

PURPOSES, BENEFITS AND COSTS OF BANKRUPTCY

The United States Constitution provides a method whereby individuals, burdened by excessive debt, can obtain a "fresh start" and pursue productive lives unimpaired by past financial problems. It is an important alternative for persons strapped with more debt and stress than they can handle.

The federal bankruptcy laws were enacted to provide good, honest, hard-working debtors with a fresh start and to establish a ranking and equity among all the creditors clamoring for the debtor's limited resources.

Bankruptcy helps people avoid the kind of permanent discouragement that can prevent them from ever re-establishing themselves as hard-working members of society.

To the extent that there may be money or property available for distribution to creditors, creditors are ranked to make sure that money or property is fairly distributed according to established rules as to which creditors get what.

This discussion is intended only as a brief overview of the types of bankruptcy filings and of what a bankruptcy filing can and cannot do. No one should base their decision as to whether or not to file bankruptcy solely on this information. Bankruptcy law is complex, and there are many considerations that must be taken into account in making the determination whether or not to file. Anyone considering bankruptcy is encouraged to make no decision about bankruptcy without seeking the advice and assistance of an experienced attorney who practices bankruptcy law.

TYPES OF BANKRUPTCY

The Bankruptcy Code is divided into chapters. The chapters which almost always apply to consumer debtors are chapter 7, known as a "straight bankruptcy", and chapter 13, which involves an affordable plan of repayment.

An important feature applicable to all types of bankruptcy filings is the automatic stay. The automatic stay means that the mere request for bankruptcy protection automatically stops and brings to a grinding halt most lawsuits, repossessions, foreclosures, evictions, garnishments, attachments, utility shut-offs, and debt collection harassment. It offers debtors a breathing spell by giving the debtor and the trustee assigned to the case time to review the situation and develop an appropriate plan. In most circumstances, creditors cannot take any further action against the debtor or the property without permission from the bankruptcy court.

CHAPTER 7

In a Chapter 7 case, the bankruptcy court appoints a Trustee to examine the debtor's assets to determine if there are any assets not protected by available "exemptions". Exemptions are laws that allow a debtor to keep, and not part with, certain types and amounts of money and property. For example, exemption laws allows a debtor to protect a certain amount of equity in the debtor's residence, motor vehicle, household goods, life insurance, health aids, retirement plans, specified future earnings such as social security benefits, child support, and alimony, and certain other types of personal property. If there is any non-exempt property, it is the Trustee's job to sell it and to distribute the proceeds among the unsecured creditors. Although a liquidation case can rarely help with secured debt (the secured creditor still has the right to repossess the

collateral if the debtor falls behind in the monthly payments), the debtor will be discharged from the legal obligation to pay unsecured debts such as credit card debts and medical bills. However, certain types of unsecured debt are allowed special treatment and cannot be discharged. These include some student loans, alimony, child support, criminal fines, and some taxes.

In addition to attorney fees, there is a filing fee in the amount of \$299.00 that must be paid to the Bankruptcy Court.

CHAPTER 13

In a chapter 13 case, the debtor puts forward a plan, following the rules set forth in the bankruptcy laws, to repay certain creditors over a period of time, usually from future income. A chapter 13 case may be advantageous in that the debtor is allowed to get caught up on mortgages or car loans without the threat of foreclosure or repossession, and is allowed to keep both exempt and nonexempt property. The debtor's plan is a document outlining to the bankruptcy court how the debtor proposes to dispose of the claims of the debtor's creditors. The debtor's property is protected from seizure from creditors, including mortgage foreclosure, as long as the proposed payments are made and necessary insurance coverages remain in place. The plan generally requires monthly payments to the bankruptcy trustee over a period of three to five years. Arrangements can be made to have these payments made automatically through payroll deductions.

In addition to attorney fees, there is a filing fee of \$274.00 that must be paid to the Bankruptcy Court.

CHAPTER 11

Usually, a Chapter 11 is a type of bankruptcy reserved for large corporate reorganizations. Chapter 11 shares many of the qualities of a chapter 13, but tends to involve much more complexity on a much larger scale.

However, since chapter 11 does not usually pertain to individuals whose debts are primarily consumer debts, further information about chapter 11 will be provided by reference to the following resource: The "Bankruptcy Basics" brochure prepared by the Administrative Office of the United States Courts, dated June 2000, and which can be accessed over the internet by visiting the following website:

www.uscourts.gov/bankruptcycourts.html .

CHAPTER 12

Chapter 12 of the Bankruptcy Code was enacted by Congress in 1986, specifically to meet the needs of financially distressed family farmers. The primary purpose of this legislation was to give family farmers facing bankruptcy a chance to reorganize their debts and keep their farms.

However, as with chapter 11, since chapter 12 does not usually pertain to individuals whose debts are primarily consumer debts, further information about chapter 12 will be provided by reference to the same "Bankruptcy Basics" brochure referred to above, which can be accessed over the internet at the same said website as mentioned for chapter 11.

