

## California Bankruptcy Law: Creditors' Meeting Explained

### Introduction

Bankruptcy can be a complicated and convoluted process with many parties involved. As such, many of the required steps in bankruptcy proceedings are conceived as a means of expediting and organizing the administration of the debtor's estate. One of the first and most important steps in this process is the "creditors' meeting". This is a meeting at which the creditors and the debtor meet face to face in the presence of a trustee appointed by the bankruptcy court. The parties explore the debtor's financial situation, the existence and location of assets, and other matters that may effect the debtor's right to bankruptcy relief or the administration of the estate. It is at this meeting that many of the rights of both debtor and creditor are asserted or lost. A bankruptcy attorney well versed in the matters addressed at these meetings can properly protect these important rights.

### Creditors' Meeting Explained

The creditors' meeting is a forum in which creditors may probe the debtor's estate to determine the legitimacy of the debtor's petition for discharge of his debt under the bankruptcy laws. The bankruptcy court assigns a trustee to take charge of this estate and to collect assets and regulate the transfer of property from the estate. In some cases, the parties present at the meeting vote to elect a trustee of their choosing. The debtor's estate is made up of that property to which there is a legal or equitable claim and which is not exempt from bankruptcy.

The bankruptcy code requires that a creditors' meeting be convened within a reasonable time after a petition for bankruptcy is filed or that it be held between twenty and forty days after an order for relief has been entered. These deadlines are designed to allow prompt notice of the filing of the petition and adequate time to consult with an attorney and prepare for the meeting. The trustee sets a meeting date, designates the location of the meeting, and presides over the meeting. A notice announcing the meeting is sent to all the creditors by the clerk of the bankruptcy court.

At the meeting the trustee and the creditors may examine the debtor and inquire into matters effecting the administration of the estate such as the location of assets, for example. At this meeting the debtor must lay bare his financial situation. The debtor is duty-bound to provide truthful information and to assist the trustee in the honest administration of the estate. Specifically, the debtor must file with the court: 1) a list of creditors; 2) a schedule of assets and liabilities; 3) a schedule of current income and current expenditures; 4) a statement of contracts not yet fulfilled; and, 5) a statement of financial affairs. Depending on the type of bankruptcy filed, additional statements may be required. The debtor must also relinquish all the property of the estate to the trustee, as well as any recorded information about the estate such as books, documents, records and papers, relating to the property of the estate.

The debtor and his attorney must make reasonable efforts to ascertain correct and complete information. The list of creditors provided by the debtor must contain the name and current address of each creditor. The court relies on this information to notify the creditors so that they have an opportunity to assert their rights under the law.

Similarly, debtors must use reasonable diligence in preparing schedules, lists of assets and other statements. The creditors and trustee rely on these documents as being truthful and thorough, provided so that they may accurately evaluate the debtor's financial condition. It is important to note that incomplete knowledge of one's own financial situation does not relieve one of the obligation to disclose all assets and debts. Because there are many different types of debt, it can be difficult to assemble a thorough report to the court. It is here that the help of a bankruptcy attorney can be invaluable as inaccuracies and omissions (especially intentional ones) can have serious consequences such as court imposed sanctions, the dismissal of the case, or criminal prosecution.

Attendance at the meeting is mandatory for the debtor and his attorney with few exceptions. In a joint case involving husband and wife, both husband and wife must attend. If the debtor is a corporation, the bankruptcy rules allow any or all of the corporation's officers, members of its board of directors, a controlling stock holder, or any other person in control, to attend and be examined as the debtor for purposes of the creditor's meeting. If the debtor is a partnership, any of the general partners, or other persons in control and designated by the court, may represent the partnership.

The meeting itself is generally fairly informal. The presiding officer makes preliminary statements about his or her role as trustee and of the ground rules for the meeting, such as the protocol for dealing with disputes which arise throughout the course of the meeting. The trustee tape records the debtor's examination and takes notes of the meeting. The debtor is under oath and must respond honestly under penalty of perjury. The questions posed to the debtor by both the trustee and the creditors must directly relate to the acts, conduct, property and financial condition of the debtor, or to matters which may affect the administration of the debtor's estate or his right to discharge. If the testimony given at the meeting would make the debtor open to criminal prosecution, the debtor may assert the privilege against self-incrimination. This privilege is not a tool for avoiding examination and must be substantiated by the debtor if asserted. Note that the privilege may inadvertently be waived if the debtor voluntarily testifies without invoking the privilege. Here is another key area in which a bankruptcy attorney can be helpful.

A creditors' meeting will include a review of the required documents provided by the debtor. After the trustee has concluded the examination, creditors attending the meeting may ask questions of the debtor. At this time creditors may not only examine the debtor, but also submit requests to the trustee concerning the disposition of their interest in the estate. Once all the creditors present have completed their examinations, the meeting is concluded. After the meeting, the creditors are allotted a number of days to make objections to the claims of the debtor regarding what properties were exempted from the estate. They may also object to the discharge of particular debts within the estate, or file additional proofs of claims.

## Conclusion

The creditors' meeting is a pivotal juncture in the bankruptcy proceedings and its importance for both the debtor and the creditor should not be underestimated. It is here that the debtor substantiates his position that he is entitled to the benefits conferred by the bankruptcy laws, and that the creditor

defends his interests in the debtor's estate. It is important for all parties to be well prepared for this important event.