

GLOSSARY OF BANKRUPTCY TERMS

341 Meeting – A meeting of creditors with the debtor, attorney and Trustee.

Abuse – A disregard of financial capability. For example, purchasing luxury items on pre-petition shopping sprees with no reasonable or probable means of repayment.

Adversary proceeding – A separate lawsuit filed in the bankruptcy court, which arises in or is related to the bankruptcy case and involves opposing parties.

Appeal – A request to the U.S. District Court to review a decision of the bankruptcy court. A request to the Circuit Court of Appeals (or the Bankruptcy Appellate Panel if there is one in the circuit) to review a decision of the U.S. District Court.

Automatic stay – An automatic injunction requiring the halting of any collection activity on any debts listed in bankruptcy. The automatic stay goes into effect upon the filing of the bankruptcy, not when you receive the notice of bankruptcy. The automatic stay also stops criminal bad debt prosecutions against the debt if the prosecution is really a means to force the debtor to pay a debt.

Bankruptcy estate – All assets, whether real or personal, belonging to the bankruptcy debtor at the time the petition is filed.

Bar date – Last date for a creditor to timely file a claim. For non governmental creditors that date is 90 days after the first date set for the meeting of the creditors (341 Meeting). Governmental units such as the IRS have 180 days from the date the petition was filed to file a claim.

Best Interest of Creditors Test – See *“Liquidation Test” below.*

Chapter 7 – The chapter of Bankruptcy Code, which sets forth the provisions relating to liquidation of a debtor’s assets. In a Chapter 7 filing, a trustee is appointed to collect and liquidate the assets and distribute the proceeds to creditors in accordance with set priorities.

Chapter 9 – This chapter is a reorganization of debts (like a Chapter 11) but exclusively available to municipalities and public agencies.

Chapter 11 – This chapter is a reorganization chapter where a debtor seeks to rehabilitate and reorganize its financial structure. This plan is normally used by businesses but can be filed by an individual debtor.

Chapter 12 – This chapter was developed for family farmers exclusively. This chapter seeks to reorganize and rehabilitate the financial structure of the debtor. Normally it allows a debtor to propose a plan to pay creditors.

Chapter 13 – Chapter 13 is known as the wage earner’s chapter. It is strictly voluntary and allows the debtor with disposable income to propose a plan in order to pay the creditors in full or in part. The plan is three to five years and the percentage of payback could range from 0 % to 100 %. To qualify for Chapter 13, a debtor must have a regular

source of income. A Chapter 13 cannot be filed if a debtor has unsecured debts of \$250,000.00 or more, or secured debts of \$750,000.00 or more.

Co-debtor stay – There is an automatic stay, which protects persons who did not file bankruptcy but are liable on the same debt along with the individual who did file. The debt, however, must have been a consumer debt incurred for personal, family, or household purposes. A business debt does not qualify for co-debtor stay protection. This co-debtor protection is available in Chapter 13 and Chapter 12 cases only.

Collateral – Property pledged for the payment of a loan or line of credit.

Confirmation – The official act of the court in approving a plan.

Co-signed Debt – A debt for which more than one person is legally responsible.

Conversion – Converting a bankruptcy case from one chapter to another.

Credit grantor – A business or individual who gives a loan or line of credit.

Cure defaults – Are pay back payments that were past due at the time of filing.

Delinquent – Overdue.

Deposition – The testimony of a witness in response to oral or written questions taken down under oath. This is normally taken outside of the courtroom in an informal setting. The answers can later be used in court for various reasons. This is a form of discovery used by attorneys investigating a case. Sanctions can be imposed against someone for failing to attend a deposition when directed to do so or for refusing to answer questions when asked at a deposition.

Discharge – Discharge of debts is the goal in bankruptcy filing. Unless a specific debt is determined to be nondischargeable, is paid “outside” a plan, or a debt has been reaffirmed, all of the debtor’s debts become non-collectable by any creditors once a discharge is granted. The discharge is considered a permanent injunction against any collection action for pre-petition debts. You will get a discharge after you complete your plan.

Discovery – The disclosure of pertinent facts or documents by either party prior to trial. This includes but is not limited to such things as interrogatories, requests to produce documents, and depositions.

