



Protecting Property Taxes in Bankruptcy

A Presentation for County Auditors, Treasurers, and Finance Officers

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AGENDA

- Why do county auditors need to know about bankruptcy? County goals:
 1. Observe the automatic stay
 2. Preserve liens
 3. Collect property taxes
- Bankruptcy basics
- Observing the automatic stay
- Filing a claim
- Collecting taxes through a plan



Disclaimer - Important

The views expressed in this presentation are those of the authors, and are not necessarily those of the offices in which they work.

Each county should confer with their own legal counsel about participation in bankruptcy proceedings.



Why do county auditors need to know about bankruptcy, anyway?

- Many individuals and businesses that pay real and personal property taxes file for bankruptcy each year.
- Filing a bankruptcy petition triggers an automatic stay which protects debtors from certain collections actions. Counties, as creditors, are obligated to follow the automatic stay.
- The County can collect taxes through a bankruptcy proceeding, and take steps to protect its liens.
- Taxpayers benefit from addressing property taxes in a bankruptcy proceeding.



Minnesota filing statistics

	2015	2014	2013	2012	2011	2010	2009	2008	2007
Total cases filed	10505	12040	14295	16804	19196	22070	21302	16473	11795
Percent change over previous year: Statewide	(14.17)	(14.11)	(17.31)	(10.87)	(9.03)	11.68	33.41	39.54	44.59
Minneapolis	(16.01)	(16.29)	(14.14)	(14.01)	(6.82)	17.57	28.48	43.27	85.03
St. Paul	(13.06)	(11.65)	(18.92)	(8.55)	(9.19)	7.55	39.75	33.34	74.24
Duluth	(9.20)	(18.05)	(18.75)	(6.27)	(11.62)	.39	54.82	30.56	81.95
Fergus Falls	(23.25)	(10.18)	(15.16)	(9.94)	(18.52)	17.31	8.27	64.36	95.88

Source: Clerk, United States Bankruptcy Court, 301 U.S. Courthouse, Minneapolis, Minnesota 55415



Minnesota filing statistics: Cases filed in the first five months of 2016

	Minneapolis	St. Paul	Duluth	Fergus Falls
Chapter 7	1411	1520	340	277
Chapter 11	2	3	0	0
Chapter 12	0	1	0	3
Chapter 13	267	279	45	60

Source: Clerk, United States Bankruptcy Court, 301 U.S. Courthouse, Minneapolis, Minnesota 55415



The premise of bankruptcy: a “fresh start”

“[T]he major objective in any bankruptcy proceeding is to afford debtors the opportunity to make a new life for themselves. When Congress drafted the Bankruptcy Code in 1979, it began with the premise that the debtor should be afforded a 'fresh start'. A fresh start should be a genuine new beginning for any debtor. It should permit him to continue his chosen profession or trade and be free from the burdens of pre-petition debts. It should give the debtor the opportunity to become a contributing member of his community and permit him to follow his line of work and support his family.”

Middleton v. Farmers State Bank of Fosston, 45 B.R. 744, 747 (Bankr. D. Minn. 1985) (internal citations omitted).

→ This fresh start is provided in the form of a discharge of debt, or a restructuring of debt payments



Types of bankruptcy cases

- Chapter 7: this is an option for individuals with no regular income, or businesses that need to liquidate. There are usually no assets to distribute to creditors.
 - Typically no claim is filed unless the County receives notice that there are assets to distribute
 - Real estate liens pass through bankruptcy intact and with the same pre-petition priority
- Chapter 13: used by individuals with regular income to consolidate debts into monthly payment, made to Chapter 13 Trustee's Office.
 - The majority of property tax claims are made in Chapter 13s
 - Plan for payment of debts replaces old obligations
 - Debtor receives discharge from personal liability for remaining debt once Plan successfully completed (note certain debts are not dischargeable)
- Chapter 11: used by business wishing to reorganize debt, or by individuals with debt over a certain amount.
 - Plan for payment of debts replaces old obligations; debt not in Plan is discharged (note certain debts are not dischargeable)
- Chapter 12: used by family farmers and fishermen with regular income



The automatic stay: what it means

- A bankruptcy case is commenced by filing a petition with the bankruptcy court.
- The petition triggers an “automatic stay” which protects the debtor from certain collection action while it is in effect. 11 U.S.C. 362(b).
- These actions that relate to property tax collection are prohibited during the stay:
 - Enforcing a judgment that was obtained before the petition was filed (example: forfeiting a property)
 - Obtaining possession of property of the estate (example: housing court action to obtain possession of forfeited property)
 - Perfecting or enforcing liens against property in the estate (example: obtaining judgment on delinquent taxes)



