



# Bankruptcy in the Municipal Context

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TCAA Fall Conference

October 6, 2022

# Agenda



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## 01. The Bankruptcy Big 3

Overview of chapter 7, 11, and 13 bankruptcy

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## 02. What is the Automatic Stay?

Does it *always* apply to municipalities?

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## 03. Proofs of Claim

Whether and when to file

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## 04. Discharge Issues

Section 523(a)(7) & fines

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## 05. Utility Services

Section 366

# The Bankruptcy Big 3

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- Individuals or businesses
- Liquidation
- Trustee automatically appointed to oversee liquidation
- 63% of cases filed in Texas in 2021

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- Businesses or sometimes individuals with high levels of debt
- Reorganization
- Debtor stays in control of assets and operations
- Less than 1% of cases filed in Texas in 2021

13

- Individuals only
- Reorganization
- Trustee automatically appointed to oversee payment plan
- 32% of cases filed in Texas in 2021

# The Automatic Stay

- 11 U.S.C. 362
- Prevents collection efforts, judicial proceedings, enforcement of judgment, acts to create, perfect, or enforce lien – and more!
- Relevant Exceptions:
  - Police & regulatory power
  - Ad valorem tax liens



# Proofs of Claim

<https://www.uscourts.gov/forms/bankruptcy-forms/proof-claim-0>

## Chapter 7

- Presumption of no assets.
- If Trustee determines there will be assets in the case, then the clerk sets a deadline and creditors are notified to file claims.
- No claim = no participation in distribution.

## Chapter 11

- Check schedules to see how Debtor described your debt.
- Failure to file a claim could cost you the right to vote for or against the reorganization plan.

## Chapter 13

- Deadline to file claim (“Bar Date”) set at beginning of case by trustee.
- Claims reviewed and reconciled by trustee after repayment plan is approved.

# Discharge

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## 11 U.S.C. 523(a)(7)

Discharge does not apply to “fine, penalty, or forfeiture payable to and for the benefit of a governmental unit...” so long as debt is not compensation for an actual pecuniary loss...

Examples: civil or criminal fines; penalties that serve some punitive or rehabilitative governmental aim

# Utility Services

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## 11 U.S.C. 366

- You have specific rights and remedies as a utility service provider.
- Consumer cases: likely no Utilities Motion, what steps can you take?
- Chapter 11 cases: look for Utilities Motion early in case.
- Code requires “adequate assurance”.



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## Questions

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