

Call for Justice, LLC—United Way 2-1-1 Training Paper

Session 13: Bankruptcy Law

June 27 and 28, 2013: James Brand, Fredrikson & Byron Law Firm, Minneapolis

Featured Speakers' Topic

This month, James Brand, an attorney with Fredrikson & Byron in Minneapolis, will discuss bankruptcy law.

Bankruptcy Basics

Federal bankruptcy law permits a person or company who cannot pay their bills to get a fresh financial start. By filing a bankruptcy petition, the debtor stops creditors from taking actions to collect debts. This “stay” of debt collection generally lasts until the bankruptcy court has made a final determination on how the debts should be sorted out. A federal bankruptcy judge oversees progression of the bankruptcy petition; often, the judge will utilize a “bankruptcy trustee,” whose role varies depending on the type of bankruptcy involved.

Bankruptcy law classifies certain property as “exempt,” and thus not subject to creditor claims. In Minnesota, a debtor may use either the Minnesota state exemptions or federal bankruptcy exemptions. Minnesota permits debtors to exempt up to \$360,000 for a home and the land it is on. If that land is used for agricultural purposes, the exemption increases to \$900,000. However, the property cannot exceed 1/2 of an acre in the city, and 160 acres elsewhere. Spouses may not double these amounts.

Minnesota also exempts various items of personal property to a total of \$10,350 (including appliances, furniture, and jewelry), a motor vehicle to \$4,600, wedding rings to \$2,695, tools of the trade to \$11,500, and certain wages, among other things. Exemption values change over time, so it's important to check bankruptcy resources for current values.

In Minnesota, there are bankruptcy courts in three different locations: Minneapolis, St. Paul, and Duluth. Bankruptcy hearings are also held at the federal courthouse in Fergus Falls. This means that a person in the part of the state where the bankruptcy court is located must file a bankruptcy petition in that court. Each courthouse with a bankruptcy court has a Clerk of Court office, where staff can help to explain filing procedures to the public.

(1) Personal Bankruptcy Positives

The positives about personal bankruptcy include:

- Eliminating the legal obligation to pay most debts, something which is called “discharging” the debt obligation.

- Stopping foreclosure on one's home or anything else (condo, manufactured home, etc.) where a person primarily resides and which is secured by a mortgage or other debt obligation. However, bankruptcy won't automatically eliminate mortgages and other liens on someone's property; instead, it simply buys time to catch up on the debt payments. (And with some government programs, an opportunity to renegotiate the mortgage to more favorable rates or monthly payments.)
- Preventing repossession of a car or other property, or even forcing the creditor to return property after it has been repossessed.
- Stopping wage garnishment, debt collection activity, and similar creditor actions to collect a debt. Thus, filing a bankruptcy petition is deemed to "automatically stay," or stop, debt collection actions of any kind.
- Preventing a utility from terminating service (or forcing restoration of that service post-bankruptcy filing).
- Permitting a person to defend against fraudulent creditor claims or when creditors attempt to collect more than is really owed (e.g. egregious penalties or fees).

(2) Personal Bankruptcy Negatives

Of course, bankruptcy has some major downsides, including:

- Bankruptcy won't eliminate the rights of a creditor who has taken a mortgage or other lien on property that's been identified as collateral for a loan. (Such creditors are called "secured creditors.") Commonly, "secured" loans are car loans and home mortgages. While in certain bankruptcies a petitioner can force secured creditors to take payments spread out over more time than originally specified in the loan (thus giving the petitioner breathing room to catch up on debts), it's not always possible to eliminate the debt. However, if a petitioner returns the property in question to the creditor, bankruptcy can end the obligation to pay any additional money or penalties on the debt.
- Similarly, bankruptcy law precludes discharging certain debts like child support, alimony, most student loans, court restitution orders, criminal fines, and most taxes.
- A petitioner will also be responsible for any new debt created after filing a bankruptcy petition (e.g. such debt won't be discharged with the bankruptcy).
- One person's bankruptcy doesn't necessarily protect another person who is listed on the debt (such as a parent who co-signs for a recently graduated child's car loan). The cosigner may very well be obligated to pay off the loan or mortgage despite the child's bankruptcy.

