

MUNICIPAL TREASURERS ASSOCIATION  
OF WISCONSIN  
2015 SPRING CONFERENCE

“BANKRUPTCY 101: BASICS FOR MUNICIPAL TREASURERS”

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2:45-3:30 P.M.

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BANKRUPTCY 101 FOR MUNICIPALITIES  
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1. What Kind of Bankruptcy?
  - a. Chapter 7: Liquidation bankruptcy. Chapter 7 panel trustee liquidates any property the debtor is unable to exempt and distributes proceeds *pro rata* to unsecured creditors.
  - b. Chapter 9: Applies to municipalities. However a municipality cannot file for Chapter 9 bankruptcy protection in the State of Wisconsin.
  - c. Chapter 11: Reorganization or liquidation. Primarily for businesses, but individuals can also file for Chapter 11.
  - d. Chapter 12: Repayment plan for family farmers or fishermen.
  - e. Chapter 13: Repayment plan. Debtor repays a percentage of his or her debts over a 3 to 5 year period.
2. What is the Automatic Stay? Stays the commencement and/or continuation of any action against the debtor or the debtor's property. 11 U.S.C. § 362
3. When File A Claim? There are many practical and legal considerations to take into account when you consider whether to file a proof of claim. In general, you want to consider whether you have been made whole already through settlement with the County. You will want to consider whether you have a secured claim or not. You will want to consider whether you have a large claim, or whether the claim is so small that the administrative costs of pursuing the matter would be likely to exceed the recovery. You also would want to consider the circumstances of the debtor, and whether you are likely to recover any money in the proceedings.

Assuming that you conduct the foregoing analysis and conclude that filing a claim would otherwise be appropriate, a proof of claim form is included in these materials, and is also available online at: [web.uscourts.gov](http://web.uscourts.gov). Please also note the following:

- a. Sewer and Water. Sewer and water charges, and any other utility charges that appear on a tax roll, constitute a lien on the property as of November 16th of the year incurred. (Section 66.0809(3)(b) and 66.0821(4)(d), Wis. Stats.) If the lien has attached, you have a secured claim, and your claim will survive the bankruptcy action. You would not necessarily need to file the claim, therefore, however as a practical matter it is probably appropriate that you do so both in a Chapter 7 and a Chapter 13 case. By filing the claim you give notice of the secured claim and increase the likelihood that it will be paid.

If the lien has not attached prior to the bankruptcy filing date, you cannot impose those charges on the tax roll and the lien cannot attach. In that case, you must file proof of claim if you wish to obtain any recovery. The claim would be filed both in a Chapter 7 and a Chapter 13 case as an unsecured non-priority claim.

- b. Personal Property Taxes. Personal property taxes can become a lien on the property, and then survive the bankruptcy action. The lien can attach even as the bankruptcy action is pending, because of a specific exception in this regard in the bankruptcy code (11 U.S.C. § 362(b)(9)(D)). The lien cannot be discharged by the bankruptcy but would continue to apply and be collectible, even against subsequent purchasers of the property. As a practical matter, however, it is probably best to file these claims, to give notice of these issues and thereby increase the likelihood that prompt payment will be received.

As another practical issue, if you are aware that the personal property is no longer available, but there is money available in the bankruptcy estate, you could consider filing your claim as a non-secured claim in the hope of recovering some of the tax money out of the bankruptcy estate. These thoughts would apply both in a Chapter 7 and a Chapter 13 case.

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A third practical consideration is to follow any leads you may get about the personal property. We occasionally find out about auctions or advertised sales involving property with delinquent taxes. We have been very successful in recovering the taxes in those cases by demanding that the seller give notice of the statutory lien, or guarantee payment of the taxes. In our experience, the bankruptcy trustee would prefer to pay us than to try to sell the property subject to our lien.

- c. Real Estate Taxes. Real property taxes also, in general, will become a lien on the property and survive the bankruptcy action. As with personal property taxes, this lien can attach as the bankruptcy action is pending. Again, depending on the circumstances, we may recommend that you file a claim for these delinquent accounts also, both in a Chapter 7 and in a Chapter 13 case, even though a claim would probably not be required.
- d. Municipal Court Fines. In Chapter 13 bankruptcy proceedings, we have found that we ought to file a claim for delinquent municipal court judgments or risk having the judgments discharged. Although these must be filed as unsecured, non-priority claims, as a practical matter the bankruptcy trustees have been treating these matters as 100% payout, to satisfy our whole claim.

As to Chapter 7 bankruptcies, we often have not been filing claims. Municipal court forfeitures are not dischargeable in a Chapter 7 case. I believe this should be reconsidered, however, if particular cases arise that have significant forfeitures involved. As a practical matter, you may increase the likelihood that the forfeitures will be paid if you file the proof of claim even in a Chapter 7 case.

- 4. Do We Charge Interest In Our Claim? Ordinarily interest can only be calculated through the date of filing of the bankruptcy action. There may be exceptions to that general rule, but in that event I still would not recommend delaying the claim merely for the purpose of enlarging the recovery. In such cases, you may be able to file a proof of claim that seeks recovery of a specific dollar amount

plus interest through the date the payment is made, by so indicating in the claim. In either case, interest should not be calculated through the date that the claim is filed, so there would be no reason to delay filing the claim.

5. When Can We Continue To Bill The Property Owner, During A Bankruptcy? This answer depends somewhat upon what charges are involved, as follows:

- a. Sewer and Water Service. I recommend that you continue to bill for these charges during the pendency of the bankruptcy action, provided that the charges are for services provided after the filing date of the bankruptcy action. Be sure that the bill clearly indicates that the charges are for services provided after the filing date.
- b. Property Taxes. Property tax bills can be mailed during the pendency of a bankruptcy action, even if the property taxes accrued prior to the filing of the bankruptcy action. The stay that applies to most pre-filing date claims does not apply to property taxes that come due after the filing of the petition. There is a specific exception in the bankruptcy code in this regard.
- c. Taxes Accruing after the Commencement of the Bankruptcy. Yes, you can bill for taxes accrued after the filing of the bankruptcy.

6. When Are Sewer And Water Charges Discharged In Bankruptcy Proceedings?  
First, if there are sufficient funds in the bankruptcy estate, claims for sewer and water charges would be paid under either a Chapter 7 or a Chapter 13 case. Your likelihood of success in either case is greatly increased if these sewer and water charges have been placed on the tax roll, prior to the filing of the bankruptcy case. They become a lien on November 16 of the year in which the charges are incurred, and for that matter once the lien attaches it is retroactive to January 1st of that year which may increase its priority in relation to other secured claims.

The deciding factor is not whether it is a Chapter 7 or a Chapter 13 case. The deciding issue is whether you have a secured claim or not, and that will depend

on whether the delinquent charges were levied prior to the bankruptcy filing date. If so, there is a significant likelihood that the secured claim will be paid. If not, the likelihood that the unsecured non-priority claim would be paid is very small, and the charges would be subject to possible discharge in a Chapter 7 case, and possible reduction or discharge in a Chapter 13 case.

7. What happens To Municipal Court Warrants When A Bankruptcy Is Pending, And When The Bankruptcy Is Concluded? In most cases, municipal prosecution, including warrants, can continue. An exception to the automatic stay is contained in 11 U.S.C. §362(b)(4), concerning enforcement of police or regulatory power.

Municipal court forfeitures are not dischargeable in a Chapter 7 case, but they are dischargeable in a Chapter 13 case. Therefore, it would be appropriate to re-issue the warrant in a Chapter 7 case given that the municipal court fine will still apply after the Chapter 7 case is completed. In a Chapter 13 case, however, once the plan is confirmed, all payments are made under the plan, and the discharge order is issued, the municipal court forfeiture is erased. At that point, no warrant could be issued, because the matter would be deemed to be paid.

8. Are Property Taxes Ever Discharged In Bankruptcy? In general, property taxes are not discharged in either a Chapter 7 or a Chapter 13 case, per Section 523 of the Bankruptcy Code. You can continue to bill for the taxes subsequent to the discharge, and pursue other collection mechanisms at that time as well.
9. What If Our First Notice Of A Bankruptcy Is A Discharge? In general, if the proper procedures were not followed, the discharge is probably not effective against you. These issues would need to be considered on a case-by-case basis. You would want to determine, first, whether you have a claim against that person, and if so the basis of the claim. You would want to consider whether a lien might continue to attach even if the discharge applied to you. If you find that you have a claim that may in fact have been discharged, and it is a claim that is worth pursuing, you could begin by contacting the bankruptcy trustee to inquire as to why you received a discharge order but were never notified of the

pendency of the action. Any number of different explanations may apply and they would need to be considered on a case-by-case basis.

