

CREDITOR AND DEBTOR RELATIONS

CREDITOR - DEBTOR RELATIONS

STATE LAWS

Mechanic's Lien real property
Artisan's Lien personal property
Attachment prejudgment
Garnishment
Foreclosure
Suretyship (primary)
Guaranty (secondary)
 defenses
 rights: subrogation
 reimbursement
 contribution

State Protection of Debtors

Homestead exemption

Truth in Lending Act: disclosure

UCCC

far fewer States than UCC
usury
disclosure
cap garnishment,
3 day revocation of in home sales
 FTC rule delaying attainment of
 HDC status on consumer note

SECURED TRANSACTIONS

Security Interest
written agreement or possession
debtor sign
describe collateral
to grant and
to allocate ownership interests
debtor has rights to collateral

PMSI: Purchase Money Security Interest

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Perfection
possession
necessary for some collateral
e.g., bearer instruments

filing
necessary for some collateral
e.g., general intangibles
e.g., patent

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Perfection
Financing Statement
written
signature of debtor
description of collateral
to put world on notice
of potential claims to ownership
name and addresses
debtor
creditor

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Perfection
automatic
PMSI in consumer goods
proceeds

Perfection
scope of security interest
proceeds
after acquired
floating lien

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PRIORITY

first to perfect
then
first to secure

buyers in the ordinary course of business
good faith

consumer sale to consumer

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SECURED TRANSACTIONS

duties
information to creditors
release
reasonable care

remedies
retention
satisfaction
notice
consumer PMSI pre-60% paid
deficiency

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BANKRUPTCY

CHAPTER 7
LIQUIDATION

CHAPTER 11
BUSINESS REORGANIZATION
business future income

CHAPTER 13
INDIVIDUAL REPAYMENT PLANS
consumer future income

CHAPTER 7: LIQUIDATION

Most of the rules of Chapter 7
apply to the other chapters.

Major differences between 7, 11, & 13
who may use
and
which debts are discharged.

CHAPTER 7: LIQUIDATION

Voluntary

Involuntary
may not force a farmer

CHAPTER 7: LIQUIDATION

Involuntary

use if:

12 or more creditors,
with 3 or more creditors owed
\$10,000 unsecured debts

or if

less than 12 creditors,
with 1 or more creditors owed
\$10,000 unsecured debts

but also if

not paying debts as due

or

custodian appointed

AUTOMATIC STAY

Trustee

powers

collect estate, preserve, account

General Powers

Assumption Rights

Preferences

Fraudulent Transfers

may be reversed, Trustee's discretion

Creditors' Meeting

debtor MUST attend or denied discharge

Property Distribution

administration

ordinary course of business

unpaid wages

unsecured employee benefits

farmers

consumer deposits

taxes

general unsecured creditors

DISCHARGE under CHAPTER 7
deficiencies on disclosed debts after liquidation

Exceptions

- 3 years back taxes
- false pretenses
- creditors not notified
- fraud as a fiduciary
- alimony & child support
- willful or malicious
- fines
- student loans
- consumer luxury goods
- cash advances
- DWI

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Objections to discharge

- concealment
- refusal to obey
- not explain loss of assets
- six years since last bankruptcy
- written waiver approved by the court

Reaffirmation of Debt

- prior court approval

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CHAPTER 11: BUSINESS REORGANIZATION

- business future income
- continue in business after filing: workouts*
- debtor in possession
- Creditor Committee
- The Plan
- Cram down

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CHAPTER 13: INDIVIDUAL WORKOUT
consumer future income

individuals only

broader, Super Discharge
in exchange for claim on future income

only voluntary,
may convert some 7's and 11's into 13's

automatic stay limited to individual's debts,
not to business'

CHAPTER 13: INDIVIDUAL WORKOUT

Creditor can object to Plan,
but do not approve the Plan like in 11

Court approval over objection
only if
distributed property equals claims,
and only if
all "disposable" income for 3 years

creditors must be as well of as in 7

CHAPTER 13: INDIVIDUAL WORKOUT

Super Discharge

after completion of all payments
discharge all debts covered in Plan

No discharge of alimony & child support.

Discharge of a Student Loan requires a
judicial finding of undue hardship
or
second bankruptcy.
