

# BANKRUPTCIES

Course: Impact of COVID-19 to  
financial markets


**Professor Nabijon Holov**

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# THE BANKRUPTCY CODE AND THE BANKRUPTCY COURTS


- ▶ Article 1, Section 8, of the United States Constitution authorizes Congress to establish “uniform Laws on the subject of Bankruptcies throughout the United States.”
- ▶ The present version of federal bankruptcy law is known as the “Bankruptcy Code” and was first enacted in 1978.
- ▶ The provisions of the Bankruptcy Code are codified as Title 11 of the United States Code.
- ▶ The Bankruptcy Code is supplemented by the Federal Rules of Bankruptcy Procedure and also by local rules, which apply to each bankruptcy court.
- ▶ There is one bankruptcy court for each judicial district in the United States.

- ▶ There are 90 judicial districts and therefore 90 bankruptcy districts in the United States, and also one district in Puerto Rico. Many bankruptcy courts in the same district have more than one location with different “divisions” or “vicinages.”
- ▶ The place of residence of a debtor for the 180-day period preceding a bankruptcy filing determines where (in which district) a bankruptcy case would be filed. (28 U.S.C. § 1408)
- ▶ New Jersey is comprised of one (1) federal judicial district. New Jersey has nine (9) bankruptcy judges, three (3) bankruptcy vicinages and three (3) courthouses in which bankruptcy courts are located: Newark, Trenton, and Camden.
- ▶ In New Jersey, the Newark vicinage consists of Bergen, Essex, Hudson, Morris, Passaic, Sussex and Union Counties. The Trenton vicinage consists of Hunterdon, Mercer, Middlesex, Monmouth, Ocean, Somerset, and Warren Counties, and most of Burlington County. The Camden vicinage consists of the remaining New Jersey counties and the remaining part of Burlington County.


- ▶ A “breathing spell” codified as the “automatic stay” under Bankruptcy Code Section 362.
  - ▶ A “fresh start” from burdensome debts, accomplished by means of a discharge in bankruptcy (Bankruptcy Code Sections 727, 1141, 1228 and 1328).
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**THERE ARE SIX BASIC TYPES OF  
BANKRUPTCY CASES UNDER THE  
BANKRUPTCY CODE**



- ▶ New Jersey has among the highest median family income (and therefore great eligibility for the filing of a Chapter 7 bankruptcy case) of any state, and as of May, 2012 has the highest median income for a family size of one, three or four or more persons.
  - ▶ Persons with income that exceeds the median annual income for their state and family size can still be eligible to file a Chapter 7 case based upon specific calculations relating to a debtor's monthly expenses under certain conditions (11 U.S.C. § 707(b)(2)).
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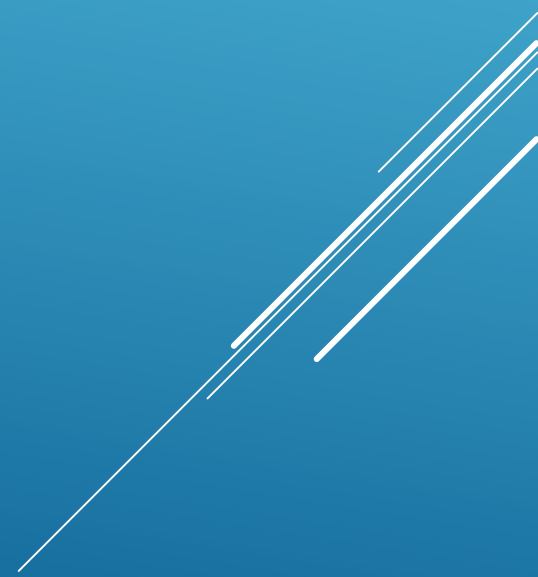
## *Adjustment of Debts of an Individual With Regular Income*

