

Back to the basics . . .

BANKRUPTCY

WHAT IS BANKRUPTCY?

- ✘ Constitutionally authorized method by which honest debtors achieve a “fresh start” and creditors are repaid in an orderly manner.

HOW DOES BANKRUPTCY WORK?

- ✘ The debtor files.
- ✘ The bankruptcy estate is created.
- ✘ The automatic stay may take affect.
- ✘ Notice of the bankruptcy to creditors.
- ✘ Creditors file claims.
- ✘ Meeting of creditors – 11 U. S. C. §341

HOW DOES BANKRUPTCY WORK?

- ✘ Plan confirmed (Ch. 11, 12, 13)
- ✘ Creditors are paid.
- ✘ Debtors achieve their discharge
- ✘ Hopefully.
- ✘ If it were that easy, you wouldn't need the lawyers.

HOW DOES BANKRUPTCY WORK?

- ✘ Problems pop up all the time.
- ✘ Typical examples:
 - + In a chapter 13 bankruptcy, the debtor has listed a real property tax claim as unsecured, or with an incorrect interest rate, or with an incorrect amount.
 - + In any chapter, the debtor has failed to list the County at all.

TERMINOLOGY

- ✘ 11 U. S. C. §101
- ✘ Not everything is defined there, however.
- ✘ Handbook
- ✘ There is conflict between property tax terminology and bankruptcy terminology so it's important to get it straight.

A WORD ABOUT TAXES ...

- ✘ Secured property taxes
- ✘ Unsecured property taxes
- ✘ Secured-unsecured

A WORD ABOUT BANKRUPTCY CLAIMS...

- ✘ Bankruptcy speak
 - + Secured
 - + Unsecured
 - + Administrative
 - ✘ Arise after the bankruptcy is filed

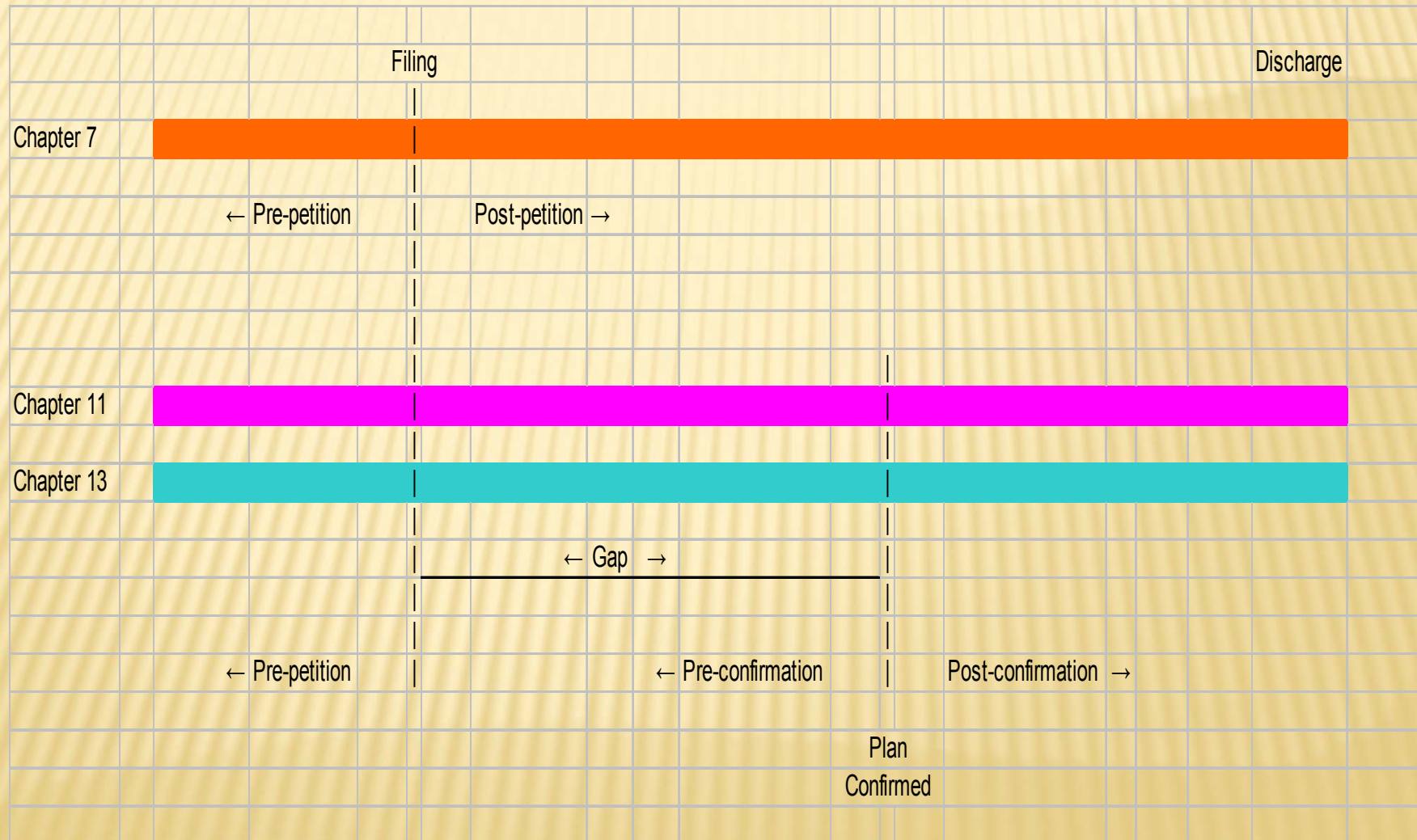
A WORD ABOUT BANKRUPTCY CLAIMS...

