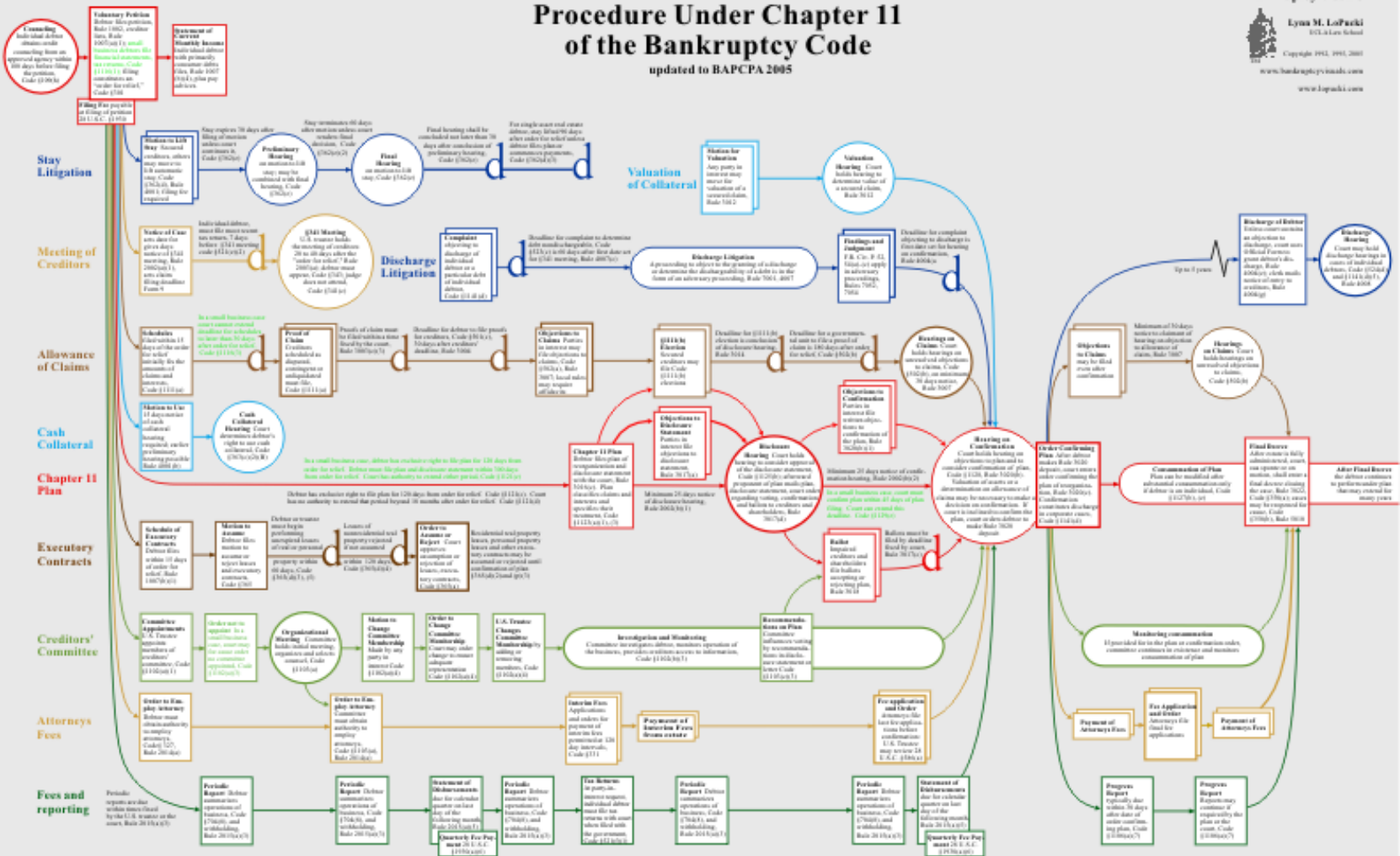


Bankruptcy 101

The Basics of Bankruptcy

Advanced Bankruptcy

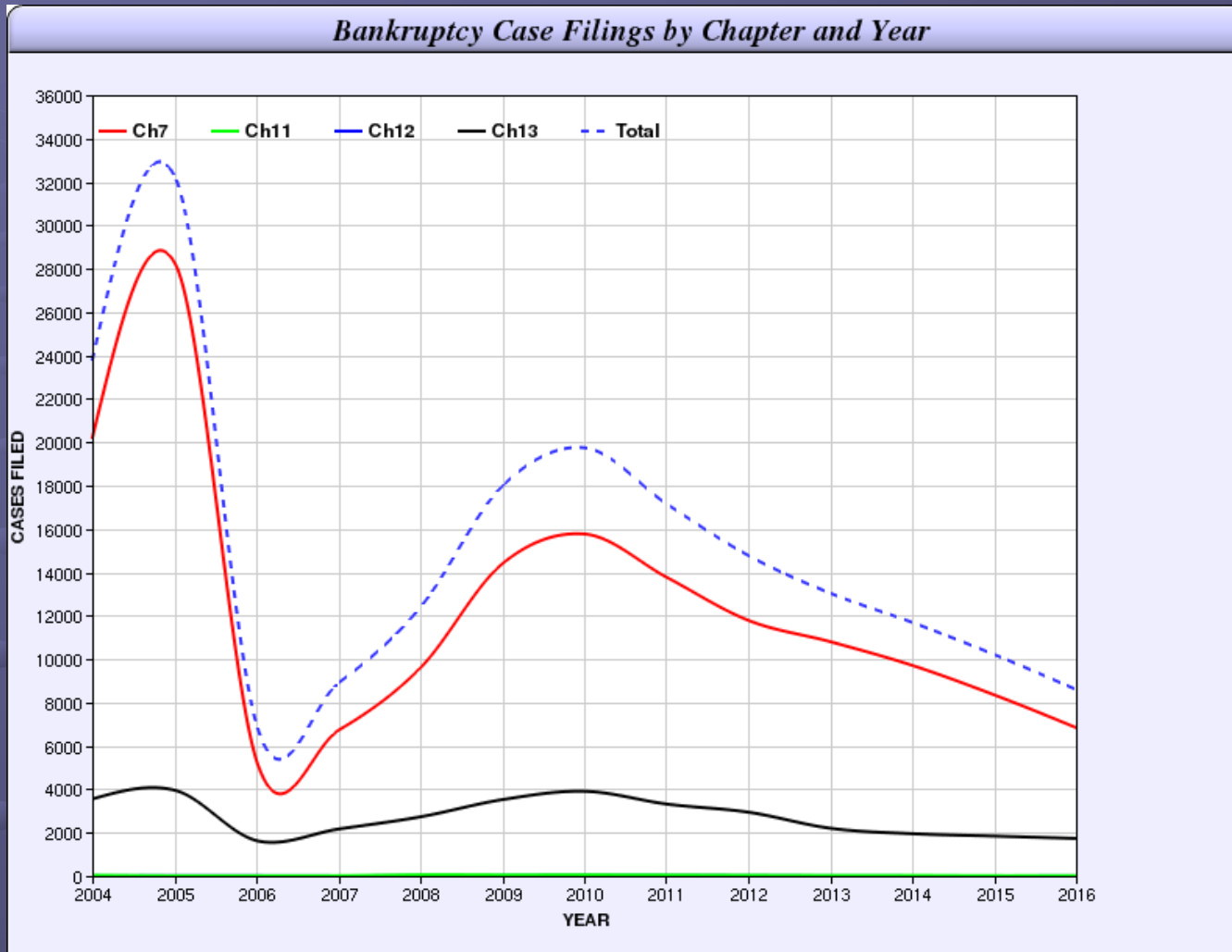
Procedure Under Chapter 11 of the Bankruptcy Code updated to BAPCPA 2005



Sources of Bankruptcy Law

- The United States Constitution provides for a uniform system of bankruptcy.
- Bankruptcy Act of 1898
- Bankruptcy Code of 1978
- BAPCPA: Bankruptcy Abuse Prevention and Consumer Protection Act of 2005

Oregon Bankruptcies 2004-2016



Some Recent Cases



ITT
ITT Tech

The logo for ITT Tech features the letters 'ITT' in a large, bold, blue, stylized font. Below it, the words 'ITT Tech' are written in a smaller, bold, black, sans-serif font.

