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SUMMARY KEYWORDS

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Hi everybody, I'm Pam Klein cough I've been doing bankruptcy for quite a while, in fact, didn't you know I didn't have the luxury of taking an elective. I also teach law school I teach an online bankruptcy class. At Alliant University. We have a lot of people don't know we have a non ABA school in Scripps ranch now, and we are tied to San Francisco law school. So that's kind of exciting. It's mainly geared toward more night students. We're small, but we're growing. And I'm teaching the first online bankruptcy class for them. So that's been kind of fun. But I've been doing bankruptcy, it's not the only thing I do in my practice. I'm a sole practitioner, and Rancho Bernardo. And I also do some probate litigation, civil litigation, real estate, kind of anything that comes in that I feel that I can handle on the civil litigation side. But bankruptcy, I worked for a sole practitioner in Temecula when I was young. And I just always kind of had it in the back pocket of any firm I went to, I was the one the go to person to say, Hey, you know, we don't know anything about bankruptcy, and you'll find that it's a great area, if any of you are any of you working in it now, or is it just something most of you are kind of thinking of, of doing or just wanting to learn the basics? Yeah, and I'm keeping this basic. So nobody, something, I wouldn't anticipate that I would get any longtime practitioners in here, I want to give you really a basic idea. And feel free to ask questions, because I would rather you learn about what to do with this. To give you a basic background of bankruptcy, what are the different chapters so many people are very confused about this? There's chapter seven. And does anyone have any idea what that is? It's a it's a liquidation. What we write, it's the most commonly filed chapter, individuals and businesses can file a Chapter Seven. But typically, when you are filing a chapter seven, as a corporation, you actually have to close your doors. So that towards a lot of people, that's a big, you know, question in their mind, I don't want to close my door. So what are my other avenues? And that's why I wanted to go over the different chapters for you so you can see what we have to analyze as practitioners. Chapter nine, is a government filing. And if you remember in the news lately, California has had a few city of the laiho Mammoth Lakes file chapter nine, and it's when a

government can't meet their bills, and they get to go into what's called a reorganization. Typically, the city isn't going to actually fold or the municipality, it could be a township and municipality, a county, but I think for the most part, historically, we've been seeing cities file. Also San Bernardino recently, they had quite a few financial problems, if you remember.

02:51

That happened, I think a lot in San Diego. Correct. But San Diego has not filed. I don't know if they even you would probably know better than anyone having worked there. But But whether the city of San Diego ever talked about it, I don't know. I think it's always a concern. Now with governments there's not that stigma now. We've seen so many more than we used to. But the the most recent one I think was probably Vallejo, or, or Mammoth Lakes that I heard in California. But it can be a variety of things. I think mammoth probably it's just they have such a seasonal business with the ski industry, they probably don't make as much money in the summer. And typically, it's just bad management. So in chapter chapter 11, gives the avenue in answers that question if you are a corporation that don't want that you don't want to close your doors, you can, you don't want to do a seven. So that's the avenue of chapter 11. individuals and businesses can file an 11 and it is a reorganization versus a liquidation. So the difference is you're trying to keep in business and typically get on your feet. And you think of Trump, Trump's hotels, New Jersey filed in 11. It's where the business isn't going to go completely out of business. And a lot of people wonder, can you transfer Can you convert to another chapter? Yes, you can. Oftentimes that's what happens with businesses. They start in an 11 with high hopes and maybe they're just trying to a good example. I don't think they have filed yet but forever 21, the retail chain that really targets more the junior high high school college age, mainly girl shopping, they're very low prices and lots of clothing. Well, they ran into problems recently because they have so many commercial leases around the nation and their lease heavy with these long term leases. And they they have talked about filing a chapter 11 so if that doesn't go well and they file 11, they might ultimately convert to a seven which I believe is an example was Toys R Us if you remember I think they started No 11 then switch to seven. And now we don't have any Toys R Us stores around. So the changing climate, especially with commercial leases and malls, the malls are going the way the dinosaur. And it'll be interesting to see what happens in the next 10 years. Chapter 12 is for family farmers, or Fisher people, Fisher men or women, and they've got certain thresholds of debt that they can do. But sometimes that's an avenue You know, my office is in Rancho Bernardo and I see quite a few people in the farming industry in Poway, Fallbrook around my office area. And I did have one gentleman who came in and he had already filed different chapters. And there are, this is a basic class. So I won't go into the details of the time between chapters, but basically, he had exhausted all his other avenues. But he did tell me, he goes, You know, I grow avocados on the side. And I think he was a commercial pilot by trade, but he got into some, too much credit card debt, different issues. And he said some of my debt is this avocado business. So we were looking at that to possibly file a family farmer issue. So that's kind of an interesting area that we don't see a lot

of. And one of my colleagues, he just retired, he was kind of the guru to do the family farmer. cases. But if you know anything about the trustees in town, for the most part, I have heard David Skelton who does chapter 13 work, they tend to give him the family farmers because he understands it. And we've had a big mushroom farm in VISTA file. You can imagine with all the flower businesses, we have an instant netus and on the coast and Carlsbad. So San Diego County is a huge farming place. So that's an avenue and also Fisher, Fisher people, I have not heard that we've had any of those filings. And but we do have a fair share of fishing businesses here. So could be an avenue I just haven't heard of any yet. Chapter 13. That's the most secondly, commonly filed chapter. And this is all under Title 11. I gave you I brought you a nice title 11 book, I peruse the library. If you're ever here, you know, we have such a wonderful library. But basically everything's on, you know, the first floors for the most part, state California. Books. Second floor, I think is all federal, correct me if I'm wrong. And then third floor, we have some of the other bankruptcy books too. But this is the US code, title. 11 is where you're going to find most of your bankruptcy. So if you get completely lost, you can go into the index on the US code. And it's all in title 11 in these chapters, who makes bankruptcy law Congress does. And today is happy Constitution Day. That's why I decided to put all my red white and blue on but under Article One of the constitution that provides Congress with the power to enact bankruptcy laws. So all our bankruptcy laws you get thank Congress for getting back to chapter 13. That is a reorganization for individuals only no businesses, and there are caps to what people can reorganize. Just to give you an idea. All of you should know even if you remember from law school, or some of you were not lawyers, you should know this just as a practical matter what unsecured debt is unsecured debt is unsecured debt are things like credit cards, where there's no collateral to grab, if somebody doesn't pay a secured debt are things like a mortgage or a car loan, where there's a collateral, if you don't pay, I'm the creditor going to grab your car back, or I'm going to grab your house back through a foreclosure proceeding. So chapter 13 has debt limits in these change. So if you're ever trying to do some research online, be mindful to look at the latest law. And that's true, of course of anything. But sometimes if you're looking at Old Law, that's not going to help you. And right now, just to give you an idea, the unsecured debt limit is 400 over 419,000. So that sounds high. But San Diego people, when I started in this business, $20,000 was really high for unsecured debt. Now we're oftentimes seeing people in the $100,000 range. So in trying to put kids through college, helping a lot of kids that come back home at 50 years old, you don't have a lot of clients that say, Well, I'm still helping my child and I'm saying how old is that child 53 here, so I'm always amazed just did that that comment, but I see a lot of it. And as we know, San Diego and California as a whole is so expensive to live in. So the housing crisis is forcing people to come back to the house, which and I see I have a lot of my fair share of people in Rancho Bernardo area in Poway too. They are taking care they're providing free childcare for their kids, kids, and not getting pay for it. Did you have a question?

