

REPRESENTING THE DEBTOR IN A (FAIRLY) SIMPLE CHAPTER 7 CASE

Bankruptcy is a code-based practice area.

U.S. Code Title 11

Bankruptcy Rules

Case Law

Chapter 7 is the most common and popular form of bankruptcy

Nearly 2/3 of all cases filed

A little over 1/3 are filed under Chapter 13

All other chapters combined comprise < 1%

Chapter 7 is titled "LIQUIDATION"

"Chapter 7 allows a debtor to make a clean break from his financial past, but at a steep price: prompt liquidation of the debtor's assets. *Harris v. Viegelah*n 135 S.Ct. 1829 (2015)

The Chapter 7 Process

Preparation

Credit briefing

Filing of Petition

Schedules and Statements

341 Meeting

Trustee Report

Dealing with secured creditors

Financial Management

Discharge

Case Closed

Presented by:

J. David Krekeler

Krekeler Strother, S.C.

2901 W. Beltline Hwy. Ste. 301

Madison, WI 53713

Property of Estate

Filing creates bankruptcy estate 11 U.S.C. § 541

When a debtor files a Chapter 7 petition, his assets, with specified exemptions, are immediately transferred to a bankruptcy estate. *Harris v. Viegelahn* § 541(a)(1).

Control by Bankruptcy Court

All legal and equitable interests

Including all marital property

Includes assets debtor may not be aware of

May become entitled to by inheritance within 180 days of filing 11 U.S.C. 541 (a)(5).

Trustee may be able to clawback into the estate

- Preferences
- Fraudulent Transfers
- Unperfected Lien

Exemptions 11 U.S.C. § 522

Debtor does not necessarily lose assets

Control of Court is temporary

- WI law allows people to keep certain kinds of property, up to certain values most in Wis. Stats. 815.18
- Bankruptcy Code does the same
- Debtor has choice of WI or Federal exemptions

- In most Chapter 7 cases, Debtors keep all assets
 - No asset cases make up about 96% of Chapter 7 cases (ABI Journal)
- In asset case, Trustee will liquidate and distribute in a priority set by the Bankruptcy Code

Exemption Chart

Category	Wisconsin Exemption (Wis. Stats. unless otherwise noted)	Federal Exemption (11 U.S.C. unless otherwise noted)
Homestead	\$75,000 § 815.20	\$25,150 per debtor § 522(d)(1)
Business & Farm	Personal Property \$15,000 §815.18(b)	Implements of the Trade \$2,525 per debtor § 522(d)(6)
Consumer Goods	\$15,000 § 815.18(d)	\$13,400 per debtor (Not to exceed \$625 per item) § 522(d)(3)
Jewelry	Included in Consumer Goods	\$1,700 per debtor § 522(d)(4)
Disability Benefits / Governmental Benefits	Federal disability under 42 U.S.C. § 401-433 § 815.18(ds)	Social Security benefit, disability, illness or unemployment benefit, unemployment compensation, local public assistance benefit § 522(d)(10)
A. Retirement Benefits	Retirement Plan, Pension, Disability, Stock Bonus, Profit Sharing, Annuity, IRA, KEOGH, 401(k), or similar plan providing benefits due to age, illness, disability, death, or length of service. Restrictions for owner-dominated plans. § 815.18(j) 815.18(3)(j) see <i>Wittman v. Koenig et al.</i> , 15-2798 (7 th Cir.).	Stock Bonus, Pension, Profit Sharing, Annuity, or similar plan on account of illness, disability, death, age, or length of service to the extent necessary for the support of the debtor and dependents. § 522(d)(10)(E) IRAs—\$1,362,800 § 522(n)

