

**CHOICE OF CHAPTERS: A BANKRUPTCY PRACTITIONER'S  
COMPARATIVE ANALYSIS OF CHAPTERS 7, 11 AND 13**

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Houston

**CHAPTER 2**



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## **LICENSED**

- United States District Court, Eastern District of Texas – January 19, 1996
- United States District Court, Northern District of Texas – February 2, 1994
- Supreme Court of the State of Texas – November 5, 1993

## **PROFESSIONAL AFFILIATIONS**

- Member of the State Bar of Texas
- Member Eastern District Bar Association
- Member National Association of Consumer Bankruptcy Attorneys

## **EDUCATION**

### **Texas Tech University**

Doctor of Jurisprudence, Cum Laude, May 15, 1993.

### **The University of Texas at Austin**

Bachelor of Arts in English Literature with High Honors, May 19, 1990

## **LEGAL EXPERIENCE**

### **Campbell, Williams & Mitchell, PLLC**

Partner in firm engaged in the practice of consumer bankruptcy representation of debtors and some creditors until July, 2003

### **Michael S. Mitchell, PC**

Solo practitioner engaged in the representation of both debtors and creditors in both consumer and non-consumer bankruptcies



# **JON MATTHEW WAAGE**

**ATTORNEY AT LAW**

## **LICENSED**

- Supreme Court of the United States of America - November 16, 1992
- United States Court of Appeals for the 5th Circuit - August 20, 1987
- United States Court of Appeals for the 8th Circuit - March 23, 1987
- United States District Court, Eastern District of Texas - December 29, 1987
- United States District Court, Northern District of Texas - August 28, 1987
- United States District Court, Southern District of Iowa - April 21, 1987
- United States District Court, Northern District of Iowa - March 9, 1987
- Supreme Court of the State of Texas - November 6, 1987
- Supreme Court of Iowa - January 23, 1987

## **PROFESSIONAL AFFILIATIONS**

- Board Certified in Business Bankruptcy Law by the Texas Board of Legal Specialization, December, 1999
- Board Certified in Consumer Bankruptcy Law by the Texas Board of Legal Specialization, December 1999
- Member of the Texas Board of Legal Specialization Bankruptcy Law Exam Commission; and a 2003, 2004 Texas Board of Legal Specialization Bankruptcy Law Examiner
- Member of the State Bar of Texas
- Member of the Iowa State Bar Association
- Member of the College of the State Bar of Texas
- Member Denton County Bar Association
- Member Eastern District Bar Association
- Alliance Bar Association Board of Directors – 02/1995 - 11/1995

## **EDUCATION**

### **Drake University**

Doctor of Jurisprudence with Honors, December 19, 1986.

Performed legal services with distinction as a Senior Citizens Legal Services Attorney during the academic year of 1986.

Junior Representative for Executive Counsel of the Student Bar Association

Co-founder of the Drake Law School Running Club

### **Southern Illinois University at Carbondale**

Bachelor of Science in Hospital Administration from Southern Illinois University at Carbondale, December 16, 1983

### **Navy**

Instructor Training School, Naval Training, Great Lakes, Illinois;

Urological Technical School at the Naval Health School, Portsmouth, Virginia;

Training as a Naval Corpsman at Great Lakes, Illinois.

## **LEGAL EXPERIENCE**

**Partner – Waage & Waage, L.L.P., Attorneys At Law**  
Denton, Texas, January 1992 – June, 2004

## **AUTHOR/SPEAKER**

- Panelist/Speaker at the 2002 DFW Area Chapter 13 Seminar, Arlington, Texas
- Speaker, for the State Bar of Texas 2003 Advanced Consumer Bankruptcy Seminar
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## **MILITARY**

Veteran, United States Navy, 1976-1982 (6 years)

## **INTERESTS**

### **Running**

Completed approximately 60 Marathons (including 5 Boston marathons, the New York, Chicago, and San Francisco marathon)

### **Biking**

Completed several mid to long distance bike rallies

### **Triathlons**

Competed in several triathlons, and adventure races

Past member Fellowship of Christian Athletes - Denton Chapter (Treasurer)

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## CHOICE OF CHAPTERS: A BANKRUPTCY PRACTITIONER'S COMPARATIVE ANALYSIS OF CHAPTERS 7, 11 AND 13

### I. ELIGIBILITY ISSUES

#### A. Chapter 7

Chapter 7 will be available to almost any client who arrives in your office.

