

8 NJ Chapter 11 and 7 Bankruptcy Types

Chapter 7 and Chapter 11 Bankruptcy in New Jersey

When a business is struggling financially, it may be forced to consider filing for bankruptcy. For general information on bankruptcy, please see our page on New Jersey Bankruptcy Law.

There are mainly two different kinds of bankruptcy most commonly used by businesses, "Chapter 7" and "Chapter 11." They are named for the specific chapter of the US Bankruptcy Code (Title 11 of the US Code) in which they appear.

Chapter 7 Bankruptcy

Chapter 7 is a "liquidation" bankruptcy, when all of the filer's assets are liquidated to satisfy the debts. Both individuals and businesses can file for Chapter 7 bankruptcy, but there are some important differences. Individuals are allowed to exempt certain types of property from bankruptcy proceedings. There are no exemptions for businesses filing Chapter 7: it's the ultimate "going out of business sale."

If a business has more debts than it has assets, and the owners have decided to shut the business down, Chapter 7 provides the owners with an easy way to liquidate the business. Instead of having to sell the assets and negotiate settlements with the company's creditors, the court appointed Bankruptcy Trustee handles it.

It is possible that a business owner could still be held liable for some of a business's debts after the business has filed a Chapter 7 bankruptcy. Often lenders will require owners of small businesses to co-sign or personally guarantee a debt. After the company has gone bankrupt, those lenders can still collect from the owner personally.

My firm has extensive experience in the little known State Court Insolvency Proceeding known as An Assignment for the benefit of Creditors. This is another possible option to evaluate for a business when a business is faced with the need for some type of restructuring or insolvency matter.

Chapter 11 Bankruptcy

Chapter 11 is a very different type of bankruptcy, often referred to as a "Reorganization,". While it is available to individuals and married couples, Chapter 11 is most commonly used by businesses.

In a Reorganization under Chapter 11 Bankruptcy , a company submits a Disclosure Statement and Plan. The plan can be confirmed by the court with consent of the classes of creditors. It can also be confirmed by the court over the objection by creditors and this is commonly known as a cram down. Businesses can file a Chapter 11 and proceed with an Orderly liquidation of the assets of the Business. This is commonly known as a liquidating Chapter 11.

One of the important features of Chapter 11 is that it allows companies to reject many contracts, leases, and contracts with suppliers. The ability of the Debtor to reject contracts and leases helps a business be relieved of burdensome contracts that drain the financial condition of the business. So by rejecting the contract it helps the business reorganize.

Companies operating under Chapter 11 have a lot of restrictions. They can only conduct “business as usual,” which means they cannot

- ∞ Obtain financing (without Court Approval)
- ∞ Sell off part of the company (without Court approval)
- ∞ Sell major pieces of equipment (without Court approval)
- ∞ Pay pre-petition claims

A Creditors Committee can be formed to represent the interests of Unsecured Creditors.

Chapter 11 Bankruptcy can also be “involuntary” which means it is imposed on a company by the company’s creditors if the company is not paying its bills and is deemed insolvent.

Our firm has experience representing Debtors, Creditors (Secured and Unsecured) and Businesses in Chapter 7 and Chapter 11 Matters. Our firm has represented purchasers of assets in Bankruptcy and has been an Assignee for Benefit of Creditors.