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**BANKRUPTCY BASICS:
SPOTTING COMMON LANDMINES AND
MITIGATING PREFERENTIAL PAYMENTS**

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COMMONLY USED BANKRUPTCY CHAPTERS

- Chapter 7
- Chapter 11
- Chapter 12
- Chapter 13

CHAPTER 7

- Available to both businesses and individuals.
- The goal is liquidation, or sale of the debtor's property and distribution of the proceeds to creditors.
- Discharge is only available for individual debtors, not business entities.
- For individuals, a means test is used to prevent abuse of Chapter 7 filings.

CHAPTER 11

- One of several “reorganization bankruptcies.”
- Available to both individuals and businesses, but is more commonly used by businesses.
- The debtor proposes a plan, which (in most cases) is voted on by creditors and (in all cases) is subject to court approval.
- There are specific options within Chapter 11 for small business debtors – small business cases and Subchapter V cases.

CHAPTER 12

- A form of reorganization bankruptcy available only to family farmers and family fishermen with “regular annual income.”
- Either individuals/married couples or business entities may file.
- There are specific eligibility requirements for both types of debtors.
- Plans are similar to those used under other reorganization chapters and last three-five years.

CHAPTER 13

- A form of reorganization bankruptcy available only to individuals and often used by wage earners (as opposed to business owners or family farmers).
- Repayment plan lasts three-five years.
- There are some unique advantages and disadvantages to Chapter 13.
 - Co-debtor stay for consumer debts.
 - As compared to Chapter 7, discharge is more expansive in some respects (e.g. extends to debts for willful and malicious injury to property), but is subject to additional exceptions as well (e.g. long-term debts, such as mortgages, which mature after completion of the plan).

KEY TERMS

- Automatic Stay: applies in all bankruptcy cases and prohibits creditors for engaging in any collection efforts after the debtor initiates his or her case.
- Trustee: a court-appointed fiduciary responsible for administering the bankruptcy estate.
- Debtor in possession: a debtor who retains possession and use of property of the bankruptcy estate, though the property is subject to claims by one or more creditors.
- Exemptions: certain property/a specified amount of value in certain property that is not subject to creditors' claims.

KEY TERMS (CONTINUED)

- Discharge: a release of liability for a debt awarded to the debtor at the conclusion of a bankruptcy case.
- Proof of Claim: a standardized bankruptcy filing providing information about an individual claim, which generally must be filed for any claim to be paid.
- Preference: a payment made by the debtor to an individual creditor shortly before the debtor files for bankruptcy, which represents more than the creditor's "fair share."
- Claw Back: the trustee's ability to reclaim (avoid) a preferential payment as part of the bankruptcy estate.



FIRST STEPS TO TAKE UPON RECEIPT OF
A BANKRUPTCY FILING NOTICE



FIRST FIVE STEPS TO TAKE UPON RECEIPT OF A BANKRUPTCY FILING NOTICE

- **Step One: The Structure.** Familiarize yourself with the bankruptcy system.
- **Step Two: The Details.** Review the bankruptcy filing notice and calendar all relevant deadlines.
- **Step Three: The Automatic Stay.** Understand and respect it.
- **Step Four: Assemble Your Team.** Consider business representatives and legal counsel required to represent the company's interests.
- **Step Five: The Proof of Claim.** Calculate the prepetition claim and gather supporting documents.

STEPS TO TAKE UPON RECEIPT OF A BANKRUPTCY FILING NOTICE

Step One: Become Familiar with the U.S. Bankruptcy System

■ The Courts

- U.S. Constitution, Article I, § 8, c. 4: “Congress shall have Power . . . [t]o establish . . . uniform Laws on the subject of Bankruptcies throughout the United States.”
- Cases Referred by U.S. District Courts to U.S. Bankruptcy Courts
 - *28 U.S.C. § 1334*: U.S. District Courts have original and exclusive jurisdiction of all cases under, arising in, and related to the U.S. Bankruptcy Code.
 - *28 U.S.C. § 157*: District Courts “refer” bankruptcy matters to U.S. Bankruptcy Courts in their Districts.