The Bankruptcy Code requires only that your debtor be a "person who resides or has a domicile, a place of business, or property in the United States . . ." 11 U.S.C. §109. A "person" is defined so as to include individuals, as well as partnerships, and corporations. 11 U.S.C. §101 (41). There is no requirement of United States citizenship. See, e.g., In re McTague, 198 BR 428 (Bankr. W.D.N.Y. 1996). See also In re Xacur, 216 BR 187 (Bankr. S.D. Tex. 1997).

Legal guardians, conservators, guardians ad litem, and next friends of infants and/or incompetent persons can initiate Chapter 7 filings on behalf of their wards. Fed. R. Bankr. P. 1004.1. However, a general power of attorney has been held to insufficient to allow a filing on behalf of another person by at least one court. See In Re Curtis, 262 BR 322 (Bankr. D. Vt. 2001).

An Executor or Administrator of an estate cannot initiate the filing of a Chapter 7 petition. However, an ongoing Chapter 7 case can usually be continued if the debtor dies during its pendency. Fed. R. Bankr. P. 1016.

One major practical limitation on the ability to file a Chapter 7 petition and receive a discharge of indebtedness is the limitation regarding those who have previously received a discharge under either Chapter 7 or 11. Simply stated, no debtor may receive a discharge under Chapter 7 or 11 unless six or more years have passed since the **filing** of the prior bankruptcy petition under which a discharge was granted. 11 U.S.C. §727(a)(8).

#### B. Chapter 11

The eligibility requirements imposed by the bankruptcy code upon the filing of a Chapter 11 petition differ in several ways from the limitations imposed upon Chapter 7 and Chapter 13 filings. These differences can be of critical importance to the client, and must therefore be understood even by those bankruptcy practitioners who are rarely involved in Chapter 11 proceedings.

First, the debt limitations imposed on Chapter 13 do not exist in Chapter 11, thus making an attempted reorganization of debt available to those who simply have too much debt to qualify for Chapter 13. It should be noted that the Debtor may qualify for a somewhat streamlined Chapter 11 process offered to

"small business" debtors under the provisions of 11 U.S.C. §101(51C), 11 U.S.C. §1121(e), and Fed. R. Bankr. P. 1020 if the Debtor's aggregate non-contingent liquidated unsecured and secured debts do not exceed two million dollars.

Second, partnerships and corporations, although excluded from Chapter 13, are eligible to reorganize (or liquidate) under Chapter 11. Third, no requirement of regular income is imposed upon the debtor by Chapter 11.

Although Chapter 11 is often perceived as a Chapter used only by large corporations, it is available to individuals as well. With the enactment of Fed. R. Bankr. P. 1004.1, it would appear that legal guardians, conservators, guardians ad litem, and next friends of infants and/or incompetent persons could initiate Chapter 11 proceedings on behalf of an individual. Under the provisions of Fed R. Bankr. P. 1016, the death of a Chapter 11 debtor does not mean that automatic dismissal of the case. Rule 1016 gives the court the power to proceed with the case if practicable.

The absence of upper debt limits, the availability to diverse debtors, and lack of required "regular" income discussed above combine with greater plan flexibility to make Chapter 11 a more suitable vehicle than Chapter 13 for some debtors seeking to liquidate or reorganize.

#### C. Chapter 13

There are four major limitations placed upon the ability to file a Chapter 13 petition. The first three are delineated in 11 U.S.C. §109(e). First, the debtor must be an "individual." Note that this requirement excludes both partnerships and corporations from Chapter 13.

Second, the debtor must have "regular income". 11 U.S.C. §101 (30) defines "regular income" as income that is "sufficiently stable and regular to enable [the debtor] to make payments under Chapter 13 of this title . . ." This is obviously a broad description, and, in recent practice, almost any source of regular income, whether from employment, government benefits, family and/or spousal support, or other regular stream of income will support a Chapter 13 filing.

