



## CHAPTER 30

# Bankruptcy Law

Historically, debtors had few rights. Today, in contrast, debtors have numerous rights. Some of these rights were discussed in Chapters 28 and 29. In this chapter, we look at another significant right of debtors: the right to petition for bankruptcy relief under federal law. Article I, Section 8, of the U.S. Constitution gave Congress the power to establish "uniform Laws on the subject of Bankruptcies throughout the United States." Bankruptcy law

in the United States has two goals—to protect a debtor by giving him or her a fresh start, free from creditors' claims, and to ensure equitable treatment to creditors who are competing for a debtor's assets. Federal bankruptcy legislation was first enacted in 1898 and has undergone several modifications since that time, most recently in 2005 as a result of the Bankruptcy Reform Act.<sup>1</sup> The 2005 act significantly overhauled certain provisions of the Bankruptcy Code

for the first time in twenty-five years.

1. The full title of the act is the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (April 20, 2005). The bulk of the act became effective 180 days after being signed by the president on April 20, 2005. Thus, the new provisions took effect in October 2005. (Bankruptcy petitions that were filed before the act became effective continued to be administered and governed by the 1978 Reform Act, as amended.)



## Bankruptcy Proceedings

Bankruptcy proceedings are held in federal bankruptcy courts, which are under the authority of the U.S. district courts, and rulings from bankruptcy courts can be appealed to the district courts. Although bankruptcy law is federal law, state laws on secured transactions, liens, judgments, and exemptions also play a role in federal bankruptcy proceedings.

### The Role of the Bankruptcy Courts

Essentially, a bankruptcy court fulfills the role of an administrative court for the federal district court concerning matters in bankruptcy. The bankruptcy court holds proceedings dealing with the procedures required to administer the estate of the debtor in bankruptcy (the *estate* consists of the debtor's assets, as will

be discussed shortly). A bankruptcy court can conduct a jury trial if the appropriate district court has authorized it and the parties to the bankruptcy consent.

### Types of Bankruptcy Relief

Title 11 of the *United States Code* encompasses the Bankruptcy Code, which has eight chapters. Chapters 1, 3, and 5 of the Code contain general definitional provisions, as well as provisions governing case administration, creditors, the debtor, and the estate. These three chapters normally apply to all kinds of bankruptcies. The next five chapters of the Code set forth the different types of relief that debtors may seek. Chapter 7 provides for **liquidation** proceedings (the selling of all nonexempt assets and the distribution of the proceeds to the debtor's creditors). Chapter 9 governs the adjustment of a municipality's debts. Chapter 11 governs reorganizations. Chapters 12 and 13 provide for the adjustment of debts by parties with regular