10:02

What exactly does that mean? So the unsecured debt limit is 419,000. What does that mean?

10:09

That means if you have more credit card debt or or say I loaned you money, that would be an unsecured debt if I didn't have any collateral, if I just gave you a promissory note. Correct, it cannot exceed. Right, there are no limits. It does seem like a lot of money, doesn't it? And believe me, the US trustees office and the panel of Trustees will look at that. And they will say, how did you get into this much debt in such a short time? If it is a short time there is a place in the forms to actually put When did you incur this debt? So I'm always mindful, I like to look at my client's credit reports. And see when they actually incurred it. Maybe this has been a Visa card closed for years. And it's post divorce. You know, the reasons why people file bankruptcy are numerous. But over the years, I've seen a pattern and it's a lot of divorce bad business decisions, a bad business partner. The housing crisis, of course, in 2008, I don't think we're going to see anything quite that bad. My phone was ringing off the hook for bankruptcies in 2008, I was getting 16 viable calls a day. And we're not seeing that our numbers are down in San Diego. But did I answer your question? Yeah, basically, that's this is how we analyze where do we pigeonhole people, and sometimes we're oftentimes torn between should they belong in the seven or 13? That's kind of usually our biggest analysis. We try to put people in a seven, because it's easier. For example,

11:43

$150,000 medical debt, that you weren't covered, because you insurance didn't cover it, which is easy to happen. Do you first try and negotiate with the hospital before you file the bankruptcy?

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It depends on the case, I had a lady yesterday who she was there for her son, basically, that had a student loan, and he didn't follow through on going through college. So I even said that. And there were there were some bullying issues with college. And I told her that I said, I think your son really should at least write a letter to see if he could get out of this before filing bankruptcy, because the bankruptcy is always going to be there. There's sure it's always an avenue. And I typically tell people that are coming into me that have never failed before I tell them the bad first I tell them, I don't want to put you in this if I don't have to. And let's look at the other avenues that maybe we could ask for negotiation. And then if that fails, let's try it.

12:36

I don't want medicals. People just will know maybe she's someone like you. And they won't negotiate before they roll. I don't have to

12:45

write definitely, it's worth a shot. I always tell people do that, that just cost you that my time or your time. Versus bankruptcy isn't typically cheap. I mean, my average price for chapter seven is 20 $400, including the 335 file fee. There are people that will do it for less than town all the way through the Yes, yes. And then we have guidelines in San Diego, of course, is lower, unfortunately, the San Francisco or Los Angeles but our judges have guidelines for chapter 13 that are typically 3900 for doing a chapter 13 reorganization, which I should add, Congress has set a limit on that for 60 months, which is five years. So that's a lot, you're not really if you pencil that out. That's a lot of work for 30 $900. But you can ask for more money. If the case becomes more complex, you can always go into court and ask for fees. So getting into in the chapter 11 is a tough one, you know that that's a lot of work, you cannot pay yourself as an attorney until you get approved. So most people just to give you an idea, the cheap range for an 11 would be $1,000. Most attorneys charge, most of them in town, the bigger firms would charge 20 to $30,000 really depends on the complexity of because you're typically dealing with a large business too. So there's a lot of accounting to do. But just to give you an idea, but that was a good question. I definitely always look at the non bankruptcy alternatives. And also, I mean, getting back to your good question about debt limits with the seven there aren't any highs or lows with the seven. I have been down at court where people are filing bankruptcy chapter seven for per se a very low amount and the trustee will make that comment saying did your attorney look at other avenues? Did you really need to file a Chapter Seven per se $1,000 debt or? But it depends, you know, I've had older clients that there's not that income coming in anymore and they're just living on Social Security. So everybody's situation is different in the nice thing is she our bankruptcy court is very pro debtor. So when you're representing a creditor, and I do both sides, as long as there's not a conflict, it I always tell my creditor clients, we've got The higher burden, it's more of a philosophy of giving people a fresh start and getting back on their feet. So and to give you the last one chapter 15. We I'm surprised we don't see more of this in San Diego with our proximity to Mexico. But it's it's a fairly new chapter. And it is cross border insolvency. So for example, a foreign company with the United States debt. And the most recent one I have read about was, I think it was filed in New York or Delaware. And it was a developer based in Brazil, who did a lot of commercial buildings in the New York, New Jersey and Delaware area and Atlantic area. So they they were underwater, and they're what it's a nice new avenue to say, let's address this because the United States creditors are being involved. So we really want to have an avenue for that. Does anyone have any questions about the different chapters? You first?

15:53

So so people will file bankruptcy for a couple $1,000? So

15:58

yeah, the question is, I mean, would you would you chart would you file for such a small amount? not usually, but I have seen it, I will usually counsel people, it my threshold is sort of if if it's somebody very young or older with major health problems, sometimes even $10,000 is a lot. But I'll typically talk to them and say, can you borrow from family? can you avoid this? Because the negatives are, it's on your credit for 10 years. And that's more by custom with, I don't know if all of you know, we've all been deluged with all the ads about Experian, Equifax, TransUnion are the big three credit reporting agencies, they're all out of Atlanta, Georgia, but Credit Karma, there's so much commercial ads for these things. And it's a good idea to run your credit, if you're filing but I always warn people, if they've already, they have a current credit report, don't I don't know if all of you are aware, every time you run your credit, you get pinged your score. So even if it's just innocently that you're buying a car, so don't try to run your credit if you don't have to, because it actually lowers your score, even if you're the one inquiry

17:08

is the 1131 is the annual credit report.com. Yeah, one time here.

