Bankruptcy

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Automatic stay - An injunction that automatically stops lawsuits, foreclosures, garnishments, and all collection activity against the debtor the moment a bankruptcy petition is filed.

Confirmation - Bankruptcy judge’s approval of a plan of reorganization or liquidation in chapter 11, or payment plan in chapter 12 or 13.

Credit counseling - two events in individual bankruptcy cases: (1) the "individual or group briefing" from a credit counseling agency and (2) the "instructional course in personal financial management" in chapters 7 and 13 that an individual debtor must complete before a discharge is entered.
Creditors' meeting see 341 meeting

current monthly income - The average monthly income received by the debtor over the six calendar months before commencement of the bankruptcy case. 11 U.S.C. § 101(10A).

Discharge - A release of a debtor from personal liability for certain dischargeable debts set forth in the Bankruptcy Code.

Dischargeable - A debt for which the Bankruptcy Code allows the debtor's personal liability to be eliminated.

Disclosure statement - A written document prepared by the chapter 11 debtor or other plan proponent that is designed to provide "adequate information" to creditors to enable them to evaluate the chapter 11 plan of reorganization.

Disputed Claim - A claim is disputed when the debtor and creditor do not agree on the debtor’s liability or on the amount of the debt.

Liquidation - A sale of a debtor's property with the proceeds to be used for the benefit of creditors.

Liquidated claim - A creditor's claim for a fixed amount of money
Means test - Section 707(b)(2) of the Bankruptcy Code applies a "means test" to determine whether an individual debtor's chapter 7 filing is presumed to be an abuse of the Bankruptcy Code requiring dismissal or conversion of the case (generally to chapter 13). Abuse is presumed if the debtor's aggregate current monthly income (see definition above) over 5 years, net of certain statutorily allowed expenses is more than (i) $10,000, or (ii) 25% of the debtor's nonpriority unsecured debt, as long as that amount is at least $6,000.

Motion to lift the automatic stay - A request by a creditor to allow the creditor to take action against the debtor or the debtor's property that would otherwise be prohibited by the automatic stay.

No-asset case - A chapter 7 case where there are no assets available to satisfy any portion of the creditors' unsecured claims.

Nondischargeable debt - A debt that cannot be eliminated in bankruptcy. Examples include a home mortgage, debts for alimony or child support, certain taxes, etc. Some debts, such as debts for money or property obtained by false pretenses and debts for fraud or defalcation while acting in a fiduciary capacity may be declared nondischargeable.

Objection to dischargeability - A trustee's or creditor's objection to the debtor being released from personal liability for certain dischargeable debts. Common reasons include allegations that the debt to be discharged was incurred by false pretenses or that debt arose because of the debtor's fraud while acting as a fiduciary.

Objection to exemptions - A trustee's or creditor's objection to the debtor's attempt to claim certain property as exempt from liquidation by the trustee to creditors.
Postpetition transfer - A transfer of the debtor's property made after the commencement of the case.

Preference or preferential debt payment - A debt payment made to a creditor in the 90-day period before a debtor files bankruptcy (or within one year if the creditor was an insider) that gives the creditor more than the creditor would receive in the debtor's chapter 7 case.

Presumption of abuse - see means test

Priority - The Bankruptcy Code's statutory ranking of unsecured claims that determines the order in which unsecured claims will be paid if there is not enough money to pay all unsecured claims in full. For example, under the Bankruptcy Code's priority scheme, money owed to the case trustee or for prepetition alimony and/or child support must be paid in full before any general unsecured debt (i.e. trade debt or credit card debt) is paid.

Priority claim - An unsecured claim that is entitled to be paid ahead of other unsecured claims that are not entitled to priority status. Priority refers to the order in which these unsecured claims are to be paid.

Proof of claim - A written statement and verifying documentation filed by a creditor that describes the reason the debtor owes the creditor money. (There is an official form for this purpose.)
Reaffirmation agreement - An agreement by a chapter 7 debtor to continue paying a dischargeable debt (such as an auto loan) after the bankruptcy, usually for the purpose of keeping collateral (i.e. the car) that would otherwise be subject to repossession.

