



April 2015 Tip of the Month Pawned Property in Bankruptcy

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April's Tip of the Month focuses on what happens to pawned property in a Chapter 7 bankruptcy. This tip identifies a client's right to redeem the property and the rules at play when a bankruptcy is involved.

Pawned Property

Pawning property begins when a person brings personal goods (jewelry, electronics, tool, guns etc.) to a pawnshop and obtains a loan on the secured property. If the loan is not paid within a certain amount of time with interest and fees, then the property is forfeited and offered for sale by the pawnshop. A person is under no obligation to redeem the property.

Pawned Property under Minnesota Statutes

Minnesota law regulates pawnshops and pawned property under Minn. Stat. §325J. Minnesota law permits a person a minimum of 60 days to redeem pawned property by paying the loan with interests and fees in full.¹

The Bankruptcy Estate

When a Chapter 7 bankruptcy is filed, nearly all of the debtor's property becomes part of the bankruptcy estate. The 2005 changes to the Bankruptcy Code carve out an exception for pawned property. Section 541 specifically excludes pawned property from the "property of the bankruptcy estate."

To be excluded from the bankruptcy estate the pawned property must be: tangible and in the possession of the pawnshop. Additionally, the debtor must have no obligation to pay the loan back or redeem the property. Because the provision requires possession of the tangible personal property, a title pawn loan would not be applicable under this section if the debtor still retains the automobile.

While the pawned property is not part of the bankruptcy estate, it is unclear whether it permits a pawnshop from actually selling the property. Nothing in the language of the provision overrides other provisions that prevent collecting on a prepetition debt, so the extent that selling the property is an act to collect a prepetition debt, the pawnshop is stayed by 11 U.S.C §362(a)(6).²

¹ Minn. Stat. §325J.06 (2014)

² *In re Mosher*, 2007 WL 1487399 (Bankr. D. Mont. May 17, 2007)

Redeeming the Property

The debtor or the trustee may redeem the property after the bankruptcy filing within the time constraints of Minnesota law and Section 108(b) of the Bankruptcy Code.

Bankruptcy may allow a person an extension of the redemption period set by Minnesota law. 11 U.S.C. §108(b) extends the state redemption period on the pawned item for 60 days following the bankruptcy filing date.

The state forfeiture laws will remain in effect and the item will be forfeited to the pawnshop if not redeemed within 60 days of the bankruptcy filing date.

What to do if Your Client has Pawned Property

If your client has pawned property you will want to obtain the pawn ticket. Your client should have received the pawn ticket at the time of the pawn transaction.

The ticket contains the parties' loan agreement including: the date and time of the transaction, the description of the property and the amount paid for the item.

Calculate 60 days out from the pawn transaction date, or if the client has "renewed" the pawn by paying a portion of the loan, 60 days out from the date of the renewal payment.

If that date falls after the filing of the bankruptcy petition, the redemption period will extend 60 days from the date of filing.

Example: *Pawn Transaction: July 15th*
 Bankruptcy petition filing date: September 1st
 Redemption period date expires: October 30th

List the right to redeem the pawned property on Schedule B, and Schedule C and on the Statement of Financial Affairs under #10.

Determine with your client if they will be redeeming the property within the redemption period. If they will be redeeming, give notice to the trustee. The pawnshop may require approval of the redemption from the debtor's attorney or the trustee.