10. How Do We Know When A Bankruptcy Is Over So That We Can Charge Again? In general, the automatic stay against pursuing any claims continues only until the earliest of the time that the case is closed, the time that the case is dismissed, or the time the discharge is granted or denied, pursuant to Section 362(c) of the Bankruptcy Code. Therefore, if you receive notice of a discharge of the debtor, then the automatic stay has terminated and you can proceed accordingly. Before submitting any bills to the debtor, though you need to determine whether your claim was discharged. Bankruptcy case information is posted on their website, so you could check that: [web.uscourts.gov](http://web.uscourts.gov). Also, keep in mind that in general you can continue to bill the debtor for services that are provided subsequent to the date of filing of the bankruptcy action, even as the matter proceeds.
11. If We Don't File A Proof Of Claim Is Our Claim Always Discharged? Not necessarily. The bankruptcy trustee has an obligation under the Bankruptcy Code to allow certain claims, even if the proof of claim is not filed. This is generally true of property taxes, both real and personal, and it is also generally true of municipal court forfeitures in a Chapter 7 case. Failure to file proof of claim as to such matters should not prevent you from ultimately pursuing collection of those matters. As a practical matter, you may want to file a proof of claim even as to such issues, however, to be sure that the bankruptcy trustee is aware of your claim.
12. When Does The Automatic Stay Apply To Prevent Our Billing A Property Owner? There are several issues regarding which the automatic stay does not apply. One is bills for services that are provided subsequent to the date of filing of the bankruptcy action. When you send such bills, you may want to make it very clear on the bill that you are seeking payment for services provided subsequent to the date of filing of the bankruptcy.

I would expect that you would continue to send a tax bill to the debtor, given that these taxes will appear on the tax roll and will be due and payable. If the

sewer and water bills have properly been levied prior to the filing of the bankruptcy action, those sewer and water bills would also be shown in the tax bill. Again, in such cases, you may want to specifically say that these tax liens for the sewer and water bills were duly levied prior to the bankruptcy filing date, and that may reduce the likelihood that you would receive an objection to the bill.

If you intend to pursue other collection mechanisms other than sending bills for post-filing date services and ordinary tax bills, then this may warrant further consideration. Ordinarily you would not pursue other collection efforts while the bankruptcy matter is pending, given that the bankruptcy action is likely to resolve those matters. It is also possible that the automatic stay would apply to those other collection measures.

If you follow these recommendations and you still receive a response saying that the bankruptcy was filed and you cannot bill the debtor then further consideration may be warranted. I would consider contacting the person who wrote such a letter (assuming it is not the debtor himself or herself) to advise of the reason why the bill was being sent and inviting their response.

13. What About Damage To Municipal Public Works Infrastructure? If you have a claim for property damage against a party who has filed bankruptcy, this may need to be considered on a case-by-case basis. Frequently parties who have caused such damage may have been charged in municipal court for a violation related to that damage, and a municipal court judgment arising from the matter will follow the procedures that are followed regarding any other municipal court judgment. The background of such issues could be different, however, depending upon how the claim was pursued. You may have filed an action in small claims court against such person, for example, prior to the bankruptcy being filed, in which case you would need to consider the status of that litigation. In most cases, however, if you do not have a judgment against the party prior to the bankruptcy being filed in all likelihood your claim would be subject to discharge in bankruptcy.



14. What if our Claim is Discharged or Otherwise Uncollectible? Municipalities may be made whole through the settlement process with the County, or partially made whole through chargeback to other taxing jurisdictions, in some situations. Note the following in this regard:

- a. Settlement Process with County Taxing Jurisdiction. Counties in Wisconsin have tax collection duties, and statutory obligations to settle with local municipalities with regard to the collection of taxes, pursuant to Wisconsin Statutes Chapter 74. Whether that settlement process will make the local municipalities whole regarding uncollectible amounts owed to the municipality due to bankruptcy depends upon the issues involved. Counties have an obligation to make local municipalities whole with regard to real estate taxes, pursuant to Wisconsin Statutes Section 74.29(1). Counties do not automatically have this obligation regarding special charges or other delinquent utility bills and the like that are noted on the tax bill, though counties can accept this obligation under Wisconsin Statutes Section 74.29(1), by resolution. Many counties in our area have done so, and routinely settle with local municipalities regarding these issues. The advantage of this system is it creates a central taxing jurisdiction, with the county, to efficiently maintain the staff and expertise necessary for collection of these delinquent accounts. We have also encountered many counties in our area, and throughout the State, that have not accepted this responsibility, however, so whether your municipality would be able to recover delinquent special charges and special assessments from the county is something that you would need to consider with the County Treasurer.
- b. Chargeback to other Taxing Jurisdictions. You have the ability to charge the other taxing jurisdictions (e.g., the school district, the technical college, and the like, that are subject to your collection responsibilities) for their share of any delinquent personal property taxes, pursuant to Wisconsin Statutes Section 74.42. This only applies to delinquent personal property taxes, however.

**GENERAL OUTLINE OF BANKRUPTCY ISSUES FOR MUNICIPALITIES<sup>1</sup>**  
**BANKRUPTCY 101. ATTORNEY ERIC J. LARSON**

	Should we File Claim?	Can we Send Bills and Pursue Collections? (Exceptions to Automatic Stay)	Subject to Discharge?	Do we Have a Lien? (Secured Claims)	Can we Stop Service?	Can we Chargeback Our Uncollectable Delinquencies?	Will we be made Whole through Settlement with County?	Is this a Priority Claim?
<b>Utility Bills</b>	Not necessarily, but good idea.	Yes, but only for post-filing date services.	Yes, if no lien.	Yes, if filing date is after November 16, and if bill is on the tax roll. (\$566.0809(3)(b), and 66,0821(4)(d), Stats.)	Yes, subject to 11 U.S.C. §366 and also winter heat utility disconnection rules.	No.	Depends on whether the County has opted to do so by resolution per §74.29(1).	No.
<b>Personal Property Taxes</b>	Not necessarily, but good idea.	Yes, and can continue to assess taxes. (11 U.S.C. §362(d)(9)(G).)	No. (11 U.S.C. §523(a)(1).)	Yes. (§70.01, Stats.)	Not applicable.	Yes. (§74.42, Stats.)	No.	Yes. (11 U.S.C. §507(8)(B).)
<b>Real Estate Taxes</b>	Not necessarily, but good idea.	Yes, and can continue to assess taxes. (11 U.S.C. §362(d)(9)(G).)	No. (11 U.S.C. §523(a)(1).)	Yes. (§70.01, Stats.)	Not applicable.	Not applicable. (Made whole in settlement process.)	Yes. (§74.29(1), Stats.)	Yes. (11 U.S.C. §507(8)(B).)
<b>Municipal Court Fines</b>	Chapter 13: Yes Chapter 7 and 11: Not necessarily, but good idea.	Yes, prosecution can continue. (11 U.S.C. §362(b)(4)(a).)	Chapter 7: No. (11 U.S.C. §523(a)(7).) Chapter 13: Yes. (11 U.S.C. §1328.)	Only if judgment is docketed. (§806.12, Stats.)	Not applicable.	No.	No.	No.
<b>Special Charges</b>	Chapter 13: Yes Chapter 7 and 11: Not necessarily, but good idea.	Yes, but only for post-filing charges.	To the extent a lien is attached, it should survive against the property.	Yes, as of delinquency. (§66.0627(4), Stats.)	Not applicable.	No.	Depends on whether County has opted to do so by resolution. (§74.29(1), Stats.)	No.
<b>Special Assessments</b>	Chapter 13: Yes Chapter 7 and 11: Not necessarily, but good idea.	Yes, but only for post-filing assessments.	To the extent a lien is attached, it should survive against the property.	Yes, as of final assessment resolution. (§66.0701(1) and (13), Stats.)	Not applicable.	No.	Depends on whether County has opted to do so by resolution. (§74.29(1), Stats.)	No.

<sup>1</sup> This is intended to provide a starting point, not an ending point, on these issues. Different rules and laws apply depending upon the circumstances, and the answer provided herein may be inapplicable or inappropriate in individual situations. All bankruptcy questions should be referred to legal counsel to render any necessary legal advice.

<b>UNITED STATES BANKRUPTCY COURT</b>		<b>PROOF OF CLAIM</b>
Name of Debtor:		Case Number:
<p><i>NOTE: Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.</i></p>		
Name of Creditor (the person or other entity to whom the debtor owes money or property):		<b>COURT USE ONLY</b>
Name and address where notices should be sent:		<input type="checkbox"/> Check this box if this claim amends a previously filed claim.  <b>Court Claim Number:</b> _____ <i>(If known)</i>  Filed on: _____
Telephone number:	email:	
Name and address where payment should be sent (if different from above):		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.
Telephone number:	email:	
<b>1. Amount of Claim as of Date Case Filed:</b> \$ _____  If all or part of the claim is secured, complete item 4.  If all or part of the claim is entitled to priority, complete item 5.  <input type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.		
<b>2. Basis for Claim:</b> _____ (See instruction #2)		
<b>3. Last four digits of any number by which creditor identifies debtor:</b> _____	<b>3a. Debtor may have scheduled account as:</b> _____ (See instruction #3a)	<b>3b. Uniform Claim Identifier (optional):</b> _____ (See instruction #3b)
<b>4. Secured Claim</b> (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.		<b>Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any:</b> \$ _____
<b>Nature of property or right of setoff:</b> <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe:		<b>Basis for perfection:</b> _____
<b>Value of Property:</b> \$ _____		<b>Amount of Secured Claim:</b> \$ _____
<b>Annual Interest Rate</b> _____ % <input type="checkbox"/> Fixed   or <input type="checkbox"/> Variable (when case was filed)		<b>Amount Unsecured:</b> \$ _____
<b>5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.</b>		
<input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).	<input type="checkbox"/> Wages, salaries, or commissions (up to \$12,475*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier -- 11 U.S.C. § 507 (a)(4).	<input type="checkbox"/> Contributions to an employee benefit plan -- 11 U.S.C. § 507 (a)(5).
<input type="checkbox"/> Up to \$2,775* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use -- 11 U.S.C. § 507 (a)(7).	<input type="checkbox"/> Taxes or penalties owed to governmental units -- 11 U.S.C. § 507 (a)(8).	<input type="checkbox"/> Other -- Specify applicable paragraph of 11 U.S.C. § 507 (a)(____).
		<b>Amount entitled to priority:</b> \$ _____
<p><i>*Amounts are subject to adjustment on 4/01/16 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</i></p>		
<b>6. Credits.</b> The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)		

**7. Documents:** Attached are **redacted** copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, security agreements, or, in the case of a claim based on an open-end or revolving consumer credit agreement, a statement providing the information required by FRBP 3001(c)(3)(A). If the claim is secured, box 4 has been completed, and **redacted** copies of documents providing evidence of perfection of a security interest are attached. If the claim is secured by the debtor's principal residence, the Mortgage Proof of Claim Attachment is being filed with this claim. (See instruction #7, and the definition of "redacted".)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

**8. Signature:** (See instruction #8)

Check the appropriate box.