17:14

Yeah. But I think that even still pings for the inquiry. It's a very strange system. And they don't really like to disclose how they they actually come up with a number. And I don't know if any of you have experienced this, I've my clients have certainly experienced this and I have with loans. Your credit score might vary a little bit differently between the three. So it's always good to get all three agencies to make sure I'm not forgetting a creditor for you on your bankruptcy. But they can differ a little bit. Did you have a question about those chapters? You were talking about chapter 13? There's a limit for unsecured debt a 419. limit for secured debt. Oh, sorry, I didn't give you that. Yes, it's over 1.2 million. It's actually if you want the exact figure, it's 1.257 850. And that changes every few years. So you know, you need to go look at that. But you can imagine that sounds high. But imagine most of the people in chapter 13 have real estate issues. And what is the average price of real estate and this I took a trip up to Monterey this summer, I couldn't believe how expensive things were in Paso Robles, and just Central California in definitely, Salinas even was very expensive outside of Monterey. So our entire state, if you own any dirt in the state, you're you're doing well. And it's because it's a finite object. You know, the second question I had was for chapter seven liquidation. You mentioned that if you're a corporation or a business, you had to close down the doors. How does that work for a sole proprietor that they still allow, and I've seen, you know, unfortunately, I've seen some attorneys down there. Dentists, not not too many doctors that we see in San Diego, but if you're a sole proprietor, you can still run the business. Of course, if you're a CPA or definitely you still would keep going. It's where the actual LLC or C Corp or an S corp, they actually have to close their doors. They don't also get exemptions which is strange, like

I represented a party store once and they had all this gift wrap and card stock and everything. And we estimated what they had left was about $1,000. Nobody wanted it yet the trustee abandoned that. And just to give you an idea of who are the players because I hear this incorrectly said a lot. The debtors the person filing the creditor is a person who is owed money and they can be multiple people. The there's a panel of Trustees in chapter seven and 13. In San Diego, we happen to have 213 people they've been doing it forever one gets the odd cases, one gets even cases and they they have been in practice for ever since I was quite young. The seven panel we have in Italy If you're ever interested in this, I don't know if I assume all of you, you're pretty probably good at computers.

20:07

In our website, and California and San Diego is ca sb.us courts.gov. And you can they have a great website, all the bankruptcy courts do. I do some work in central district to and central district is huge. It encompasses la Santa Barbara, Riverside. And if you want their website, it's there's a knack to this the way the government has set this up. It's ca CB, which stands for California central bankruptcy.us courts.gov. So let's just say I mean, sometimes I want to go look at a northern Cal case, I'm teaching some students from San Francisco on my online bankers and classic law school. So I want to inform them what's going on in Northern California. And I'll go on ca NB, which is Northern bankruptcy.us courts.gov. So if you're interested in kind of looking at the different courts and how they vary with the forms, it's kind of interesting that you can, there's a lot of information on all their websites, they tell you judges calendars, and I always tell my law students to and you guys should know this too. If you're interested in this area, you can go over to 880 French street, and that's where the creditor meetings are held, you do have to go through a metal detector. But that's the worst of it. It's going through where the old Social Security Office used to be. And now the IRS is in the building. But it's right there in the federal building. And I believe they're conducted every day of the week, you could go watch creditor meetings. So no one's going to ask you who you are, if you're just interested in kind of seeing the flavor of how they they are run. Also, the bankruptcy court is at F Street. And you can go and look at the judge's calendars on the website and see if there's anything interesting that you want to see. For instance, the two big ones in the last couple of years were the Catholic Church bankruptcy that was standing room only a lot. Of course, the victims were showing up to those hearings. Judge Adler had that case. And also they brought in outside. They brought in Leo Pappas and I used to click for him in law school, and he became a US magistrate wonderful judge. They can't had him helping judge Adler with all the victim issues. So that was kind of interesting. And also we had, if you remember, it's quite a few years ago, now the US or the San Diego Symphony filed, and a lot of people in town we're attending those hearings. So if you hear sometimes there's some interesting things for the most part, it's not that exciting. You know, it's usually we see a lot of wrote motions and things are very, it's all about money and bankruptcy. It doesn't get too flavorful, like criminal law or anything like that. But we have a beautiful courthouse, and it's a

historic building over on F Street. So if you're ever interested, nobody's going to ask you why you're there. You know, you're welcome to go watch. So what about it? Does anyone have any questions about background of bankruptcy at all?

23:00

The judge can say no, you're not going to be in 13, you're going to go to 11, even though you found in 13, correct?

23:06

Yes. Yes. Usually, though, they have a credit, excuse me that driving into or out of 11. It can be a creditor, it could be a trustee, it could be the judge on their suicide sponte motion. Typically, what's going to happen is, most of these chapters have a required creditor meaning chapter 11 is a little bit different where it's a debtor in possession. And typically the debtor meets with the US trustees office was a little bit different. But somebody is going to possibly bring a motion to convert it to a different chapter. And what what oftentimes happens, you probably you guys that have been around a while since 2005, we have Bankruptcy Reform, which created this new means test form, which none of us like it looks like a tax form. It's also not very fair on the debtor site, it's very difficult. As you know, you know, you can make 70 or $80,000 or $100,000 in San Diego, which sounds like a lot of money. But it doesn't go very far in San Diego or San Francisco especially or in Los Angeles. So it's difficult sometimes to get people to pass this means test because it goes by the median income of our state. Well, we have a huge state, we have one of the largest states in the nation. So the median income is fairly low. And you if you have a mortgage and you have a car payment, and you have a lot of kids or dependents, sometimes I can get people to pass but it's it's a pain in the neck form that we're all finding after we've had it now you know, since 2005. So a while none of us like it. The nice thing is I don't know if any of you are thinking of going into this field. Basically in the old days when I first started practicing, everybody had to type this stuff and use a calculator in it was awful. You if you made a mistake, you had to wipe out everything or use carbon paper. Now we have programs and there were a lot of more. There was there was a lot of more competition than the past. Now pretty much you're all familiar with West publishing, which publishes some of our publications up here. West publishing has the monopoly on it. And they produce a software called Best case software. And if you're interested, they have a website best case.com. And that's what we all use. It's, you do have to pay by module. So for instance, I pretty much practices southern and central and I only buy those modules. If I did take the case, say in San Francisco, I would probably call them up and add that on. But it's it's pricey, because they're the only game in town. It's wonderful software, it does a lot. But it's an annual license. And luckily, it does the math for you, you know, say I entered all your data. And then you came in with the new new data that said, Oh, I forgot, you know, my CPA just did my taxes, Pam, I have to add this stuff in. The nice thing is it saves everything and I can