- + Unsecured taxes fall into two categories
 - × General Unsecured
 - × Priority claims
 - * Aka “Unsecured Priority”
- + Priority claims are preferred as they get paid before other unsecured claims.

TIMING TERMINOLOGY

- × Pre-petition
- × Post-petition
- × Pre-confirmation
- × Post-confirmation
- × Gap

TIMING TERMINOLOGY



BANKRUPTCY CHAPTERS

CHAPTERS 1, 3, 5

- × General stuff
- × Administration
- × Duties

CHAPTER 7

- ✘ Liquidation.
- ✘ Found at 11 U. S. C. §701 et seq.
 - + With special sections for stockbrokers, commodity brokers and clearing banks.
- ✘ Applies to both individuals and corporations.
- ✘ Asset v. no asset bankruptcy
- ✘ Secured claims are rarely paid.

CHAPTER 9

- ✘ Municipalities.
- ✘ Very rare, but not unheard of.
- ✘ County may be involved if, for example, a city owned property outside its boundaries and was forced to file bankruptcy.

CHAPTER 11

- ✘ Can be a reorganization or a liquidation.
- ✘ Applies to individuals, businesses, and corporations where the assets and debts are higher than a statutorily set amount.
- ✘ This is the tricky one. It's recommended you refer it to counsel.
- ✘ Watch out for first day motions.

CHAPTER 11

- ✘ There's a disclosure statement.
- ✘ CAREFULLY read the plan.
 - + In chapter 11, property of the estate is cleared of all creditors "interests" upon confirmation of the plan.
 - ✘ UNLESS the plan specifically says it isn't

CHAPTER 11

- + A chapter 11 plan can do other nasty things.
 - × Reduce the amount of the debt or terms of payment
 - × Corporation gets “super discharge”
 - ✦ Not subject to exceptions in §523
 - × Discharge is applicable whether or not a claim was filed.

CHAPTER 11

- ✘ For tax collectors, the important things to check in the plan are:
 - + Are you listed as a creditor?
 - + Are you paid in full?
 - + What interest rate are you receiving?
 - + How long will it be before you are paid in full?
 - + What happens to your lien?

CHAPTER 11

- ✘ Unless you can read the plan and determine the answers to all those questions . . .
- ✘ And you like the answers . . .
- ✘ It's always a good idea to have counsel take a look at the Chapter 11 plan.

CHAPTER 11

- ✘ So what do you do if you don't like the plan?
 - + File an objection.

CHAPTER 12

- ✘ Applies only to family farming and fishing operations.
- ✘ Very similar to Chapter 11.

CHAPTER 13

- ✘ Requires that the individual have a regular income. 11 U. S. C. §101(30)
- ✘ Assets and debts must be within a statutorily set range.
- ✘ This is a reorganization only.
 - + If the debtor has to liquidate he will either file a chapter 7 or will have to convert to the chapter 7.