The third limitation placed upon Chapter 13 eligibility is the dollar limitation set out in 11 U.S.C. §109(e). Note that these dollar amounts are adjusted every three years pursuant to the provisions of 11 U.S.C. §104. Currently, only an individual, and his or her spouse, who owes, on the date of the filing of the petition, non-contingent, liquidated, unsecured debts of less than \$307,675.00 and non-contingent, liquidated, secured debts of less than \$922,975.00, may file bankruptcy under Chapter 13. 11 U.S.C. §109(e).

The fourth limitation on Chapter 13 filing is encountered less frequently, but can be just as fatal to a

debtor's ability to file Chapter 13. This section of the Code applies only to a debtor who has been in a prior bankruptcy case. Simply stated, the filing of a Chapter 13 case is prohibited if: 1) the debtor's prior case was dismissed within the preceding 180 days; **and** 2) the dismissal was obtained by the debtor voluntarily following the initiation of an effort to terminate the bankruptcy stay by someone other than the debtor; **or** the case was dismissed by the court either for "willful failure of the debtor to abide by the orders of the court, or to appear before the court in proper prosecution of the case." 11 U.S.C. §109(g).

Finally, as with both Chapters 7 and 11, an Executor or Administrator of an estate cannot initiate the filing of a Chapter 13 petition. However, an ongoing Chapter 13 case can usually be continued if the debtor dies during its pendency. Fed. R. Bankr. P. 1016.

## **II. LIEN ISSUES**

The ability to effectively deal with the liens of creditors is often crucial to the success of your client's bankruptcy filing. Here again, an understanding of the attributes of Chapters 7, 11, and 13 is important.

Chapter 13, and more specifically 11 U.S.C. §1322(b)(2), provides the most powerful tool for modification of liens. This section, in combination with 11 U.S.C. §506, allows the debtor to strip or "cram down" a secured claim so that the debtor need only remit the value of the allowed claim to the lienholder in order to retain the collateral at issue. Chapter 11 also provides a debtor with great flexibility to modify and bifurcate secured claims, often over a greater period of time than would be possible in either Chapter 13 or Chapter 7.

The "cramdown" provisions of Chapter 13 do not exist in Chapter 7. However, Chapter 7 debtors may often effectively modify secured claims by virtue of the code provisions governing the reaffirmation (11 U.S.C. §524(c)) and/or redemption (11 U.S.C. §722) of debts.

## **III. PLAN ISSUES**

A thorough discussion of Chapter 11 plan issues is well beyond the scope of this paper. However, several differences between Chapter 11 and Chapter 13 plans are worth noting.

As noted above, Chapter 11 plans provide the debtor with the advantage of proposing a plan that may exceed the five year maximum term of Chapter 13. However, with this advantage comes several distinct disadvantages that do not exist in Chapter 13. Most notable among these disadvantages is the greater participation in the plan crafting process available to creditors of the estate in Chapter 11. Chapter 11 creditors are often entitled to vote to accept or reject

the debtor's plan and, may, in appropriate circumstances, file a plan in the case. The Chapter 11 debtor must also file and obtain the court's approval of a disclosure statement that provides creditors of the estate with information adequate to allow the creditors to support, or oppose, confirmation of the plan.

## **IV. DISCHARGE ISSUES**

A full or partial discharge of the indebtedness of your client is the ultimate goal of most bankruptcy filings. The debtor's discharge is granted, if at all, according to the nature of the debt and the Chapter under which the debtor proceeds. 11 U.S.C. §523 sets out exceptions to discharge in bankruptcy, and is incorporated and modified by 11 U.S.C. §§ 727, 1328 and 1141. An understanding of the differences between Chapters 7, 11 and 13 is thus crucial to successful representation.

### **A. Tax Issues**

The possible tax-related issues that arise in bankruptcy cases are too numerous and varied to address fully in this paper. However, a debtor's ability to discharge income taxes, whether assessed by federal or state taxing entities, must be addressed in any discussion regarding the debtor's choice between Chapters 7, 11, and 13.

Income tax dischargeability in bankruptcy is governed by six major factors: 1) The date on which the return was filed (if filed at all); 2) The time that elapsed between the filing of the return and the filing of the bankruptcy petition; 3) The date on which the tax liability was assessed (if assessed); 4) The date on which a tax lien was filed (if ever filed); 5) The conduct of the debtor; and 6) The existence (or lack thereof) of several tolling events. Understanding these factors and their effect on dischargeability is crucial for debtor's counsel.