■ The Law

- U.S. Bankruptcy Code: 11 U.S.C. §§ 101, *et seq.*
- Federal Rules of Bankruptcy Procedure 1001, *et seq.*
- Official Bankruptcy Forms: Fed. R. Bankr. P. 9009 (www.uscourts.gov/forms/bankruptcy-forms)
- U.S. Administrative Office of the Courts Director’s Bankruptcy Forms

■ The Local Norms

- Local Rules, Orders, and Forms: Fed. R. Bankr. P. 9029
- Administrative Procedures Manual: Fed. R. Bankr. P. 5005(a)(2)(A)

STEPS TO TAKE UPON RECEIPT OF A BANKRUPTCY FILING NOTICE

Step Two: Review the Notice – Individual Chapter 7 Case

Information to identify the case:

Debtor 1
 First Name _____ Middle Name _____ Last Name _____
 Last 4 digits of Social Security number or ITIN _____
 EIN _____

Debtor 2 (Spouse, if filing)
 First Name _____ Middle Name _____ Last Name _____
 Last 4 digits of Social Security number or ITIN _____
 EIN _____

United States Bankruptcy Court for the _____ District of _____ (State)
 [Date case filed for chapter 7 _____ MM / DD / YYYY OR
 [Date case filed in chapter _____ MM / DD / YYYY
 [Date case converted to chapter 7 _____ MM / DD / YYYY

Case number: _____

Petition Date

Official Form 309B (For Individuals or Joint Debtors)

Notice of Chapter 7 Bankruptcy Case — Proof of Claim Deadline Set 10/20

For the debtors listed above, a case has been filed under chapter 7 of the Bankruptcy Code. An order for relief has been entered.

This notice has important information about the case for creditors, debtors, and trustees, including information about the meeting of creditors and deadlines. Read both pages carefully.

The filing of the case imposed an automatic stay against most collection activities. This means that creditors generally may not take action to collect debts from the debtors or the debtors' property. For example, while the stay is in effect, creditors cannot sue, garnish wages, assert a deficiency, repossess property, or otherwise try to collect from the debtors. Creditors cannot demand repayment from debtors by mail, phone, or otherwise. Creditors who violate the stay can be required to pay actual and punitive damages and attorney's fees. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although debtors can ask the court to extend or impose a stay.

The debtors are seeking a discharge. Creditors who assert that the debtors are not entitled to a discharge of any debts or who want to have a particular debt excepted from discharge may be required to file a complaint in the bankruptcy clerk's office within the deadlines specified in this notice. (See line 9 for more information.)

To protect your rights, consult an attorney. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below or through PACER (Public Access to Court Electronic Records at <https://pacer.uscourts.gov>).

The staff of the bankruptcy clerk's office cannot give legal advice.

To help creditors correctly identify debtors, debtors submit full Social Security or Individual Taxpayer Identification Numbers, which may appear on a version of this notice. However, the full numbers must not appear on any document filed with the court.

Do not file this notice with any proof of claim or other filing in the case. Do not include more than the last four digits of a Social Security or Individual Taxpayer Identification Number in any document, including attachments, that you file with the court.

About Debtor 1:	About Debtor 2:
1. Debtor's full name	
2. All other names used in the last 8 years	
3. Address	If Debtor 2 lives at a different address:
4. Debtor's attorney Name and address	Contact phone _____ Email _____
5. Bankruptcy trustee Name and address	Contact phone _____ Email _____

Debtor's Counsel

Trustee

For more information, see page 2

Debtor Name _____ Case number (if known) _____

6. Bankruptcy clerk's office
 Documents in this case may be filed at this address. You may inspect all records filed in this case at this office or online at <https://pacer.uscourts.gov>.
 Hours open _____
 Contact phone _____

7. Meeting of creditors
 Debtors must attend the meeting to be questioned under oath. In a joint case, both spouses must attend. Creditors may attend, but are not required to do so.
 Date _____ at _____ Time _____ Location: _____
 The meeting may be continued or adjourned to a later date. If so, the date will be on the court docket.

