

MONTANA LAND AND TITLE
ASSOCIATION
FALL SEMINAR: NOVEMBER 7 & 8,
BILLINGS MT






*WHEN DISPOSITION OF REAL PROPERTY
IN BANKRUPTCY INTERSECTS WITH
TITLE AGENTS OR PRODUCTS*

HON. BENJAMIN HURSH &
GRANT KELLY, ESQ.

1

1

OUTLINE

-  I. Introduction
-  II. Why do people and entities file bankruptcy?
-  III. Bankruptcy, Generally
-  IV. Bankruptcy, Basics for Title Agents
-  V. Disposition of Real Property Title Agents & Products

2

2

**HOW DOES
BANKRUPTCY
INTERSECT WITH
TITLE WORK?**

-  Stay relief – litigation guarantee/trustee's sale guarantee
-  Transaction under 363(b) or (f); or Confirmed Plan – title commitment
-  Avoid liens – judgment report/other product

3

3

I. Why Bankruptcy?

4

**CREDIT CARD DEBT
IN US IN AUGUST
2023**

**\$17.06
trillion**



5

**MORTGAGE DEBT
IN US IN AUGUST
2023**

\$1 trillion



6

**AUTO LOAN DEBT
IN US IN AUGUST
2023**

\$1.5 trillion



7

**WHY DO
INDIVIDUALS
STOP PAYING
CREDITORS**

- Income Interruption
- Job loss
- divorce
- Illness



8

**BROKEN PROMISES & COLLECTION OF
DEBT**

Income, \$2,210. Expenses \$2,000. Credit card debt of \$10,000.

- Complaint filed in Justice Court or State Court (state court proceeding)
- Answer or Entry of Default
- Entry of judgment, \$10,000.
- Issue a Writ of Execution (“garnishment”).
- 25% of wages.
- \$552 of \$2,210, = **\$1,658**.
- Expenses remain: \$2,000.

9

ENFORCING JUDGMENT LIEN – PERSONAL PROPERTY, GARNISHMENT

JUDGMENT AMOUNT: \$10,000
25% OF WAGES OF \$2,210 = \$552
18 MONTHS OF GARNISHING WAGES TO PAY JUDGMENT

10

10

HOW DOES A BORROWER/DEBTOR STOP COLLECTION – FILE BANKRUPTCY

1. Bankruptcy initiated with Debtor filing a petition.
2. Immediately stops creditor collection.
3. Goals of Bankruptcy:
 - Maximize return to creditors;
 - Preserve/rehabilitate debtor; and
 - Provide honest debtor with a fresh start.

“... the Bankruptcy Code seeks to effect an equitable distribution of a debtor’s assets to the debtor’s various creditors through the Code’s statutory provisions and the use of a bankruptcy trustee.” *Stahl v. Simon (In re Adamson Apparel, Inc.)*, 785 F.3d 1285, 1291 (9th Cir. 2015).

11

11

III. BANKRUPTCY TERMS & GENERAL CONCEPTS

12

12

BANKRUPTCY

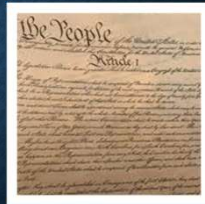
- (1) The quality, state, or condition of being without enough money to pay back what one owes; insolvency. Also termed failure to meet obligations; failing circumstances.
- (2) A statutory procedure by which a debtor obtains financial relief and undergoes a judicially supervised reorganization or liquidation of the debtor's assets for the benefit of creditors; a case under the Bankruptcy Code (Title 11 of the United States Code).

13

13

BANKRUPTCY LAW IS FEDERAL LAW

- Article I, Section 8, of the United States Constitution authorizes Congress to enact "uniform Laws on the subject of Bankruptcies."
- Series of bankruptcy acts passed but few were successful until Act of 1898. 1898 Act governed insolvency until 1978.
- 1978 Congress enacted the "Bankruptcy Code."



14

14

STATE LAW CONTROLS PROPERTY INTERESTS

"Property interests are created and defined by state law. Unless some federal interest requires a different result, there is no reason why such interests should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding."

Butner v. United States, 440 U.S. 48, 55 (1979).

15

15



THE CASE

- "Filing" a petition commences a bankruptcy case - may be a chapter 7, 11, 12 or 13 case.
- Petition may be filed voluntarily by debtor;
- Petition may be filed by group of creditors against debtor, involuntary; and
- Filing petition is "order for relief."
- Petition date establishes prepetition and post-petition temporal periods.

