

District of Columbia Bar Continuing Legal Education

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Bankruptcy 101 for Non Bankruptcy Lawyers

HANDOUT

I. Bankruptcy History

Humans have been unable to repay their debts since the beginning of time. Each tribe, society, and culture handled the problem in markedly differently ways: executions; debtor's prison; excommunication; slavery of the debtor and his family and his slaves; lifetime penury; destruction of their work place¹, tribal and family feuds; restructuring of the debt; discharge of the debt; and allowing a fresh start, to name a few.

The Code of Hammurabi §27 (Babylon 1795-1750 BC)² #117 provides: If any one fail to meet a claim for debt, and sell himself, his wife, his son, and daughter for money or give them away to forced labor: they shall work for three years in the house of the man who bought them, or the proprietor, and in the fourth year they shall be set free.

The Old Testament also weighs in. Moses' pronouncements as revealed in Leviticus, references a Jubilee or Holy Year, to take place once every fifty years.

¹ The etymology of bankruptcy is *bancus rupta* or *banca rota* which means broken bench in Latin and Italian . It refers to the destruction of the stall of the debtor in the market place by the angry creditors.

² Debt was secured on the person of the debtor. Distraint on a debtor's corn was forbidden by the Code; not only must the creditor give it back, but his illegal action forfeited his claim altogether. An unwarranted seizure for debt was fined, as was the distraint of a working ox. The debtor being seized for debt could nominate as mancipium or hostage to work off the debt, his wife, a child, or slave. The creditor could only hold a wife or child three years as mancipium. If the mancipium died a natural death while in the creditor's possession no claim could lie against the latter; but if he was the cause of death by cruelty, he had to give son for son, or pay for a slave. He could sell a slave-hostage, unless she were a slave-girl who had borne her master children. She had to be redeemed by her owner.

During that year, it was decreed that all debts would be eliminated and those Israelites that had sold themselves into slavery would be freed. In addition, the Jubilee Year called for all land that had been sold to revert back to its original owner. Leviticus 25: 10-13 states: [11] “ a jubile shall that fiftieth year be...” Also, Deuteronomy 15:1-2 reads: [1] “at the end of every seven years thou shall make a release.” and [2] “And this is the manner of the release: Every creditor that lendeth ought unto his neighbor shall release it; he shall not exact it of his neighbor, or, of his brother; because it is called the Lord’s release.”

England established bankruptcy laws in 1542 under Henry VIII. Debtor’s were treated as criminals and put in debtor’s prisons, sent to colonies or could be executed.

In the US, bankruptcy is provided for in the Constitution. Article I, Section 8, Chapter 4 authorizes congress to enact “uniform Laws on the subject of bankruptcies throughout the United States.”

In response to land speculation, the first federal bankruptcy legislation was enacted in 1800 and repealed in 1803. [Some relief from individual debt.]

In response to the financial panic of 1837 the second US bankruptcy act was enacted in 1841 and quickly repealed in 1843. [Some relief from individual debt.]

After the Civil war an act of 1867 was passed but also repealed in 1878. [Relief from individual debt and corporations now included].

The Acts of 1898 was the first time companies could be protected from creditors in addition to the discharge of debt.

The new acts of 1933 & 1934 led to the Supreme Court decision providing that the primary goal of bankruptcy law was to provide debtors with a “fresh start.”³

The first of the modern bankruptcy acts was the Chandler Act of 1938. This provided for reorganization of a business for the first time.

Bankruptcy Reform Acts of 1978 & 1994 modernized the bankruptcy law

³ Local Loan Co. v. Hunt, 292 US 234, 54 S.Ct. 695 (1934)

“It is the purpose of the bankrupt act...to relieve the honest debtor from the weight of oppressive indebtedness, and permit him to start afresh free from the obligations and responsibilities consequent upon business misfortunes.” U.S. Supreme Court (1915) See also: Marrama v. Citizens Bank of Massachusetts, 127 S.Ct. 1105 (2007) Grogan v. Garner, 111 S.Ct. Co., 35 S.Ct. 289(1915), citing Wetmore v. Markoe, 196 U.S. 68 (1904); Zavelo v. Reeves, 227 U.S. 625 (1913); and Burlingham v. Crouse, 228 U.S. 459 (1913).

and also caused a constitutional crisis over Article I v. Article III powers.

Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) of 2005 is the latest iteration of the bankruptcy law, which greatly restricted the fresh start concept by imposing a Means Test which pushes more debtors into Chapter 13 monthly repayments and away from the Chapter 7 liquidation.

State Bankruptcy Laws The individual states each have their own laws that regard debtors and creditors and most have exemptions to protect their resident citizens to some extent when they become insolvent. The Federal law will override the state law in a conflict but some of the federal bankruptcy laws have provision that allow state law to prevail if the state “opts out.” The state and federal exemptions are the most dramatic example of the different treatment from state to state (and the District of Columbia).