The automatic stay: suggestions for observing it

- Designate someplace in the county where bankruptcy notices can be received and tracked
- Include language on property tax notices that invites taxpayers to inform the county of a bankruptcy filing
 - *Example: If this property is subject to a current bankruptcy case, or has been in the past five years, rights and liabilities may differ and this notice may not be valid. Please notify Hennepin County immediately of your bankruptcy by calling 612-348-3011, and consult with your attorney.*
- Use technology to avoid violating the stay
 - *Example: Hennepin's PINS system has a bankruptcy indicator, which suppresses mailing of certain notices if activated*
- Consult with your county attorney to determine when the stay is lifted. 11 U.S.C. 362(c)(2). When the stay lifts depends on the chapter.



Practical Application for Property Tax Notices

Disclosure notice added to the Current Year Unpaid Tax Penalty Notices

NOTICE OF HENNEPIN COUNTY UNPAID PROPERTY TAXES FOR 2016

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Hennepin County Treasurer
A600 Government Center
Minneapolis, MN 55487-0080
612-348-3011

06/06/16

THERESA M RENNICK-DEERING
MARK W DEERING
4553 COLUMBUS AVE S
MINNEAPOLIS MN 55407-3525

PROPERTY I.D. NUMBER:
15-117-22 24 0044
PROPERTY ADDRESS:
3308 ELDORADO TR W

Online Property Information: www.hennepin.us

M.S. 279.01 may provide extension of the property tax due date if you are a veteran who is on Federal Active Service.

If you have filed bankruptcy, please contact our office at 612 348-3011.

AMOUNTS DUE AND PAYMENTS:

	TAX	PENALTY	TOTAL
1st 1/2 TAX (due date May 16th)	7.03		7.03
PENALTY		.28	.28
TOTAL	7.03	.28	7.31
NET PAID YEAR TO DATE	0.00	.00	0.00
BALANCE DUE	7.03	.28	7.31

UNPAID 1ST HALF AMOUNT 7.31

UNPAID AMOUNT IS VALID ONLY THROUGH 06/30/16

Current year Property Taxes are due on **May 15th** and **October 15th**.
Penalty is assessed after these due dates and increases monthly.
Payments are allocated first to penalty and then to tax.
If taxes are escrowed, we suggest you contact your Mortgage Company.

DETACH AND RETURN THIS STUB WITH YOUR PAYMENT

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NOTICE OF HENNEPIN COUNTY UNPAID PROPERTY TAXES FOR 2016

THERESA M RENNICK-DEERING
MARK W DEERING
4553 COLUMBUS AVE S
MINNEAPOLIS MN 55407-3525

Property Address:
3308 ELDORADO TR W

06/06/16



Payment must be postmarked by 06/30/16

PROPERTY IDENTIFICATION NO. 15-117-22 24 0044	UNPAID AMOUNT DUE 7.31
--	---------------------------

151172224004400000073100000073122317152400440



Protecting the county's property tax interest: filing a proof of claim

- File a proof of claim for all taxes for which the lien has attached as of the petition date
- Include any interest and penalty in the claim that have accrued up to the petition date
- Do not include penalties after the petition has been filed on any taxes included in the claim (“no post-petition penalty on pre-petition taxes”)

→ Example: A debtor files a Chapter 13 petition on June 16, 2016. File a claim for taxes through Pay 17, because the lien for the Pay 17 taxes attached on January 2, 2016.



Calculating a claim

→ Part 1: everything you can write a check for as of the petition date

→ Part 2: total of remaining taxes not yet payable, but for which lien has attached

BANKRUPTCY PROOF OF CLAIM CALCULATION

Prepared by the Hennepin County Resident and Real Estate Services Department
Contact: Vicci Lee, 612-348-2338

Bankruptcy Petition of John and Jane Roe, Court File No. 12-12345	
Petition Date: February 1, 2012	Last Pre-Petition Lien: January 2, 2012
Claim Prepared: March 1, 2013	Taxes Secured through Payable Year: 2013
Property Address: 1234 Claim Street, Minneapolis, Minnesota	
Property Identification No.: 12-345-6789-1011	

Part 1: Property Taxes Payable As of Petition Date

2008/2009	Delinquent property taxes	\$ 5,000.00
2009/2010	Delinquent property taxes	\$ 5,000.00
2010/2011	Delinquent property taxes	\$ 5,000.00
	Penalties on delinquent taxes through Petition Date	\$ 1,000.00
		\$ 1,000.00

SUBTOTAL: Taxes Payable as of Petition Date **\$ 17,000.00**
This is the "arrearage and other charges, as of the time case was filed" in the Proof of Claim form.

