



# The Process of Collection and Creditor's Rights in Bankruptcy

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# First Steps in Collection Process

- Demand Letter
  - Some debtors may respond if it comes from a law firm, some will simply ignore it.
- Evaluate whether filing suit is practical
  - Considerations include total amount of the debt, presence/absence of attorney's fees provisions in your credit documents, source of debtor's income.
  - May not make business sense to pursue
  - Good credit documents and reliable information on the debtor (SSN or tax ID, bank account) are critical

# Repossession

- UCC Liens
  - May be able to simply repossess collateral (vehicles, equipment, etc.) if UCC lien is properly perfected
  - Any repossession must be “peaceful”

# Judicial Process

- File a Complaint
  - Complaint alleges debtor is not paying as agreed
  - Requests a money judgment for the amount
  - Debtor will have approximately twenty days to respond (depends on method of service)
    - If debtor denies, then discovery/trial follow.
    - If debtor admits or fails to respond, judgment may be obtained

# Common Post-Judgment Actions

- Garnishment of Wages
  - Debtor must be an individual
  - Subject to state and federal protections
  - Social Security and disability income exempt (debt is still valid)
- Garnishment of Bank Accounts
  - Debtor may be individual or an entity
  - Need bank information
  - Bank places ninety day hold on deposit accounts

# Other Opportunities to Collect

- Judgment attaches to real property
  - Judgment would need to be released in order for debtor to obtain title insurance policy
  - Typically only applies in the county where judgment is obtained
  - May wish to register judgment in other counties where debtor owns real estate
- Judgment appears on credit report
  - May need to satisfy judgment in order to obtain additional financing from bank

# Bankruptcy Filings

- Overview of Process
  - Debtor files, United States Bankruptcy Court issues Notice of Bankruptcy to named creditors
  - Type of bankruptcy determines likelihood of payment
    - Chapter 7 – Liquidation
      - Means Tested
      - Debtor may surrender collateral or reaffirm secured debt
      - Unsecured debt discharged
    - Chapter 11 – Business Reorganization
      - Usually large business filing to restructure debt load

# Other Filing Types

- Chapter 12 – Family Farmer
  - 80% of debt from family farm operations
  - Less common type of filing
  - Goal is to reorganize/restructure and maintain operations
- Chapter 13 – Individual Repayment
  - Must have steady income
  - Partial repayment of unsecured debt, catch up missed payment on secured debt through repayment plan



# Automatic Stay

- Filing of any bankruptcy triggers automatic stay
  - Creditors must cease typical collection efforts and work through the Bankruptcy Court
  - Bankruptcy must be FILED. Don't received bankruptcy protection by speaking with attorney, thinking about it, etc.
  - Stay expires when property is no longer part of the bankruptcy estate, or when case is closed, dismissed, or debtor receives a discharge
  - Secured creditors can file and receive a relief from stay allowing recovery or further proceedings against collateral
  - Creditors can be penalized if automatic stay is violated

# Meeting of Creditors

- Bankruptcy trustee and creditors offered opportunity to question debtor about bankruptcy petition
- Conducted under oath, but no Judge is present
- Bankruptcy trustee conducts meeting and confirms accuracy of information
- Creditors can ask questions to determine whether or not bankruptcy plan is viable

# Proof of Claim

- Creditors should file a Proof of Claim unless:
  - Instructed differently by the Court
  - Debtor's Chapter 7 is determined to be a no-asset case
- Court form can be found at the following link:  
[http://www.wiwb.uscourts.gov/fillable\\_forms/ProofofClaim\\_B10.pdf](http://www.wiwb.uscourts.gov/fillable_forms/ProofofClaim_B10.pdf)
- Proof of Claim is filed to assert your right to share in the bankruptcy estate based on your status as a secured or unsecured creditor
- Debtor or any other party in interest may object to the claim

# Final Steps

- Trustee forwards payments as plan payments are received (Chapter 11, 12, 13) or as assets are liquidated (Chapter 7) according to priority
- Debtor receives a discharge or case may be dismissed/closed
- When debt is discharged, no further action can be taken
- Collection action can resume if case is merely dismissed or closed.

Questions?