II. Economic and Social Policy

Despite the added difficulties imposed by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), the basic purpose of the US bankruptcy system is to allow an orderly resolution of insolvency problems for both individual and business entities. The theme of a “fresh start” is a national policy of benevolence and grace but it also has very practical benefits for our capitalistic system. Individuals that are crippled with debt cannot and will not participate in our credit system economy and will hunker down rather than purchase goods and sustain the flow of money. The same is true with floundering business, of whatever size and construct. A dysfunctional General Motors or United Airlines is worse for our future economy than the negative impact of a bankruptcy on the creditors, shareholders and labor force that will experience immediate loss and diminution of benefits.

Though debtor’s prisons were abolished in 1831 in Pennsylvania and by 1833 throughout the US, they continued to exist in England. Some of our founding fathers, notably Robert Morris and William Penn, spent time in debtor’s prison. Such is an interesting historical footnote but it did not help their creditors or the economy of the newly formed nation. Most certainly the historical enslavement of a debtor or the destruction of the debtor’s means of earning a living was of no economic value to its creditors or the economy.

III. The Basic Concepts

Who may be a debtor? §109 is the place to start. The ability to be a debtor is rather broad but certain institutions have been excluded such as railroads, banks; building and loans association's; domestic insurance companies and sovereign nations. These excluded entities have a different statutory scheme for dealing with insolvency and do not give the power to the Bankruptcy Court. Chapter 13 has a ceiling on the amount of secured and unsecured debt of a debtor.⁴ If the debts are over that amount for a Chapter 13 and the debtor cannot use a Chapter 7 liquidation, they may only use the much more expensive and difficult Chapter 11.

Voluntary and Involuntary. There are two types of federal bankruptcy, voluntary and involuntary. The involuntary bankruptcy (11 USC §303⁵), allows creditors to file an action to force an individual or business debtor into bankruptcy. This is an expensive procedure that is seldom used because it requires the petitioning party to prove that the putative debtor is insolvent before the bankruptcy can commence. It is most often used when a debtor is dissipating its assets or is so crooked that you want it in the bankruptcy court structure to control and review its conduct.

A voluntary bankruptcy is the opposite of a law suit. When a law suit is filed there can be no relief (other than through a temporary restraining order, "TRO") until many months have passed and the court has considered the facts and ruled. In contrast, the minute a voluntary petition is filed, all of the protections of the bankruptcy law and court are automatically in place subject to future action to remove the protections. In essence it is a TRO without the need to file a complaint and motion and it always works, at least at the moment of filing.

The voluntary bankruptcy may be filed by any individual and by most entities whether they are insolvent or not. There are any number of business and personal reasons to file a bankruptcy and owing money is only one of the reasons. The theme being: "You do not have to be broke to qualify for or file bankruptcy."

The **Automatic Stay of Execution** (11 USC §362) is the most dramatic power of the bankruptcy court. By merely filing with the court, all collection activities or other actions that may disrupt the debtor and its estate are prohibited subject to control and further review by the court, at the creditor's initiative. As examples of this extraordinary power, the automatic stay will stop a law suit in mid session; it will also stop a foreclosure and an eviction.

⁴ The amount is indexed periodically but in 2010 the limit for secured debt is \$1,010,650 and for unsecured debt the limit is \$336,900.

⁵ All future references to the bankruptcy law are found in 11 USC and will only be identified by the section number.

The Means Test. The 2005 BAPCPA law requires all individuals to separately file certain financial information in addition to their court filing. The purpose of the test is to determine whether the debtor may qualify for a Chapter 7 or must use Chapter 13 and the 3 to 5 year payback provisions. The test follows various guidelines from the IRS and from national statistics to perform a quantitative analysis. The result will be a determination that there is no presumption of abuse so that you may file Chapter 7 or that there is a presumption of abuse requiring a Chapter 13.

Required Bankruptcy Courses. Pre Filing. Before an individual debtor may file for bankruptcy, he must submit proof with the filing that the debtor has taken a credit counseling course. §109(h)(1). The course may be taken over the telephone or the internet and usually costs \$50.00. When complete, a certificate is provided for filing with the court. **Post filing.** After the case has been filed and the first meeting of creditors (§341) has been conducted, the debtor must then take a personal financial management course. A certificate for this course must also be filed with the court in order for the debtor to receive the discharge of any debts that qualify. §727(a)(11), §1141(d)(3)(C) and, §1328(g)(2).

The Bankruptcy Estate. Upon the filing of a bankruptcy petition, all of the assets of the debtor are transferred to a new bankruptcy estate to be administered by a fiduciary trustee or the Debtor in Possession (DIP). The composition of the estate is established by §541.

Trustee v Debtor in Possession (DIP). In all bankruptcy cases there must be a fiduciary that is charged with administering the case. If the case is a Chapter 7 liquidation, the trustee is normally appointed from a panel of trustees, usually private bankruptcy practitioners, that are appointed by the US Trustee's office of the Department of Justice. The fiduciary is a neutral but its main job is to locate and marshal the assets of the debtor, if any, to be distributed to the creditors of the case that have filed claims.