The following is a very brief and simplistic outline of dischargeability, as governed by 11 U.S.C. §§507, 523, 727, 1328, and 1141, of income tax debts in the three chapters discussed herein.

1. An income tax is dischargeable in Chapter 7 if:
  - a. The Debtor's tax return was filed more than 2 years prior to the bankruptcy petition date;
  - b. The return was non-fraudulent;
  - c. The debtor has not engaged in an attempt to willfully evade payment of the tax;
  - d. The tax at issue was assessed more than 240 days prior to the bankruptcy petition date;
  - e. The most recent date that the tax return was due to be filed, including any extensions, is more than three years prior to the bankruptcy petition date;

- f. The taxing entity does not hold a valid tax lien; and
- g. No events have occurred that would “toll” the running of the periods noted in paragraphs a, d, or e above.

2. An income tax debt is dischargeable in Chapter 13 if:

The taxing entity fails to timely file a proof of claim in the case after receiving proper notice the filing of the case.

OR

- a. The tax at issue was assessed more than 240 days prior to the bankruptcy petition date;
- b. The most recent date that the tax return was due to be filed, including any extensions, is more than three years prior to the bankruptcy petition date;
- c. The taxing entity does not hold a valid tax lien; and
- d. No events have occurred that would “toll” the running of the periods noted in paragraphs a or b above.

OR

- a. The most recent date that the tax return was due to be filed, including any extensions, is more than three years prior to the bankruptcy petition date;
- b. No events have occurred that would toll the running of the period listed in paragraph a above.
- c. The tax at issue has not been assessed by the taxing entity, but is assessable; and
- d. The debtor either failed to file the return or filed it within two years of the petition date or filed a fraudulent return or willfully attempted to evade or defeat the tax.

3. An income tax debt is dischargeable in Chapter 11 if:

Chapter 11 generally follows the same rules for dischargeability as Chapter 7. However, specific Chapter 11 plan provisions may, from time to time, alter dischargeability issues.

Note – the “tolling events” referenced above include periods of time during which a tax court case was pending, during which an offer in compromise was pending, during which prior bankruptcy was pending, etc. and are beyond the scope of this paper.

A careful comparison of the dischargeability outlines above will reveal that Chapter 13 can hold significant advantages over Chapters 7 and 11

depending upon the specific circumstances of the debtor’s case. Specifically, the “super discharge” granted by Chapter 13 will allow a debtor who has either failed to file returns or has engaged in more willful fraudulent activity or evasion to discharge a tax that is otherwise non-dischargeable.

An additional benefit available to the Chapter 13 debtor is the ability to repay those tax debts that are non-dischargeable (i.e. priority unsecured tax debts) without the additional accrual of penalties and interest, over a term of as many as five years

Finally, if the debtor is facing a secured tax claim (i.e. one where the IRS is in possession of a properly filed and otherwise valid tax lien), Chapter 13 allows the debtor to in effect “cramdown” the value of the IRS tax lien to a value commensurate with the total amount of equity in the debtor’s real and personal property and to repay this sum over a term of as many as five years.

### B. Other Dischargeability Issues

The laundry list of exceptions to discharge set out in 11 U.S.C. §507, and incorporated and modified by 11 U.S.C. §§ 727, 1328 and 1141 governs the discharge of all debts in bankruptcy. §1328(a)(2) is particularly important as it governs the “super discharge” available to debtors under Chapter 13.

As illustrated by the Chapter 7-11-13 chart included with this paper, the “super discharge” allows a Chapter 13 debtor to discharge many debts not dischargeable under either Chapter 7 or 11, while specifically providing that certain support, student loan, and “DUI” related debts remain non-dischargeable in Chapter 13.

§1328(a)(5) governs the “hardship discharge” available to a Chapter 13 debtor who meets certain criteria enumerated therein. The effect of a hardship discharge is essentially to obtain a Chapter 7 discharge for a debtor who cannot complete his or her Chapter 13 plan due to circumstances beyond his or her control. The hardship discharge is a useful, and probably under-utilized, tool that the Chapter 13 practitioner should keep in mind.

