

GARDEN STATE CLE LESSON PLAN

A 1.0 credit course

**FREE DOWNLOAD
LESSON PLAN AND EVALUATION**

WORKING OUT A WORK-OUT

With

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And featuring

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Program description

Riddle? What is faster, cheaper and easier than bankruptcy when you're broke? Two answers...the lottery or working out a deal with your creditors. Here is how you can accomplish the art of the deal with those that your client owes big bucks to the bank.

I. Introduction

- **Matthew Cavaliere, Esq.**
- **Practicing law for approximately 30 years**
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II. Working out a Workout

- **“workout” – a client who has a financial problem that they want to solve by incurring the least amount of pain possible usually avoiding bankruptcy – often this term is used to refer to trying to resolve financial problems short of being forced into bankruptcy**
- **All the same thing no matter who is the client – just a matter of degree of financial problems, i.e. commercial vs. private/personal, and the number of creditors**
 - **More “stuff” to deal with when dealing with a business, i.e. stockholders, business partners, etc.**
- **Example: Homeowner who has fallen into financial problems, including upside-down on the mortgage**
 - **Most people’s goal is to hold on to the house – sometimes a wise goal and sometimes not so wise – attorney must review and determine whether expectations are realistic**
- **Options:**
 - Bankruptcy**
 - **“fresh start”**
 - **Been around for a long time, recent updates to the law**
 - **Idea is when underwater and no hope of reorganization**
 - **“underwater” = debt is way greater than assets and with combination of assets and income not able to workout – just going to keep getting deeper in debt – usually a result of credit card debt at extraordinary interest rates**
 - **Bankruptcy court requires more due diligence on the part of bankruptcy attorneys to see how to address the issues short of bankruptcy**
 - **Suggest clients to get an accountant – list everything they own, all assets, all debts – have accountant to analysis of how much income there is and how much debt can be supported and come up with a workout**

plan that makes sense or determine that there is no workout plan

a. Chapter 7

- **Liquidation**
- **In a straightforward situation, saying to the court “here is what I have and here is what I owe” – take my debt, liquidate assets, pay what is available to creditors that is equitable to them, and give me a fresh start so I can start again with no debt**
- **There are exemptions – there are things you can keep**
- **Homeowners exemption in NJ, tools exempt**
- **Bankruptcy exempts – trustee can say not enough equity in asset to liquidate so it is abandoned back to the debtor**
- **Result is that client walks away from debt and home and start again**
- **Good thing – still has a job (no matter the income)**
- **Must say to client that this will solve immediate problems but you are going to be approached by a number of people who want to extend you credit – client must discipline themselves about their finances**
- **Ultimate relief available but there are methods that are less extreme**
- **Try to avoid Chapter 7 for many reasons – giving up a great deal, stigma within the world (although social stigma has declined with change in economy)**

b. Chapter 13 (personal)/Chapter 11 (business)

- **Reorganization**
- **Chapter 11 – usually are complex, bankruptcy court has a great deal of power in this type of situation to do things (“cram downs” – involuntary imposition by a court of a reorganization plan over the objection of some classes of creditors)**
 - **“debtor in possession” – I would like to hang on to what I got and won’t incur more debt except to operate, leave me there to preserve what is there better than a trustee can do – this is what will happen unless creditors object and court agrees**

- **Need to come up with plan that everyone can accept (even though they don't like it) – equitably apportioned – creditor will probably do better with this result than outright liquidation**
- **Still have employees, still earning a wage**
- **Reorganization plan is crammed down the throats of creditors even though they don't want to**
- **Wage earner must have job and has a period of time to execute the plan to pay secured creditors and unsecured creditors will get nothing**
- **You must look at everything in order to determine what is best for the client**
- **Chapter 13 often makes more sense than Chapter 7**
- **Primary purpose of Chapter 13 was the idea of let's create personal reorganization that has the benefit of allowing people to avoid liquidating – most want to allow debtor to keep is the house**
- **Chapter 13 is intended to allow debtor to keep his house – and that is the biggest asset and what we don't end up losing**
- **If you qualify for Chapter 13 and don't have a house, then why Chapter 13?? – no benefit because only credit card type debt and the value of the assets purchased with the credit card is minimal and therefore unlikely the creditor will come after you for the assets (except Sears – requires payment in full even in bankruptcy)**
- **There are exemptions and things you get to keep under Chapter 13**
- **If don't have a house, then question why Chapter 13**
- c. **Refinancing**
 - **“equity stripping” – type of foreclosure rescue scheme; often considered a form of predatory lending – but once refinanced there is nothing left**
 - **Concept of equity stripping has been going on for years but just pops every few years when the economy is bad**