R **RadioShack**®

The RadioShack logo consists of a red circle containing a white letter 'R'. To the right of this symbol, the word 'RadioShack' is written in a bold, black, sans-serif font, followed by a registered trademark symbol (®).

TAKATA

The TAKATA logo features a stylized orange icon on the left, resembling a car seat or a similar automotive component. To the right of this icon, the word 'TAKATA' is written in a bold, black, sans-serif font.

Toys R Us®

The Toys R Us logo is highly colorful and playful. The word 'Toys' is in pink, 'R' is in blue with a white star inside, and 'Us' is in green. The entire logo is followed by a registered trademark symbol (®).

Life Cycle of Bankruptcy Case

- Petition filed
- Trustee (or DIP) appointed
- First meeting of creditors
- Administration of estate (varies by chapter)
- Distribution to creditors
- Case closed

Liquidation



The Mean Means Test

- Debtor cannot file chapter 7 if he/she can repay a certain amount to unsecured creditors after taking into account certain expenses.
- A presumption of abuse created if:
 - Debtor can repay at least \$12,850 over 5 years; or
 - Debtor can repay at least \$129/month and that equals at least 25% of unsecured debt over 5 years

Chapter 7 Assets

Car #1	HHG	Cash \$1,500	Retirement
House	Car #2	Personal Injury Claim	
	Car #3		

Chapter 7 Equity

Car #1 – no equity fmv \$20,000 GMAC debt \$22,000	HHG \$3,000	Cash \$1,500	Retirement \$400,000
House --\$39,600 in equity	Car #2 \$4,500 equity: fmv is \$10,000 GMAC debt is \$5,500	Personal Injury Claim	
	Car #3: \$4,000 equity: fmv is \$10,000; GMAC debt is \$6,000		

Oregon Exemptions 2017

● **Homestead**

- ORS 18.395 - Real property up to \$40,000 (\$50,000 if joint owners), including a manufactured home (defined by ORS 446.003) or floating home (defined by ORS 830.700)
- Sale proceeds exempt for one year if plan to and actually do purchase another home with them.

● **Personal Property**

- ORS 18.345(1)(d) - Motor vehicle to \$3,000;
- ORS 18.345(1)(b) - Clothing, jewelry, personal items to \$1,800 total;
- ORS 18.345(1)(f) - Household items, furniture, utensils, TVs and radios to \$3,000 total and food & fuel to last 60 days if debtor is householder;
- ORS 18.345(1)(a) - Books, pictures & musical instruments to \$600 total;
- ORS 18.345(1)(n) - Earned income tax credit;
- ORS 18.345(1)(e) - Domestic animals & poultry with food to last 60 days up to \$1,000;
- ORS 18.345(1)(k) – Personal injury recoveries up to \$10,000 for debtor or someone debtor depended upon as needed for support;
- ORS 18.345(1)(L) - Lost earnings payments for debtor or someone debtor depended upon as needed for support;
- ORS 18.345(1)(p) - \$400 of any personal property that is not already covered under any other exemption;
- ORS 18.362 – One pistol and one rifle or shotgun if owned by person over the age of 16, up to cumulative total of \$1,000.

● **Wages**

- ORS 18.385 - The greater of the following: \$218 per week or minimum of 75% of disposable wages.*

