LIENS

- **Lien:** An encumbrance on property to secure a debt or to protect a claim for payment of a debt.

- **Mechanic’s Lien:** A lien on real property to ensure payment for work performed and materials furnished in the repair or improvement of real property.

- **Artisan’s Lien:** A possessory lien on personal property to ensure payment for services performed to repair, improve, and/or enhance the value of the personal property.

- **Innkeeper’s Lien:** A possessory lien on the luggage, and contents thereof, of a hotel’s guest for unpaid hotel charges.

- **Judgment Lien:** A lien obtained by judicial order in favor of a creditor.

- **Writ of Attachment:** A court order to seize and take into custody property of the debtor prior to the issuance of a judgment lien.

- **Writ of Execution:** A court order, following the issuance of a judgment lien, to seize and sell property of the debtor.
GARNISHMENT, COMPOSITION, AND FORECLOSURE

- **Garnishment:** Legal process used by a creditor to collect a debt by seizing property of the debtor (e.g., wages) being held by a third party (e.g., the debtor’s employer).
  
  Both state and federal laws restrict the amount of money that can be garnished from a debtor’s paycheck.

- **Composition Agreement:** An agreement between a debtor and his or her creditors by which the creditors agree to accept a lesser sum than that owed in full satisfaction of the debt.

- **Foreclosure:** A mortgage holder (the *mortgagee*) has the right, subject to state law, to foreclose on mortgaged property in the event that the debtor (the *mortgagor*) defaults.
  
  Foreclosure is typically accomplished by seizing the property and selling it by *judicial sale*.

  If the proceeds of the sale are not sufficient to satisfy the mortgage, the mortgagee may seek a *deficiency judgment* to collect the balance due from the debtor.
SURETYSHIP AND GUARANTY

- **Suretyship:** An express promise by a third party (the *surety*) to a creditor to be *primarily* responsible for the debtor’s obligation to the creditor.

- **Guaranty:** An express promise by a third party (the *guarantor*) to a creditor to be *secondarily* responsible for the debtor’s obligation to the creditor -- that is, to pay the debt *if, but only if*, the debtor defaults.

- **Defenses of Sureties and Guarantors:** Sureties and guarantors are entitled to assert the same defenses against payment (e.g., fraudulent inducement, material modification, satisfaction, rejected tender of payment) as the debtor, *except* for (i) bankruptcy of the debtor and (ii) statute of limitations.
RIGHTS OF SURETIES AND GUARANTORS

- **Subrogation:** The right of a guarantor or surety to stand in the shoes of or be substituted for another party, typically the creditor, and assume all of that party’s rights with respect to a particular transaction or series of transactions.

- **Reimbursement:** The right of a guarantor or surety to be restored, repaid, or indemnified for costs, expenses, or losses expended or incurred on behalf of the debtor.

- **Contribution:** The right of a co-surety or co-guarantor (where two or more persons are acting as surety or guarantor) to recover from his or her co-surety(-ies) or co-guarantor(s) any costs, expenses, or losses expended or incurred on behalf of the debtor greater than his or her proportionate share.
PROTECTION FOR DEBTORS

- **Homestead Exemption:** Each state’s law permitting a debtor to retain his or her family home, either in its entirety or up to a specified dollar amount, *free from claims of unsecured creditors and trustees in bankruptcy.*

- In addition to the home itself, state statutes typically protect the following:
  - **Household furniture** up to a specified dollar value,
  - **Clothing** and certain **personal possessions**, such as family heirlooms or a Bible,
  - A **vehicle** (or vehicles) for transportation (at least up to a certain dollar value),
  - Certain classified **animals**, including pets, and
  - Equipment used by the debtor in his or her business or trade (up to a certain dollar value).
**VOLUNTARY BANKRUPTCY**

- **Voluntary Bankruptcy:** A debtor who finds himself or herself unable to pay debts as they become due may voluntarily petition for bankruptcy. The petition must contain the following:

  1. A list of all secured and unsecured creditors, their addresses, and the amount owed to each;

  2. A statement of the debtor’s finances;

  3. A list of all property (real and personal) owned by the debtor, including property claimed by the debtor to be exempt (e.g., homestead, etc.); and

  4. A list of current income and expenses.
INVOLUNTARY BANKRUPTCY

- Involuntary Bankruptcy: A bankruptcy petition may be filed against a debtor by his or her creditors.

- If the debtor has twelve or more creditors, the petition must be filed by three or more creditors having unsecured claims totaling at least $10,775.