- I am the creditor.    
  I am the creditor's authorized agent.    
  I am the trustee, or the debtor, or their authorized agent. (See Bankruptcy Rule 3004.)    
  I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_

Address and telephone number (if different from notice address above): \_\_\_\_\_

\_\_\_\_\_  
(Signature) (Date)

Telephone number: \_\_\_\_\_ email: \_\_\_\_\_

*Penalty for presenting fraudulent claim:* Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

**INSTRUCTIONS FOR PROOF OF CLAIM FORM**

*The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, exceptions to these general rules may apply.*

**Items to be completed in Proof of Claim form**

**Court, Name of Debtor, and Case Number:**  
Fill in the federal judicial district in which the bankruptcy case was filed (for example, Central District of California), the debtor's full name, and the case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is at the top of the notice.

**Creditor's Name and Address:**  
Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

**1. Amount of Claim as of Date Case Filed:**  
State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

**2. Basis for Claim:**  
State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on delivering health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if an interested party objects to the claim.

**3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:**  
State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

**3a. Debtor May Have Scheduled Account As:**  
Report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

**3b. Uniform Claim Identifier:**  
If you use a uniform claim identifier, you may report it here. A uniform claim identifier is an optional 24-character identifier that certain large creditors use to facilitate electronic payment in chapter 13 cases.

**4. Secured Claim:**  
Check whether the claim is fully or partially secured. Skip this section if the

claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.

**5. Amount of Claim Entitled to Priority Under 11 U.S.C. § 507 (a).**  
If any portion of the claim falls into any category shown, check the appropriate box(es) and state the amount entitled to priority. (See Definitions.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

**6. Credits:**  
An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

**7. Documents:**  
Attach redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest and documents required by FRBP 3001(c) for claims based on an open-end or revolving consumer credit agreement or secured by a security interest in the debtor's principal residence. You may also attach a summary in addition to the documents themselves. FRBP 3001(c) and (d). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.

**8. Date and Signature:**  
The individual completing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in person, if your name is on the signature line, you are responsible for the declaration. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. If the claim is filed by an authorized agent, provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a servicer, identify the corporate servicer as the company. Criminal penalties apply for making a false statement on a proof of claim.

## DEFINITIONS

**Debtor**

A debtor is the person, corporation, or other entity that has filed a bankruptcy case.

**Creditor**

A creditor is a person, corporation, or other entity to whom debtor owes a debt that was incurred before the date of the bankruptcy filing. See 11 U.S.C. §101 (10).

**Claim**

A claim is the creditor's right to receive payment for a debt owed by the debtor on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.

**Proof of Claim**

A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the clerk of the same bankruptcy court in which the bankruptcy case was filed.

**Secured Claim Under 11 U.S.C. § 506 (a)**

A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car. A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien.

A claim also may be secured if the creditor owes the debtor money (has a right to setoff).

**Unsecured Claim**

An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.

**Claim Entitled to Priority Under 11 U.S.C. § 507 (a)**

Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

**Redacted**

A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor must show only the last four digits of any social-security, individual's tax-identification, or financial-account number, only the initials of a minor's name, and only the year of any person's date of birth. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information.

**Evidence of Perfection**

Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.

## INFORMATION

**Acknowledgment of Filing of Claim**

To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim or you may access the court's PACER system ([www.pacer.psc.uscourts.gov](http://www.pacer.psc.uscourts.gov)) for a small fee to view your filed proof of claim.

**Offers to Purchase a Claim**

Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 *et seq.*), and any applicable orders of the bankruptcy court.

United States Code Annotated  
Title 11, Bankruptcy (Reif & Annos)  
Chapter 3, Case Administration (Reif & Annos)  
Subchapter IV, Administrative Powers

11 U.S.C.A. § 362

§ 362. Automatic stay

Effective: December 22, 2010  
Currentness

- (a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of--
- (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;
  - (2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;
  - (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;
  - (4) any act to create, perfect, or enforce any lien against property of the estate;
  - (5) any act 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;
  - (6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;
  - (7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and
  - (8) the commencement or continuation of a proceeding before the United States Tax Court concerning a tax liability of a debtor that is a corporation for a taxable period the bankruptcy court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title

(b) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay--

- (1) under subsection (a) of this section, of the commencement or continuation of a criminal action or proceeding against the debtor;
- (2) under subsection (a)--
  - (A) of the commencement or continuation of a civil action or proceeding--
    - (i) for the establishment of paternity;
    - (ii) for the establishment or modification of an order for domestic support obligations;
    - (iii) concerning child custody or visitation;
    - (iv) for the dissolution of a marriage, except to the extent that such proceeding seeks to determine the division of property that is property of the estate; or
    - (v) regarding domestic violence;
  - (B) of the collection of a domestic support obligation from property that is not property of the estate;
  - (C) with respect to the withholding of income that is property of the estate or property of the debtor for payment of a domestic support obligation under a judicial or administrative order or a statute;
  - (D) of the withholding, suspension, or restriction of a driver's license, a professional or occupational license, or a recreational license, under State law, as specified in section 466(a)(19) of the Social Security Act;
  - (E) of the reporting of overdue support owed by a parent to any consumer reporting agency as specified in section 466(a)(7) of the Social Security Act;
  - (F) of the interception of a tax refund, as specified in sections 464 and 466(a)(3) of the Social Security Act or under an analogous State law; or
  - (G) of the enforcement of a medical obligation, as specified under title IV of the Social Security Act;

- (3) under subsection (a) of this section, of any act to perfect, or to maintain or continue the perfection of, an interest in property to the extent that the trustee's rights and powers are subject to such perfection under section 546(f) of this title or to the extent that such act is accomplished within the period provided under section 547(e)(2)(A) of this title.
- (4) under paragraph (1), (2), (3), or (6) of subsection (a) of this section, of the commencement or continuation of an action or proceeding by a governmental unit or any organization exercising authority under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, opened for signature on January 13, 1993, to enforce such governmental unit's or organization's police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power.

**(f5) Repealed Pub L 105-277, Div. I, Title VI, § 603(1), Oct. 21, 1998, 112 Stat. 2681-886]**

- (6) under subsection (a) of this section, of the exercise by a commodity broker, forward contract merchant, stockbroker, financial institution, financial participant, or securities clearing agency of any contractual right (as defined in section 555 or 556) under any security agreement or arrangement or other credit enhancement forming a part of or related to any commodity contract, forward contract or securities contract, or of any contractual right (as defined in section 555 or 556) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such contracts, including any master agreement for such contracts.
- (7) under subsection (a) of this section, of the exercise by a repo participant or financial participant of any contractual right (as defined in section 559) under any security agreement or arrangement or other credit enhancement forming a part of or related to any repurchase agreement, or of any contractual right (as defined in section 559) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such agreements, including any master agreement for such agreements.
- (8) under subsection (a) of this section, of the commencement of any action by the Secretary of Housing and Urban Development to foreclose a mortgage or deed of trust in any case in which the mortgage or deed of trust held by the Secretary is insured or was formerly insured under the National Housing Act and covers property, or combinations of property, consisting of five or more living units.
- (9) under subsection (a), of—
- (A) an audit by a governmental unit to determine tax liability.
- (B) the issuance to the debtor by a governmental unit of a notice of tax deficiency.
- (C) a demand for tax returns, or
- (D) the making of an assessment for any tax and issuance of a notice and demand for payment of such an assessment (but any tax lien that would otherwise attach to property of the estate by reason of such an assessment shall not take effect unless

- such tax is a debt of the debtor that will not be discharged in the case and such property or its proceeds are transferred out of the estate to, or otherwise reversed in, the debtor.)
- (10) under subsection (a) of this section, of any act by a lessor to the debtor under a lease of nonresidential real property that has terminated by the expiration of the stated term of the lease before the commencement of or during a case under this title to obtain possession of such property.
- (11) under subsection (a) of this section, of the presentation of a negotiable instrument and the giving of notice of and protesting dishonor of such an instrument.
- (12) under subsection (a) of this section, after the date which is 90 days after the filing of such petition, of the commencement or continuation, and conclusion to the entry of final judgment, of an action which involves a debtor subject to reorganization pursuant to chapter 11 of this title and which was brought by the Secretary of Transportation under section 31325 of title 46 (including distribution of any proceeds of sale) to foreclose a preferred ship or fleet mortgage, or a security interest in or relating to a vessel or vessel under construction, held by the Secretary of Transportation under chapter 537 of title 46 or section 109(h) of title 49, or under applicable State law.
- (13) under subsection (a) of this section, after the date which is 90 days after the filing of such petition, of the commencement or continuation, and conclusion to the entry of final judgment, of an action which involves a debtor subject to reorganization pursuant to chapter 11 of this title and which was brought by the Secretary of Commerce under section 31325 of title 46 (including distribution of any proceeds of sale) to foreclose a preferred ship or fleet mortgage in a vessel or a mortgage, deed of trust, or other security interest in a fishing facility held by the Secretary of Commerce under chapter 537 of title 46.
- (14) under subsection (a) of this section, of any action by an accrediting agency regarding the accreditation status of the debtor as an educational institution.
- (15) under subsection (a) of this section, of any action by a State licensing body regarding the licensure of the debtor as an educational institution.
- (16) under subsection (a) of this section, of any action by a guaranty agency, as defined in section 435(j) of the Higher Education Act of 1965 or the Secretary of Education regarding the eligibility of the debtor to participate in programs authorized under such Act.
- (17) under subsection (a) of this section, of the exercise by a swap participant or financial participant of any contractual right (as defined in section 560) under any security agreement or arrangement or other credit enhancement forming a part of or related to any swap agreement, or of any contractual right (as defined in section 560) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such agreements, including any master agreement for such agreements.
- (18) 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.