Federal Exemptions 2017

- **Homestead:** §522(d)(1), (5) - Real property, including mobile homes and co-ops, or burial plots up to \$23,675. Unused portion of homestead, up to \$11,850 may be used for other property.
- **Personal Property:** §522(d)(2) - Motor vehicle up to \$3,775.
- §522(d)(3) - Animals, crops, clothing, appliances and furnishings, books, household goods, and musical instruments up to \$600 per item, and up to \$12,625 total.
- §522(d)(4) - Jewelry up to \$1,600.
- §522(d)(9) - Health aids.
- §522(d)(11)(B) - Wrongful death recovery for person you depended upon.
- §522(d)(11)(D) - Personal injury pmt up to \$23,675 except for pain & suffering or pecuniary loss.
- §522(d)(11)(E) - Lost earnings payments.
- **Pensions:** §522(b)(3)(C) - Tax exempt retirement accounts
- §522(b)(3)(C)(n) - IRAS and Roth IRAs to \$1,283,025.
- **Public Benefits:** §522(d)(10)(A) - Public assistance, SocSec, Veteran's benefits, Unemployment.
- §522(d)(11)(A) - Crime victim's compensation.
- **Tools of Trade:** §522(d)(6) - Implements, books and tools of trade, up to \$2,375.
- **Alimony and Child Support:** §522(d)(10)(D) Spousal/child support needed for support.
- **Insurance:** §522(d)(7) - Unmatured life insurance policy except credit insurance.
- §522(d)(8) - Life insurance policy with loan value up to \$12,625.
- §522(d)(10)(C) - Disability, unemployment or illness benefits.
- §522(d)(11)(C) - Life insurance pmts for a person you depended on, needed for support.
- **Wildcard:** §522(d)(5) - \$1,250 of any property, and unused portion of homestead up to \$11,850.

Chapter 7 Estate Liquidation

<p>Car #1 – no equity</p>	<p>HHG \$3,000</p>	<p>\$800 exempt \$700 not exempt</p>	<p>Retirement— entirely exempt</p>
<p>House--\$39,600 in equity</p> <p>\$40,000 exempt if single;</p> <p>\$50,000 exempt if married.</p>	<p>Car #2 \$4300 exempt \$200 not exempt</p>	<p>Personal Injury Claim \$10,000 exempt</p>	
	<p>Car #3 \$4,000 not exempt</p>	<p>Excess over \$10,000 not exempt</p>	

What Happens to Assets?

- Car #1: GMAC repossesses
- House: Debtors reaffirm
- Car #2: Debtors keep, reaffirm debt
- Car #3: Trustee sells, pays off GMAC, keeps **\$4,000** for estate
- Cash: Debtors pay trustee **\$700**
- Personal Injury Claim: Trustee takes over case, pays debtor first **\$10,000**
- Retirement, HHG: Debtors keep

Pyramid of Priority



Distribution of Cash

Priority debts

- Child support
- Trustee and other administrative costs
- Wages owed to debtor's employees
- Taxes

Secured debts

- GMAC gets \$6,000 (car #2 debt) from sale

Unsecured

- Share remaining cash *pro rata*

Discharge!

- Permanent Injunction
- Some debts excepted from discharge:

- Child support
- Recent taxes
- Pre-bankruptcy luxury purchases and cash advances
- Restitution
- Civil penalties
- Loan to pay taxes
- Fraud, intentional torts*



Frequent Filers

- No discharge in chapter 7
 - If received discharge under chapters 7 or 11 within previous eight years; or
 - If received chapter 13 discharge within previous six years.
- No discharge in chapter 13
 - If received discharge under chapters 7 or 11 within previous four years; or
 - If received chapter 13 discharge within previous two years.

Chapter 13 Reorganization

- monthly payments of
- net disposable income for
- at least three, up to five years with
- “superdischarge” after all payments made

The PLAN

● Chapter 13 plan must:

- Pay all priority debt in full
- Pay secured creditors current value of claim

● Chapter 13 plan may:

- “Strip down” some secured debt
- Cure mortgage arrearages
- Allow debtor to sell property

Confirmation of Plan

- Minimums under old law:
 - Case must be filed in good faith,
 - Plan must pay unsecured creditors at least what would have received in chapter 7 (Best Interest of Creditors test)
 - Plan must be proposed in good faith

Confirmation under BAPCPA

- Plan must pay pre-petition secured arrearages in equal monthly installments.
- Plan payments must provide adequate protection to creditors with security interest in personal property.
- Debtor must have paid all domestic support obligations due after filing.
- Debtor must have filed all federal, state, and local tax returns.

Duration of Chapter 13 Plans

OLD LAW

Most chapter 13 plans lasted three years, but could last up to five years with court's approval.

NEW LAW

If annual family income exceeds state annual median income, must propose five-year repayment plan.

