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FREQUENTLY ASKED QUESTIONS ABOUT CONSUMER BANKRUPTCY

What is the difference between the various types of bankruptcy?

Chapter 7 is sometimes referred to as a “straight” bankruptcy. In a chapter 7 most debts are “discharged” and the obligation is relieved. A debtor can choose to keep debt if they so desire and it is otherwise in the debtor’s best interest. In a vast majority of chapter 7s, a debtor will keep all assets. A majority of bankruptcies are the Chapter 7 variety.

Chapter 13 is a repayment program that lasts between 36 and 60 months (depending on income). The amount that is repaid depends on the amount of debt that a debtor can afford to repay as well as the type of debt that is required to be repaid.

Many factors determine what type of bankruptcy is appropriate. Again, chapter 7 is the most common and efficient type of bankruptcy. If possible that is the preferred approach. However, Chapter 13 can resolve debt problems that cannot be resolved in a chapter 7 (ex. Mortgage arrearages and tax debt). Further, as a result of recent changes in the law that, debtors with a household income exceeding the state average are usually required to file a chapter 13.

How much does it cost?

The filing fee for a chapter 7 is \$299. The filing fee for a chapter 13 is \$274. Attorney’s fees for a typical chapter 7 are \$651. A typical chapter 13 attorney fee is \$2500 but most of that is paid in monthly payments over the course of the repayment plan. If it is anticipated that a chapter 13 is necessary, your attorney may require a portion the filing fee and a portion of the attorney fee (\$500-\$1000) in advance. There are also counseling fees associated with every consumer bankruptcy that will cost an additional \$100-\$150, depending on the provider.

Will I lose my property and household goods?

In most cases the answer to this question is “No”. The bankruptcy laws allow most debtors to keep all assets via *exemptions*. There are exemptions for common types of personal property and even real property. It is a rare occurrence that assets sold to satisfy debt. If assets will be sold, your attorney will advise you of that possibility well in advance.

What is the automatic stay?

When a debtor files a bankruptcy, creditors are prevented from collecting any debt owing at the time the bankruptcy is filed. Thus, debt collection efforts (including garnishments, lawsuits and harassing phone calls) are “stayed” pending the conclusion of the bankruptcy or some other time as indicated by the court. Most debtors see a significant reduction in creditor collection efforts immediately following the filing of the bankruptcy and this is a product of the automatic stay.

What paperwork must I complete in order to file a bankruptcy?

Generally you will have to fill out a form telling your lawyer what assets you have, what debts you have incurred, and some other general information about the nature of your financial affairs. Although the

form is rather lengthy, most people are able to complete it with paperwork that is readily available (invoices, statements, memory, etc.). You can obtain a copy of the form [here](#). In the event you need assistance the trained staff at Hames, Anderson & Whitlow, can help.

What documents do I need in order to file a bankruptcy?

Situations vary but in most cases the following documents will provide your attorney with the necessary information:

- Wage stubs
- Last two years tax returns
- Recent account statements
- Copies of relevant legal documents including divorce paperwork.

Can I discharge student loan debt?

Generally, no. There are however, exceptions that could apply. Furthermore, solving other debt problems could allow you to make the monthly payments on the student loan debt.

Can I discharge tax debt?

It is a common misconception that tax debt is non-dischargeable. Depending on the particulars of the tax debt, bankruptcy may help resolve debts to the IRS and other governmental entities. Ask your attorney for more detailed information.

What is the process?

Prior to filing you and your attorney will complete necessary paperwork or “schedules”. You will be required to obtain a “pre-bankruptcy counseling certificate”. Your attorney’s staff will assist you with that. The bankruptcy will then be filed and the automatic stay imposed. You will be required to attend a “meeting of creditors” (see below) several weeks after the initial filing.

In a chapter 7 you will receive a “discharge” letter approximately 60 days after the meeting of creditors. You’re bankruptcy is finished at that time.