The DIP is the fiduciary in a Chapter 11 case and it is usually an officer of the debtor entity or the individual debtor. While a DIP appears conflicted, the DIP is under the supervision of the court, the US Trustee's office and a creditor's committee, if one has been formed. This selection is desirable because the DIP has the institutional knowledge and should know where the bodies are buried. If the

DIP acts inappropriately, the court may sanction the DIP and appoint a trustee and/or a receiver. As with the Chapter 7 trustee, the job of the DIP is to administer the case which also involves the preparation of disclosure statement and a plan of reorganization. The same is true with Chapter 9s, 12s and 15s but these chapters are rather exotic and very uncommon.

In the case of a Chapter 13 (individuals with regular income that do not choose or cannot qualify for a Chapter 7 liquidation), there is one or more individual Chapter 13 trustee assigned to a region in the court's jurisdiction.

Liquidation. Chapter 7 (§§ 701–784) is the area of the code that provides for the liquidation of the assets of the debtor, the repayment of creditors and the discharge of the debts. The concept is simple: the debtor gives up all of his assets to the bankruptcy estate at the time of filing and may then retain any money or assets he can acquire post petition, with some exceptions. The code and each state have exemptions for an individual debtor only, which may be excluded from the bankruptcy estate unless successfully challenged. It is then the job of the trustee to marshal and sell what the trustee can or abandon some or all assets if they are of no value to the estate and its creditors. Because of the exemptions requested, most small consumer cases are treated as no asset cases by the trustee and then closed.

Reorganization and Debt Adjustment. All of the other bankruptcy chapters; 9, 11, 12, 13, and 15, allow for a reorganization of the individual or entity and its debt (called an adjustment of debt in Chapter 13 cases). Any such reorganization normally only has a few basic powers. It can

- Provide the debtor additional **time** to pay
- Adjust the **interest rate**
- Reduce the **size of the debt**
- Convert some or all **secured to unsecured debt**.

Exemptions. The Bankruptcy Code and each of the states have exemptions for both real and personal property that are available to individual debtors. The state exemptions may be available both in and out of bankruptcy. A summary of the federal exemptions and those for the three local jurisdictions is appended as Attachment A. §522 provides exemption for those individual debtors (but not entities) that are able to and choose to use the federal exemptions. Some states were given the right to opt out of the federal exemptions and use only their own exemptions (which Virginia and Maryland have done) while those states that opt in (DC) may use either the federal or the state exemptions but not a combination of the two.

Secured v. Unsecured Claims. Claims are defined at §101(5) and treated in the Code in §§501-511 and 724.

It is critical that counsel distinguish secured from unsecured claims for debt. Secured debt is treated as royalty; it is of a higher priority and is normally paid before unsecured debt claims out of the bankruptcy estate. A typical secured debt is a deed of trust or mortgage on real estate and automobile loans. Typical unsecured claims for debt are credit cards, telephone and cable bills and unperfected secured debt. All secured debt must be correctly perfected in some manner. The requirements for perfection vary: deeds of trust are normally perfected by recordation in land records; auto loans are perfected in accordance with state statute; and most personal property, tangible and intangible, is perfected by following the state UCC, Article 9 (Secured Transactions) procedure for recording financing statements. Judgments become perfected liens by being automatically recorded in the court of record in Virginia and Maryland but in the District of Columbia they must be specially taken from the Superior and District courts and recorded in the land records at the Recorder of Deeds office.

The prioritization of unsecured claims is found in §507. Ten (10) levels are established. Domestic support claims are first, unsecured claims of governmental units (taxes) are in eighth position, and claims for personal injury from impaired drivers of a motor vehicle or vessel are last (10th).

Discharge of Debts. The discharge of debts is treated differently by each of the chapters. In a chapter 7 liquidation case, the discharge of all debts eligible for discharge and properly scheduled in the debtor's petition takes place sixty (60) days after the First Meeting of Creditors (§341), when the time for the filing of a complaint objecting to the discharge; (Bankruptcy Rule 4004(a) & (c)(1)) and after the Certificate of Completion of the Financial Instructional course is filed. §727(a) (11), However if the trustee, a creditor, the court *sua sponte* or any other interested party challenges the dischargeability, the discharge of the challenged debt or debts will not take place until the court resolves the challenge. (§§523, 727).

Note that the availability of a Chapter 7 discharge was changed from the biblical seven years (Deuteronomy 15:1-2) to eight (8) years under the new 2005 law. §727(a)(8). (This seems ironical since it was an evangelical president who signed the law.)

In a Chapter 13 adjustment of debt case, the discharge does not become effective until after the confirmed plan has been fully satisfied by the debtor (§1328) and the Certificate of Completion of Instructional Course and the Motion

for Entry of Discharge has been filed with the court. See §1328(g)(2) and DC Local Rule 3015-4.

