

BANKRUPTCY OPTIONS

- **Liquidation:** The sale of all nonexempt assets of a debtor and distribution of the proceeds to the debtor's creditors, pursuant to Chapter 7 of the Bankruptcy Code.
- **Reorganization:** A form of bankruptcy, under Chapter 11 of the Bankruptcy Code, whereby a business debtor and its creditors formulate a plan under which the debtor repays a portion of its debts and is discharged from the remainder.
- **Repayment:** Individuals with regular income who owe fixed unsecured debts of less than \$290,525 or fixed secured debts of less than \$871,550 may voluntarily petition the bankruptcy court for relief under Chapter 13 of the Bankruptcy Code.

VOLUNTARY BANKRUPTCY

- **Voluntary Bankruptcy:** A debtor who finds himself **unable to pay debts as they become due** may voluntarily petition for bankruptcy relief. The petition must contain
 - (1) a list of all **secured and unsecured creditors**, their addresses, and the amount owed to each,
 - (2) a statement of the **debtor's finances**,
 - (3) a list of **all property** (real and personal) owned by the debtor, including property claimed by the debtor to be exempt (*e.g.*, homestead, etc.), and
 - (4) a list of **current income and expenses**.

INVOLUNTARY BANKRUPTCY

- **Involuntary Bankruptcy:** A debtor's creditors may file a bankruptcy petition against the debtor.
- If the debtor has **twelve or more creditors**, the petition must be filed by three or more creditors having unsecured claims totaling at least \$10,775.
- If the debtor has **fewer than twelve creditors**, the petition must be filed by one or more creditors having unsecured claims totaling at least \$10,775.
- If the debtor challenges the bankruptcy, the court will hold a hearing and enter an order against the debtor if
 - (1) the debtor is generally **not paying debts as they become due**, or
 - (2) a **receiver, custodian, or assignee** took possession of, or was appointed to take charge of, substantially all of the debtor's property within 120 days prior to the filing of the bankruptcy petition.

AUTOMATIC STAY

- **Automatic Stay:** Once a bankruptcy petition is filed voluntarily or involuntarily, virtually all other litigation or other action by creditors or potential creditors against the debtor or the debtor's property are suspended until the bankruptcy is resolved and the stay is lifted.
- If a creditor **knowingly** violates the automatic stay, any party injured thereby is entitled to recover actual damages, costs, and attorneys' fees from the violator.
- **Adequate Protection:** Ensures that a secured creditor's security interest is not lost as a result of a debtor's automatic stay.

THE BANKRUPTCY ESTATE

- Once a bankruptcy proceeding begins, the following legal and equitable interests in property, subject to certain exemptions, become property of the bankruptcy estate:

- (1) property **currently held** by the debtor,
- (2) **jointly-held** property,
- (3) property **transferred by the debtor** within one year prior to the filing of the petition,
- (4) **proceeds and profits** from the use or sale of property of the estate, and
- (5) certain interests in property to which the debtor will become entitled within 180 days after the filing.

EXEMPT PROPERTY

- An individual debtor is entitled to exempt limited dollar amounts of the following from her bankruptcy estate:
 - (1) equity in the debtor's **homestead**, burial plot, and other real property,
 - (2) an interest in a **motor vehicle**,
 - (3) **household goods and furnishings, apparel, appliances, books, animals, crops, and musical instruments**,
 - (4) **jewelry**,
 - (5) **tools** of the debtor's trade,
 - (6) certain **life insurance** contracts, and interests in accrued dividends or interests therein, owned by the debtor;
 - (7) prescription **health aids**,
 - (8) **Social Security** and certain **welfare benefits, alimony and support payments**, and certain **pension benefits**, and
 - (9) rights in certain **personal injury awards**.

TRUSTEE'S ROLE

- **Trustee's Powers:** The trustee may require persons holding the debtor's property when the debtor files her bankruptcy petition to **deliver the debtor's property** to the trustee.
- **Voidable Rights:** Because the trustee "stands in the debtor's shoes," any reason the debtor could use to reclaim her property is **equally valid** for the trustee.
- **Preferences:** A debtor may not transfer property or make a payment that **favors one creditor over others**. Therefore, the trustee can reclaim any payment made or property transferred by the debtor in the **last 90 days** before the debtor filed her petition, if the payment or transfer gave the creditor more than he would have received as a result of the bankruptcy proceedings.
- **Liens:** The trustee may avoid statutory liens that **did not attach** prior to the debtor's insolvency or bankruptcy.
- **Fraudulent Transfers:** The trustee may avoid (*i.e.*, undo) transfers made or obligations incurred by the debtor **within one year** of filing her petition if they were **made with the intent to hinder, delay, or defraud** a creditor.

PROPERTY DISTRIBUTION

- **Secured creditors** have priority over unsecured creditors to the proceeds from the disposition of **secured collateral**. To the extent that a secured creditor's claims are not satisfied by the secured collateral, he becomes an unsecured creditor for the balance due.
- After paying all **administrative expenses** associated with the bankruptcy – including court costs, trustee fees, and attorneys' fees – proceeds from the remainder of the estate are distributed among **unsecured creditors** according to a strict categorization of claims. (See page 591 of your text.)

