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Bankruptcy Law Amendments Improve Your Chances Of Collecting If You Sell Products

I. Amendments

- A. There are amendments to the Bankruptcy Code which take effect in bankruptcy cases filed after October 17, 2005. If you sell goods, these amendments improve your chances of collecting your money or getting your goods back if the seller files bankruptcy before it pays you.

II. Right to Reclaim

- A. If you sell goods to a business that files bankruptcy and hasn't paid for the goods, you may have the right to reclaim those goods and get them back.
- B. You may also have a first priority administrative claim in the bankruptcy which almost always is paid in full in large bankruptcy cases and some times is in small cases.
- C. These rights are much better than just having a general unsecured claim on which you may be paid pennies on the dollar.

III. Requirements to Reclaim

- A. In order to reclaim the goods, all of the following are required:
 - 1. You must have sold goods to the buyer in the ordinary course of its business and **delivered** the goods to the buyer **within 45 days before bankruptcy**.
 - 2. The **buyer must have been insolvent** when it received the goods. Insolvent means its liabilities were greater than its assets which is usually the case in bankruptcy.
 - 3. You must **give a written notice to the buyer within 45 days after you delivered the goods** that you are reclaiming them. This gives you longer to give the notice than the 10 days you had under the old law.

- a. If the 45 day period expires within 20 days after the bankruptcy is filed, then you have until 20 days after the bankruptcy is filed to send the notice.
- B. If you meet all of these requirements, then you have the right to have your goods back.
- C. If the buyer has given a lien to someone on the buyer's equipment or inventory and your goods have become part of the buyer's inventory or equipment, you may not have the right to reclaim.

IV. Administrative Claim

- A. You may be entitled to a first priority administrative claim in the bankruptcy which gives you the best chance to be paid in full in the bankruptcy.
- B. Requirements:
 - 1. The only requirement is that you **sold goods to the buyer** in the ordinary course of its business **within 20 days before the bankruptcy filing.**
 - 2. You must file a motion or application for the administrative claim by the deadline set by the Court.
- C. An alternative to reclamation
 - 1. You may have an administrative claim for the full amount owing for the goods delivered within 20 days before bankruptcy if you prefer that to reclaiming the goods and reselling them.
 - 2. You have the administrative claim even if you failed to give the notice of reclamation within 45 days after delivery of the goods.
 - 3. You can split your claim. If you gave the 45 day notice, you could reclaim the goods. Or you could just reclaim the goods delivered more than 20 days before bankruptcy and have an administrative claim for the goods sold within 20 days before bankruptcy.
 - 4. If you lose on your reclamation claim because the goods fell under someone else's lien, you can still have the administrative claim.

V. Return of Goods By Agreement

- A. If the seller and buyer agree for the buyer to return the goods to the seller, the bankruptcy court may authorize that.
- B. Requirements:
 - 1. The agreement must be made within 120 days after the bankruptcy is filed.

2. The seller may credit the buyer for return of the goods.
 3. You don't have to have given the 45 notice of reclamation.
 4. You may not have the right to do this if the goods have fallen under someone else's lien on the buyer's inventory or equipment.

VI. Consult a Lawyer

- A. These statements are based on amendments that have not yet been applied by courts to specific cases. Courts may interpret some of the amendments differently.
- B. It's always necessary to consult a knowledgeable bankruptcy attorney about each specific case you have to have the attorney analyze how the amendments apply to your case as they begin to be interpreted by the courts.
- C. These amendments are contained in Bankruptcy Code sections 503(b)(9), 546(c),(h).