8. Presumption of abuse
 If the presumption of abuse arises, you may have the right to file a motion to dismiss the case under 11 U.S.C. § 707(b). Debtors may rebut the presumption by showing special circumstances.
 [The presumption of abuse does not arise.]
 [The presumption of abuse arises.]
 [Insufficient information has been filed to permit the clerk to determine whether the presumption of abuse arises. If more complete information is filed and shows that the presumption has arisen, the clerk will notify creditors.]

9. Deadlines
 The bankruptcy clerk's office must receive these documents and any required filing fees by the following deadlines:
File by the deadline to object to discharge or to challenge whether certain debts are dischargeable: Filing deadline: _____
You must file a complaint:
 ■ if you assert that the debtor is not entitled to receive a discharge of any debts under any of the subdivisions of 11 U.S.C. § 727(a)(2) through (7), or
 ■ if you want to have a debt excepted from discharge under 11 U.S.C. § 523(a)(2), (4), or (6).
You must file a motion:
 ■ if you assert that the discharge should be denied under § 727(a)(8) or (9).
Deadline for all creditors to file a proof of claim (except governmental units): Filing deadline: _____
Deadline for governmental units to file a proof of claim: Filing deadline: _____
Deadlines for filing proof of claim:
 A proof of claim is a signed statement describing a creditor's claim. A proof of claim form may be obtained at www.uscourts.gov or any bankruptcy clerk's office. If you do not file a proof of claim by the deadline, you might not be paid on your claim. To be paid, you must file a proof of claim even if your claim is listed in the schedules that the debtor filed.
 Secured creditors retain rights in their collateral regardless of whether they file a proof of claim. Filing a proof of claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a proof of claim may surrender important nonmonetary rights, including the right to a jury trial.
Deadline to object to exemptions: Filing deadline: 30 days after the conclusion of the meeting of creditors
 The law permits debtors to keep certain property as exempt. If you believe that the law does not authorize an exemption claimed, you may file an objection.
 If you are a creditor receiving a notice mailed to a foreign address, you may file a motion asking the court to extend the deadlines in this notice. Consult an attorney familiar with United States bankruptcy law if you have any questions about your rights in this case.

10. Creditors with a foreign address

11. Liquidation of the debtor's property and payment of creditors' claims
 The bankruptcy trustee listed on the front of this notice will collect and sell the debtor's property that is not exempt. If the trustee can collect enough money, creditors may be paid some or all of the debts owed to them in the order specified by the Bankruptcy Code. To ensure you receive any share of that money, you must file a proof of claim as described above.

12. Exempt property
 The law allows debtors to keep certain property as exempt. Fully exempt property will not be sold and distributed to creditors. Debtors must file a list of property claimed as exempt. You may inspect that list at the bankruptcy clerk's office or online at <https://pacer.uscourts.gov>. If you believe that the law does not authorize an exemption that the debtors claim, you may file an objection. The bankruptcy clerk's office must receive the objection by the deadline to object to exemptions in line 9.

Court Clerk's Office

Meeting of Creditors

Contesting Dischargeability

Filing a Claim



STEPS TO TAKE UPON RECEIPT OF A BANKRUPTCY FILING NOTICE

Step Two: Review the Notice – Chapter 13 Case

Information to identify the case:

Debtor 1: First Name, Middle Name, Last Name, Last 4 digits of Social Security number or ITIN, EIN

Debtor 2 (Spouse, if filing): First Name, Middle Name, Last Name, Last 4 digits of Social Security number or ITIN, EIN

United States Bankruptcy Court for the: District of (State)

Case number: (Date case filed for chapter 13, Date case filed in chapter, Date case converted to chapter 13)

Petition Date

Official Form 3091
Notice of Chapter 13 Bankruptcy Case 10/20

For the debtors listed above, a case has been filed under chapter 13 of the Bankruptcy Code. An order for relief has been entered.