Exemption Chart

Category	Wisconsin Exemption (Wis. Stats. unless otherwise noted)	Federal Exemption (11 U.S.C. unless otherwise noted)
B. Retirement Benefits	War pension payments on account of military or naval service from U.S. Government. § 815.18(n)	Veterans benefits. § 522(d)(10)(B)
C. Retirement Benefits	Fire and Police Pension Funds in department where city population exceeds 100,000 § 815.18(ef)	Retirement assets in fund or account exempt from taxation under IRS sections 401, 403, 408, 408A, 414, 457, or 501(a) § 522(d)(12)*
A. Life Insurance	Any unmatured policy and accrued dividend interest or loan (not to exceed \$4,000). Can be up to \$150,000 in life insurance or annuities if funded at least 2 years prior to claim of exemption. § 815.18(f)	Unmatured. § 522(d)(7) Life Insurance with loan value. \$13,400 per debtor § 522(d)(8)
B. Life Insurance	Payment to debtor under a life insurance contract that insured the life of an individual on whom the debtor was a dependent at the time of death to the extent reasonably necessary for the support of the debtor and debtor dependents. § 815.18(i)(a)	Same as Wisconsin exemption. § 522(d)(11)(C)
*These would apply to 401(k) plans, 403 plans (university, government, and not-for-profit employees), IRAs, Roth IRAs, 414 and 457 plans (public employees), and 501(a) thrift savings plans for federal employees.		
Motor Vehicles	\$4,000 plus unused portion of Consumer Goods exemption. § 815.18(g)	\$4,000 in one vehicle. § 522(d)(2)

Exemption Chart

Category	Wisconsin Exemption (Wis. Stats. unless otherwise noted)	Federal Exemption (11 U.S.C. unless otherwise noted)
A. Personal Injury / Wrongful Death	A payment from the wrongful death of an individual whom debtor was a dependent at the date of death to the extent reasonably necessary for the support of the debtor and dependents. § 815.18(i)(b)	Same as Wisconsin exemption. § 522(d)(11)(B)
B. Personal Injury / Wrongful Death	\$50,000 from personal injury, including pain and suffering and actual pecuniary loss. § 815.18(c)	\$25,150 per debtor, not including pain and suffering. § 522(d)(11)(D)
C. Personal Injury / Wrongful Death	A payment for loss of a future earnings is an amount reasonably necessary for the support of debtor and debtor's dependents. § 815.18(i)(d)	Same as Wisconsin exemption. § 522(d)(11)(E)
Depository Account	\$5,000 § 815.18(k)	See Wildcard, below.
Child Support/ Family Support	Child support, family support, alimony, maintenance to the extent reasonably necessary for the support of debtor and debtor's dependents. § 815.18(c)	Alimony, support, or separate maintenance to the extent reasonably necessary for support of the debtor or any dependent. § 522(d)(10)
Worker's Compensation	Unlimited § 102.27	§ 522(d)(10)(C)
Miscellaneous / Wildcard		\$1,325 plus up to \$12,575 of unused (d)(1) homestead on any property. § 522(d)(5)

Exemption Chart

Category	Wisconsin Exemption (Wis. Stats. unless otherwise noted)	Federal Exemption (11 U.S.C. unless otherwise noted)
College Savings Accounts	EdVest § 815.18(p) Confirmed by <i>In re Bronk, (Cirilli v. Bronk)</i> , No. 13-1123 (7 th Cir., June 5, 2015).	§ 541 (b)(6) – Contributions to 529 accounts made within 365 days prior to filing are not property of the estate. Up to \$6,825 is excluded if contributed more than 1 year ago, but less than 2 years ago. Contributions made more than 2 years ago are not property of the estate.

Note: Values effective April 1, 2019 (Readjusted every three years)

- Exemption things to remember
 - Debtor must choose WI or Federal
 - Joint debtors each are entitled to exemption 11 U.S.C. § 522(m)
 - Married debtors filing jointly must choose same 11 U.S.C. § 522(b)
 - Wis. Stat. 815.18(8)
 - Only individual debtors may claim exemptions
- A bankruptcy discharge enables the debtor to obtain a satisfaction of a judgment lien under Wis. Stats. § 806.19(4), even if the property subject to lien is not exempt. *Megal Development Corp. v. Shadof*, 286 Wis.2d 105, 705 N.W.2d 645 (2005)
- Debtor may avoid liens in certain circumstances
 - Household goods
 - Tools of trade
- Exemption planning can be very important to promote debtor's fresh start

Automatic Stay – 11 U.S.C. § 362

Generally, any actions taken in violation of the automatic stay are void. *Matthews v. Rosene*, 739 F.2d 249 (7th Cir. 1989).

