

TITLEMANS
Introduction to Bankruptcy

*As Ask the TITLEMANS™ Presentation
Presented by
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Our Topic for Today

1. What is Bankruptcy?
2. Why file for relief?
3. The Common forms of Bankruptcy
4. The Impact of Bankruptcy/Automatic Stay
5. Title Company Perspectives
6. Considerations and Applications in Typical Real Estate Transactions

Our Topics Continued

Conclusion, Questions and Wrap up....

1. SO... What is bankruptcy?

- Bankruptcy is the filing for relief with the court in the repayment of your debts and obligations.



2. And Why file?



- A person or business files for bankruptcy when they do not have enough money available to pay their creditors.
- The filing “stays” (think stops/delays) creditors from collecting on their debts in order to give the person or business filing a chance to reevaluate their financial condition without having to defend against creditors at the same time.

3. What are the different kinds of Bankruptcy?

- 3 main types
- Named for the Chapter in Bankruptcy Code...
- Chapter 7 (Liquidation)
- Chapter 11 (Reorganization) and
- Chapter 13 (Repayment).

What is a Chapter 7 Bankruptcy?

- Individuals and businesses both can file a Chapter 7 Bankruptcy known as Liquidation.
- The person filing the bankruptcy papers known as the debtor.
- As its name suggests (Liquidation) it is the valuation and ultimate distribution/sale of the person's assets in order to pay creditors their proportionate share of that value.

Chapter 7 Liquidation Cont.

- Not all assets are liquidated (sold or its dollar equivalent made available).
- Certain assets are protected and therefore are not considered available for creditors.
- Examples: Automobile, Clothing, Home
- All depending upon value and/or equity debtor has in them.

Chp 7 cont.

- Other personal items: wedding rings, family pets and beds are also protected to a certain amount.
- These amounts change, differ on state and are listed in the statutes (and in the filing itself).
- For example, in Arizona, the debtor's equity in a family residence (up to \$150,000.00) protected. Arizona Revised Statutes Section 33-1101.

Other Considerations in a 7

- Debtors needs to complete Counseling
- Need to “qualify” under a means test

What is a Chapter 11 Bankruptcy?

- A Chapter 11 Bankruptcy is a called a Reorganization
- Normally filed by corporations although occasionally individuals do file
- Reorganization of assets, debts, etc.

Chapter 11 Reorganization Continued

- Debtor aka debtor-in-possession - they are “in possession of the assets”
- Once filed, the debtor is required to file a plan
- This plan, a plan of reorganization, needs to be approved/ confirmed by the court
- If the plan submitted is unrealistic or objected to by the creditors, then there will be discussion revising before plan is “Confirmed” by Court

Chp 11 Cont.- Compliance

- If Plan not complied with by the debtor
- Court can dismiss the case forcing the debtor out of Bankruptcy
- Or can require the debtor to file under a Chapter 7.

What is a Chapter 13 Bankruptcy?

- A Chapter 13, considered reorganization for the individual debtor, is a Repayment of debts
- Completed over the course of years.
- Subject to maximum amounts owed, the individual files a bankruptcy under Chapter 13 when they wish to set up a repayment schedule

Chapter 13 Repayment Cont.

- Why file a Chapter 13 rather than a Chapter 7?
- Avoid the moral and financial severity of Chapter 7 liquidation.
- Cannot “qualify for a Chapter 7 filing

Chapter 13 Cont.

- As in the Chapter 11, debtor is required to submit a Plan of Repayment
- Plan is confirmed by the Court.
- Once confirmed this plan usually 3-5 years
- During Plan, the debtor makes the required payments

Chp 13- Payments

- Plan payments made to the court through the manager of the debtor's case, the bankruptcy Trustee
- Trustee divides those payments to the creditors according to Plan.
- Creditors will get only a percentage of what is owed them but they usually receive more than when the debtor files under a Chapter 7 liquidation.

Chp 13 Payments Cont.

- Some payments are made directly to Creditors as outlined in the plan.
- Examples: Payments owed under a Mortgage (Deed of Trust) for Home.

Does filing affect the sale of property /the collection of debt?

- YES
- Once someone files a bankruptcy, the creditors are prevented from continuing in their efforts to collect their debts.
- The “automatic stay” begins at filing.

What is meant by automatic stay?