Secured Claim - A claim is secured if the creditor has a lien on property of the debtor (collateral) that gives the creditor the right to be paid from the property before creditors who do not have liens on the property. A claim is secured only to the extent to which the value of the creditor’s interest in a property equals the amount of the debt. Any amount not protected by collateral is unsecured. 11 U.S.C. § 506. Examples of liens are a mortgage on real estate and a security interest in a car, boat, television set, or other item of property. A lien may have been obtained through a court proceeding before the bankruptcy case began; in some states a court judgment is a lien.

Secured debt - Debt backed by a mortgage, pledge of collateral, or other lien; debt for which the creditor has the right to pursue specific pledged property upon default. Examples include home mortgages, auto loans and tax liens.

Statement of intention - A declaration made by a chapter 7 debtor concerning plans for dealing with consumer debts that are secured by property of the estate.

Substantive consolidation - Putting the assets and liabilities of two or more related debtors into a single pool to pay creditors. (Courts are reluctant to allow substantive consolidation since the action must not only justify the benefit that one set of creditors receives, but also the harm that other creditors suffer as a result.)
341 meeting - The meeting of creditors required by section 341 of the Bankruptcy Code at which the debtor is questioned under oath by creditors, a trustee, examiner, or the U.S. trustee about his/her financial affairs. Also called creditors' meeting.

Transfer - Any mode or means by which a debtor disposes of or parts with his/her property.

Undersecured claim - A debt secured by property that is worth less than the full amount of the debt.

The Process

• 1978 Congress set up Bankruptcy Code
• Title 11 of the United States Code
• Federal Rules of Bankruptcy Procedure
• Rules contain a set of Official Forms
• Code and Rules set forth procedures
Purpose

- Fresh Start
- 1934 Supreme Court Decision
- Local Loan Co. v. Hunt
- Debts Discharged

Types

- Chapter 7 - Liquidation
- Chapter 13 - Adjustment of Debts
- Chapter 11 - Reorganization,
- Chapter 12 - Adjustment of Debts of a Family Farmer or Fisherman
- Chapter 9 - Adjustment of Debts of a Municipality
- Chapter 15 - Ancillary and Other Cross-Border Cases
  - Service members' Civil Relief Act
  - Securities Investor Protection Act ("SIPA")
Filings

- Creates Estate
- Automatic Stay
- Bankruptcy Filing Fees
  - effective October 17, 2005

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Officials

- **Middle Georgia Bankruptcy Court**
  Locations: Albany, Athens, Columbus, Macon, Thomasville, Valdosta

- **Northern Georgia Bankruptcy Court**
  Locations: Atlanta, Gainesville, Newnan, Rome

- **Southern Georgia Bankruptcy Court**
  Locations: Augusta, Brunswick, Dublin, Savannah, Statesboro, Waycoss
Bankruptcy Estate

“everything that the debtor owns or has a right to possess at the time of filing of the bankruptcy petition”

Automatic Stay

- bars a creditor from doing anything that would be beneficial in attempting to collect a debt
- pursue any other action that would be beneficial in attaining a secured position
Relief from Automatic Stay

- may be obtained by a creditor properly seeking relief
- creditor has the right to be provided with adequate protection

Abandonment

“releasing property from the bankruptcy estate”

Voluntary Abandonment
Party-in-Interest Request
Bankruptcy Case Closed
Voluntary Abandonment

1. Burdensome to the estate; or
2. Of inconsequential value and benefit to the estate

Party-in-Interest Request

• Request from creditor to the court for abandonment
Bankruptcy Case Closed

(1) assure that the property is abandoned for the estate; and
(2) obtain release from the automatic stay from the bankruptcy court.

