



Bankruptcy and Title

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Bankruptcy Basics



What is a bankruptcy?

- Bankruptcy is a legal proceeding initiated when a person or business cannot repay outstanding debts or obligations.
- It offers a fresh start for people who can no longer afford to pay their bills.



Bankruptcy Law

- Bankruptcy law is a federal statutory law as set forth in Title 11 of U.S. Code (“The Code”)
 - Governs the rules and requirements for filing all Bankruptcy cases
 - Chapters 1, 3 and 5 of the Code are the admin provisions that apply to all Bankruptcy cases under Chapter 7 (liquidation), Chapter 11 (reorganization), and Chapter 13 (adj of debts of an individual)



Bankruptcy Law

- **Tools:**
 - **Bankruptcy Code**
 - **Federal Rules of Bankruptcy Procedure**
 - **Local Rules of Bankruptcy Procedure per district:**
accessible on each district court's website
 - **Case law**
 - **PACER:** Public Access to Court Electronic Records:
a public access service that allows users to obtain
case and document information online.



Bankruptcy Estate

- Petition filed creates a Bankruptcy estate under 11 U.S.C. § 541, *et seq.* of the Code
- **Bankruptcy Estate includes:**
 - All debtors legal and equitable property interests wherever located, existing at the time of the commencement of the case (not exempted or abandoned)
 - This includes a “look back” period for conveyances and transfers of 180 days PRIOR to the commencement of the case AND property in which debtor has an interest, but property is owned by a third party.
 - Property and equitable interests not disclosed in the bankruptcy petition and related documents are part of the estate even if not disclosed.
 - In **Chapter 13**, Property acquired by debtor within 180 days after filing (e.g., devise, bequest or inheritance) may become property of the Bankruptcy Estate



Bankruptcy Estate

- What is not included:
 - Property acquired after commencement of case (exception: Ch 13 – see previous slide)
 - Any power that debtor may exercise for the benefit of an entity other than the debtor
 - Contributions to educational IRA
 - Withholdings made by employer for employee benefit plan



Important Terms:

- **Abandon:** when shows the property is burdensome or of inconsequential value to the Bankruptcy estate
- **Assets:** Everything the debtor owns at the time of filing and some interests acquired after. Exempt or non-exempt. Exempt assets are not included in the bankruptcy estate while non-exempt assets are included.
- **Automatic Stay:** Stops collection activity after a debtor files the bankruptcy petition.
- **Debtor:** Person or entity who filed the case, a/k/a petitioner.
- **Discharge:** An order granted by the bankruptcy court that releases the debtor permanently from personal liability for certain types of debts.
- **Dismissal:** Bankruptcy process has stopped because debtor(s) fails to follow procedure, file appropriate documents or pay certain fees.
- **Estate:** Non-exempt property and interests of the debtor. Assets are subject to exclusive control and protection of the bankruptcy court (until removed from the estate)



Important Terms (cont.)

- **Exempt property:** property not part of the bankruptcy estate
- **Petition:** Document that is filed to commence the case.
- **Schedules:** A series of documents filed in the case disclosing debtor's interests, debts, and financial condition. Schedules A-J.
- **Plan:** A literal plan confirmed by the bankruptcy court for how the debtor will financially navigate through a reorganizational bankruptcy.
- **Trustee:** Administrator appointed by court to manage the case.



Chapters of The Bankruptcy



Chapter 7 overview:

- **Liquidation:** designed to eliminate unsecured debts. 11 U.S.C. 701 to 784
 - 4-12 months
 - No repayment plan is filed.
 - Chapter 7 Trustee is in control: Trustee collects, administers and liquidates property of the bankruptcy estate
- Individual or Business Debtor.
- Discharge of Debts
 - No collection or enforcement efforts for discharged debts
 - Debtor no longer legally required to pay discharged debts.



Chapter 11 overview:

- **Reorganization** instead of liquidation. 11 U.S.C. Sections 1101 to 1195.
 - Corporate entities and some individuals who do not qualify for a Chapter 13.
 - Reorganization Plan is filed
- Subchapter V-Small Business Reorganization Act of 2019
 - Small business Chapter 11 with a streamlined process



Chapter 13 overview:

- **Reorganization** instead of liquidation. 11 U.S.C. Sections 1301 to 1330.
 - “Wage earners plan” for individuals with regular income.
 - 3-5 years.
 - Plan is filed.
 - Chapter 13 trustee.
 - Cure mortgage default.
- Discharge of debts at completion of plan



