

Bankruptcy Law: Know It and Be Guided

Student's Name

Institution of Learning

Bankruptcy Law: Know It and Be Guided

Bankruptcy law governs the rights and responsibilities of debtors and determines the rights and remedies of creditors in case debtors cannot pay them off. In general, bankruptcy law deals with collecting the assets of a debtor, determining which assets can be sold to pay off creditors, and distributing the debtor's assets among creditors. The most controversial idea about bankruptcy law is its fundamental goal of ensuring that after bankruptcy is filed, and assets are distributed, the debtor preserves some assets to recover from burdensome debts. Therefore, banks and corporate organizations should know and be guided by bankruptcy law to meet current obligations, avoid dishonesty during the meeting with creditors, provide exemption claims on time, and preserve the ability to recover from burdensome debts through a bankruptcy discharge.

Regulated by the United States Congress, bankruptcy law governs not only the process of gathering, evaluating, and distributing a debtor's assets but also liquidating and reorganizing a bankruptcy estate. According to Brickley and Gottesman (2017), a bankruptcy estate includes a debtor's assets that are subject to a court's jurisdiction and thus, can be transferred to a creditor's ownership. However, even when a debtor's assets become a bankruptcy estate, and it becomes possible to use them for paying off debts, he or she can extract these assets by providing exemption claims. Generally, a debtor has 30 days to present exemption claims after the meeting with creditors if bankruptcy takes place (Brickley & Gottesman, 2017). A debtor's exempt property is the basic assets that are considered necessary by the court for a debtor's recovery after bankruptcy.

To understand the complications of bankruptcy law, it is necessary to know what can be included in and what can be excluded from a debtor's bankruptcy estate. Apart from the tangible

assets of the debtor, his or her bankruptcy estate also includes tax refunds for prepetition years and intellectual property, inheritances received within six months after the bankruptcy is filed, and tax attributes such as loss carryforwards (Brickley & Gottesman, 2017). As such, creditors assume the right to the debtor's inheritances, tax refunds, and stock options, as well as to file a lawsuit against the debtor. The exceptions to the bankruptcy estate include the debtor's rights in the trust funds and in ERISA-qualified retirement plans since those assets are not the property of the estate (Brickley & Gottesman, 2017). The understanding of what can be included in and excluded from the bankruptcy estate is necessary for the correct formulation of claims when filing bankruptcy.

Chapter 7 of bankruptcy law provides the most important guidelines for banks on how to operate when filing bankruptcy. According to this chapter, a trustee is a person elected by the creditors or appointed by the court for gathering the debtor's non-exempt property, managing funds, and paying expenses to owed creditors ("Chapter 7 - Bankruptcy Basics," 2019). In this context, the Bankruptcy Code, which is the common name of bankruptcy law in the United States, grants the trustee's right to recover the property that might be improperly transferred by the debtor or that might be seized by the creditors shortly before the case is filed ("Chapter 7 - Bankruptcy Basics," 2019). Trustees can abandon some assets if their net value to the bankruptcy estate is insignificant, or the tax burden surpasses the available sale proceeds. Abandonment can take place during the case, and any property that the trustee does not manage or sell is considered abandoned by the court. Bankruptcy law allows debtors to preserve basic assets to recover from large debts that can be accomplished through a bankruptcy discharge. However, this provision

also implies that the debtor is released from personal liability from particular debts, and creditors are prohibited from collecting those debts.

A liquidation, reorganization, and cross-border insolvency are the most common forms of bankruptcy one should know when it comes to filing bankruptcy in court. Liquidation assumes the involvement of a trustee who is responsible for collecting, managing, and distributing the debtor's assets to creditors. Regarding liquidation, it is important to understand that with the passage of the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) in 2005, bankruptcy law significantly changed and made it difficult for consumer debtors to file bankruptcy (Herring, 2014). Specifically, according to the BAPCPA, credit card issuers can decrease their losses from bankruptcy by increasing credit percentages charged to customers. A reorganization is a form of bankruptcy that is available only to the states, cities, towns, and rural municipalities that helps them pay off their creditors by raising taxes. Finally, cross-border insolvency deals with the insolvency of banks and companies that operate internationally and secures debtors by prohibiting creditors from distributing the debtor's proceeds to rehabilitate financial institutions in bankruptcy (Herring, 2014). Thus, different forms of bankruptcy ensure distinct levels of protection for the debtor and creditors.

Generally, bankruptcy law reveals the implications experienced by banks when it comes to filing bankruptcy. In particular, filing bankruptcy costs a bank a significant sum of money, the largest part of which goes for hiring an attorney or trustee and filing fees. However, debtors can be released from filing fees by petitioning for a fee waiver that is based on the debtor's income declaration and is not larger than 150% of the federal poverty level (Brickley & Gottesman, 2017). In addition to that, it takes approximately two years for the bank in bankruptcy to recover

from the debts and improve its credit score by taking small credit that is easy to pay off in a short period. Even though the United States Bankruptcy Court is interested in helping banks recover from debt to ensure the flow of credit in the national economy, filing bankruptcy in the banking sector is a costly and time-consuming procedure that can either help the debtor to recover or escalate the conflict with creditors.

As a result, filing bankruptcy is a complex and confusing process that opens the debtor's assets, income, and expenses to public scrutiny and requires complete disclosure of his or her financial state. Dishonesty about the debtor's financial affairs is a serious federal crime that is under the jurisdiction of the Federal Bureau of Investigation in the United States. Any attempt to hide information about the real finances of the debtor can result in the discharge revocation by a court. Since the discharge is the most important goal of bankruptcy law, one should understand that the court can protect the debtors from creditors' attempts to collect bankruptcy assets. Hence, banks and other profit organizations should be aware of bankruptcy law to claim exemption of assets, meet current obligations, and remain capable of recovering from burdensome debts through a bankruptcy discharge.

References

Brickley, S. D., & Gotesman, B. M. (2017). *Business Law Basics* (2nd ed.). Berger Harris LLP.

“Chapter 7 - Bankruptcy Basics.” (2019). *United States Courts*. Retrieved from <https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/chapter-7bankruptcy-basics>

Herring, R. (2014). The Challenge of Resolving Cross-Border Financial Institutions. *Yale Journal on Regulation*, 31(3), 853-875.