

Garden State CLE Presents:



Consumer Bankruptcy Twenty Questions You Should Discuss With Your Clients

Instructors



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Presenters for
our Next
Lunchtime
Learning Event:



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Lesson Plan

Introduction

During the period ranging from October 1, 2005 to September 30, 2021, about 15.3 million non-business bankruptcy petitions were filed in the federal courts (i.e., filings involving mainly consumer debt). Of those, 10.3 million - 67 percent of total non-business filings were filed under Chapter 7 and 5 million - 32 percent of total non-business filings were filed under Chapter 13.

Other types of bankruptcies include Chapter 11 (Reorganization/Individual/Small Business), Chapter 12 (Family Farmers or Fishermen), Chapter 15 (Cross-Border Cases) and Chapter 9 (Municipalities). Some individuals use Chapter 11 to obtain relief.

In 2005, Congress enacted the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA), which among other things, instituted a means test to move some filers away from filing for bankruptcy under Chapter 7 and toward filing under Chapter 13. An individual or couple filing jointly may file for bankruptcy under Chapter 7 only if their debts are primarily consumer debt and their monthly income over six months prior to filing for bankruptcy is below the state median for a similar household, or if the debtor's monthly disposable income falls below a threshold established by a statutory means test.

In order to make sense of the complexity of the process, the following are 20 questions you should discuss with your bankruptcy client before filing a petition:

- 1) How do you explain the process to your clients?
- 2) Which option is best: Chapter 7 or 13?
- 3) What about legal fees and limitations?
- 4) How do you explain means-testing?
- 5) How do you explain the automatic stay provision?
- 6) How do you convert from a Chapter 13 to a Chapter 7?
- 7) Do they have pre-filing counseling in New Jersey as a condition for filing?
- 8) Are there any debts that cannot be included in a chapter 13 repayment plan (e.g., federal income taxes, student loans, etc.)?
- 9) How often can a client file a petition? (A Chapter 7 liquidation vs. a Chapter 13 wage-earner plan)?
- 10) How long should a chapter 13 repayment plan last?

11) What exemptions are available to consumers in a New Jersey bankruptcy for real and personal property?

12) What debts are not subject to a Chapter 7 or 13 discharge? (e.g., taxes, student loans, child support, alimony, personal injury debts (DWI), money due to a secured creditor)?

13) In New Jersey, how long does it typically take to get a discharge following a chapter 7 filing?

14) What are the filing costs and costs of administration (e.g., trustee fees)?

15) What is the impact of bankruptcy on the ownership of real property (i.e., can I keep my house)?

16) What is the impact of bankruptcy on individual spouses?

17) How do you explain the impact of bankruptcy on your client's credit scores?

18) How do you handle objections from creditors?

19) Are there any viable alternatives to bankruptcy?

20) Can you reaffirm debts in order to keep secured property (e.g. a vehicle)?