

FAQ: Basic Bankruptcy Terms

Your Day in Bankruptcy Court: A Glossary

341 meeting—A meeting of creditors at which the debtor is questioned under oath by creditors, a trustee, an examiner, or the U.S. Trustee about his or her financial affairs.

adversary proceeding—A lawsuit arising in or related to a bankruptcy case that begins by filing a complaint with the court, that is, a "trial" that takes place within the context of a bankruptcy case.

assets—Property of all kinds, including real and personal, tangible and intangible.

automatic stay—An injunction that automatically stops lawsuits, foreclosure, garnishments, and most collection activity against the debtor the moment a bankruptcy petition is filed.

bankruptcy administrator—An officer of the Judiciary serving in the judicial districts of Alabama and North Carolina who, like the United States trustee, is responsible for supervising the administration of bankruptcy cases, estates, and trustees; monitoring plans and disclosure statements; monitoring creditors' committees; monitoring fee applications; and performing other statutory duties.

bankruptcy estate—All interests of the debtor in property at the time of the bankruptcy filing. The estate technically becomes the temporary legal owner of all of the debtor's property.

bankruptcy trustee—A private individual or corporation appointed in all Chapter 7 and Chapter 13 cases to represent the interests of the bankruptcy estate and the debtor's creditors.

Chapter 7—The chapter of the Bankruptcy Code providing for "liquidation," that is, the sale of a debtor's nonexempt property and the distribution of the proceeds to creditors. In order to be eligible for Chapter 7, the debtor must satisfy a "means test." The court will evaluate the debtor's income and expenses to determine if the debtor may proceed under Chapter 7.

Chapter 7 trustee—A person appointed in a Chapter 7 case to represent the interests of the bankruptcy estate and the creditors. The trustee's responsibilities include reviewing the debtor's petition and schedules, liquidating the property of the estate, and making distributions to creditors. The trustee may also bring actions against creditors or the debtor to recover property of the bankruptcy estate.

Chapter 11—A reorganization bankruptcy, usually involving a corporation or partnership. A Chapter 11 debtor usually proposes a plan of reorganization to keep its business alive and pay creditors over time. People in business or individuals can also seek relief in Chapter 11.

Chapter 13—The chapter of the Bankruptcy Code providing for adjustment of debts of an individual with regular income, often referred to as a "wage-earner" plan. Chapter 13 allows a debtor to keep property and use his or her disposable income to pay debts over time, usually three to five years.

Chapter 13 trustee—A person appointed to administer a Chapter 13 case. A Chapter 13 trustee's responsibilities are similar to those of a Chapter 7 trustee; however, a Chapter 13 trustee

has the additional responsibilities of overseeing the debtor's plan, receiving payments from debtors, and disbursing plan payments to creditors.

claim—A creditor's assertion of a right to payment from a debtor or the debtor's property.

collateral—Property that is promised as security for the satisfaction of a debt.

confirmation—Approval of a plan of reorganization by a bankruptcy judge.

consumer debts—Debts incurred for personal, as opposed to business, needs.

debtor's plan—A debtor's detailed description of how the debtor proposes to pay creditors' claims over a fixed period of time.

discharge—A release of a debtor from personal liability for certain dischargeable debts. Notable exceptions to dischargeability are taxes and student loans. A discharge releases a debtor from personal liability for certain debts known as dischargeable debts and prevents the creditors owed those debts from taking any action against the debtor or the debtor's property to collect the debts. The discharge also prohibits creditors from communicating with the debtor regarding the debt, including through telephone calls, letters, and personal contact.

disposable income—Income not reasonably necessary for the maintenance or support of the debtor or dependents. If the debtor operates a business, disposable income is defined as those amounts over and above what is necessary for the payment of ordinary operating expenses.

executory contracts—Contracts or leases under which both parties to the agreement have duties remaining to be performed. If a contract or lease is executory, a debtor may assume it (keep the contract) or reject it (terminate the contract).

exempt assets—Property that a debtor is allowed to retain, free from the claims of creditors who do not have liens on the property.

lien—A charge on specific property that is designed to secure payment of a debt or performance of an obligation. A debtor may still be responsible for a lien after a discharge.

liquidation—A sale of a debtor's property with the proceeds to be used for the benefit of creditors.

No-asset case—A Chapter 7 case in which there are no assets available to satisfy any portion of the creditors' unsecured claims.

nondischargeable debt—A debt that cannot be eliminated in bankruptcy.

nonexempt assets—Property of a debtor that can be liquidated to satisfy claims of creditors.

objection to discharge—A trustee's or creditor's opposition to releasing a debtor from personal liability for certain dischargeable debts.

petition—The document that initiates the filing of a bankruptcy proceeding, setting forth basic information regarding the debtor, including name, address, chapter under which the case is filed, and estimated amount of assets and liabilities.

proof of claim—A written statement describing the reason a debtor owes a creditor money, which typically sets forth the amount of money owed. (There is an official form for this purpose.)

property of the estate—All legal or equitable interests of the debtor in property as of the commencement of the case.

reaffirmation agreement—An agreement by a debtor to continue paying a dischargeable debt after the bankruptcy, usually for the purpose of keeping collateral or mortgaged property that would otherwise be subject to repossession.

redemption—A procedure in a Chapter 7 case whereby a debtor removes a secured creditor's lien on collateral by paying the creditor the value of the property. The debtor may then retain the property.

schedules—Lists submitted by the debtor along with the petition (or shortly thereafter) showing the debtor's assets, liabilities, and other financial information. (There are official forms a debtor must use.)

secured creditor—A secured creditor is an individual or business that holds a claim against the debtor that is secured by a lien on property of the estate. The property subject to the lien is the secured creditor's collateral.

secured debt—A debt backed by a mortgage, pledge of collateral, or other lien.

subordination—The act or process by which a person's rights or claims are ranked below those of others.

trustee—The representative of the bankruptcy estate who exercises statutory powers, principally for the benefit of the unsecured creditors, under the general supervision of the court and the direct supervision of the U.S. trustee or bankruptcy administrator.

Undue hardship—The most widely used test for evaluating undue hardship in the dischargeability of a student loan includes three conditions: (1) the debtor cannot maintain—based on current income and expenses—a minimal standard of living if forced to repay the loans; (2) there are indications that the state of affairs is likely to persist for a significant portion of the repayment period; and (3) the debtor made good faith efforts to repay the loans.

U.S. Trustee—An officer of the U.S. Department of Justice responsible for supervising the administration of bankruptcy cases, estates, and trustees; monitoring plans and disclosure statements; monitoring creditors' committees; monitoring fee applications; and performing other statutory duties.

unsecured claim—A claim or debt for which a creditor holds no special assurance of payment, such as a mortgage or lien. It is a debt for which credit was extended based solely on the creditor's assessment of the debtor's future ability to pay.

wage garnishment—A nonbankruptcy legal proceeding whereby a plaintiff or creditor seeks to subject to his or her claim the future wages of a debtor. In other words, the creditor seeks to have part of the debtor's future wages paid to the creditor for a debt owed to the creditor.