



BANKRUPTCY: IS IT THE ANSWER?

One of the fundamental keys to financial wellness is the ability to efficiently manage and minimize debt. With careful planning and a long-term payment strategy, debt management and consolidation can easily be maintained. However, a challenging economic climate can create a multitude of financial obstacles that can drastically disrupt even the most detailed debt management strategy, and change a seemingly bright financial future. Plummeting stock prices, rising unemployment rates and property devaluation are among the many unpredictable economic downturns that contribute to unmanageable debt.

In today's economy these market-destabilizing trends are increasing, leaving many with an abundance of debt they had never anticipated nor have the money to manage. Bankruptcy is a process that can help to alleviate the burden of excessive debt, and has helped many to get a fresh start on their financial future. However, while bankruptcy can act as a new beginning for many, it may not always be the best answer for each of us. The following information can provide insight on your bankruptcy options, and help to determine whether it is right for you.

Bankruptcy (Chapters 7, 11 And 13)

Bankruptcy is the legal process that allows a debtor to form a repayment plan or liquidate assets to pay off creditors with whatever assets he owns. Once the creditors are paid (if payment is possible), in full or in part, the debtor is free from liability on the debts. The debts are discharged and the person gets a financial "fresh start."

Bankruptcy proceedings are filed exclusively in federal bankruptcy courts. State courts have no jurisdiction over bankruptcy matters. Bankruptcy laws provide for several different options under which a debtor can file for bankruptcy. The options are referred to by their legal designations as a Chapter 7, Chapter 11 and Chapter 13 bankruptcy. Individuals file for either a Chapter 7 or Chapter 13 bankruptcy. Businesses may file for Chapter 11 bankruptcy.

TIP: The U.S. Bankruptcy courts maintain a Web site at www.uscourts.gov/bankruptcycourts.html with useful information and links.

What is a debtor? *A debtor is an individual or business that has filed a petition for bankruptcy.*

The petition informs the court that the debtor has more liabilities than assets and, in essence, is unable to pay what she owes.

TIP: Married couples should file jointly for bankruptcy or the debts will be extinguished as to only the filing spouse. Creditors may be able to continue to look for payment from the spouse that did not file.

When the debtor files for bankruptcy, the petition includes certain forms or schedules, listing all the debtor's assets and naming all the creditors. The court uses the schedules to send out notices of bankruptcy to any person or company listed on the debtor's schedule as a creditor.

Can anyone file for bankruptcy? *Yes. Any person or business may file for bankruptcy.* Depending on the type of business and the amount of the debtor's assets, if any, the debtor files under one of several bankruptcy provisions called chapters.

Municipal corporations, railroads, insurance companies and certain savings and loans institutions are prohibited from filing Chapter 7 bankruptcy.

TIP: Bankruptcy forms can be viewed online at www.uscourts.gov/bkforms.

What is a creditor? *A creditor is any person or entity to which the debtor owes money.* Typical creditors include mortgage companies, vehicle financing companies and banks that have issued credit cards or made loans to the debtor. However, anyone may be a creditor. For example, if the debtor owes his parents money, the parents are creditors in a bankruptcy.

Creditors are notified that the debtor has filed for bankruptcy shortly after the debtor files. Creditors have the right to contest the filing within 90 days by alleging that the debtor has the assets to pay or is attempting to defraud the creditor.

The filing puts in place an automatic stay to any and all collection activities. For instance, collection companies that have been calling the debtor's home must cease calling immediately or risk violating the automatic stay.

A frequently noted benefit of filing for bankruptcy is the halting of all collection calls, letters and other creditor activities common in the many months prior to filing.

While the automatic stay halts most creditor activity, it does not stop or postpone the following:

- Eviction proceedings
- Actions to withhold, suspend or restrict a driver's license
- Actions to withhold, suspend or restrict a professional, recreational or occupational license
- Lawsuits to establish paternity, child custody or visitation

- Lawsuits to establish, modify or collect domestic support
- Actions to intercept tax refunds
- Divorce proceedings (although proceedings to divide marital property are stayed)
- The withholding of payments on pension, profit-sharing, stock bonus, or 401(k) loans from the debtor's pay
- Proceedings to enforce medical obligations
- Lawsuits related to domestic violence

Do some creditors have priority over other creditors? *Some creditors receive special, or priority, treatment from bankruptcy courts.* These creditors usually recoup some of what they are owed in preference to other creditors. The IRS is a priority creditor. Ex-spouses who are owed child support or alimony under a court order are also priority creditors.

