or pension benefits
c. Debtor must have "non-contingent, liquidated, unsecured debts" totaling less than \$336,900 and "non-contingent, liquidated, secured debts" of less than \$1,000,000
2. Process
a. Debtor submits disposable income for 3 to 5 years to repay all or a portion of debts pursuant to repayment plan
b. May protect more of the debtor's property than Chapter 7 because debtor keeps more property

TRUSTEES

The U.S. Trustee, a federal appointee, oversees the administration of bankruptcy cases, and appoints panel and standing trustees to Chapter 7, 11, 12, and 13 cases
PROBATE AND REQUIREMENTS
1. Panel and standing trustees are private citizens (not employees of federal government)
2. Panel and standing trustees serve as representative of the estate, and can sue and be sued
3. Present in all Chapter 7 and 13 cases, but only in Chapter 11 if necessary

POWERS AND DUTIES

1. Collecting property to create estate
2. Challenges certain pre- and post-bankruptcy transfers by debtor, including voiding certain inappropriate transfers
3. Selling property of estate
4. Objecting to improper creditors' claims
5. Objecting to debtor's discharge if appropriate under §704

CHAPTER 7 CASES

1. Selected for particular case as appointed under §702
2. Performs liquidation functions
Bankruptcy Act 2005 changes
1. U.S. Trustee must review all statements submitted by debtor and submit a report as to whether abuse should be presumed, no later than 10 days after first meeting of creditors
2. Must, no later than 30 days after that time, file a motion to dismiss or convert under §706(b) or a motion as to why such a motion is not appropriate

CHAPTER 11 CASES

1. Appointed only for "cases," such as liquidation of creditors
2. Eligible creditors may elect trustee if appointment is authorized by court
3. Generally, the debtor remains in possession underlying core functions and powers of trustee (§541)
Bankruptcy Act 2005 changes
1. In "small business" cases, specific duties to conduct an initial interview before the creditors' meeting including beginning investigation into underlying core functions and powers of trustee

CHAPTER 11 CASES

1. Discharging agent-supervisor of debtor's performance of plan
2. §362 bars suit on debt of debtor's estate under this chapter

ATTORNEYS

• SPECIAL ATTORNEYS
1. Attorney for debtor (Chapters 11 & 12), trustee (Chapter 7), or creditors' committee (Chapter 11) must be approved by court
a. Attorney may be used for other representation in violation of Fair Debt Collection Practices Act (§806), prohibited
2. Attorney may not have any adverse interests to the estate (§327(a))
3. Court may authorize trustee to act as own attorney if in best interest of the estate (§327(b))
4. Other professionals, such as accountants, may also be retained with court approval
5. Non-lawyer preparer of bankruptcy petitions subject to strict regulation and severe penalties for misconduct (§506)

Bankruptcy Act 2005 changes

1. Attorney representatives must sign petitions, affidavits, or motions to certify that attorney has performed a reasonable investigation into circumstances of debtor, determine that it is well-founded in fact, supported by law and good faith, and is not an abuse, and has no knowledge after an inquiry that information is incorrect
a. In Chapter 7, trustee may recover from debtor's counsel reasonable costs incurred for preparing a motion to disqualify under the above standard of §506(b) if attorney violated FRBP 9011(b)(7)(B)(i)
b. Court may also assess civil penalty against attorney
2. Exempt administratively the respondents, respondents, and motions on debt-related agency assistance, non-profit credit-counseling agencies, and bankruptcy petition preparers under §522, 527, 528 and §506(b)(1)
• COMPENSATION
1. Trustees and professionals retained by debtor (Chapters 11 & 12), trustee (Chapter 7), or creditors' committee are normally paid from bankruptcy estate (§327, 330)
2. All professional fees must be approved by court (§328)
a. Fees to be considered in allowing or denying fee requests estimated in §330(a)
i. In considering reasonable compensation the court shall consider nature, extent, and value of services, including time spent, rates charged, necessity of services, time in which services were performed, and ordinary compensation
3. In Chapter 7, debtor's attorney is not entitled to payment from bankruptcy estate, must receive fee from debtor in advance (§406, 5.5.5, 5.6.6)

Bankruptcy Act 2005 changes

1. Fees have second priority among unsecured claims in administrative expenses (§507(b)(2))

PROCEDURE

COMMENCEMENT OF A CASE

1. Filing of petition
a. Debtor must be filed, signed, or verified electronically if local rules permit (§501(b)(1))
2. Inventory and assets that may be a debtor file under §501 or §502
a. Inventory includes may file under Chapter 7, 11, and §502
b. Where there are 12 or more unsecured creditors in bankruptcy, at least 1 pre-bankruptcy creditor holding unsecured, non-contingent, unsecured claims totaling \$1,475 or more are required

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Synopsis

The series that BarCharts was built upon. For those in law school facing loads of information that culminates in the Bar Exam.

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Customer Reviews

Honestly, at first, I couldn't see how ONE laminated PAGE (front and back) would be enough to sum up a whole course in a manner that would help me on my law school exam....but once I received it in the mail and started looking it over, my mind was changed, completely!! HIGHLY recommend for someone who wants a very concise guide that will help you pick out what's truly important in this subject vs. info that can be left out without causing any point reductions on exams.

BarCharts normally makes great products, but this one is useless. Few cases are discussed, and the sections confusingly tell you a rule, only to tell you a few lines down how it was changed by BAPCA. It's well past BAPCA's 2005 passage, and everyone's textbook has been updated by now. Unfortunately, nobody updated this product.

I used the Fed Income Tax BarCharts, which was extremely helpful for citing statute sections and key cases. However, this BarCharts for Bankruptcy was 50% longer and not nearly as helpful. It might be because of my particular class. I took the course with one of the author's of the widely-used Bankruptcy Law textbook, and we focused much on 1129 cram downs and 363 sales, which I found lacking in this supplement.

Well organized. Has a lot of the main laws. Would've been better if each stated law noted which Â§ it was referring to.

Came quickly, nice review.

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