In a Chapter 11 reorganization, the discharge of debt occurs at the time of the confirmation of the plan (§1141(d)) and after the Certificate of Completion of Financial Instructional Course for an individual has been filed. §1141(d)(3)(C)

Avoidance actions: Preferences and Fraudulent Conveyances. The Bankruptcy Code specifically provides for the avoidance of any transfer of assets of the bankruptcy estate under certain circumstances. This allows the moving party to bring the improperly transferred assets back into the estate for administration by the trustee or DIP.

Although not attackable in most other legal circumstances, preferential transfers may be avoided in a bankruptcy proceeding. (§547 Preferences.) The statute is complex but the main concept is that any transfers to a creditor for pre filing (antecedent) debt, by an insolvent debtor may be avoided if it occurs within the prohibited time periods. Those time periods are: a transfer within 90 days prior to the date of filing for general creditors; and for one year if the transferees involved are “insiders.” The simple example is paying off a debt to debtor’s brother in law, partner, attorney or accountant, within the prohibited time periods.

Fraudulent Transfers have been a part of the common law since The Statute of Elizabeth of 1570. They continue to be prohibited by the laws of each state and also by §548 of the Bankruptcy Code. The basic concept is that any transfer of assets of a bankrupt debtor for less than reasonable equivalent value and when the debtor was insolvent at the time may be avoided. The bankruptcy code has a two (2) year reach back. However the state statutes may have a different burden of proof and different statutes of limitation, often longer than the 2 year period of the Code. A bankruptcy trustee is enabled by §544 to use any of the state enforcement statutes in addition to the Bankruptcy Code. The trustee will normally use the statute containing the burden of proof or time period that is most helpful to its case.

IV. An Outline of the Bankruptcy Process.

A. Chapter 7 Liquidation.

Basics for all bankruptcy chapters.

1. Have a fee agreement signed by the client describing the amount of the fee, the scope of the work and when and how the fee is to be held and paid.
2. Use bankruptcy software or print out and fill in a full set of forms (all available on line) and obtain the debtor client’s information for all of the parts

and questions on the forms. [You are strongly urged to use one of the bankruptcy software packages, Best Case or West Chapter 7...13. Entering the data and completing the process and filing the case is extremely tedious, dangerous and likely to contain errors or generate a myriad of deficiencies from the court after you file. N.B. that all lawyers must file electronically and you must be registered to file with each particular court.]

3. Get a detailed list of all of the individual and jointly held secured and unsecured assets and liabilities of the client and the date the debt was incurred.

4. Determine whether the client wants to surrender some or all of the secured goods or keep them.

5. Get valuations of the assets, particularly the unusual ones like real estate and automobiles. (Use appraisers, on line information, tax assessments, etc. for valuations.)

6. Get the name address, account number and amount of each debt. Get the payoff figures and arrearages of all secured debts.

7. Have the client fill in a monthly budget of income and expenses on Schedules I & J, being extremely thorough. Include all sources of income, all income deductions, and all individual monthly expenses.

8. If in DC, you must decide whether to use the federal Bankruptcy Code exemptions or the DC exemptions. (In Maryland and Virginia you may only use the state exemptions). Use any and all exemption available, if you have an individual debtor.

9. Get copies of the last 3 months of pay advices from the employer of the debtor and the last full year's federal and state tax returns.

10. Draft the Means Test once you have most of the financial information to determine if there is a presumption of abuse (requiring a Chapter 13) or if there is no presumption so that you may use chapter 7. If there is a presumption you may still present argument to the panel trustee and the court.

11. File your case electronically with the court being certain you are in the correct district in Maryland and Virginia.

12. Contact the paralegal of the trustee to be certain they have what they need before the first meeting of creditors (§341).

13. Attend the first meeting with the client who should have a picture ID and proof of his social security number. There will be an information sheet to fill in to present to the trustee at the meeting. It is available at the meeting room if it was not located before the meeting.

At the meeting, creditors may be present to ask questions but most of the questions are from the trustee. Fully cooperate with the trustee and provide the trustee with any documents or information he may request. (Remember that the

trustee is in a hurry to either close the case as a no asset case or to marshal any available assets and liquidate them.)

There may be motions, adversary proceedings and court hearings to follow the first meeting of creditors but that is not the usual scenario and that is not being covered here.

A discharge will normally be granted after the 341 meeting but recognize that not all debts will be discharged. Student loans and domestic obligations are typical examples.

(HYPO: Excessive credit card debt, \$85,000 of student loans, all assets exempt.)

B. Chapter 13 Adjustment of debt.

Follow all of the steps identified above as Basics for all bankruptcy chapters plus these additional steps.

All Chapter 13 cases must be filed with a plan for the adjustment of the debts. That plan is found on the court forms but the plans differ in each of our local jurisdictions.