This notice has important information about the case for creditors, debtors, and trustees, including information about the meeting of creditors and deadlines. Read both pages carefully.

The filing of the case imposed an automatic stay against most collection activities. This means that creditors generally may not take action to collect debts from the debtors, the debtors' property, and certain codebtors. For example, while the stay is in effect, creditors cannot sue, garnish wages, assert a deficiency, repossess property, or otherwise try to collect from the debtors. Creditors cannot demand repayment from debtors by mail, phone, or otherwise. Creditors who violate the stay can be required to pay actual and punitive damages and attorney's fees. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although debtors can ask the court to extend or impose a stay.

Confirmation of a chapter 13 plan may result in a discharge. Creditors who assert that the debtors are not entitled to a discharge under 11 U.S.C. § 1328(f) must file a motion objecting to discharge in the bankruptcy clerk's office within the deadline specified in this notice. Creditors who want to have their debt excepted from discharge may be required to file a complaint in the bankruptcy clerk's office by the same deadline. (See line 13 below for more information.)

To protect your rights, consult an attorney. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below or through PACER (Public Access to Court Electronic Records at <https://pacer.uscourts.gov>).

The staff of the bankruptcy clerk's office cannot give legal advice.

To help creditors correctly identify debtors, debtors submit full Social Security or Individual Taxpayer Identification Numbers, which may appear on a version of this notice. However, the full numbers must not appear on any document filed with the court.

Do not file this notice with any proof of claim or other filing in the case. Do not include more than the last four digits of a Social Security or Individual Taxpayer Identification Number in any document, including attachments, that you file with the court.

About Debtor 1:	About Debtor 2:
1. Debtor's full name	
2. All other names used in the last 8 years	
3. Address	If Debtor 2 lives at a different address:
4. Debtor's attorney Name and address	Contact phone Email
5. Bankruptcy trustee Name and address	Contact phone Email
6. Bankruptcy clerk's office Documents in this case may be filed at this address. You may inspect all records filed in this case at this office or online at https://pacer.uscourts.gov .	Hours open Contact phone

Debtor's Counsel

Chapter 13 Trustee

For more information, see page 2 ▶

Debtor: _____ Case number (if any): _____

7. Meeting of creditors
 Debtors must attend the meeting to be questioned under oath. In a joint case, both spouses must attend. Creditors may attend, but are not required to do so.
 Date: _____ at _____ Time: _____ Location: _____
 The meeting may be continued or adjourned to a later date. If so, the date will be on the court docket.

8. Deadlines
 The bankruptcy clerk's office must receive these documents and any required filing fee by the following deadlines.
Deadline to file a complaint to challenge dischargeability of certain debts:
 You must file:
 a motion if you assert that the debtors are not entitled to receive a discharge under U.S.C. § 1328(f), or
 a complaint if you want to have a particular debt excepted from discharge under 11 U.S.C. § 523(a)(2) or (4).
Deadline for all creditors to file a proof of claim (except governmental units): Filing deadline: _____
Deadline for governmental units to file a proof of claim: Filing deadline: _____
Deadlines for filing proof of claim:
 A proof of claim is a signed statement describing a creditor's claim. A proof of claim form may be obtained at www.uscourts.gov or any bankruptcy clerk's office. If you do not file a proof of claim by the deadline, you might not be paid on your claim. To be paid, you must file a proof of claim even if your claim is listed in the schedules that the debtor filed.
 Secured creditors retain rights in their collateral regardless of whether they file a proof of claim.
 Filing a proof of claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a proof of claim may surrender important nonmonetary rights, including the right to a jury trial.
Deadline to object to exemptions: Filing deadline: 30 days after the conclusion of the meeting of creditors
 The law permits debtors to keep certain property as exempt. If you believe that the law does not authorize an exemption claimed, you may file an objection.

