

WFG NATIONAL TITLE INSURANCE COMPANY PRESENTS

Basically Title Webinar Series:

Bankruptcy Primer for
Title Insurance Professionals

What is Bankruptcy?

The BK Clause of the U.S. Constitution is found in Article I, Section 8, which states:

**“The Congress shall have Power to
...establish...uniform Laws on the subject of
Bankruptcies throughout the United States...”**



WE THE PEOPLE of the
insure domestic Tranquility, provide for the common defense
and our Posterity, do ordain and establish this Constitution
Article I

Some General Rules for BKs:

1. When you file for bankruptcy, you are no longer in control of your assets.
2. Certain property is exempted.
3. As a rule, only unsecured debts are discharged.
4. Secured debts aren't usually discharged.
5. Some debts cannot be discharged at all: most taxes, student loans, alimony, child support, etc.
6. You should wait at least 14 days to act on any BK Court order.

Types of Bankruptcy

Chapter 7

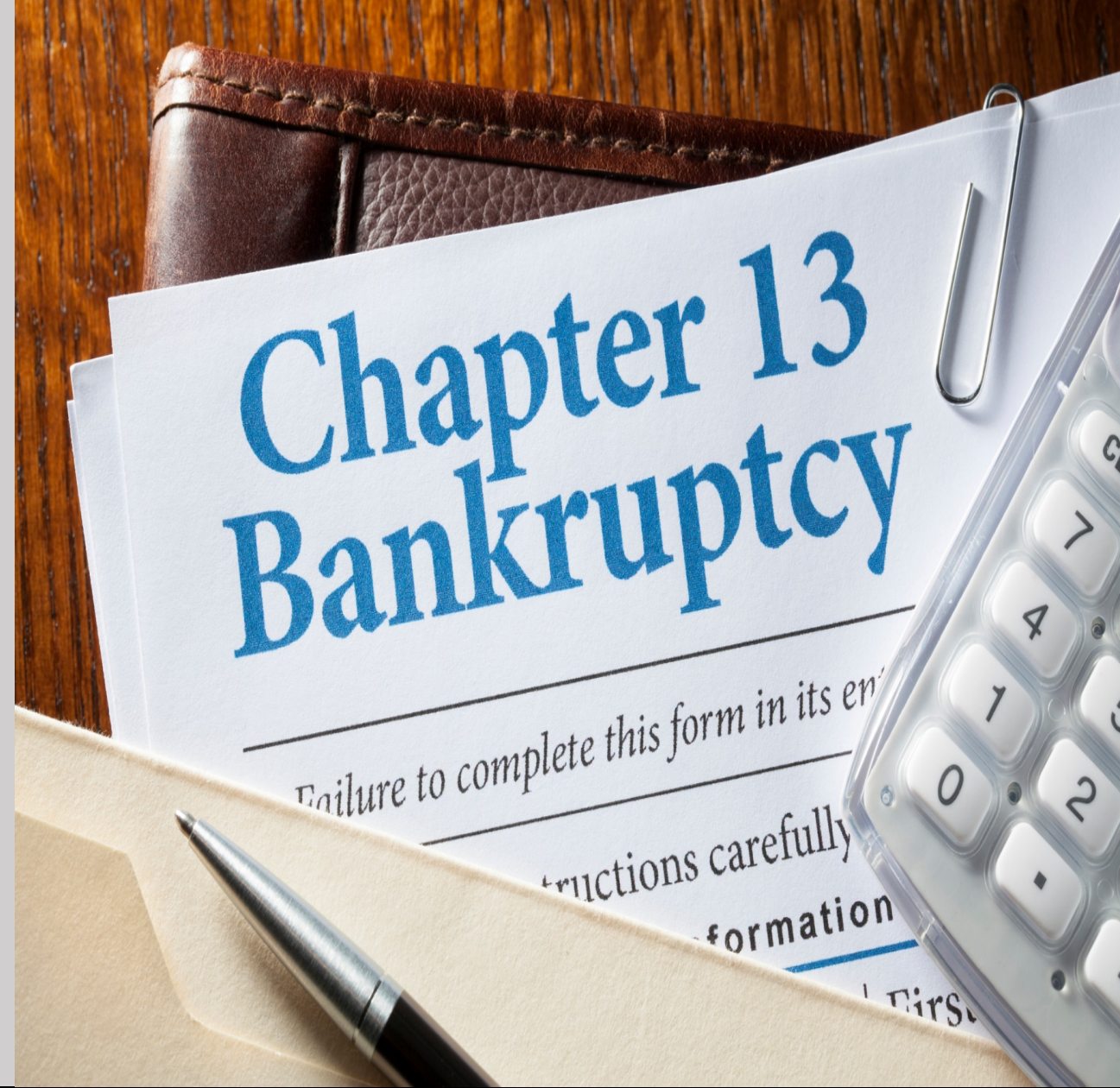
A liquidation bankruptcy overseen by a bankruptcy Trustee, and mostly used by individuals below certain income levels.