Types of Bankruptcy

We often hear about "Chapter 7" or "Chapter 11" bankruptcies. These (and other types of bankruptcy) refer to sections of the federal Bankruptcy Code, which governs all bankruptcies. Here are the different types of bankruptcy:

Chapter 7

A Chapter 7 bankruptcy requires the bankruptcy petitioner to relinquish or give up any property which isn't considered "exempt." In turn, that property is sold (sometimes through auctions, but not always), to pay creditors. "Exempt property" generally consists of what's needed to restart one's financial life and can include the debtor's home (up to a certain equity dollar level), car (again, up to a certain dollar level), various household goods, work tools or equipment, and one's right to receive certain benefits, like Social Security, or public assistance or unemployment benefits. The value of tangible assets (like a car) is determined not by what the debtor paid for the property, but what it's worth at the time the bankruptcy petition is filed.

There is a "means test" used to determine if a person can file for Chapter 7. It involves comparing the debtor's income to the median income for a household of the debtor's size in Minnesota. If the debtor's income is less than the median, the debtor will be eligible to file for Chapter 7. Alternately, the debtor can choose to file for Chapter 13 (see below) using a three-year repayment plan (rather than five years).

Currently, the median Minnesota income for a one-person household is just over \$46,000; these figures change periodically. A caller can find the most recent amounts on the website of the U.S. Trustee at www.justice.gov/ust. Click on "Bankruptcy Reform," and then "Means Testing Information." Or the caller can go directly to the Census Bureau table at http://www.justice.gov/ust/eo/bapcpa/20111101/bci_data/median_income_table.htm.

Chapter 11

A Chapter 11 bankruptcy is more common with business bankruptcies. Sometimes, individuals whose debts are extremely large may file Chapter 11.

Chapter 12

Agricultural entities (family farmers and fishermen) are eligible to use Chapter 12-type bankruptcies.

Chapter 13

A Chapter 13 bankruptcy involves a bankruptcy "plan" in which the debtor pays off his or her debts over three to five years. Significantly, under Chapter 13, the good news is that the debtor gets to keep his or her property—like a home or car—as long as the petitioner can show an ability to make payments to creditors over time. If something is paid on unsecured debt over time, the remaining debt can be discharged if the debtor successfully completes the plan. The bankruptcy court will carefully weigh a Chapter 13 petition to determine if it's realistic for the

debtor to make payment on existing debts. If not, the petition won't be approved and the debtor may be forced to "convert" the bankruptcy from a Chapter 13 to a Chapter 7 proceeding.

Prerequisites to Filing for Personal Bankruptcy

(1) Budget and Credit Counseling

Changes to the Bankruptcy Code enacted in 2005 established several prerequisites that must be satisfied before someone can file a bankruptcy petition. One prerequisite is obtaining budget and credit counseling from an approved credit counseling agency not more than 180 days before the petition is filed. This ensures that the potential bankruptcy petitioner understands both filing and non-filing options, including review of a budget. The counseling (which can cost \$20-\$50) may be conducted in-person, by telephone, or over the Internet. Regardless of the manner chosen, the law requires that a petitioner have a certificate from a credit counseling agency before a bankruptcy case can be filed.

RED FLAG: It's not easy to distinguish good counseling agencies from bad ones. Moreover, being an "approved" agency for bankruptcy counseling is no guarantee that the agency is good or that it can help if someone's debt problems have progressed too far.

(2) Debt Management Plans

Some approved debt counseling agencies offer "debt management plans" (also called DMPs), which is a non-bankruptcy plan to repay some or all of a potential bankruptcy petitioner's debts. This usually involves forwarding a monthly lump sum to the counseling agency, which it then distributes to the debtor's creditors. There is no guarantee that a DMP will work. Some commentators recommend that a potential bankruptcy petitioner speak to an attorney before entering into a DMP since some plans are unrealistic and won't avoid ultimately filing for bankruptcy. Additionally, bankruptcy isn't necessarily the kind of thing to be avoided at all costs; for some people, bankruptcy may be the best option available.

(3) Filing Fee

A filing fee (ranging from \$306 for a Chapter 7 bankruptcy and \$281 for a Chapter 13 bankruptcy) must be paid at the time the bankruptcy petition is filed. Sometimes the fee can be waived in a Chapter 7 case and in both Chapter 7 and Chapter 13 cases, the fee can be paid in two installments.

