

## **Bankruptcy Glossary**

### **Adversary Proceeding**

A lawsuit filed in the bankruptcy court which is related to the debtor's bankruptcy case. Examples are complaints to determine the dischargeability of a debt and complaints to determine the extent and validity of liens.

### **Arrears**

The amount that is unpaid and overdue as of the date the bankruptcy case is filed. The word "arrears" is usually used when referring to back child support, back alimony owed, or the amount that is past due on mortgage payments (including interest and penalties).

### **Assets**

Personal possessions of value, including cash, real estate, vehicles and investments.

### **Automatic Stay**

An injunction that stops lawsuits, foreclosure, garnishments and all collection activity against the debtor the exact date a bankruptcy petition is filed Bankruptcy: By filing bankruptcy in federal court, an individual or individuals can restructure or relieve themselves of debts and liabilities.

### **Avoidance**

The Bankruptcy Code permits the debtor to eliminate (avoid) some kinds of liens that interfere with (or impair) an exemption claimed in the bankruptcy. Most judgment liens that have attached to the debtor's home can be avoided if the total of the liens (mortgages, judgment liens and statutory liens) is greater than the value of the property in which the exemption is claimed. This is sometimes called "lien stripping."

### **Avoidance Powers**

Rights given to the bankruptcy trustee or the debtor in possession to recover certain transfers of property such as preferences or fraudulent

transfers or to void liens created before the commencement of a bankruptcy case.

## **Bankruptcy Code**

Title 11 of the United States Code governs bankruptcy proceedings. Bankruptcy is a matter of federal law and is, with the exception of exemptions, the same in every state. When federal bankruptcy law conflicts with state law, federal law controls.

## **Bankruptcy Estate**

The estate is all of the legal and equitable interests of the debtor as of the commencement of the case. From the estate, an individual debtor can claim certain property exempt; the balance of the estate is liquidated in a Chapter 7 to pay the administrative costs of the proceeding and the claims of creditors according to their priority.

## **Chapter 7**

Chapter 7 bankruptcy is a process provided for under United States federal law by which you are entitled to a fresh start. Chapter 7 may eliminate most kinds of unsecured debt. It is usually designed for someone with no assets.

## **Chapter 11**

A reorganization proceeding in which the debtor may continue in business or in possession of its property as a fiduciary. A confirmed Chapter 11 plan provides for the manner in which the claims of creditors will be paid in whole or in part by the debtor.

## **Chapter 12**

A simplified reorganization plan for family farmers whose debts fall within certain limits. Chapter 12 was not renewed when it expired this session of Congress.

## **Chapter 13**

Chapter 13 is an interest-free debt repayment plan through which you consolidate your debts and make a payment on your debt over a 3 to 5 year period. This type of bankruptcy is often used to save a house from foreclosure or to save a car from repossession.

## **Collateral**

The property that is subject to a lien as for payment of a debt or performance of a contract. A creditor with rights in collateral is a secured creditor and has additional protections in the Bankruptcy Code for the claim secured by collateral.

## **Confirmation**

The process by which the Bankruptcy Judge approves a plan of reorganization of a debtor in a Chapter 13 case.

## **Conversion**

Cases under the Bankruptcy Code may be converted from one chapter to another chapter; for example, a Chapter 7 case may be converted to a case under Chapter 13 if the debtor is eligible for Chapter 13. Even though the Chapter of the Code that governs it changes, it remains the same case as originally filed.

## **Credit Report**

A report outlining an individual's credit history, public records and credit worthiness.

## **Creditor**

Any person or business that a debtor owes money to.

## **Debtor**

Any person who is liable to another for money.

## **Default**

Failure to make payments within a specified period of time governed by the original contract.

## **Delinquency**

Failure to make payments when payments are due. For most mortgages, payments are due on the first day of the month. Even though they may not charge a "late fee" for a number of days, the payment is still considered to be late and the loan delinquent. When a

loan payment is more than 30 days late, most lenders report the late payment to one or more of the credit bureaus.

