BANKRUPTCY BASICS

Law Offices of Pamela Kleinkauf
(858) 675-1105
pklaw@pamkleinkauf.com

INTRODUCTION

- Background of Bankruptcy
  - different chapters
  - federal vs. state
- Exemptions
  - what you may be able to keep as a debtor
- Creditor Issues
  - proofs of claim
- Litigation Issues
  - adversary proceedings and trials

BACKGROUND INFO

- History - Move from punishment to forgiveness
- The players - Debtor, Creditors, Trustee, US Trustee, Bankruptcy Judge
- Title 11 in the US Code - federal law
- CCP 703 and 704 used for exemptions in California
- Congress makes bankruptcy laws
- Chapters in Bankruptcy
- Chapter 7 - Liquidation. Nonexempt assets are liquidated for payment of dividends to creditors
- Chapter 9 - Government
- Chapter 11 - Reorganization. Debtor in possession. Court approved reorganization plan. Individuals or businesses.
- Chapter 12 - Reorganization family farmer and fisherman or woman.
- Chapter 13 - Reorganization. Individuals. Regular income. Plan. Unsecured and secured debt limits.
- Chapter 15 - Cross border insolvency. Foreign company with US debt.

EXEMPTIONS

- What does a debtor get to keep in a bankruptcy?
- Depends on the Chapter debtor files.
- Cannot mix exemptions in California, have to choose between 703 vs 704.

- 703 Wildcard concept - over $31,000
- 704 Homestead - $75,000, $100,000, $175,000 - must be debtor's home

- CCP 703 exemptions
- CCP 703.140
- -Car $5850.00
- -Furniture - $725 per item
- -Jewelry - $1750.00

- 704 Exemptions
- Homestead
- Auto - $3325.00
- Household goods - no limit
- Jewelry - $8725.00

- Schedule C - must contain an exemption for each item of property listed on Schedule A/B or property is exposed

CREDITOR ISSUES

- Automatic Stay under 11 USC Section 362 - Injunction against creditor actions during a bankruptcy case
- Discharge order
- Proofs of claim
- Adversary proceedings
- Request for special notice
- The Creditor meeting - 11 USC Section 341A meetings - nature and location of assets and debts

LITIGATION

- Relief from stay
- Reaffirmation agreements
- Adversary proceedings
- Motions for fraudulent transfers
- Turnover orders

- Bankruptcy appellate panel
- Bankruptcy reporter cases

QUESTIONS?