

## SMALL BUSINESS ISSUES IN PERSONAL BANKRUPTCIES

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### 11 USC Section 541- Property of the Estate

- (a) The commencement of a case under section 301, 302 or 303 of this title creates an estate. Such estate is comprised of all of the following property, wherever located and by whomever held:
  - (1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.
  - (2) All interests of the debtor and the debtor's spouse in community property as of the commencement of the case that is-
    - (A) Under the sole, equal, or joint management and control of the debtor; or
    - (B) Liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and against the debtor's spouse, to the extent that such interest is so liable.

### 11 USC Section 704-Duties of the Trustee

- (a) The Trustee shall-
  - (1) Collect and reduce to money the property of the estate for which such Trustee serves, and close such estate as expeditiously as is compatible with the best interests of parties in interest.

### SOLE PROPRIETORSHIP

If your client is a sole proprietorship, all of his assets (business and personal) are assets of the estate and subject to liquidation by the Trustee. Potential assets include real estate, personal property, inventory, equipment, supplies, accounts receivable, client list. The Trustee has the ability to close and secure the property and business if he deems it in the best interests of the estate.

### CORPORATION OR LLC

Business assets are separate from the personal bankruptcy estate. However, the debtor's ownership of the business (for instance, the shares of a corporation) is an asset of the estate and can be liquidated for the benefit of creditors. The Trustee can either sell the interest to a third party or to the individual debtor.