Read the Chapter 13 Code provisions, fill out a plan, have the client sign it and file it with the court. (Some of the Chapter 13 trustees or their paralegals can be helpful filing out the plan. However, it is best to confer with an experienced counsel until you are comfortable with the process.)

You must send the trustee the first payment for the amount you have suggested to pay through the plan even before the first meeting of creditors. Also you must continue to pay all post petition secured debt service until a plan is confirmed and probably thereafter.

The plan must be confirmed by the court at a scheduled confirmation hearing. If the trustee does not oppose the plan, the trustee and the court may allow the debtor and counsel to skip the scheduled confirmation hearing before the court. Often a confirmation order is signed by the court before the hearing if there is no opposition.

Unlike the Chapter 7 and 11, the property that vested in the trustee is still held by the trustee even after the confirmation. If all of the plan payments are made and the discharge is granted, the property will vest back to the debtor for its sole use. If the debtor wishes to use, sell or do something with the property while the case is ongoing, counsel should contact the trustee for permission and then make the appropriate motion to the court.

(HYPO: Foreclosure of residence scheduled in 3 days, \$7,890 in arrears on debt service, First trust and second trust under water, car under water, self employed).

C. Chapter 11 Reorganization.

Follow all of the steps identified above as Basics for all bankruptcy chapters plus these additional steps.

1. Study the facts of the case carefully and organize a team of experts that will be required to make the case such as accountants, economists, etc.
2. Attempt a workout or at least establish a dialogue with the main creditors.
3. Try to gain agreement for a pre packaged filing. If almost all of the contentious issues have been resolved before filing, the case can move through the court quickly and smoothly.
4. Get a corporate or other entity (non individual) resolution authorizing the signor to file the bankruptcy case.
5. Prepare a list of the 20 largest creditors. (Bankruptcy Rule 1007(d).)
6. Review your cash collateral issues regarding your secured creditors.
7. Prepare any first day motions to include: the use of cash collateral; employment of accountants and other experts; payment of trade creditors, etc.
8. Prepare a Disclosure Statement and plan in draft just to focus on the issues in the case and minimize the logistical effort.
9. File your disclosure statement,
10. Discuss your proposed plan with opposing counsel for the creditors or the creditor's committee.
11. File your plan.
12. Solicit ballots if the plan is approved
13. Obtain an order confirming the plan.
14. Comply with the plan.

(HYPO: Restaurant LLC owes \$28,000 for DC Sales taxes; owes 14 suppliers a total of \$47,000: owes seller \$93,000 for purchase money note secured on all assets; owes bank 65,000 secured by ARs and equipment; owes equipment suppliers \$55,000, all secured by a financing statement on the equipment, owes federal income taxes and there is a tax lien on record, owes landlord \$15,000 for 3 months rent with personal guaranty by one of the spouses; LLC has only 2 members, husband and spouse.)

V. Common legal matters involving bankruptcy

Pending law suits and non judicial actions:

Civil suits

Foreclosures

Evictions

IRS collection activities

Wage garnishments

Attachments on bank accounts or other assets

Harassing phone calls and letters from creditors at home and at work

Taxes

Lien prioritization

Domestic pre or post marital orders

Student loans

Judgment liens

Purchase money liens

Trusts

Probate Estates

Intervention Estates

Workouts

Settlements

VI. ANSWERS TO COMMONLY ASKED QUESTIONS:

Will bankruptcy stop a foreclosure or an eviction?

Answer. Yes but not for any extended period of time if the creditor is aggressive. You will have to make arrangement to pay sooner or later or give up the house or lease.

- ***Will filing for bankruptcy affect my spouse/co-debtor?***

Answer: If you do not file a joint bankruptcy with your spouse, it should not affect the credit rating of a co-debtor or a spouse, however, only the bankruptcy debtor will be relieved of liability on discharged debts.

In a Chapter 13, any co-debtor receives the same bankruptcy protection the debtor gets even though they do not file jointly.

- ***Will my bankruptcy filing discharge my taxes and student loans?***

Answer: Bankruptcy will normally not discharge debts for taxes, fines, child support, alimony, or student loans. Most credit card debts, medical bills, and similar unsecured debts can be fully discharged.

- ***Can I keep my car?***

Answer. Yes, if you continue to pay and you may also have to formally reaffirm the debt

- Can I keep any credit cards?

• Answer: You must list ALL debts that you have when you file. You can always reaffirm any debt or voluntarily repay one or more debts after filing your case to keep a credit card or negotiating with the lender .

- Will I ever be able to qualify for a loan after bankruptcy?

Answer: The most important factors in extending credit are your current income and expenses (ability to repay the loan). If you can show that your bankruptcy was due to factors not likely to recur (such as illness, unemployment, divorce) AND if you have a good steady job, your chances of being approved for new credit are good.

- How long will bankruptcy affect my credit?

Answer: The fact of filing for bankruptcy can appear on your credit report for as long as 10 years. This does not mean that you can not get credit for 10 years. In fact, your credit may actually improve since your debts will be discharged.

