BANKRUPTCY OVERVIEW

Bankruptcy is a procedure under federal law which allows debtors to eliminate debt through a process of either (1) liquidation; or (2) reorganization. The two most frequently used chapters of bankruptcy are Chapter 7 and Chapter 13.

Chapter 7

- A chapter 7 bankruptcy is used by both consumers and businesses.

- Chapter 7 eliminates *unsecured* debts (credit card debts, medical debts, etc.). In most cases, a Chapter 7 debtor will be allowed to keep her property (vehicle, home, etc.) *and* be allowed to discharge all of her *unsecured* debts.

- A debtor only forfeits property in a Chapter 7 bankruptcy if she has property that is non-exempt (which is determined by applying either federal or state exemptions to the assets of the debtor).

- A Chapter 7 debtor may also pick and choose which *secured* debts (car notes, mortgages, etc.) she would like to eliminate and which *secured* debt she would like to reaffirm.

- Example: If a Chapter 7 debtor is current on a vehicle loan at the time she filed bankruptcy, she could elect to either (1) surrender the vehicle in the bankruptcy (where she could walk away from the vehicle and the purchase contract); *or* (2) retain the vehicle and reaffirm her obligation to make payments pursuant to the original purchase contract (where she would continue to make monthly payments to the car creditor).

- Example: If a Chapter 7 debtor is current on a mortgage at the time she filed bankruptcy, she could elect to either (1) reaffirm the mortgage debt owed on real property she chose retain at the time of filing a chapter 7 bankruptcy (where mortgage payments would continue to be made), or (2) surrender the real property at the time a Chapter 7 is filed (where she could walk away from the real property and mortgage free and clear).

Chapter 13

- A Chapter 13 bankruptcy is a debt reorganization plan.

- In a Chapter 13 bankruptcy, a debtor proposes a 3-5 year debt reorganization plan.

- The terms of this repayment plan include the debtor making a monthly payment to the bankruptcy trustee.

- With the money received from the debtor each month, the bankruptcy trustee makes payments to the debtor's creditors as proposed in the debtor's debt reorganization plan.

- The debt reorganization plan usually provides to pay only *secured* creditors, i.e., specific secured

debts (vehicles, houses, taxes, etc.).

- The debt reorganization plan provides to pay *unsecured* creditors only if it is determined that (1) the debtor has "disposable income," or (2) the debtor has "non-exempt assets."

- The amount of money that a debtor is required to pay *unsecured* creditors (credit card debts, medical debts, etc.) through a debt reorganization plan (if anything at all) depends on the amount of "disposable income," and/or "non-exempt assets" the debtor is determined to have at the time he files the debt reorganization plan.

- A debtor may file a debt reorganization plan in order to prevent a house foreclosure; prevent a vehicle repossession; catch-up missed vehicle payments; catch-up missed mortgage payments; pay taxes; stop interest from accruing on tax debt (state and federal taxes); keep valuable non-exempt property; and more.

- If a debtor makes all proposed payments of his debt reorganization plan, he will have paid-off or become current on all secured debts proposed to be paid through the reorganization plan, and will receive a discharge (elimination) of all remaining unsecured debts.

- To file Chapter 13 bankruptcy, a debtor must have a "regular source of income."