9. Filing of plan
 [The debtor has filed a plan, which is attached. The hearing on confirmation will be held on: _____ at _____ Date: _____ Time: _____ Location: _____]
 Or [The debtor has filed a plan. The plan and notice of confirmation hearing will be sent separately.]
 Or [The debtor has not filed a plan as of this date. A copy of the plan and a notice of the hearing on confirmation will be sent separately.]

10. Creditors with a foreign address
 If you are a creditor receiving a notice mailed to a foreign address, you may file a motion asking the court to extend the deadline in this notice. Consult an attorney familiar with United States bankruptcy law if you have any questions about your rights in this case.

11. Filing a chapter 13 bankruptcy case
 Chapter 13 allows an individual with regular income and debts below a specified amount to adjust debts according to a plan. A plan is not effective unless the court confirms it. You may object to confirmation of the plan and appear at the confirmation hearing. A copy of the plan [is included with this notice] or [will be sent to you later], and [the confirmation hearing will be held on the date shown in line 9 of this notice] or [the court will send you a notice of the confirmation hearing]. The debtor will remain in possession of the property and may continue to operate the business, if any, unless the court orders otherwise.

12. Exempt property
 The law allows debtors to keep certain property as exempt. Fully exempt property will not be sold and distributed to creditors, even if the case is converted to chapter 7. Debtors must file a list of property claimed as exempt. You may inspect that list at the bankruptcy clerk's office or online at <https://pacer.uscourts.gov>. If you believe that the law does not authorize an exemption that debtors claimed, you may file an objection by the deadline.

13. Discharge of debts
 Confirmation of a chapter 13 plan may result in a discharge of debts, which may include all or part of a debt. However, unless the court orders otherwise, the debts will not be discharged until all payments under the plan are made. A discharge means that creditors may never try to collect the debt from the debtors personally except as provided in the plan. If you want to have a particular debt excepted from discharge under 11 U.S.C. § 523(a)(2) or (4), you must file a complaint and pay the filing fee in the bankruptcy clerk's office by the deadline. If you believe that the debtors are not entitled to a discharge of any of their debts under 11 U.S.C. § 1328(f), you must file a motion by the deadline.

Meeting of Creditors

Contesting Dischargeability

Filing a Claim

Plan Confirmation Hearing



STEPS TO TAKE UPON RECEIPT OF A BANKRUPTCY FILING NOTICE

Step Two: Review the Notice – Business Chapter 11 Case

Information to identify the case:

Debtor Name _____ EIN _____

United States Bankruptcy Court for the _____ District of _____ (State) _____

Case number: _____

(Date case filed for chapter 11 _____ MM / DD / YYYY OR
 (Date case filed in chapter _____ MM / DD / YYYY
 Date case converted to chapter 11 _____ MM / DD / YYYY

Petition Date

Official Form 309F1 (For Corporations or Partnerships)
Notice of Chapter 11 Bankruptcy Case 10/20

For the debtor listed above, a case has been filed under chapter 11 of the Bankruptcy Code. An order for relief has been entered.

This notice has important information about the case for creditors and debtors, including information about the meeting of creditors and deadlines. Read both pages carefully.

The filing of the case imposed an automatic stay against most collection activities. This means that creditors generally may not take action to collect debts from the debtor or the debtor's property. For example, while the stay is in effect, creditors cannot sue, assert a deficiency, repossess property, or otherwise try to collect from the debtor. Creditors cannot demand repayment from the debtor by mail, phone, or otherwise. Creditors who violate the stay can be required to pay actual and punitive damages and attorney's fees.

Confirmation of a chapter 11 plan may result in a discharge of debt. A creditor who wants to have a particular debt excepted from discharge may be required to file a complaint in the bankruptcy clerk's office within the deadline specified in this notice. (See line 11 below for more information.)