Part 2: Property Taxes Payable After Petition Date, but Secured by Pre-Petition Liens

2011/2012	Property taxes	\$ 5,000
2012/2013	Property taxes payable May 15, 2013	\$ 2,500.00
2012/2013	Property taxes payable October 15, 2013	\$ 2,500.00

SUBTOTAL: Taxes Payable After Petition Date, but Secured as of Petition Date **\$15,000.00**

TOTAL SECURED CLAIM (Part 1+Part 2) **\$32,000.00**
This is the total secured claim as of the petition date in the Proof of Claim form. This total does not reflect any interest that has, or will, accrue post-petition.

IMPORTANT NOTES ABOUT THIS PROPERTY TAX CLAIM

Tax years are represented as **Assessed Year / Payable Year**. For example, 2010/2011 refers to taxes that were assessed in 2010 but not payable to the County until 2011. Payable Year taxes become a lien on the property on January 2 of the Assessment Year. See Minn. Stat. §§ 272.31, 273.01.

Payable Year taxes become delinquent if unpaid on January 1 of the following year, and interest starts to accrue at a rate of ten percent. Minn. Stat. § 279.03. Interest may accrue on delinquent property taxes during the automatic stay when property tax liens are over-secured. 11 U.S.C. § 506(b).

Any claim including estimated taxes pursuant to 11 U.S.C. § 502(c)(1) will be amended as soon as the estimated amount is finalized.

Please include language in the Plan stating that the debtor(s) may pay property taxes directly to the County as they become payable.



Filing a proof of claim for real property taxes

→ There are three types of claims: secured, priority, and unsecured

→ Real property taxes are secured, and if over secured are entitled to interest at the rate set by state law

→ Personal property taxes may be priority or unsecured – see 11 U.S.C. 507(a)(8)(B)

B10 (Official Form 10) (04/13)

UNITED STATES BANKRUPTCY COURT _____ District of _____		PROOF OF CLAIM
Name of Debtor:		Case Number:
NOTE: Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property):		
Name and address where notices should be sent:		<input type="checkbox"/> Check this box if this claim amends a previously filed claim.
Telephone number:	email:	Court Claim Number: _____ (if known)
Name and address where payment should be sent (if different from above):		Filed on: _____
Telephone number:	email:	<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.

1. Amount of Claim as of Date Case Filed: \$ _____		
If all or part of the claim is secured, complete item 4.		
If all or part of the claim is entitled to priority, complete item 5.		
<input checked="" type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.		
2. Basis for Claim: Ad valorem property taxes (See instruction #2)		
3. Last four digits of any number by which creditor identifies debtor:	3a. Debtor may have scheduled account as: (See instruction #3a)	3b. Uniform Claim Identifier (optional): (See instruction #3b)
4. Secured Claim (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.		Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: Delinquent total \$ _____
Nature of property or right of setoff: <input checked="" type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe:		Basis for perfection: Minn. Stat. 272.31
Value of Property: \$ Assessed value		Amount of Secured Claim: \$ Total
Annual Interest Rate 10 % <input checked="" type="checkbox"/> Fixed or <input type="checkbox"/> Variable (when case was filed)		Amount Unsecured: \$ _____
5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.		
<input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).	<input type="checkbox"/> Wages, salaries, or commissions (up to \$12,475*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4).	<input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5).
<input type="checkbox"/> Up to \$2,775* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7).	<input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8).	<input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)(____). Amount entitled to priority: \$ _____
*Amounts are subject to adjustment on 4/01/16 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.		
6. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)		



Filing a proof of claim

- The calculation form accompanies the official claim form; show the Court why the County is entitled to payment
- Proof of claims can be filed on the bankruptcy court's website (by non-attorneys) at <http://www.mnb.uscourts.gov/epoc>



The Plan

- Chapter 13 Plan: ask the debtor's attorney to include property taxes in paragraph 7. This allows your claim total to be treated as an estimate (there are inevitably adjustments as the result of interest), and allows the debtor to pay "new" taxes directly to the county in the ordinary course of business.
- Chapter 11 Plan: there is no standard plan; it is important to read it! Consult with your county attorney to ensure property taxes are properly addressed in the debtor's plan.



Sample Plan

- Paragraph 7 contains claims that will be paid through the trustee's office. The claims are estimates, liens securing the claims are preserved, and new payments can be made directly to the county
- Make sure the debtor includes the statutory interest rate

Form 3015-1 - Chapter 13 Plan

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

CHAPTER 13 PLAN

In re: [REDACTED]

Dated: July 6, 2015

DEBTOR Case No.
In a joint case, debtor means debtors in this plan.