WHAT BANKRUPTCY CAN AND CANNOT DO

Bankruptcy may make it possible for financially distressed individuals to:

1. Discharge liability for most or all of their debts and get a fresh start. When the debt is discharged, the debtor has no further legal obligation to pay the debt.
2. Stop foreclosure actions on their home and allow them an opportunity to catch up on missed payments.
3. Prevent repossession of a car or other property, or force the creditor to return property even after it has been repossessed.
4. Stop wage garnishment and other debt collection harassment, and give the individual some breathing room.
5. Restore or prevent termination of certain types of utility service.
6. Lower the monthly payments and interest rates on debts, including secured debts such as car loans.
7. Allow debtors an opportunity to challenge the claims of certain creditors who have committed fraud or who are otherwise seeking to collect more than they are legally entitled to.

Bankruptcy, however, cannot cure every financial problem. It is usually not possible to:

1. Eliminate certain rights of secured creditors. Although a debtor can force secured creditors to take payments over time in the bankruptcy process, a debtor generally cannot keep the collateral unless the debtor continues to pay the debt.
2. Discharge types of debts singled out by the federal bankruptcy statutes for special treatment, such as child support, alimony, student loans, certain court ordered payments, criminal fines, and some taxes.
- 3.. Protect all cosigners on their debts. If relative or friend co-signed a loan which the debtor discharged in bankruptcy, the cosigner may still be obligated to repay whatever part of the loan not paid during the pendency of the bankruptcy case.
4. Discharge debts that are incurred after bankruptcy has been filed.

BANKRUPTCY'S EFFECT ON YOUR CREDIT

By federal law, a bankruptcy can remain part of a debtor's credit history for 10 years. Whether or not the debtor will be granted credit in the future is unpredictable, and probably depends more on what good things the debtor does in the nature of keeping a job, saving money, making timely payments on secured debts, etc., than the fact that the debtor filed bankruptcy.

In some cases it may actually be easier to obtain future credit after bankruptcy, because new creditors may feel that since the old obligations have been discharged, they will be first in line. They also recognize that the debtor cannot again file bankruptcy for at least the next four years in the case of chapter 13 or eight years in the case of chapter 7. The truth is that if a debtor cannot pay his or her bills, and the debtor's credit is already ruined or exhausted, filing bankruptcy can actually be an important first step in re-building credit.

SERVICES AVAILABLE FROM CREDIT COUNSELING AGENCIES

If you're not disciplined enough to create a workable budget and stick to it, can't work out a repayment plan with your creditors, can't keep track of mounting bills, or need more help with your debts than can be achieved by merely having a few of your unsecured creditors lower your interest rates somewhat, it makes NO sense to consider contacting a credit counseling organization.

If, on the other hand, you meet all of those criteria, there are many non-profit credit counseling organizations that are nonprofit and will work with you to solve your financial problems.

But be aware that, just because an organization says it's "nonprofit," there's no guarantee that its services are free, affordable, or even legitimate. In fact, some credit counseling organizations charge high fees, which may be hidden, urge consumers to make "voluntary" contributions that can cause more debt, urge consumers to enter "debt repayment plans" they simply cannot afford.

Most credit counselors offer services through local offices, the Internet, or on the telephone. If possible, it probably best to find an organization that offers in-person counseling. Many universities, military bases, credit unions, housing authorities, and branches of the U.S. Cooperative Extension Service operate nonprofit credit counseling programs. Your financial institution, local consumer protection agency, and friends and family also may be good sources of information and referrals.

Reputable credit counseling organizations can advise you on managing your money and debts, help you develop a budget, and offer free educational materials and workshops. Their counselors are certified and trained in the areas of consumer credit, money and debt management, and budgeting. Legitimate counselors will discuss your entire financial situation with you, and help you develop a personalized plan to solve your money problems. An initial counseling session typically lasts an hour, with an offer of follow-up sessions.

If your financial problems stem from too much debt or your inability to repay your debts, a credit counseling agency may recommend that you enroll in what is known as a "debt management plan" or "DMP". A DMP alone is not credit counseling, and DMPs are not for everyone. You should sign up for one of these plans only after a certified credit counselor has spent time thoroughly reviewing your financial situation, has offered you customized advice on managing your money, and has analyzed your budget to make sure that the proposed DMP is one you can afford. However, remember that all organizations that promote DMPs fund themselves in part through kickbacks from the creditors involved, which are called "fair share", so you have to be wary as to whose best interest the counselor has in mind. Even if a DMP is not appropriate for you, a reputable credit counseling organization still can help you create a budget and teach you money management skills.