This is true regardless of whether or not the creditor had actual knowledge of the bankruptcy filing. *In re J & L Transport, Inc.*, 47 BR 51 (Bankr. W.D. Wis.1985)

- Halts start or continuations of suits or legal proceedings;
- Enforcement of judgment

- Orders of repossession
- Lien enforcement

Thus, repossession and foreclosure activities are prohibited as soon as the case is filed. No acts may be taken to recover possession of the property or to enforce the lien. *Nobelman v. American Savings Bank*, 113 S.Ct. 2016 (1993).

Automatic → Notice not required
 Actions in violation are likely void
 Can result in damages

Exceptions to stay:

Criminal 11 U.S.C. § 363 (b)(1)

Most family law matters – not affecting the marital assets 11 U.S.C. § 362 (b)(2)

Tax audits & notices 11 U.S.C. § 362 (b)(9)

Police Powers

Stay may be lifted, terminated, modified, or annulled 11 U.S.C. § 362(d)(b)(4)

- Generally only for secured creditors to pursue collateral
- Also used to continue divorce actions
- Suits versus insurers

Accomplished by Motion

- Most motions in bankruptcy are done by negative notice
- See B.R. 4001

Does not apply to co-debtors

Discharge

- Almost all Chapter 7 debtors file bankruptcy to discharge debt.
- Discharge provides in personam relief
- Operates as an injunction preventing future collection 11 U.S.C. § 524
- Discharge applies only to debts which arose before the filing 11 U.S.C. § 727(6)
- Discharge order is issued after time for objections has run.
- Only individuals get a discharge 11 U.S.C. § 727(a)(1)
 - Entities do not get discharge
- Only one Chapter 7 discharge every 8 years 11 U.S.C. § 727(a)(8)
 - Shorter intervals for other chapters
- Discharge does not discharge liens.
 - “Liens pass through bankruptcy unaffected” *Dewsnup v. Timm*, 502 U.S.C. § 410 (1992)

Denial of Discharge

- Requires timely filing of Adversary Proceeding, and proof that during or within a year before the case, the debtor
 - (a) transferred, removed, destroyed or concealed assets
 - (b) with the intent to hinder, delay or defraud a creditor or the trustee. 11 U.S.C. § 727(a)(2).

This does not prevent “exemption planning” (turning non-exempt assets into exempt assets) as long as the debtor doesn’t commit fraud in the process. *In re Smiley*, 864 F.2d 562 (7th Cir. 1989).

- Failed to keep or preserve financial records
- Lied or withheld information during the case 11 U.S.C. § 727(a)(4)
- Failed to explain loss of assets 11 U.S.C. § 727(a)(5)

Non-Dischargeable Debts

- Most are automatic
- Certain credit card abuses
- Unscheduled creditors (in certain circumstances – See: *In Re Gusekk*, 310 B.R. 400 (Bankr. E.D. Wis. 2004)
- Most taxes
- DSO and other debts arising from divorce
- Fines, penalties and forfeitures
- Student Loans
- Personal injury damages from intoxicated operation of a motor vehicle
- Debts denied discharge in a prior case

Some require Bankruptcy Court Determination

- Incurred by fraud or misrepresentation 11 U.S.C. § 523(a)(2)
- Defalcation by a fiduciary, embezzlement, theft 11 U.S.C. § 523(a)(4)
- Willful and malicious injury to persons or property, including conversion. 11 U.S.C. § 523(a)(6)

Dealing with secured debts

Debtor must file Statement of Intention 11 U.S.C. § 521(a)(2)(A)

Choices:

- Surrender – Lose collateral, but owe nothing
- Reaffirm – Theoretically gives debtor a chance to re-negotiate
Serious matter because impairs debtor's fresh start
Therefore, requires disclosures and attorney certification 11 U.S.C. § 524(k)(5)
Right to rescind
- Redeem-- Available only for personal property intended for personal, family or household use
Must be consumer debt
Must pay value of collateral, in cash
- Ride Through-- Keep paying per the contract
No reaffirmation
Surrender at any time
Only available if debt subject to Wisconsin Consumer Act

Resources: Pacer – www.pacer.uscourts.gov

ED WI – www.wieb.uscourts.gov

WD WI – www.wiwb.uscourts.gov

BICR – listserv

Mentor listserv

CLE - Annual Bankruptcy Update

Annual Conference

Kohler Retreat

Lou Jones Breakfast Club

Western District Bankruptcy Bar