### **Denial of Discharge**

Penalty for debtor misconduct with respect to the bankruptcy case or creditors as a whole. The grounds on which the debtor's discharge may be denied are found in 11 U.S.C. 727. When the debtor's discharge is denied, the debts that could have been discharged in that case cannot be discharged in any subsequent bankruptcy. The administration of the case, the liquidation of assets and the recovery of avoidable transfers, continues for the benefit of creditors.

### **Dischargable**

Debts that can be eliminated in bankruptcy. Certain debts are not dischargeable; that is, they may not be discharged through bankruptcy or may only be discharged through Chapter 13. Family support and criminal restitution are examples of debts which cannot be discharged. Debts incurred by fraud can only be discharged in [Chapter 13 bankruptcy](#).

### **Discharge**

The legal term for the order eliminating a debt through a bankruptcy case. When a debt is discharged, it is no longer legally enforceable against the debtor, though any lien that secures the debt may survive the bankruptcy case.

### **Equity**

A homeowner's financial interest in a property. Equity is the difference between the value of the property and the amount still owed on its mortgage and other liens.

### **Exempt**

Property that is exempt is removed from the bankruptcy estate and is not available to pay the claims of creditors. The debtor selects the property to be exempted from the statutory lists of exemptions available under the law of his state. The debtor gets to keep exempt property for use in making a fresh start after bankruptcy.

## **Exemptions**

Exemptions are the lists of the kinds and values of property that is legally beyond the reach of creditors or the bankruptcy trustee. What property may be exempted is determined by state and federal statutes, and varies from state to state.

## **Fiduciary**

One who is entrusted with duties on behalf of another. The law requires the highest level of good faith, loyalty and diligence of a fiduciary, higher than the common duty of care that we all owe one another. The debtor in possession in a Chapter 11 is a fiduciary for the creditors, owing loyalty to the creditors and not the shareholders of the debtor.

## **Fair Market Value**

The highest price that a buyer, willing but not compelled to buy, would pay, and the lowest a seller, willing but not compelled to sell, would accept. Foreclosure: The legal process by which a borrower in default under a mortgage is deprived of his or her interest in the mortgaged property. This usually involves a forced sale of the property at public auction with the proceeds of the sale being applied to the mortgage debt.

## **Garnishment**

A court-ordered method of debt collection in which a portion of a person's salary is paid to a creditor. The process by which a judgment creditor seizes money, which is owed to his judgment debtor, from a third party known as a garnishee.

## **General Unsecured Claim**

Creditor's claim without a priority for payment for which the creditor holds no security (or collateral). If the available funds in the estate extend to payment of unsecured claims, the claims are paid in proportion to the size of the claim relative to the total of claims in the class of unsecured claims.

## **Lien**

A charge upon real or personal property for the satisfaction of a debt or discharge of an obligation. Examples would include: judgments, taxes, mortgages, deeds of trust, etc.

## **Liquidated**

A debt that is for a known number of dollars is liquidated. An unliquidated debt is one where the debtor has liability, but the exact monetary measure of that liability is unknown. Tort claims are usually unliquidated until a trial fixes the amount of the liability of the tortfeasor.

## **Non-dischargeable**

A [Chapter 7 bankruptcy](#) case in which the trustee determines, after the applicable exemptions, that there are no significant assets to liquidate. The debtor retains all of their real and personal property.

## **No Asset Case**

A debt that cannot be eliminated in bankruptcy. Non dischargeable debts remain legally enforceable despite the bankruptcy discharge.

## **Perfection**

When a secured creditor has taken the required steps to perfect his lien, the lien is senior to any liens that arise after perfection. A mortgage is perfected by recording it with the county recorder; a lien in personal property is perfected by filing a financing statement with the secretary of state. An unperfected lien is valid between the debtor and the secured creditor, but may be behind liens created later in time, but perfected earlier than the lien in question. An unperfected lien can be avoided by the trustee.