In a DMP, you deposit money each month with the credit counseling organization, which uses your deposits to pay your unsecured debts, like your credit card bills and medical bills, according to a payment schedule the counselor develops with your creditors. Your creditors may agree to lower your interest rates or waive certain fees, but it's always best to check with all your creditors, just to make sure they offer the concessions

that a credit counseling organization is promising you. A successful DMP requires you to make regular, timely payments, and could take 48 months or more to complete. Ask the credit counselor to estimate how long it will take for you to complete the plan. You may have to agree not to apply for , or use , any additional credit while you're participating in the plan, and a DMP is absolutely useless if your problems stem from or involve your secured creditors holding your car, truck or home as collateral. DMP's are also useless if your problems stem from alimony, child support or overdue taxes.

The bottom line is this: If all you need is a little lowering of your interest rates on some unsecured debts, a DMP might be the answer. However, if what you really need is to reduce the amount of your debt, bankruptcy may be the only solution.

NOTICE OF MANDATORY DISCLOSURE TO CONSUMERS WHO CONTEMPLATE FILING BANKRUPTCY

You are notified as follows:

1. All information that you are required to provide with the filing of your case and thereafter, while your case is pending, must be complete, accurate and truthful.
2. All your assets and all your liabilities must be completely and accurately disclosed in the documents filed to commence your case.
3. Some places in the bankruptcy code require you to determine and list the replacement value of an asset, as for instance a car, or furniture. When replacement value is required, it means the replacement value, established after reasonable inquiry, as of the date of the filing of your bankruptcy case, without deduction for costs of sale or marketing. With respect to property acquired for personal, family or household purposes, replacement value means the price a retail merchant would charge for "used" property of that kind considering the age and condition of the property.
4. Before your case can be filed, it is subject to what is called "Means Testing". The Means Test was designed to determine whether or not you qualify to file a case under chapter 7 of the Bankruptcy Code, and if not, how much you need to pay your unsecured creditors in a chapter 13 case. For purposes of means test, you must state, after reasonable inquiry, your total current monthly income, the amount of all expenses as specified and allowed pursuant to section 707(b)(2) of the bankruptcy code, and if the plan is to file you in a Chapter 13 case, you must state, again after reasonable inquiry, your disposable income, as that term is defined.
5. Information that you provide during your case may be audited pursuant to the provisions of the Bankruptcy Code. Your failure to provide complete, accurate and truthful information may result in the dismissal of your case or other sanctions, including criminal sanctions.

IMPORTANT INFORMATION ABOUT BANKRUPTCY ASSISTANCE SERVICES

If you decide to seek bankruptcy relief, you can represent yourself, you can hire an attorney to represent you, or you can get help in some localities from a bankruptcy petition preparer who is not an attorney. **THE LAW REQUIRES AN ATTORNEY OR BANKRUPTCY PETITION PREPARER TO GIVE YOU A WRITTEN CONTRACT SPECIFYING WHAT THE ATTORNEY OR BANKRUPTCY PETITION PREPARER WILL DO FOR YOU AND HOW MUCH IT WILL COST.** Ask to see the contract before you hire anyone.

The following information helps you understand what must be done in a routine bankruptcy case to help you evaluate how much service you need. Although bankruptcy can be complex, many cases are routine.

Before filing a bankruptcy case, either you or your attorney should analyze your eligibility for different forms of debt relief available under the Bankruptcy Code and which form of relief is most likely to be beneficial for you. Be sure you understand the relief you can obtain and its limitations. To file a bankruptcy case, documents called a Petition, Schedules and Statement of Financial Affairs, as well as in some cases a Statement of Intention need to be prepared correctly and filed with the bankruptcy court. You will have to pay a filing fee to the bankruptcy court. Once your case starts, you will have to attend the required first meeting of creditors where you may be questioned by a court official called a 'trustee' and by creditors.

If you choose to file a chapter 7 case, you may be asked by a creditor to reaffirm a debt. You may want help deciding whether to do so. A creditor is not permitted to coerce you into reaffirming your debts. It may not be in your best interest to reaffirm a debt.

If you choose to file a chapter 13 case in which you repay your creditors what you can afford over 3 to 5 years, you may also want help with preparing your chapter 13 plan and with the confirmation hearing on your plan which, if held, will be before a bankruptcy judge.

If you select another type of relief under the Bankruptcy Code other than chapter 7 or chapter 13, you will want to find out what should be done from someone familiar with that type of relief. However, please be advised that in most cases, you will only be concerned with chapter 7 and chapter 13.

Your bankruptcy case may also involve litigation. You are generally permitted to represent yourself in litigation in bankruptcy court, but only attorneys, not bankruptcy petition preparers, can give you legal advice.

FRAUD & CONCEALMENT PROHIBITED

If you decide to file bankruptcy, it is important that you understand the following:

1. Some or all of the information you provide in connection with your bankruptcy will be filed with the bankruptcy court on forms or documents that you will be required to sign and declare as true under penalty of perjury.
2. A person who knowingly and fraudulently conceals assets or makes a false oath or statement under penalty of perjury in connection with a bankruptcy case shall be subject to fine, imprisonment, or both.
3. All information you provide in connection with your bankruptcy case is subject to examination by the Attorney General.