- DEBTOR'S PAYMENTS TO THE TRUSTEE —
 - As of the date of this plan, the debtor has paid the trustee \$ 0.00.
 - After the date of this plan, the debtor will pay the trustee \$ 630.00 per Month for 60 months, beginning within 30 days after the order for relief for a total of \$ 37,800.00. The minimum plan payment length is 36 or X 60 months from the date of the initial plan payment unless all allowed claims are paid in a shorter time.
 - The debtor will also pay the trustee _____.
 - The debtor will pay the trustee a total of \$ 37,800.00 [line 1(a) + line 1(b) + line 1(c)].

2. PAYMENTS BY TRUSTEE — The trustee will pay from available funds only creditors for which proof of claim have been filed. The trustee may collect a fee of up to 10% of plan payments, or \$ 3,780.00, [line 1(d) x .10].

3. ADEQUATE PROTECTION PAYMENTS [§ 1326(a)(1)(C)] — The trustee will promptly pay from available funds adequate protection payments to creditors holding allowed claims secured by personal property, according to the following schedule, beginning in month one (1).

Creditor	Monthly Payment	Number of Months	Total Payments
<u>-NONE-</u>	\$ _____	_____	\$ _____
a. TOTAL			\$ <u>0.00</u>

4. EXECUTORY CONTRACTS AND UNEXPIRED LEASES [§ 365] — The debtor assumes the following executory contracts or unexpired leases. Cure provisions, if any, are set forth in ¶ 7.

Creditor	Description of Property
<u>-NONE-</u>	_____

5. CLAIMS NOT IN DEFAULT — Payments on the following claims are current and the debtor will pay the payments that come due after the date the petition was filed directly to the creditors. The creditors will retain liens, if any.

Creditor	Description of Property
<u>-NONE-</u>	_____

6. HOME MORTGAGES IN DEFAULT [§ 1322(b)(5) and § 1322(e)] — The trustee will cure defaults on the following claims secured only by a security interest in real property that is the debtor's principal residence. The debtor will pay the payments that come due after the date the petition was filed directly to the creditors. The creditors will retain liens. All following entries are estimates. The trustee will pay the actual amounts of default.

Creditor	Amount of Default	Monthly Payment	Beginning in Month #	Number of Payments	TOTAL PAYMENTS
a. <u>US BANK</u>	\$ <u>4,912.00</u>	\$ <u>350.86</u>	<u>5</u>	<u>14</u>	\$ <u>4,912.00</u>
b. TOTAL					\$ <u>4,912.00</u>

7. CLAIMS IN DEFAULT [§ 1322 (b)(3) and (5) and § 1322(e)] — The trustee will cure defaults on the following claims as set forth below. The debtor will pay for the payments that come due after the date the petition was filed directly to the creditors. The creditors will retain liens, if any. All following entries are estimates, except for interest rate.

Creditor	Amount of Default	Int. rate (if applicable)	Monthly Payment	Beginning in Month #	Number of Payments	TOTAL PAYMENTS
a. <u>HENNEPIN CNTY</u>	\$ <u>2,245.08</u>	<u>10</u>	\$ <u>175.86</u>	<u>5</u>	<u>14</u>	\$ <u>2,462.02</u>
b. TOTAL						\$ <u>2,462.02</u>



What could go wrong?

- Debtor could file a motion to sell real property “free and clear” of liens
- Debtor could improperly classify property taxes in a plan – and the county could be stuck with it



Tracking payments

- Track whether the county is receiving payments pursuant to a plan
- Paying taxes through a plan is a win-win: the county is paid timely, and the debtor stays on top of property taxes
 - If taxes are not addressed in a plan, the property may again be subject to tax forfeiture proceedings as soon as the automatic stay is lifted
- If a debtor is in violation of a plan, discuss options with your county attorney



What does change after filing:

- County will not obtain a judgment on delinquent taxes during the automatic stay.
- County will not file a personal property tax lien against the debtor during the automatic stay.
- County will not give notice of the expiration of the redemption period, and the redemption period is put on “hold.” If this notice was given prior to the filing of the bankruptcy petition, then 60 days are added to the time during which the property can be redeemed. If the right to redeem is not timely exercised by the debtor or trustee during that extended period, the property forfeits absolutely to the state. 11 U.S.C. § 108.
- County will not add new penalty to any unpaid taxes included in its claim.
- County will not intercept tax refunds from the Department of Revenue for application to personal property tax liabilities.



