

I Am A Creditor. Does This Mean I Lose?

While our prior articles have focused on debtors' rights in bankruptcy, this week we will shift focus to creditors. I am frequently asked the same question by clients, friends, family members, and neighbors alike: If someone owes me money and then files for bankruptcy, will I ever see the money again? Am I up the creek without a paddle? Is there any recourse for recovering what I'm owed?

The answer is creditors have rights too. You do not lose all protection simply because you are on the other side. However, there are a number of important rules that must be followed in order to collect. The rules vary depending on whether the debtor – i.e., the individual who owes you money – filed for Chapter 7, Chapter 11, or Chapter 13. This week's article will examine what you need to know and what you should consider under a Chapter 7 filing. The next installments in the series will explain how to proceed under Chapters 11 and 13.

While a Chapter 7 bankruptcy generally wipes out the legal obligation to repay most types of debts, there are exceptions. The exceptions are where the creditors survive. First and foremost, though, every creditor must be aware that this rule only applies to individuals. Corporations, LLCs,

and other types of corporate formations do not receive a discharge of their debts in Chapter 7 bankruptcy. The point of a business filing for Chapter 7 is solely to liquidate their assets in an orderly fashion under court supervision.

With this in mind, there are two major exceptions where an individual will not

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receive a discharge of a debt in a Chapter 7 filing. First is where the individual hides assets from the bankruptcy court. On your bankruptcy papers you are required to list everything you own. Unfortunately, many unscrupulous debtors mistakenly think they can get away with playing fast and loose with these rules. Such individuals often deliberately omit assets of substantial value from their bankruptcy papers thinking no one will find out.

If you are a creditor, your prior dealings with the debtor likely gave you some idea of the debtor's assets. You probably required the debtor to fill out a financial disclosure before doing business or ex-



tending a loan. You likely had numerous conversations as well in which the debtor discussed his finances in detail. Creditors would be wise to compare what the debtor lists on his bankruptcy papers with whatever documentation you have from your previous dealings with the debtor to see if they match up. For example, the debtor may have boasted to you about various financial accounts he owns, e.g., mutual funds, stock options, government bonds, or other investment accounts. He

may have even provided you specific account numbers as well as the names of the financial institutions where the accounts are held. Carefully scrutinize the bankruptcy papers to see if it mentions any of these accounts. If after thorough review anything makes you suspicious about the debtor's bankruptcy filing, the bankruptcy court provides various measures to further investigate. However, the bankruptcy court operates under a set of strict rules and deadlines.

If you find yourself in such a situation, it would be prudent to consult with an experienced bankruptcy attorney who can guide you through the maze. Stay tuned for our next article in the series, which will examine the second of the two exceptions mentioned above.

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