update everything. And just, it does the math accordingly. Because it because you can imagine in the old days, we had to redo that. And that was that created a lot of work. So it was difficult to to make a lot of money unless you were really streamlined. I don't know how let's just leave that screen up. Because this is just sticky. It's okay, because it has everything up there. That's fine. Okay, here, this one up here. Yeah. Okay. Anyway, um, let's move on to exemptions. What do you get to keep in a bankruptcy? Does anyone have any idea what you get to keep to get to keep everything? No. Basically, there are parameters. And this is where federal law takes a backseat, typically, in California to California law we have if you're interested, go look at the statute there, CCP 703, point 140. If you and then all these subsections. And then their CCP. And you all know the California Civil Procedure Code that I'm referring to is 704. And how we analyze what exemptions to protect people's assets in a bankruptcy are based on both of these code sections. So all of you know, from con law, you know, the 10th amendment allows states to prevail with state law in certain areas. And this is where Congress, defers to states allowing different exemptions. And I always use this example to my law students. You know, the oj simpson case was great, because it just has so much to it. And he's a good example, if you remember, he moved from Brentwood, and had great attorneys advising him, he moved to Florida. And why do you think he did that?

27:39

Exactly. Remember, he had the Heisman Trophy. Remember, he won the criminal case. But he lost the civil case with brown family for wrongful death, which was a civil case. So he did have a judgment against him. Before that judgment came down his attorneys were smart enough to say, oh, Jay moved to Florida, there's an unlimited homestead exemption. And basically, the brown family is going to have a real tough time getting paid. So they gave good advice. And that's why you'll see a lot of very high profile people with a lot of net worth. Move to Florida Tiger Woods is based in Florida, or and or Texas, Texas has an unlimited homestead. Also, we unfortunately do not, you know, but we are seems high. But given the amount of your average real estate prices in San Diego, it doesn't, it actually doesn't protect much. So what we do, and I'll leave it to you guys to go through CCP, 703 and 704 if you want to and Nolo has a really good sheet on there. If you give you a Nolo press book you all know no law. It's based out of UC Berkeley, and it's really designed for the non practitioner. But those of us who do different areas of law like if I don't do any immigration law, I just want a quick read. I can check this at the library understand immigration law a little bit, which is something I don't know very much about. The same thing with bankruptcy, we've got the Nolo press books. And you can buy those now at Barnes and Noble and you can get them from Nolo press, but they're designed to help people give giving you a very practical explanation on certain areas of law. So exemptions you know what I normally do when somebody comes in, of course, I tried to put them in the seven because it's a lot quicker than a 13. It's typically a four and a half month process versus five years. So that's why we all love sevens much better gives people a little bit quicker relief than the 13. But exemptions are important to

the seven because it's a liquidation all non exempt assets get sold and they are going to get sold to pay creditors. So if somebody comes into me and for instance, let's say they have a house worth 300,000, which would be very low in San Diego but and $100,000 debt, they have $200,000 of equity right Can I purchase Take that in the chapter seven. No, no. And you know, you would only know this if you really look at the CCP code. But the nice thing about best case is that actually, you know, you put there are different schedules, you put your house on Schedule A, and then you have to have a matching on Schedule C an exemption. So if you put the wrong exemption, it'll actually come up with a unhappy face that no you don't pass. So it tells you the practitioner, or your secretary or paralegal that No, we've got to get, we're not going to be able to make a seven work. And that's sometimes the reason if that scenario came into my office, I would have to counsel that person or husband and wife that they need to file a 13, they've got $200,000 on the table, they cannot do a seven and they will lose their house, the trustee and a seven will actually sell their house and pay creditors. And people don't believe it. But you know, you have to be very correct about this, you know, the oftentimes people say, Well, I still want to do seven, you have to say, well, you don't want to lose your house. So your only Avenue is a 13. So that's best the analysis that we go into my first question from anybody is do you have a house because of our house values being so high here? And then what do you owe against it? And you guys practice, it sounds like a few years, a lot of you, you understand, it's pretty amazing. I always tell my students and my family, you know, I'm amazed that people don't know what they owe on their house, don't know what they owe on their car, don't sometimes even know what title, they'll husband and wife will sit there in my office going? Are you on the title? I don't know, or is our son jack on the title or, you know, and so the nice thing about Of course, you know, documents tell all you what kind of stuff do you want from people that are filing you want their tax returns, plus the court is going to want to see their current tax returns. So I just recently had a lady who honestly hadn't filed in eight years, I sent her to a CPA and said, I can't help you till you get these taxes squared away. And so you want them don't go by what your clients are telling you, you've got to have the registration of the car, oftentimes, they come in with old registration. So you've got to double check and be savvy about is this current? And if you see another name, you know, who's Suzy Jones? Oh, that may that's my niece. You know, why is she on the title? So oftentimes, the documents will prompt you to ask further questions. But basically, on these exemptions and what you get to keep, if you were under about a little over $30,000, we have a wild card on the 703 side that I use 703 is when people don't have real estate, or they don't have equity in their house. For instance, if your house is worth $500,000, and you owe Citibank mortgage $500,000 you have no equity in it, right. So that makes it easy for us. We love those cases. But of course, just like anything in law, everything isn't easy, correct. I mean, most things, we really have to wrestle with a lot of things. The nice thing is if you go into this area, we're such a friendly bar, everybody is just so helpful. And I'm sure whatever areas you guys practice in, you have learned about the listservs that their emails in people say hey, I'm having this problem in this case, anybody else having this problem? So it's really nice. So you know, there's there's so much out there and just before I do forget, I don't remember the date. But if any of you are interested in following this topic up, I noticed after Maria

Anna Maria Maria apologizes, she had an event in Washington DC she had to be here today are over there today. Judge man Margaret man and Michael O'Halloran are giving a talk at Legal Aid Society in October, I don't know the date. But you could look it up, I assume on the legal aid website. And it's coming up, I think mid October. And from what I saw, it's an all day base bankruptcy basics. So if you want to follow up with having another class, so the next one that I know is coming up. Also there is a San Diego bankruptcy forum, you have an annual fee or you can attend their workshops for a price. If you don't want to join them. It's not very expensive. They oftentimes have monthly lunches over at either the US the new federal, the federal courthouse over off of Broadway. Sometimes it's actually at the across the street from the bankruptcy court, but they're very practical topics. So and they're wonderful. Usually the judges are speaking or the trustees are speaking so so look for that.