Other Chapters

- **Chapter 9:** Reorganization limited to municipalities
 - adjustment of debts/assets not liquidated but paid off in a court approved plan.
- **Chapter 12:** Reorganization for family farms
 - Qualification: 80% or more of the debt must come from the business of a family farm
- **Chapter 15:** Ancillary and other Cross-Border cases
 - Bankruptcy Abuse Prevention and Consumer Protection Act of 2005
 - To provide effective mechanisms for dealing with insolvency cases involving debtors, assets, claimants, lenders and other parties of interest involving **more than one country.**
 - Ancillary to a primary proceeding brought in by another country. (typically debtors home country)



Examiner Review:

- When should the examiner show the bankruptcy?:
 - If there is a bankruptcy court *in your county*
 - If there is a notice of bankruptcy filed in the county recorders office
 - If Agent is aware of a bankruptcy in another state – Agent has “notice” and should make a requirement on commitment
- Verify that the property for the transaction is listed on Schedule A of the petition
(applies to all chapters)
- Docket should be reviewed
 - For any order that would lift the stay
 - Need legal description and sales price included in order of sale
 - If property sale price is **decreased** – a new order will be required.
 - to determine that no appeals were taken after entry of the order of sale



Automatic Stay

- Upon filing of the petition:
 - All creditors must STOP all collection actions against the debtor including lenders in the process of foreclosing.
 - The rules of the **automatic stay** are set out in Section 362.
 - The automatic stay is an operation of law:
 - No judicial action is necessary, and it applies to both property of the debtor and property of the Estate
 - The purpose:
 - Allows for a fair and efficient administration of the debtor’s estate by preventing one creditor to be paid before other creditors AND
 - Provides the debtor with some “breathing room” by maintaining the status quo until such time as the bankruptcy court can evaluate the debtor’s financial position.
 - Keep in mind:
 - **It is automatic**
 - **It is broad (applies to all entities)**
 - **Actual knowledge is not necessary**



Automatic Stay (cont.)

- Length of Stay:
 - Unless lifted or modified by an order of the court:
 - Remains in effect until sought-after property is no longer part of the bankruptcy estate OR the case has been dismissed or closed
 - A discharge also operates to lift the stay as to the debt owed.
 - Chapter 7 :
 - Property surrendered will lift the stay



Relief from the automatic stay

(Applies to all chapters)

- A creditor may request a relief from the stay:
 - File a motion with the Bankruptcy Court requesting that the stay be lifted. (Section 362)
 - The court must enter an order continuing the stay **OR**
 - Set a hearing within 30 days.
 - A ruling must be made within 60 days.
 - Lifting of the stay allows a lender to proceed with a foreclosure
 - Orders are effective for either 10 or 14 days, unless the order states otherwise.



Chapter 7:

- an “orderly and fair” liquidation of the Debtor’s assets
- Most common
- **Debtor has three options regarding assets:** (stated in petition regarding the property) action by Debtor
 - **Surrender** – Debtor is obligated to follow through with the surrender.
 - If lender wants to foreclose, lender must take the step to foreclose
 - If property has been surrendered, it is not necessary for the lender to have the automatic stay lifted, but best practice to do.
 - **Reaffirm** -
 - If Debtor states his/her intention to reaffirm, he/she executes a reaffirmation agreement with the existing lender and continues to make payments under the new agreement after bankruptcy is discharged
 - **Redeem** - typically vehicles rather than real property
 - The debtor must pay off the claim (amount due under the note)
- **Abandonment:** - action by Trustee
 - Section 554: a trustee may determine there is no value/equity in the property and abandon it.
 - This may be done by a specific order or in the final Trustees report.
 - If in the report – an order is not necessary
 - The debtor can sell without court approval since the property is not part of the bankruptcy estate



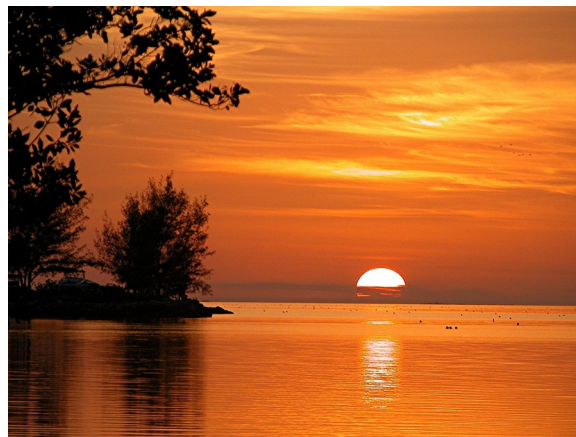
Chapter 11:

- Reorganization used mostly by entities and businesses (can be used by individuals)
- Court approved business plan of reorganization which can be voluntary or involuntary
- Trustee may or may be appointed:
 - If no trustee if appointed: the **debtor-in-possession** is authorized to operate and manage on-going business
- Debtor usually proposes a plan of reorganization to keep the business running and pay the creditors over time.
- Court must approve the reorganization plan after notice to creditors and hearing is held



Chapter 13:

- Allows individual debtor with regular income to repay debts under court supervision
- Trustee appointed for specific duties in a more monitoring capacity (not taking control of the bankruptcy estate)
- Debt adjustment plan for individuals only who meet the following:
 - Regular income
 - Unsecured debt less than \$336,996 (4.1.07)
 - Secured debt less than \$1,010,065 (4.1.07)
- Court must approve filed plan for periodic payments to creditors over **NO MORE** than five years even though creditors receive notice of the Plan
 - Creditors do not “vote” on the plan but can file objections with the court.



Important Title issues:



Sales during Bankruptcy owned *at the time of Bankruptcy* filing

Chapter 7:

- If property has NOT been abandoned by the trustee or has NOT been scheduled & approved as exempt: **Court order authorizing sale is required**

Chapter 11:

- If property is abandoned by the trustee or scheduled as approved & exempt and reorganization plan does not prohibit:
 - The debtor can sell without court approval
- If the property is NOT abandoned or exempt:
 - **Sale must be authorized by Reorganization plan** OR
 - **A court order must authorize the sale**



Sales during Bankruptcy owned *at the time of Bankruptcy* filing cont.

Chapter 13:

- May be sold **WITHOUT** court approval if:
 - Abandoned by the trustee OR scheduled & approved as exempt AND
 - Confirmed plan does not prohibit
- Sale must be authorized by the confirmed plan
- **Court order must authorize sale** if the property is not abandoned.



Sales during Bankruptcy for property acquired *after filing of bankruptcy petition*

Chapter 7:

- Sale of property **requires court order** to sell if acquired within 180 days of the bankruptcy filing by bequest, devise or inheritance, by property settlement with a spouse, or a court order
 - Property **acquired by any means** other than those listed above is not bankruptcy estate property and debtor may sell without court approval.

Chapter 11:

- Sale of property **requires court order** to sell if acquired within 180 days of the bankruptcy filing by bequest, devise or inheritance, by property settlement with a spouse, or a court order
 - Property **acquired by any means** other than those listed above is not bankruptcy estate property and debtor may sell without court approval so long as the Reorganization Plan does not prohibit it



Sales during Bankruptcy for property *acquired after filing of bankruptcy petition* cont.

Chapter 13:

- **All property** acquired by the debtor after the filing of Chapter 13 bankruptcy is considered bankruptcy estate property and **may not be sold without court approval**



Purchases during Bankruptcy

Chapter 7:

- **May** be purchased with CASH without court approval
 - Even if it is a cash purchase : an order may still be needed as the debt/asset ratio changes as the Trustee might require the cash to be used to pay other creditors
- Property acquired by debtor after filing of Bankruptcy petition does not become bankruptcy estate property.

Chapter 11:

- **May** be purchased with CASH without court approval
 - Even if it is a cash purchase : an order may still be needed as the debt/asset ratio changes as the Trustee might require the cash to be used to pay other creditors
- Property acquired by debtor after filing of Bankruptcy petition does not become bankruptcy estate property.



Purchases during Bankruptcy cont.

Chapter 13:

- Property may be purchase if **authorized by court order**
- Property acquired by the debtor after the filing of Chapter 13 petition becomes bankruptcy estate property.



New mortgage against property owned *at time of bankruptcy petition*

Chapter 7:

- If property has been abandoned by the Trustee or has been scheduled and approved as exempt AND the mortgage is not given to secure a Pre-bankruptcy claim:
 - **No court approval is required** for the refinance/2nd mortgage
- A mortgage of property not abandoned or exempt to secure a pre-petition claim would violate the automatic stay which prohibits creating a lien against the bankruptcy estate property

Chapter 11:

- If property has been abandoned by the Trustee or has been scheduled and approved as exempt AND the mortgage is not given to secure a Pre-bankruptcy claim AND the confirmed reorganization plan does not prohibit the mortgage, **no court approval is required** if mortgaged in compliance with the Reorganization Plan
 - All other situations require bankruptcy approval.



