

# What You Should Do When Your Customer Files Bankruptcy

## And Collection of Idaho Public Agency Debt



Association of Idaho Cities  
2017 Annual Conference



## **Disclaimer:**

The topics included in this presentation are intended to be for discussion purposes only. Nothing in our discussions, including the topics covered in this presentation are intended to be legal advice.

# Bankruptcy

## Definitions of Terms

**Automatic Stay (Stay):** Once the case is filed in the court, the creditor cannot make an attempt to collect the filing debtor's account(s) that is included in the bankruptcy filing. REQUIRED BY STATUTE!

### Parties:

**Attorney for the Creditor:** The legal representative of the creditor for the bankruptcy proceedings.

**Attorney for the Debtor:** The legal representative of the debtor for the bankruptcy proceedings.

**Creditor:** Party that has a debt owed by the filing party.

**Debtor:** (Consumer) The filing party seeking relief from creditors.

**Judge:** Oversees, interprets the law and rules in bankruptcy cases.

**Trustee:** Administrator of the bankruptcy estate.

## Definition of Terms (cont.)

### Filings:

**Chapter 7** – Liquidation for personal and business

**Chapter 9** – Restructure for municipalities

**Chapter 11** – Business Reorganization

**Chapter 12** – Family Farmers or Family Fishermen

**Chapter 13** – Personal Restructure, AKA Wage Earner Plan

**Chapter 15** – Foreign Representative

### Case Dispositions:

**Bankruptcy Filed:** The act of filing a petition with a bankruptcy court in order to relieve the filing party from debts and creditors' efforts to pursue recoveries of those debts.

**Closed:** The end of the bankruptcy case.

**Completion:** The debtor has paid all of the funds to the court as listed in the confirmation of a Chapter 13 plan.

**Discharged:** The case has been decided and the debtor has been released of personal liability on those specified debts.

## Definition of Terms (cont.)

### Case Dispositions (cont.)

**Dismissed:** The legal affect of the bankruptcy is voided. The stay is released and creditors can pursue recovery efforts as if no bankruptcy had been filed.

**Plan Confirmed:** A debtor's Chapter 13 plan to pay creditors that has been reviewed and accepted by the court.

**Re-Opened Case:** This is a proceeding that the court re-opens a closed case for whatever reason.

### Miscellaneous Terms:

**Baiting:** This is an planned effort by the debtor to tempt a creditor to violate the bankruptcy code.

**Objection:** The creditor or trustee objects for whatever reason about the discharge of the specific debt or all of the debts included in a bankruptcy.

**Pro Se:** This when the creditor does not have legal counsel in the bankruptcy proceedings. The debtor is representing himself/herself.

## You Receive a Bankruptcy Notice in the Mail, Now What...

Locate the account on your system.

- Highlight or note the account. Include the chapter filed and the filing date.
- Determine the account balance as of the filing date. Note it.
- Make NO ATTEMPT to pursue the account balance as of the filing date.
- Note deadlines that are included in the notice.
- Make sure ongoing statements sent to the consumer do not include amounts included in the bankruptcy.
- Make sure that all applicable individuals within your organization has access to this information.

Please keep in mind, all debts that includes or precedes the filing date are included in the bankruptcy and are subject to the automatic stay. Charges incurred for services that are incurred after the filing of the bankruptcy are NOT included in the bankruptcy and collection efforts can be made toward those amounts.

## Do You File a Proof of Claim?

- Review the notification carefully.
- Look at Chapter that was filed.
  - Most Chapter 7 bankruptcies have little or no assets.
  - Many Chapter 11's and 13's are 100% paid.
  - If you decide to file a proof of claim, make sure it is done before the noted deadline date.

## Where Do You Find the Form to File a Proof of Claim?

You can go online to: [www.uscourts.gov](http://www.uscourts.gov) or at the bankruptcy clerk's office to pick up proof of claim forms, objection forms and more.

Please feel free to call the trustee for additional information.

## How Often Can a Debtor File Bankruptcy?

There are no restrictions of the timeframe between bankruptcy filings. There are restrictions on whether the debts in subsequent filings are dischargeable. Here is the timeframe that a debtor can file a subsequent bankruptcy and have the debts in the subsequent bankruptcy remain dischargeable.

<u>Previous Case</u>	<u>Current Case</u>	<u>Timeframe</u>
Chapter 7	Chapter 7	8 Years
Chapter 7	Chapter 13	4 Years
Chapter 13	Chapter 13	2 Years
Chapter 13	Chapter 7	6 Years*

These timeframes are from the initial filing to the subsequent filing.

