



Legal Note – Bankruptcy / General Overview

In light of the frequency of calls we now receive inquiring as to the benefits of bankruptcy, the next few legal notes explain some of the costs and benefits of the bankruptcy option. This month we provide some general background.

The federal bankruptcy process generally provides a means of discharging indebtedness owned by an insolvent debtor. The assets of the debtor become the property of the “bankruptcy estate” paid to creditors based on rules of preference.

Generally three types of bankruptcy are utilized by individuals and businesses to discharge indebtedness. Chapter 7 contemplates a “snapshot” liquidation on the date of filing. Non-exempt assets are therefore compiled for the benefit of creditors whose debts are discharged. Money earned by the debtor after filing bankruptcy (i.e., after the snapshot) is not included in the bankruptcy estate available to creditors at the time of filing. The debtor is generally discharged from most all indebtedness within ninety (90) days of filing and provides a “fresh start”.

Chapter 13 affords individual debtors the ability to establish a repayment plan. Only individuals with unsecured debts less than \$336,900 and secured debts of less than \$1,010,650 are eligible for Chapter 13 bankruptcy. If a debtor is able to repay the restructured debt, the debtor may keep his or her assets.

Chapter 11 is generally only available to business entities and individuals with significant assets who owe debts exceeding the Chapter 13 limits. Under Chapter 11, the debtor remains “in possession” of its assets and proposes a debt payment plan. Under certain circumstances, the debtor may alternatively force the creditor(s) to accept (or “cram down”) a payment plan. At the end of the payment plan, if the debtor has complied with the plan, the debtor retains its assets.