Arizona Bankruptcy Attorney: The Bankruptcy Process & Common Terms

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Bankruptcy attorneys often forget that the terms and lingo used in their day to day lives is not generally known by the general public. Bankruptcy is its own area of the law with many terms not used in other areas of non-bankruptcy law. I thought it would be helpful to give a brief run down of terms used in the bankruptcy process to help you in your navigation of the bankruptcy system.

Automatic Stay: The Automatic Stay is provided for in 11 U.S.C. § 362(a). This is an order automatically entered by the bankruptcy court upon the filing of your bankruptcy case that stops any future collections efforts by your creditors against you or any of your property. The Automatic Stay stops garnishments, collection calls, demand letters, and even foreclosure. The Automatic Stay is one of the powerful tools of the bankruptcy code.

Chapter 7 Bankruptcy: This is the chapter of bankruptcy that most people file. It is a liquidating bankruptcy meaning that if you have non-exempt assets they can be liquidated during the bankruptcy process. You will receive a total discharge of your unsecured debts. Relatively short process – most cases last about 4 to 5 months.

Chapter 11 Bankruptcy: Typically used for business cases. However, we are seeing more and more individual chapter 11 cases where people have very high amounts of debt ($1mil +) or when there are significant assets and the individual does not qualify for other chapters of bankruptcy.

Chapter 13 Bankruptcy: This is a personal adjustment of your debts. Longer process, typically 3 to 5 years, but has many powerful bankruptcy tools to help you keep you house and even remove second mortgages or Home Equity Lines of Credit. During a chapter 13 bankruptcy you are required to propose a plan whereby you pay off a portion of your debts over a 3 to 5 year period.

Creditor: This is the person or company to whom you owe money.

Debtor: In the bankruptcy world, this is the person who is filing for bankruptcy.

Discharge: The discharge is the order entered by the bankruptcy court at the conclusion of your bankruptcy case. The discharge essentially eliminates all debts that are dischargeable through the bankruptcy process.

Exemption: There are both federal and state exemptions. Exemptions are statutes that protect your property from your creditors and the trustee in bankruptcy. The most commonly known exemption is the homestead exemption. In Arizona, there are also exemptions for your car, wedding ring, furniture, retirement accounts, and many other things. If property is deemed exempt by Arizona law, your creditors cannot take it or garnish it – even in bankruptcy.

Meeting of Creditors or "341": In every bankruptcy case the Debtor is required to attend a Meeting of Creditors. This meeting is typically held about 30 days after the bankruptcy case is filed. In Arizona bankruptcy cases the Debtor and their attorney will meet with the trustee assigned to the case. The trustee will then ask the Debtor a series of questions relating to the truthfulness of the documents filed with the court and questions on residency. While creditors can appear and question Debtors, it is very uncommon for a creditor to make an appearance at the Meeting of Creditors. Sometimes bankruptcy attorneys will refer to the Meeting of Creditors as the "341" meeting. This simply refers to 11 U.S.C. § 341 which requires that the Meeting of Creditors be held.

Petition and Schedules: These are the documents that are filed with the bankruptcy court that begin your bankruptcy case. The petition contains general information like name, address, social security number and the schedules contain information on your debts, assets, income and expenses.

Secured Creditor: A secured creditor is a person or company to whom you owe money and they have collateral on the loan. Mortgage loans and car loans are the most typical secured loans.

Trustee: Each bankruptcy case is assigned a trustee to oversee and shepherd a bankruptcy case through the bankruptcy process. The trustee is appointed by the U.S. Trustee. The U.S. Trustees are part of the Department of Justice.

Unsecured Creditor: An unsecured creditor is a person or company to whom you owe money and there is no collateral or property attached to the loan. Credit card debt and medical debt are common types of unsecured debt.

These are just a small sampling of commonly used terms in the bankruptcy court. I offer a free bankruptcy consultation where we can discuss your specific situation and determine if bankruptcy is a good option for you. Attorney John Skiba can be reached at (480) 464-1111.