CHAPTER 13

- ✘ Supposed to last three years.
 - + Can go five with the court's permission.
- ✘ Debtor must file tax returns.
 - + Applies to IRS only so far. No indication it's intended to cover personal property tax statements.
- ✘ Debtor must pay interest on secured claims which are paid over time. 11 U. S. C. §506
- ✘ In California that now means 18% on property tax claims. 11 U. S. C. §511

CHAPTER 15

- ✘ Foreign bankruptcy.
 - + Think of this as a bankruptcy filed in the U.S. to coordinate with a bankruptcy filed in another country.

CLAIMS

WHAT YOU NEED TO KNOW

- × Debtor
 - + Name and address
- × Identity of court
- × Parcel number or numbers
- × Amount owing
- × Type of claim

DEBTOR

- ✘ Who is your debtor?
 - + Husband and wife
 - + Husband
 - + Wife
 - + Partnership
 - + Corporation
 - + Multiple entities

PROPERTY

- ✘ More than one?
- ✘ Verify assessee

TYPE OF CLAIM

- × Secured
- × Unsecured
 - + Is it a priority claim?
- × Administrative

AMOUNT OWING

- ✘ Not that simple
- ✘ Depends on the type of debt
- ✘ Taxes, interest, penalties and costs
- ✘ Accrued prior to the filing of the bankruptcy
- ✘ Owing as of the date the petition is filed
- ✘ **EVEN IF THERE IS NO BILL AS YET.**

FILING CLAIMS

- ✘ Claims should be filed with the CORRECT court.
- ✘ It is preferred that claims be filed electronically.
- ✘ But paper claims are still accepted and probably always will be.
- ✘ Claims should be served on the trustee, debtor and debtor's attorney as well

ISSUES

- × Objection to claim
 - + Notice and hearing
 - + Court determines
 - × Whether or not claim is enforceable
 - × Whether or not the amount of a property tax claim exceeds the value of the estate (11 U.S.C. §502(b)(3))
 - × The amount of the claim.
 - × Among other things.

RECONSIDERATION

- ✘ A claim that has been allowed or disallowed may be reconsidered for cause. A reconsidered claim may be allowed or disallowed according to the equities of the case.

11 U.S.C.A. § 502(j)

AMENDING CLAIMS

- ✘ Should I amend my claim
 - + What changed?
 - + Make sure you're not adding post-petition charges
 - + Has the bar date passed?

CAN I AMEND MY CLAIM

- ✘ Has the bar date passed?
- ✘ Up to bar date – yes
- ✘ After bar date, requires motion to amend claim and permission of the court
 - + AND no substantial changes or additional debts will be allowed

SO . . .

- ✘ What do you do when you get a notice of bankruptcy?

THE AUTOMATIC STAY

THE AUTOMATIC STAY

- ✘ 11 U.S.C. §362
- ✘ Prevents creditors from hogging assets
- ✘ Usually takes effect upon the filing of the bankruptcy petition

THE AUTOMATIC STAY

- ✘ Important distinction
- ✘ In rem - means “against the property”
- ✘ In personum - means “against the person”
- ✘ The automatic stay prevents some acts against the debtor and some acts against the debtor’s property – and it’s important to know the difference

THE AUTOMATIC STAY

- ✘ Subdivision (a) lists what you can't do
 - + you can't begin or continue any act to recover a claim against the debtor if you could have done it before the debtor filed bankruptcy
 - + you can't enforce a judgment against the debtor or the property of his estate if it was obtained before the debtor filed bankruptcy.

