Bankruptcy Glossary

Bankruptcy has its own language. Here is a brief definition of those terms used in this site and in the Bankruptcy Code.

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

Assets: Assets are every form of property that the debtor owns. They include such intangible things as business goodwill; the right to sue someone; or stock options. The debtor must disclose all of his assets in the bankruptcy schedules; exemptions remove the exempt assets from property of the estate.

Automatic stay: The injunction issued automatically upon the filing of a bankruptcy case which prohibits collection actions against the debtor, the debtor's property or the property of the estate. See Relief from Stay on terminating the injunction.

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

Avoidance powers: Rights given to the bankruptcy trustee (or the debtor in possession in a Chapter 11) to recover certain transfers of property such as preferences or fraudulent transfers or to void liens created before the commencement of a bankruptcy case. More on preferences.

Bankruptcy Code. Title 11 of the United States Code governs bankruptcy proceedings. Bankruptcy is a matter of federal law and is, with the exception of exemptions, the same in every state. When federal bankruptcy law conflicts with state law, federal law controls. Bankruptcy Code incorporating changes effective 10/17/05.

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

Chapter 7: The most common form of bankruptcy, a Chapter 7 case is a liquidation proceeding, available to individuals, married couples, partnerships and corporations. More in Bankruptcy Basics.

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

Chapter 12: A simplified reorganization plan for family farmers whose debts fall within certain limits.

Confirmed: A plan of reorganization in Chapter 11, 12 or 13 approved by the court and binding on the parties is said to be confirmed.

Chapter 13: A repayment plan for individuals with debts falling below statutory levels which provides for repayment of some or all of the debts out of future income over 3 to 5 years. More in The Power of 13.

Charged Off: This is an accounting term that means the creditor does not expect to collect on the debt. It relates to the creditor's taxes. It starts time periods under the Fair Credit Reporting Act. It does not mean that the debt is no longer legally enforceable.

Collateral: The property which is subject to a lien. A creditor with rights in collateral is a secured creditor and has additional protections in the Bankruptcy Code for the claim secured by collateral. The measure of the secured claim is the value of the collateral available to secure the claim: it is possible to have a lien on property that is subject to a senior lien or liens such that the security available to pay the claim is really without value to the junior creditor. The general rule with respect to liens is "First in time, first in right." More on Secured Debts.

Confirmation: The court order which makes the terms of the plan for repayment of debts in a Chapter 11, 12 or 13 binding. The terms of the confirmed plan replace the prepetition rights of the debtor and creditor.

Consumer Debt Debts incurred by an individual for personal, family or household purposes. Taxes are not consumer debts; neither are business loans. The means test only applies to those with primarily consumer debt.

Contingent: Used to describe debts that are not fixed in right at the time, but are dependent on some other event happening to fix the liability.

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

Creditor: The person or organization to whom the debtor owes money or has some other form of legal obligation.

Debtor: The debtor is the entity (person, partnership or corporation) who is liable for debts, and who is the subject of a bankruptcy case.

Debtor in Possession: In a Chapter 11 case, the debtor usually remains in possession of its assets and assumes the duties of a trustee. The debtor in possession is a fiduciary for the creditors of the estate, and owes them the highest duty of care and loyalty.

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

Discharge: The legal elimination of debt through a bankruptcy case. When a debt is discharged, it is no longer legally enforceable against the debtor, though any lien which secures the debt may survive the bankruptcy case.

Dischargeable: Debts that can be eliminated in bankruptcy. Certain debts are not dischargeable; that it, they may not be discharged through bankruptcy or may only be discharged through Chapter 13. Family support and criminal restitution are examples of debts which cannot be discharged. Debts incurred by fraud can only be discharged in Chapter 13. More on which debts can be discharged. Considerations in contesting discharge of a debt.

Dismissal: The termination of the case without either the entry of a discharge or a denial of discharge; after a case is dismissed, the debtor and the creditors have the same rights as they had before the bankruptcy case was commenced. Dismissal is the penalty for many essentially minor infractions of bankruptcy procedures under the 2005 amendments.

Domestic Support Obligation: Debts for alimony, maintenance or support owed to child, spouse or governmental entity that paid for the support of the child or spouse. A new term introduced by the bankruptcy amendments of '05.

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

Exemptions: Exemptions are the lists of the kinds and values of property that is legally beyond the reach of creditors or the bankruptcy trustee. The debtor in bankruptcy keeps the exempt property. What property may be exempted is determined by state and federal statutes, and varies from state to state. More on exemptions.

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

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

Indemnify: to guarantee against any loss which another might suffer. In bankruptcy, it is used to describe the undertaking of one spouse in a divorce to assume certain debts of the marriage and to see that the other spouse is not forced to pay. Also called a "hold harmless" clause.

Lien: An interest in real or personal property which secures a debt; the lien may be voluntary, such as a mortgage in real property, or involuntary, such as a judgment lien or tax lien.

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

Means Test: Added to the Code in 2005, the means test is intended to screen out those filing Chapter 7 who is supposedly able to repay some part of their debts. The test is found in Official Form B22a. Debtors who fail the means test may convert their case to another chapter of bankruptcy. More about how the means test works.

Meeting of creditors the debtor must appear at a meeting with the trustee to be examined under oath about assets and liabilities. Creditors are invited but seldom attend. The meeting is sometimes called the 341 meeting, after the section of the Bankruptcy Code that requires it. More about "going to court".

Non dischargeable: A debt that cannot be eliminated in bankruptcy. Non dischargeable debts remain legally enforceable despite the bankruptcy discharge. The Code's list of non dischargeable debts is found at 11 U.S.C. 523. The scope of the discharge in Chapter 13 differs from the discharge in Chapter 7. Discharges compared.

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

Personal property: Assets, such as cars, stock, furniture, etc., that is not real estate or affixed to real property,

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

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

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

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

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

Proof of claim: The form filed with the court establishing the creditor's claim against the debtor.

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

Reaffirm: The debtor can chose to waive the discharge as to a debt that is reaffirmed. Generally, the parties to the reaffirmed debt have the same rights and liabilities that each had prior to the bankruptcy filing: the debtor is obligated to pay and the creditor can sue or repossess if the debtor doesn't pay. More on reaffirmation and the alternatives.

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

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

Secured debt: A claim secured by a lien in the debtor's property by reason of the debtor's agreement or an involuntary lien such as a judgment or tax lien. The creditor's claim may be divided into a secured claim, to the extent of the value of the collateral, and an unsecured claim equal to the remainder of the total debt. Generally a secured claim must be perfected under applicable state law to be treated as a secured claim in the bankruptcy. More at Is This Debt Secured?

Trustee: the court appoints a trustee in every Chapter 7 and Chapter 13 case to review the debtor's schedules and represent the interests of the creditors in the bankruptcy case. The role of the trustee is different under the different chapters. More on trustees.

Unsecured: A claim or debt is unsecured if there is no collateral that is security for the debt. Most consumer debts are unsecured. See Is This Debt Secured?

Further definitions are found in Section 101 of the Bankruptcy Code.