DISCHARGE

- **Discharge:** With certain exceptions, any debts not satisfied by the liquidation proceeds are **discharged**, meaning that the debtor is no longer obligated to repay them.

- **Discharge Exceptions:** There are a number of **non-dischargeable** debts, including back taxes, alimony and child support, student loans, and consumer credit obtained within 60 days of filing. (See p. 592 of your text.)

- **Discharge Objections:** The following conduct by the debtor will also prevent discharge:
 - (1) **concealment or destruction of property** with the intent to hinder, delay, or defraud a creditor;
 - (2) **fraudulent concealment or destruction of financial records**; and
 - (3) having been **previously discharged** within six years of filing the present petition.

- **Revocation of Discharge:** The bankruptcy court may revoke the debtor's discharge within one year if it is discovered that the debtor was fraudulent or dishonest during the bankruptcy proceedings.

REAFFIRMATION

- A debtor may **voluntarily agree to pay off a debt** even though the debt could be discharged in bankruptcy. An agreement to do so is called a *reaffirmation agreement*, and
 - (1) must be made **before** the debt is discharged in bankruptcy, and
 - (2) must be **filed** with the bankruptcy court.
- **Court Approval:** If the debtor is not represented by counsel, the bankruptcy court must approve the agreement. If the debtor is represented by counsel, court approval is not needed as long as the debtor's attorney declares or affirms that
 - (1) the debtor has been **fully informed** of the consequences of the agreement (and of default under the agreement),
 - (2) the debtor made the agreement **voluntarily**, and
 - (3) the agreement imposes **no undue hardship** on the debtor or the debtor's family.

REORGANIZATION BANKRUPTCY

- **Debtor-in-Possession (DIP):** Upon order of the bankruptcy court, the Chapter 11 debtor continues to operate his business, with or without a *trustee* to oversee the DIP.
- **Creditors' Committee:** A committee of **unsecured creditors** appointed to consult with the trustee or DIP concerning the debtor's reorganization.
- **Reorganization Plan:** A plan to conserve and administer the debtor's assets in the hope of an eventual return to successful operation, which must
 - (1) designate **classes** of claims and interests,
 - (2) specify the **treatment** to be afforded to each class, and
 - (3) provide an adequate means for **execution**.
- **Confirmation:** Once a plan is developed, the various creditor classes must accept it, and the bankruptcy court must **confirm** it (*i.e.*, make it binding).
- **Cram-Down:** Once at least one class of creditors has agreed to the plan, the court may confirm it over the objections of other creditors, as long as the plan does not “discriminate unfairly” against any creditors.

REPAYMENT BANKRUPTCY - PT. I

- **Procedure:** A Chapter 13 repayment bankruptcy is begun by the debtor's filing of a **voluntary petition**.
- Certain Chapter 7 and Chapter 11 cases may be converted to Chapter 13 with the debtor's consent.
- **Repayment Plan:** The debtor's plan must
 - (1) **turn over** to the trustee any **future earnings or income** needed to fulfill the plan,
 - (2) provide for **full payment** of all priority claims within three years (or, with the approval of the bankruptcy judge, up to five years), and
 - (3) provide **equal treatment** for all claims within a particular class.
- **Timely Payment:** The debtor must begin making plan payments within **thirty days** after filing the plan. Failure to make timely payments is grounds for the court to convert the case to a liquidation bankruptcy or dismiss the petition.
- If the court has not yet approved the debtor's plan, the trustee must retain all plan payments until the court confirms the debtor's plan.

REPAYMENT BANKRUPTCY - PT. II

- **Confirmation:** Once the individual debtor has filed his plan, the bankruptcy court holds a hearing and will confirm the plan with respect to each claim of a secured creditor if
 - (1) the secured creditor has **accepted** the plan, or
 - (2) the plan provides that the creditor **retains** its claim and the property to be distributed under the plan is sufficient to satisfy the secured claim, or
 - (3) the debtor **surrenders** the collateral to his creditor.
- **Objections:** Unsecured creditors may object to the plan. Nonetheless, the court should approve it as long as
 - (1) the value of the property to be distributed under the plan is at least equal to the amount of claims, or
 - (2) all of the debtor's disposable income during the three-year plan period will be applied to making payments.
- **Discharge:** After the completion of all payments, the bankruptcy court will discharge all debts included in the repayment plan. Even if the debtor does not complete the plan, the court may grant a ***hardship discharge***, if the failure was due to circumstances beyond the debtor's control.

FAMILY FARM BANKRUPTCY

- **Family Farmer:** A farmer whose **gross income** is **at least 50 percent farm dependent** and whose **debts**, which may not total more than \$1.5 million, are **at least 80 percent farm related**, as well as a partnership or closely held corporation that is at least 50 percent owned by a family farmer.
- **Procedure:** The procedure for a family farm bankruptcy, under Chapter 12 of the Bankruptcy Code, is essentially the same as for a consumer repayment bankruptcy under Chapter 13.
- **Discharge:** After the completion of all payments, the bankruptcy court will discharge all debts included in the repayment plan.
- **Conversion:** A family farmer who has already filed a Chapter 11 or Chapter 13 plan may convert the plan to Chapter 12. A family farmer who has filed a Chapter 12 plan may convert it to a Chapter 7 liquidation.