

# Bankruptcy Terminology

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Most debtors who file bankruptcy, and many of their creditors, know very little about the bankruptcy process. The Public Information Series of the Bankruptcy Judges Division is designed to provide debtors, creditors, judiciary employees, and the general public with a basic explanation of bankruptcy and how it works. The series features seven pamphlets that discuss chapter 7 (liquidation), chapter 13 (adjustment of debts of an individual with regular income), chapter 12 (adjustment of debts of a family farmer), chapter 11 (reorganization), chapter 9 (adjustment of debts of a municipality), SIPA (the Securities Investor Protection Act), and bankruptcy terminology. This pamphlet on bankruptcy terminology explains, in layman's terms, many of the legal terms that are used in cases filed under the Bankruptcy Code.

**adversary proceeding** A lawsuit arising in or related to a bankruptcy case that is commenced by filing a complaint with the court.

**assume** An agreement to continue performing duties under a contract or lease.

**automatic stay** An injunction that automatically stops lawsuits, foreclosure, garnishments, and all collection activity against the debtor the moment a bankruptcy petition is filed.

**business bankruptcy** A bankruptcy case in which the debtor is a business or an individual involved in business and the debts are for business purposes.

**bankruptcy** A legal procedure for dealing with debt problems of individuals and businesses; specifically, a case filed under one of the chapters of title 11 of the United States Code (the Bankruptcy Code).

**Bankruptcy Code** The informal name for title 11 of the United States Code (11 U.S.C. 101 - 1330), the federal bankruptcy law.

**bankruptcy estate** All legal or equitable interests of the debtor in property at the time

of the bankruptcy filing. (The estate includes all property in which the debtor has an interest, even if it is owned or held by another person.)

**bankruptcy mill** A business not authorized to practice law that provides bankruptcy counseling and prepares bankruptcy petitions.

**bankruptcy petition** A formal request for the protection of the federal bankruptcy laws. (There is an official form for bankruptcy petitions.)

**bankruptcy trustee** A private individual or corporation appointed in all chapter 7, chapter 12, and chapter 13 cases to represent the interests of the bankruptcy estate and the debtor's creditors.

**chapter 7** The chapter of the Bankruptcy Code providing for "liquidation," *i.e.*, the sale of a debtor's nonexempt property and the distribution of the proceeds to creditors.

**chapter 7 trustee** A person appointed in a chapter 7 case to represent the interests of the bankruptcy estate and the unsecured creditors. (The trustee's responsibilities include reviewing the debtor's petition and schedules, liquidating the property of the estate, and making distributions to creditors. The trustee may also bring actions against creditors or the debtor to recover property of the bankruptcy estate.)

**chapter 11** A reorganization bankruptcy, usually involving a corporation or partnership. (A chapter 11 debtor usually proposes a plan of reorganization to keep its business alive and pay creditors over time. People in business or individuals can also seek relief in chapter 11.)

**chapter 12** The chapter of the Bankruptcy Code providing for adjustment of debts of a "family farmer," as that term is defined in the Code.

**chapter 13** The chapter of the Bankruptcy Code providing for adjustment of debts of an individual with regular income. (Chapter 13 allows a debtor to keep property and pay debts over time, usually three to five years.)

**chapter 13 trustee** A person appointed to administer a chapter 13 case. (A chapter 13 trustee's responsibilities are similar to those of a chapter 7 trustee; however, a chapter 13 trustee has the additional responsibilities of overseeing the debtor's plan, receiving payments from debtors, and disbursing plan payments to creditors.)

**claim** A creditor's assertion of a right to payment from a debtor or the debtor's property.

**complaint** The first or initiatory document in a lawsuit that notifies the court and the defendant of the grounds claimed by the plaintiff for an award of money or other relief

against the defendant.

**confirmation** Approval of a plan of reorganization by a bankruptcy judge.

**consumer bankruptcy** A bankruptcy case filed to reduce or eliminate debts that are primarily consumer debts.

**consumer debts** Debts incurred for personal, as opposed to business, needs.

**contingent claim** A claim that may be owed by the debtor under certain circumstances, for example, where the debtor is a cosigner on another person's loan and that person fails to pay.

**creditor** A person to whom or business to which the debtor owes money or that claims to be owed money by the debtor.

**debtor** A person who has filed a petition for relief under the bankruptcy laws.

**defendant** An individual (or business) against whom a lawsuit is filed.

**discharge** A release of a debtor from personal liability for certain dischargeable debts. (A discharge releases a debtor from personal liability for certain debts known as dischargeable debts (defined below) and prevents the creditors owed those debts from taking any action against the debtor or the debtor's property to collect the debts. The discharge also prohibits creditors from communicating with the debtor regarding the debt, including telephone calls, letters, and personal contact.)

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

**equity** The value of a debtor's interest in property that remains after liens and other creditors' interests are considered. (Example: If a house valued at \$60,000 is subject to a \$30,000 mortgage, there is \$30,000 of equity.)