New mortgage against property owned *at time of bankruptcy petition cont.*

Chapter 13:

- If the property has been abandoned by the trustee OR has been scheduled and approved as exempt, AND the confirmed plan does not prohibit it, the debtor can mortgage **without court approval**
 - Please note: If the confirmed plan prohibits debtor from **creating additional** debt, then court approval is required to mortgage the property.
 - The confirmed plan could also provide that all property remains bankruptcy estate property until plan is complete
 - In that case: **court approval would be required** for obtaining a mortgage.



New mortgage against property obtained *after* filing bankruptcy petition:

Chapter 7:

- Mortgage of property **require court approval** IF acquired within 180 days of the bankruptcy filing by bequest, devise or inheritance by property settlement agreement with a spouse or by court order
- If the mortgage is not given to secure a pre-petition claim, no court approval is required because property acquired after filing bankruptcy petition is not bankruptcy estate property.

Chapter 11:

- Mortgage of property **requires court approval** if acquiring within 180 days of bankruptcy filing by bequest, devise or inheritance, by property settlement agreement with a spouse or by court order
- Property acquired after filing of bankruptcy petition is not bankruptcy estate property. Therefore, IF the mortgage is given to secure a pre-petition claim or if the Reorganization Plan prohibits the mortgage of the property, court approval is required.



New mortgage against property obtained *after* filing bankruptcy petition: cont.

Chapter 13:

- Since property acquired after filing bankruptcy petition is bankruptcy estate property, **court approval is required** because a mortgage or property which is not abandoned would violate the automatic stay (which prohibits creating a lien against bankruptcy estate property).



Bankruptcy appeals vs Stay Period

Fourteen-day appeal: (Fed.R. Bankr. P. 8002(a))

- The notice of appeal shall be filed with the clerk within 14 days of the date of the entry of the judgment, order or decree appealed from
- Order approving use, sale or lease of property is a final appealable order
- **Right of appeal is NOT waivable**

Stay of order authorizing use, sale or lease of property: (Fed.R. Bankr. P. 6004(h))

- An order authorizing the use, sale or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order unless the court orders otherwise
 - This **CAN BE waived**.



Computing Time

- When the period is stated in days:
 - Exclude the day of the event that triggers the period (day the order is entered and appears on the docket)
 - Count every day (including Saturdays, Sundays and legal holidays) including the last day of the period
 - Unless Saturday, Sunday and legal holiday in which case, the period continues to run until the end of the next day that is not a Saturday, Sunday or legal holiday (Rule 9006)



Who signs the deeds in a sale:

- The Trustee:
 - Typical in a Chapter 7
 - Court order will state Trustee to deed out
- The Debtor:
 - Typical in a Chapter 13
 - Upon dismissal
 - Discharge and when case is fully closed
 - Property has been abandoned by the Trustee or property has been ruled exempt (not part of the bankruptcy estate)
 - Order of sale will state Debtor to deed out



Lien in Bankruptcy:

- Remember: a lien going into bankruptcy is a lien coming out of bankruptcy....UNLESS:
 - There is a bankruptcy court order saying it isn't and a discharge is not such an order...
- Types of orders:
 - order "avoiding" the lien
 - Order to "sell Free and Clear" of the lien



Lien Avoidance:

- If there is an order avoiding the lien under Sec 522(f) of the Code, a release from the creditor is not necessary
 - Applies to **Chapter 7 and Chapter 13**
- Chapter 7:
 - requires a motion pursuant to Rule 4003(d)
 - Requires notice and service under Local rule 4003-2
- Chapter 13:
 - May be permitted through a Chapter 13 Reorganization plan
 - Under Rule 5009, debtor can request entry of an order declaring that secured claim has been satisfied and lien has been released under the terms of a confirmed plan. (must be motioned and also served on holder of the claim)



Lien Stripping

APPLIES TO CHAPTER 13:

- Debtor can “strip down” or “strip off” a lien from property of the estate by valuing the property under Sec 506(a).
- Allow debtor to void a lien to the extent it is unsupported by the value of the collateral
- The creditor holds a secured claim to be paid through the plan only to the extent of the value of property, with the remainder becoming an unsecured claim



Discharge vs. Dismissal:

- Discharge:
 - Relieves the debtor of the personal obligation of the debt.
 - The entire Bankruptcy process has been COMPLETED
 - For FNTI to insure after discharge, Bankruptcy case must be fully closed.
- Dismissal:
 - The Bankruptcy process has stopped because the debtor has failed to follow the bankruptcy procedure, file appropriate documents in the bankruptcy case or pay certain fees.
 - A dismissal is as if the debtor never filed bankruptcy and there is no waiting period prior to insuring.