## **Personal Property**

Property that is not real property or affixed to real property, such as cars, stock, furniture, etc.

## **Petition**

The document that initiates a bankruptcy case. The filing of the petition constitutes an order for relief and institutes the automatic stay. Events are frequently described as "prepetition", happening before the bankruptcy petition was filed, and "post petition", after the bankruptcy.

## **Preference**

A transfer to a creditor in payment of an existing debt made within certain time periods before the commencement of the case. Preferences may be recovered by the trustee for the benefit of all creditors of the estate.

## **Pre-petition**

Claims or events arising before the commencement of the bankruptcy case, that is, before the filing of the bankruptcy petition. Generally only pre petition debts may be discharged in a bankruptcy proceeding.

## **Priority**

The Bankruptcy Code establishes the order in which claims are paid from the bankruptcy estate. All claims in a higher priority must be paid in full before claims with a lower priority receive anything. All claims with the same priority share pro rata. Claims are paid in this order: 1) costs of administration 2) priority claims and 3) general unsecured claims. Secured claims are paid from the proceeds of liquidating the collateral which secured the claim.

## **Priority Claims**

Certain debts, such as unpaid wages, spousal or child support, and taxes are elevated in the payment hierarchy under the Code. Priority claims must be paid in full before general unsecured claims are paid.

## **Proof of Claim**

Document a creditor files showing how much money is owed to them by the debtor, together with all supporting evidence of such claim. There is usually a deadline in which to file a Proof of Claim.

## **Property of the Estate**

The property that is not exempt and belongs to the bankruptcy estate. Property of the estate is usually sold by the trustee and the claims of creditors paid from the proceeds.

## **Reaffirm**

The debtor can choose to reaffirm debts that would otherwise be discharged by the bankruptcy. Generally, when a debt is reaffirmed, the parties to the reaffirmed debt have the same rights and liabilities that each had prior to the bankruptcy filing: the debtor is obligated to pay and the creditor can sue or repossess if the debtor doesn't pay. Generally speaking, the debtor should avoid reaffirmations as one loses the benefit of bankruptcy protection, which is the idea behind filing in the first place. In the Western District of Washington State, it's not necessary to reaffirm to keep collateralized property so long as payments for it continue to be made in a timely fashion.

## **Relief from Stay**

A creditor can ask the judge to lift the automatic stay and permit some action against the debtor or the property of the estate. If the motion is granted, the moving party (but no one else) is free to take whatever action the court permits. Relief can be absolute, for example, permitting the creditor to foreclose on property, or limited, as for example, allowing the recordation of a notice of default.

## **Repossession**

Once in default, as defined by the creditor in the security agreement, occurs, the creditor can: repossess the collateral by self-help (depending on state law) or with the aid of a court order, dispose of the collateral by public or private foreclosure sale, retain the collateral in satisfaction of the debt, terminate the debtor's right of redemption, add the costs of repossession and foreclosure to the unpaid balance of the debt, and pursue the debtor for any remaining unpaid balance or deficiency.



## **Schedules**

The debtor must file the required lists of assets and liabilities to commence a bankruptcy case, collectively called the schedules.

## **Secured Debt**

A secured debt is one where the creditor takes personal or real property as collateral. A creditor whose debt is secured has a right to take property to satisfy a debt in default. For example, most homes are burdened by a secured debt in the form of a mortgage. This means that the lender has the right to take the home if the borrower fails to make payments on the loan.

## **Trustee**

A private individual or corporation appointed in [bankruptcy](#) filings who represents the interests of the creditors in the bankruptcy estate.

## **Unsecured**

A claim or debt is unsecured if there is no collateral that is security for the debt. Most consumer debts are unsecured.

## **Unsecured Debt**

A debt is unsecured if you have simply promised to pay a creditor a sum of money at a particular time, and you have not pledged any real or personal property as collateral for that debt. Generally, credit cards and medical bills are unsecured debts.