34:28

I think I lost you. And when the examples he gave you mentioned he had a $300,000 home, we have $100,000 in debt, so you have 200,000 in equity. And then you mentioned at that point they lose the house. Is there a threshold or is there a particular amount of equity we're looking at in

34:41

order to determine when somebody loses their home? Right? I mean, and so that would be the other issue that I'm looking at if I can't use 703 the wild card if they have equity, I'm looking at Can I use TCP 704 to protect the house and that's the homestead exemption. I've given a talk at the library twice about differences in the home. Instead, I don't know if all of you are aware, every state except I think Rhode Island kind of does their own thing, but has a homestead exemption. And the philosophy is, in the historical realm of law, we didn't want people losing their home, if they had a judgment creditor against them, we still want them to have a roof over their head. So California regularly changes this amount. But right now, it's $75,000 equity protection for a single person who is basically by themselves on title. It's $100,000 if you're a married couple, or a family unit, and that can mean if you have minor children in the home are your widow or widower, do you have minor kids? Or it even can mean, there's a lot of nuances if you do the research in this area. But it can also mean if you have a college student who can't work, things like that, but that's where you I've argued those cases in bankruptcy court did evidentiary hearings. So basically, it's usually a married couple gets $100,000 equity protection, which doesn't sound like a lot California. And then if you were 65, or over and or disabled, and there's a lot of other little nuances, but I want to keep this basic, you get $175,000 protection. So that's the highest we can give. So in my scenario, they're at 200,000. Right? So right away, I'm going to ask when someone like that, that pattern comes into my office, I'll ask are you 65 or over? Or is anybody disabled on title? Maybe that would work? Because even though maybe I've got another 50 grand on the table. Maybe I can look on Zillow or Redfin, or maybe they came in to me and they think their

house is worth 300. And maybe we really look at it and maybe they get a broker's opinion. The nice thing is with the internet, you can actually get so much information, which is fantastic, right? You can get on Redfin Zillow, you can oftentimes brokers in the area will give you a cop for free because they want the business. And I always tell people to walk around your neighborhood with your dog or your kids and go pick up flyers see what maybe you think your house is worth 300,000. But they'll go get me some flyers of your same square footage and floorplan and maybe maybe people are asking that but they're not selling it. So does your question and trust me, we'll just take Redfin or Zillow, they don't need a real appraisal. It depends on the case. I think our trustees in San Diego have all been here for a long time. They really understand the market around here. Of course, they're going to look at a house and cornado differently than a house say in Santee, I mean, they they know things or hide certain places, or if it's a unique property, they might want a broker's opinion. But they will oftentimes at that creditor, meaning ask, how did you arrive at the value, I see that you put this, and of course, they go back to their office, they have their assistance, or they do the work themselves? I think we're about up to eight or nine of them. And some of them still practice, that they have their trusty job. And they actually, I know, Mr. stat Mueller has his own practice.

38:08

A lot of them do. know and understand they it's a numbers game, and our numbers are down right now. We you know, the average when I was first in this business, we could kind of go by the months of the year because a typical bankruptcy case will look like this is your 2019. Right? The case number in San Diego at least will be one nine dash. If you're the first one in January, it'll typically look like 00001. And it's chronological. So in the old days, here it is, we're in the ninth month you would be looking at in the 9000s. Well, that's not true. I think we're really low. Right now we're probably in only in like the 5000s. We're way behind. Don't get confused at San Diego makes it easy to look at case numbers, central district their case numbers, I still don't have a really good handle on it. They're really if any of you have looked at them, they're real wacky. I mean, they're just. And what I don't like is when you look at doing the research, sometimes, like my case, in your case, could have the same case number but you filed in 2014 and I filed in 2019. They seem to reuse the case numbers. And they're strange that way. And I didn't put it on my handout. But do all of you know what the Pacer system is to its you can sign up for it in the past, we as practitioners got it free through the court, and it was funded through taxes that went away and now we have to pay for it monthly. But it's still a good bargain. If you're in this field. pacer.gov don't go out. There's other Pacer companies you want to go on pacer.gov calm, that is a company I believe they're out of Kentucky. And it's a private company that you can access really all cases in the United States, but it particularly is used by bankruptcy and banks, bankruptcy practitioners and creditors that work for banks to look at bankruptcy cases. So what's nice is let's say you wanted to go Look up Donald Trump's past bankruptcies, who are, you want to look at this one to see if forever 21 filed, you could go in that system and look at the Pacer system. And I like it.