- The collection efforts of creditors are stopped or stayed automatically.
- The automatic stay is the provision that prevents:
 - Creditors from filing a lawsuit
 - Foreclosing on property
 - Or anything else that the court considers as an attempt to collect a debt.

Stay Continued

- This period very important to the person or business that files for bankruptcy.
- Chapter under which a debtor files determines what they expect will happen or what requirements are made on them (repayment, reorganization, or liquidation)
- This stay allows the debtor opportunity to consider their financial condition.
- Many creditors think differently- some times considered as a stall tactic.

The Creditor's Perspective

- *If a customer who owes me money files bankruptcy, is there any hope for me?*
(All hope is not lost)
- *What should I expect?*
- Are you listed as a creditor or on the mailing list?

What can and should I do to protect my claim?

- Proof of Claim Submission if allowed
- Take other permitted action to protect your interests
- Protecting property during foreclosure- seek counsel if you have not done so already.
- Hidden Assets, Disappearing Assets, Receiverships



Different debts Secured v. Unsecured

- *Would a personal loan be treated differently from a mortgage on a piece of real estate?*
- *Yes.*
- A debt (ex.: credit debt) not secured against some type of property has less control in a bankruptcy.
- A debt that is secured on property (ex.: Deed of Trust on a home) remains against property subject to certain proceedings completed.

Dischargeable vs. Non Dischargeable

- Dischargeable debts are discharged/wiped out at the conclusion of the bankruptcy.
- A nondischargeable debt is one that survives the bankruptcy and the creditor can pursue the claim against the debtor.
- Nondischargeable debts include: certain taxes, fraud claims, alimony and child support, and certain student loans.

Creditor Perspective Continued

- *So if my claim is considered a dischargeable debt, do I lose?*
- *What can I do to prevent this from happening to me again?*

The Debtor's Perspective

- As a debtor, you must file an accurate and complete bankruptcy filing.
- The filing includes your basic financial condition, debts, creditors and assets.
- The failure to be truthful could cause your case to be dismissed requiring you to start all over again.

***The ET Perspective
(Escrow and Title)***

- *What are some of the first questions that I need answers to?*
- *What is the debtor trying to do?*
- Are they selling, buying, or borrowing?
- *Who is the debtor anyway?*
- Individual, corporation, LLC, etc.?
- Is that the same one who is involved in your transaction?

ET Continued

- *What kind of bankruptcy was filed?*
- Chapter 7, 11 or 13?
- Different issues depending on the type of bankruptcy filed.
- For example, some debts that can be ignored in a Chapter 7 may need to be paid in a Chapter 13.

ET Cont.

- *What kind of property are we dealing with?*
- Commercial, residential or primary residence
- *Are we trying to eliminate a judgment, a lien, or merely get permission to do the transaction?*
- *Is there an attorney involved?*
- *What is the status of the bankruptcy?*
- Just filed, dismissed, or closed?

ET Cont.
Chapter 7

- *Is this property listed as an asset?*
- Caution: Mislabeled property or forget completely to list it as an asset in their filing.
- *What kind of asset, exempt or non-exempt?*

Hint: "Schedule C" of the bankruptcy filing shows the assets that claimed as exempt.

ET Cont.
Chapter 11

- *Has a "plan of reorganization" been filed AND confirmed?*

Hint: Need a copy of the plan and the order from the court that confirmed the plan.

- *Does the plan allow this type of transaction?*

ET Cont.
Chapter 13

- *Has a Repayment Plan been confirmed?*
- You will need a copy of the plan and the order from the court that confirmed the plan.

- *Does it allow for this type of transaction?*
- *Can we get the Bankruptcy Trustee approval for this transaction?*
- *Does the plan even require such approval?*

Many times, they do. Review Plan.

Hint: Trustee no-objection letter may suffice.

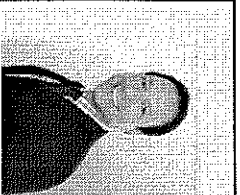
What else is needed in order to close the transaction?

- That is hard to say
- It all depends on the answers that you get from the questions above.
- Many times speaking with the attorney handling the bankruptcy case right from the beginning is helpful.
- *Working with Underwriter is important- early and often.*

Conclusion

You can do it!

Just remember to ask questions and review documents.



Titman

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