To protect your rights, consult an attorney. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below or through PACER (Public Access to Court Electronic Records at <https://pacer.uscourts.gov>).

The staff of the bankruptcy clerk's office cannot give legal advice.

Do not file this notice with any proof of claim or other filing in the case.

1. Debtor's full name _____

2. All other names used in the last 8 years _____

3. Address _____

4. Debtor's attorney Name and address _____ Contact phone _____ Email _____

5. Bankruptcy clerk's office Documents in this case may be filed at this address. You may inspect all records filed in this case at this office or online at <https://pacer.uscourts.gov>. Hours open _____ Contact phone _____

6. Meeting of creditors The debtor's representative must attend the meeting to be questioned under oath. Creditors may attend, but are not required to do so. _____ at _____ Date _____ Time _____ Location: _____

Debtor's Counsel

Meeting of Creditors

For more information, see page 2

Debtor Name _____ Case number (optional) _____

7. Proof of claim deadline **Deadline for filing proof of claim:** _____ [Not yet set. If a deadline is set, the court will send you another notice.] or [date, if set by the court]

A proof of claim is a signed statement describing a creditor's claim. A proof of claim form may be obtained at www.uscourts.gov or any bankruptcy clerk's office.

Your claim will be allowed in the amount scheduled unless:

- your claim is designated as disputed, contingent, or unliquidated;
- you file a proof of claim in a different amount; or
- you receive another notice.

If your claim is not scheduled or if your claim is designated as disputed, contingent, or unliquidated, you must file a proof of claim or you might not be paid on your claim and you might be unable to vote on a plan. You may file a proof of claim even if your claim is scheduled.

You may review the schedules at the bankruptcy clerk's office or online at <https://pacer.uscourts.gov>.

Secured creditors retain rights in their collateral regardless of whether they file a proof of claim. Filing a proof of claim submits a creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a proof of claim may surrender important nonmonetary rights, including the right to a jury trial.

8. Exception to discharge deadline If § 523(c) applies to your claim and you seek to have it excepted from discharge, you must start a judicial proceeding by filing a complaint by the deadline stated below.

The bankruptcy clerk's office must receive a complaint and any required filing fee by the following deadline. **Deadline for filing the complaint:** _____

9. Creditors with a foreign address If you are a creditor receiving notice mailed to a foreign address, you may file a motion asking the court to extend the deadlines in this notice. Consult an attorney familiar with United States bankruptcy law if you have any questions about your rights in this case.

10. Filing a Chapter 11 bankruptcy case Chapter 11 allows debtors to reorganize or liquidate according to a plan. A plan is not effective unless the court confirms it. You may receive a copy of the plan and a disclosure statement telling you about the plan, and you may have the opportunity to vote on the plan. You will receive notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. Unless a trustee is serving, the debtor will remain in possession of the property and may continue to operate its business.

11. Discharge of debts Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. See 11 U.S.C. § 1141(d). A discharge means that creditors may never try to collect the debt from the debtor except as provided in the plan. If you want to have a particular debt owed to you excepted from the discharge and § 523(c) applies to your claim, you must start a judicial proceeding by filing a complaint and paying the filing fee in the bankruptcy clerk's office by the deadline.

Filing a Claim



STEPS TO TAKE UPON RECEIPT OF A BANKRUPTCY FILING NOTICE

Step Two: Dates to Calendar from the Notice

- **Meeting of Creditors**
- **Plan Confirmation Hearing** (in chapter 13 cases)
- **Deadline to File a Proof of Claim**
- **Deadline to Object to Dischargeability of Debts**
- **First-Day Hearings** (in chapter 11 cases)

