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CONVERSION FROM CHAPTER 7 TO 13

A. Does the Debtor have an absolute right to convert?

B. What is the effect of conversion regarding post-petition/
pre-conversion property and post-petition/pre-conversion debt?

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A CLE Presentation

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I. The Applicable Code Sections.

§ 348. Effect of Conversion

(a) Conversion of a case from a case under one chapter of this title to a case under another chapter of this title constitutes an order for relief under the chapter to which the case is converted, but, except as provided in subsections (b) and (c) of this section, does not effect a change in the date of the filing of the petition, the commencement of the case, or the order for relief.

...

(d) A claim against the estate or the debtor that arises after the order for relief but before conversion on a case that is converted under section 1112, 1208, or 1307 of this title, other than a claim specified in section 503(b) of this title, shall be treated for all purposes as if such claim had arisen immediately before the date of the filing of the petition.

§ 706. Conversion

(a) The debtor may convert a case under this chapter to a case under chapter 11, 12, 13 of this title at any time, if the case has not been converted under section 1112, 1208, or 1307 of this title. Any waiver of the right to convert a case under this subsection is unenforceable.

(b) On request of a party in interest and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 11 of this title at any time.

(c) The court may not convert a case under this chapter to a case under chapter 12 or 13 of this title unless the debtor requests such conversion.

(d) Notwithstanding any other provision of this section, a case may not be converted to a case under another chapter of this title unless the debtor may be a debtor under such chapter.

§ 707. Dismissal

...

(b) After notice and a hearing, the court, on its own motion or on a motion by the United States trustee, but not at the request or suggestion of any party in interest, may dismiss a case filed by an individual debtor under this chapter whose debts are primarily consumer debts if it finds that the granting of relief would be a substantial abuse of the provisions of this chapter. There shall be a presumption in favor of granting the relief requested by the debtor.

§ 727. Discharge

...

(d) On request of the trustee, a creditor, or the United States trustee, and after notice and a hearing, the court shall revoke a discharge granted under subsection (a) of this section if –

(1) such discharge was obtained through the fraud of the debtor, and the requesting party did not know of such fraud until after the granting of such discharge;

(2) the debtor acquired property that is property of the estate, or became entitled to acquire property that would be property of the estate, and knowingly and fraudulently failed to report the acquisition of or entitlement to such property, or to deliver or surrender such property to the trustee; or

(3) the debtor committed an act specified in subsection (a)(6) of this section.

- (e) The trustee, a creditor, or the United States trustee may request a revocation of a discharge—
- (1) under subsection (d)(1) of this section within one year after such discharge is granted; or
 - (2) under subsection (d)(2) or (d)(3) of this section before the later of—
 - (A) one year after the granting of such discharge; and
 - (B) the date the case is closed.

§ 1305. Filing and Allowance of post-petition claims

- (a) A proof of claim may be filed by any entity that holds a claim against the debtor—
- (1) for taxes that become payable to a governmental unit while the case is pending; or
 - (2) that is consumer debt, that arises after the date of the order for relief under this chapter, and that is for property or services necessary for the debtor's performance under the plan.

Rule 1017 Dismissal or Conversion of Case; []

(a) **Voluntary Dismissal; Dismissal for Want of Prosecution or Other Cause.** Except as provided in §§ 707(b), 1208(b), and 1307(b) of the Code, a case shall not be dismissed on motion of the petitioner or for want of prosecution or other cause or by consent of the parties prior to a hearing on notice as provided in Rule 2002. For such notice the debtor shall file a list of all creditors with their addresses within the time fixed by the court unless the list was previously filed. If the debtor fails to file the list, the court may order the preparing and filing by the debtor or other entity.

Rule 2002 Notices to Creditors, equity security holders, United States, and the United States Trustee

(a) **Twenty-Day Notices to parties in Interest.** Except as provided in subdivisions (h), (i) and (l) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees at least 20 days' notice by mail of:

...