The Not-So-Super Discharge

OLD LAW

Debtors who completed a plan received a

“super discharge”

- Fraud
- Breach of fiduciary duty
- Willful and malicious injury
- Some otherwise non-dischargeable taxes
- Civil restitution
- Civil penalties

NEW LAW

- **No discharge for debts arising out of**
 - Fraud
 - Breach of fiduciary duty
 - Willful and malicious injury, including civil restitution
- **May discharge some taxes, civil penalties**

How It Used to Work

Debtors were offered incentives to file chapter 13:

- Interest stopped on all priority debt
- Superdischarge was available
- Strip down vehicle loans to value of collateral

Even with incentives, only **30%** of chapter 13 cases reached the goal line of discharge.

How It Works Now

- It's still a mystery!
 - There are at least seven different ways to calculate net disposable income;
 - No statistics on success rates;
 - Many more marginal debtors are in chapter 13 cases;
 - Interest continues to accrue on non-dischargeable debt
- The cost of chapter 13, both to debtors and creditors, has skyrocketed.
- In short, it's a



● What is disposable income?

- If debtor's annual income is less than state annual median income (\$80,170 for four-member family):
Debtor's current monthly income
Minus debtor's actual, reasonably necessary expenses for maintenance and support
= Disposable Income
- If debtor's annual income is more than state annual median income:
Debtor's current monthly income
Minus debtor's actual, reasonably necessary expenses for maintenance and support as established by strict IRS guidelines
= Disposable Income

Automatic Stay



What is the Automatic Stay?

Forbids efforts to:

- collect pre-petition debt
- continue court or administrative proceedings
- control property of the bankruptcy estate
- create, perfect or enforce a lien against property

The automatic stay applies to governmental units just as it does to private creditors.

Exceptions to Automatic Stay

Paternity and Child Support



Tax Audit and Assessment



Chapter 11 (Business Reorganization)

**Voluntary/Involuntary
Petition
Filed**

**First Day
Orders**

**U.S.T. Appoints
Creditors Committee**

- Debtor files monthly operating reports.
- Filing of disclosure statement and plan.

**Court approves disclosure
statements. Ballots sent out.**

Plan Confirmed

Chapter 11 Plan governs relations between re-organized debtor and creditors.

Chapter 11: Convert or Dismiss For Cause

OLD LAW

Courts could dismiss case for cause:

- Loss to estate and unlikelihood of rehabilitation.
- Inability to effectuate plan.
- Unreasonable delay.
- Failure to propose plan.
- Denial of confirmation of proposed plan.
- No payment of fees.

Chapter 11: Convert or Dismiss For Cause

NEW LAW

Courts **MUST** convert or dismiss case if cause exists. Adds new further grounds for cause:

- Failure to maintain insurance.
- Unauthorized use of cash collateral.
- Unexcused failure to file a document.
- Failure to attend first meeting of creditors or Rule 2004 examination.
- Failure to pay taxes.
- Failure to pay domestic support obligation.

Proofs of Claim

Case 16-01332-JDP Claim 1 Filed 08/23/17 Desc Main Document Page 1 of 3

Fill in this information to identify the case:

Debtor 1	Marlin Pohlman
Debtor 2	
(Spouse, if filing)	
United States Bankruptcy Court	District of Idaho
Case number:	16-01332

FILED
U.S. Bankruptcy Court
District of Idaho
8/23/2017
Stephen W. Kenyon, Clerk

Official Form 410 Proof of Claim

04/16

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?	Oregon Department of Corrections Name of the current creditor (the person or entity to be paid for this claim) Other names the creditor used with the debtor	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent?	Where should notices to the creditor be sent? Oregon Department of Corrections Name Central Trust P.O. Box 14400 Salem, OR 97309 Contact phone _____ Contact email _____ Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	Where should payments to the creditor be sent? (if different) Name _____ Contact phone _____ Contact email _____
4. Does this claim amend one already filed?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Claim number on court claims registry (if known) <u>1</u> Filed on <u>05/05/2017</u> MM/DD/YYYY	
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	