(19) under subsection (a), of withholding of income from a debtor's wages and collection of amounts withheld, under the debtor's agreement authorizing that withholding and collection for the benefit of a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414, 457, or 501(c) of the Internal Revenue Code of 1986, that is sponsored by the employer of the debtor, or an affiliate, successor, or predecessor of such employer--

(A) to the extent that the amounts withheld and collected are used solely for payments relating to a loan from a plan under section 408(b)(1) of the Employee Retirement Income Security Act of 1974 or is subject to section 72(f) of the Internal Revenue Code of 1986, or

(B) a loan from a thrift savings plan permitted under subchapter III of chapter 84 of title 5, that satisfies the requirements of section 8433(g) of such title;

but nothing in this paragraph may be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 403(b), of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title;

(20) under subsection (a), of any act to enforce any lien against or security interest in real property following entry of the order under subsection (4)(4) as to such real property in any prior case under this title, for a period of 2 years after the date of the entry of such an order, except that the debtor, in a subsequent case under this title, may move for relief from such order based upon changed circumstances or for other good cause shown, after notice and a hearing;

(21) under subsection (a), of any act to enforce any lien against or security interest in real property--

(A) if the debtor is ineligible under section 109(g) to be a debtor in a case under this title; or

(B) if the case under this title was filed in violation of a bankruptcy court order in a prior case under this title prohibiting the debtor from being a debtor in another case under this title;

(22) subject to subsection (1), under subsection (a)(3), of the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential property in which the debtor resides as a tenant under a lease or rental agreement and with respect to which the lessor has obtained before the date of the filing of the bankruptcy petition, a judgment for possession of such property against the debtor;

(23) subject to subsection (m), under subsection (a)(3), of an eviction action that seeks possession of the residential property in which the debtor resides as a tenant under a lease or rental agreement based on endangerment of such property or the illegal use of controlled substances on such property, but only if the lessor files with the court, and serves upon the debtor, a certification under penalty of perjury that such an eviction action has been filed, or that the debtor, during the 30-day period preceding the date of the filing of the certification, has endangered property or illegally used or allowed to be used a controlled substance on the property;

(24) under subsection (a), of any transfer that is not avoidable under section 544 and that is not avoidable under section 549;

(25) under subsection (a), of--

(A) the commencement or continuation of an investigation or action by a securities self-regulatory organization to enforce such organization's regulatory power;

(B) the enforcement of an order or decision, other than for monetary sanctions, obtained in an action by such securities self-regulatory organization to enforce such organization's regulatory power; or

(C) any act taken by such securities self-regulatory organization to delist, delete, or refuse to permit quotation of any stock that does not meet applicable regulatory requirements;

(26) under subsection (a), of the setoff under applicable nonbankruptcy law of an income tax refund, by a governmental unit, with respect to a taxable period that ended before the date of the order for relief against an income tax liability for a taxable period that also ended before the date of the order for relief, except that in any case in which the setoff of an income tax refund is not permitted under applicable nonbankruptcy law because of a pending action to determine the amount or legality of a tax liability, the governmental unit may hold the refund pending the resolution of the action, unless the court, on the motion of the trustee and after notice and a hearing, grants the taxing authority adequate protection (within the meaning of section 361) for the secured claim of such authority in the setoff under section 506(a).

(27) under subsection (a) of this section, of the exercise by a master netting agreement participant of any contractual right (as defined in section 555, 556, 559, or 560) under any security agreement or arrangement or other credit enhancement forming a part of or related to any master netting agreement, or of any contractual right (as defined in section 555, 556, 559, or 560) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such master netting agreements to the extent that such participant is eligible to exercise such rights under paragraph (6), (7), or (17) for each individual contract covered by the master netting agreement in issue, and

(28) under subsection (a), of the exclusion by the Secretary of Health and Human Services of the debtor from participation in the medicare program or any other Federal health care program (as defined in section 1128B(f) of the Social Security Act pursuant to title XI or XVIII of such Act)

The provisions of paragraphs (12) and (13) of this subsection shall apply with respect to any such petition filed on or before December 31, 1989

(e) Except as provided in subsections (d), (e), (f), and (h) of this section--

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate;

(2) the stay of any other act under subsection (a) of this section continues until the earliest of--

(A) the time the case is closed;



- (B) the time the case is dismissed, or
- (C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied:
- (3) if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)—
- (A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case;
- (B) on the motion of a party in interest for continuation of the automatic stay and upon notice and a hearing, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed, and
- (C) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—
- (i) as to all creditors, if—
- (I) more than 1 previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was pending within the preceding 1-year period;
- (II) a previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to—
- (aa) file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be a substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney);
- (bb) provide adequate protection as ordered by the court, or
- (cc) perform the terms of a plan confirmed by the court, or
- (III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13 or any other reason to conclude that the later case will be concluded—

- (aa) if a case under chapter 7, with a discharge, or
- (bb) if a case under chapter 11 or 13, with a confirmed plan that will be fully performed, and
- (ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, that action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to actions of such creditor, and
- (4)(A)(i) if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b), the stay under subsection (a) shall not go into effect upon the filing of the later case, and
- (ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect;
- (B) if, within 30 days after the filing of the later case, a party in interest requests the court may order the stay to take effect in the case as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed;
- (C) a stay imposed under subparagraph (B) shall be effective on the date of the entry of the order allowing the stay to go into effect; and
- (D) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—
- (i) as to all creditors, if—
- (I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;
- (II) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court, or
- (III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed, or

(h) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, such action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to such action of such creditor

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay--

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest;

(2) with respect to a stay of an act against property under subsection (a) of this section, if--

(A) the debtor does not have an equity in such property; and

(B) such property is not necessary to an effective reorganization;

(3) with respect to a stay of an act against single asset real estate under subsection (a), by a creditor whose claim is secured by an interest in such real estate, unless, not later than the date that is 90 days after the entry of the order for relief (or such later date as the court may determine for cause by order entered within that 90-day period) or 30 days after the court determines that the debtor is subject to this paragraph, whichever is later--

(A) the debtor has filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time, or

(B) the debtor has commenced monthly payments that--

(i) may, in the debtor's sole discretion, notwithstanding section 363(c)(2), be made from rents or other income generated before, on, or after the date of the commencement of the case by or from the property to such creditor whose claim is secured by such real estate (other than a claim secured by a judgment lien or by an unperfected statutory lien); and

(ii) are in an amount equal to interest at the then applicable nondefault contract rate of interest on the value of the creditor's interest in the real estate; or

(4) with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either--

(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval, or

(B) multiple bankruptcy filings affecting such real property

If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording.

(e)(1) Thirty days after a request under subsection (d) of this section for relief from the stay of any act against property of the estate under subsection (a) of this section, such stay is terminated with respect to the party in interest making such request, unless the court, after notice and a hearing, orders such stay continued in effect pending the conclusion of, or as a result of, a final hearing and determination under subsection (d) of this section. A hearing under this subsection may be a preliminary hearing, or may be consolidated with the final hearing under subsection (d) of this section. The court shall order such stay continued in effect pending the conclusion of the final hearing under subsection (d) of this section if there is a reasonable likelihood that the party opposing relief from such stay will prevail at the conclusion of such final hearing. If the hearing under this subsection is a preliminary hearing, then such final hearing shall be concluded not later than thirty days after the conclusion of such preliminary hearing, unless the 30-day period is extended with the consent of the parties in interest or for a specific time which the court finds is required by compelling circumstances.

(2) Notwithstanding paragraph (1), in a case under chapter 7, 11, or 13 in which the debtor is an individual, the stay under subsection (a) shall terminate on the date that is 60 days after a request is made by a party in interest under subsection (d), unless--

(A) a final decision is rendered by the court during the 60-day period beginning on the date of the request; or

(B) such 60-day period is extended--

(i) by agreement of all parties in interest; or

(ii) by the court for such specific period of time as the court finds is required for good cause, as described in findings made by the court.