- (5) the time fixed to accept or reject a proposed modification of a plan;

II. Does the debtor have an absolute right to convert?

According to the language of § 706, the debtor has a **one time** right to convert his or her petition from a Chapter 7 case to a Chapter 13 case so long the debtor's Chapter 7 case is not the result of a prior conversion from a Chapter 11, 12 or 13 case, and as long as the debtor gives notice on his or her motion to convert to a Chapter 13 case in accordance with Rule 2002(a)(5). After the notice period, the conversion takes place when the court enters an order. "Legislative history indicates a clear Congressional preference for allowance of conversion by a debtor for debt repayment." *In re Kuntz*, 233 B.R. 580, 582 (U.S. Bankr. App. 1st Cir. 1999).

The conversion can take place at any time, and even after the entry of a Chapter 7 discharge, and the conversion does not disturb the Chapter 7 discharge. The debtor cannot waive his or her right to convert, and the debtor cannot convert to a Chapter 13 case unless the debtor meets the Chapter 13 debtor requirements such as sufficient income to fund the plan and the ceilings on secured and unsecured debt.

On request of a party in interest and after notice and a hearing, the court may convert a Chapter 7 case to a Chapter 11 case at any time. However, the court may not convert a Chapter 7 case to a case under Chapter 12 or 13 of this title unless the debtor requests such conversion.

The debtor has considerable control over the Chapter 7 to 13 conversion process, but may not abuse it: “[c]ases interpreting the conversion rights under section 706(a) of the Code have consistently recognized the debtor’s one-time right to conversion, which right may only be denied in ‘extreme circumstances.’” In re Kuntz at 582 (citing Matter of Martin, 880 F.2d 857 (5th Cir. 1989)). Examples of such “extreme” circumstances include the debtor acting with subjective bad faith and conversion objectively futile (In re Finney, 992 F.2d 43 (4th Cir. 1993)); where there is abuse of process (In re Lesniak, 208 B.R. 902 (Bankr.N.D.Ill.1997)); and where other gross inequity would result (In re Jeffrey, 176 B.R. 4 (Bank.D.Mass.1994)).

III. What is the effect of conversion regarding post-petition/pre-conversion property and debt?

At the outset, it should be noted that a great number of conversions from Chapter 7 to 13 take place because of the operation of §707(b). Here, the debtor’s Chapter 7 case is involuntarily dismissed by the court on its own, or the U.S. Trustee’s motion. A dismissal will occur where the debtor’s debts are primarily consumer debts and the granting of Chapter 7 relief would be a substantial abuse of the Chapter 7 provisions. However, debtors have the option of conversion post-discharge, where a Chapter 7 discharge was granted.

In the case where a Chapter 7 debtor was granted a discharge, voluntarily converted to a Chapter 13, and did not have his or her Chapter 7 discharge revoked, the debtor may have no claims to pay in his or her plan. The reason a debtor would want to convert from a Chapter 7 to Chapter 13 case where the debtor has a discharge, is where a debt survives the discharge such as a non-priority tax debt or a secured debt on collateral the debtor wants to retain with a reaffirmation that the creditor will agree to.

A claim against the estate or the debtor that arises after the order for relief but before conversion of a Chapter 7 case to a Chapter 13 case will be characterized as a Chapter 13 post-petition claim. “The import of section 348(a) is that the ‘date of the order for relief in the Chapter 13 case is ‘thrown back’ to the date of the filing of the Chapter 7 petition.” In re Bottone, 226 B.R. 290, 294 (Bankr. D.Mass. 1998)(citing 3 Keith M. Lundin, Chapter 13 Bankruptcy § 8.30, at 8-47 (1994)).

Accordingly, as a post-petition, pre-conversion (or post-conversion debt) is controlled by the operation of § 1305 whereby post-petition claims are treated a pre-petition claims for purposes of proof, allowance and distribution. “To the extent that post-petition tax and/or consumer creditors evidence a willingness to do so, §1305(a) permits them to share payment over time under the plan with pre-petition creditors.” In re Bottone, at 295.