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### 1.0 Law & Legal CLE Credit – A/V Approval #1077706

Recording Date – September 13, 2017

Recording Availability – August 24, 2018

Meeting Location	Date	Time	Topic
King County Bar Association 1200 Fifth Avenue - Suite 700 Seattle, WA	<b>Wednesday, September 13, 2017</b>	12:00 PM to 1:15 PM	Bankruptcy for the Non-Bankruptcy Attorney

#### AGENDA

**12:00 PM** Introduction

**12:10 PM** Presentation: ‘Bankruptcy for the Non-Bankruptcy Attorney’, by Sarah Weaver, Sarah Weaver, PLLC

- Fundamental differences between Chapters 7, 11, and 13;
- What assets can be protected through a bankruptcy filing; and
- When relief may be appropriate for businesses and individuals.

**1:15 PM** Adjourn

#### SPEAKER BIOGRAPHY:

**Sarah Weaver, Sarah Weaver, PLLC** - Ms. Weaver is a graduate of Cornell University and the University of Oregon School of Law. She is a former law clerk to the Honorable Keith M. Callow of the Washington State Court of Appeals and the Honorable Thomas T. Glover of the U.S. Bankruptcy Court for the Western District of Washington. She has been involved in all facets of bankruptcy proceedings and has represented lending institutions, creditors’ committees, trade creditors, debtors, and individuals in bankruptcy proceedings, receiverships, and workout transactions. Ms. Weaver has served as chair of KCBA Debtor-Creditor Section, as chair of the KCBA Solo & Small Firm Section, and as a member of the Executive Committee of the WSBA Creditor-Debtor Section. Ms. Weaver opened her own office in downtown Seattle in September 2003.

## **HOW DO I EARN CREDIT FOR SELF-STUDY OR AUDIO/VISUAL (A/V) COURSES?**

For pre-recorded A/V (self-study) programs, although the sponsor should apply for accreditation, **lawyers need to report the credits earned for taking the course.**

To add an approved course to your roster, follow the procedures below:

- ❖ Go to the "mywsba" website at [www.mywsba.org/](http://www.mywsba.org/).
- ❖ Log in.
- ❖ Click on the "Access MCLE" link in the "MCLE Info" box on your home profile page.
- ❖ Click on "Add Activity." Search to find the approved course in our system. (See search suggestions on the screen.)

### **Adding a Recorded Course**

Select Recorded Course from the Add New Activity screen.

This will prompt you to search for the activity in case the activity has already been accredited in the MCLE system.

You can search by Activity ID or by specific Activity Details. For the Activity Details search, you can use keywords for the title, sponsor name and date.

After entering your search criteria and selecting Search at the bottom of the screen, a list of possible activities will be provided.

You can select the correct one by clicking the Activity ID. This will take you to the specific activity. Entered the date(s) on which you began and ending viewing this recorded activity.

Then claim the correct credits for which you attended this activity in the Credits Claimed fields and click the Submit button at the bottom of the page.

You will receive a confirmation message at the top of your screen stating, "The activity has been added to your roster."

# Welcome to Bankruptcy



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# Most Common Bankruptcies

Chapter 7	Liquidation
Chapter 11	Reorganization
Chapter 13	Wage Earners



## Chapters that apply in all bankruptcy cases

Chapter 1	General provisions Who may be a debtor
Chapter 3	Commencement of case Administration of case Officers of the estate
Chapter 5	Creditors and claims Debtor's duties and benefits

# Common Elements

All cases are commenced by filing a petition, the bankruptcy schedules, and statement of financial affairs

The automatic stay goes into effect immediately upon filing: Section 362

All debtors must participate in the first meeting of creditors, known as the "341 Meeting"

All individuals must take "credit counseling" within 6 months before filing & "dr ed" to escape

# Chapter 7

**The goal:** to receive a discharge & a fresh start

**The price:** full disclosure & loss of nonexempt assets

**Who:** individuals, corporations, other entities

## The Discharge

A personal right available ONLY to individuals in Chapter 7  
Available only once every 8 years . . . use with care!!

Exceptions to discharge:

Section 523 -- certain debts that are not discharged

Section 727 -- discharge may be denied entirely

# Corporate Chapter 7 Filings

## Drawbacks:

- Not entitled to a discharge
- Not entitled to exempt property



## Benefits:

- Orderly liquidation of assets
- Recovery of preferential payments & fraudulent conveyances

Better to go gracefully out of business?

# Qualifying for Chapter 7

Two ways to qualify for individuals:

Business debtors: more than 50% of the debt is "business related"

Quick test: compare business debt to home mortgage

Consider personal guarantees of loans & leases  
Investment properties

Consumer debtors: personal, family, or household debt

Must pass the "means test"



# The Means Test

a three-step analysis for 6 full months prior to filing

## Step 1 - Income

Gross wages, rents, contributions from others, interest & dividends

If below median income, you qualify!



## Household size

	1	2	3	4	5	6
	\$59,154	\$72,460	\$79,754	\$92,727	\$101,127	\$109,527
<b>mos. max</b>	\$29,577	\$36,230	\$39,877	\$46,364	\$ 50,564	\$ 54,764

## Step 2 - Secured debt: payments due within 60 months

Homes, cars, boats & planes - include taxes & insurance

Past due amounts

Balloon payments

Most people will pass at this point



## Step 3 - Other actual expenses

Employment taxes

Union dues, uniforms

Insurance - term life, health, disability

Court-ordered payments - alimony, child support

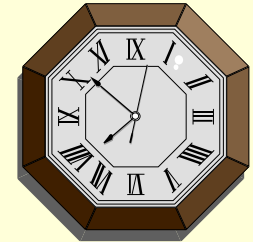
Continued charitable contributions

and more . . . .