- **People are targeting individuals with financial problems who owns houses and telling them they will save their house – bring in “straw man” to have that person buy the house and get new mortgage with decent credit and then original homeowner will pay off mortgage and bring it up to date and then be in position to re-purchase house from straw man – equity for original owner is now gone**
 - **What about mortgage companies?**
 - **What about attorneys involved?**
Misrepresentations?? Attorneys representing both sides of the transaction and don’t get objective and unbiased representation
 - **What happens when straw man defaults on the mortgage while original homeowners are still in the house as “tenants”?? – hope of original homeowner is that straw man is going to continue to make payments that homeowner is paying**
 - **Recommend refinancing??**
 - **Viable option**
 - **Do inventory of assets and liabilities and analysis by accountant and then attorney**
 - **Many people with mortgages with higher interest rates**
 - **Most major banks have “workout departments”**
 - **Short of rip off scams – if client can deal with legitimate bank, then refinancing is appropriate option**
 - **Key is that there is an advantage to avoid bankruptcy and foreclosure from bank’s perspective - to the advantage of the bank to deal with people to work something out**
 - **Litigation should be the last resort! – in the past the first option was litigation – more realistic perspective now**
- d. Workout**
- **All major banks have “workout departments” or “workout guy/girl” – trying to accommodate what amounts to poor situation we are in with the economy**

- **For a consumer who has a job and has fallen behind a few months on the mortgage and is otherwise solvent but not making enough money to make current mortgage payment:**
 - **Contact bank and try to work something out – give “us” some time**
 - **Contact someone at bank with authority – who that is depends on bank – local or regional banks are easy to find proper contact person; larger banks have departments to contact or contact main number**
 - **Recognized part of banking these days – mortgage companies as well**
 - **Approach the mortgage companies in the same way**
 - **Mortgage brokers and mortgage bankers – not clear who is holding the paper – usually not lending their own money so they will need to get approval from another company**
 - **Mortgage industry is no longer easy to maneuver because more complex – used as investment vehicle – selling mortgages**
 - **NJ Supreme Court had put a moratorium on bankruptcies because of this mortgage issue – who really owned property was unclear and foreclosures were being dismissed**
 - **Pitch to bank is “I would like to avoid bank and client having expense and aggravation of bankruptcy and therefore we would like to review some options”**
 - **Options such as:**
 - **If cannot catch up on mortgage, banks will send letters advising that there are options – but contact us and we can help – without an attorney, but probably better result if homeowner had an attorney**
 - **Banks generally amenable to talking about tacking what is past due on to end of mortgage – not behind anymore**

- **Bank can voluntarily reduce interest – old mortgage with high interest rate relative to what it is now – refinance will lower payments and at that new number homeowner able to pay ***inventory of assets and income is important for this option! – prefer an accountant to provide numbers; need documentation to show that these are real numbers (tax returns, debt load)**
- **Most compelling argument – this makes sense for the bank – don’t expect banks to be charitable – demonstrate to bank that there is an advantage to the bank – banks do not want to be property owners because that is a huge liability on the bank**
 - **Foreclosures allow for bank to charge back to debtor certain legal fees – but that is limited – so bank is stuck with the difference – there is a formula that is used**
 - **Costly to bank for foreclosures**
- **Banks plug numbers into a computer to determine how they are going to address each case**
- **Workout department are centralized – no matter where the property may be**
- **Ask to “send workout package” and complete it and return it – computer analysis is done at bank – figuring out risk and whether it is going to work**
- **Bank wants to know whether debtor is able to do this workout and make it work as opposed to bank delaying and more costs incurred**
- **Second homes v. primary residences**
 - **Primary residences in NJ have additional protections in foreclosure and bankruptcy process that do not exist for second homes**
 - **Banks more agreeable to talk about realistic resolution for primary residences**

- **Does not matter the use of secondary property – may depend on value of the asset – but if a house with a rental value – asset has value and bank can turn it around and won't be a liability**
- **Cost-benefit analysis that bank uses**
- **Approach business clients the same way but there are more complexities**
 - **Loans may be the result of inventory, unsecured, accounts receivable**
 - **Banks don't want to be unsecured creditors – so they will position themselves to be a secured creditor**
 - **Businesses usually have accountants, so it makes the resolution of the problems easier – accountant probably has already done the homework**
- **Workout for businesses is different – commercial department**
- **Selling the deal is best done by finding out who to contact and then send a letter, whether introductory or otherwise – but not usually an email, maybe PDF to the contact person**
- **Not necessarily more persuasive to meet in person with client, as opposed to by mail – depends on the case, where is the workout department located? – consumers don't have the funds for an attorney to travel, etc.**
- **For businesses, start with phone calls and who to contact, then letter, then usually on the phone with bank person, then meeting**
- **Goal and mechanics are largely the same for consumers and commercial clients**
- **No substitute for face to face meeting in terms of persuasiveness**
- **Client ultimately has option of going through bankruptcy if cannot worked out in client's favor**

III. Advice for young attorneys

- **Be prepared for frustration**

- **Follow up and tenacity are key**
- **Be a pain but not be perceived as being a pain to get the job done for your client**
- **Be respectful and diplomatic in working through the system to get to someone who can actually look at your client's file and do something about it**
- **Have all the numbers ready**
- **Be honest in negotiations**
- **Be persistent**
- **Bottom line – be persuasive**