Post-filing Personal Finance Counseling Certification

Once a bankruptcy petition is filed, the debtor will need to complete an approved course in personal finance. The idea here is to learn from one's financial mistakes. The two hour personal finance course costs; the vendor will provide a certificate afterwards. The certificate must be filed with the bankruptcy court in order to obtain a discharge of debts.

Credit Worthiness after Bankruptcy

A record of filing for bankruptcy can show up on a person's credit report for ten years from the date of filing the bankruptcy petition. However, usually it's the inability to pay debts that prompts the bankruptcy filing; hence, by the time someone enters bankruptcy, their credit has already suffered greatly. On the other hand, getting debts discharged through bankruptcy (not all debts may be discharged but there may be more breathing room to pay them) may mean that a person will have the chance to again build up good credit.

A Word about Reverse Mortgages

A reverse mortgage is a special type of home loan that allows a homeowner to convert a portion of their home equity into cash. However, unlike a traditional home equity loan or second mortgage, a reverse mortgage borrower usually doesn't have to repay the loan until the borrower no longer uses the home as a principal residence or if the borrower fails to meet the obligations of the mortgage. There are usually age requirements (such as FHA requiring a homeowner to be at least 62 years old) and the requirement that the borrower live in the home. Also, there have been many reported instances where reverse mortgage borrowers didn't understand the intricacies of the reverse mortgage and ended up facing foreclosure. The key to understanding the ins and outs of a reverse mortgage (and thus avoiding problems which could result in a bankruptcy) is to speak with a reputable advisor before entering into a reverse mortgage.

Legal Resources

Because bankruptcy is a federal court proceeding and highly technical, legal resources are far more limited than with some of the other legal topics on which we've trained.

Twin Cities—Primary Referrals

(1) Minneapolis and St. Paul Bankruptcy Court Advice Clinics (BAC)

The Bankruptcy Advice Clinic (BAC) is a collaborative effort of the United States Bankruptcy Court for the District of Minnesota, the Bankruptcy Section of the Minnesota State Bar Association and the Volunteer Lawyers Network. The BAC is a free service where low-income Minnesota residents contemplating bankruptcy, as well as pro se debtors and creditors already involved in pending bankruptcy cases

and adversary proceedings, can receive up to 15 minutes of basic information and bankruptcy-related advice from lawyers. Attorneys who volunteer at the BAC won't represent any individual beyond the brief advice given at the clinic.
Eligibility: 300% of FPG.

The clinics are available on a bi-weekly basis at the federal courthouses in Minneapolis and St. Paul and are staffed with volunteer bankruptcy attorneys and law students. The **eight fifteen-minute time slots** available each clinic session are allotted on a first come, first served basis only; no pre-scheduling is available. If the slots are full, people will need to come back the next clinic. **For more information about the clinic project, contact the Volunteer Lawyers Network at 612-752-6677.** The schedule can be accessed at http://www.mnb.uscourts.gov/Newsite/General_Info/bkyadviceclinic.html

The clinic schedule is as follows:

Minneapolis 11:00 a.m. - 1:00 p.m. Dates Vary	St. Paul 11:00 a.m. - 1:00 p.m. Dates Vary
U.S. Courthouse 300 South Fourth Street, Minneapolis 7th Floor	Warren E. Burger Federal Building U.S. Courthouse 316 North Robert Street, St. Paul 2nd Floor

(2) Dignity Center, Hennepin Avenue United Methodist Church

Mondays, Wednesdays and Fridays from 9:00am – 11:30 a.m. by appointment only.
612-435-1315

Description: Clients are expected to enter into a mentoring relationship with a Dignity Center Advocate to work simultaneously on legal and other self-sufficiency issues, such as housing, employment, and chemical and mental health. **Brief legal advice only.**

(3) Telephone Advice Only—Volunteer Lawyers Network, 600 Nicollet Mall, Minneapolis.

Call intake line: 612-752-6677. This is a brief advice service only over the telephone for 15 minutes.

Eligibility: 300% of the FPG for a family.

Geographic areas served: Statewide.

