

Douglas County Bar Association  
February 23, 2024

# Bankruptcy for Non- Bankruptcy Practitioners



Ryan A. Blay  
Partner, WM Law

**WM LAW**

KANSAS CITY'S PREMIER BANKRUPTCY FIRM

# Agenda

- Bankruptcy Basics
- Divorce and Family Law
- Personal Injury/Worker's Compensation
- Civil & Business Litigation
- Criminal Law
- Estate Planning/Probate
- Final tips & takeaways
- Questions?

# The Basics of Bankruptcy





## Why Do People (or Businesses) File for Bankruptcy Protection?

1. The Automatic Stay
2. Discharge of Debts
3. A "fresh start"

# The Different Chapters of Bankruptcy for Individuals and Businesses

- Chapter 7 – a liquidation in which the debtor’s assets are placed into the control of a trustee, who liquidates non-exempt property and sells for the benefit of creditors. Trustees also have certain powers to avoid/undo transactions to recover property/money for creditors. Typically a 3 month process from filing to discharge.

Available for individuals and (rarely) corporations

- Chapter 11 – A reorganization usually for high income individuals or businesses in which the debtor puts together a plan and submits it for balloting by creditors. There is a newer version called Subchapter V.

Available for individuals (rarely) and corporations

# The Chapters of Bankruptcy, Continued

- Chapter 12 – a reorganization exclusively for family farmers and fishermen. Individuals and business entities can file.
- Chapter 13 – a reorganization designed for wage earners to repay debts over 3-5 years. Contains a “super discharge” that eliminates more debts than Chapter 7 can. ONLY available for individuals.

All of these chapters have different rules for eligibility we will not delve into today.

# What do Debtors Get Out of Bankruptcy?

- (1) The Automatic Stay protects debtors from most (not all!) collection activity. It not only protects the filing Debtor, but also the “property of the bankruptcy estate”
- (2) With debt eliminated in a Chapter 7, an opportunity for a “Fresh start”
- (3) A chance to breathe by reorganizing debt loads and stopping creditor activities.

# What isn't protected by the automatic stay? (11 U.S.C. Section 362)

- Criminal actions
- Establishing or modifying domestic support obligations
- Actions under state law regarding driver's licenses
- Divorce proceedings (except division of assets)



# A married couple and their divorce attorneys walk into a bar.....

1. Finances and money management cause stress
2. Stress leads to divorces and separations
3. Divorces and separations lead to bankruptcy filings. (Roughly 50% of divorces end with one or more filings).

Navigating the complexities of divorce and bankruptcy can be a CLE of its own. What happens in the context of both legal actions depends largely on who your client is and what their goals are.

- Whether one party has to pay child support, alimony, or maintenance to another.
- What happens to property settlements and equalization payments
- Whether one party is ordered to pay the debts of another
- How the parties want to divide up assets

# What can a bankruptcy attorney do to help a divorce move smoothly?



- (1) Eliminate debts. One less thing to bicker about
- (2) Provide some level of reason if one party (or both) is being unreasonable
- (3) Provide financial disclosure for any party filing – verification through bank statements, paystubs, tax returns, etc.

# How Can a Bankruptcy Throw Off a Divorce?

- (a) Delay divorce – if the automatic stay is not lifted, the parties cannot divide property of the estate and proceedings can't be finalized
- (b) Discharging property division and equalization payments (non-DSO obligations in Chapter 13)
- (c) Undoing divorce decrees that are "fraudulent conveyances" (one party receives property for less than adequate consideration)



# OK, but what if I don't want to be depressed by family law and I want to help people who have been injured

Typically, claims for injuries like torts and worker's compensation claims are property of the bankruptcy estate.

Most states protect worker's compensation \*claims\* if the funds haven't been received. However, if they have, the answer isn't so simple.

Personal injury claims are not exempt. They belong to the trustee, in Chapter 7, or the Chapter 13 (or 11 or 12) Debtor.



# OK, but forget my client for a moment. What about ME?



- Professionals such as lawyers and special counsel need to be employed by the bankruptcy estate. The Chapter 7 trustee or the Debtor-in-possession can file a motion to retain counsel and approve the fee agreement (contingency, hourly rate, etc.)
- Some trustees will turn to other counsel, while others will keep the counsel that's familiar with the case.
- How are your fees paid? Were they paid up before bankruptcy?