THE AUTOMATIC STAY

- ✘ you can't attempt to obtain possession of property of the estate from the estate or exercise control over property of the estate
- ✘ you can't attempt to create, perfect or enforce a lien against the property of the estate

THE AUTOMATIC STAY

- ✘ you can't attempt to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title
- ✘ You can't attempt to collect, assess or recover a claim against the debtor that arose before the filing of the bankruptcy

THE AUTOMATIC STAY

- ✘ you can't setoff any debt owing to the debtor before the filing of the bankruptcy against any claim you have against the debtor
- ✘ If the debtor is a corporation, you can't take them to the U.S. Tax Court or continue your action in that court unless the bankruptcy court says you can

THE AUTOMATIC STAY

- ✘ But there are exemptions to the “can’t do’s”
- ✘ Subdivision (b) lists the exemptions
 - + There are a lot.
 - + Some are hard to understand
 - + Be careful

THE AUTOMATIC STAY

- ✘ Doesn't stop:
 - + a criminal trial or charge
 - + Paternity or domestic support issues
 - + Divorce
 - + License suspensions – driver's, professional, occupational, etc.
 - + Collections by the agencies regulating the production of chemical weapons (seriously)

THE AUTOMATIC STAY

- ✘ Doesn't stop things that apply to us, either
 - + Tax audits by government agencies (11 U.S.C. §362(b)(9)(A))
 - + Issuance of a notice of tax deficiency by a government agency (11 U.S.C. §362(b)(9)(B))
 - + A tax assessment and issuance of demand for payment of such assessment (11 U.S.C. §362(b)(9)(C))

THE AUTOMATIC STAY

- ✘ Here's a big one for us:
- ✘ The automatic stay does not stop acts prohibited “under subsection (a) of the creation or perfection of a statutory lien for an ad valorem property tax, or a special tax or special assessment on real property whether or not ad valorem, imposed by a governmental unit, if such tax or assessment comes due after the date of the filing of the petition;” 11 U.S.C. §362(b)(18) [emphasis added]

THE AUTOMATIC STAY

- × Subdivision (c) includes:
 - + How long the automatic stay continues
 - × Generally until closed or dismissed
 - × Chapter 7 – discharge

THE AUTOMATIC STAY

- ✘ Subdivision (c) includes:
 - + If there's been one filing within a year
 - ✘ Stay terminates on the 30th day after the filing of the last case (11 U.S.C. §362(c)(3)(A))
 - ✘ But a “party of interest” can move to have the stay continued
 - + If there's been more than one filing within a year
 - ✘ And certain conditions are met
 - ✘ The stay does not go into effect upon filing the latest case (11 U.S.C. §362(c)(4))

THE AUTOMATIC STAY

- ✘ Subdivision (d) - (h) allow relief from the automatic stay
- ✘ Certain conditions must be proven
- ✘ Usually applies only to the party that moves for relief from stay
 - + But if, as result of the moving parties action, the property is no longer part of the estate, it's usually fair game

THE AUTOMATIC STAY

- ✘ Why do we not violate the automatic stay?
 - + Other than it is, of course, the law.
- ✘ Subdivision (k):
 - + Actual damages, including costs and attorneys fees
 - + Possible punitive damages

TAX SALES

MOST ASKED QUESTIONS

- ✘ Debtor filed bankruptcy and says we have to pull his property from the sale. Do we?
 - + Variations on dates are crucial
- ✘ Debtor filed for bankruptcy and his property is
 - + Ready to go PTS
 - + In PTS and we're sending notices of pending tax sale

MOST ASKED QUESTIONS

- ✘ Who is entitled to claim excess proceeds?
 - + There are several versions on this question.

WHAT YOU NEED TO KNOW

- ✘ Is the automatic stay in place?
 - + Depends on when the debtor filed in relation to the tax sale, notice, excess proceeds, etc.
- ✘ If the automatic stay is in place, your actions are limited and need to be analyzed under the automatic stay analysis previously discussed.

IMPORTANT STATE LAWS

- ✘ Cal. Rev. & Tax. Code § 4101
 - + Tax-defaulted property may be redeemed until the right of redemption is terminated.
- ✘ Cal. Rev. & Tax. Code § 3707
 - + The right of redemption terminates at the close of business on the last business day prior to the date of the sale.

IMPORTANT STATE LAWS

- ✘ Cal. Rev. & Tax. Code § 3803 (Chapter 8 sale)
 - + If not previously terminated, all rights to redeem the property shall terminate on the date and at the time the agreement becomes effective. If all or any portion of the property is redeemed before the agreement becomes effective, the agreement is null as to the property redeemed.

IN RE TRACHT GUT, LLC

- ✘ (9th Circ., 2014) 503 B.R. 804
- ✘ Case involved properties sold at tax sale and then debtor filed bankruptcy
- ✘ Tax collector recorded tax sale deeds AFTER the bankruptcy filing.

