

MANAGING BANKRUPTCY CLAIMS

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Potential Bankruptcy Claims

Non-dischargeable debts (secured claims)-

- *Ad Valorem (Property) Tax
- *Hotel and Sales Tax
- *Fines
- *Assessment Liens

Dischargeable debts-

- *Utility bills
- *Contract obligations
- *Money judgments



UTILITY BILLS

Your agency received a notice of Chapter 11 bankruptcy for a utility customer, now what do you do?



Objective

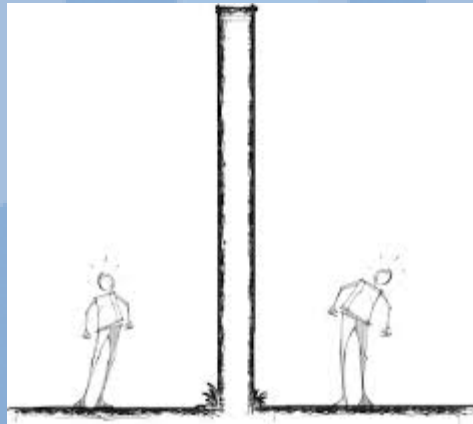
- Provide a **5 STEP** method to offer the best chance to receive payments for utility services provided to the bankrupt customer.



But first...

Pre-bankruptcy

- Unpaid, pre-petition utility bills are an unsecured, non-priority claim



Post-bankruptcy

- Unpaid, post-petition utility service charges are administrative expense claims
- “actual, necessary costs and expenses of preserving the estate”
 - *11 U.S.C § 503(b)(1)(A)*



Step 1

- **Do not alter service to the utility customer and cease collection activities.**
 - Utilities that receives a notice of bankruptcy from a federal bankruptcy court generally “may not alter, refuse, or discontinue service to, or discriminate against, [a] trustee or [a] debtor solely on the basis of the commencement” of bankruptcy proceedings or because of an unpaid pre-bankruptcy utility bill. 11 U.S.C. § 366 (a).



Step 2

- **Close the pre-bankruptcy account.**
 - Utilities must stop all collection activity on pre-bankruptcy account balances and delinquencies.



Pre-bankruptcy account

- Use any existing security deposit to cover the balance due
 - 11 U.S.C. § 366 (c)(4).
- File an unsecured claim in Bankruptcy Court for any additional balance due.



Step 3

- **Open a new post-bankruptcy account.**
 - Customers who enter bankruptcy must still pay for the service they use while in bankruptcy.
 - Commencement of bankruptcy does not require that a utility reconnect service to an already-disconnected customer (i.e., disconnected prior to the filing of the bankruptcy petition).



Step 4

- **Ensure payment of post-bankruptcy service by 1) asking for adequate assurance or 2) filing an administrative expense claim.**
 - The Bankruptcy Code provides these two tools utilities may use to guard against delinquencies



Adequate Assurance of Payment

- Request adequate assurance of payment from the bankrupt customer to ensure their ability and willingness to pay for utility service.
 - Examples: cash deposit, letter of credit, certificate of deposit, surety bond, and prepayment of utility charges.
- If no assurance is received, you may terminate service 30 days from filing for bankruptcy.



Administrative Expense Claims

- File an administrative expense claim with the bankruptcy court for post-bankruptcy utility charges as actual, necessary costs and expenses of preserving the estate.
- This claim is given priority in any distribution from assets of the bankrupt customer's estate.



Step 5

- **Treat the post-bankruptcy account as any other account for purposes of disconnecting service.**
 - Use the same policies and procedures used for all other customers.
 - The period of delinquency starts when the utility customer is unable to pay after the date the customer filed for bankruptcy.
 - Utility customers in bankruptcy who are facing disconnection or termination of service must receive the same process applied to those not in bankruptcy.



When Receive Bankruptcy Notice:

1. Do not alter service to the utility customer.
2. Stop collection activities.
3. Close the pre-bankruptcy account.
4. Open a new post-bankruptcy account.



THEN.....

1. Get deposit for the post-bankruptcy account.
2. File a claim for pre-bankruptcy debt, if any.
3. File an administrative expense claim for post-bankruptcy debt, if any.
4. Treat the post-bankruptcy account like any other account for purposes of disconnecting service.



Thanks,

