

# Considerations For The Filing Of Involuntary Bankruptcies

## PART I: PREREQUISITES OF AN INVOLUNTARY PETITION

The filing of involuntary bankruptcy petitions is not a common practice with most creditors or creditors' attorneys. This article begins a series of three (3) articles dealing with the uses and abuses of involuntary bankruptcy petitions, with this first article addressing the conditions precedent to the filing of an involuntary proceeding.

In 11 United States Code (U.S.C.) Section 303 of the Bankruptcy Code which addresses the requirements necessary for a creditor or creditors to file an involuntary petition against a debtor. First of all, certain debtors are exempt from having involuntary petitions filed against them. The classes of debtor thus favored are "eleemosynary" [charitable] institutions and farmers. Thus, if your debtor raises chickens or is a charity, you may not file an involuntary petition in an attempt to collect the debt.

If your debtor is not otherwise exempt, you may still need to enlist the help of other creditors to take advantage of this remedy. You have to know the number of creditors which your debtor has in order to make this decision. If there are fewer than 12 creditors (and your claim is in excess of at least \$5,000 of the value of any collateral held by you) you may file an involuntary petition for your debtor by yourself.

If the creditors of your debtor number 12 or more, then you must have two others join with you, and your combined claims against the debtor still need only exceed \$5,000 in excess of the value of the collateral which the three of you hold. There is a provision, however, for the creditor who files by itself and then learns that there are 12 or more creditors. If the petitioning creditor can find two others to join with

it from the list of creditors filed by the debtor, then their joining in as petitioners will have the same effect as if they had joined in the original petition.

The debtor has twenty (20) days in which to contest the filing of your involuntary petition, and unless it does so, the Court shall then enter an Order of Relief against the debtor under either Chapter 7 or Chapter 11, depending upon the Chapter under which the creditors have asked for relief. Upon entry of the Order of Relief, the usual automatic stay restraining all creditors from collecting their balances goes into effect just as in any other Chapter 7 or 11.

The debtor may object to and contest the petition, however, in which case the petitioning creditors must be able to prove, as they have alleged in their original involuntary petition, the following elements:

1. - The debtor is generally not paying its debts as they become due (unless such debts are the subject of a bona fide dispute); or,

2. - Within 120 days before the date of the filing of the petition, a custodian (other than a trustee, receiver or agent appointed or authorized to take charge of less than substantially all of the property of the debtor for the purpose of enforcing a lien against such property) was appointed or took possession.

Be sure to watch for parts II and III of this explanation of involuntary petitions, presently planned for the June and July issues of *The Arrow*. The topics therein addressed will include the consequences of having your involuntary petition dismissed by the Court, and those situations in which this rather drastic creditors' remedy is advisable, as well as those situations in which it might prove a mistake.

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