- ▶ Designed for an individual debtor with a regular source of income
  - ▶ Can be preferable to Chapter 7 in certain instances because:
    - a. The debtor is permitted to keep all assets so designated, provided that the court approves a “plan” of repayment to creditors over time, usually three (3) to five (5) years.
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- b. The discharge granted to Chapter 13 debtors who successfully complete a plan is somewhat broader than in a Chapter 7 case, i.e., more debts are discharged/eliminated.
  - ▶ Subject to readjustment that will be effective April 1, 2013, a debtor under a Chapter 13 bankruptcy case must have “non-contingent, liquidated, unsecured debts of less than \$360,475, and non-contingent, liquidated, secured debts of less than \$1,081,400.”
  - ▶ If an individual has debts that exceed those ceilings for unsecured and/or secured debt, that individual would be required to file a Chapter 11 case rather than a Chapter 13 case.
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## *Adjustment of Debts of Family Farmer or Fisherman With Regular Annual Income.*

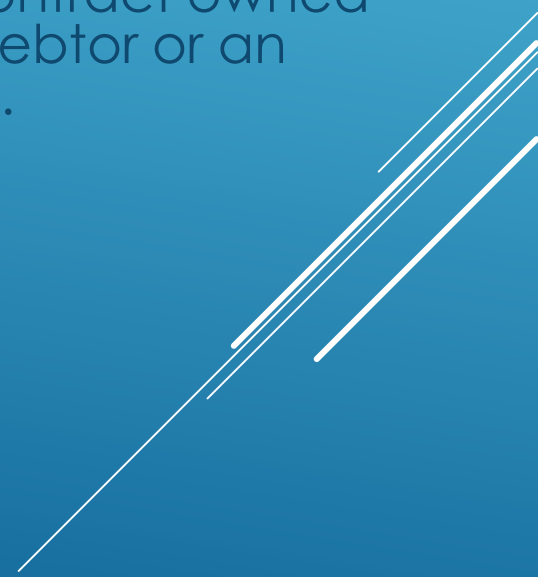
- ▶ Provides debt relief to family farmers and fisherman with regular income.





- ▶ A individual debtor in bankruptcy in New Jersey is entitled to exempt property that is designated as exempt under New Jersey state law or under Bankruptcy Code Section 522.
- ▶ Under New Jersey state law, a judgment debtor is entitled to exempt from execution all wearing apparel and household furnishings to the extent of \$1,000 in value, and also assets held in qualified retirement accounts which are not required to be distributed or which are actually distributed to a judgment debtor.
- ▶ The basic federal exemptions, available under Bankruptcy Code Section 522(d), consist of the following types and amounts of property, said amounts to be readjusted every three (3) years, the next readjustment to be effective as of April 1, 2013:

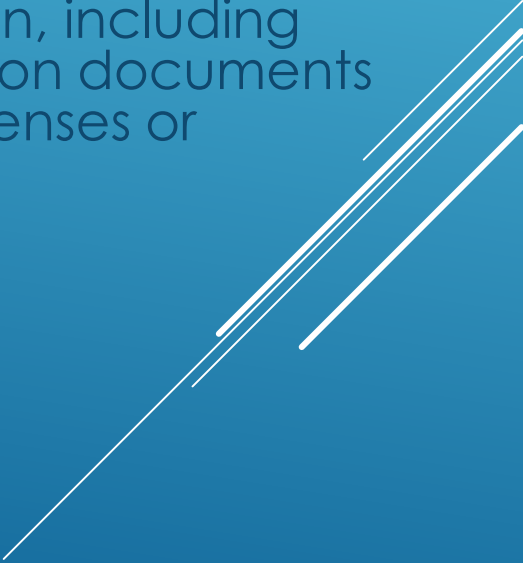
## **BANKRUPTCY DISCHARGE** **FOR INDIVIDUAL DEBTORS**