### V. AUTOMATIC STAY ISSUES

The extent of the automatic stay, and the time frame in which it terminates is determined by the choice of Chapters.

If your client’s debts are primarily consumer debts, the co-debtor stay imposed by Chapter 13 may be of importance. The co-debtor stay prohibits creditors from attempting to collect consumer debts from a co-debtor of the debtor unless the creditor obtains relief from the co-debtor stay after notice and a hearing. The co-debtor stay is imposed by 11 U.S.C. §1301 and thus does not exist in either Chapter 7 or Chapter 11.

11 U.S.C. §362(c) provides that the automatic stay terminates as to actions against property of the estate as soon as said property is no longer property of the bankruptcy estate. Pursuant to the provisions of 11 U.S.C. §1141(b) and 11 U.S.C. §1327(b), the confirmation of a plan under Chapter 11 or Chapter 13 vests all property of the estate in the debtor, unless the plan specifically provides to the contrary. Thus, in most Chapter 11 and 13 cases, the stay terminates as to actions against property upon confirmation.

In Chapter 7 cases, the stay will terminate as to actions against property of the estate as soon as the debtor's claimed exemptions are allowed pursuant to the terms of 11 U.S.C. §§362(c), 522(l) and Fed. R. Bankr. P. 4003(b). Thus, in the majority of Chapter 7 cases, the stay will terminate as to exempt property on the 31<sup>st</sup> day following the conclusion of the meeting of creditors in the case.

In Chapter 7 and 13 cases, the automatic stay as to acts other than acts against property will continue until the debtor receives a discharge. In the typical Chapter 7 case, this will be a period of about four to six months. In the typical Chapter 13 case, this will be a period of about three to five years.

In Chapter 11, the automatic stay as to acts other than acts against property will terminate, for all practical purposes, at confirmation since the Chapter 11 debtor receives a discharge of dischargeable pre-petition debts at confirmation. 11 U.S.C. §1141(d).

## **VI. CLAIM ISSUES**

The procedure for the filing of claims by creditors differs somewhat between Chapters 7, 11, and 13 in accordance with the differing purposes of the Chapters.

It is worth noting that, if a Chapter 11 debtor schedules a debt, a claim for that debt as scheduled is deemed filed. 11 U.S.C. §1111(a). Claims are not deemed filed in either Chapter 7 or Chapter 13.

# **EXPLAINING THE RELIEF AVAILABLE**

By

**JON WAAGE  
MIKE MITCHELL**

State Bar of Texas  
**CONSUMER BANKRUPTCY BOOT CAMP**  
September 22, 2004  
Houston

**CHAPTER 2**



Explaining the relief available to your client under chapter 7, 11, 12, or 13 of title 11 United States Code. On the second page of every petition you file is the following signature block;

**Exhibit B**

(To be completed if debtor is an individual  
whose debts are primarily consumer debts)