Claims in Bankruptcy

Priority Claims
- Taxes

Administrative Claims
- administrative expenses
- necessary expenses of preserving estate
- Wages
- Salaries
- commissions for services rendered
- reasonable compensation for professional services

Secured Claims
- Collateral

Unsecured Claims
- NO collateral
Ad Valorem Tax Claims

“If a complaint to avoid the fixing of a statutory lien pursuant to 11 U.S.C. § 545(2) is brought against your jurisdiction, the Bankruptcy code and general case law support the position that statutory ad valorem tax liens are secured and perfected, and thus, a bankruptcy trustee is not able to avoid the liens under Section 545 of the bankruptcy code.”

Discharge

• debtor is no longer legally required to pay any debts that are discharged

• a secured creditor may enforce the lien to recover the property secured by the lien

• Ad valorem taxes should not be discharged
Receiving a Discharge

• Unless there is litigation involving objections to the discharge, the debtor will usually automatically receive a discharge.

Granting a Discharge

Chapter 7 - on expiration of the time fixed for filing a complaint objecting, and the time fixed for filing a motion to dismiss for substantial abuse (60 days following the first date set for the 341 meeting)

    Typically about four months after the date the debtor files the petition.

Chapter 11, 12 & 13 - as soon as practicable after the debtor completes all payments under the plan

    Since a chapter 12 or chapter 13 plan may provide for payments to be made over three to five years, the discharge typically occurs about four years after the date of filing.
Debts Not Discharged

- certain types of **tax claims**
- debts not set forth by the debtor on the lists and schedules filed with the court
- debts for spousal or child support or alimony
- debts for willful and malicious injuries to person or property
- debts to governmental units for fines and penalties
- debts for most government funded or guaranteed educational loans or benefit overpayments
- debts for personal injury caused by the debtor's operation of a motor vehicle while intoxicated
- debts owed to certain tax-advantaged retirement plans
- debts for certain condominium or cooperative housing fees.

Objection to Discharge

Complaint filed with the court also know as "adversary proceeding"

Chapter 7 discharge may be denied:
section 727(a)

1. failure to provide requested tax documents
2. failure to complete a course on personal financial management
3. transfer or concealment of property with intent to hinder, delay, or defraud creditors
4. destruction or concealment of books or records
5. perjury and other fraudulent acts
6. failure to account for the loss of assets
7. violation of a court order or an earlier discharge in an earlier case commenced within certain time frames before the date the petition was filed.
Bankruptcy Forms

http://www.uscourts.gov/rules/

PACER

Public Access to Court Electronic Records

Permits you to request information about a particular individual or case

http://pacer.psc.uscourts.gov/register.html
How much does it Cost?

- Court documents cost $0.10 per page.
- Cost to access a single document is capped at $3.00, the equivalent of 30 pages.
  - The cap does not apply to name searches, reports that are not case-specific and transcripts of federal court proceedings.
  - By Judicial Conference policy, if your usage does not exceed $15 in a quarter, fees for that quarter are waived, effectively making the service free for most users.

Accrue Costs

- Users who do not accrue charges of more than $15 in a quarterly billing cycle would not be charged a fee.
  - The current exemption is $10 per quarter.
  - The expanded exemption means that 75 to 80 percent of all users will still pay no fees.
How do I access PACER?

• First, you will need a PACER account.
  – Sign up for one using our convenient on-line registration process.

• Each court maintains its case information locally.
  – If you do not know where the case is filed, use the PACER Case Locator.

What Info is Available?

• Case and docket information for all district, bankruptcy, and appellate courts.
  – PACER currently hosts 500 million case file documents.
  – These are available immediately after they have been electronically filed.
  – No other court system provides as rapid access to as much case information.
State of Georgia
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Is All Case Data Available?

• No.
  – A policy to protect private information while ensuring public access to electronic case information requires that personal identifiers be removed or redacted before the records become public.
  – These identifiers include the first five digits of a Social Security number, financial account numbers, the name of a minor, etc.

State of Georgia
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What is CM/ECF?

• Case Management/Electronic Case Filing (CM/ECF) is a comprehensive case management system that allows courts to maintain electronic case files and offer electronic filing over the Internet.
How do I get more Info?

- Pacer@psc.uscourts.gov