

The TWILIGHT ZONE

OF CHAPTER 13

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1

Haunted by the Chapter 7 you didn't file

- 11 U.S.C. § 1325 (a)(4)
 - “... the court shall confirm the plan if the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date.”



2

... and by a future Chapter 7 you could file

- 11 U.S.C. § 1306
 - The code makes clear that property of the estate includes all property acquired after the commencement of the case until the case is closed, dismissed, or converted.
- So how do you deal with post-petition appreciation?
 - Stay tuned to the next episode.....



Issues determining value as of the effective date of the plan

- Atypical assets
 - Examples: cryptocurrency, property located outside the country, annuities, interest in non-filing spouse's income
 - The debtor has the burden of confirmation and proving up valuation
 - While debtor may testify as to value, testimony alone will likely be insufficient

Issues determining value as of the effective date of the plan (cont'd)

- Assets requiring cooperation
 - For example, if a debtor is a party to a non-exempt lawsuit that has not been settled or disposed, recovery is dependent on debtor's participation and prosecution of the claim but the debtor may not be willing to pursue if recovery will only go to creditors.

5

Issues determining value as of the effective date of the plan (cont'd)

- Credit for Administration Costs?
 - Likelihood of administration/abandonment, difficulty of sale, liquidity of asset
- Charge for delay in payment?
 - Time value of money: chapter 13 plans typically propose repayment to unsecured creditors after years of payments to secured creditors so an interest payment may need to be factored in.

6

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