(f) Upon request of a party in interest, the court, with or without a hearing, shall grant such relief from the stay provided under subsection (a) of this section as is necessary to prevent irreparable damage to the interest of an entity in property, if such interest will suffer such damage before there is an opportunity for notice and a hearing under subsection (d) or (e) of this section.

(g) In any hearing under subsection (d) or (e) of this section concerning relief from the stay of any act under subsection (a) of this section--

(1) the party requesting such relief has the burden of proof on the issue of the debtor's equity in property; and

(2) the party opposing such relief has the burden of proof on all other issues

(K)(1) In a case in which the debtor is an individual, the stay provided by subsection (a) is terminated with respect to personal property of the estate or of the debtor securing in whole or in part a claim, or subject to an unexpired lease, and such personal property shall no longer be property of the estate if the debtor fails within the applicable time set by section 521(a)(2)--

(A) to file timely any statement of intention required under section 521(a)(2) with respect to such personal property or to indicate in such statement that the debtor will either surrender such personal property or retain it and, if retaining such personal property, either redeem such personal property pursuant to section 722, enter into an agreement of the kind specified in section 524(c) applicable to the debt secured by such personal property, or assume such unexpired lease pursuant to section 365(p) if the trustee does not do so, as applicable; and

(B) to take timely the action specified in such statement, as it may be amended before expiration of the period for taking action, unless such statement specifies the debtor's intention to reaffirm such debt on the original contract terms and the creditor refuses to agree to the reaffirmation on such terms.

(2) Paragraph (1) does not apply if the court determines, on the motion of the trustee filed before the expiration of the applicable time set by section 521(a)(2), after notice and a hearing, that such personal property is of consequential value or benefit to the estate, and orders appropriate adequate protection of the creditor's interest, and orders the debtor to deliver any collateral in the debtor's possession to the trustee. If the court does not so determine, the stay provided by subsection (a) shall terminate upon the conclusion of the hearing on the motion.

(f) If a case commenced under chapter 7, 11, or 13 is dismissed due to the creation of a debt repayment plan, for purposes of subsection (c)(3), any subsequent case commenced by the debtor under any such chapter shall not be presumed to be filed not in good faith.

(i) On request of a party in interest, the court shall issue an order under subsection (c) confirming that the automatic stay has been terminated.

(K)(1) Except as provided in paragraph (2), an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages.

(2) If such violation is based on an action taken by an entity in the good faith belief that subsection (h) applies to the debtor, the recovery under paragraph (1) of this subsection against such entity shall be limited to actual damages.

(K)(1) Except as otherwise provided in this subsection, subsection (b) (22) shall apply on the date that is 30 days after the date on which the bankruptcy petition is filed, if the debtor files with the petition and serves upon the lessor a certification under penalty of perjury that--

(A) under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment for possession was entered, and

(B) the debtor (or an adult dependent of the debtor) has deposited with the clerk of the court, any rent that would become due during the 30-day period after the filing of the bankruptcy petition.

(2) If, within the 30-day period after the filing of the bankruptcy petition, the debtor (or an adult dependent of the debtor) complies with paragraph (1) and files with the court and serves upon the lessor a further certification under penalty of perjury that the debtor (or an adult dependent of the debtor) has cured, under nonbankruptcy law applicable in the jurisdiction, the entire monetary default that gave rise to the judgment under which possession is sought by the lessor, subsection (b)(22) shall not apply, unless ordered to apply by the court under paragraph (3).

(3)(A) If the lessor files an objection to any certification filed by the debtor under paragraph (1) or (2), and serves such objection upon the debtor, the court shall hold a hearing within 10 days after the filing and service of such objection to determine if the certification filed by the debtor under paragraph (1) or (2) is true.

(B) If the court upholds the objection of the lessor filed under subparagraph (A)--

(i) subsection (b)(22) shall apply immediately and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property, and

(ii) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the court's order upholding the lessor's objection.

(4) If a debtor, in accordance with paragraph (5), indicates on the petition that there was a judgment for possession of the residential rental property in which the debtor resides and does not file a certification under paragraph (1) or (2)--

(A) subsection (b)(22) shall apply immediately upon failure to file such certification, and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

(B) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the docket indicating the absence of a filed certification and the applicability of the exception to the stay under subsection (b)(22).

(5)(A) Where a judgment for possession of residential property in which the debtor resides as a tenant under a lease or rental agreement has been obtained by the lessor, the debtor shall so indicate on the bankruptcy petition and shall provide the name and address of the lessor that obtained that pre-petition judgment on the petition and on any certification filed under this subsection.

(B) The form of certification filed with the petition, as specified in this subsection, shall provide for the debtor to certify, and the debtor shall certify--

- (I) whether a judgment for possession of residential rental housing in which the debtor resides has been obtained against the debtor before the date of the filing of the petition, and
- (ii) whether the debtor is claiming under paragraph (1) that under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment of possession was entered, and has made the appropriate deposit with the court.
- (C) The standard forms (electronic and otherwise) used in a bankruptcy proceeding shall be amended to reflect the requirements of this subsection.
- (D) The clerk of the court shall arrange for the prompt transmittal of the rent deposited in accordance with paragraph (1)(B) to the lessor.
- (m)(1) Except as otherwise provided in this subsection, subsection (b) (22) shall apply on the date that is 15 days after the date on which the lessor files and serves a certification described in subsection (b)(23).
- (2)(A) If the debtor files with the court an objection to the truth or legal sufficiency of the certification described in subsection (b)(23) and serves such objection upon the lessor, subsection (b)(23) shall not apply, unless ordered to apply by the court under this subsection.
- (B) If the debtor files and serves the objection under subparagraph (A), the court shall hold a hearing within 10 days after the filing and service of such objection to determine if the situation giving rise to the lessor's certification under paragraph (1) existed or has been remedied.
- (C) If the debtor can demonstrate to the satisfaction of the court that the situation giving rise to the lessor's certification under paragraph (1) did not exist or has been remedied, the stay provided under subsection (a)(3) shall remain in effect until the termination of the stay under this section.
- (D) If the debtor cannot demonstrate to the satisfaction of the court that the situation giving rise to the lessor's certification under paragraph (1) did not exist or has been remedied--
  - (i) relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to proceed with the eviction, and
  - (ii) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the court's order upholding the lessor's certification.
- (3) If the debtor fails to file, within 15 days, an objection under paragraph (2)(A)--

- (A) subsection (b)(23) shall apply immediately upon such failure and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property, and
  - (B) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the docket indicating such failure.
  - (n)(1) Except as provided in paragraph (2), subsection (a) does not apply in a case in which the debtor--
    - (A) is a debtor in a small business case pending at the time the petition is filed,
    - (B) was a debtor in a small business case that was dismissed for any reason by an order that became final in the 2-year period ending on the date of the order for relief entered with respect to the petition,
    - (C) was a debtor in a small business case in which a plan was confirmed in the 2-year period ending on the date of the order for relief entered with respect to the petition, or
    - (D) is an entity that has acquired substantially all of the assets or business of a small business debtor described in subparagraph (A), (B), or (C), unless such entity establishes by a preponderance of the evidence that such entity acquired substantially all of the assets or business of such small business debtor in good faith and not for the purpose of evading this paragraph.
  - (2) Paragraph (1) does not apply--
    - (A) to an involuntary case involving no collusion by the debtor with creditors, or
    - (B) to the filing of a petition if--
      - (i) the debtor proves by a preponderance of the evidence that the filing of the petition resulted from circumstances beyond the control of the debtor not foreseeable at the time the case then pending was filed, and
      - (ii) it is more likely than not that the court will confirm a feasible plan, but not a liquidating plan, within a reasonable period of time.
    - (e) The exercise of rights not subject to the stay arising under subsection (a) pursuant to paragraph (6), (7), (17), or (27) of subsection (b) shall not be stayed by any order of a court or administrative agency in any proceeding under this title.
- CREDITS(S)**
- (Pub L. 95-598, Nov. 6, 1978, 92 Stat. 2570, Pub. L. 97-222, § 3, July 27, 1982, 96 Stat. 235, Pub. L. 96-353, Title III, §§ 304, 363(b), 392, 441, July 10, 1984, 98 Stat. 352, 363, 365, 371; Pub. L. 99-509, Title V, § 5001(a), Oct. 21, 1986, 100 Stat. 1911; Pub. L. 99-554, Title II, § 257(j), 283(d), Oct. 27, 1986, 100 Stat. 3115, 3116, Pub. L. 101-311, Title I, § 102, Title II, § 202, June 25, 1990, 104 Stat. 267, 269; Pub. L. 101-508, Title III, § 3007(a)(1), Nov. 5, 1990, 104 Stat. 1388-28, Pub. L. 103-394,

**§ 362. Automatic stay, 11 USCA § 362**

Title I, §§ 101, 116; Title II, §§ 204(a), 218(b); Title III, § 304(b); Title IV, § 401; Title V, § 501(b)(2), (d)(7); Oct. 22, 1994, 108 Stat. 4107, 4119, 4122, 4128, 4132, 4141, 4142, 4144, Pub. L. 105-277, Div. I, Title VI, § 603, Oct. 21, 1998, 112 Stat. 2681-886; Pub. L. 109-8, Title I, § 106(f); Title II, § 214, 224(b); Title III, §§ 302, 303, 305(1), 311, 320; Title IV, §§ 401(b), 441, 444; Title VII, §§ 709, 718; Title IX, § 907(d), (g)(1), (2); Title XI, § 1106; Title XII, § 1225, Apr. 20, 2005, 119 Stat. 41, 54, 64, 75, 77, 79, 84, 94, 104, 114, 117, 127, 131, 176, 181, 182, 192, 199; Pub. L. 109-304, § 170(k)(1), Oct. 6, 2006, 120 Stat. 1706; Pub. L. 109-390, § 50(a)(2), Dec. 12, 2006, 120 Stat. 2696; Pub. L. 111-327, § 20(a)(12), Dec. 22, 2010, 124 Stat. 3558 )