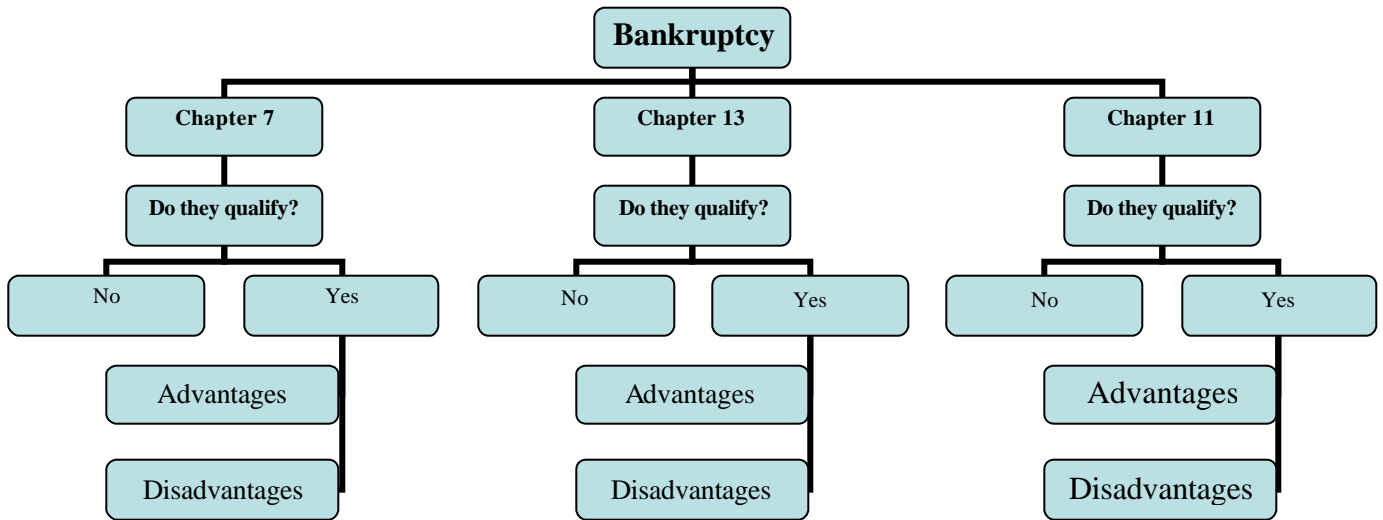
I, the attorney for the petitioner named in the forgoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter.

X \_\_\_\_\_  
Signature of Attorney for Debtor(s)

Rule 9011(c) provides for sanction if an attorney signs a document that [she or he] knows is false. It is therefore, in your best interest in each and every case that you create a normal course of business procedure to explain the relief available under each chapter to all of your clients.

One such way is to create a form letter that you can send to your clients before you file for them. However, in reality, time is often the enemy. Therefore you also need to create for your self some standard business dealings where, in each and every client interview, you at least touch the bases of all of the available chapters (perhaps then followed up by a letter).

In this paper, we have tried to give you a very brief and quick overview to help you during your client interview stage. This paper is meant to be short and to the point. In part, because of time constraints, realistically, you can not afford to spend 4 hours with each client explaining the difference between the various chapters.



# Chapter 7

## Do they qualify?

Most of you client will qualify for chapter 7 with very few exceptions; such as, a railroad, a domestic insurance company, bank, etc. These exceptions are found in 11 U.S.C. Section 109(b).

If you client is behind in their house payments or auto payments they stand a good chance of losing there homes in a chapter 7 case and should most likely consider a chapter 13 or 11 case.. Additionally, if your client has non-exempt assets they would lose in a chapter 7, there is a chance you could put them into a chapter 13 or 11 case and payout some of the unsecured debt, in order to keep the non-exempt assets.

Additionally, under 11 USC Section 727(a)(8) you client can not get a discharge under chapter 7, if they have been granted a discharge in a case commenced within the 6 years before filing the case you are considering for them. That 6 year restriction is not found under chapter 13.

Chapter 7 is where your client can discharge (which means not pay back), almost all of his or her unsecured debts. However, some unsecured debts are non-dischargeable. Some examples of non-dischargeable debts are

Certain taxes

Child support

Alimony

Student loans

Non-listed debts

Debts obtained by fraud

# Chapter 13

## Do they qualify?

### Qualifications: 11 U.S.C. § 109(e)

To file a Chapter 13 Bankruptcy, your client(s) must have a regular source of income and be otherwise eligible.

Additionally, to file Chapter 13, your client (s) must owe less than \$922,975 in secured debts and less than \$307,675 in unsecured debts. Corporations and partnerships can not file Chapter 13 but may file Chapter 11 to reorganize their debt structure.

### If they do qualify:

Problems you client may have that a chapter 13 can help resolve:

Foreclosure;

Repossessions;

Wage turn-over orders or garnishments by the IRS;

Interest and penalties on income taxes that was due prior to filing Chapter 13 (unless the IRS has filed a lien - in which case your client may have to pay interest to the IRS under the Chapter 13 Plan but not post-petition penalty).

### IRS Taxes

Most of the time you can spread equal, monthly payments for your clients over 36 to 60 months without further penalty or further interest. However, over the course of the Plan you must pay any interest accrued prior to filing. In some cases, you may also have to pay IRS penalties over the course of the Plan.

