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Bankruptcy (Quick Study Law)

QUICK STUDY LAW

BANKRUPTCY

INTRODUCTION

BANKRUPTCY CODE OVERVIEW

Chapter 1 General Provisions
Chapter 3 Case Administration
Chapter 7 Creditors, the Debtor, and the Estate
Chapter 9 Liquidation
Chapter 11 Adjustment of Debts of a Debtor
Chapter 12 Reorganization
Chapter 13 Adjustment of Debts of an Individual with Regular Income
Chapter 14 Ancillary and Other Cross-Border Cases

NOTES: How may indicate "Bankruptcy Abuse Prevention and Consumer Protection Act of 2005" changes.

On April 20, 2005, President Bush signed into law the biggest revision of the U.S. bankruptcy laws in more than 25 years. The majority of these revisions went into effect 180 days after enactment, although some provisions went into effect immediately. Chapter 11 is amended by the new code became effective July 1, 2005.

FORMS OF BANKRUPTCY RELIEF

• ELIGIBILITY GENERALLY DEPENDS
A bankruptcy petition may be filed by:

1. A municipality; or
2. Any "person" that resides, is domiciled, or has a place of business or property in the United States.

The term "person" includes individuals, partnerships, and corporations (§301(a)).

A "corporation" is defined by the code to include incorporated and unincorporated business associations, but does not include limited partnerships (§301(b)).

Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 Changes (§101(b))

1. A debtor who is an individual must obtain a hearing from an appointed credit-counseling agency within the 180-day period preceding the filing of the petition unless the individual is incarcerated, disabled, an active military duty in a war zone, or the individual certifies to the court that "certain circumstances" prevented the debtor from obtaining counseling.
2. Petition may be "deemed" filed by either an "an idea" (initially viewed by the court for failure to comply) (§302).
3. If debtor is an individual and case is dismissed and refiled within 1 year, automatic stay is subsequent order terminates. No debt-prior-confirmation notice time extended by court (§328(b)(2)).
4. Automatic stay is satisfied in subsequent order case if parties in nearby structure (§362(c)(1)(B)).
5. Certificate disclosing services received and any debt repayment plan must be filed with bankruptcy petition (§321(d)).

CHAPTER 7 (Liquidation)

1. Requirements for eligibility
2. Process
3. Debtor retains all assets and continues to use, sell, or lease property (§363)
4. Creditors paid pursuant to "plan of reorganization"

CHAPTER 11 (Rehabilitation for Individuals)

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CHAPTER 13 (Rehabilitation for Individuals)

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TRUSTEES

The U.S. Trustee, a political appointee, oversees the administration of bankruptcy cases, and appoints panel and standing trustees to Chapter 7, 11, 12, and 13 cases.

PURPOSE AND REQUIREMENTS

1. Panel and standing trustees are persons selected (and compensated) of federal government.
2. Panel and standing trustees serve as representatives of the estate, and can sue and be sued.
3. Persons in all Chapter 7 and 13 cases, but only in Chapter 11 if necessary.

POWERS AND DUTIES

1. Collecting property to create estate
2. Challenges certain pre- and post-bankruptcy transfers by debtor, including revoking certain mortgage transfers
3. Selling property of estate
4. Objecting to improper creditors' claims
5. Objecting to debtor's discharge if appropriate under §704

CHAPTER 7 CASES

1. Selected for particular case as appointed trustee §702
2. Performs Liquidation Functions

Bankruptcy Act 2005 changes

1. U.S. Trustee must review all statements submitted by debtor and submit a report as to whether those should be presented, no later than 10 days after first meeting of creditors.
2. Must, no later than 30 days after that time, file a motion to dismiss or convert under §707(b) as a means to do so only such a motion is not appropriate.

CHAPTER 11 CASES

1. Appointed only for "cases" such as filed by current management, or if in best interests of creditors.
2. Generally, the debtor remains in possession (undertaking same functions and powers of trustee) (§541).

Bankruptcy Act 2005 changes

1. In "small business" cases, specific duties to conduct an initial interview before the creditors' meeting including beginning reorganization plan, and filing of reorganization plan.