# What if you fail the means test?

## Timing considerations

- File before a foreclosure or short sale
- Wait for higher earnings to "drop off" the 6 months
- File before a new job



## Other considerations

- Do you need a new car?
- Adopt a child?
- Have another baby?



# Exemptions - federal or state?



General rule: if home equity exceeds \$23,675 (single) or \$47,350 (married), use state exemptions

Washington homestead exemption \$125,000

Personal property exemptions increased in 2011

Federal personal property exemptions are more generous

household goods: \$12,625 (single) \$26,250 (married)

wildcard: half of unused homestead exemption

\$13,088 (single) \$26,175 (married)

Section 522:

must reside in state for 2 years to use that state's exemptions

# Nonexempt property



Surrender to the trustee

Buy back the equity from the trustee

Is the property overvalued?

## The role of the Chapter 7 trustee

The trustee's job: look out for the unsecured creditors

Sell nonexempt assets & pursue preference payments

# Chapter 7 timeline

- Take credit counseling within 6 months of filing
- Fill out the schedules & file the case
- Provide docs to the trustee 1 week before 341 meeting  
Tax returns, bank statements, pay stubs, declaration
- Attend the 341 meeting (about 30 days after filing)
- Take “debtor education” class; reaffirm car debt
- Wait 61 days from the 341 meeting for the discharge
- Case closed shortly after discharge unless trustee is pursuing assets

# The discharge

**May always repay debt voluntarily**

**Automatically not discharged:**



A domestic support obligation  
& debt incurred in a divorce or separation  
e.g., hold harmless provisions

Income taxes due within 3 years

Sales & employment taxes –  
amounts required to be collected or withheld

Student loans unless undue hardship  
Fine, penalty, or forfeiture

# The discharge continued



## **Requires separate adversary proceeding:**

False financial statement

False pretenses or actual fraud, including

consumer debt for luxury goods or services  
within 70 days of filing > \$650

consumer cash advances within 90 days of  
filing > \$925

Willful & malicious injury



# Reaffirmation agreements – section 524

Reinstates personal liability

The risk: default & liability for deficiency

Must be filed before the discharge is entered – 60 days after 341 meeting

May be rescinded within 60 days after filing

Attorney certification:

Fully informed & voluntary

No undue hardship

Advised of legal effect & consequences of default

Generally used for cars – but not homes

# Chapter 13 – a voluntary undertaking

## **The goal:**

to confirm a plan & receive a discharge  
& a fresh start

**Who:** individuals with a regular income

## **Debt limits:**

unsecured debt less than \$ 394,725

secured debt less than \$1,184,200

noncontingent & liquidated



## **Timing:**

4 years from filing case with previous discharge in Chapter 7, 11, or 12

2 years from previous Chapter 13

any time earlier – just no discharge

## **Drawbacks:**

Plan runs 3 to 5 years

Discharge not immediate

Living within a budget

## **Benefits:**

Assets are not liquidated – can keep nonexempt assets

Opportunity to “strip lien” on residence if no equity in the residence (becomes unsecured & could affect ability to qualify)

Creditors not entitled to vote on the plan

Stay of action against co-debtor on consumer debt

## **Biggest benefit:**

Cure home/car arrearages over time

# The Chapter 13 Plan

Must pay greatest of

- Disposable income calculated under the means test  
(uses IRS standards)
- Value of all nonexempt property or
- Payment in full of all priority debts over life of the plan

Length of plan:

3 years unless debt sooner paid (& can take longer)

5 years if above median income

# Conditions to confirmation:

All postpetition domestic support obligations have been paid in full

All tax returns have been filed



# Chapter 11 – Reorganization

**Who?** individuals, corporations, partnerships, LLCs

**The Goal:** confirm a plan of reorganization &  
receive a fresh start

**The Plan:** a contract between the debtor and creditors  
governing how the debtor will pay some of all  
of the prebankruptcy debt



# Benefits:

- The debtor remains in possession of its assets
- Continued operation in the ordinary course
  - Free from creditor pressure
  - No payment on prebankruptcy debt
- The opportunity to "write down" prebankruptcy debt in plan
- Survival of an existing business -- preserve jobs
- Maximizes the value of the assets v. liquidation
- Ability to assume or reject contracts and leases



**Drawbacks:** very expensive  
very cumbersome  
most fail

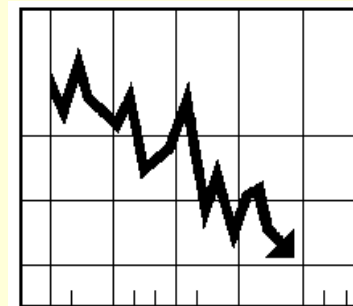
Court permission required for anything unusual:

- sell / lease property out of the ordinary course
- borrow money
- use "cash collateral"
- anything the debtor does not normally do
- assume or reject leases and contracts



# Should a plan be filed?

Is the business making money?



# Can a plan be confirmed?

creditors vote by class

one class must vote yes

51% of those voting & 2/3 of amount voted

a large creditor, e.g., the bank, may control  
the class

# Major confirmation issues:

Plan must be feasible -- can the debtor do what it promises?  
financial projections?

Plan must pay at least what creditors would receive in a Chapter 7 liquidation

the "best interest of creditors" test  
protects dissenting creditors

Plan must be proposed in good faith

Can plan be confirmed over objection of dissenting class?

