Personal Bankruptcy

WHAT IS PERSONAL BANKRUPTCY?

Bankruptcy is a legal proceeding that can eliminate an individual's legal obligation to pay many kinds of debt, including credit card and medical debt. Bankruptcy can also stop, at least temporarily, an eviction or foreclosure proceeding, repossession, or utility shut-off. By filing for bankruptcy, an individual can eliminate debt, protect future income from collection, and achieve a fresh financial start. In 2013, over 1 million Americans filed for personal bankruptcy. Deciding whether or not to file for bankruptcy is a complicated decision, and you should consult with an attorney. But if you cannot pay your debts and you have income or assets you want to protect from creditors, filing for bankruptcy may be a good choice.

WHAT ARE THE DIFFERENT TYPES OF BANKRUPTCY AVAILABLE TO ME?

Most individuals can file for bankruptcy under either Chapter 7 or Chapter 13. Chapter 7, the most common form of personal bankruptcy, allows a person to keep some property and all income received **after** the filing of the bankruptcy case while eliminating most kinds of debt. Chapter 13 requires the debtor to pay back some debt, while allowing a debtor to keep more property than in Chapter 7. For most debtors, Chapter 7 is the right choice, but Chapter 13 can make sense for people who could lose a car or home in a Chapter 7 bankruptcy case. You should consult with an attorney before deciding which kind of bankruptcy is right for you.

WHAT ARE THE ADVANTAGES OF FILING FOR BANKRUPTCY?

- When you file for bankruptcy, an **automatic stay** takes effect, preventing creditors from taking action to collect the debts you owe.
- The automatic stay will delay – and may stop permanently – eviction, foreclosure, repossession, and garnishment.
- At the end of your bankruptcy case, most of your debts will be **discharged** (eliminated), meaning the bankruptcy court issues an order stating that you do not have to pay the debts. Most credit card debt, personal loans, public benefits overpayments, and medical debts can be discharged.

WHAT ARE THE DISADVANTAGES OF FILING FOR BANKRUPTCY?

- Bankruptcy will have a negative impact on your **credit score**, and remains on your credit report for 10 years. This could impact your ability to get credit, find a job, or rent an apartment.
- If you receive a discharge in a Chapter 7 case, you cannot file another Chapter 7 petition for 8 years.
- You may lose assets that are not exempt from collection (however, most debtors can keep all their property).
- Most student loans, child support, alimony, criminal fines, and some tax debts **cannot be discharged** in bankruptcy.
- If you live in a rent-stabilized apartment, there is a chance you could lose your lease. This happens when a landlord is willing to pay the trustee to evict the tenant so that the landlord can rent the apartment at market rate. Generally, this is more of a risk where a tenant pays far below market rate, lives in a neighborhood with high market rate rents, or has a history of non-payment of rent. This is a complicated issue, and you should consult with an attorney about your specific situation.

WILL I LOSE PROPERTY OR MONEY IF I FILE FOR BANKRUPTCY?

Probably not. The law allows you to keep some property through certain “exemptions.” Exemptions allow many debtors to keep most or all of their property, but if you have significant assets – real estate, valuable jewelry, or an expensive car, for example – they may be sold to pay your debts. Before filing for bankruptcy, talk to an attorney to determine whether or not your property will be exempt.

HOW DOES THE BANKRUPTCY DISCHARGE OPERATE?

The bankruptcy discharge is a permanent court order stating that you do not have to pay certain debts. No one can make you pay a discharged debt, though you can pay the debt voluntarily if you wish to do so. A creditor holding secured debt – such as a mortgage or car loan – cannot make you pay the debt, but they can take the property securing the debt. Some debts – such as most student loans, child support, alimony, criminal fines, and some tax debts – cannot be discharged. Note that the discharge only covers debts incurred *before* you file your bankruptcy petition. A creditor can also object to discharge if a debt was incurred by fraud or deception. Also the court can deny discharge if you act dishonestly in your bankruptcy case – by hiding property or money, falsifying records, or lying during the case. Talk to an attorney before filing for bankruptcy if you’re not sure whether your debts can be discharged.

WHAT WILL HAPPEN WHEN I FILE FOR BANKRUPTCY?

Before you file, you will need to complete a mandatory credit counseling session, which usually takes less than an hour and can be done in person, by telephone, or online. A bankruptcy case begins when a document called a “petition” is filed with the bankruptcy court. The petition contains information about your debts, assets, and other financial affairs. Once your petition is filed, the automatic stay takes effect and creditors must not take any action against to collect your debts. Your case will also be assigned to a “trustee,” who will administer your bankruptcy case. You will have to appear before the trustee at a meeting, where the trustee will ask you questions about your finances, employment, assets, and other matters to determine whether there is any money available for your creditors. This meeting (called the “meeting of creditors” or “section 341 meeting”) will take place about a month after the petition is filed.

WHAT HAPPENS AFTER I FILE FOR BANKRUPTCY?

Bankruptcy has a major negative impact on your credit score – more than any other single credit issue. But that doesn’t mean you can’t get credit after declaring bankruptcy. After filing, you can improve your credit by not opening any new credit accounts, keeping low balances on any existing accounts, and staying current on your bills. After you file for bankruptcy, lenders may also ask you to “reaffirm” debts – that means you agree to pay them, even though they were discharged in the bankruptcy. In most cases, reaffirmation is a bad idea. Talk to a bankruptcy lawyer before signing any reaffirmation agreement after bankruptcy.

WHAT ABOUT STUDENT LOAN DEBTS?

Most student loan debt is not dischargeable in bankruptcy. However, if you have suffered an injury or are disabled, and do not expect to be able to work in the field for which you were educated, it may be possible to discharge your student loan debt. Talk to an attorney about your specific circumstances to determine whether your loans may be dischargeable.

WILL BANKRUPTCY AFFECT MY ABILITY TO RECEIVE GOVERNMENT BENEFITS?

No. The government cannot deny or revoke benefits solely because you filed for bankruptcy. This includes Social Security benefits, public assistance, and public housing.