The Collector Chronicle

North American Recovery | May 2017 | America's Collection Authority

Last Month's Lucky Winner

The lucky winner of our client prize for February is Benjamin Kim, MD. He has been using our agency since 2007!

We will be sending Judy a gift card to Red Lobster. Enjoy!

This Month's Prize

This month we will be giving away a $100 gift card to Nordstrom!

Each client who sends new accounts during the month of May will have their name entered into a drawing. At the end of the month, we will draw a name. If it's yours, you'll win the prize.

Don't miss out on your chance to win.
Send new accounts in May!
Good Luck!!

Bankruptcy

By David J. Saxton
President, North American Recovery

DISCLAIMER: *This article is for informational purposes only. The author is not rendering legal advice or interpreting the bankruptcy code. As with any legal matter, you should consult your attorney if you have questions about a bankruptcy.*

Bankruptcy. It's a subject no creditor enjoys. Collectors feel the same way, and for that matter, so do consumers. When it comes right down to it, nobody likes bankruptcies. But it's part of life in America, so we learn to deal with it. This month I thought I'd talk about the different types of bankruptcies and what happens when someone files for bankruptcy protection.

There are two kinds of consumer bankruptcies: Chapter 7 and 13. I'll briefly explain the process for each one.

Chapter 7

Chapter 7 bankruptcy is also known as a liquidation bankruptcy. It allows a consumer to give up their assets in exchange for the elimination of their debts. Assets can include real estate, cars, jewelry, or any other item of substantial value. Certain bills, however, cannot be eliminated with a Chapter 7. These include federally guaranteed student loans, criminal fees, and child support obligations.

Chapter 7 bankruptcy relief is available to individuals, regardless of how much they owe. However, a consumer cannot file for bankruptcy if during the preceding six months a prior bankruptcy was dismissed due to their willful failure to appear before the court or to comply with orders of the court, or if a case was voluntarily dismissed after creditors sought to recover property. Although most Chapter 7 bankruptcies result in a discharge of debts, it's not guaranteed.

Once a consumer (or the consumer's attorney) files for bankruptcy, the court issues an "automatic stay" that stops all collection action—including wage garnishments.

Approximately 30 days after filing bankruptcy, the court will schedule a meeting of creditors (the 341 meeting). This meeting allows creditors to question the consumer's claim that they can't pay their debts. In practice, most creditors don't attend these meetings because their

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debts are not secured by property. The ones who do attend will negotiate a repayment agreement with the consumer and allow them to keep their possessions. This is called a reaffirmation agreement and it will survive the bankruptcy. If the consumer doesn't pay their reaffirmed debt, we can collect it after the bankruptcy has been discharged.

Sixty days after the 341 meeting, if the consumer has complied with all of the courts requirements, they will receive a discharge. When this happens they won't have to repay any of the debts they didn't reaffirm. However, if the consumer does not comply with the instructions from the court, their bankruptcy will be dismissed and they owe every bill.

Chapter 13

Chapter 13 bankruptcies are different because the consumer agrees to repay their debts—in full or in part—over a period of 3-5 years. Any individual can file for Chapter 13 relief as long as their unsecured debts are less than $394,725 and their secured debts are less than $1,184,200.

A corporation or partnership may not file a Chapter 13. Also, individuals cannot file under Chapter 13 if during the preceding six months a prior bankruptcy was dismissed due to the consumer's willful failure to appear before the court or comply with orders of the court, or it was voluntarily dismissed after creditors have sought relief from the bankruptcy court to recover property.

Filing Chapter 13 automatically stays most collection actions against the consumer. As long as the stay is in effect, creditors generally cannot initiate or continue a lawsuit, wage garnishment, or even telephone calls demanding payment. Chapter 13 also protects co-signers from all collection action on that specific debt, unless the creditor receives special permission from the court to have the stay lifted against the co-signer.

After the initial filing, a meeting of creditors is held, during which the consumer is examined under oath (similar to what happens with a Chapter 7). It usually takes place 20-50 days after the petition is filed. The consumer must attend the meeting, where creditors ask questions regarding the consumer's financial affairs and the proposed terms of the plan. If a husband and wife have filed a joint bankruptcy petition, they must both attend the creditor meeting. The trustee will also attend the meeting and question the consumer on the same matters. In order to preserve their independent judgment, bankruptcy judges are prohibited from attending.

In a Chapter 13 case, unsecured creditors who have claims against the consumer must file their claims within 90 days after the meeting of creditors. After the meeting of creditors has concluded, the bankruptcy judge must determine during a confirmation hearing whether the plan is feasible and meets the standards set forth in the bankruptcy code. Creditors, who will receive a 25-day notice of the hearing, may object to confirmation.

Once the court confirms the plan, the consumer must make regular payments to the trustee (typically biweekly or monthly). The trustee then distributes the funds to creditors according to the terms of the plan. Failure to make the payments in accordance with the confirmed plan may result in dismissal of the case, or its conversion to a Chapter 7.

While in the Chapter 13 plan, a consumer may not incur any new credit obligations without consulting the trustee, as such credit obligations may have an impact on the execution of the plan.

If paid as agreed, a consumer's Chapter 13 bankruptcy will be discharged. This means that the consumer is released from all debts provided for by the plan. Those creditors who were paid in full or in part under the Chapter 13 plan may no longer initiate or continue any legal or other action against the consumer to collect the discharged obligations.

Well, there you have it: Chapter 7 and 13 explained. If it seems a bit daunting, don't worry. We are doing everything possible on every account to recover the maximum amount allowed in a timely manner. However, if you have questions on a specific account, anyone in our Client Service department will be happy to review it with you. Just send us an email ClientService@North-American-Recovery.com or give us a call at 801-364-0777.

Thanks for reading and have a great month!

The Collector Chronicle is published by NORTH AMERICAN RECOVERY for prospective and current clients. The owner, David Saxton, welcomes your questions or comments.
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