What does not change after filing:

- Liens continue to attach to the property each January 2. 11 U.S.C. § 362(b)(18).
- Property tax bills and notices continue to be mailed. 11 U.S.C. § 362(b)(9).
- Tax Court petitions for property of the estate filed pursuant to Chapter 278 proceed unaffected. *Eden Prairie Mall, LLC v. Cnty. of Hennepin*, 797 N.W.2d 186 (Minn. 2011).



Hennepin Bankruptcy Claims

- 49 claims filed in 2015 for 49 parcels in which debtor held an interest
- These claims totaled \$ 651,488



Practical Application: Clearing up a tax-title defect related to a Bankruptcy matter for a vacant and boarded, alleged former gang-occupied property at 4831 Colfax Ave. N., Minneapolis (1/2 block south of school and park)



Practical Application: Clearing up a tax-title defect related to a Bankruptcy matter for North Minneapolis vacant and boarded, alleged former gang-occupied property



Practical Application to Clear Title Defects:

- Sale to a City for \$5,000 for housing redevelopment
- Sale rescinded by County Board due to title defect, purchase price refunded.
- County Attorney brought legal action for Retroactive Relief from the Automatic Stay
- Alternative Boarding treatment applied to boarded windows
- Tax Title Defect cleared, property scheduled for Home Rehabilitation Pilot Program



Hennepin Property Tax Claim Management in SharePoint

SharePoint Newsfeed OneDrive Sites Rebecca Holschuh

Bankruptcy Home

Quick Links

- Create a new bankruptcy file
- View all bankruptcy files
- Look up bankruptcy properties
- Review non-compliant payments

Upcoming Dates

There are no items to show in this view of the "Calendar" list.

Notes that Need Attorney Review

Subject	Note Status	Note Category	Bankruptcy:File	Modified	Modified By
New Bankruptcy has ownership in LLC's	Needs Attorney Review	Automatic Stay	[REDACTED]	May 19	<input type="checkbox"/> Vicci A Lee

Notes that Need Paralegal Review

Subject	Note Status	Note Category	Bankruptcy:File	Modified	Modified By
New Bankruptcy	Needs Paralegal Review		[REDACTED]	Monday at 12:38 PM	<input type="checkbox"/> Vicci A Lee



Hennepin Property Tax Claim Management in SharePoint

SharePoint interface showing a document library view for 'Bankruptcy Files'. The document is titled 'Bankruptcy' and is currently selected. The metadata form displays the following information:

File	[Redacted]
Bankruptcy Status	Active
File Status	Bankruptcy Received
Private Data	No Private Data
Property Tax Interest	Yes
Bankruptcy No.	[Redacted]
Bankruptcy Name	[Redacted]
Chapter	13
Jurisdiction	Minnesota
Date Filed	5/3/2016
PINS Indicator	On
Automatic Stay	On
Automatic Stay Date On	
Automatic Stay Date Lifted	
Debtor Attorney	Curtis K Walker
Trustee Contact	Gregory A Burrell
Date Dismissed	
County Attorney File No.	
Judgment Date	
File Comments	
Automatic Stay Status	On
Content Type: Bankruptcy Note	
Version: 1.0	
Created at 5/11/2016 7:49 AM by Vicci A Lee	
Last modified at 5/11/2016 7:49 AM by Vicci A Lee	

A 'Close' button is located at the bottom right of the metadata form.

SharePoint interface showing a document library view for 'Bankruptcy Files'. The document is titled 'Notes' and is currently selected. The metadata form displays the following information:

Subject	New Bankruptcy	Note Status	Resolved	Note Category		Modified	May 13	Modified By	Vicci A Lee
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A modal window titled 'Notes - New Bankruptcy' is open, displaying the following information:

Bankruptcy	[Redacted]
Note Category	
Subject	New Bankruptcy
Notes	[Redacted]
Note Status	Resolved
CC	
BankruptcyFile	[Redacted]
Content Type: Bankruptcy Note	
Version: 0.0	
Created at 5/13/2016 9:03 AM by Vicci A Lee	
Last modified at 5/13/2016 12:45 PM by Workflow on behalf of Vicci A Lee	

A 'Close' button is located at the bottom right of the modal window.

Takeaways

- Counties need to be aware of bankruptcies to (1) observe the automatic stay, (2) collect taxes, and (3) protect tax liens
- County auditor staff can file claims for property taxes directly with the United States Bankruptcy Court for the District of Minnesota
- Property taxes should be included in a debtor's plan



Thanks for attending!

Comments or Questions?

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