

Bankruptcy Quick Reference Guide

FRANKLIN &
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TYPES OF BANKRUPTCY CASES

Chapter 7 - *Liquidation* - Available to individuals and corporations. A bankruptcy Trustee gathers and distributes all the debtor's assets to creditors in order of priority.

Chapter 11 - *Reorganization* - Generally for corporate debtors. Enables a company to reorganize through a plan while the automatic stay prevents creditors from seizing assets.

Chapter 13 - *Individual Debt Adjustment* - Permits an individual debtor to retain assets, normally a residence, by paying creditors through a plan.

AUTOMATIC STAY

The automatic stay generally goes into effect immediately when a debtor files a bankruptcy case. The automatic stay prevents most actions against the debtor or the **debtor's assets**. Violating the automatic stay may result in an award of damages and potentially attorneys' fees. Any assets obtained in violation of the automatic stay can be recovered by the trustee. In a Chapter 13 case, the automatic stay also applies to collection efforts against any other person liable on a consumer obligation of the debtor.

POST-BANKRUPTCY COLLECTION ACTIVITIES

A **creditor** who becomes aware of a bankruptcy filing should immediately cease any collection activities outside of the bankruptcy court, including billing, collection calls or the sending of collection letters. The creditor must also immediately notify any attorney or collection agency seeking to collect from the debtor of the bankruptcy filing.

WAGE GARNISHMENTS AND WAGE DEDUCTIONS

An employer who becomes aware of a bankruptcy filing involving an employee should immediately determine which, if any, payroll deductions and garnishments should be terminated. Certain garnishments are not affected by the automatic stay, examples of these are alimony and child support. Most other garnishments and wage deductions are prohibited by the automatic stay.

MECHANICS LIENS

In some states, a creditor can file a mechanic's lien against the **debtor's assets after the debtor files** a bankruptcy case. This varies state by state, and time for filing is often very limited. If you have a potential mechanic's lien, you should consult bankruptcy counsel immediately on learning of a bankruptcy filing, as you may lose valuable rights if you do not act promptly.

POSSESSION OF DEBTOR'S ASSETS

If you are holding a **debtor's** assets on the date a bankruptcy

case is filed, you should continue holding the assets as they are when you learn of the bankruptcy filing, until you are able to consult bankruptcy counsel to determine your rights and obligations with respect to the assets. You may, under certain circumstances, be entitled to withhold the assets until you are paid charges owed to you by the debtor. Any action you take with respect to a **debtor's** assets without court approval could potentially subject you to a claim for damages for violating the automatic stay.

DOING BUSINESS WITH A DEBTOR

A bankruptcy petition does not necessarily end the operation of a debtor's business. Often you can continue providing goods and services to a debtor in the ordinary course of business, however, certain types of transactions require court approval, and certain types of contracts known as executory contracts give rise to special rights and obligations. You should consult bankruptcy counsel if you have an executory contract with a **debtor**, or before engaging in business with a **debtor**, to determine what your rights and responsibilities are, and whether you might forfeit compensation if you fail to obtain court approval.

GOODS PROVIDED IMMEDIATELY PRIOR TO FILING

If you provided goods to a debtor within the 20 day period immediately preceding a debtor's bankruptcy filing, you may be entitled to special rights, possibly requiring prompt action. You should contact bankruptcy counsel promptly to determine whether you may have special rights.

FILING A PROOF OF CLAIM

A proof of claim informs all parties of your claim against the debtor. You will generally not receive any distribution from a debtor's case unless you file a proof of claim. There are very strict deadlines for the filing of proofs of claim and late filings generally will not be accepted. A proof of claim must be accompanied by documentation of your claim, and there are severe penalties for filing a false proof of claim. If in doubt, consult bankruptcy counsel immediately upon learning of a bankruptcy case to determine the appropriate deadline for filing, the proper amount of the claim, and to review the proof of claim for compliance.

LEXICON

Debtor – The debtor is the person (can be an individual or a business entity) whose name appears on the bankruptcy petition. A debtor's owner, parent company or subsidiary is not, solely by virtue of that relation, a debtor.

Assets – Assets include all tangible property, e.g. equipment, real property, inventory, etc., and also includes intangible property e.g. money, stocks and claims against others (lawsuits, loans, etc.).

Priority – Priority is the order in which different types of claims are paid.
For example, administrative claims ordinarily take priority over general unsecured claims.

Administrative Claim – An administrative claim ordinarily arises from a benefit bestowed upon a debtor after the bankruptcy filing. Administrative claims arise from, for example, lease agreements where the leased property is used by a debtor after the filing or Post-filing utility. In general, an administrative claim takes higher priority than a general unsecured claim, and is therefore more likely to receive a distribution from the debtor's bankruptcy case.

Secured Claim – A secured claim is a claim against the debtor that is also a lien on, or secured by, certain of the debtor's assets. Common secured claims include mortgages, car loans, mechanic's liens, and judgments (which usually create liens on certain of the debtor's assets). In general, a secured claim must be paid in full, with interest, up to the value of the security. As a result, secured claims are far more valuable in bankruptcy than most other types of claims.

General Unsecured Claim – A general unsecured claim is a claim against the debtor that arose before the debtor's bankruptcy filing, and is not secured by the debtor's assets. Ordinarily, general unsecured claims take a lower priority in distributions than all other creditor claims and only get paid ahead of other than equity interests in the debtor.

Security – Security means the assets to which a secured claim attaches. For example, security for a mortgage is the real property to which it relates.

Executory Contract – An executory contract is a contract between a debtor and a third party where neither party has fully performed its obligations. Executory contracts receive special treatment under the bankruptcy code. You should consult bankruptcy counsel if you are a party to an executory contract to determine your rights and obligations.

Debtor in Possession or DIP – When a debtor files a Chapter 11 case and continues to operate its business, it becomes a Debtor in Possession. Transactions entered into with such a debtor after the bankruptcy filing are sometimes called DIP transactions, identifying them as being with the post-filing debtor rather than continuations of transactions with the entity that filed bankruptcy.

Plan – In a Chapter 11 or 13 case, the debtor's objective is to 'confirm' (obtain court approval of) a plan. The plan divides the debtor's creditors into similarly situated classes, and provides a certain treatment for each class as a means for the debtor to exit bankruptcy. Creditors can object to a debtor's plan, however, the debtor may be able to confirm a plan over a creditor's objection where certain conditions in the bankruptcy code are met (known as a 'cram down').

Preference – A preference is a payment on an existing debt made by a debtor to a creditor within a certain period before the debtor's bankruptcy filing, 90 days in the case of unrelated parties, and one year in the case of 'insiders' (e.g. owners and officers). A debtor, or more likely a trustee, can sue to recover preferences from their recipients. A trustee's right to recover preferences is subject to certain defenses, most commonly the 'ordinary course of business' and 'new value' defenses.

Trustee – Trustees are always appointed by the bankruptcy court in Chapter 7 and Chapter 13 cases, and sometimes in Chapter 11 cases. In Chapter 7, and when appointed, in Chapter 11, the trustee gathers and disburses a debtor's assets to creditors. Trustees in Chapter 13 cases do not take possession of the debtor's assets; rather the Chapter 13 trustee receives and distributes payments made by a debtor pursuant to a plan