- ▶ (d)(1) The debtor's aggregate interest in the debtor's residence property (whether real property or personal property), not to exceed \$21,625 in value;
  - ▶ (d)(2) The debtor's interest, not to exceed \$3,450 in value, in one (1) motor vehicle;
  - ▶ (d)(3) The debtor's interest, not to exceed \$550 in value in any particular item or \$11,525 in aggregate value, in household furnishings, household goods, wearing apparel, appliances and the like which are held primarily for personal, family or household use;
  - ▶ (d)(4) The debtor's aggregate interest, not to exceed \$1,450 in value, in jewelry held primarily for personal, family or household use;
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- ▶ (d)(5) The debtor's aggregate interest in any property, not to exceed in value \$1,150, plus up to \$10,825 of any unused amount of the exemption provided under Section (d)(1);
  - ▶ (d)(6) The debtor's aggregate interest, not to exceed \$2,175 in value, in any implements, professional books, or tools, of the trade of the debtor;
  - ▶ (d)(7) Any unmatured life insurance contract owned by the debtor, other than a credit life insurance contract;
  - ▶ (d)(8) The debtor's aggregate interest, not to exceed in value \$11,525, in any accrued dividend or interest under, or loan value of, any unmatured life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.
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- ▶ (d)(9) Professionally prescribed health aids for the debtor;
  - ▶ (d)(10) The debtor's right to receive various benefits such as social security benefits, unemployment compensation, veterans' benefits and/or disability benefits; alimony, support or separate maintenance payments to the extent reasonably necessary for the support of the debtor and any dependent of the debtor; and/or, and a payment under a pension, profit sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, with certain restrictions particularly if such plan or contract was established by an "insider" which employed the debtor;
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- ▶ The most common types of non-dischargeable debts are certain types of tax claims; debts not identified by the debtor on schedules filed with the court; debts for spousal support, child support or alimony; debts for willful and malicious injuries to person or property; debts to governmental units for fines and penalties; debts for most educational loans; debts for personal injury caused by the debtor's operation of a motor vehicle while intoxicated; and, debts for certain condominium or cooperative housing fees.
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- ▶ In addition to the right of creditors to object to a discharge of that creditor's particular debt, a creditor or other party in interest in a bankruptcy case can seek to obtain a denial of a debtor's discharge in a case for reasons set forth in Bankruptcy Code Section 727(a). These reasons include failure to provide tax return documents; transfer or concealment of property with intent to hinder, delay, or defraud creditors; concealment of books and records; perjury and other fraudulent acts; and, failure to account for the loss of assets.
  - ▶ a creditor does not have standing to object to a debtor's discharge. Instead, creditors must object to confirmation of the debtor's repayment plan and may also object post-confirmation if a creditor can demonstrate material changed circumstances to the debtor's financial condition, including additional assets not identified in the initial petition documents and/or a material reduction in the debtor's expenses or obligations.
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- ▶ All creditors are aware of economic realities and, in my experience, have been more willing than ever to consider settlement for less than the full amount due.
  - ▶ For business debtors, current financial information is the most useful information to have. Obtain current and reliable information from the bookkeeper, controller and/or accountant.
  - ▶ Especially for business debtors, your secured creditor is often your best friend and ally.
  - ▶ For consumer debtors, the unfortunate reality is that many creditors, such as credit card account holders, will not negotiate debt settlement unless and until that creditor's indebtedness is more than ninety (90) days past due.
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- ▶ The most favorable settlements are often obtained in exchange for an offer of a prompt, lump-sum payment, especially from a source that would otherwise be exempt from levy such as money received from a family member and/or from an exempt source such as a 401 (k) or pension loan.
  - ▶ Respond in writing to collection letters, requesting verification of the debt and copies of actual bills and/or invoices.
  - ▶ Utilize the services of an experienced lawyer and/or accountant.
  - ▶ Particularly in instances in which the option of a lump-sum payment is unavailable, consider utilizing the services of a reputable debt resolution organization.
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- ▶ A “breathing spell” codified as the “automatic stay” under Bankruptcy Code Section 362.
  - ▶ A “fresh start” from burdensome debts, accomplished by means of a discharge in bankruptcy (Bankruptcy Code Sections 727, 1141, 1228 and 1328).
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**THERE ARE SIX BASIC TYPES OF  
BANKRUPTCY CASES UNDER THE  
BANKRUPTCY CODE**