Types of Bankruptcy

Chapter 13

Available only to individual wage earners, and can take 3-5 years to complete.



Types of Bankruptcy

Chapter 11

Creates a reorganization plan to allow the individual or business time to get their business affairs in order and emerge as a going concern.



How Are Bankruptcies Filed?

In most cases, you file voluntarily for bankruptcy.

In the worst case, your creditors can force you into an involuntary bankruptcy.

Automatic Stay:

A Powerful Bankruptcy Tool



The Automatic Stay: (Drumroll, please!)

The exact moment a BK petition is filed, an automatic stay prevents creditors from taking actions to collect most debts!

Prohibited creditor actions include:

- Beginning or continuing judicial, administrative or other legal
- Proceedings against the debtor;
- Enforcement of judgments against the debtor or property of the estate;
- Actions to create, perfect or enforce a lien against a debtor's property;
- The setoff of any debt owing to the debtor that arose before the BK was filed.

The Automatic Stay (continued)

The automatic stay provisions do not affect the following actions or proceedings:

- to establish paternity;
- to establish or modify domestic support obligations (i.e., alimony);
- to determine child support or visitation;
- related to dissolution of marriage, except to the extent such proceedings determine the division of property of the estate;
- related to domestic violence.

Getting Property Out of the BK Estate

This is one of our biggest concerns as title professionals.

Methods include:

- Abandonment of the property by the Trustee
- Sale free and clear of any liens or judgments
- Sale in the ordinary course of business
- Lift of the automatic stay

Another Big Problem

Liens, judgments and mortgages attached to the property before the bankruptcy was filed!

An often-heard conversation with the homeowner:

Homeowner: “I filed a Chapter 7 BK four years ago, and the judgment you are asking about was listed on my BK petition and has been discharged.”

Title company: “Is there a court order avoiding this lien or judgment?”

Homeowner: “I don’t know what that means, but my lawyer says I don’t owe the money anymore and I’m not going to pay it now.”

U.S. Supreme Court Decision:

In **Johnson v. Homestate Bank, 501 U.S. 78, 82-83, 11 S. Ct. 2150, 115 L.Ed 2nd 66, 73-74 (1991)**, the U.S. Supreme Court held that a creditor's right to foreclose on a lien survives the bankruptcy proceedings, notwithstanding the discharge of personal liability of the debtor pursuant to §524(a).

Other Common Bankruptcy Scenarios to Watch Out for:

- Foreclosures: The automatic stay prevents a foreclosure from being filed or pursued in state court.
- Preferences: payments made by the debtor between 90 days and a year before filing for bankruptcy can sometimes be avoided by the BK Trustee.
- Unsigned mortgages or deeds of trust.
- Unrecorded documents.

How Bankruptcy Affects Co-Tenancy

For property owned as joint tenants, a BK filing by one joint tenant may convert the co-tenancy to tenancy in common. Check with your underwriter about specific law in your state.

If your state recognizes tenancy by the entirety, a BK filing by a single spouse may not convert the co-tenancy to tenancy in common. Verify with your underwriter about specific law in your state.



Have Questions?

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