In some cases, IRS taxes that are more than three years old can be completely discharged. There are exceptions to the rule that allow these taxes to be discharged, so we must discuss your specific situation with you to give you a more definite direction.

### Property Taxes

You can pay past due property taxes through your plan.

### Foreclosure

Under Chapter 13, if your client is behind on house payments, you can stop foreclosure and usually spread the arrearage (amount you are behind) over 36 to 60 months. However, from the day your client files bankruptcy, you must inform them very clearly that they are to stay current on all mortgage payments that come due from that day on. Sometimes you have to remind them over and over again.

## **Car Payments**

Your clients' car payments, in some cases can be reduced by reducing the principal amount due. Such can be accomplished by using the 11 U.S.C. 506 section of the code. In most cases you will probably put your proposed value in the plan, and come to an agreement with the creditor as to the value latter. If you can not agree, then you will probably need to file an objection to the creditors proof of claim and have a hearing on the matter.

## **Liens and Exemptions**

If a creditor has a valid lien on any property (even if the property is exempt), to keep that property, your client must be current with the creditor and continue making your regularly scheduled payments to the creditor; or in some cases pay the claim or value the item through the plan. There are numerous circumstances where you will experience the fun and excitement of finding out, after you file for your client, that there are secured creditors out there that you were not informed of before you filed the case.

# Chapter 11

## Do they qualify?

Corporations, partnerships, or larger businesses (that do not qualify for Chapter 13), usually use chapter 11 to reorganize their debt.

A corporation or a partnership can not file a Chapter 13. They may choose to file either a Chapter 11 or Chapter 7 Bankruptcy. Although an individual can file a Chapter 11, many people find that Chapter 11 is simply too costly because of the extensive requirements that Federal Bankruptcy Law imposes. A Chapter 11 can easily cost 10 times (or more) that of a Chapter 13 Bankruptcy in legal fees and other related costs. Also, the plan in a Chapter 11 is usually much more complex than a plan in a Chapter 13. I can not visualize taking on a chapter 11 for anything less than at least \$10,000.00 up front as a retainer.

## If they do qualify:

### Variations of Chapter 11

Chapter 11 plans vary a great deal. You can create a straight liquidation plan, that shuts down your clients business, sells (or gives back) all of your clients property, and pays whatever you can to the creditors. Or, you can create a plan where your client stays in business and pay all of their creditors in full over a period of time. Note that a Chapter 11 plan could be created somewhere in the middle of these two extremes.

If your client (or your clients business) can't currently pay their bills due to temporary cash flow problems, a Chapter 11 may help them extend or reduce their debts, and perhaps even help their eliminate some of your operating costs.

### Disclosure Statement

In a Chapter 11, you must file an extensive Disclosure Statement. The disclosure statement is a document that must contain enough information regarding your clients' assets, liabilities, and affairs, so that creditors can make an informed judgment about the plan. After the disclosure statement is filed, the Bankruptcy Court holds a hearing to determine whether it should be approved. You can not seek acceptance or rejection of the plan without prior approval by the court of the disclosure statement.

### Plan of Reorganization and Classes

Additionally, you may file a detailed plan of reorganization 11 U.S.C. §1121 You need to file your plan of reorganization within 120 days of filing your bankruptcy. If you do not file a plan of reorganization within 120 days, a party in interest (such as a creditor, or creditors' committee) may be able to file their own plan.

The plan of reorganization must include classification of claims, and must specify how each class of claims will be treated under the plan. Similar creditors are classified together. Under Chapter 11, a creditor within certain classes can vote against the plan. What you seek to achieve is acceptance by each class of claims.

A class of claims has accepted the plan if at least two-thirds in amount and more than one-half in number of the allowed creditors in that class vote in favor of the plan. A plan with creditors support, is usually more likely to be approved by the bankruptcy court, and cost you less in legal fees. If there are "impaired" classes of claims in the plan, the court cannot confirm the plan unless it has been accepted by at least one class of non-insiders whose claims are impaired under the plan. An impaired claim is a claim that is not going to be paid completely or in which some legal, equitable, or contractual right is altered. Even if at least one of the aforementioned impaired classes have accepted the plan while other classes vote against it, there may be still more requirements that must be met in order to confirm the plan. Additionally, the plan must be approved by the Bankruptcy Court.