- ▶ In New Jersey, an individual consumer debtor with income below the following amounts (in annual income) and with the following “family size” will automatically be eligible to file a bankruptcy case:


after 5/1/12

- ▶ One person: \$ 62,226
- ▶ Two people: \$ 69,634
- ▶ Three people: \$ 87,576
- ▶ Four people: \$ 105,175


- ▶ New Jersey has among the highest median family income (and therefore great eligibility for the filing of a bankruptcy case) of any state, and as of May, 2012 has the highest median income for a family size of one, three or four or more persons.
  - ▶ Persons with income that exceeds the median annual income for their state and family size can still be eligible to file a case based upon specific calculations relating to a debtor's monthly expenses under certain conditions (11 U.S.C. § 707(b)(2)).
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## *Adjustment of Debts of an Individual With Regular Income*


- ▶ Designed for an individual debtor with a regular source of income
  - ▶ Can be preferable to certain instances because:
    - a. The debtor is permitted to keep all assets so designated, provided that the court approves a “plan” of repayment to creditors over time, usually three (3) to five (5) years.
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- ▶ A debtor must provide creditors with a court-approved disclosure statement which must contain information deemed adequate by the court to enable creditors to evaluate a proposed plan.
  - ▶ If the case survives long enough, the court will ultimately approve or “confirm,” or disapprove, a plan of reorganization.
  - ▶ Under a confirmed plan, a debtor can reduce debts and repay a portion of obligations and can discharge other obligations entirely.
  - ▶ A debtor can also terminate burdensome contracts and leases, recover assets and re-scale operations.
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## *Adjustment of Debts of Family Farmer or Fisherman With Regular Annual Income.*

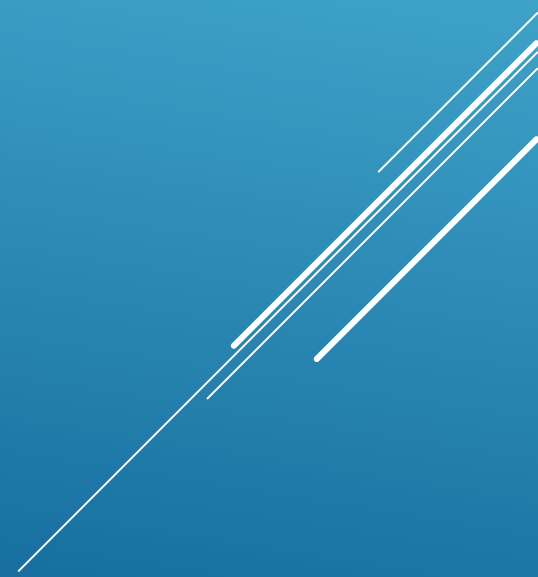
- ▶ Provides debt relief to family farmers and fisherman with regular income.
  - ▶ Very similar to case.
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## *Adjustments of Debts of a Municipality*

- Provides essentially for the reorganization of a municipality, much like the reorganization of a business entity or individual under Chapter 11.
  - A municipality is defined to include cities, towns, townships, counties, taxing districts, municipal utilities and/or school districts.
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## *Ancillary and Other Cross-Border Cases*

- ▶ The purpose of is to provide an effective mechanism for dealing with cases of cross-border insolvency, involving entities with organizations inside and outside the United States.



- ▶ A individual debtor in bankruptcy in New Jersey is entitled to exempt property that is designated as exempt under New Jersey state law or under Bankruptcy Code Section 522.
- ▶ Under New Jersey state law, a judgment debtor is entitled to exempt from execution all wearing apparel and household furnishings to the extent of \$1,000 in value, and also assets held in qualified retirement accounts which are not required to be distributed or which are actually distributed to a judgment debtor.
- ▶ The basic federal exemptions, available under Bankruptcy Code Section 522(d), consist of the following types and amounts of property, said amounts to be readjusted every three (3) years, the next readjustment to be effective as of April 1, 2013:

## **BANKRUPTCY DISCHARGE** **FOR INDIVIDUAL DEBTORS**

# BANKRUPTCY DISCHARGE FOR INDIVIDUAL DEBTORS (CONT.)

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- ▶ (d)(4) The debtor's aggregate interest, not to exceed \$1,450 in value, in jewelry held primarily for personal, family or household use;

- ▶ (d)(5) The debtor's aggregate interest in any property, not to exceed in value \$1,150, plus up to \$10,825 of any unused amount of the exemption provided under Section (d)(1);
- ▶ (d)(6) The debtor's aggregate interest, not to exceed \$2,175 in value, in any implements, professional books, or tools, of the trade of the debtor;
- ▶ (d)(7) Any unmatured life insurance contract owned by the debtor, other than a credit life insurance contract;
- ▶ (d)(8) The debtor's aggregate interest, not to exceed in value \$11,525, in any accrued dividend or interest under, or loan value of, any unmatured life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.

## **BANKRUPTCY DISCHARGE FOR INDIVIDUAL DEBTORS (CONT.)**

- ▶ (d)(9) Professionally prescribed health aids for the debtor;
- ▶ (d)(10) The debtor's right to receive various benefits such as social security benefits, unemployment compensation, veterans' benefits and/or disability benefits; alimony, support or separate maintenance payments to the extent reasonably necessary for the support of the debtor and any dependent of the debtor; and/or, and a payment under a pension, profit sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, with certain restrictions particularly if such plan or contract was established by an "insider" which employed the debtor;

## BANKRUPTCY DISCHARGE FOR INDIVIDUAL DEBTORS (CONT.)

- ▶ (d)(11) The debtor's right to receive payment under a crime victim's compensation law and, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, certain payments received on account of wrongful death, under a life insurance contract or on account of personal bodily injury or compensation for loss of future earnings; and,
- ▶ (d)(12) Retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under Section 401, 403, 408, 408A, 414, 457 or 451 (a) of the Internal Revenue Code.

## **BANKRUPTCY DISCHARGE FOR INDIVIDUAL DEBTORS (CONT.)**


- ▶ A bankruptcy discharge releases the debtor from personal liability for certain specified types of debts, such that the debtor is no longer legally required to pay any debts that are discharged.
- ▶ A valid lien or encumbrance against specific property, to secure a payment of a debt, and which has not been avoided as part of a bankruptcy case, will remain after the bankruptcy case.
- ▶ Note that certain liens may be avoided as part of a bankruptcy case and, in addition, certain liens can also be avoided under certain circumstances under New Jersey state law after a debtor has received a bankruptcy discharge.

## WHAT IS A DISCHARGE IN BANKRUPTCY?

- ▶ In cases under, and in individual, the bankruptcy court generally grants a discharge as soon as practicable after completion by the debtor of all payments required under the confirmed plan. Plans under typically provide for payments to be made in monthly intervals for a period of three (3) to five (5) years.
- ▶ The bankruptcy court may deny an individual debtor's discharge in a case if the debtor fails to complete "an instructional course concerning financial management" after having filed the bankruptcy case.
- ▶ This requirement is in addition to the requirement under Bankruptcy Code Section 109(h) that an individual debtor receive credit counseling (including a briefing conducted by telephone or on the Internet), received from an approved non-profit budget and credit counseling agency, within 180 days before filing a bankruptcy case.