16

IV. BANKRUPTCY BASICS

17

PETITION FILED ON JANUARY 2, 2023 (A TEMPORAL LINE OF DEMARCATION)

<p>January 1, 2023, and all that preceded it</p> <ul style="list-style-type: none"> • Prepetition • Prepetition claims • Prepetition interests 	<p>January 2, 2023, and all that follows</p> <ul style="list-style-type: none"> • Post petition • Post petition claims • Post petition interests
--	--

18



AUTOMATIC STAY



The automatic stay is a federal injunction that temporarily prevents creditors, collection agencies, government departments and anyone else from collecting, or even contacting and requesting, money that a debtor owes them.

Extends to property of the estate.

Acts taken in violation of the stay are void. Offender may be held in contempt, liable for damages, including punitives.

Exceptions to the stay (i.e., not every act is stayed): Criminal actions; Paternity or domestic support obligations; Government's police and regulatory powers.

19

THE ESTATE

- At the commencement of the case – filing of the petition – , all of debtor's property except narrow statutory exceptions [exempted property] goes into a bucket – the estate.
- As the case progresses, the property in the bucket will be classified and sorted into other buckets.
- Some property will go back the debtor, (exempt property), some property will be earmarked for secured creditors (property encumbered by liens), and some property may be liquidated and the proceeds from liquidation used to pay administrative expenses and claims.




20

LIQUIDATION, CHAPTER 7 – DISPOSITION OF REAL PROPERTY

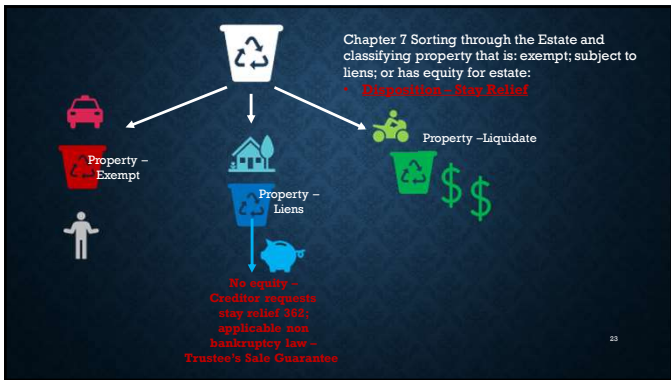
- No asset Chapter 7, nothing to liquidate.
- Asset Chapter 7, review exemptions, objections to claims, liquidation of assets, payment secured claims, priority unsecured claims, and general unsecured claims that are allowed.
- General unsecured claims share on a pro rata basis.
- Debtor receives discharge and has no personal liability for prepetition claims, subject to statutory exceptions, (domestic support).

