

LAW AND PROCEDURES FOR INDIVIDUAL CHAPTER 11 CASES

The following discusses requirements and certain procedures in cases under chapter 11 where the debtor is an individual. Section numbers citations are to the United States Bankruptcy Code, 11 U.S.C. §101 *et. seq.* Rules citations are to the Federal Rules of Bankruptcy Procedure.

A. Financial Management Course. An individual chapter 11 debtor is required to complete a financial management course when the plan provides for the liquidation of all or substantially all of the property of the estate and the debtor does not engage in business after consummation of the plan. This is because §1141(d)(3)(C) provides that “[t]he confirmation of a plan does not discharge a debtor if the debtor would be denied a discharge under §727(a).” Under §727(a)(11), the discharge is denied if the course requirement is not satisfied. Bankruptcy Rule 1007(b)(7) requires an individual debtor in a chapter 11 case to file a statement of completion of the financial management course if course completion is required.

B. Domestic Support Obligations. For a plan to be confirmed, the debtor must pay all domestic support obligations that accrue post-petition. §1129(a)(14). There is no requirement that domestic support obligations have been paid as a condition to discharge. However, a debtor who has not paid all post-petition domestic support obligations risks dismissal or conversion of the case pursuant to §1112(b)(4)(P).

C. Discharge. Unlike other Chapter 11 cases, in individual cases the grant of a discharge requires a court order.

1. Three Grounds for Obtaining a Discharge. There are three grounds for entering a discharge in individual chapter 11 cases:

a. Discharge Upon Completion of Plan Payments. Ordinarily, the discharge will be entered after completion of all plan payments. §1141(d)(5)(A).

b. Early Discharge For Cause. A discharge may be granted before completion of all plan payments "for cause." §1141(d)(5)(A). For example, if there is sufficient assurance that claims will be paid as provided by the plan, such as from the grant of lien rights or protection under a letter of credit, an early discharge for cause may be warranted under §1141(d)(5)(A).

c. Early Discharge Under Modified Best Interests Test and Impracticability of Plan Modification. A discharge may also be granted before completion of plan payments if (i) unsecured creditors holding allowed claims have actually received under the plan at least as much as they would have received in a hypothetical chapter 7 case in which the estate assets were liquidated on the plan effective date; and (ii) modification of the plan under section §1127 is not practicable. §1141(d)(5)(B). For example, if a plan provides for payment in full of all claims within five years after the plan effective date, and further provides for payment without impairment of obligations under a note secured by a mortgage against the debtor's principal residence that under §1123(b)(5) cannot be modified, a discharge after completion of the payments to be made within five years may be warranted under §1141(d)(5)(B).

2. Procedures For Seeking A Discharge Order. To seek entry of a discharge order, the debtor should file a motion requesting entry of the discharge as follows:

a. Discharge Upon Completion of Plan Payments. To obtain a discharge order upon completion of plan payments, the debtor should file a Certificate of Completion of Plan Payments and a Motion for Entry of Discharge, and serve notice of the motion on all parties in interest, specifying a 21-day period to object. If no objections are filed timely, the Court may grant the discharge without a hearing. §1141(d)(5)(A).

b. Early Discharge. If, pursuant to §1141(d)(5)(A) or (B), the Debtor asks for entry of a discharge order before completing all plan payments, the debtor should file a motion, give supporting grounds, and serve adequate notice thereof, specifying a 21-day period to object. The debtor should contact chambers to obtain a date and time for a preliminary hearing on the motion and include the hearing date and time in the notice. The Court may require a hearing even if no objections are filed. It is possible for the Debtor to seek entry of the discharge order at the time of plan confirmation, if the motion is filed and noticed separately, and served with the plan confirmation documents. In such an event the motion for early discharge would be heard at the same time as plan confirmation.

3. Discharge Provision Involving Homestead Exemption of Other States. The debtor is not entitled to a discharge, even when he or she makes all plan payments, if (i) the debtor claimed a state-law homestead or similar exemption in excess of \$146,500, and (ii) there is pending at the time of the discharge request a proceeding that might result in the debtor being found guilty of certain felonies or liable for certain claims based on fraud, willful injury, or similar claims that arose in the preceding five years. §1141(d)(5)(C). This provision should not apply in most New Mexico cases, given the limit in the value of the New Mexico homestead exemption. In the unusual case of an individual chapter 11 debtor claiming the state law homestead exemption of a different state, Debtor's counsel is encouraged to review §1141(d)(5)(C) and make sure that it does not prohibit entry of the discharge order.