

# Creditor Protection

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# Asset Protection and Essential Takeaways

- Goal is to protect assets from creditor's claims
- Strategies to accomplish them vary
- Clients need to start before the claim arises
- Clients need to have Insurance
- Clients need to put business interests in Business Entities
- Don't help clients commit Fraud

# Why People Go Bankrupt

- Medical Bills
- Job Loss
- Bad Spending
- Divorce
- Unexpected Expenses

# Business And Non-Business Filings

Years Ending June 30, 2015-2019

Year	Business	Non-Business	Total
2019	22,483	750,878	773,361
2018	22,245	753,333	775,578
2017	23,443	772,594	796,037
2016	25,227	793,932	819,159
2015	25,046	854,690	879,736

# Consequences

- Potential property loss
- Decreased credit score
- Credit report impacted for up to 10 years
- Employer may find out

# Ohio Bankruptcy Process – How to File

## *2005 Bankruptcy Act Credit Counseling*

The 2005 Bankruptcy Act requires all individual debtors who file bankruptcy on or after October 17, 2005, to undergo credit counseling within six months before filing for bankruptcy relief and to complete a financial management instructional course after filing bankruptcy.

# Ohio Bankruptcy Process – How to File

## *2005 Bankruptcy Act Means Test*

Under the 2005 Bankruptcy Act, the applicant's income and expenses will be analyzed to determine if they qualify to file a Chapter 7 or if they must file Chapter 13.

- Average income for the six months prior to filing and compare it to the median income for Ohio.
  - If the income is below the median, then the applicant may choose Chapter 7. If their income exceeds the median, the remaining parts of the means test will be applied to determine if they can file Chapter 7 or if they must file Chapter 13.

# Ohio Bankruptcy Process – How to File

## *Gathering Paperwork*

To begin the bankruptcy process an applicant must itemize their current income sources; major financial transactions for the last two years; monthly living expenses; debts (secured and unsecured); and property (all assets and possessions, not just real estate). They should also collect their tax returns for the last two years, deeds to any real estate owned, car(s) titles, and the documents for any loans.

# Ohio Bankruptcy Process – How to File

## *Petitions and Forms*

- To actually file, either the applicant or their attorney will need to file a two-page petition and schedules that ask the applicant to describe their current financial status and recent financial transactions (typically within the last two years).
- Once the applicant has filed the paperwork with the bankruptcy court, an **automatic stay** immediately goes into effect. This provision prevents creditors from making direct contact with the applicant or staking a claim on any of their property from the day of filing forward. This will stop any foreclosure proceedings.

# Chapter 7 or Chapter 13

I am not a bankruptcy attorney – Ha!

For bankruptcy advice, call Attorney Laura Nesbitt at 614-800-0262 because I did.

(Not for bankruptcy, for this presentation.)

# Chapter 13 Requirements

- Chapter 13 is often referred to as a “wage earner plan.” It requires a debtor to file a proposed repayment plan to pay debts (or parts of debts) from current, ongoing income over a 3 to 5 year period.
- If an applicant is filing a Chapter 13 bankruptcy, a proposed repayment plan must also be submitted. Priority claims (such as taxes and back child support) must be paid in full; unsecured debts (like credit card debt and medical bills) are usually paid in part.
- Upon filing, the court will assume legal control of the applicant’s debts and any property not covered by their Ohio exemptions. A **bankruptcy trustee** will be appointed to the case by the court.
- 341 Meeting of Creditors

# Chapter 7 Requirements

- Chapter 7 is known as “straight” bankruptcy or “liquidation.” It may require a debtor to give up property that exceeds the value of allowed limits called “exemptions,” so the property can be sold to pay creditors.
- The applicant files a petition asking the court to discharge debts. The basic idea in a chapter 7 bankruptcy is to wipe out (discharge) debts in exchange for property, except for “exempt” property which the law allows the applicant to keep.

# What Property Can Be Protected from Creditors When Filing Bankruptcy in Ohio?

If an applicant seeks to exempt property that is currently secured by a loan, such as a home or maybe a car, an exemption is needed only to protect the equity in the property that exceeds the exemption value.

- In Chapter 7, if the amount of equity in property is not fully covered by an exemption, the trustee may liquidate the asset and would distribute the proceeds from the sale in the form of payments to creditors. In Chapter 13, the property remains the debtor's property, even if it is not fully exempt. For this reason, many people choose Chapter 13 to protect non-exempt assets.