**executory contract or lease** Generally includes contracts or leases under which both parties to the agreement have duties remaining to be performed. (If a contract or lease is executory, a debtor may assume it or reject it.)

**exempt** A description of any property that a debtor may prevent creditors from recovering.

**exemption** Property that the Bankruptcy Code or applicable state law permits a debtor to keep from creditors.

**exempt property** Property or value in property that a debtor is allowed to retain, free from the claims of creditors who do not have liens.

**face sheet filing** A bankruptcy case filed either without schedules or with incomplete schedules listing few creditors and debts. (Face sheet filings are often made for the purpose of delaying an eviction or foreclosure.)

**family farmer** An individual, individual and spouse, corporation, or partnership engaged in a farming operation who meet certain debt limits and other statutory criteria for filing a petition under chapter 12.

**fraudulent transfer** A transfer of a debtor's property made with intent to defraud or for which the debtor receives less than the transferred property's value.

**fresh start** The characterization of a debtor's status after bankruptcy, *i.e.*, free of most debts. (Giving debtors a fresh start is one purpose of the Bankruptcy Code.)

**insider** (of individual debtor) Any relative of the debtor or of a general partner of the debtor; partnership in which the debtor is a general partner; general partner of the debtor; or corporation of which the debtor is a director, officer, or person in control.

**insider** (of corporate debtor) A director, officer, or person in control of the debtor; a partnership in which the debtor is a general partner; a general partner of the debtor; or a relative of a general partner, director, officer, or person in control of the debtor.

**joint administration** A court-approved mechanism under which two or more cases can be administered together. (Assuming no conflicts of interest, these separate firms or individuals can pool their resources, hire the same professionals, etc.)

**joint petition** One bankruptcy petition filed by a husband and wife together.

**lien** A charge upon specific property designed to secure payment of a debt or performance of an obligation.

**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.

**motion to lift the automatic stay** A request by a creditor to allow the creditor to take an action against a 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.

**objection to discharge** A trustee's or creditor's objection to the debtor's being released from personal liability for certain dischargeable debts.

**objection to exemptions** A trustee's or creditor's objection to a debtor's attempt to claim certain property as exempt, i.e., not liable for any prepetition debt of the debtor.

**plan** A debtor's detailed description of how the debtor proposes to pay creditors' claims over a fixed period of time.

**plaintiff** A person or business that files a formal complaint with the court.

**postpetition transfer** A transfer of a debtor's property made after the commencement of the case.

**prebankruptcy planning** The arrangement (or rearrangement) of a debtor's property to allow the debtor to take maximum advantage of exemptions. (Prebankruptcy planning typically includes converting nonexempt assets into exempt assets.)

**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.

**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.

**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 describing the reason a debtor owes a creditor money. (There is an official form for this purpose.)

**property of the estate** All legal or equitable interests of the debtor in property as of the commencement of the case.

**reaffirmation agreement** An agreement by a chapter 7 debtor to continue paying a dischargeable debt after the bankruptcy, usually for the purpose of keeping collateral or

mortgaged property that would otherwise be subject to repossession.

**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.

**schedules** Lists submitted by the debtor along with the petition (or shortly thereafter) showing the debtor's assets, liabilities, and other financial information. (There are official forms a debtor must use.)

**statement of financial affairs** A series of questions the debtor must answer in writing concerning sources of income, transfers of property, lawsuits by creditors, etc. (There is an official form a debtor must use.)

**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.

**substantial abuse** The characterization of a bankruptcy case filed by an individual whose debts are primarily consumer debts where the court finds that the granting of relief would be an abuse of chapter 7 because, for example, the debtor can pay its debts.

**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** A meeting of creditors at which the debtor is questioned under oath by creditors, a trustee, examiner, or the United States trustee about his/her financial affairs.

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

**typing service** A business not authorized to practice law that prepares bankruptcy petitions.

**United States trustee** An officer of the Justice Department responsible for supervising the administration of bankruptcy cases, estates, and trustees, monitoring plans and disclosure statements, monitoring creditors' committees, monitoring fee applications, and performing other statutory duties.

**undersecured claim** A debt secured by property that is worth less than the amount of the debt.

**unlawful detainer action** A lawsuit brought by a landlord against a tenant to evict the tenant from rental property—usually for nonpayment of rent.

**unliquidated claim** A claim for which a specific value has not been determined.

**unscheduled debt** A debt that should have been listed by a debtor in the schedules filed with the court but was not. (Depending on the circumstances, an unscheduled debt may or may not be discharged.)

**unsecured claim** A claim or debt for which a creditor holds no special assurance of payment, such as a mortgage or lien; a debt for which credit was extended based solely upon the creditor's assessment of the debtor's future ability to pay.

**voluntary transfer** A transfer of a debtor's property with the debtor's consent.

Sources:

Doran, Personal Bankruptcy and Debt Adjustment 135-139 (1991);

Griffin, Personal Bankruptcy: What You Should Know 145-149 (1994)