STEPS TO TAKE UPON RECEIPT OF A BANKRUPTCY FILING NOTICE

Step Three: Analyze the Impact of the Automatic Stay

- **The Automatic Stay – § 362(a).** With very limited exceptions, the filing of a bankruptcy petition stays most actions a creditor could take against a debtor, including, but not limited to:
 - Commencement or continuation of a judicial, administrative, or other proceeding against the debtor that was or could have been commenced pre-bankruptcy
 - Enforcement of a pre-bankruptcy judgment against the debtor or property of the estate
 - Any act to obtain possession of or exercise control over property of the estate
 - Any act to create, perfect, or enforce any lien against property of the estate
 - Any act to collect, assess, or recover a pre-bankruptcy claim against the debtor
- **Exceptions to Stay – § 362(b)(1)-(29).** The following are among the most common exceptions:
 - § 362(b)(1) – criminal proceedings against the debtor
 - § 362(b)(2) – certain domestic relations matters
 - § 362(b)(3) – perfection of certain statutory liens
 - § 362(b)(10) – any act by a debtor’s lessor whose nonresidential real property lease naturally terminated prior to the bankruptcy filing to obtain possession of the property
 - § 362(b)(18) – creation or perfection of certain statutory liens for real property taxes
- **Damages for Stay Violations – § 362(k).** “An individual injured by any willful violation of a stay . . . shall recover actual damages, including costs and attorneys’ fees, and, in appropriate circumstances, may recover punitive damages.”

STEPS TO TAKE UPON RECEIPT OF A BANKRUPTCY FILING NOTICE

Step Four: Assemble Your Team

- **Business Representatives**
 - In-House Counsel
 - Relationship / Account Manager
 - Financial Analyst
 - Special Assets Manager

- **Litigation Counsel**

- **Bankruptcy Counsel**
 - **Admission to Practice in Bankruptcy Court**
 - General Admission
 - *Pro Hac Vice* Admission

 - **Authorization to File Pleadings in Bankruptcy Court**
 - Required Training with Case Management / Electronic Case Filing (CM/ECF System) Before Filing
 - Authorization to Obtain CM/ECF Filing Credentials

STEPS TO TAKE UPON RECEIPT OF A BANKRUPTCY FILING NOTICE

Step Five: Calculate the Prepetition Claim & Gather Documents

Fill in this information to identify the case:

Debtor 1 _____
 Debtor 2 _____
 (Spouse, if filing)

United States Bankruptcy Court for the _____ District of _____

Case number _____

Official Form 410

Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?
 Name of the current creditor (the person or entity to be paid for this claim) _____
 Other names the creditor used with the debtor _____

2. Has this claim been acquired from someone else?
 No
 Yes. From whom? _____

3. Where should notices and payments to the creditor be sent?
 Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
Name _____	Name _____
Number Street _____	Number Street _____
City State ZIP Code _____	City State ZIP Code _____
Contact phone _____	Contact phone _____
Contact email _____	Contact email _____

Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____

4. Does this claim amend one already filed?
 No
 Yes. Claim number on court claims registry (if known) _____ Filed on MM / DD / YYYY _____

5. Do you know if anyone else has filed a proof of claim for this claim?
 No
 Yes. Who made the earlier filing? _____

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor?
 No
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____

7. How much is the claim? \$ _____ Does this amount include interest or other charges?
 No
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim?
 Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
 Limit disclosing information that is entitled to privacy, such as health care information.

9. Is all or part of the claim secured?
 No
 Yes. The claim is secured by a lien on property.
Nature of property:
 Real estate. If the claim is secured by the debtor's principal residence, file a Mortgage Proof of Claim Attachment (Official Form 410-A) with this Proof of Claim.
 Motor vehicle
 Other. Describe: _____
Basis for perfection:
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)
 Value of property: \$ _____
 Amount of the claim that is secured: \$ _____
 Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.)
 Amount necessary to cure any default as of the date of the petition: \$ _____
 Annual Interest Rate (when case was filed) _____ %
 Fixed
 Variable

10. Is this claim based on a lease?
 No
 Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff?
 No
 Yes. Identify the property: _____

Attach supporting documents.
 Note duty to redact.