**Notes of Decisions (6021)**

**11 U.S.C.A. § 362, 11 USCA § 362**

**Current through P.L. 113-296 (excluding P.L. 113-235, 113-287, 113-291, and 113-295) approved 12-19-2014**

**End of Document**

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United States Code Annotated  
Title 11, Bankruptcy (Refs & Annots)  
Chapter 5, Creditors, the Debtor, and the Estate (Refs & Annots)  
Subchapter II, Debtor's Duties and Benefits

11 U.S.C.A. § 523

§ 523. Exceptions to discharge

Effective: December 22, 2010

Currentness

<Notes of Decisions for 11 USCA § 523 are displayed in two separate documents. Notes of Decisions for subdivisions I to XVI are contained in this document. For Notes of Decisions for subdivisions XVII to end, see second document for 11 USCA § 523 >

(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;

(B) with respect to which a return, or equivalent report or notice, if required--

(i) was not filed or given, or

(ii) was filed or given after the date on which such return, report, or notice was last due, under applicable law or under any extension, and after two years before the date of the filing of the petition, or

(C) with respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax.

(2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by--

(A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition,

(B) use of a statement in writing--

(i) that is materially false;

(ii) respecting the debtor's or an insider's financial condition;

(iii) on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and

(iv) that the debtor caused to be made or published with intent to deceive, or

(C)(k) for purposes of subparagraph (A)--

(1) consumer debts owed to a single creditor and aggregating more than \$650<sup>1</sup> for luxury goods or services incurred by an individual debtor on or within 90 days before the order for relief under this title are presumed to be nondischargeable; and

(11) cash advances aggregating more than \$925<sup>1</sup> that are extensions of consumer credit under an open end credit plan obtained by an individual debtor on or within 70 days before the order for relief under this title, are presumed to be nondischargeable; and

(ii) for purposes of this subparagraph--

(1) the terms "consumer", "credit", and "open end credit plan" have the same meanings as in section 103 of the Truth in Lending Act; and

(11) the term "luxury goods or services" does not include goods or services reasonably necessary for the support or maintenance of the debtor or a dependent of the debtor;

(3) neither listed nor scheduled under section 521(a)(1) of this title, with the name, if known to the debtor, of the creditor to whom such debt is owed, in time to permit--

(A) if such debt is not of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim, unless such creditor had notice or actual knowledge of the case in time for such timely filing; or

(B) if such debt is of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim and timely request for a determination of dischargeability of such debt under one of such paragraphs, unless such creditor had notice or actual knowledge of the case in time for such timely filing and request;

(4) for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny;

- (5) for a domestic support obligation;
- (6) for willful and malicious injury by the debtor to another entity or to the property of another entity;
- (7) to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss, other than a tax penalty—
  - (A) relating to a tax of a kind not specified in paragraph (1) of this subsection; or
  - (B) imposed with respect to a transaction or event that occurred before three years before the date of the filing of the petition;
- (8) unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor's dependents, for—
  - (A)(i) an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution; or
  - (ii) an obligation to repay funds received as an educational benefit, scholarship, or stipend; or
  - (B) any other educational loan that is a qualified education loan, as defined in section 221(d)(1) of the Internal Revenue Code of 1986, incurred by a debtor who is an individual;
- (9) for death or personal injury caused by the debtor's operation of a motor vehicle, vessel, or aircraft if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance;
- (10) that was or could have been listed or scheduled by the debtor in a prior case concerning the debtor under this title or under the Bankruptcy Act in which the debtor waived discharge, or was denied a discharge under section 727(g)(2), (3), (4), (5), (6), or (7) of this title, or under section 14c(1), (2), (3), (4), (6), or (7) of such Act;
- (11) provided in any final judgment, unreviewable order, or consent order or decree entered in any court of the United States or of any State, issued by a Federal depository institutions regulatory agency, or contained in any settlement agreement entered into by the debtor, arising from any act of fraud or defalcation while acting in a fiduciary capacity committed with respect to any depository institution or insured credit union;
- (12) for malicious or reckless failure to fulfill any commitment by the debtor to a Federal depository institutions regulatory agency to maintain the capital of an insured depository institution, except that this paragraph shall not extend any such commitment which would otherwise be terminated due to any act of such agency;
- (13) for any payment of an order of restitution issued under title 18, United States Code;

- (14) incurred to pay a tax to the United States that would be nondischargeable pursuant to paragraph (1);
- (14A) incurred to pay a tax to a governmental unit, other than the United States, that would be nondischargeable under paragraph (1);
- (14B) incurred to pay fines or penalties imposed under Federal election law;
- (15) to a spouse, former spouse, or child of the debtor and not of the kind described in paragraph (5) that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, or a determination made in accordance with State or territorial law by a governmental unit;
- (16) for a fee or assessment that becomes due and payable after the order for relief to a membership association with respect to the debtor's interest in a unit that has condominium ownership, in a share of a cooperative corporation, or a lot in a homeowners association, for as long as the debtor or the trustee has a legal, equitable, or possessory ownership interest in such unit, such corporation, or such lot, but nothing in this paragraph shall except from discharge the debt of a debtor for a membership association fee or assessment for a period arising before entry of the order for relief in a pending or subsequent bankruptcy case;
- (17) for a fee imposed on a prisoner by any court for the filing of a case, motion, complaint, or appeal, or for other costs and expenses assessed with respect to such filing, regardless of an assertion of poverty by the debtor under subsection (b) or (f)(2) of section 1915 of title 28 (or a similar non-Federal law), or the debtor's status as a prisoner, as defined in section 1915(b) of title 28 (or a similar non-Federal law);
- (18) owed to a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414, 457, or 501(c) of the Internal Revenue Code of 1986, under—
  - (A) a loan permitted under section 408(b)(1) of the Employee Retirement Income Security Act of 1974, or subject to section 72(p) of the Internal Revenue Code of 1986; or
  - (B) a loan from a thrift savings plan permitted under subchapter III of chapter 84 of title 5, that satisfies the requirements of section 8433(g) of such title;
 but nothing in this paragraph may be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 403(b), of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title; or
- (19) that—
  - (A) is for—

(f) the violation of any of the Federal securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), any of the State securities laws, or any regulation or order issued under such Federal or State securities laws, or

(ii) common law fraud, deceit, or manipulation in connection with the purchase or sale of any security, and

(B) results, before, on, or after the date on which the petition was filed, from--

(i) any judgment, order, consent order, or decree entered in any Federal or State judicial or administrative proceeding;

(ii) any settlement agreement entered into by the debtor; or

(iii) any court or administrative order for any damages, fine, penalty, citation, restitutionary payment, disgorgement payment, attorney fee, cost, or other payment owed by the debtor

For purposes of this subsection, the term "return" means a return that satisfies the requirements of applicable nonbankruptcy law (including applicable filing requirements). Such term includes a return prepared pursuant to section 6020(a) of the Internal Revenue Code of 1986, or similar State or local law, or a written stipulation to a judgment or a final order entered by a nonbankruptcy tribunal, but does not include a return made pursuant to section 6020(b) of the Internal Revenue Code of 1986, or a similar State or local law

(b) Notwithstanding subsection (a) of this section, a debt that was excepted from discharge under subsection (a)(1), (a)(3), or (a)(8) of this section, under section 17a(1), 17a(2), or 17a(5) of the Bankruptcy Act, under section 439A of the Higher Education Act of 1965, or under section 733(g) of the Public Health Service Act in a prior case concerning the debtor under this title, or under the Bankruptcy Act, is dischargeable in a case under this title unless, by the terms of subsection (a) of this section, such debt is not dischargeable in the case under this title

(c)(1) Except as provided in subsection (a)(3)(B) of this section, the debtor shall be discharged from a debt of a kind specified in paragraph (2), (4), or (6) of subsection (a) of this section, unless, on request of the creditor to whom such debt is owed, and after notice and a hearing, the court determines such debt to be excepted from discharge under paragraph (2), (4), or (6), as the case may be, of subsection (a) of this section.

(2) Paragraph (1) shall not apply in the case of a Federal depository institutions regulatory agency seeking, in its capacity as conservator, receiver, or liquidating agent for an insured depository institution, to recover a debt described in subsection (a)(2), (a)(4), (a)(6), or (a)(11) owed to such institution by an institution-affiliated party unless the receiver, conservator, or liquidating agent was appointed in time to reasonably comply, or for a Federal depository institutions regulatory agency acting in its conserve capacity as a successor to such receiver, conservator, or liquidating agent to reasonably comply, with subsection (a)(3)(B) as a creditor of such institution-affiliated party with respect to such debt.

(d) If a creditor requests a determination of dischargeability of a consumer debt under subsection (a)(2) of this section, and such debt is discharged, the court shall grant judgment in favor of the debtor for the costs of, and a reasonable attorney's fee

for the proceeding if the court finds that the position of the creditor was not substantially justified, except that the court shall not award such costs and fees if special circumstances would make the award unjust.