## TIMING OF THE BANKRUPTCY DISCHARGE (CONT.)

# OBTAINING A DISCHARGE

- ▶ Unless there is litigation involving objections to the discharge, the debtor will usually automatically receive a discharge. Under the Federal Rules of Bankruptcy Procedure, the applicable bankruptcy court clerk is directed to mail a copy of the discharge order to all creditors of the debtor who are identified in the bankruptcy petition documents.
  - ▶ Certain debts are deemed non-dischargeable. Bankruptcy Code Section 523(a) specifically excepts various categories of debts from the discharge granted to an individual debtor.
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- ▶ The most common types of non-dischargeable debts are certain types of tax claims; debts not identified by the debtor on schedules filed with the court; debts for spousal support, child support or alimony; debts for willful and malicious injuries to person or property; debts to governmental units for fines and penalties; debts for most educational loans; debts for personal injury caused by the debtor's operation of a motor vehicle while intoxicated; and, debts for certain condominium or cooperative housing fees.
- ▶ A debtor's obligations affected by fraud or malice, described in Bankruptcy Code Sections 523(a)(2), (4) and (6), are not automatically excepted from discharge in a Chapter 7 case but can be so excepted if a creditor properly seeks to assert such exceptions.
- ▶ The broader category of discharge of debts permitted in a Chapter 13 case includes debts for willful and malicious injury to property; debts incurred to pay non-dischargeable tax obligations; and debts arising from property settlements in divorce or separation proceedings.

## OBTAINING A DISCHARGE (CONT.)

- ▶ In addition to the right of creditors to object to a discharge of that creditor's particular debt, a creditor or other party in interest in a bankruptcy case can seek to obtain a denial of a debtor's discharge in a Chapter 7 case for reasons set forth in Bankruptcy Code Section 727(a). These reasons include failure to provide tax return documents; transfer or concealment of property with intent to hinder, delay, or defraud creditors; concealment of books and records; perjury and other fraudulent acts; and, failure to account for the loss of assets.
- ▶ In a, a creditor does not have standing to object to a debtor's discharge. Instead, creditors must object to confirmation of the debtor's repayment plan and may also object post-confirmation if a creditor can demonstrate material changed circumstances to the debtor's financial condition, including additional assets not identified in the initial petition documents and/or a material reduction in the debtor's expenses or obligations.

## OBJECTIONS TO DISCHARGE

# TIPS FOR CONSIDERATION IN DEBT RESOLUTION FOR INDIVIDUAL DEBTORS AND BUSINESS DEBTORS




- ▶ All creditors are aware of economic realities and, in my experience, have been more willing than ever to consider settlement for less than the full amount due.
- ▶ For business debtors, current financial information is the most useful information to have. Obtain current and reliable information from the bookkeeper, controller and/or accountant.
- ▶ Especially for business debtors, your secured creditor is often your best friend and ally.
- ▶ For consumer debtors, the unfortunate reality is that many creditors, such as credit card account holders, will not negotiate debt settlement unless and until that creditor's indebtedness is more than ninety (90) days past due.

## **TIPS FOR CONSIDERATION IN DEBT RESOLUTION FOR INDIVIDUAL DEBTORS AND BUSINESS DEBTORS (CONT.)**

- ▶ The most favorable settlements are often obtained in exchange for an offer of a prompt, lump-sum payment, especially from a source that would otherwise be exempt from levy such as money received from a family member and/or from an exempt source such as a 401(k) or pension loan.
- ▶ Respond in writing to collection letters, requesting verification of the debt and copies of actual bills and/or invoices.
- ▶ Utilize the services of an experienced lawyer and/or accountant.
- ▶ Particularly in instances in which the option of a lump-sum payment is unavailable, consider utilizing the services of a reputable debt resolution organization.

## **TIPS FOR CONSIDERATION IN DEBT RESOLUTION FOR INDIVIDUAL DEBTORS AND BUSINESS DEBTORS (CONT.)**

## TIPS FOR CONSIDERATION IN DEBT RESOLUTION FOR INDIVIDUAL DEBTORS AND BUSINESS DEBTORS (CONT.)

- ▶ In exchange for payment of a compromised amount, request the removal by the creditor of negative information reported to credit reporting agencies. At minimum, require that resolved debt be reported to creditor reporting agencies as “settled in full.”
  - ▶ For consumer debtors, be alert to possible violations of the Fair Debt Collection Practices Act and other consumer protection laws and regulations, both state and federal.
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- A decorative graphic consisting of several parallel white lines of varying lengths, slanted diagonally from the bottom right towards the top right, set against the blue background.

## ▶ References

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