

SECTION 4

NOTICE OF THE BANKRUPTCY CASE

We learn about a consumer's bankruptcy filing in a number of different ways, including from the customer, the customer's attorney, by way of a letter or notice, newspaper article, notice from the bankruptcy court and sometimes by a service purchased by your creditor. Regardless of how you learn of the bankruptcy case, as soon as you become aware that a customer has filed for bankruptcy protection, your creditor's account should be coded a bankruptcy account and *all collection activity must stop immediately*.

Coding the customer's account as a bankruptcy account is critical. It is important for recordkeeping purposes, but more importantly, it usually stops collection activity, which will violate the automatic stay if continued. *See* Section 5, "The Automatic Stay." You should refer to your creditor's policies and procedures for how to properly code an account a bankruptcy account.

THE NOTICE OF BANKRUPTCY

Every debtor that files for bankruptcy protection must provide the bankruptcy court with a creditor matrix, which includes the name and address of every creditor of the debtor. The court, or noticing center retained by the court, then mails the official notice of bankruptcy to each of the creditors listed by the debtor. It also provides notice of the first meeting of creditors.

In some cases, the official notice of bankruptcy may not be received until 30-60 days after the bankruptcy case is initiated, but beware: Just because it is the "official notice" does not mean that you do not have to comply with the Code provisions until you receive the notice. If you learn of the bankruptcy case before you receive the notice, you must still treat the debtor's account as a bankruptcy account immediately. Do not wait until you receive the official notice of bankruptcy to do so.

Section 4: Notice of the Bankruptcy Case

Sometimes a creditor does not receive a copy of the notice, or perhaps the department that handles bankruptcy cases does not receive the notice. This can occur for various reasons. For example, the debtor may have provided an incorrect address for the creditor, or it could have been sent to another office location. Failure to receive the official notice, however, does not relieve the creditor of complying with the Code if any one person in the creditor's office or offices knows about the bankruptcy case.

The notice of bankruptcy is an official bankruptcy form. It provides useful information about the bankruptcy case. The notice tells the chapter under which the consumer filed for bankruptcy protection and the bankruptcy court that is presiding over the bankruptcy case. It gives the bankruptcy case number, which should always be referred to in communications about the debtor's bankruptcy case.

The notice tells you the name and address of the debtor, the name and address of the debtor's attorney and the name and address of the bankruptcy trustee. If the bankruptcy case is a chapter 7, it tells you whether the case is a potential "no-asset" case, which means that the debtor expects there to be no distribution to the creditors. *See* Section 8, "The Chapter 7 Bankruptcy Case."

The notice of bankruptcy also provides deadlines: the deadline for objecting to the debtor's exemptions, filing a complaint to request the bankruptcy court to make one or all of the debtor's debts nondischargeable and, most importantly, the deadline for filing a proof of claim if one must be filed. *See* Section 13, "Nondischargeability of Debt" and Section 7, "The Proof of Claim." A blank proof-of-claim form is usually included with the notice of bankruptcy if the case is not filed as a no-asset bankruptcy case.

NOTICE TO ONE IS NOTICE TO ALL

Notice of a bankruptcy case to anyone in your creditor's company, regardless of how and where the information is received, is considered notice to everyone in your creditor's company. In other words, if notice of a bankruptcy case is sent to branch office A, and servicing of the debtor's account is no longer with office A because it has been moved to office B, collection calls by the employees at office B will be a violation of the automatic stay once notice has been received by branch office A. This is true even if office B did not receive notice of the bankruptcy.

Therefore, if the bankruptcy account is no longer in your office, but has been moved to another location in your creditor's company, you should call the location where the account has been moved to tell them of the bankruptcy case and send the information or notice of bankruptcy to that office immediately. *This is critical to protect your creditor against possible claims for violating the automatic stay. See Section 5, "The Automatic Stay."*

If you received notice or information about a bankruptcy case and you do not know where the account is located, check your company's policies for where the bankruptcy information should be sent or send the information to your legal department.

Over the past few years, different vendors have developed services whereby a database of filed bankruptcy cases and related bankruptcy information maintained by the vendor can be matched electronically against a creditor's files on a periodic basis. The bankruptcy accounts in the creditor's account records are then marked as being in a bankruptcy case. Some companies will do this "scrubbing" of the file daily, weekly or monthly. It has become a more reliable means of ensuring that accounts in bankruptcy are properly marked and not collected after the bankruptcy case is filed.

You should follow your creditor's procedures with respect to the notice and marking of accounts if such a service is used. However, be careful of relying completely on the service. There are times that the service may not be able to identify an account that is in bankruptcy because of an error in the bankruptcy records. In that case, if you have actual notice of the bankruptcy filing, you need to mark the account and notify the vendor.

DESIGNATING AN ADDRESS FOR NOTICE

BAPCPA made certain changes to the Code's provisions for providing notice to creditors that, if followed, may temper the comments made in the preceding section. These provisions apply not only to the initial notice of bankruptcy, but also to all other notices mailed by the bankruptcy court.