Case 16-01332-JDP Claim 1 Filed 08/23/17 Desc Main Document Page 2 of 3
Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: <u>6114</u>
7. How much is the claim?	\$ <u>4074.20</u> Does this amount include interest or other charges? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).
8. What is the basis of the claim?	Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as healthcare information. Civil restitution (\$2,732.46); Copies (\$353.70); Postage (\$211.62); County Court (\$477.22); Federal Court (\$299.02)
9. Is all or part of the claim secured?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. The claim is secured by a lien on property. Nature of property: <input type="checkbox"/> Real estate. If the claim is secured by the debtor's principal residence, file a <i>Mortgage Proof of Claim Attachment</i> (Official Form 410-A) with this <i>Proof of Claim</i> . <input type="checkbox"/> Motor vehicle <input type="checkbox"/> Other. Describe: _____ Basis for perfection: _____ Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.) Value of property: \$ _____ Amount of the claim that is secured: \$ _____ Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.) Amount necessary to cure any default as of the date of the petition: \$ _____ Annual Interest Rate (when case was filed) _____ % <input type="checkbox"/> Fixed <input type="checkbox"/> Variable
10. Is this claim based on a lease?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Amount necessary to cure any default as of the date of the petition. \$ _____
11. Is this claim subject to a right of setoff?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Identify the property: _____

Proofs of Claim

Case 16-01332-JDP Claim 1 Filed 08/23/17 Desc Main Document Page 3 of 3

12 Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Check all that apply:	Amount entitled to priority
A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.	<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
	<input type="checkbox"/> Up to \$2,850* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
	<input type="checkbox"/> Wages, salaries, or commissions (up to \$12,850*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
	<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
	<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
	<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)(L) that applies	\$ _____

* Amounts are subject to adjustment on 4/01/19 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157 and 3571.

Check the appropriate box:

- I am the creditor.
 I am the creditor's attorney or authorized agent.
 I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
 I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this Proof of Claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this Proof of Claim and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 8/23/2017
 MM / DD / YYYY

/s/ Carolyn G. Wade

Signature

Print the name of the person who is completing and signing this claim:

Name Carolyn G. Wade
 First name Middle name Last name
 Title Senior Assistant Attorney General
 Company Oregon Department of Justice
 Address 1162 Court Street NE
 Identify the corporate servicer as the company if the authorized agent is a servicer
 Number Street
Salem, OR 97301
 City State ZIP Code
 Contact phone 541.686.7846 Email Carolyn.G.Wade@doj.state.or.us

Avoidable Transfers

- Preferences
- Fraudulent Conveyances
- Post-Petition Transfers

Preferences

Preferences are transfers of property of the debtor:

- Made for the benefit of a creditor;
- Made on account of an antecedent debt;
- Made while the debtor was insolvent;
- Made within 90 days before the filing of the bankruptcy (one year, if transfer is to insider);
- That allow the creditor to receive more than it would have if the transfer had not occurred and the creditor had received a distribution under a chapter 7.

Fraudulent Transfers

Transfers of property of the debtor:

- Within two years before the filing of the bankruptcy;
- Made either
 - with actual intent to hinder, delay, or defraud a creditor; or
 - for less than reasonably equivalent value
 - while the debtor was insolvent or
 - when the debtor was engaged in business with unreasonably small capital; or
 - intended to incur debts he couldn't pay; or
 - to an insider under an "employment contract" not in the ordinary course of business.

Post-Petition Transfers

Post-Petition transfers are transfers of property of the estate:

- Made after the commencement of the case;
- That are not authorized by the bankruptcy code or the bankruptcy court.