- How can I reestablish my credit after bankruptcy?

Answer: If you have a debt that survives bankruptcy, such as a mortgage or car loan, making your payments on time will help to re-establish your credit. Otherwise, make small purchases on credit and pay it back as quickly as you can to show a new pattern of responsible action. You may also ask the three credit reporting companies for your report, review the credit reports carefully for errors and write to correct or explain what happened (loss of job, divorce, accident, law suit, etc).

- What is a "Secured Credit Card"?

Answer: It is similar to a debit card. You deposit money in a savings account with a bank or other institution. The amount on deposit is your credit limit on the card. You still have to make monthly payments on the card. If you fail to do so, the bank will take the money on deposit.

- What about companies that claim to be able to erase a bankruptcy from my credit report?

Answer: Don't waste your time or money. The most that they can do is to temporarily remove adverse remarks on your credit history by filing a dispute. There is no legitimate way to do what they claim.

- If my home is foreclosed upon do I have any rights as an occupant or must I get out immediately?

Answer. DC, MD & VA all require that residential evictions be made through the judicial process. Self help is not permitted. Your rights will differ in DC, if you are a tenant or if you were the owner. Consult a lawyer.

How often may someone file a bankruptcy?

Answer. You may only obtain a discharge of debt in a chapter 7 once every 8 years. Chapter 11s and 13s have no fixed time limits except under certain circumstances but bad faith filing are prohibited.

VII. The Code: 11 U.S.C. 101, et seq

101-112	(General Provisions)
301-366	(Case Administration)
301-308	Commencement of a Case
321-333	Officers
341-351	Administration
361-366	Administrative Powers
501-562	(Creditors, the Debtors, and the Estate)
501-511	Creditors and Claims
521-528	Debtor's Duties and Benefits
541-563	The Estate
701-784	(Chapter 7) Liquidation
701-707	Officers and Administration
721-728	Collection, Liquidation and Distribution of the Estate
741-753	Stockholder Liquidation
761-767	Commodity Broker Liquidation
781-784	Clearing Bank Liquidation
901-946	(Chapter 9) Adjustment of Debts of a Municipality.
901-904	General Provisions
921-930	Administration
941-946	The Plan
1101-1174	(Chapter 11) Reorganization
1101-1116	Officers and Administration
1121-1129	The Plan
1141-1146	Postconfirmation Matters
1161-1174	Railroad Reorganizations
1201-1231	(Chapter 12) Adjustment of Debts of a Family Farmer or Fisherman with Regular Annual Income
1201-1208	Officers, Administration, and the Estate
1221-1231	The Plan
1301-1330	(Chapter 13) Adjustment of Debt of an Individual with Regular Income
1301-1308	Officers, Administration, and the Estate
1321-1330	The Plan
1501-1532	(Chapter 15) Ancillary and Other Cross-Border Cases
1501	Purpose and scope of application
1502-1508	General Provisions

1509-1514	Access of Foreign Representatives and Creditors to the Court
1515-1524	Reorganization of a Foreign Proceeding and Relief
1525-1527	Cooperation with Foreign Courts and Foreign Representatives
1528-1532	Concurrent Proceedings
18 U.S.C.	(Bankruptcy Crimes)
26 U.S.C.	(Internal Revenue Code)

VIII. The Bankruptcy Rules: Rule 1001-9037

1001-1021	Commencement of Case; Proceedings Related to Petition and Order for Relief
2001-2020	Officers and Administration; Notices; Meetings; Examinations; Elections; Attorneys and Accountants
3001-3022	Claims and Distributions to Creditors and Equity Interest Holders; Plans
4001-4008	The Debtor: Duties and Benefits
5001-5011	Courts and Clerks
6001-6011	Cancellation and Liquidation of the Estate
7001-7087	Adversary Proceedings
8001-8020	Appeals to District court or Bankruptcy Appellate Panel
9001-9037	General Provisions

IX. Local Rules

Each of the bankruptcy courts have local rules that follow the numbering of the federal Bankruptcy Rules and may alter the Rules as they apply to that court. Cites to the rules are as follows:

<http://www.dcb.uscourts.gov/dcb/local-rules;>

<http://www.vaeb.uscourts.gov/home/localrules.html;>

http://www.mdb.uscourts.gov/localrules/local_rules.htm;

X. Foreign Bankruptcies

Canada
Mexico
England
Common Market
Japan
Korea
China

Attachment A

Local DC, MD and VA Exemption Laws

The District of Columbia Code was updated in 2000 to provide broad exemptions for all District of Columbia debtors. The exemption laws were patterned after the federal bankruptcy exemptions (11 U.S.C. § 522) but they are much more generous to the debtor in three important areas:

1. Without limitation, all of a debtor's interest in "real property used as the residence of the debtor" is exempt District of Columbia Code, §15-501(a)(14);
2. The D.C. law now exempts all recovery for personal injury. District of Columbia Code, §15-501 (d)(11)(D).
3. Individual Retirement Accounts (IRAs) are finally exempt for debtors in the District of Columbia. District of Columbia Code, § 15-501(a)(9). (IRAs have been fully exempt in Maryland, but have only a limited exemption in Virginia according to the statutory formula.)