In a chapter 13, at some point after the meeting of creditors (usually 30-60 days) there is a “confirmation hearing” that you’re lawyer will attend on your behalf. At that time the bankruptcy judge will typically approve (“confirm”) the reorganization plan. From that point forward your obligation is to simply make the required payment and keep your attorney apprised of any significant changes in your financial situation. A chapter 13 debtor will receive a discharge letter when the term of the plan is complete.

What happens at the meeting of creditors?

The meeting of creditors is an opportunity for the bankruptcy trustee and creditors to ask you questions about your financial situation. Typically only the trustee and your attorney are at that meeting – it is relatively rare that creditors appear. Although the meeting is not a “court appearance” it is nonetheless somewhat formal. You will be sworn under oath and the trustee will ask you several questions. The meeting typically takes several minutes.

The trustee’s role is to inquire about your financial situation. All trustees are respectful and cognizant of the realities that require people to file for bankruptcy protection. They are more concerned about the accuracy of the information you provided to the court than they are with the reasons for your filing. Many debtors are needlessly anxious and nervous about the meeting of creditors. After the meeting they realize their anxiety was unnecessary.

Can I keep my home and car?

In most cases, the debtor has the option to keep secured debt such as houses or cars. If there is a loan associated with the property then your attorney will make arrangements with the creditor (“reaffirmation

agreements”) to continue to make payments on the loan. If you prefer to “surrender” (give back) the property, you can. Exceptions to this rule exist if there is some significant amount of equity in the property or if the payments on debt associated with the property exceed a reasonable amount (in relation to your household income).

How will a bankruptcy affect my credit?

Obviously, filing for bankruptcy will have a negative impact on credit rating. However, in many cases a person who files for bankruptcy protection already has a less than perfect rating so the impact is negligible. Bankruptcy allows you to essentially “start fresh” with your credit and rebuild it over time.

If I file for bankruptcy, when will I be able to finance a house or car?

The answer to this depends on your financial situation at the time you try to buy the house or car. If there is a record (after the bankruptcy) of maintaining monthly payments, you have sufficient income, and are attempting to buy an item within your means, you will likely find lenders willing to loan money. Oftentimes, this question relates more to how much interest you pay on the loan rather than whether or not you would “qualify”. A lender may also require a larger down payment from you.

How do I handle creditors that won't stop calling, are harassing me, etc.?

Creditors are given a lot of discretion in the manner in which they can attempt to collect a debt. Filing the bankruptcy petition is the only way to “force” creditors to stop harassing a debtor.

What is the difference between debt reduction plans and a chapter 13 bankruptcy?

A chapter 13 plan is a formal repayment plan that has the force of law. Creditors generally must get permission from the bankruptcy court before suing, garnishing wages, garnishing checking accounts or taking other steps to collect a debt. That permission is not granted very often. With debt reduction plans the creditor can take any action they deem appropriate – regardless of the agreement that you’ve arranged. Further, the payment made in a chapter 13 is based on what the debtor can afford. In a debt reduction plan, the payment is based on the amount the creditor demands of the debtor.

What are common reasons for filing a bankruptcy?

Common reasons include: medical bills, divorce, employment termination or decrease in employment, family tragedy, accidents, or a combination of these events. In most cases, all bankruptcies can be “traced” to some significant event.

How long will a bankruptcy appear on my credit report?

Typically a notation of a bankruptcy will stay on your credit report for 7 years, although federal laws allow for the notation to remain for up to 10 years.

If I’m married, am I obligated to file with my spouse?

No. However in most cases it is in your and your spouse's best interest to file “jointly”. The cost is the same regardless of whether the petition is joint or separate.

Do I have to have an attorney to file a bankruptcy?

No. However, an attorney who is familiar with the law and procedures will make the process more efficient. More importantly, a debtor who represents himself runs the risk of having the bankruptcy “dismissed”. Depending on the circumstance a dismissal could prohibit someone from refiling another petition at a later date.

Must I be a citizen in order to file for bankruptcy?

No.