Question:

DJ owns his home in his name alone. A creditor obtains a judgment against DJ for \$50,000 in circuit court. DJ files a Chapter 7 bankruptcy and names the creditor. The creditor receives all appropriate notices in the bankruptcy proceedings. DJ obtains a discharge. The bankruptcy estate was closed four months ago and now DJ is refinancing. The creditor's judgment was not satisfied and is less than ten years old, so the examiner shows the judgment on title and requires satisfaction and release of the lien. DJ, DJ's bankruptcy attorney and the refi lender all push back with evidence of the DJ's discharge in the Chapter 7 case and ask for removal of the judgment since the discharge "took care of that judgment."

Should the examiner agree to remove the judgment from the commitment and insure without exception?



Answer:

- NO 😊 - the discharge eliminates DJ's personal liability for the debt but does not terminate the lien of the judgment against DJ's real property.



Question:

- Same fact pattern except DJ buys a home AFTER discharge. DJ then decides to refinance the new home. The title chainer includes the judgment in the chain. Does the examiner include the judgment on B-I to be satisfied?



Answer:

- NO – the difference is the **timing** of events
- The discharge eliminated DJ's personal liability for the debt to his creditor.
- Unless the creditor had a lien on DJ's property at the time he filed bankruptcy, he is not required to pay off the judgment. Debt is considered wiped by the discharge.
- Since the debt no longer existed on the day DJ purchased the new home, the judgment never became a lien on the new home acquired after discharge.
- Best practice:
 - Obtain a copy of the discharge and file as an exhibit to an affidavit in the county where DJ's new property is located
 - Affidavit should include information regarding the bankruptcy case, date of discharge, date DJ acquired the new property with legal and information about the judgment that is passed on that discharge.



At Discharge:

- A judgment lien docketed before the bankruptcy filing is not affected by the discharge **UNLESS** the debtor:
 - Obtains a bankruptcy court order avoiding the lien
 - Obtains a satisfaction or release of the property lien from the judgment creditor **OR**
 - Obtains a “free and clear” sale order in the bankruptcy.



At Discharge:

- **Dischargeable**

- Business debts
- Credit Cards
- Guaranties
- Judgments
- Leases
- Medical Bills
- Personal Loans

- **Not Dischargeable**

- Accident claims
- Alimony
- Child Support
- Criminal fines and restitution
- Debts denied in prior bankruptcy
- Debts obtained under false pretenses
- Federal taxes
- State taxes
- Unscheduled debts



Arizona Specifics for Bankruptcy



State Specific:

Arizona:

- **Homestead exemption:** Arizona law does not recognize federal property exemptions but establishes exemptions specific to Arizona residents.
 - Arizona's homestead exemption laws protect up to \$150,000 of a person's **equity** in the person's dwelling from attachment, execution or forced sale.
 - A person, or married couple, may only claim one homestead exemption and must reside in the dwelling for which the exemption is claimed.
 - The exemption applies to the person's house and land, condominium or cooperative, mobile home or mobile home and land, as well as to the identifiable cash proceeds from the voluntary or involuntary sale of the property for up to 18 mo. after sale.
- **Exceptions:**
 - Does not protect from foreclosure on a mortgage/mechanic lien or government tax lien
 - Does not protect a person against liens resulting from Child support or spousal maintenance arrearage
 - Does not protect a person against lien from HOA



Arizona Bankruptcy Courts

- **Phoenix Division:** Maricopa, Apache, Navajo, Coconino, Gila and Yavapai county cases should be filed with, and will be maintained by, the clerk's office in the Phoenix Division. 8
- **Tucson Division:** Pima, Cochise, Santa Cruz, Graham, Pinal and Greenlee county cases should be filed with, and will be maintained by, the clerk's office in the Tucson Division.
- **Yuma Division:** Yuma, La Paz and Mohave county cases should be filed with, and will be maintained by, the clerk's office in the Yuma Division.
- Notes 2007: The only change to this rule is to require **Gila County cases to be filed** in the **Phoenix Division** rather than the Tucson Division, incorporating that change made by General Order No. 71.



Resources:

- The Bankruptcy Code
 - <https://www.law.cornell.edu/uscode/text/11>
- PACER
 - <https://pacer.uscourts.gov>
- Local Rules for Arizona:
 - <https://www.azb.uscourts.gov/local-rules>
- FNTI Underwriter for Arizona:
 - Wendy.Hoelting@fnti.com or David.Dickard@fnti.com



**Thank you to all in attendance! I appreciate your
time and involvement!**





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Contact your underwriter team with questions

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