

Chapter 39—Bankruptcy

Chapter 3—Case Administration

Commencement of the Case

Voluntary Petitions—any eligible person may file a voluntary petition for bankruptcy which must list all creditors, property owned, list of exempt property, and a statement of the debtor's affairs; filing constitutes an automatic order for relief. Insolvency is not required to file a voluntary petition.

Involuntary petition—a debtor may be forced into involuntary bankruptcy if the petition is filed by three or more creditors with unsecured claims of \$11,625 or more, or if there are no more than 12 creditors and one or more of them has claims of \$11,625 or more. Farmers and banking, insurance, or nonprofit corporations cannot be forced into involuntary bankruptcy. If the petition is not contested, the court will enter an order for relief against the debtor.

Chapter 5—Creditors, the Debtor, and the Estate

The order of priority is:

- 1. expense of administration**
- 2. “gap” creditors**
- 3. wages, salaries, or commissions earned within 90 days of filing or date of cessation of business, whichever comes first, up to \$4,650**
- 4. contributions to employee benefit plan up to \$4,650**
- 5. grain or fish producer claims against a storage facility up to \$4,650**
- 6. consumer deposits up to \$2,100**
- 7. alimony and support of spouse or child**
- 8. taxes**

The Estate

Voidable Preferences—allows the trustee to invalidate pre-bankruptcy transfers:

- 1.made to or for the creditor's benefit**
- 2.made for or on account of an antecedent debt**
- 3.made while the debtor was insolvent**
- 4.made within 90 days of the filing; and**
- 5.if the creditor receives more than he would under chapter 7**

Distribution of the Estate

Assets of the estate are distributed in the following order:

- 1. secured creditors, on their security interests**
- 2. creditors entitled to a priority in the order provided**
- 3. unsecured creditors who filed their claims on time**
- 4. unsecured creditors who filed their claims late**
- 5. claims for fines and multiple, exemplary, or punitive damages**
- 6. interest at the legal rate from the date of the filing of the petition, to all of the above claimants**
- 7. whatever property remains to the debtor**