- If the debtor has fewer than twelve creditors, the petition must be filed by one or more creditors having unsecured claims totaling at least $10,775.

- If the debtor challenges the bankruptcy, the court will hold a hearing and enter an order against the debtor if:

  1. The debtor is generally not paying debts as they become due, or

  2. A receiver, custodian, or assignee took possession of, or was appointed to take charge of, substantially all of the debtor’s property within 120 days prior to the filing of the bankruptcy petition.
AUTOMATIC STAY

- **Automatic Stay:** Once a bankruptcy petition is filed voluntarily or involuntarily, virtually all other litigation or other action by creditors or potential creditors against the debtor or the debtor’s property are suspended until the bankruptcy is resolved and the stay is lifted.

- If a creditor *knowingly* violates the automatic stay, any party injured thereby is entitled to recover actual damages, costs, and attorneys’ fees from the violator.
CHAPTER SEVEN: LIQUIDATION - PART I

- **Liquidation:** The sale of all nonexempt assets of a debtor and distribution of the proceeds to the debtor’s creditors.

- With certain exceptions, any debts not satisfied by the liquidation proceeds are **discharged**, meaning that the debtor is no longer obligated to repay them.

- **Bankruptcy Estate:** Once a bankruptcy proceeding begins, the following legal and equitable interests in property, subject to certain exemptions, become property of the bankruptcy estate:

  1. Property **currently held** by the debtor;
  2. **Jointly-held** property;
  3. Property **transferred by the debtor** in transactions voidable by the trustee;
  4. **Proceeds and profits** from the use or sale of property of the estate; and
  5. Certain interests in property to which the debtor will become entitled within 180 days after the filing.
CHAPTER SEVEN: LIQUIDATION - PART II

Priorities in Property Distribution:

- Secured creditors have priority over unsecured creditors to the proceeds from the disposition of secured collateral. To the extent that a secured creditor’s claims are not satisfied by the secured collateral, he or she becomes an unsecured creditor for the balance due.

- Among unsecured creditors, proceeds from the remainder of the estate are distributed according to a strict categorization of claims.

  - Note that general creditors, typically the largest class of unsecured creditors, are the last to receive any distributions from the bankruptcy estate.

Discharge: From the debtor’s perspective, the purpose of liquidation is to discharge his or her debts and start anew. However, there are a number of non-dischargeable debts, including back taxes, alimony and child support, student loans, and consumer credit obtained within 60 days of filing.
CHAPTER ELEVEN: REORGANIZATION

■ **Reorganization:** A form of bankruptcy, under Chapter 11 of the Bankruptcy Code, whereby a business debtor and its creditors formulate a plan under which the debtor repays a portion of its debts and is discharged from the remainder.

■ **Debtor-in-Possession:** Upon order of the bankruptcy court, the Chapter 11 debtor continues to operate his or her business as a *debtor-in-possession*, with or without the requirement that a *trustee* oversee the DIP.

■ **Reorganization Plan:** A plan to conserve and administer the debtor’s assets in the hope of an eventual return to successful operation, which must:

1. Designate **classes** of claims and interests;

2. Specify the **treatment** to be afforded to each class; and

3. Provide an adequate means for **execution**.

■ **Confirmation:** Once a plan is developed, the various creditor classes vote on whether to accept it. The bankruptcy court must **confirm** the plan to make it binding.
CHAPTER THIRTEEN: REPAYMENT

- **Repayment Plan:** Individuals with regular income who owe fixed unsecured debts of less than $269,250 or fixed secured debts of less than $807,750 may voluntarily petition the bankruptcy court for relief under Chapter 13.

- **Confirmation:** Once the individual debtor has filed his or her plan, the bankruptcy court holds a hearing and will confirm the plan with respect to each claim of a secured creditor if:

  (1) the secured creditors have **accepted** the plan;

  (2) the plan provides that creditors **retain** their claims **and** the property to be distributed under the plan is sufficient to satisfy the secured claims; **or**

  (3) the debtor **surrenders** the property securing the claim to his or her creditors.

- **Discharge:** After the completion of all payments, the bankruptcy court will discharge all debts provided for by the repayment plan. Even if the debtor does not completely satisfy the requirements of the plan, the court may grant a **hardship discharge**.
CHAPTER TWELVE: FAMILY FARMER

- **Family Farmer:** One whose gross income is at least 50% from a farm business and whose debt is at least 80% farm related.

- Total debt cannot exceed $1.5 million.

- A payment plan much like that of a Chapter 13 plan is filed and must be confirmed or denied within 45 days of the filing of the plan.