21

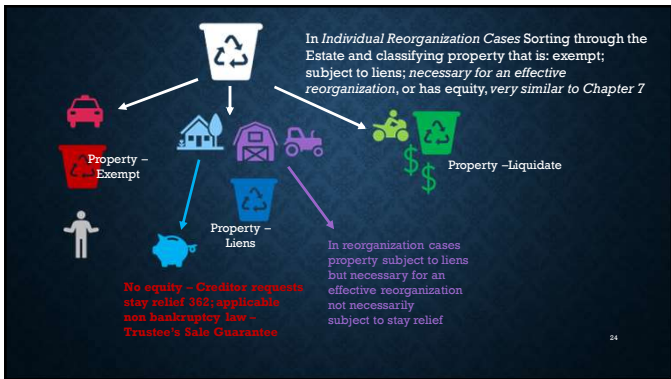
V. DISPOSITION OF REAL PROPERTY



22



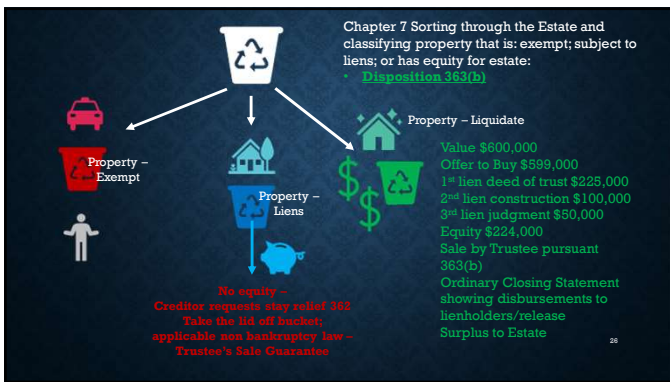
23



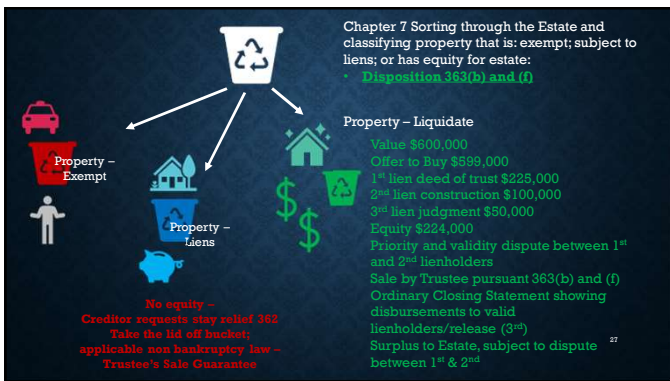
24



25



26



27

REORGANIZATION GENERALLY, CHAPTERS 11, 12 AND 13

- Rather than liquidate, in a reorganization the Debtor proposes a repayment plan that provides for repayment of debts on new terms over a fixed period of time.
- Like a chapter 7 case, there is a claims process, and parties may object to claims. In individual cases, debtor may assert exemptions.
- Chapter 13 plans must be 36-60 months.
- Chapter 11 and Chapter 12 plans are not subject to the same limitation.
- Plan shall provide the same treatment for each claim within a particular class.
- Sale of real property occurs in reorganizations under chapters 11, 12 and 13

28

28



Sale of Real Property in Reorganization, Chapters 11, 12, and 13, (not 7):

- **Disposition 363 or Confirmation Order**

(A) *Prior to Confirmation of Plan Sale* authorized by Order pursuant to 363

(B) *Post Confirmation Sale* may be authorized by Order pursuant to 363 or Confirmation Order:

1. Did Property revest in Debtor at Confirmation, (no longer estate property), Confirmation Order likely authorizes sale;
2. If Property did not revest in Debtor at Confirmation of Plan, Sale may be pursuant to 363 Order because Property remains property of the estate.

29

29




Chapter 7 Sorting through the Estate and classifying property that is: exempt; subject to liens; or has equity for estate:

- **Disposition Abandonment 554**

11 U.S.C. § 554(a):

- (a) After notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.
- (b) On request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.
- (c) Unless the court orders otherwise, any property scheduled under section 521(a)(1) of this title not otherwise administered at the time of the closing of a case is abandoned to the debtor and administered for purposes of section 350 of this title.
- (d) Unless the court orders otherwise, property of the estate that is not abandoned under this section and that is not administered in the case remains property of the estate.

30



Chapter 7 Sorting through the Estate and classifying property that is: exempt; subject to liens; or has equity for estate:

- **Avoiding Lien**


§22(f)(1)(A):
Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is—a judicial lien

§22(f)(2)(A):
For the purposes of this subsection, a lien shall be considered to impair an exemption to the extent that the sum of—

- the lien;
- all other liens on the property; and
- the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens.

31

31



Chapter 7 Sorting through the Estate and classifying property that is: exempt; subject to liens; or has equity for estate:

- **Avoiding Lien**

Mont. Code Ann. 70-32-104:

(3)(a) The department of revenue shall adopt administrative rules setting the homestead value limit.


(b) In 2021, the homestead value limit is \$350,000.

(c) The homestead value limit must increase by 4% every calendar year after 2021.

Prior to 2021, \$250,000.

32

32



Chapter 7 Sorting through the Estate and classifying property that is: exempt; subject to liens; or has equity for estate:

- **Avoiding Lien**

Example:

If judicial lien is less than "A," using $A = [B+C+D] - E$, judicial lien is avoided in its entirety.

B: Lien subject to avoidance, \$44,699.40

C: Other liens, mortgages, and other encumbrances on the real property, \$348,018.89

D: Exemption amount, \$250,000 (pre 2021)

$B + C + D = \$642,718.29$

E: Value of property, \$465,000

$\$642,718.29 - \$465,000 = \$177,718.29$

B is less than A ($\$44,699.40 < \$177,718.29$) and subject to avoidance.

33

33

CONCLUSION

- Goal today was to provide a lightning overview of a couple bankruptcy concepts, primarily, "estate," and scenarios where bankruptcy disposition of real property will likely intersect with title agent or product
- Admittedly, not a comprehensive coverage of subject matter;
- Stay relief
- Sales pursuant to 363 (b), and (f), or a confirmed plan;
- Abandonment
- Lien Avoidance

34

34

CONTACT

Hon. Benjamin Hursh
benjamin_hursh@mtb.uscourts.gov
parker_streets@mtb.uscourts.gov

Grant Kelly
 Ugrin Alexander Zadick, PC
 #2 Railroad Square, Ste. B
 Great Falls, MT 89401
 (406) 771-0007

THANK YOU

35

35
