Bankruptcy Fundamentals NACBA 2018

Speak Fluent Bankruptcy

If you venture into the special world of bankruptcy, it helps to know the language spoken there.

Master just a couple of words and phrases, and bankruptcy starts to make sense.

Essential bankruptcy terms

Petition - the first paper filed in a bankruptcy case that initiates the case. It invokes the automatic stay.

Automatic stay - an injunction against creditors that halts collection and foreclosure just because the petition has been filed.

Schedules - the balance of the papers filed after the petition to flesh out your bankruptcy case.

Trustee - the individual appointed by the Department of Justice to oversee your filing and to represent the interests of creditors as a whole.

U.S. Trustee - an employee of the Department of Justice who supervises trustees and monitors Chapter 11 cases with no creditors committee.

Means test - a form and a formula added to consumer bankruptcy cases supposedly to ferret out bankruptcy filers who are really able to pay creditors without bankruptcy.

Discharge - the court order that makes your dischargeable unsecured debts unenforceable.

Dischargeable - debts that may be wiped out in bankruptcy.

Non dischargeable - debts that are excluded from the discharge by the terms of the Bankruptcy Code.

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Reaffirm - an agreement made after filing to waive the discharge as to a particular debt. Reaffirmation requires court approval

Transfer - any act that changes ownership or title to an asset, or creates a lien on an asset.

Post petition - events that happen after the petition for bankruptcy is filed.

Add some numbers to your list

Because bankruptcy is based on the Bankruptcy Code, bankruptcy types tend to use the number of some important statutes as shorthand.

341 - Section 341 requires a first meeting of creditors in every bankruptcy case. We call that the 341 meeting.

523 - This is the section that lists the debts that are non-dischargeable. Several subsections require an affected creditor to prove his debt is non-dischargeable.

727 - This section sets out the circumstances when a discharge can be denied altogether. It can be brought by a creditor or the trustee for the benefit of all creditors.

Bankruptcy chapters come next

Different chapters of the Bankruptcy Code provide for different kinds of bankruptcy cases that may be filed.

Chapter 7 - a liquidation bankruptcy case available to individuals and business entities, but not trusts or estates.

Chapter 13 - a reorganization case for individuals with debts under certain limits.

Chapter 11 - a more complex reorganization case without debt limits for individuals and business entities

Chapter 12 - a simplified reorganization proceeding for family farmers

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