(e) Any institution-affiliated party of an insured depository institution shall be considered to be acting in a fiduciary capacity with respect to the purposes of subsection (a)(4) or (11).

**CREDITS)**

(Pub L. 95-598, Nov. 6, 1978, 92 Stat. 2590; Pub L. 96-56, § 3, Aug. 14, 1979, 93 Stat. 387; Pub L. 97-35, Title XXXIII, § 2334(b), Aug. 13, 1981, 95 Stat. 863; Pub L. 98-353, Title III, §§ 307, 371, 454, July 10, 1984, 98 Stat. 353, 364, 375; Pub L. 99-554, Title II, §§ 257(a), 281, 283(j), Oct. 27, 1986, 100 Stat. 3115 to 3117; Pub L. 101-581, § 2(a), Nov. 15, 1990, 104 Stat. 2865; Pub L. 101-647, Title XXV, § 2522(a), Title XXXI, § 3102(a), Title XXXVI, § 3621, Nov. 29, 1990, 104 Stat. 4865, 4916, 4964; Pub L. 103-322, Title XXXII, § 320934, Sept. 13, 1994, 108 Stat. 2135; Pub L. 103-594, Title II, § 221, Title III, §§ 304(a), (b)(3), 306, 309, Title V, § 501(d)(13), Oct. 22, 1994, 108 Stat. 4129, 4133 to 4135, 4137, 4145; Pub L. 104-134, Title I, § 101(a)(Title VIII, § 804(b)), Apr. 26, 1996, 110 Stat. 1321-74, renumbered Title I Pub L. 104-140, § 1(a), May 2, 1996, 110 Stat. 1327, amended Pub L. 104-193, Title III, § 374(a), Aug. 22, 1996, 110 Stat. 2255; Pub L. 105-244, Title IX, § 971(a), Oct. 7, 1998, 112 Stat. 1837; Pub L. 107-204, Title VIII, § 803, July 30, 2002, 116 Stat. 801; Pub L. 109-8, Title II, §§ 215, 220, 224(c), Title III, § 301, 310, 314(a), Title IV, § 412, Title VII, § 714, Title XII, §§ 1209, 1235, Title XIV, § 1404(a), Title XV, § 1502(a)(2), Apr. 20, 2005, 119 Stat. 54, 59, 64, 75, 84, 88, 107, 128, 194, 204, 215, 216; Pub L. 111-327, § 2(a)(8), Dec. 22, 2010, 124 Stat. 3559)

**Notes of Decisions (5581)**

**Footnotes**

1 Dollar amount as adjusted by the Judicial Conference of the United States. See Adjustment of Dollar Amounts notes set out under this section and 11 U.S.C.A. § 104  
11 U.S.C.A. § 523, 11 USCA § 523  
Current through P.L. 113-296 (excluding P.L. 113-235, 113-287, 113-291, and 113-295) approved 12-19-2014



United States Code Annotated  
Title 11, Bankruptcy (Refs & Annos)  
Chapter 5, Creditors, the Debtor, and the Estate (Refs & Annos)  
Subchapter I, Creditors and Claims

11 U.S.C.A. § 507

§ 507. Priorities

Effective: December 22, 2010  
Currentness

(a) The following expenses and claims have priority in the following order:

(1) First:

(A) Allowed unsecured claims for domestic support obligations that, as of the date of the filing of the petition in a case under this title, are owed to or recoverable by a spouse, former spouse, or child of the debtor, or such child's parent, legal guardian, or responsible relative, without regard to whether the claim is filed by such person or is filed by a governmental unit on behalf of such person, on the condition that funds received under this paragraph by a governmental unit under this title after the date of the filing of the petition shall be applied and distributed in accordance with applicable nonbankruptcy law.

(B) Subject to claims under subparagraph (A), allowed unsecured claims for domestic support obligations that, as of the date of the filing of the petition, are assigned by a spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative to a governmental unit (unless such obligation is assigned voluntarily by the spouse, former spouse, child, parent, legal guardian, or responsible relative of the child for the purpose of collecting the debt) or are owed directly to or recoverable by a governmental unit under applicable nonbankruptcy law, on the condition that funds received under this paragraph by a governmental unit under this title after the date of the filing of the petition be applied and distributed in accordance with applicable nonbankruptcy law.

(C) If a trustee is appointed or elected under section 701, 702, 703, 1104, 1202, or 1302, the administrative expenses of the trustee allowed under paragraphs (1)(A), (2), and (6) of section 503(b) shall be paid before payment of claims under subparagraphs (A) and (B), to the extent that the trustee administers assets that are otherwise available for the payment of such claims.

(2) Second, administrative expenses allowed under section 503(b) of this title, unsecured claims of any Federal reserve bank related to loans made through programs or facilities authorized under section 13(3) of the Federal Reserve Act (12 U.S.C. 1413), and any fees and charges assessed against the estate under chapter 123 of title 28.

(3) Third, unsecured claims allowed under section 502(f) of this title.

(4) Fourth, allowed unsecured claims, but only to the extent of \$12,475<sup>1</sup> for each individual or corporation, as the case may be, earned within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first, for--

(A) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual, or

(B) sales commissions earned by an individual or by a corporation with only 1 employee, acting as an independent contractor in the sale of goods or services for the debtor in the ordinary course of the debtor's business if, and only if, during the 12 months preceding that date, at least 75 percent of the amount that the individual or corporation earned by acting as an independent contractor in the sale of goods or services was earned from the debtor.

(5) Fifth, allowed unsecured claims for contributions to an employee benefit plan--

(A) arising from services rendered within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first, but only

(B) for each such plan, to the extent of--

(i) the number of employees covered by each such plan multiplied by \$12,475<sup>1</sup>, less

(ii) the aggregate amount paid to such employees under paragraph (4) of this subsection, plus the aggregate amount paid by the estate on behalf of such employees to any other employee benefit plan.

(6) Sixth, allowed unsecured claims of persons--

(A) engaged in the production or raising of grain, as defined in section 557(b) of this title, against a debtor who owns or operates a grain storage facility, as defined in section 557(b) of this title, for grain or the proceeds of grain, or

(B) engaged as a United States fisherman against a debtor who has acquired fish or fish produce from a fisherman through a sale or conversion, and who is engaged in operating a fish produce storage or processing facility--

but only to the extent of \$6,150<sup>1</sup> for each such individual.

(7) Seventh, allowed unsecured claims of individuals, to the extent of \$2,775<sup>1</sup> for each such individual, arising from the deposit, before the commencement of the case, of money in connection with the purchase, lease, or rental of property, or the purchase of services, for the personal, family, or household use of such individuals, that were not delivered or provided

(8) Eighth, allowed unsecured claims of governmental units, only to the extent that such claims are for--

- (A) a tax on or measured by income or gross receipts for a taxable year ending on or before the date of the filing of the petition--
  - (i) for which a return, if required, is last due, including extensions, after three years before the date of the filing of the petition;
  - (ii) assessed within 240 days before the date of the filing of the petition, exclusive of--
    - (I) any time during which an offer in compromise with respect to that tax was pending or in effect during that 240-day period, plus 30 days; and
    - (II) any time during which a stay of proceedings against collections was in effect in a prior case under this title during that 240-day period, plus 90 days; or
  - (iii) other than a tax of a kind specified in section 523(a)(1)(B) or 523(a)(1)(C) of this title, not assessed before, but assessable, under applicable law or by agreement, after, the commencement of the case;
- (B) 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;
- (C) a tax required to be collected or withheld and for which the debtor is liable in whatever capacity;
- (D) an employment tax on a wage, salary, or commission of a kind specified in paragraph (4) of this subsection earned from the debtor before the date of the filing of the petition, whether or not actually paid before such date, for which a return is last due, under applicable law or under any extension, after three years before the date of the filing of the petition;
- (E) an excise tax on--
  - (i) a transaction occurring before the date of the filing of the petition for which a return, if required, is last due, under applicable law or under any extension, after three years before the date of the filing of the petition; or
  - (ii) if a return is not required, a transaction occurring during the three years immediately preceding the date of the filing of the petition;
- (F) a customs duty arising out of the importation of merchandise--
  - (i) entered for consumption within one year before the date of the filing of the petition;

