BANKRUPTCY

Chapter 7 Overview

MICHIGAN COMMUNITY RESOURCES

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A chapter 7 bankruptcy can help a company go out of business by providing an orderly liquidation of the company while eliminating the need to address creditors individually. Unlike chapter 11 bankruptcy, a chapter 7 bankruptcy does not allow for continued operation of the company. Filing under this chapter will shut down your company and put a chapter 7 trustee in charge of the liquidation of assets.

Upon filing, your company will receive protection from the "automatic stay." This means, that collection actions against your company will stop. As long as the stay is in effect, creditors generally may not initiate or continue lawsuits or collection efforts against the company. However, the chapter 7 trustee will be put in charge of all of the company's assets, will sell those assets and pay creditors pro rata, by priority. In addition, the chapter 7 trustee will investigate prior transactions to determine if money paid to the owners or others should be returned, primarily as preference actions.

Unlike a chapter 7 for individuals, corporations and LLCs do not receive a bankruptcy discharge. A discharge means that the debt is "wiped out." However, a discharge is not needed because, at the end of the case, the company is no longer operational, and there is nothing left of value for creditors to take from the company.

Keep in mind that the automatic stay does not protect the owners from being sued on a guaranty of payment or other similar obligations.

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ADVANTAGES:

- Because the business closure is under the court's supervision, it is easier to demonstrate that the winding down of the company took place in a manner consistent with legal requirements.
- Chapter 7 will wind down the company in a very public manner, offering a high level of transparency for creditors.
- When effective, the officers and managing members of the company get to step away from the closure and leave the hard work of selling off assets and paying creditors to the bankruptcy trustee.

DISADVANTAGES:

- Upon filing the petition, you will lose control of your company. The bankruptcy trustee will take over the business assets and determine whether it's in the best interests of the creditors to sell the company as a whole, or to sell off the assets.
- Chapter 7 will wind down the company in a very public manner.
- You will not have the ability to negotiate and settle debt for a lower amount than what is owed.
- If you are personally liable for your company's debt, this chapter 7 proceeding will not discharge you personally. However, you are able to file a personal bankruptcy proceeding.

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