However, as of the date of writing this handbook, it is not certain that all bankruptcy courts have yet been able to put procedures in place for implementing these notice provisions. You will need to check with your legal department or bankruptcy attorney to determine whether you can specify an address for notice in a specific jurisdiction in accordance with these provisions.

Pursuant to BAPCPA, your creditor may designate the address to which bankruptcy notices must be sent in one or more of the following ways:

a. Pre-petition request to the debtor. If a creditor sends the debtor two communications, such as monthly statements, within 90 days before the bankruptcy petition is filed, and the communications show the debtor's account number and provide the creditor's address for receiving bankruptcy notices, the debtor must send all bankruptcy notices to that address and include the debtor's account number.

b. Pre-petition request to the bankruptcy court. A creditor may file a notice with any one or more bankruptcy courts designating an address to be used by the bankruptcy court for purposes of notices issued by the bankruptcy court in chapter 7 and chapter 13 cases. Any notices given by the bankruptcy court 30 days after the bankruptcy court receives the creditor’s request must be sent to the specified address.

c. Post-petition request. A creditor may file with the bankruptcy court and serve on the debtor a request for notice in a specific bankruptcy case. Any notice given to the creditor by either the debtor or the bankruptcy court five days after the bankruptcy court and the debtor receive the creditor’s request must be sent to the address given in the creditor’s request.

EFFECTIVE NOTICE UNDER BAPCPA

If your creditor has requested notices to be sent to a specific address as described above, then notices not sent to the requested address will not be considered “legally effective” under BAPCPA until the notice is “brought to the attention of the creditor.” If a creditor has designated a person or subdivision within its company to be responsible for receiving bankruptcy notices, and has established reasonable procedures for delivery of notices to the designated person or subdivision, then a defective notice is not “brought to the attention of the creditor” until the designated person or subdivision actually receives the notice.

No monetary penalty can be imposed on a creditor for violating the automatic stay or for failing to turn over property of the bankruptcy estate unless and until “legally effective” notice of the bankruptcy is given to the creditor in the form and to the address specified in accordance with one of the three methods described above under BAPCPA.

NOTICE TO ATTORNEYS

Notice or knowledge of a bankruptcy case must also be communicated to any attorney that you have retained to collect the customer's account, commence foreclosure proceedings or take any other legal action. This is because the attorney is acting as your creditor's representative, and any knowledge that your creditor has about the bankruptcy filing may be deemed as knowledge to your creditor's representative.

If your attorney continues collection action after your creditor has received notice of the bankruptcy filing, it may not only violate the automatic stay, but also potentially subject the attorney and your creditor to a claim for damages.

OTHER BANKRUPTCY PAPERS YOU MAY RECEIVE

You may receive other papers or documents in a bankruptcy case in addition to the official notice of bankruptcy. These include other types of notices, motions and complaints.

Motions and complaints are papers filed by a debtor, creditor or bankruptcy trustee, asking the bankruptcy court to (1) authorize or approve some type of action, (2) enter an order requiring someone else to do (or not do) something or (3) grant some other kind of relief under the Code. Whether the request is made by a motion or complaint is determined by the Rules of Bankruptcy Procedure.

A complaint is generally required if the request is to (1) recover money or property of the debtor, (2) determine the validity, priority or extent of a lien against the debtor's property or (3) object to a discharge of the debtor or the discharge of a specific debt. Complaints will start an adversary proceeding, which is, in essence, a lawsuit within the bankruptcy case.

Unlike a lawsuit filed in state court, adversary proceeding complaints may be served by mail. The Code does not require an adversary proceeding

complaint to be served on your creditor by a person. Therefore, you should act promptly upon receiving the complaint regardless of how it is received.

All other types of requests for relief are usually made by a motion. In some circumstances, the requested relief is made by an application to the bankruptcy court.

You can tell whether the paper is a motion or a complaint that starts an adversary proceeding in a couple of ways. The title of a motion should start “Motion to ...,” thereafter describing the type of relief requested.

In contrast, the first paper filed in an adversary proceeding is titled “Complaint,” just like a lawsuit. It will usually also include a summons, just like a lawsuit. Motions do not require a summons.

Another way to tell the difference is that motions are not separately numbered in the bankruptcy case. Adversary proceedings are separately numbered. On the upper right front page of the complaint, it should read “Adversary Proceeding No. xxxx,” usually directly under the bankruptcy case number.

You should act promptly when receiving a motion or adversary proceeding complaint. A contested motion or adversary proceeding should be treated just like any other lawsuit filed against your creditor. You will need to retain an attorney to file an answer and represent your company in defending the complaint or motion. Therefore, in most cases, the complaint or motion should be sent to your legal department or bankruptcy attorney immediately.

The Rules of Bankruptcy Procedure pertaining to motions versus complaints differ in some respects, but you do not need to be concerned with these as both a motion and an adversary proceeding need to be handled by an attorney.

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Motions and adversary proceedings always require a timely response. If a response is not filed within the time required by the Code and the Rules, your creditor will not be able to object to the relief requested and the bankruptcy court may grant relief. This could include, for example, losing rights given to your creditor under the Code, losing your creditor's lien or paying sanctions. Therefore, you must promptly respond to a motion or adversary proceeding.