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Bankruptcy (Quick Study Law)

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BANKRUPTCY

INTRODUCTION

BANKRUPTCY CODE OVERVIEW

- Chapter 1 General Principles of the United States
- Chapter 3 Case Administration
- Chapter 5 Creditors, the Debtor, and the Estate
- Chapter 7 Liquidation
- Chapter 9 Adjustment of Debt of a Municipality
- Chapter 11 Reorganization
- Chapter 12 Adjustment of Debt of a Family Farmer or Fisherman or Rural Homestead
- Chapter 13 Adjustment of Debt of an Individual with Regular Income
- Chapter 15 Ancillary and Other Cross-Border Cases

[NOTE:] Also see *Uniform Consumer Credit Protection Act (UCCPAA)*; also see *Uniform Consumer Protection Act (UCCPAA)*.

On April 26, 2005, President Bush signed into law the biggest revision of the U.S. bankruptcy laws in more than 75 years. The majority of these revisions take effect 180 days after enactment, although some provisions take effect immediately. Chapter 12 is amended by the new code section effective July 1, 2005.

FORMS OF BANKRUPTCY RELIEF

- 1. **ELIGIBILITY CRITERIA FOR RELIEF**
 - a. Bankruptcy relief may be filed by:
 - 1. A municipality.
 - 2. Any "person" that resides, is domiciled, or has a principal place of business in the United States.
 - 3. The "estate" of a person, including individuals, partnerships, and corporations. **[§541(a)]**
 - b. "Corporation" is defined by the code to include:
 - 1. Any partnership, and
 - 2. Any trust, partnership, and association, but does not include limited partnership. **[§541(c)]**

Bankruptcy Case Procedures and Consumer Protection Act of 2005 changes **[§101(b)]**

- 1. A debtor who is an individual must obtain a briefing from an assigned credit-counseling agency within the 180-day period preceding the filing of the petition unless the individual is:
 - a. Financially disabled, or
 - b. An individual who, at the time of the filing of the petition, is a debtor in a Chapter 12 case.
- 2. A petition may be "dismissed" (initially) only by the court for the failure to comply. **[§541(a), Revised]**
- 3. If a debtor is an individual and case is dismissed and refilled within 1 year, automatic stay is subsequent case terminates 30 days post-refiling unless extended by court. **[§541(a), Revised]**
- 4. Automatic stay is modified to subsequently initial case if petition is merely dismissed. **[§541(a), Revised]**
- 5. Chapter 13 creditors' petitions received and not able to proceed may now be filed with bankruptcy petition. **[§541(a)]**

CHAPTER 7 (Liquidation)

- 1. Requirements for eligibility:
 - a. Debtor must be a "person" and, if an individual, must comply with credit-counseling requirement.
 - b. Railroads, domestic and foreign insurance companies, and foreign insurance or reinsurance companies.
- 2. Process:
 - a. Debtor's pre-petition non-exempt property is liquidated and proceeds are distributed in order of priority to satisfy creditor's claims.
 - b. Individual debtor's pre-petition debts are discharged generally. "Black-out" business debtor cases: optional.

CHAPTER 11 (Reorganization)

- 1. Requirements for eligibility:
 - a. Debtor must be a "person" and, if an individual, must comply with credit-counseling requirement.

- b. Railroads are eligible for Chapter 11, including, including, including, and foreign insurance companies, and foreign insurance companies, and foreign insurance companies (except an insurance case insured by a foreign insurer).
- c. Foreignly owned by business.
- d. Process:
 - 1. Debtor negotiates its liabilities and attempts to reorganize its value in an effort to financially restructure.
 - 2. Debtor retains all assets and continues to run, sell, or lease property. **[§363]**
 - 3. Creditors paid pursuant to "plan of reorganization."

CHAPTER 13 (Rehabilitation for Individuals)

- 1. Requirements for eligibility:
 - a. Available to individuals only; corporations and partnerships are ineligible.
 - b. Debtor must have income sufficiently stable and regular to enable such individual to make payments under a Chapter 13 plan. This may include:
 - 1. Regularly recurring or periodic income.
 - 2. Debtor must have non-contingent, liquidated, unsecured debt "noting less than \$100,000" and "non-contingent, liquidated, secured debt" of less than \$1,000,000.
- 2. Process:
 - a. Debtor obtains disposable income for 1 to 5 years to repay all or a portion of debts pursuant to repayment plan.
 - b. May protect some of the debtor's property than Chapter 7 because debtor keeps more property.

TRUSTEES

The U.S. Trustee, a **trustee**, represents the administration of bankruptcy cases and oversees and monitors trustee's duties. **[§541, 11, 12, and 13 cases]**

PURPOSE AND REQUIREMENTS

- 1. Panel and standing trustees are private citizens elected by creditors of the United States.
- 2. Panel and standing trustees serve as representatives of the estate, and can sue and be sued.
- 3. Reside in all Chapter 7 and 13 cases, but only in Chapter 11 if necessary.

POWERS AND DUTIES

- 1. Collecting property of the estate.
- 2. Changing certain pre- and post-bankruptcy transfers by debtor, including transferring certain nonexempt property.
- 3. Selling property of estate.
- 4. Objecting to improper creditor's claims.
- 5. Objecting to debtor's discharge if appropriate under **§541**.

CHAPTER 7 CASES

- 1. Selected for particular case as appointed under **§541**.
- 2. Performs liquidation functions.

Bankruptcy Act 2005 changes

- 1. U.S. Trustee must review all materials submitted by debtor and submit a report as to whether debtor should be permitted, no later than 180 days after the meeting of creditors.
- 2. Meet, on less than 180 days after that time, file a motion to dismiss in current case **[§541(a)]** or a motion to sue to refile such a motion is not appropriate.

CHAPTER 11 CASES

- 1. Appointed only for "cases" such as federal reorganization, or if in best interests of creditors.
- 2. Eligible creditors may elect trustee if appointment is authorized by court.
- 3. Generally, the debtor retains in possession and control of the business and assets of the estate. **[§541(a)]**

Bankruptcy Act 2005 changes

- 1. In "small" cases, the trustee, specifically, is to conduct an initial interview before the creditors' meeting including beginning reorganization plan, including a plan of reorganization, and a plan of reorganization.

CHAPTER 13 CASES

- 1. Discharging general obligations of debtor's performance of plan.
- 2. **[§541]** Also see results of trustee's duties under this chapter.

ATTORNEYS

- **QUALIFYING AGENCY (QIA)**
 - 1. Attorney for debtor **[§541(a) 17 & 13]**, trustee **[§541(a) 17]**, or creditors committee **[§541(a) 17]** must be licensed by the state and admitted to the bar.
 - 2. Attorney may be used for legal representation in violation of *State Bar Code of Professional Responsibility*.
 - 3. Attorney may not have any adverse interests to the estate. **[§541(a)]**
 - 4. Court may authorize trustee to act in own attorney's best interests of the estate. **[§541(a)]**
 - 5. Other professionals, such as accountants, may also be retained with court approval.
 - 6. Non-lawyer preparer of bankruptcy petitions advised to enter reorganization and secure protection for reorganization. **[§541(a)]**

Bankruptcy Act 2005 changes

- 1. Attorney representatives must sign petitions, affidavits, or motions to court that attorney has performed a reasonable investigation into circumstances of debtors, interests that it is well-informed of



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

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.

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.

I don't own a business but you never know. Chance favors the prepared mind!

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

Easy and accurate!

Came quickly, nice review.

Comprehensive

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