Because sometimes when I've applied for jobs or different issues that I needed to list my past cases, what's kind of nice is it keeps a record not completely far back, I think they started scanning all the data in about 1998. But I can go back and type my name and and go, Oh, yeah, you know, or, let's say, you asked me for a good motion for the for relief from stay, and I go, Oh, yeah, I did that in the court case. And I could go look at that case, and then pull it up for you and send it to you. So it's kind of nice now that you can actually do that. In my gosh, we've got so many avenues for you to do that, too. It's great. And each, each court website, you can go into their specific website and access the Pacer system to the charges run anywhere, I think it kind of depends on the document. But let's say you're copying a relief from stay motion for you, that would probably be in the range of like $3. Just to give you an idea, there's not it doesn't seem like there's an exact science of per page charge anymore. And then what you do is you can pay by credit card online, and then they send you a bill monthly. And so it's it's nice, you know, it was very nice when it was free. But that's been quite a while ago. So let's get get into what can creditors do if your creditor if should you just give up the ghost when what happens is the chordal generate a form and send to you don't do anything, your creditor don't do anything, don't pile proof of claim, don't do anything at all. And I always tell creditors don't listen to that file a proof of claim because there's no charge to it. It's completely free. It's a form. And you're basically saying like, like let's say you filed, you owed me attorney fees, and I did work for you. And then you file bankruptcy? Well, I might want to file a proof of claim in your case, because if you convert to a different chapter, or maybe you have non exempt assets, it may become important that I actually filed a claim. And the trustee will look at who filed a claim first and possibly possibly plate pay that first person first usually goes by who you are as a creditor, government gets paid first taxes, the government secured claims and then unsecured claims are sort of at the bottom of the barrel, but you never know. So I always tell creditors, it's worth it, throw that proof of claim in there, there's no charge that the court charges you for it, it doesn't take very long to fill out the form. And what you want to do, the key thing is attach whatever is your proof of why you have the claim. In my example, I would attach my Billings. Again, you run into sometimes problems, you have to check your ethics rules about exposure of past client attorney relationship issues. That's always a quirky one with that typical situation. But again, I think there's enough case law when you have fired the attorney and you aren't paying the person, then they that usually I think there's enough case law saying that we can attach bills to a proof of claim or anything that's in litigation. So also what a creditor can do is file an adversary proceeding. And I think you asked me before I started, you know, can you change deadlines? Are there deadlines? Yes, there's typically deadlines in most cases, especially in chapter seven, saying, you have to fly. To give you a crumb chronology of a typical chapter seven, I file let's say I filed today, September 17, I'm going to get a creditor meaning approximately 30 days in the future. So about October 17th. I go down they're never on weekends are always Monday through Friday. And sometimes that gets continued oftentimes 99% of time it's just one meeting. And then 60 days has to elapse for creditors to gripe so in that time, the court is probably going to say that puts you into November, December 17, right before Christmas. So the courts probably going to say, creditors, you've got till December 17, to file into

the objections to discharge. Otherwise, this person filing is going to get rid of your debt. So that's when people call me frantically usually saying oh my gosh, I have X amount of time to file an adversary. And of course, I look it up on Pacer and confirm that hopefully it hasn't passed. If it has passed, sometimes you do have avenues to bring emotion as to why you didn't bring one earlier, but the courts going to want to hear a good excuse for that. So you want to get in even if you have to just file a very simple complaint, your complaint to object to discharge. And there's two big reasons why creditors object to discharge typically they go under what's called title 11 USC 523 reasons like fraud. Did you incur my debt right before the filing if what people oftentimes get in trouble with when people come to me I asked them have you used your credit cards right before? I see that a lot. It's January problems. You know, February, they they've done a Christmas shopping spree, you got to worry about that. Because there's a 90 day look back period that they could set that aside the court kids, so I'm looking at major charges before filing, were they fraudulent, were there any probably the best one I won in front of Judge buoy was a contempt order, I had a fact pattern where a woman was trying to get rid of her contempt order and had a lot of family law issues. And I had done quite a bit of foreign family law in my younger days. So at least I understood it and judge buoy held that that was non dischargeable. Because the VISTA judge had ordered she had acted in contempt and had violated orders. So she couldn't get rid of this debt she had to this creditor that I represented. So that was nice, but that it usually takes stuff like that fraud, misrepresentation, whether you've been in a trustee position, and let's say you were trustee for a probate estate and absconded with money and things like that. So okay, so just to give you kind of, that's a really big broad brush, but there are other motions you can bring to. I wanted to end with litigation, and then I'll open it up for a couple minutes of questions. But you can see when I have to do points and authorities Look at all these avenues we have in there even more resources in the law library, but you've got so much you'll call yours as a digest. You got the US code, which of course, when they're annotated, you can get case law out of here. The nice thing too, is you guys know what's opened up a whole world for us in research and doing points and authorities is you can go online, and there is a lot out there. But I still like to come down on the library. And all of you know we can check these out for I think is it. It's phenomenal. If you have the higher pass, you can check it out for a week and extended I think another week. I know I had one issue with a commercial lease last year, and I really needed the books at home. So I kept them for about two weeks. And it was wonderful. But I'll let you guys peruse these but of course the Bible on anything is the retter group. They're great guides, sometimes I have to say in bankruptcy, they get a little bit detailed, but they have great examples. So and also what I really like to use when I'm doing points and authorities are the West digests and Lisa and I were talking about that it those of us that learned with the books before there were computers. All the West publications have these key numbering systems. So even if you find it on LexisNexis, when let's say you're doing a relief from state and you find a wonderful keynote, keynote, 23 or whatever it is in bankruptcy, you can then cross reference that with all the West guides and find maybe a 2019 case in the ninth circuit. We are in the ninth circuit and the Federal District here. So and you can imagine with California we're a Rainmaker case maker state. So of course, the judges are going to

be more impressed with the Ninth Circuit case from California here. Then if you're citing a Rhode Island case, you know judge Adler judge man is gonna go well, you know, that's nice was calling cough, you're you're talking about Connecticut, but don't we have something in the ninth circuit that may be more on point. And even though the federal law you understand each circuit and district sometimes has their own quirks about things, especially student loans, that's that is a levy that with, that's the new thing, student loan issues are becoming a little bit more liberally looked at, basically, you cannot get rid of a federally guaranteed student loan, you can get out of a private loan. Let's say you took out a private loan with National University, and it's not governed by Sallie Mae are the federal backing that you can get out of that would be like an unsecured debt, but your typical Sallie Mae student loan, stuff that had FAFSA and all that good stuff you cannot get out of however, the last seminar I went to the judges are be becoming more open to possibly hearing motions as to why you have extreme hardship. And in the past, the hardship meant you were disabled, you had 12 kids, you'll never work again, you have a horrible disease. Now they're starting to open up a little bit more to say, my gosh, you know, the average debt and as you guys know, in law school, and I know my daughter's going to law school next year, it's terrible if you even go to UCLA is at least 45,000 a year, and that's not with housing. So it's an expensive endeavor when you go to medical school, and even with bachelor's degrees at San Diego State and that's why we're seeing all this college scandal right now. People are high stakes. So that is a new area. And if you're looking at you know, kind of an interesting area that maybe brings emotions, that would be it. So I'll open it up to questions I know it. I tell my students bankruptcy is like learning a new language. It's like learning French or Spanish, all these little terms that we have, but it's a really enjoyable area. I've done it for quite a while and I never get bored. It's it's a fun area. On the debtor side, you're giving people relief and on the creditor side if you can, when that, of course makes them happy, and sometimes you get yelled at as I have been by by debtors when you win from creditors, but it's part of our job. So I'll open it up to questions, promissory note,

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the publication, but our promissory note that the debtor discloses, doesn't the debtor through the trustee or the attorney have to find the individual is the creditor. But what I'm saying is, you lend somebody some money, they don't tell you that they file bankruptcy, but they they want to get a discharge. Right? Well, that should be added if somebody came into my office and told me if they purposely Do not let the person that the creditor No, are you following?