Describe the claim

Unexpired Lease?



STEPS TO TAKE UPON RECEIPT OF A BANKRUPTCY FILING NOTICE:

Step Five: Calculate the Prepetition Claim & Gather Documents

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check one:

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,025* 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"/> Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.	\$ _____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

Priority?

Prepare the Proof of Claim

- Calculate amount owed prior to the Petition Date.
- Prepare a written summary of the claim.
- Review for potential priority treatment under § 507.
 - Anything owed for goods and services actually received by the Debtor within 20 days prior to bankruptcy filing? (See § 503(b)(9)).
- Evaluate potential for setoff by or against Debtor.
- Gather all supporting documents.
- Consider the need for a litigation hold.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

I am the creditor.

I am the creditor's attorney or authorized agent.

I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that 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.

I have examined the information in this Proof of Claim and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date

Print the name of the person who is completing and signing this claim:

Name

Title

Company
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Number Street

City State ZIP Code

Contact phone Email

Who will sign?

STEPS TO TAKE UPON RECEIPT OF A BANKRUPTCY FILING NOTICE

Bonus Step: Consider Possible Sources of Information

- **Meeting of Creditors:** 11 U.S.C. § 341
- **Schedules of Assets & Liabilities:** Fed. R. Bankr. P. 1007(b)(1)(A)-(C)
- **Statements of Financial Affairs:** Fed. R. Bankr. P. 1007(b)(1)(D)
- **“Rule 2004” Examinations:** Fed. R. Bankr. P. 2004
- **First-Day Declaration of Business Debtor’s Representative**



PROTECTING AGAINST PREFERENCE CLAIMS

POP UP QUESTION

- What is Dan's favorite color?
 - A. Orange
 - B. Red
 - C. Green
 - D. Yellow

PROTECTING AGAINST PREFERENCE CLAIMS

- Avoidance Power of the Trustee
 - Bankruptcy Code allows the Trustee (or DIP) to “avoid” certain payments
 - A transfer of debtor’s property
 - To or for the benefit of a creditor
 - For an “antecedent” debt
 - Made while debtor is insolvent
 - Within 90 days of bankruptcy filing (1 year if to an insider)
 - Which gives creditor more than their “fair” share
 - Intent is Irrelevant

PROTECTING AGAINST PREFERENCE CLAIMS

- The Bankruptcy Code Provides Several Defenses to Preference Claims
 - “Enabling” loans
 - Contemporaneous exchange
 - Ordinary course of business
 - New value
 - “Small” payments
 - \$600 from individual (primarily consumer)
 - \$6,825 from businesses (primarily non-consumer)
 - If less than \$25,000, trustee must bring action where creditor lives

PROTECTING AGAINST PREFERENCE CLAIMS

- New Value

Date	Check Received by Creditor	Goods/Services Provided by Creditor	Preference Balance
June 10	\$150,000	–	\$150,000
June 12	–	\$130,000	\$20,000
July 10	\$20,000	–	\$40,000
July 15	–	\$50,000	\$0
August 5	\$25,000	–	\$25,000
Total Preference Exposure (debtor files august 15th)			\$25,000

PROTECTING AGAINST PREFERENCE CLAIMS

- Ordinary Course of Business
 - Most commonly litigated
 - Also, best opportunity for “normal” creditor defend against preference claim
 - “Subjective Test”
 - “Objective Test”
 - Examples

PROTECTING AGAINST PREFERENCE CLAIMS

- The best protection is to be diligent in dealing with payment from your customers
 - Use of third-party?
- Consider Personal Guarantees
 - If you use guarantees, make sure you get them signed!

PROTECTING AGAINST PREFERENCE CLAIMS

- Strategies
 - Apply payments to the most recent debt
 - Affidavit of solvency
 - Cash checks immediately
 - Collect in regular intervals

CLE & POST-WEBINAR SURVEY

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PLEASE CONTACT ONE OF THE PRESENTERS



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