Dismissal – An order terminating the bankruptcy. After approval by the bankruptcy court this order allows creditors to begin collecting on the debt involved in the bankruptcy. If you continually fail to make your plan payments, your case will be dismissed.

Disposable Income – Income not required for reasonable living expenses.

Exemptions – Certain property belonging to the debtor is allowed to be excluded from the bankruptcy. The Bankruptcy Code and North Carolina law set forth guidelines where property can be kept by a debtor free of creditor’s claims. This means the debtor is

allowed to keep certain property in order to have a “fresh start”. In Chapter 13, allowable exemptions are used as one of the yardsticks to measure whether a debtor’s plan will pay more to creditors than if the debtor was in a Chapter 7. *See also, “Liquidation Test”, below.*

Feasibility – The likelihood of being successfully completed.

Foreclosure – To take back legal title to and possession of property.

Fraud – Intentional misrepresentation or deceit by the debtor. For example, false information given in bankruptcy schedules, an inaccurate income statement or a false social security number on a credit card application. Hiding assets or falsifying records are also forms of fraud.

Guarantor – A person who promises to repay a debt for someone else.

Insolvent – The inability to pay debts as they fall due in the usual course of business, or the inability of the debtor to pay current obligations as they become due. There is no requirement of insolvency in the Bankruptcy Code.

Interrogatories – A formal question or series of questions that are proposed by opposing counsel in writing and answered in writing. The answers can be used later in court for various reasons. This is a form of discovery used by attorneys when investigating a case. Sanctions can be imposed for willfully refusing to respond timely to interrogatories.

Involuntary Chapter 7 – A liquidation bankruptcy that is forced by creditors.

Joint bankruptcy – A debtor filing bankruptcy together with a spouse.

Jurisdiction – The geographical region over which a court has power.

Liability – Debt.

Liquidation – A conversion of assets to cash in order to pay creditors all or a portion of the debt owed.

Liquidation Test – Also known as the “Best Interest of Creditors Test”. For a Chapter 13 debtor’s plan to be confirmed, the court must determine that the debtor’s creditors will receive more than they would receive if the debtor were liquidation under Chapter 7.

Luxuries – Purchases made that provide pleasure or comfort but are not absolutely necessary. Debtor’s financial ability should be considered. For example, clothing may be luxury based on price, item bought, or the department store purchased from. Many stores are known as luxury stores such as Saks Fifth Avenue or Bloomingdales.

Mailing matrix – A list of the name and address of each creditor. Also known as a Matrix.

Meeting of Creditors – Also known as the Section 341(a) Meeting or First Meeting of Creditors. This is an opportunity for the Trustee and the creditors to question the debtor,

with the debtor's attorney present, about assets, debts, statements in the bankruptcy schedule, etc. All questions are answered under oath. Failure to attend the Meeting of Creditors will result in dismissal of a debtor's case. **CRITICAL POINT IN CASE!**

Modification of Plan – A plan normally filed in a Chapter 13, Chapter 12, or Chapter 11 bankruptcy, can be modified to change the amount paid to classes within the plan, to extend or reduce the length of a plan, or to reduce or increase the amount of monthly payments. This can only be done with the Court's approval and after creditors are given notice and an opportunity to object.

Motion – A formal request to a court to allow or require a specific legal action.

Necessities – Purchases that are required for the sustenance of life without being excessive. For example, food, clothing, shelter, etc.

Net disposable income – The amount of income left over after the debtor pays all expenses necessary (a) for maintenance or support of the debtor or a dependant of the debtor, or (b) if the debtor is engaged in business, for continuation, preservation, and operation of the business.

Net disposable income test – To be confirmed, a debtor's plan must require the debtor to pay all net disposable income to the trustee for the first 36 months of the plan. See also, "*Substantial Abuse*", below.

Nondischargeable debt – Certain debts not included in the debtor's discharge. Some are automatically excluded (i.e. taxes, alimony, educational loans, debts incurred due to drunk driving violation that resulted in the death or injury of someone else), and some require action by the creditor in the case. If your debt is declared nondischargeable, collection activity can resume regarding the debt after your case is dismissed or after you get a discharge of your other debts.

Offset – The IRS keeping all or part of a tax refund to apply to debt owed to the IRS.