# Civil and Business Litigation

Peter Plaintiff sues Don Defendant and Don's Dental LLC

Peter obtains default judgment against both parties

Who files bankruptcy? Don, Don's Dental, both, or neither?

With the increase in small business bankruptcies (Chapter 11s), there is still a need to protect the business owners.

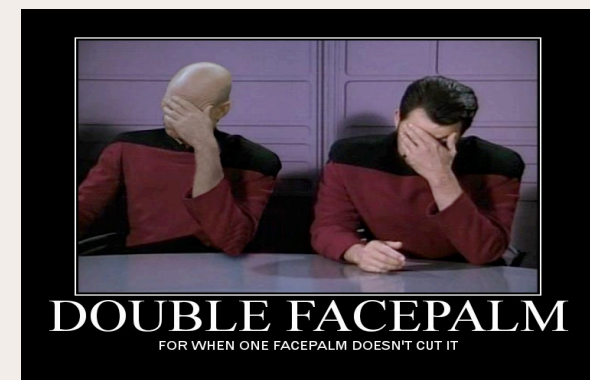
For debtors who shut down their companies and cease operations, a personal bankruptcy may be the ultimate resolution.

# Prosecutors and Criminal Defense Attorneys: Your Time to Shine

- a. Some debts are excluded from a discharge. Those include:
  - violations of securities laws
  - Federal election law fines
  - Restitution under Title 18, US Code (note: likely extends to all criminal restitution)
  - fraud, defalcation in a fiduciary capacity, embezzlement, larceny (Note: this must be alleged and brought to judgment, it is not automatically exempted from discharge)
- b. Sometimes, in the course of a bankruptcy, a Debtor may commit an action that requires a referral to a criminal defense attorney (or a referral to the United States Attorney's Office...)

False oaths or false testimony

Converting or mutilating property of the bankruptcy estate



# Criminals beware...

Both Chapter 13 and Chapter 11, Subchapter V involve limits on the amount of debt a debtor can have to qualify. A large restitution judgment could make a debtor ineligible to file an otherwise appropriate Chapter of bankruptcy.

A prior criminal conviction may also constitute cause for a Debtor in possession to be removed in a Chapter 11 bankruptcy and a trustee appointed.

A question on the statement of financial affairs requires disclosure:

Within 1 year before you filed for bankruptcy, were you a party in any lawsuits, court action, or administrative proceeding? List all such matters, including personal injury cases, small claims actions, divorces, collection suits, paternity actions, support or custody modifications, and contract disputes.



# Estate Planning and Probate



# Property of the Bankruptcy Estate (Section 541 of the Bankruptcy Code)

all legal or equitable  
interests of the debtor  
in property as of the  
commencement of the  
case.

PLUS....

- Any interest in property that would have been property of the estate if such interest had been an interest of the debtor on the date of the filing of the petition, and that the debtor acquires or becomes entitled to acquire within 180 days after such date—**(A)** by bequest, devise, or inheritance;....
- **(C)** as a beneficiary of a life insurance policy or of a death benefit plan.



## Inheritances in Reorganization Cases

These issues can affect Chapter 13 debtors in particular (or Chapter 11 or 12 debtors early on if the matter becomes known). Inheritances, even after 180 days from filing, often create new surplus disposable income. Does this inherited money go to the debtor, his/her creditors, or both?

# Proper Estate Planning Can Prevent Bankruptcy Issues

- (1) Rather than debtor placing a relative on title to a vehicle, a bank account, or piece of real estate, there are better solutions, like beneficiary deeds
- (2) For those setting up trusts, spendthrift provisions can prevent a debtor's creditors, through a bankruptcy trustee, from accessing trust property
- (3) Transferring property to a 3<sup>rd</sup> party without proper estate planning mechanisms could cause fraudulent conveyance issues

## Final tips & takeaways

- Bankruptcy can impact a whole slew of legal issues
- Consult a bankruptcy specialist, just as you would want a bankruptcy attorney to consult you on issues related to your expertise
- Advise clients not to DIY the law in any respect. They will screw up and it will cost them more money to fix their mistakes



Thank  
you

Ryan Blay

913-422-0909

[blay@wagonergroup.com](mailto:blay@wagonergroup.com)

[www.kansascitybankruptcy.com](http://www.kansascitybankruptcy.com)