IN RE TRACHT GUT, LLC

- ✘ First, Debtor's right of redemption as to the Properties lapsed the day before the tax sales occurred. Cal. Rev. & Tax Code § 3707. A tax deed subsequently provided to a purchaser “conveys title to the purchaser free of all encumbrances of any kind.” Cal. Rev. & Tax Code § 3712. Under these facts, since Debtor's interest in the Properties lapsed before it filed for bankruptcy, the Properties never became property of the estate under § 541, and any action by the County concerning those Properties would not run afoul of the automatic stay under § 362(a).

In re Tracht Gut, LLC, 503 B.R. 804, 811-12 (B.A.P. 9th Cir. 2014)

PERSONAL PROPERTY TAXES

ARE THEY UNSECURED?

- ✘ IF YOU GOT A LIEN OR A JUDGMENT ON PERSONAL PROPERTY TAXES BEFORE THE BANKRUPTCY WAS FILED, YOU NOW HAVE A SECURED CLAIM FOR BANKRUPTCY PURPOSES.
- ✘ Not as good as real property taxes which have a 1st priority, statutory lien.

UNSECURED TAXES

- ✘ Very different from real property taxes until you have a lien
- ✘ Even then, they don't get the same treatment as real property taxes.
- ✘ Filed as general unsecured or priority unsecured
- ✘ You want priority, but getting priority depends on timing.

PRIORITY UNSECURED

- ✘ Priority claims are a special subset of general unsecured claims.
- ✘ They are incurred prior to the filing of the bankruptcy.
- ✘ They must have been payable without penalty after one year before the date the petition was filed.

PRIORITY UNSECURED

✘ Order of payment

- + Domestic support
- + Administrative expenses from §503(b) (Fed. Reserve)
- + Unsecured claims under §502(f)
- + Certain wages
- + Contributions to employee benefit plans
- + Certain farmer or fisherman claims
- + Deposit reimbursement
- + AND

PRIORITY UNSECURED

- ✘ Government claims

- + a property tax incurred before the commencement of the case and last payable without penalty after one year before the date of the filing of the petition;
- + 11 U.S.C. § 507(a)(8)(B)

GENERAL UNSECURED TAXES

- ✘ All other unsecured taxes.
- ✘ Least likely to get paid.
- ✘ REMEMBER – IF YOU GOT A LIEN OR A JUDGMENT ON PERSONAL PROPERTY TAXES BEFORE THE BANKRUPTCY WAS FILED, YOU NOW HAVE A SECURED CLAIM FOR BANKRUPTCY PURPOSES.

ADMINISTRATIVE CLAIMS

ADMINISTRATIVE CLAIMS

- ✘ Debt occurs post-petition
- ✘ You must file a “request for payment” (claim)
- ✘ If late in the case, you’re going to have to file a motion for permission. You have to have “cause.”
- ✘ Taxes are an acceptable administrative expense.

POST BANKRUPTCY ISSUES

CAN I STILL COLLECT THE DEBT?

- ✘ If you had a general unsecured claim, the answer is an unequivocal “NO”

CAN I STILL COLLECT THE DEBT?

- ✘ If you had a priority unsecured claim, the answer is “Yes”
- ✘ Reason: 11 U.S.C. §523(a)(1)(A)
 - + (a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt--
 - ✘ (1) for a tax or a customs duty--
 - ✘ (A) of the kind and for the periods specified in section 507(a)(3) or 507(a)(8) of this title, whether or not a claim for such tax was filed or allowed;

CAN I STILL COLLECT THE DEBT?

- ✘ If you had a secured debt, most likely, yes.

 - + Reason:

 - ✘ Permanent stay of 11 U.S.C. §524

 - ✘ Enjoins acts against the debtor regarding pre-petition debts

 - ✘ And things that COULD have been pre-petition debts

- ✘ If you have a debt secured by property held by the debtor at the time the bankruptcy was filed, the property should still secure the debt.

CAVEATS

- ✘ Chapter 7 no-asset case
 - + Line of decisions which say that no-asset cases discharge everything
- ✘ Liens for personal property taxes remain attached only to property held at the time the bankruptcy was filed
 - + They don't become attached to after-acquired property.