Advice to Agencies

After the debtor has filed for bankruptcy, you may:

- Continue administrative process under “police power” exception in § 362(b)(4)
- Address license issues and assess civil penalties and/or costs on any orders issued post-petition
- File proofs of claim for already-assessed debts
 - Where nothing is final yet, give estimate and say “estimated” after amount
 - Amend proofs of claim to include additional debts once orders are entered
- Start counting 60 days to finality of any not-yet-final order – when final, you can collect civil penalties

After debtor has filed for bankruptcy, you may NOT:

- Include bankruptcy as factor in your proceedings because it would violate §525
- Undertake any collection efforts on any debts during bankruptcy because it would violate automatic stay

Certain costs and penalties are discharged

- If debtor receives any kind of discharge, costs in pre-petition final orders are discharged
- If debtor receives full discharge under §1328(a) in ch. 13, civil penalties are discharged
- If debtor receives hardship discharge under §1328(b), then civil penalties are NOT discharged

Agency Questions

Effect of automatic stay on collection efforts

- Multiple parties responsible on single account
 - Automatic stay protects ONLY debtors in bankruptcy and property of the estate
 - If debtor is corporation, debtor's owners are NOT protected
 - If debtor is individual:
 - LLC member files for bankruptcy, LLC is not debtor in that bankruptcy, so LLC is NOT protected
 - Corporation's shareholder/officer files for bankruptcy, corporation is not debtor in that bankruptcy, so corporation is NOT protected
 - Partnership's partner files for bankruptcy, partnership is not debtor in that bankruptcy, so partnership is NOT protected
 - Sole proprietor of business files for bankruptcy, business IS included in that bankruptcy, so business IS protected
 - Chapter 13 co-debtor stay only applies to consumer debts, which agency does not collect, so agency can go and collect

Secured portion of proof of claim with recorded warrant

- Value of property minus amount of any senior liens = secured portion of proof of claim
 - Example: Property value = \$500,000. 1st, 2nd and 3rd trust deeds ahead of agency = \$450,000 total. Agency's secured claim = \$50,000.
 - Example: Property value = \$500,000. Agency recorded warrant before 3rd trust deed. Agency's secured claim = \$150,000 and 3rd trust deed may be completely unsecured.
- Unsecured portion of agency's proof of claim is likely unsecured, though possibly priority, depending on facts and timing of claim

Notice of debtor's bankruptcy to agency

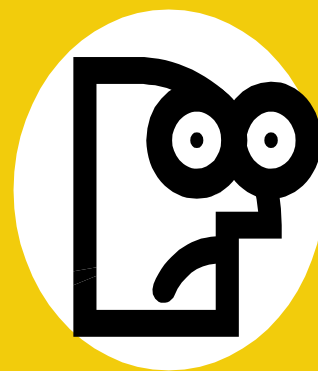
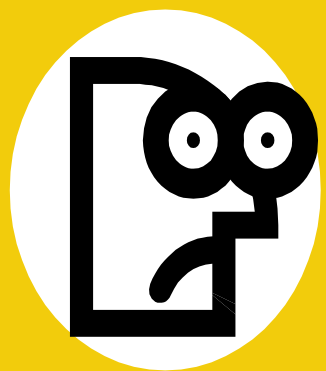
- Debtors are required to notify each state agency separately, but they often fail to do this
- If your agency is not listed as a creditor in debtor's bankruptcy schedules, but you find out about it from sources other than debtor and his/her attorney:
 - Proceed as if your agency had been listed in bankruptcy schedules
 - Debt to your agency is NOT discharged if you received notice too late to file non-dischargeability complaint
 - Debt to your agency is NOT discharged if you received notice too late to participate in distribution to unsecured creditors
 - Debt to your agency is discharged if you received notice in time to participate in bankruptcy but did not (and debt is of type that is dischargeable)

Efforts to collect on pre-petition vs. post-petition debt

- Is debt really post-petition debt? (Were the actions taken by debtor **giving rise to the debt** post-petition?)
- What kind of bankruptcy is it? (Chapter 7 has different result than chapter 13 or chapter 11)
- What actions do you want to take? (Administrative? Collection? Recording a warrant?)
- Remember that debtor's assets and bankruptcy estate's assets are off-limits
- Contact DOJ to work through these questions

REMEMBER

- **Be careful! Before taking any collection action, be sure you are not violating the automatic stay.**
- **Be vigilant to protect your rights under chapters 7, 11, or 13**
 - **Review plans carefully and call DOJ if you think the debtor is trying to impair your claim.**
 - **File proof of claims early.**
 - **Give notice to the debtor and court about where you want notices to be filed.**
- **Most important, if you have any question about bankruptcy, call DOJ for help!**



It's QUESTION TIME !!