What is the difference between a secured and unsecured creditor? *A secured creditor has collateral or security for her loan of money to the debtor.* For instance, a financed vehicle is the security for the car note. If the note is unpaid, the creditor may repossess the car. Likewise, a mortgage company has a lien on real estate that it can foreclose on if the debtor falls behind on house payments.

Vehicles and other property may not be repossessed while the automatic stay is in effect, even if payments are not being made.

Most creditors involved in personal bankruptcies, however, are unsecured creditors, with credit card companies making up the majority of creditors. The unsecured creditor has loaned or allowed use of its money without any collateral. If the debtor does not pay, there is nothing for the creditor to take in lieu of payment. For example, MasterCard has no legal right to take clothing, furnishings or toys that were purchased with the card, and intangible items, such as dinners, trips and movies, can never be recovered.

Large purchases, such as appliances and electronics that are financed by or through the store where the purchase was bought, can, in theory, be taken by the creditor to settle the debt.

Hospitals and health care providers are also unsecured creditors. Any outstanding medical bills are completely discharged under a Chapter 7 bankruptcy.

What is a bankruptcy trustee? *Bankruptcy trustees are individuals appointed by bankruptcy courts to handle and supervise bankruptcies.* Because bankruptcy is often an ongoing process with a multiyear plan of repayment, the trustee is charged with supervising the plan and dealing with creditors' claims.

What is the 90-day rule? *Because bankruptcy discharges debts, leaving the creditor with little or nothing in payment for the items the debtor purchased, any purchases totaling more than \$500 for luxury goods occurring within 90 days prior to the bankruptcy are generally considered fraudulent.* Similarly, cash advances totaling more than \$750 and made **within 70 days of**

filing are also not dischargeable in bankruptcy. The basis for the rule is the legal assumption that a debtor must have known how precarious her financial position was in the weeks prior to filing and made purchases knowing (or intending) never to pay. Those debts may not be discharged.

TIP: Bankruptcy attorneys will not file a petition for client until 90 days have passed since the last credit card purchase. Anyone considering bankruptcy must cease using credit cards immediately, even the ones that are not past due.

Can the judge dismiss my bankruptcy petition? *Yes. At any time during the proceedings, the bankruptcy judge can dismiss the petition.* Typically, the trustee determines that the debtor does, in fact, have assets and is ineligible for bankruptcy. However, a debtor who is intentionally attempting to defraud creditors will not only have the petition dismissed but may also face criminal charges.

What is discharge? *The discharge is the final court order in a bankruptcy. The order discharges all the debtor's debts and releases him from further liability.* Under the law, the debts cease to exist and the creditors are permanently enjoined from pursuing collection. Discharges are automatically granted unless creditors object to the bankruptcy

Chapter 7 discharges are granted once the time has passed for creditors to object to the bankruptcy, typically 60 days after the 341 meeting. Chapter 13 bankruptcies are discharged when the 3- to 5-year repayment plan has been completed.

Under the new bankruptcy law, a debtor's case will be discharged only after he has completed an instructional course on personal financial management. This requirement applies to discharges under Chapter 7 and 13. However, this is currently a pilot project and may not apply to the district in which you file.

Can I be forced to file for bankruptcy involuntarily? *Yes. Creditors have the ability to force a debtor to declare bankruptcy.* Filing the bankruptcy protects the creditors from misuse of funds by the debtor and fraudulent payments to preferred creditors over other creditors.

One creditor can force an individual into Chapter 7 bankruptcy only if he has fewer than 11 creditors. The creditor must be owed at least \$12,300 of unsecured debt (such as a credit card account) to file an involuntary petition. Three creditors must join together to file if the debtor has more than 11 creditors.