50:56

Oh, well, that will that, of course, would be bankruptcy fraud or negligence, if you did that. Yeah, I mean, a couple of things. You know, I, of course, as a practitioner, and most of us, I don't know, anybody who would differ with this opinion, you want to add everybody even remotely you think

you owe

51:15
that they may not be honest with you. So what do you treat women with abortion? If you find out after the fact, let's say the 13, that has been granted? And you weren't told, right? What does support? What kind of relief Are you getting right there,

51:31
there is a case I can't remember the name off the top of my head. But I had this happen where one of my clients innocently started getting billed after the fact. And I told him his options are, I basically wrote a letter under this case, saying, creditor, you had constructive notice of this bankruptcy, and they went away. And I said, your other avenue creditor would be we are going to reopen the case and add you in it was a mistake. It was in, in this case, I truly believed it was an inadvertent mistake, he had gone through a divorce, his wife had some paperwork, he had some paperwork. You know, oftentimes people, your goal is a debtors Council is really make them as organized as they can. And I have checklists, I also tell them to run their credit or bring in a credit report. I don't do that. And you don't want to get in that business. You know, let them let the person and also best case I think has a link if you want to sign up and do that through that. But that's the best way. But you're right. Oftentimes, promissory notes or medical bills do not show up on credit reports. It's right. So I always tell people wrack your brain and think of historically, who could you owe money to? You know, did you have a promissory note with your brother That happens a lot with family. And I get the feedback. Oh, I don't want to add him in. I go, Well, if you don't add him in, then, you know, forever hold your peace. Right. You should be adding. Yeah, you know, it's a good idea to add anybody even in what I do. Oftentimes, I counseled people with ex spouses and ex business partners. I say, I know, this is embarrassing that they're going to get noticed. But it's a good idea that we add them in because you never know the fallout of ongoing litigation and divorce and partnership disputes. Do you have a question over here?

53:13
So can you just talk about it briefly, isn't it if the taxes are actually filed then and then after a certain amount of years ago? So discharge? federal and state taxes in the 713? is not possible?

53:23
Yes. I mean, the general rule is, first of all, like my lady that just came in that hadn't filed for eight years, you have to have filed. And they have to be at least three years old. So through that three years, and there's some other requirements too, but that's kind of the basic, big to

53:41
fall every year, and then federal and state through over three years.

53:45
Right. And the way you count three years would be for instance, you don't owe an in none of us. So we're 2019 taxes till April 15 20, correct. Well, right, but I'm talking about 2019 isn't done yet. I'm just giving you in the future that they would be too new anyway, but that's how they count it is. You don't owe 2019 till April 15th 2020. So then you count 2122 23 and let's say you owe 2019 tax debt. So you would have to be waiting till 2024 to file that. So that's how we look at it. There's a lot of factors there was a I can't remember his name. But anyway, there's a guy up in Dublin, California that writes a wonderful book on discharging taxes by bankruptcy. I didn't see that we had it in the library, but we might want his name is Morgan King. He's an attorney up in northern Cal

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or maybe if there's a negotiation with the tax authorities, then there's already a separate contract with them. So that would not be included in a bank

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right. And what you want to do is get the tax transcript a CPA can help you get better you know, all the forms are online now, but your client can I just did that for my client is she didn't you know, clients don't usually like to do anything. Once they hire you. They like you to do everything. Yeah, sometimes I feel you know, you definitely feel like you take over their life sometime. But that would be the thing to do is get the tax transcript. And that way you can look at to see when they assessed it, which is important. And if they're really truly three years old,

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they haven't found it's like your example from a form and file everything for the past eight years, and then go forward with it right?

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before you're right, you need to do the analysis or have them sign off that they're instructing you to file. I have to tell you, you know, everybody hears horror stories of the IRS. But the San Diego office is wonderful, and they are very helpful. And I even had a case once that they were they

admitted to me that they couldn't find any record of this my filer. So they said, go ahead and file, I was trying to get the story. And they said, We have no record. Go ahead and file, we're just going to say that we don't have the records for this person. So he got to discharge anyway, it's pretty good amount like $15,000, you got a question? Yeah. What's the purpose of the three years of the tax returns? I can't imagine that the trustee or the judge assigned to the case actually audit and confirms the information is correct, as just a matter of confirming that they filed a tax return. Yes, I mean, that's just by a bankruptcy law that you cannot discharge taxes in bankruptcy unless you're at least three years old. So they have to be more than that. And but of course, you have had to file it's not as if I didn't, I never paid this $50,000 I owed in 2011. And you, you don't have your cake and eat it too. You still have to file. So everybody actually looks at it. You know, the trustees. Our district really wants to see documentation and they want to see at least your last year of taxes, but they would probably win. That's the big gripe about other districts, especially when I am up in Santa Ana, Riverside, they say, Oh, we never like to come down to San Diego because you your trustees need so much information. So we give them the taxes. We give them their car registration, we give them car values off of kbb.com Kelley Blue Book, and we give them Zillow. So there's no hide the ball here. It's amazing when I go up to Riverside or Santa Ana, typically the only what the taxes, they're big on the taxes, but not all this other stuff. Although in central district, you do have to actually file the last three months, and there's a specific form. So if you just be cautioned that when you go to different districts, they all have their own idiosyncrasies just like any courts, different forms. And if they're not kinda in central district, that they'll just send out a dismissal notice. So

57:31
the time but landlord and stage was something that a landlord can get in trouble with,

57:37
right? Well, anything you know, the automatic stay is effective the minute somebody files, and you have got to be very careful about stop collecting anything. Continuing homeowners associations are the exception, they are allowed to keep billing people post bankruptcy because you're getting the benefit of the pool or the tennis courts or whatever you're using. So they can, but there's a lot of exception of that. But yes, when you're a creditor and you receive a bankruptcy notice, stop doing anything and probably call a practitioner and find out what you can do. Did you have a question?

