



## Beware of Bankruptcy Notices

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In recent months, bankruptcy filings have increased dramatically. Though some economic indicators show improvement, data suggests more bankruptcy filings will occur in 2010 than in 2009. Chances are good, then, that you may receive notice of a bankruptcy filing. Ignore a bankruptcy notice at your peril. Pay close attention to any mail involving a bankruptcy case – because every bankruptcy case in which the Debtor owes you or your institution money, or has property you or your institution may have an interest in, has the potential to affect your interests. Consider the following hypotheticals:

*Imagine that a customer of your institution files bankruptcy. In that bankruptcy, the Debtor proposes to pay none of the outstanding balance owed to the institution. How can the institution protect its right to receive full payment for the outstanding balance?*

*Worse yet, imagine that your institution received a payment from the customer within ninety (90) days of the customer filing for bankruptcy, and now you receive a notice from the bankruptcy trustee demanding the payment be returned. How can the institution protect the payment it has already received?*

*Imagine that you own property, personal or real, and you gave the property to another, for repair, for use, etc. Then the person possessing your property files bankruptcy and creditors now claim an interest in the property. How can you protect your ownership in the property and obtain its return?*

Below is a short, basic primer on bankruptcies – including reasons to give special care to any correspondence you receive about a bankruptcy case and how to protect your interests that otherwise might be harmed during a bankruptcy.

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### **PRACTICE AREAS**

Bankruptcy & Restructuring



### **WHAT IS VOLUNTARY BANKRUPTCY?**

Bankruptcy is filed by an individual or institution to obtain financial relief. The person or institution filing bankruptcy is referred to as a "debtor."

### **ARE THERE DIFFERENT TYPES OF BANKRUPTCIES?**

Yes. There are basically two types of bankruptcy cases: 1) liquidation; and 2) reorganization. The first type, a Chapter 7 case, totally eliminates the debtor's debt. The second type, a Chapter 13 for individuals and Chapter 11 for companies, reorganizes the debtor's debt and provides for partial debt relief.

### **CAN A BANKRUPTCY CASE ELIMINATE DEBT THE DEBTOR OWES?**

Yes. Any debt that the debtor owes can be affected in a bankruptcy case. This could include, for example, installment loans, mortgages, credit card balances, account receivables, personal loans, etc. Whether you are a secured creditor or an unsecured creditor determines the amount of the debt affected by the bankruptcy.

### **CAN A BANKRUPTCY CASE IMPACT OWNERSHIP OR ANYTHING ELSE OTHER THAN A DEBT?**

Yes. A bankruptcy case could also put at risk interests in property – such as personal property you may own but which is in the possession of the debtor. This includes interests you or your institution may have in the debtor's property. In short, every interest – legal or equitable – that you have and which is somehow related to the debtor is potentially at risk in a bankruptcy.

### **HOW DO YOU FIND OUT THERE IS A BANKRUPTCY FILING THAT POTENTIALLY AFFECTS YOUR INTERESTS?**

The simplest answer is by either mail or word-of-mouth. With mail, you may receive documents from the bankruptcy court identifying the bankruptcy and noting how the debtor seeks to dispose of a debt owed or an item in which you claim an interest. Bankruptcy courts issue various types of documents, but the most common documents that might be received regarding a debtor's bankruptcy filing are the following:

- Notice of Bankruptcy Filing

If the Debtor lists you or your institution as a creditor that the Debtor owes money, the Court will send you a notice of bankruptcy;

- Notices of Dividends, Motions for Relief From Stay, Debtor's Plan

You could receive a notice of possible dividends, motions for relief from stay, or the debtor's reorganization plan. The debtor's plan generally relates to how the debtor intends to pay its creditors – i.e., how the payments will take place, at what interest rate, and over what period of time.

Each bankruptcy notice should be given careful attention and likely forwarded to a bankruptcy attorney to evaluate.



**WHAT IF THE DEBTOR DOES NOT LIST YOU AS A CREDITOR? HOW DO YOU GET NOTICE THEN?**

If the Debtor does not list you as a creditor, then you will not receive notice – even if you or your institution is owed money. For that reason, you must stay aware of anything you hear regarding a person or company with whom you are doing business. If you hear news of a person or company perhaps filing bankruptcy, you can either investigate further, or ask an attorney to investigate the bankruptcy court docket.

**WHAT SHOULD A PERSON OR INSTITUTION DO IF IT RECEIVES NOTICE OF A BANKRUPTCY?**

If you receive notice of a bankruptcy, the first thing to do is contact an attorney. This is necessary because bankruptcy cases have many deadlines and are extremely time-sensitive. Although each bankruptcy case is different, sometimes there is little attorney time needed to protect your interests. For example, if the debtor lists you or your institution in the plan and the payment terms are acceptable, then little attorney time may be required.

The second thing you must do is stop collection efforts against the debtor. From the moment a bankruptcy case is filed, bankruptcy laws require that all entities that the debtor owes money must cease collection efforts. You should contact an attorney to determine how to proceed in the bankruptcy case to collect any debt owed.

**WHAT COULD HAPPEN IF A PERSON OR INSTITUTION RECEIVES NOTICE OF A BANKRUPTCY BUT DOES NOTHING ABOUT IT?**

Many potential unfavorable things may happen if quick action is not taken in a bankruptcy case. If owed money and the Debtor proposes to pay less than what the Debtor owes, then the right to object may be lost if you do not respond, or wait too long to respond. Likewise, failure to timely respond could lead to losing any interest you may have in property (e.g., vehicle or property), of which the Debtor has possession.

*Foster, Swift's Bankruptcy team has years of experience handling multi-faceted bankruptcies. Please let us know if you would like Foster, Swift, Collins & Smith, P.C. to help with any bankruptcy related questions.*