Order – A formal ruling by a judge allowing or requiring specific action.

Periodic – Occurring at regular intervals, usually monthly, semiannually, or annually.

Perjury – A materially false, willful statement or assertion as to a matter of fact, opinion, belief, or knowledge made in a judicial proceeding under oath. Perjury may be committed by testimony or in writing. Perjury is a crime and may be punished by imprisonment, a fine, or both. To avoid perjury, always tell the truth.

Petition – A document used to begin a bankruptcy case. It can also be referred to as the face sheet of the bankruptcy schedules. The petition must be filed with the Clerk of Bankruptcy Court in order to begin bankruptcy proceedings, while other bankruptcy documents (such as statement of financial affairs, statement of intentions, etc.) can be filed within 15 days after the filing of the petition document.

Post-petition – Any activity occurring after the filing of the bankruptcy. Post-petition charges are not under jurisdiction of the bankruptcy and the post-petition dollar amount can be collected without violation of the automatic stay.

Preference period – A ninety (90) day window before or after the bankruptcy was filed. The trustee may undo any activity conducted in that time frame.

Pro-rate basis – Divided proportionately.

Pro Se – A debtor filing bankruptcy without representation by legal counsel.

Proof of claim – A form used to file a claim in order to receive payment from the bankruptcy estate.

Reaffirmation Agreement – Under such an agreement, a debtor agrees to continue to be liable on a debt despite having filed a bankruptcy petition. This is usually only done in Chapter 7 cases and usually to allow a debtor to keep property pledged as collateral that a creditor would otherwise repossess or get a creditor to keep a debtor's account open, such as with a credit union shareholder account. In some cases the Bankruptcy Court Judge must approve the reaffirmation agreement as being in the debtor's best interest. The debtor carries this debt through the bankruptcy and it is not affected by the discharge. Collection activity can take place in the event of default.

Relief from Stay – Certain creditors may obtain an Order for Relief from Stay to allow them to enforce their claims, repossess property pledged as collateral for a loan, pursue collections on a co-debtor, or any other activity that would violate the automatic or co-debtor stay if pursued without relief. **WHEN AN ORDER FOR RELIEF FROM STAY IS GRANTED BY THE COURT, THE EFFECT IS TO CANCEL THE AUTOMATIC STAY WITH REGARD TO THE PARTICULAR DEBT INVOLVED.**

Rescind – To cancel a contract previously entered into. (For example, a debtor may rescind a reaffirmation agreement within the rescission period, which is any time before discharge, or within 60 days after filing the agreement with the court, whichever occurs later.)

Sanction – A monetary penalty placed upon a party in response to a violation of the Bankruptcy Code or a court order. The penalty ranges in dollar amount depending on the violation, then intent of the party, and the district in which the violation occurred.

Schedules – Information about the debtor's property and debts filed by the debtor with the Clerk of Bankruptcy Court on the day of filing a bankruptcy petition or within 15 days thereafter. These forms give the bankruptcy court and trustee a financial picture of the debtor and are required to be filled out under perjury. These schedules include items such as the petition, the Schedule of Income and Expenses, the Statement of Financial Affairs, etc.

Secured creditor – A creditor holding a lien on property (i.e. security agreement or judgment) or a debt that is secured with collateral.

Sole proprietorship – A business owned by an individual; not incorporated.

Special classification - Legally allowed to be treated differently. Co-debtor claims for consumer goods may be specially classified in Chapter 13 to protect the co-debtor.

Subpoena – A formal notice usually issued by a court, commanding specific action be taken under threat of penalty or contempt of court.

Substantial abuse – The court may dismiss a bankruptcy case on the motion of a Trustee (or on the court's own motion) if the debts are primarily consumer debts and if the Trustee believes that the Chapter 7 petition represents substantial abuse under the Bankruptcy Code (that the debtor is able to repay a significant portion of creditor's claims under Chapter 13 and should properly be a Chapter 13 debtor). (See Section 707(b) of the Bankruptcy Code.)

Summons – An order to answer a lawsuit within a specified time.

Trustee – Person appointed to administer a bankruptcy case.

Unsecured creditor – A creditor whose debt is not secured by property or collateral. This would include credit card debts.