58:08
Yeah. As a creditor of affirmation agreements, do they have to be filed through the bankruptcy court or candlelit dinner coming in? Who's given written consent, saying that you wish to reaffirm

their debt?

58:21

Yeah, when in which he's talking about I mean, reaffirmation agreements are typically with cars that before 2005 we didn't get too excited about those. What it is, is it's a new contract, typically on a car. Sometimes trust deeds want them to but typically on a car, you're saying, I have my car loan, but the car lenders after 2005 Bankruptcy Reform, they got this law pass saying if you don't sign a reaffirmation agreement, they can pop your we call it pop the card, take the car back, and all of us practitioners, when this was new, we said why would anybody take a car from somebody who's a good customer and paying? Well, they wanted to make a point. And they wanted to have their rights post bankruptcy, that they could still go after the attorney fees, liens if they had to do an auction and that kind of stuff. In our district. Yeah, you have to every district treats them a little bit differently. But for the most part, you have to have a hearing now, all the judges are almost scheduling hearings, and it's so that's a factor, you have to kind of put in your fees to thinking a lot of us sometimes will say we charge extra free apps, or sometimes people will say it's included in my filing, if I have to go down to a hearing and help people with that. But if I'm sorry,

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if I'm a creditor, and I have the debtor coming in and telling me I know that you have secured the debt is secured. I know it's not going to be like God. I know the automatic state but I want to continue to make payments, right? How would we go as credit or how do we go about making sure that we are

59:57

truly reaffirming that if you're you Want to make the judges happy here, I would suggest you file the reaffirmation agreement with the court give everybody notice the trustee, the US trustees office. And those are two different people. There's the panel trustee assigned to the case that you meet with with the creditor, meaning then there's the United States trustee who is has an opposite add Front Street, and then the bankruptcy judge and upload it, you're going to, you know, if you're working through an attorney, we all file electronically through the ECF system. If you're just doing it through your business, you could take it over to the court and actually file it, they're open nine to four. A lot of people don't realize they closed at four o'clock. So but that's what I would do. And then it's up to the judge to schedule a hearing. But most of the judges now we have four judges, they will probably schedule a hearing on that. Because in their question to the debtor is they want to say debt, or can you really afford this, that's their concern, they won't approve it, if they don't feel that the person can afford the car or the in California, we tend not to do reaffirmation agreements on houses because we're a trusted, safe state. And then we've got

foreclosure options too. But yeah, reaffirmation would be a really good whole topic to do for now. Yeah. So

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if I as a creditor if I have a debtor that's coming in and making the payments, but I'm not really, in my stay within compliance with its bankruptcy law, because I'm accepting,

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and I just, I had this happen, I have a client selling to Amazon, he's got this loan with Amazon, it's like a, to me a hamster wheel that he was taking loans out, but he's working for them. And I told him, I don't see that this is a good thing that you're reaffirming or doing anything with this loan again. But same thing, he voluntarily paid Amazon Amazon out of an abundance of caution refunded him the money. So that it's probably best to if you're taking the payments, that probably the best course of action, once you get that bankruptcy notice is don't take the payments, right the attorney or if they're improper, right, the person and say, there's this day, I would, you know, I do not want to violate this day. For this time, we're not accepting payments, the exception would be of course, the car, the car lender wants the payment to keep the car so they they're allowed to take the payments. And of course, a house, you don't want to have to go into foreclosure. But if you're talking about like, let's say you have collateral to a refrigerator or something like that, you got to be careful that you have to look at what your contract says. And, and the type of bankruptcy they're filing. So it's kind of case by case. But when in doubt, don't do anything, you know, don't, don't do the collection. That's what I always tell people back off and call a bankruptcy practitioner and make sure you're not violating the state because you could be sanctioned. It's not like you're gonna get thrown in prison or anything, but you know, you could be fined. So any other questions? And we'll stay a little bit afterward. Okay, well, good. Good group, I hope.

1:03:04
Super quick question. So you're talking about the educational loans before, is there also kind of an exception for some education that may not directly lead us sort of bogus kind of online, maybe like, I'm gonna be careful, what I think maybe call an area or something that's not doesn't directly lead to a career or profession isn't something that's more dischargeable.

1:03:27
If they're if it's a federally guaranteed student loan, it's non dischargeable. And that's the new law, you know, back when we used to have time limits, and I'm talking 20 something years ago, but it

changed to not dischargeable absent extreme hardship, you can bring a motion for extreme hardships. Education doesn't really well, I think now the judges, they gave a hint that less seminar and went to that they may look at that. In the example I can give I think it was out in Gillespie field, there was a airline school that went out of business in a lot of the students were just having to pay these loans and that they didn't get to finish their sort of certificate in their degree. So I think they do look at that. But bottom line, the law right now is if it's federally guaranteed, you cannot get out of it absent bringing a motion for extreme hardship. And when I did the research, extreme hardship in the EU, I went to my nice West digest here to look at that. It was talking about cases of extreme hardship where you can never work again. Or let's say, you know, you suddenly developed cancer that is incurable or you have lots of children or things have really gone terrible in your life for whatever reason that you you don't have a shelf life of being able to work and pay off this debt. So it's not just a matter of, Hey, I went to law school and it's expensive. The judges aren't going to be too happy with it because they went to law school themselves. Yeah. And I'll just leave you with I mean, the one thing about bankruptcy judges, they are wonderful because they nobody becomes a big bankruptcy judge without practicing in this area, they serve for 14 year terms. I don't know a lot of people don't realize that they're not appointed by the president, even though they're federal judges, but their bankruptcy judges and the good thing is, people that are on the bench have have either been a debtors attorney, a lot of them come from the creditor world, in San Diego, but judge Adler came from the debtor world. The other three I believe, came from the creditor side of bigger firms, but they are all very knowledgeable and they've been there done that. So what's nice is you don't always see that in different areas that I know I've practiced in sometimes you get somebody who is on the landlord tenant vention has never done Real Estate Law, and suddenly they're having to learn that so that I'll stick around if you have any other questions, but thank you for coming and feel free to call or email me anytime. I I love questions. I love teaching. So if I don't know the answer, I'll try to find out for you.

1:05:55
Thank you