



Bankruptcy Basics Series – Part 1

March 1, 2021

After the Program Questions and Answers from Speakers Patrick Geile and Jeff Andrews

Q: Patrick, as a chapter 7 trustee with cases in the Boise area, what is the average equity that you are seeing in real estate?

P: It varies greatly. Home prices have increased at least 20% in the last 18 months.

Q: Idaho Code 49-1205 allows a judgement creditor to request that a party who has failed to satisfy a financial judgement to have his or her drivers license suspended until the debt is paid. The statute further provides that a discharge of the judgement in bankruptcy "... shall not be deemed a satisfaction of judgment unless the person gives proof of financial responsibility."

What does that mean?-- i.e. what does it mean to give proof of financial responsibility?

P: I understand the debtor must provide proof of current insurance and a copy of the discharge order in order to reinstate their driver's license.

J: Idaho Code 49-1205. Proof of financial Responsibility 49-117(18) Proof of financial responsibility means proof of ability to respond in damages for liability on account of accidents subsequent to the effective date of the proof...

The license has to be reinstated under 11 U.S.C. Sec. 525. You will have to show that your client is insured going forward. In Idaho you can also post a cash bond.

Q: Are the questions by the Trustee at the 341 Meeting posted somewhere or otherwise available to new practitioners?

P: Here are my questions:

1. Do you swear or affirm that the testimony you are about to give is the truth the whole truth and nothing but the truth?
2. Ask to state name on the record, and if they live at the address listed on the petition.

3. Social security number.
4. Did you sign the petition, schedules, statements, and related documents and is the signature your own? Did you read the petition, schedules, statements, and related documents before you signed them?
5. Are you personally familiar with the information contained in the petition, schedules, statements and related documents? To the best of your knowledge, is the information contained in the petition, schedules, statements, and related documents true and correct?
6. Are there any errors or omissions to bring to my attention at this time?
7. Are all of your assets identified on the schedules? Have you listed all of your creditors on the schedules?
8. Have you previously filed bankruptcy?
9. Do you have a domestic support obligation? To whom? Please provide to me the claimant's address and telephone number, but do not state it on the record.
10. What is the address of your current employer?
11. Is the copy of the tax return you provided a true copy of the most recent tax return you filed?
12. Have you read the Bankruptcy Information Sheet provided by the United States Trustee?
13. Have you ever owned real property? When, where, equity, refinance?
14. Any transfers over 1,000 of any kind including gifts, in the past 2 years?
15. Are you suing anyone or contemplating a lawsuit, consulted with any lawyers other than your own in the past 2 years?
16. Are you entitled to life insurance proceeds or an inheritance for someone's death?
17. Does anyone owe you money?
18. Have you borrowed money from friends or family in the past year, have you repaid any?
19. Have you been garnished in the past year?
20. Engaged in any business in the past 4 years?
21. Creditors or US Trustee?

Q: Is it better to download the court forms or use a bankruptcy software program?

P: I have only used Bestcase which I like using

J: Download Forms or Software. I know that Patrick and I both use best case. I think there are significant advantages to the software. I have never used the forms from the website.

Q: I have received a Ch. 7 discharge for a client that had a presumption of abuse. I don't think the statement is accurate that presumption equals Ch. 13

P: I would agree, if that happens Debtor's counsel works with the UST to determine eligibility for a chapter 7

J: Presumption of Abuse. I don't know enough about the specifics of your case. I don't know whether the means test was filled out correctly. I don't know whether the court on its own motion or the United States Trustee alleged the same and a hearing was held 707(b)(1). I don't know whether someone other than yourself went through the 707(b)(2)(A) analysis. Maybe you got lucky and it wasn't reviewed. If I were encouraging a new attorney to incorporate bankruptcy into their practice, I would offer that the statutory language means something. I personally would not make a habit of filing chapter 7 cases where the presumption of abuse has in fact arisen.

Q: If a service provider has a service contract with an individual who files for Chapter 7 bankruptcy, does the automatic stay prevent the service provider (unsecured creditor) from terminating the service contract with the individual?

P: I don't think that is a stay violation-Jeff what do you think?

J: If the service contract is executory in character and if the service provider unilaterally terminated the contract because of the bankruptcy filing (ipso facto clauses unenforceable) I could see scenarios where termination would violate the automatic stay.

Q: I understand child support obligations are not discharged or stayed under Ch 7 or 13, and that they may even take priority. However, does child support count as income for a client? Do they need to report it and can these assets be obtained by debtors?

P: Yes, income from all sources is considered in the means test calculation (excluding social security). Child support is exempt under IC 11-604

J: Child support counts as income. It needs to be reported "I" schedule and SOFA. Child support would be exempt from attachment by creditors. I hope I answered your question.

Q: Will you doing a seminar or CLE on Ch. 11 subchapter V's?

We do not know at this time.