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Bankruptcy (Quick Study Law)

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Condensed Material

BANKRUPTCY

INTRODUCTION

BANKRUPTCY CODE OVERVIEW

- Chapter 1: General Provisions
- Chapter 3: Case Administration
- Chapter 5: Creditors, the Debtor, and the Estate
- Chapter 7: Liquidation
- Chapter 9: Adjustment of Debts of a Municipality
- Chapter 11: Reorganization
- Chapter 12: Adjustment of Debts of a Family Farmer with Regular Annual Income
- Chapter 13: Adjustment of Debts of an Individual with Regular Income
- Chapter 15: Ancillary and Other Cross-Border Cases

(NOTE: New law indicates "Bankruptcy Abuse Prevention and Consumer Protection Act of 2005" changes.)

On April 20, 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 went into effect 180 days after enactment, although some provisions went into effect immediately. Chapter 11 is amended by the new code because effective July 1, 2005.

FORMS OF BANKRUPTCY RELIEF

1. ELIGIBILITY GENERALLY DEFINED

A bankruptcy petition may be filed by:

1. A municipality, or
2. Any "person" that resides in, is domiciled in, or has a place of business or property in the United States.

The term "person" includes individuals, partnerships, and corporations (including S corporations) as defined by the code to include incorporated and unincorporated business associations. See also the federal bankruptcy website (www.uscourts.gov).

Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 changes (BAPCPA)

1. A debtor who is an individual must obtain a briefing from an accredited credit-counseling agency within the 180-day period preceding the filing of the petition unless the individual is incarcerated, disabled, on active military duty in a war zone, or the individual certifies to the court that "special circumstances" prevented the debtor from obtaining counseling.
2. Petition may be "dismissed" (temporarily closed or "sickled") (temporarily expires) by the court for failure to comply (18 U.S.C. 541c).
3. If debtor is an individual and case is dismissed and reaffirmed within 1 year, automatic stay in subsequent case terminates 30 days post-confirmation unless time extended by court (18 U.S.C. 541c).
4. Automatic stay suspended in subsequently notified case if petition is merely to refile (18 U.S.C. 541c).

2. Complete disclosure: service must include any debt agreement plan must be filed with bankruptcy petition (18 U.S.C. 541c).

CHAPTER 7 (Liquidation)

1. Requirements for eligibility.
2. Debtor must be a "person" and if an individual, must comply with credit counseling requirement.
3. Railroads, American and foreign insurance companies, and bank holding companies are ineligible.
4. Priority used by business.
5. Debtor recognizes its liabilities and attempts to restructure its debts in an effort to financially reorganize.
6. Debtor retains all assets and continues to use, sell, or lease property (BAPCPA).
7. Creditors paid pursuant to "plan of reorganization".

CHAPTER 11 (Rehabilitation for Individuals)

1. Requirements for eligibility.
2. Process.
3. Debtor retains all assets and continues to use, sell, or lease property (BAPCPA).
4. Creditors paid pursuant to "plan of reorganization".

CHAPTER 13 CASES

1. Discharging reorganization of debtor's reorganized plan.
2. (BAPCPA) bars out-of-state of debtor's debts under this chapter.

ATTORNEYS

- **GENERAL PRACTICE ATTORNEYS**
- 1. Attorney for debtor (Chapters 11 & 13), trustee (Chapter 7), or creditors' committee (Chapter 11) must be approved by court.
- 2. Attorney may be used for later representation in violation of Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692b.
- 3. Attorneys may not have any adverse interests to the estate (18 U.S.C. 541c).
- 4. Court may authorize trustee to act as own attorney if in best interests of the estate (18 U.S.C. 541c).
- 5. Other professionals, such as accountants, may also be retained with court approval.
- 6. Non-lawyer preparer of bankruptcy petitions subject to strict regulation and severe penalties for misleading (18 U.S.C. 541c).

