



**DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING
ENFORCEMENT DIVISION
*DIRECTIVE***

**DIRECTIVE
NUMBER
306**

**DISTRIBUTION
DATE
October 1, 1998**

1. **SUBJECT: BANKRUPTCY**
2. **PURPOSE:** To set forth the procedures to be followed in handling cases where a respondent(s) has filed or is about to file for bankruptcy.
3. **BACKGROUND:** Under the present bankruptcy law, a respondent may file for liquidation (Chapter 7), reorganization (Chapter 11) or an adjustment of debts (Chapter 13) (refer to Attachment 1 - "Types of Bankruptcy"). Due to the complex nature of this law, a variety of situations may arise which require different types of legal action by the Department in order to secure a claim for a complainant against a bankrupt respondent. In some instances, immediate legal action may be required.

4. **PROCEDURES:**

A. **Referral To Legal:**

- 1) As soon as the Consultant learns of the bankruptcy proceeding he/she will immediately inform the District Administrator. The District Administrator will contact the assigned attorney for instructions for handling the case.
- 2) If requested by the assigned attorney, the case file will be forwarded to the Legal Division as outlined in Directive 311, "Referral of Cases to Legal." The assigned attorney will handle the bankruptcy portion of the complaint.

The following information will accompany the case file when it is forwarded to the Legal Division:

- a) A brief cover memorandum explaining all information known about the bankruptcy.
- b) The name and telephone number of the respondent's bankruptcy attorney.

- c) Copies of the bankruptcy documents, if possible.
- 3) The assigned attorney will provide additional instruction to the District Administrator and Consultant as to how to proceed further with the investigation.
- 4) The assigned attorney will ensure that the case file is returned to the District Office with written instructions for processing and/or closure, as appropriate.

5. **APPROVAL:**

Nancy C. Gutierrez, Director

Date

TYPES OF BANKRUPTCY

Provided below is a short explanation of the types of bankruptcies that may be encountered:

Chapter 7:

This is a liquidation of the business. The debtor's purpose in filing is to secure a discharge of the debts. If a corporation is the debtor, it will be going out of business. To obtain a discharge under Chapter 7, the debtor must give up all non-exempt assets to its creditors.

Only an individual may obtain a discharge in a Chapter 7 liquidation, but debts resulting from intentional, malicious acts should not be discharged. Thus, if the DFEH complaint concerns acts such as harassment or intentional discrimination, the complainant should take steps, through counsel, to have the bankruptcy court determine that the debt is not dischargeable.

If the DFEH complaint involves non-intentional discrimination, the primary concern is whether the debtor has any assets to distribute. If there are assets available, the complainant will want to claim a share of them; in a no-asset case, there is probably no monetary remedy available.

Chapter 11:

This is a business reorganization. This is the only means by which a business (other than a sole proprietorship) can obtain a discharge of debts. There is a strong chance of gaining a monetary remedy in these cases, although the complainant will have to get on the list of creditors and may have to wait a considerable amount of time to collect. Except in the case of individual debtors, the Chapter 11 discharges all debts arising within a specified time unless the debtor "liquidates" rather than reorganizes and does not thereafter engage in business.

Chapter 13:

Individuals with limited debt and regular income can file under this "reorganization." The debtor agrees to a plan in which as much of the debt as possible is repaid in a three-year period and the remaining debts are discharged. Even intentional and malicious acts debts are discharged.