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Bankruptcy S&M, a Simplified and Methodical Approach Prepared for ALRP CLE

- I. Quick Introduction
- II. Who Files Bankruptcy?
 - A. Some client stats
 - 1. Average age is 48
 - 2. Average income is \$65,000
 - 3. About 75% single, versus 25% married or in DP
 - 4. 67% file Chapter 7; 33% filed Chapter 13; few Chapter 11
 - 5. Nearly 50/50 between men and women
 - 6. 50% have a BA, 12% MA, 8% Doctorates
 - 7. 16% of clients own a business
- III. What Causes Bankruptcy?
 - A. Trauma: death of loved one, divorce, job loss
 - B. Self-inflicted
- IV. Timeline
 - A. Look back first
 - 1. 90 day preference
 - 2. 1 year "insider"
 - 3. 4-7 fraud using state law
 - 4. 10 years for self settled trust
 - 5. **2 years for residency

- V. Chapter 7 bankruptcy walkthrough
 - A. Eligibility
 - 1. Credit counseling
 - 2. Income limit (means test)
 - a) HH 1 - \$51,763
 - b) HH 2 - \$69,370
 - c) HH 3 - \$74,224
 - 3. Income exception (non-consumer debt)
 - 4. Unlimited debt
 - B. Two tracks to follow: (1) Debts, (2) Assets
 - C. Debts that are, and are not discharged
 - D. Keeping a home or car in Chapter 7? Be current on date of filing!
- VI. Chapter 13 Walkthrough
 - A. Eligibility
 - 1. Credit counseling
 - 2. Debt limit
 - a) Unsecured debt - \$394,725
 - b) Secured debt - \$1,184,200
 - 3. Unlimited income
 - B. Committing to repayment plan – generally 3-5 years
 - C. Pay monthly check to trustee based on disposable income or liquidation analysis
 - D. Same automatic stay stops foreclosure
 - E. Can pay arrearages through plan
 - F. Ability to strip second mortgage or HELOC when unsecured
 - G. Super discharge

VII. Crossover Issues

A. Family Law

1. Chapter 13 “super discharge” of any other family law debts, other than alimony and child support
2. Community property in the bankruptcy estate
3. Community discharge

B. Taxes

1. Income taxes are dischargeable if 3 year, 2 year and 240 day rule are met
2. Current issue with late filed returns (SFR)
3. BOE - state sales taxes are potentially dischargeable (must inform BOE and trigger 3 year rule)
4. Trust fund taxes never dischargeable (payroll taxes)

C. Personal Injury

1. Can you discharge negligence?
2. Can you discharge intentional torts?
3. “Willful & malicious” exception

D. Business

1. The sole prop problem
2. Shares of a corporation or membership interest in LLC as assets

E. Estate Planning

1. 180 day clawback
2. Probate Code prohibition regarding debtors as trustees