

BANKRUPTCY LAW



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JAROUDI LAW, PC

BANKRUPTCY DEFINED

- Bankruptcy is a federal legal process that can help you eliminate or restructure overwhelming financial obligations. The federal Bankruptcy Code is written by Congress and the bankruptcy laws are interpreted by the federal courts.
- Created by the Bankruptcy Reform Act of 1978

PURPOSE OF BANKRUPTCY

- A fundamental goal of the federal bankruptcy laws enacted by Congress is to give debtors a financial "fresh start" from burdensome debts. The Supreme Court made this point about the purpose of the bankruptcy law in a 1934 decision:
- [I]t gives to the honest but unfortunate debtor...a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt.
- It also serves to give fair and equal treatment to Creditors who are owed money

CHAPTER 7: LIQUIDATION

- Liquidation of the debtor's assets by a trustee to pay creditors' claims.
- Voluntary vs. Involuntary Petition
 - A voluntary petition may be filed by any entity (including individual, partnership, corporation, etc.) residing in the U.S. or having a domicile or place of business in the U.S.
 - Involuntary chapter 7 is when the petition is filed by the creditors

TRUSTEE APPOINTMENT

- Interim Trustee: is appointed promptly after the order for relief is entered.
 - Function: begins investigations regarding the debtor's financial affairs
 - Selected by a panel of private trustees
- Trustee: elected at the first meeting of creditors
 - If none is selected, the interim trustee serves as the trustee
- Duties: collects, sells, and reduces to cash the assets of the estate.
 - Operate the debtor's business, and make a final report.

ORDER OF DISTRIBUTION OF ESTATE

- Priority Claims according to their respective rank
- Unsecured claims filed within 70 days after bankruptcy proceeding initiated
- Unsecured claims that were filed late
- Claims for fines, penalties, forfeitures, or punitive damages
- Claims for interest that accrue after petition is filed
- Surplus is distributed to debtor

PRIORITY CLAIMS

- First Priority: Domestic support obligations (child support, etc)
- Second priority: Expenses of bankruptcy proceeding
- Third Priority: Involuntary gap claims
 - Claims that accrue in the ordinary course of business after an involuntary petition is filed, but before the appointment of a trustee
- Fourth Priority: Wage Claims
 - Employees who have claims for wages earned within 180 days before the filing of the petition or cessation of the debtor's business

PRIORITY CLAIMS (CONTINUED)

- Fifth Priority: Contributions to employee benefit plans
 - Unpaid contributions to employee benefit plans, such as health insurance or pension plans, if they arise from services rendered within 180 days prior to bankruptcy or cessation of the business.
- Sixth Priority: Claims for grain or the proceeds thereof by persons engaged in the production or raising of grain against a debtor who owns or operates a grain storage facilities.
- Seventh Priority: Claims arising from the pre-petition deposit of money with the debtor for the purchase or lease of property up to \$2,850.00

PRIORITY CLAIMS (CONTINUED)

- Eighth Priority: Tax claims
- Ninth Priority: capital requirements of insured depository institution
- Tenth Priority: Personal injury claims resulting from intoxicated operation of a vehicle.

CHAPTER 11: REORGANIZATION

- Who is eligible:
 - Corporations, partnerships, individuals
 - Commenced by filing of a chapter 11 petition for relief
 - Filing must include a list of the 20 largest unsecured creditors (excluding insiders)
 - A list of the debtor's equity security holders
 - Complete list of all creditors
 - Creditors do not have to file proofs of claim unless debt is disputed, contingent or unliquidated

CONTINUED OPERATION OF BUSINESS UNDER CHAPTER 11

- Debtor may generally continue to operate business in ordinary course without a court order
- Trustee is usually NOT appointed; rather debtor remains in possession of his assets and generally has the same powers as the trustee
- Trustee can be appointed for cause, including fraud, dishonesty, incompetence, or gross mismanagement by the debtor in possession
- US Trustee may appoint a Creditors Committee to investigate debtor's conduct and finances, in preparation for filing of a plan

PLANS OF REORGANIZATION

- Who may file?
 - Debtor is given exclusive right to file a plan of reorganization for 120 days after the entry of the order for relief
 - Requirements of the Plan
 - Must designate classes of claims and interests
 - Specify any class of claims that is not impaired
 - Specify the treatment of the classes (proposed percentage of distribution)
 - Provide equal treatment for each member of a particular class

PLAN OF REORGANIZATION (CONTINUED)

- Provide adequate means for implementation of the plan, such as:
 - Retention by the debtor of all or part of the property of the estate
 - Transfer of all or any part of the property of the estate to one or more entities
 - Merger or consolidation of the debtor with one or more persons
 - Sale of all or party of the property of the estate
 - Satisfaction or modification of liens
 - Cancellation or modification of any indenture or similar instrument
 - Must have been proposed in good faith
 - Must be accepted by each class

PLAN OF REORGANIZATION (CONTINUED)

- Must pass the best interest of the creditors test; creditors must receive at least what they would in chapter 7 liquidation case

CONFIRMATION OF THE PLAN AND EFFECT

- Court must enter an order confirming a plan if;
 - It is accepted by all classes
 - Provides payment in full of all priority claims
 - Provides for payment in full of all bankruptcy fees

CONFIRMATION OF PLAN AND EFFECT

- Effect of Confirmation
 - Confirmation vests title to all property in the estate of the debtor
 - Confirmation binds the debtor and all creditors to the terms of the plan and discharges all debts dischargeable under the Code
 - Cramdown
 - Court can impose the plan on certain creditors even if they object