# Some of the most commonly utilized bankruptcy exemptions for Ohio include ORC 2329.66

- **Homestead:** \$145,425
- **Motor vehicle:** \$4,000
- **Cash on hand:** \$500
- **Household goods and furnishings:** \$625 per item up to a total value of \$13,400
- **Jewelry:** \$1,700
- **Tools of the trade:** \$2,550
- **Benevolent society death benefits:** \$5,000
- **Personal injury award received within 12 months before filing:** \$25,175
- **Wildcard-Other Property:** \$1,325

# Continued...

- **IRA:** No limit
- **ERISA plans:** No limit
- **Tax Deferred Annuities:** No limit
- **Earnings:** 75%
- **Life Insurance:** No limit
- **529 plans:** No limit

# Creditor's Rights

## *Creditors in bankruptcy are entitled to:*

- Share in any distribution from the bankruptcy estate according to the priority of their claim.
- Be heard by the court in matters concerning the debtor's plan, the liquidation of the debtor's non-exempt assets, and payments from the assets of the estate.
- Challenge an individual debtor's right to a discharge or to discharge the creditor's particular debt.

# What Will a Creditor Do?

- Cease any collection action.
- File a claim with the court.
- Consider whether a claim is dischargeable.
- Determine whether a claim is secured by the debtor's assets
- Share information with the trustee.
- Monitor the progress of the case.

# Best Defense is a Good Offense

- LLC
  - Limited Liability Company
- Insurance
- Trusts
  - For clients
  - For their children

# Ohio Domestic Asset Protection Trusts

- Domestic asset protection trusts are available in seventeen states. What exactly is a DAPT, and what distinguishes it from other types of trusts?
- What can go in the trust?
  - Cash
  - Securities
  - Limited Liability Companies (LLCs)
  - Business assets, including inventory and equipment
  - Intellectual property, including licenses and patents
  - Real estate
  - Vehicles, boats, and aircraft

# LLC in Bankruptcy

- If the Debtor has a 100% membership interest in the LLC, the jurisprudence generally recognizes that the Chapter 7 Trustee can sell the assets of the LLC and use the proceeds to pay the bankruptcy estate's creditors.
- Multi-Member LLC - the Chapter 7 Trustee can market the economic component of that membership interest (i.e. the right to receive distributions and pass-through of profits). However, the Trustee will have difficulty in exercising the Debtor's managerial or voting rights associated with the membership interest.

- Consensus: The economic rights accompanying LLC membership interests are property of the individual member's bankruptcy estate pursuant to § 541(a)(1), and at a minimum the chapter 7 Trustee is entitled to that economic component of (i.e., the right to distributions) just like a seizing creditor.
- Consensus: The LLC's assets are not property of the estate.
- Apparent Consensus: With respect to single member LLCs, the chapter 7 trustee is a "substituted member" can exercise both the debtor's economic and managerial components of the debtor's membership interests. However, this does not mean there is a substantive consolidation or a total disregard of the LLC entity, and presumably the trustee must pay the LLC's creditors and otherwise perform the appropriate management functions for the LLC before making a distribution to the bankruptcy estate.

# Revocable Living Trust

NAME(S): \_\_\_\_\_

DATE: \_\_\_\_\_

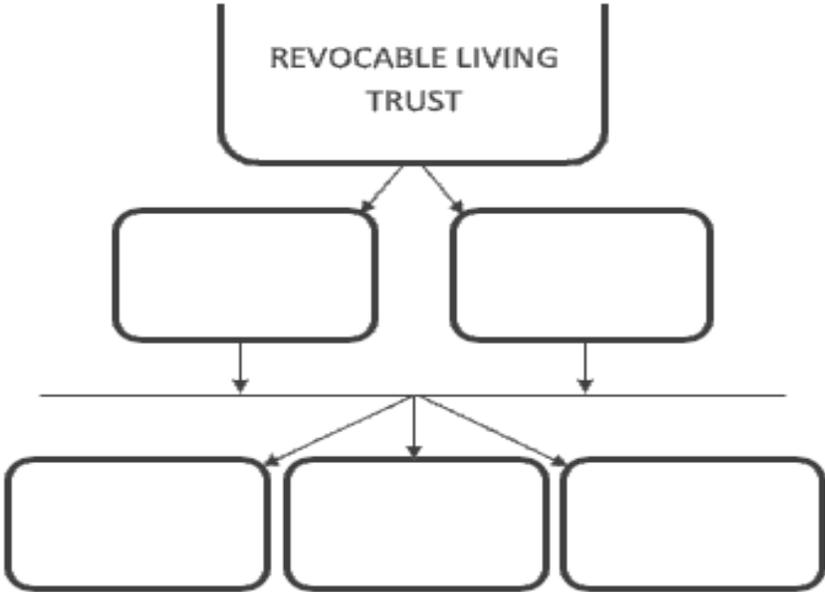
TRUSTMAKER(S)

TRUSTEE(S)

BENEFICIARY(IES)

SUCCESSOR TRUSTEE(S)  
AT DISABILITY

SUCCESSOR TRUSTEE(S)  
AT DEATH



POUR OVER WILL  
EXECUTOR \_\_\_\_\_  
GUARDIAN(S) \_\_\_\_\_

SUCCESSOR FINANCIAL POA  
\_\_\_\_\_  
SUCCESSOR HEALTH CARE DIRECTIVES  
\_\_\_\_\_

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Thank you for your time and attention!  
Please feel welcome to contact me  
if you have any questions.

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