

Bankruptcy- 11 U.S.C.

Chapter 7-liquidation chapter

Chapter 13-repayment of % of debt

Other key terms

Discharge-fresh start; received at end of case as to all pre-petition obligations. Everything except DSOs, student loans and priority tax debt.

Means Test-decides eligibility for Chapter 7; decides amount of repayment in Chapter 13 (aka Current Monthly income test); household size plays key factor

Property of the Estate-541; legal & equitable interests i.e. right to lawsuit, stock options, life insurance policy proceeds, tax refunds, intellectual property.

Exclusions-spendthrift trusts & ERISA qualified retirement plans

In Ch. 7 future wages are NOT but in a 13 they ARE

Inheritances received within 180 days after filing are POE in 7; monies or property received within 180 days of filing as a result of property settlements or agreements with debtor spouse or court order/judgment.

Exemptions-Federal at 522 but Maryland requires use State at CJP 11-504

Adversary Proceeding-a complaint filed in the bk court, ancillary to Debtor's main case. Filed to object to discharge or dischargeability of debt. Debtor's can bring them against creditors who violate certain provisions of the bk code.

Proof of Claim-a form a creditor files in order to get paid in a bk

General Unsecured Claim- non-secured claim against a debtor that neither has priority status over other creditors nor is secured by debtor's property.

2 most important aspects to know: Automatic Stay & Domestic Support Obligations

Automatic Stay-362

Bars actions for enforcement of a claim against the debtor or against property of the estate.

Exceptions: divorce, establishment/modification/enforcement of child support or visitation, paternity. Therefore U&P, division of property, monetary award are stayed. Maryland Courts have construed it to apply to discovery on these issues as well-*Klass v. Klass*, 377 Md. 13 (2003)

Contempt-gray area; civil contempt stayed, criminal not. Dependent upon POE.

Issue is purging the contempt since in 13 wages and after-acquired property is POE.

Lifting the stay-by Motion in the bk matter; i.e. property considerations imperative to support award; bk court give guidance on proceeding in State court.

Domestic Support Obligations- 101(14A)

Accrued on, before or after filing; owed to spouse/former spouse/child or parent of child; in nature of alimony, maintenance, support; established by separation agreement, divorce decree, settlement agreement or court order/judgment.

Priority status-hierarchy of payment FIRST; excluded from avoidance powers of Trustee; required to be paid post-petition or could be dismissed or withhold discharge.

Discharge-523(a)(5) excludes from 7 or 13 discharge a DSO; 523(a)(15) deals with non-support divorce related obligations and the Ch. 7 discharge carves an exception so that 523(a)(15) obligations are not discharged but in a Ch. 13 they are (after repaid a %) i.e. monetary award. If questionable-launch an adversary.

Drafting concerns-defining something as support in an agreement is not decisive to a bk court; interrelate support with the equitable property division, make it clear that the equitable property division is imperative to the support and maintenance of the spouse/kids.

are former spouses insiders?

Other Concerns

If there are joint debts, a non-filing spouses credit can be affected. Reflect as "in bk".

Breach of indemnity clause considerations. If no agreement for indemnity it leaves the non-filing spouse liable unless equitable concerns dictate otherwise. Dischargeable in a Ch. 13 but how determine amount of claim?

Joint Ch. 13 – if separate afterwards there are ethical concerns for the bk lawyer so they'll each get separate counsel and sever their cases. The concern then becomes how to divide the claims, how to classify them and whether any innocent spouse liability exclusions apply to tax debts.

Lien Stripping

Chapter 13-wholly unsecured secondary mortgages; cram down of vehicle to value and paid through Plan; modification of secured debt interest rate or length of terms via Plan.

Impairment of exemption-complex formula; non-possessory non-purchase money; can eliminate entire security interest or bifurcate it.

Judicial liens-can impair exemptions or be avoidable as a preference.

Preferences-payments outside of the ordinary course or taking of property within 90 days of filing; or to an insider within 1 year of filing.

Fraudulent Conveyances-2 years in BK; 3 in MD; reasonably equivalent value not given; bona fide purchaser exception.

Can be used as a planning mechanism pre-divorce. Concern re: individual filings and ability to strip joint liens. Use of Ch. 20 to discharge unsecureds & then to strip off.

Evidence-financial statements can be evidence in the bankruptcy case and vice versa the bankruptcy schedules can be evidence in the domestic case.