\*Exceptions – the 6 year period does not apply if:

- All unsecured debts were paid in the Chapter 13 or
- At least 70% of unsecured debts and the plan was made in good faith and completed with the debtor's best effort.



## How Often Can a Debtor File Bankruptcy? (cont.)

### Dismissals

The court may restrict the time that the debtor can file another bankruptcy for 180 days or longer if:

- The debtor willfully failed to obey court orders in the previous case, or
- The debtor voluntarily dismisses the previous case after a creditor filed a motion for relief from the automatic stay.

### Other Limitations

- If the debtor files a subsequent bankruptcy that is filed within one year of a previously filed bankruptcy, the automatic stay is limited to 30 days.
- If the debtor has two or more dismissals within a year, the automatic stay is waived.

## Tips You May Wish to Follow...

Create a written policy and procedure document that include...

- What you should do upon receiving a bankruptcy notice.
- Checklist of whether to file a proof of claim. For example, you may wish to file on only Chapter 13 cases, or file on accounts that exceed a minimum of \$50.

Designate an employee(s) that handle bankruptcy accounts, file claims, etc.

- They will become proficient in the process.

Make sure that you maintain the written policy and procedures as you modify your actions.

If you contact the clerk of the bankruptcy court or the trustee, please remember that they can assist you with questions but cannot provide legal advice. Contact your attorney for legal advice.

## Miscellaneous

- If you or your collection agency are not listed as a creditor in a bankruptcy filing and one or both of find that the debtor has an OPEN bankruptcy, you are included.
  - Once you know of the bankruptcy filing, you must adhere to the automatic stay.
  - Contact the trustee for additional information about filing a claim.
- Make sure you identify or distinguish the debtor.
  - Is the filing party a consumer, a business or both?
    - Keep in mind, Chapter 13 bankruptcies are for consumer debt, not business debt.
  - Many bankruptcies are filed in an effort to prevent foreclosure, repossessions, wage garnishments, etc. Once the debtor finds an acceptable method of working through those issues, debtors may file dismissals.

## Miscellaneous (cont.)

- If the debtor files a bankruptcy pro se, you can talk to the debtor about the bankruptcy but cannot pursue any effort to collect the debt.
- Courts have a tendency to allow certain discretion with debtors filing as pro se.
  - It is not unusual for a pro se debtor to fail to notify creditors that the case has been dismissed, discharged, etc.
    - Check status with the court, clerk or the trustee.
- If a debtor contacts a creditor after the bankruptcy proceeding is closed and VOLUNTARILY wants to pay the debt owed to the creditor that was discharged in the bankruptcy, the creditor can accept the debtor's payment.
- If the debtor wishes to discuss an account with a creditor that was discharged in the bankruptcy, the creditor can discuss the account but cannot make any attempt to collect to discharged amount.

**Special Thanks to**

**Kathleen McCallister - Chapter 13 Trustee**

PO Box 1150

Meridian, ID 83680

(208) 922-5100

kam@kam13trustee.com

# Collecting Public Agency Debt

## Definitions of Terms

**Public Agency:** Any city or political subdivision of the State of Idaho, including but not limited to counties, school districts, highway districts, port authorities, instrumentalities of counties, cities or other political subdivisions created under the laws of the State of Idaho and any agency of the state government and any city or political subdivision of another state. “State” means a state of the United States and the District of Columbia (Idaho Code 67-2327).

**Public Agency Fee:** The fees that the collection agency charges the consumer.

**Verification of the Debt:** If the debt or any portion of the debt is disputed in writing within 30 days of the public agency sending the statutory notice, the public agency must provide documentation to substantiate the debt to the consumer.

## The Process

- Select accounts that you are ready to send to your collection agency.
- Send the consumer the required validation notice.
  - Make sure you note the date that the notice is sent.
  - Tip: Most of our public agencies send the notice as part of their normal process. For example, they may include the notice on their 60 day statement.
- If after a minimum of 30 days expire and the consumer does not respond, resolve or pay the account, then the account can be listed with your collection agency.
- If the consumer responds within the 30 day period with a verification request, the public agency must respond to the request with documentation to support the debt. Best practices would be to provide the consumer an additional 30 days to review the documentation and respond accordingly. If that 30 day period expires without receiving payment or resolution, then the account can be listed with your collection agency.

## The Process (cont.)

- List the account with your collection agency.
- The collection agency will add the collection fees to the listed account.
- The collection agency begins recovery efforts for the combined total of the listed amount and the collection fees.
- When paid in full to the agency, remittance to the public agency should include the entire listed amount.