- (ii) covered by an entry, liquidated or reliquidated within one year before the date of the filing of the petition; or
  - (iii) entered for consumption within four years before the date of the filing of the petition but unliquidated on such date, if the Secretary of the Treasury certifies that failure to liquidate such entry was due to an investigation pending on such date into assessment of antidumping or countervailing duties or fraud, or if information needed for the proper appraisalment or classification of such merchandise was not available to the appropriate customs officer before such date; or
- (G) a penalty related to a claim of a kind specified in this paragraph and in compensation for actual pecuniary loss
- An otherwise applicable time period specified in this paragraph shall be suspended for any period during which a governmental unit is prohibited under applicable nonbankruptcy law from collecting a tax as a result of a request by the debtor for a hearing and an appeal or any collection action taken or proposed against the debtor, plus 90 days, plus any time during which the stay of proceedings was in effect in a prior case under this title or during which collection was precluded by the existence of 1 or more confirmed plans under this title, plus 90 days.
- (9) Ninth, allowed unsecured claims based upon any commitment by the debtor to a Federal depository institutions regulatory agency (or predecessor to such agency) to maintain the capital of an insured depository institution.
  - (10) Tenth, allowed claims for death or personal injury resulting from the operation of a motor vehicle or vessel if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance
  - (b) If the trustee, under section 362, 363, or 364 of this title, provides adequate protection of the interest of a holder of a claim secured by a lien on property of the debtor and if, notwithstanding such protection, such creditor has a claim allowable under subsection (a)(2) of this section arising from the stay of action against such property under section 362 of this title, from the use, sale, or lease of such property under section 363 of this title, or from the granting of a lien under section 364(d) of this title, then such creditor's claim under such subsection shall have priority over every other claim allowable under such subsection
  - (c) For the purpose of subsection (a) of this section, a claim of a governmental unit arising from an erroneous refund or credit of a tax has the same priority as a claim for the tax to which such refund or credit relates
  - (d) An entity that is subrogated to the rights of a holder of a claim of a kind specified in subsection (a)(1), (a)(4), (a)(5), (a)(6), (a)(7), (a)(8), or (a)(9) of this section is not subrogated to the right of the holder of such claim to priority under such subsection.
- CREDITS(S)**  
 (Pub L. 95-598, Nov. 6, 1978, 92 Stat. 2583; Pub L. 98-353, Title III, §§ 350, 449, July 10, 1984, 98 Stat. 358, 374; Pub L. 101-647, Title XXX, § 2522(d), Nov. 29, 1990, 104 Stat. 4867; Pub L. 103-394, Title I, § 108(G), Title II, § 207, Title III, § 304(C), Title V, § 501(b)(3), (d)(11), Oct. 22, 1994, 108 Stat. 4123, 4132, 4142, 4145; Pub L. 109-8, Title II, §§ 212, 223, Title VII, §§ 705, 706, Title XIV, § 1401, Title XV, § 1502(a)(1), Apr. 20, 2005, 119 Stat. 51, 62, 126, 214, 216; Pub L. 111-203, Title XL, § 1101(b), July 21, 2010, 124 Stat. 2115; Pub L. 111-327, § 2(a)(15), Dec. 22, 2010, 124 Stat. 3559)

Notes of Decisions (1158)

Footnotes

- 1 Dollar amount as adjusted by the Judicial Conference of the United States. See Adjustment of Dollar Amounts notes set out under this section and 11 U.S.C.A. § 104.
- 11 U.S.C.A. § 507, 11 USCA § 507  
Current through P.L. 113-296 (excluding P.L. 113-235, 113-287, 113-291, and 113-295) approved 12-19-2014

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### Fair Debt Collection

#### The Federal Fair Debt Collections Practices Act ("FDCPA")

As a consumer, you are entitled to file a lawsuit against any debt collector who violates your rights under the FDCPA. In short, the FDCPA allows a consumer to recover their actual damages, statutory damages of up to \$1,000 and their attorney's fees and costs. While this may seem like a modest amount, to debt collectors who violate the law there is much more at stake: Increased insurance rates, decreased collection rates, potential governmental regulatory action, and the spiraling costs of defending a lawsuit for their illegal conduct.

The deck is stacked against consumers with sophisticated debt collection tactics. As a consumer, you should not hesitate to shield yourself from these sharp practices and exercise your rights under the FDCPA. Our law firm has the experience, resources and ability to zealously represent you in your FDCPA action against any debt collector. We file federal civil lawsuits against debt collectors who violate any state or federal law. The FDCPA prohibits any collection efforts, which violates any law. That means that amongst other things, a collector must tell the truth, be respectful to you, and cease communicating with you when you have a lawyer. Our firm can and will make illegal collection activity stop dead in its tracks.

We firmly believe that everyone should pay their just and owing debts. But our country was founded on historic legal principles which rejected debtor's prisons and the like. Likewise, we think that no debt collector ought to violate your rights to get payment. It's that simple. Your legal right to fair, legal, debt collection activity cannot take a back seat to any debt collector's violations of state and federal law.

#### Some Definitions

**Consumer** Any person who owes or is alleged to owe a consumer debt.

**Debt Collectors** According to the FDCPA, a debt collector is any person, other than the creditor, who regularly collects debts owed to others and includes attorneys who regularly collect debts.

**Covered Debts** Any debt that is primarily for personal, family, or household purposes are covered under the FDCPA. Business and commercial debts are not covered. Alimony, child support, criminal fines, and tort claims are generally not considered debts within the meaning of the FDCPA.

#### How a Debt Collector Can Communicate With You

**Communications Generally** A debt collector may communicate with you by mail, in person, by telephone or telegram. A debt collector cannot contact you at times or in places that they know are inconvenient to you, such as at work if your employer does not

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permit it or during daytime sleep hours if you work nights. A debt collector cannot contact you before 8 a.m. or after 9 p.m.

**Stopping Communications** If you send a written request to a debt collector demanding that they stop contacting you, the debt collector must stop contact immediately, but they may send one last communication to you advising you that they intend to take a specific action against you including filing a lawsuit.

**Attorney Representation** If you are represented by an attorney concerning a consumer debt (e.g., a consumer rights attorney such as our office, a bankruptcy attorney, or a family attorney), the debt collector cannot communicate directly with you except through your lawyer.

**Contacting Others** A debt collector cannot contact any third party about your debt. This means that they cannot call you sister-in-law, your grandson, or your neighbor about the debt. Debt collectors are not allowed to tell anyone but you and your attorney that you owe anyone else money.

**Locating You** A debt collector has a right to contact other people once, and only once, in an effort to locate you. Debt collectors are not permitted to ask neighbors to bring you phone messages, ask you to come across the street for a phone call, or tell other people that they are attempting to collect a debt from you.

### **Debt Validation**

**30-Day Validation Notice Requirements** Within five days after you are first contacted; a debt collector must send you a written notice telling you the following:

- The amount of the debt.
- The name of the creditor to whom the debt is owed.
- A statement that unless you, within thirty days after receipt of the notice, dispute the validity of the debt, or any portion of it, the debt will be assumed to be valid by the debt collector.
- A statement that if you notify the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against you and a copy of such verification or judgment will be mailed to the consumer by the debt collector.
- A statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.
- Finally, a statement that the communication is from a debt collector attempting to collect a debt and that any information obtained will be used for that purpose.
- Every debt collector who tries to collect your debt must provide their own 30-day validation notice, even if a previous debt collector has already given such notice.

**Rights While Debt Under Dispute** If you dispute a debt in writing within the 30-day validation period, a debt collector cannot continue to collect on the debt until they have sent you proof of the debt or a copy of the judgment.

### **What a Debt Collector is prohibited From Doing to You**

**Collection Fees Prohibited** A debt collector may not charge you

an interest, fees, or collection charges, except those amounts that were authorized by the agreement with the creditor to whom the debt is owed.

**Harassment Prohibited** A debt collector may not use any language, communication or conduct to harass, oppress, or abuse any person. This includes prohibits on:

- Use threats of violence or harm to the person, property, or reputation.
- Advertise your debt or publish a list of consumers who refuse to pay their debts, except to credit bureaus.
- Use obscene or profane language.
- Repeatedly use the telephone to annoy someone or ring the telephone constantly.
- Call people without identifying themselves.

**False Statements Prohibited** A debt collector may not use any false statements when trying to collect a debt. This includes:

- Falsely implying that they are an attorney or government representative.
- Falsely implying that you have committed a crime by not paying a debt.
- Falsely represent that they operate or work for a credit bureau.
- Misrepresent the character, amount, or legal status of the debt.
- Indicate that papers being sent are legal papers when they are not.
- Indicate that papers being sent are not legal papers when they are.

**Threats Prohibited** A debt collector may not use threats when trying to collect a debt. This includes threats like the following:

- You will be arrested if you do not pay your debt.
- They will seize, garnish, attach, or sell your property or wages, unless the collection agency or the creditor intends to do so and they have the right to do so.
- Take any actions against you which are illegal.
- Violate any law in an effort to collect a debt.

**Deception Prohibited** A debt collector may not use deception when trying to collect a debt. This includes deceptions like the following:

- Send you anything that looks like an official document from a court or government agency when it is not.
- Give false credit information about you to anyone.
- Use a fake or false name, unless that name is allowed by state law and properly registered with the state, if required.

**Unfairness Prohibited** A debt collector may not treat you unfairly in attempting to collect a debt. This includes unfairness like the following:

- Collect any amount greater than your debt, unless allowed by law.
- Deposit a post-dated check more than 5 days before the date on the check, without giving you notice of when they intend to deposit it.
- Solicit a post-dated in order threaten criminal prosecution or threaten to cash the check early.
- Make you accept collect calls or pay for telegrams.
- Take or threaten to take your property unless this can be done legally, including wrongfully repossessing your vehicle.
- Contact you by postcard.

**Payments on Multiple Debts** A debt collector must apply you payments on multiple debts in the order you direct. A debt collector is prohibited from applying any payments you send in to debts that you believe you do not owe.

### **Your Rights to Sue**

#### **Your Right to Sue a Collector for Violations of the FDCPA.**

You have the right to sue a debt collector within one year from the date you believe the law was violated. This is what our law firm does. If you do not bring you lawsuit within one year of the violation, your claim will be forever barred by a statute of limitations. If you win your lawsuit, you may recover money for the damage you suffered, statutory damages of up to \$1,000 plus court costs and your attorney's fees.

If you have been subjected to any of these illegal practices, please contact our office.

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