Bankruptcy Act 2005 changes

1. Attorney representatives must sign petitions, affidavits, or motions to court if that attorney has performed a reasonable investigation into circumstances of debtors, determining that it is well-founded in fact, supported by law and good faith, and is not an abuse, and has no knowledge after an inquiry that information is incorrect.
2. In Chapter 7, trustee may recover from debtor's unpaid non-taxable costs incurred for preparing a motion to dismiss under the abuse standard of 18 U.S.C. 541c if attorney violated FRBP 7011 (18 U.S.C. 541c).
3. Court may also order civil penalty against attorney.
4. Expenses, including the representation, regulations, and motions on debtors' agency accounts, non-profit credit-counseling agencies, and bankruptcy petition preparers under (18 U.S.C. 541c, 542, and 541c.11).

• COMPENSATION

1. Trustees and professionals retained by debtor (Chapters 11 & 13), trustee (Chapter 7), or creditors' committee are normally paid from bankruptcy estate (18 U.S.C. 541c, 542).
2. All professional fees must be approved by court (18 U.S.C. 541c).
3. Parties to be considered in allowing or denying fee requests are creditors (18 U.S.C. 541c).
4. In reorganizing, reasonable compensation the court shall consider nature, extent, and value of services, including time spent, rates charged, necessity of services, time in which services were performed, and ordinary compensation.
5. In Chapter 7, debtor's attorney is not entitled to payment from bankruptcy estate, must receive fee from debtor or advance (18 U.S.C. 541c, 542).

Bankruptcy Act 2005 changes

1. Fees have second priority among unsecured claims as administrative expenses (18 U.S.C. 541c).

ELIGIBILITY

1. Railroads are eligible for Chapter 11; stockholders, commodity brokers, debtors and foreign insurance companies, and bank holding companies (except an insured state member bank) are ineligible.
2. Process.
3. Debtor recognizes its liabilities and attempts to restructure its debts in an effort to financially reorganize.
4. Debtor retains all assets and continues to use, sell, or lease property (BAPCPA).
5. Creditors paid pursuant to "plan of reorganization".

CHAPTER 11 CASES

1. Appointed only by court, such as filed by court management, or if in best interests of creditors.
2. Eligible creditors may elect trustee if appointment is authorized by court.
3. Generally, the debtor remains in possession (including some functions and powers of trustee) (18 U.S.C. 541c).

Bankruptcy Act 2005 changes

1. In "small business" cases, specific duties to conduct an initial interview before the creditors' meeting including beginning investigative new filings and prepare plan (debtor's business plan, assets & liabilities) (18 U.S.C. 541c).

TRUSTEES

The U.S. Trustee, a federal appointee, oversees the administration of bankruptcy cases, and appoints panel and standing trustees to Chapter 7, 11, 12, and 13 cases.

• POWERS AND DUTIES

1. Collecting property to create estate.
2. Challenges certain pre- and post-bankruptcy transfers by debtor, including voiding certain inappropriate transfers.
3. Selling property of estate.
4. Objecting to improper creditors' claims.
5. Objecting to debtor's discharge if appropriate under (18 U.S.C. 541c).

CHAPTER 7 CASES

1. Selected for particular case as appointed trustee (18 U.S.C. 541c).
2. Performs liquidation functions.

Bankruptcy Act 2005 changes

1. U.S. Trustee must review all statements submitted by debtor and submit a report as to whether abuse should be presumed, no later than 15 days after first meeting of creditors.
2. Must act later than 30 days after that time, file a motion to dismiss or confirm under (18 U.S.C. 541c) or a statement as to why such a motion is an appropriate (18 U.S.C. 541c).

CHAPTER 11 CASES

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PROCEDURE

COMMENCEMENT OF A CASE

- **FILED BY: 18 U.S.C. 541c.**
- 1. Documents must be filed, signed, or verified electronically if local rules permit (18 U.S.C. 541c).
- 2. Bankruptcy may occur that may be a debtor (18 U.S.C. 541c) or (18 U.S.C. 541c).
- 3. Insolvency: creditors may file under Chapters 7, 11, and (18 U.S.C. 541c).
- 4. Where there are 12 or more unsecured creditors in bankruptcy, at least 1 petitioning creditor, including unsecured, non-contingent, unperfected claims totaling \$1,177 or more are required.



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

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.

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.

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

Came quickly, nice review.

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