

Advising a Pro Per Debtor About Chapter 7 Bankruptcy

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- Michael was admitted to practice in 1981 after attending law school at U.S.C. He has been a bankruptcy and insolvency lawyer since. He has focused on representing debtors since 1990.
- He is a certified bankruptcy specialist per the State Bar of California and the American Board of Certification.
- His individual debtor cases have had debt from \$10,000 to \$250,000,000 for over 1,000 clients.
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Outcomes in a Successful Bankruptcy

- Discharge of most debts
- Automatic stay of collection activities
- Protection from unsecured creditors
- Retention of assets
 - Only those assets with value over approx. \$6,000 in equity which are not exempt are at risk. Generally, less valuable items likely will not be liquidated.

Risks in Bankruptcy

- Loss of valuable assets. It is critical to analyze this fully.
 - Location of asset irrelevant.
 - Most people overvalue their own assets.
- Dishonesty leading to an FBI investigation!

Exempt Assets

- The California statutes provide the list of protected assets. These cannot be seized.
- A person with no home to protect usually invokes CCP Section 703.140(b). It includes:
 - All household goods and clothes.
 - All pensions, retirement and social security.
 - A car with equity less than \$4,800.
 - Another \$24,000 in value in any other assets.

Limitations on Debt Discharge

- Common Non-Dischargeable Debts
 - Support: child or spousal
 - Student loans
 - Income tax debt owing for recent years or where returns were unfiled
 - Fraud or dishonesty or intentional tort debts
- Res judicata based on an earlier judgment will apply if the creditor fights the bankruptcy.

Venue

- Client must live in San Diego or Imperial County at least 90 days prior to case filing.

Pre-Bankruptcy Process

- Complete Credit Counseling
 - Available on-line. Takes 90 minutes.
- Prepare Bankruptcy Forms for Filing
 - A watercolor picture.
 - Easy to amend and augment.
- Locate the documents required for the trustee
 - Last filed federal tax return or its transcript.
 - Documentation of income in the last 60 days.

Bankruptcy Process

- File Case. Possibly get filing fee waived.
- Provide Mandatory Trustee Documents
 - In the first 2 weeks of the case.
- Attend the Meeting with the Trustee
 - Held about day 30 in the case.
- Complete a Financial Management Course and file the certificate of completion
 - Before the discharge issues.
- Receive Discharge or see who challenges
 - In about 90 days.
- This process spans about 90-100 days.

The Players

- The Court: exists to resolve disputes. Not a participant in 90% of cases.
- The Creditors: rarely participate. Best predictive factor: animus toward the debtor.
- The Trustee: he\she liquidates assets if valuable and have nonexempt equity.
- Trustee Commission is \$60 in cases without assets to sell or approx. 8-10% if there are assets.

United States Trustee

- The quality control monitor. Can be a party in any case.
- United States Trustee Local Office Link
http://www.justice.gov/ust/r15/san_diego/index.htm
 - Chapter 7 Trustee Guidelines
http://www.justice.gov/ust/r15/docs/chapter7/standing_administration_guidelines.pdf

Bankruptcy Links

- Bankruptcy Court

<http://www.casb.uscourts.gov/>

- Instructions on Filing a Bankruptcy w/o an Attorney

<http://www.casb.uscourts.gov/html/prose.htm>

- Online Bankruptcy Forms

<http://www.casb.uscourts.gov/html/prose.htm#forms>

- Federal Court Bankruptcy Basics

<http://www.uscourts.gov/FederalCourts/Bankruptcy.asp>

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