

CHAPTER 7 BANKRUPTCY

SOME CONSIDERATIONS

Presented by

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WHO MAY BE A DEBTOR

- A person who resides in USA
 - A person who has a USA domicile
- A person who has a USA place of business
 - A person who has property in USA
 - A municipality

WHO IS A PERSON?

A Person includes:

- Individual
- Partnership
- Corporation (includes LLC, etc.)
- **DOESN'T INCLUDE** most governmental units

PREREQUISITES FOR CHAPTER 7

If you are an individual:

- Credit Counseling from Approved Agency
- Received within 180 days BEFORE petition
- Household income must be under median
OR
- Debts are primarily non-consumer debts OR
 - Adjustments to income are available

MEDIAN FAMILY INCOME 2014

TEXAS HOUSEHOLDS

- 1 Earner \$41,354
- 2 People \$56,296
- 3 People \$59,569
- 4 People \$68,566
- 5 People \$76,666
- 6 People \$84,766
- 7 People \$92,866
- 8 People \$100,966

DEBTOR'S DUTIES

Among other duties, the debtor shall file:

- List of creditors
- Schedule of assets and liabilities
- Schedule of current income and expenditures
- Statement of Financial Affairs
- Attorney certification of notice of chapters
- Means test
- Statement of Intention regarding secured debts

SCHEDULES AND SOFA

Gathering Information for Liabilities:

- Most recent statements from creditors
 - Collection Notices
- Copies of leases or closing papers
 - Payment advices or booklets
 - Run a credit report (free)

SCHEDULES AND SOFA

Gathering information for assets:

- Account statements (need for trustee)
 - Certificates of title
 - Deeds
 - Receipts
 - Other evidence of existence and value
 - Internet sites/Craig's List
 - Opinion letters (e.g. intellectual property)
- Room by room inventory of personal property

SCHEDULES AND SOFA

Gathering information for income and expenses:

- Pay stubs for six months (need for trustee and means test)
 - Any other income paperwork
- Two years of tax returns (mandatory filing all years; need for trustee)
 - Utility and other monthly bills

SCHEDULES AND SOFA

Gathering information for SOFA:

- Account statements
 - Lawsuits
- Tax returns (two years)
- Any paperwork on repossessions, garnishment, surrender, etc.

DETERMINATION OF EXEMPTIONS

CHOICE OF FEDERAL OR TEXAS

11 U.S.C. §522

- Pick most advantageous
 - Depends upon client needs
- Texas usually helps more often

TEXAS ADVANTAGES

- Potential unlimited homestead equity
- Must have resided in Texas 1215 days or more
 - If not, then limited to \$155,675 (currently)
 - Personal Property
 - Single person aggregate \$30,000
 - Married couple aggregate \$60,000
 - Insurance/Annuities/Other

FEDERAL ADVANTAGES

Wild Card Exemption

- Equity (real and personal property)
 - Cash
- Anything else up to exemption limit
 - \$22,975 (current)

INCLUDE EVERYTHING

COST OF OMITTING CREDITORS:

- No discharge of debt for omitted creditors
- Include disputed and zero balance creditors

COST OF OMITTING ASSETS:

- Loss of omitted assets
- Trustee may abandon/Debtor may purchase

INCLUDE ALL SOFA INFORMATION

OMISSION CAN CAUSE DENIAL OF DISCHARGE

LEGAL ASSISTANTS

- Never Complete Schedules And Sofa Alone
- Never Be the Only Face of the Firm to Client
 - Have Attorney Review Everything
 - Protect Yourself
 - Protect the Attorney
 - PROTECT THE CLIENT

AUTOMATIC STAY 11 U.S.C. §362

What actions are stayed (chapter 7)?

- The commencement or continuation of a judicial, administrative or other action or proceeding against the debtor that was or could have been commenced *before* the petition date
- any action to recover a pre-petition claim against the debtor or property of the estate
- any action to perfect or enforce a lien against property of the estate
- the setoff of any debt owed to the debtor against any claim against the debtor [common issue in ongoing business relationship after petition]
- generally speaking, the commencement or continuation of a proceeding before the US Tax Court
- DIVISION OF ASSETS AND LIABILITIES IN DIVORCE

AUTOMATIC STAY 11 U.S.C. §362

What is not stayed in family court?

- commencement or continuation of civil actions or proceedings:
 - to establish paternity
 - to establish or modify domestic support obligations
 - concerning child custody or visitation
 - for the dissolution of a marriage *except for the division of property of the estate*
 - regarding domestic violence
- collection of domestic support obligation from property that is not property of the estate
- withholding of income that is property of the estate for domestic support obligation under order or statute

MOTIONS TO LIFT STAY

WHEN IN DOUBT FILE THE MOTION
DON'T RISK CONTEMPT OF COURT

Family Court Lift Stay Motions Will Be Granted
Pending Civil Litigation Maybe
Yet to be Filed Lawsuit a Big Maybe