(4) Full Representation—Volunteer Lawyers Network, 600 Nicollet Mall, Minneapolis. Call

intake line: 612-752-6677. This is for **Chapter 7 bankruptcies only.** Applicants being

garnished or at risk of garnishment are given priority. There is a 3 to 5 week waitlist before an attorney will advise if the person in need will be accepted for full representation. VLN-affiliated attorneys represent approximately 60 people per year in Chapter 7 proceedings.

Eligibility: 150% of the FPG for a family.

Geographic areas served:

- Anoka County Benton County Blue Earth County Brown County Carver County Chippewa County Chisago County Cottonwood County Dakota County Dodge County Faribault County Fillmore County Freeborn County Goodhue County Hennepin County Houston County Isanti County Jackson County Kanabec County Kandiyohi County Lac Qui Parle County Le Sueur County Lincoln County Lyon County Martin County McLeod County Meeker County Mille Lacs County Morrison County Mower County Murray County Nicollet County Nobles County Olmsted County Pine County Pipestone County Ramsey County Redwood County Renville County Rice County Rock County Scott County Sherburne County Sibley County Stearns County Steele County Swift County Wabasha County Waseca County Washington County Watonwan County Winona County Wright County Yellow Medicine County

(5) Leonard, Street and Deinard Legal Clinic, 2001 Bloomington Avenue South Community University Health Care Center Minneapolis, MN 55404 Phone: 612-638-0700

Eligibility: CUHCC patients based on annual income

Website: <http://www.ahc.umn.edu/cuhcc/ourservices/legal/home.html>/Legal clinic for patients of Community University Health Care Center (financial screening done) offered by Leonard, Street and Deinard. Legal Clinic includes: Consumer Matters, Bankruptcy, debt collection-repossession, wrongly denied credit or insurance

(6) University of Minnesota Consumer Bankruptcy Clinic, 229 19th Avenue, S, no. 285, Minneapolis MN 55455 Phone: 612-625-5515. **However, note that this clinic doesn't schedule appointments; instead they use VLN as a screener. Thus, it's better to simply give VLN's phone number and not the U of M number above.**

<http://bankruptcyprobono.org/MN/CBC.php>

Eligibility: Same as VLN's.

Geographic Areas Served: Hennepin and Ramsey Counties

Students at the University of Minnesota Law School provide pro bono services to individuals in serious financial difficulty contemplating filing for bankruptcy and to individuals otherwise involved in a bankruptcy case.

(7) Legal Access Point at Government Center in Minneapolis. This doesn't provide advice for bankruptcy on a regular basis; however, a **Call for Justice inside tip** is that lawyers who specialize in bankruptcy routinely staff the LAP to do general pro bono work. Callers can contact the HCBA Legal Referral and Information Service (612-752-6666) and ask when the bankruptcy-trained attorneys will staff the clinic. (The caller can't make an

appointment per se to talk to that attorney; the caller will simply need to show up at the LAP on the day/time when a bankruptcy attorney is scheduled.)

Fallback Referral

LawHelpMN.org: always provide this as a fallback referral. The caller will need to type in “bankruptcy” into the search field; many resources will then pop up, including a “Bankruptcy Basics” video and an information sheet entitled “Filing for Bankruptcy without an Attorney.”

The state Court Self-Help Centers are not a referral source on bankruptcy since they help with state law legal matters; bankruptcy, as described above, is federal in nature.

This Month’s Tips

- 1. Bankruptcy law is incredibly complicated. Consequently, relatively few lawyers specialize in it, explaining why pro bono bankruptcy resources are very limited.**
- 2. However, the courts understand that many people will not be able to afford a lawyer for their bankruptcy. Thus, assure callers that there are resources out there for people proceeding pro se.**
- 3. The realization that bankruptcy is the only option comes slowly (and incrementally) for most people. This in part helps to explain why people continue to incur debt of enormous proportions. It also explains why people suddenly panic and want to see an attorney immediately.**
- 4. Again, it’s important to remind people of the need to deal with their legal issues while they’re still in the “problem” stage and before they become legal “emergencies,” such as when a creditor garnishes the caller’s bank account, taking this month’s rent money.**

Let us know if you have any questions!

ellie and Jillian

Call for Justice, LLC