# Chapter 12

## Do they qualify?

If chapter 12 is statutorily available, then 11 U.S.C. Section 109(f) states that “only a farmer with regular annual income may be a debtor under chapter 12 ...” We would suggest that, if you client is a farmer, and chapter 12 is currently available, then review in more detail the qualifications under 109. Additionally, review chapter 12. In the area where we practice, even when Congress has kept chapter 12 alive, it seems like a rare animal.

	Chapter 7	Chapter 13	Chapter 11
<b>Eligibility Issues:</b>			
Individual Corporation	Yes	Yes	Yes
Partnership	Yes	No	Yes
Legal Guardian	Yes	No	Yes
Non-Citizen	Yes	Yes	No **
Dollar Limitations	None	\$922,975.00 secured \$307,675.00 unsecured	Yes
6-year time limitation on re-filing	Yes	Non-contingent & unliquidated	No - but "small business" treatment available if debt is under 2 million
Regular Income Requirement	No	No	No
<b>Lien Issues:</b>			
Mortgage Lien Stripping	No	No	No
Junior Mortgage Lien Stripping	No	Possibly, if lien wholly unsecured	Possibly, if lien wholly unsecured
Judgment Lien Avoidance	Yes	Yes	Yes
Avoidance of Non-purchase Money Lien	Yes	Yes	Yes
<b>Plan Issues:</b>			
Permissible Length of Plan	N/A	3 to 5 years	No limit
Disclosure Statement Required	N/A	No	Yes
Voiting on Plan by Creditors	N/A	No	Yes
Creditors able to file plan	N/A	No	Yes, 121 days after order for relief
Post-confirmation modification allowed	N/A	Yes	Yes, if court retained jurisdiction
Best interest of creditors test relevant	N/A	Yes	Yes
<b>Discharge Issues:</b>			
Income Tax Debts			
Willful Evasion or Fraud			
Return on file less than 2 years	Non-dischargeable	Dischargeable, if other conditions met	Non-dischargeable*
3+ yrs passed from date return due	Non-dischargeable	Dischargeable, if other conditions met	Non-dischargeable*
Assessed w/in 240 days of petition	Dischargeable, if other conditions met	Dischargeable, if other conditions met	Dischargeable, if other conditions met
Valid Tax Lien Filed pre-petition	Non-dischargeable	Non-dischargeable	Non-dischargeable*
Fraud-based Debts	Non-dischargeable	Non-dischargeable to extent of value of lien	Non-dischargeable to extent of value of lien*
Debts not Scheduled/Listed	Non-dischargeable***	Dischargeable	Non-dischargeable*
Child/Spousal Support Debts	Non-dischargeable***	Dischargeable***	Non-dischargeable*,***
Willful/Malicious Injury	Non-dischargeable	Non-dischargeable	Non-dischargeable*
Fine/Penalty owed to Govt. Unit	Non-dischargeable	Dischargeable	Non-dischargeable*
Student Loans	Non-dischargeable absent hardship	Non-dischargeable absent hardship	Non-dischargeable*
DUI-based Debts	Non-dischargeable	Non-dischargeable	Non-dischargeable*
Fine/Restitution from Criminal Conviction	Non-dischargeable	Non-dischargeable	Non-dischargeable absent hardship
Debt incurred to pay non-dischargeable tax	Non-dischargeable	Non-dischargeable	Non-dischargeable*
Hardship Discharge Possible	No	Yes	No
Discharge Granted	Approximately 60 days after 341	Upon completion of plan	Upon confirmation*
<b>Automatic Stay Issues:</b>			
Co-Debtor Stay	No	Yes, as to consumer debts only	No
Termination of Stay	At discharge	At confirmation, unless otherwise provided	At confirmation*
<b>Claim Issues:</b>			
Bar dates	Set by Trustee in an asset case	90 days after 341 concluded for non-govt claims	Set by court or local rule
Filing of claims	Required for unsec. claims in asset case	Required for unsecured creditors	Claim deemed filed if scheduled & not
* Specific Chapter 11 plan provisions may, from time to time, alter dischargeability issues		** See attached materials	*** case law may allow discharge