The new exemption laws are available to all debtors who are District of Columbia residents whether in bankruptcy or not. However, if a bankruptcy is filed, the debtor must decide whether to use the federal bankruptcy law exemptions or the District of Columbia exemption law. They may not use both.

In the past, the choice was relatively simple. D.C. exemption law was antiquated and parsimonious, while the federal law was more generous with one exception. The federal law authorized the partition of property held as tenancy by the entirety while the use of the smaller D.C. exemptions would protect the tenancy by the entirety property from creditors of only one spouse. Today the local law is far more generous than the federal bankruptcy exemptions except that the federal contain slightly larger dollar amounts because they are indexed annually, while the D.C. exemption figures are fixed.

Here is a brief summary of the exemption laws available in the District of Columbia, Maryland, Virginia and Federal Bankruptcy.

A. District of Columbia

After being adopted on June 24, 2000

§ 15-501 of the DC Code adds new exemption categories and greatly increases the amount of the exemptions as this partial listing illustrates.

- **Unlimited exemption for real property used as a residence.** §15-501(a)(14)
- Interest in one motor vehicle up to a value of \$2,575. § 15-501(a)(1)
- Household and personal items valued up to \$425 per piece to an aggregate of \$8,625. §15-501(a)(2)
- Aggregate interest in any property valued at \$850 plus unused value from §501(a)(14) up to \$8,075. § 15-501(a)(3)
- Tools, supplies and library used for business up to a value of \$1,925. §§ 15-501(a)(4) and (a) (13)
- Un-matured, non-credit life-insurance. § 15-501(a)(5)
- Professionally proscribed health aides. § 15-501(a)(6)
- Family pictures and books up to \$400. § 15-501(a)(8)
- **Assets in all retirement accounts including IRA's up to the maximum allowed contribution.**
- § 15-501(a)(9)
- Three months provisions. § 15-501(a)(12)
- **Unlimited recovery for personal injury.** § 15-501 (a)(11)(D)
- Implements of a professional person or artist up to \$300. § 15-501(a)(13)

B. State of Maryland

§ 11-504 of the current Maryland Code provides the following exemptions to debtors:

- Wearing apparel, tools, books and other requirements of trade profession valued up to \$5,000. § 11-504(b)(1)
- Unlimited recovery for accident, injury or death. § 11-504(b)(2)
- Professionally proscribed health aides for the debtor or their dependent. §11-504 (b)(3)
- Household items including furniture, clothing and pets held primarily for personal use up to a value of \$1,000. § 11-504(b)(4)
- Property of any kind valued at up to \$6,000 if exemption claimed within 30 days of attachment or levy. § 11-504(b)(5)
- Aggregate interest in real or personal property of up to \$5,000 (limited to bankruptcy proceedings). § 11-504(f)
- Interest in any retirement plan. § 11-504(h)

C. Commonwealth of Virginia

The following exemptions are among those permitted by the Virginia Code:

- Real and personal property for householder up to \$5,000 plus \$500 more for each dependent. § 34-4
- Family bible, wedding and engagement rings. § 34-26(1) and (1a)
- Family portraits and heirlooms up to \$5,000 in value. § 34-26(2)

- Burial lot and a funeral contract valued up to \$5,000. § 34-26(3)
- Clothing up to \$1,000. § 34-26(4)
- Household furnishings up to \$5,000. § 34-26(4a)
- All pets which are not for sale. § 34-26(5)
- Medically prescribed health aids. § 34-26(6)
- Tools, books, machinery and vehicles necessary for profession up to a value of \$10,000. § 34-26(7)
- A motor vehicle other than for work valued at up to \$2,000. §34-26(8)
- Unlimited personal injury or wrongful death proceeds. § 34-28.1
- Certain retirement benefits. § 34-34

D. Federal Bankruptcy

Section 522 of the Bankruptcy Code (11 U.S.C. 101, et seq.) provides a broad list of exemptions. Unlike the state exemptions, which may be used in or out of bankruptcy, federal exemptions are only available to the debtor that has filed bankruptcy and properly claimed the exemption. Additionally § 522 is indexed annually while the DC exemptions are fixed.

It must be noted that the Bankruptcy Code permits states to "opt out" and allow their state exemptions to be used for a federal bankruptcy filing. However, even with an opt out, the state exemptions may be limited by some of the federal statutes such as the exemption limitation for the debtor's residence. Locally, Maryland and Virginia have opted out but the District of Columbia has not. In a DC bankruptcy a debtor may use either the District of Columbia or the federal exemptions, but not both.