CHAPTER 13 CASES

1. Discharge of debtor's performance of plan
2. §502 says not discharge of debtor's debts under this chapter

ATTORNEYS

• QUALIFICATION REQUIREMENTS

1. Attorney for debtor (Chapters 11 & 13), trustee (Chapter 7), or creditors' committee (Chapter 11) must be approved by court
2. Attorney may be used for later representation in violation of their Code of Professional Practice Act (Ethics), Judicial
3. Attorney may not have any adverse interests to the estate (§327(b))
4. Court may authorize trustee to act as own attorney if in best interests of the estate (§327(b)(6))
5. Other professionals, such as accountants, may also be retained with court approval
6. Non-lawyer preparer of bankruptcy petitions subject to strict regulation and severe penalties for misbehavior (§328)

Bankruptcy Act 2005 changes

1. Attorney responsible must sign petition, pleadings, or motions to court that attorney has performed a reasonable investigation into circumstances of disclosure, affirming that it is well-grounded in fact, warranted by law and good faith, and is not an abuse, and has no knowledge after an inquiry that information is incorrect
2. In Chapter 7, trustee may recover from debtor's estate reasonable costs incurred for preparing a motion to dismiss under the above standard of §707(b) of attorney retained FRBP §301 §327(b)(6)(B)
3. Court may also assess civil penalty against attorney
4. Expense ratably to the requirements, regulations, and motions or debt relief agency assessment, non-profit credit-counseling agencies, and bankruptcy options preparers under §329, §327, §328 and §328(a)(11)

• COMPENSATION

1. Trustees and professionals retained by debtor (Chapters 11 & 13), trustee (Chapter 7), or creditors' committee are normally paid from bankruptcy estate (§541, §301)
2. All professional fees must be approved by court (§327)
3. Fees to be considered in allowing or denying the request enumerated in §306(a)
4. In considering reasonable compensation the court shall consider nature, extent, and value of services, including time spent, costs charged, necessity of services, time in which services were performed, and ordinary compensation
5. In Chapter 7, debtor's attorney is not entitled to request from bankruptcy estate, must receive fee from debtor in advance (§301, §328, §329)

Bankruptcy Act 2005 changes

1. Fees have second priority, except unpaid claims of administrative expenses (§301, §327)

PROCEDURE

• COMMENCEMENT OF A CASE

• FILING REQUIREMENTS

1. Documents that be filed, signed, or verified electronically if case under §301 or §302
2. Voluntary may occur that may be a debtor files under §301 or §302
3. Involuntary creditors may file under Chapter 7, 11 only (§302)
4. Where there are 12 or more unsecured creditors in bankruptcy, at least 3 petitioning creditors holding unsecured, non-contingent, unperfected claims totaling \$1,475 or more are required



Synopsis

The series that BarCharts was built upon. For those in law school facing loads of information that culminates in the Bar Exam.

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Customer Reviews

Honestly, at first, I couldn't see how ONE laminated PAGE (front and back) would be enough to sum up a whole course in a manner that would help me on my law school exam....but once I received it in the mail and started looking it over, my mind was changed, completely!! HIGHLY recommend for someone who wants a very concise guide that will help you pick out what's truly important in this subject vs. info that can be left out without causing any point reductions on exams.

BarCharts normally makes great products, but this one is useless. Few cases are discussed, and the sections confusingly tell you a rule, only to tell you a few lines down how it was changed by BAPCA. It's well past BAPCA's 2005 passage, and everyone's textbook has been updated by now. Unfortunately, nobody updated this product.

I used the Fed Income Tax BarCharts, which was extremely helpful for citing statute sections and key cases. However, this BarCharts for Bankruptcy was 50% longer and not nearly as helpful. It might be because of my particular class. I took the course with one of the author's of the widely-used Bankruptcy Law textbook, and we focused much on 1129 cram downs and 363 sales, which I found lacking in this supplement.

Well organized. Has a lot of the main laws. Would've been better if each stated law noted which § it was referring to.

Came quickly, nice review.

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