Some of the important federal bankruptcy exemptions are:

- Interest in a residence for either the debtor or their dependant of up to \$20,200 11 U.S.C. § 522 (d)(1)
- Interest in a motor vehicle valued up to \$3,225. § 522 (d)(2)
- Household items and personal effects valued at no more than \$525 per item and totaling together no more than \$10,775. § 522 (d)(3)
- Personal jewelry up to \$1,350. § 522(d)(4)
- Aggregate interest in additional real or personal property valued at \$1,075 plus up to \$10,125 of unused value from the residence exemption. § 522 (d)(5)
- Receipt of various benefits including alimony, pension plan and social security. § 522(d)(10)
- Any unmatured life insurance contract. § 522(d)(8)
- Receipt of property from varying sources including payments for wrongful death, lost wages, or life insurance. § 522 (d)(11)
- Recovery for personal injury up to \$20,200. § 522 (d)(11)(D)
- Individual Retirement Accounts not to exceed \$1,095,000.

**E. Comparison of Exemption Laws
In the D.C. Metro Area**

The following charts describe the major exemptions available in the three jurisdictions and the Bankruptcy Code exemptions.

COMPARISON OF MAJOR EXEMPTIONS

Asset	D.C.		Asset	Maryland*
Residence Coops	100% subject to the holding requirement and \$ cap if in bankruptcy.		Any real or personal property (Wild card)	\$6,000 of cash or property of any kind and \$5,000 of real or personal property
Motor Vehicles	\$2,575			
Personal Property (General) Wearing Apparel Furnishings	\$8,625		Personal Property for trade or business	\$5,000
Library, Pictures Any Property (Wild card)	\$850 plus up to \$8,075 of unused amount for residence		Personal Property for personal, family or household use	\$1,000
			IRA	100%
Wages Principal Non-principal			Life Insurance Proceeds dividend, interest, loan value	All proceeds to Dependent Beneficiaries
Trade Implements, tools	\$1,625		Tenancy by Entirety Protection (unless both tenants are liable)	Yes
Office & Professional	\$300			
IRA	100%			
Life Insurance Proceeds dividend, interest, loan value	100%			

Personal Injury Proceeds	100%		
Tenancy by Entirety Protection (unless both tenants are liable)	Yes		

*MD Code Section 11-504

COMPARISON OF MAJOR EXEMPTIONS			
Asset	VIRGINIA *	Asset	Bankruptcy Code 522(d)* (as of March 2008)
Real and Personal Property (Wild card)	\$5,000 + \$500 per dependant	Real and Personal Property (Wild card) Coops	\$20,200
Motor Vehicles	\$2,000	Motor Vehicles	\$3,225
Wearing Apparel	\$1,000	Personal Property	\$525 max per item; \$10,775 total plus \$1,075 and up to \$10,775 of unused portion of \$20,200 for real or personal property.
Furnishings	\$5,000		
Household, etc.	\$5,000	Jewelry	\$1,350
Trade Implements Tools	\$10,000	Trade Implements Tools Office & Professional	\$2,025
IRA	Unlimited if the only retirement plan. Partial if other plans plus an IRA.	IRA	\$1,095,000 unless reasonably necessary for support

Life Insurance Proceeds. dividend, interest, loan value	Group & Non-profit policies	Life Insurance Proceeds	\$10,775
		dividend, interest, loan value	Unlimited
Personal Injury Proceeds	100% Unlimited	Personal Injury Proceeds	\$20,200
Tenancy by Entirety Protection. (unless both tenants are liable)	Yes	Tenancy by Entirety Protection. (unless both tenants are liable)	No
*VA Code Section 34-26-34; 34-4		*Indexed annually 11 U.S.C. Section 522(d)	

Conclusion

Clearly, the most important change in the D.C. Code is the addition of the unlimited residence exemption. Whatever the current housing market, we may expect an even greater interest in and demand for D.C. residential real estate. Real estate sales personnel and builders may think they have died and gone to heaven as more entrepreneurial risk takers rush to establish their residences in the District. Yet it must be realized that this new and generous exemption is not merely a gift for the profligate. For years tenancy by the entirety has protected the home and other property of married debtors. This new exemption only levels the playing field. Now, all debtors have an opportunity to protect their residence whether married or not. This reflects a sound social policy.

The current bankruptcy bill caps the homestead exemptions in bankruptcy at \$136,875 for residential property not held 1215 or more days before the bankruptcy filing. However, even if you have lived in your home less than the required 1215 days, there is still hope if you moved to your current residence from another home, purchased prior to the 1215 day window. If you purchased your last home more than 1215 days before filing for bankruptcy, and that home was located within the same state as your current residence, any interest transferred from that old residence to the new one is exempt without limit. This bill may slightly dampen the unlimited exemption, but for those residents that can avoid filing bankruptcy, the unlimited exemption is still available without any 1215 day holding period. The D.C. home is not only a person's castle but also a treasure trove and a retirement plan. It sure beats the stock market.