

FREQUENTLY ASKED QUESTIONS

- **WHAT IS A CHAPTER 7 BANKRUPTCY?**

Chapter 7 bankruptcy, sometimes referred to as a “straight” bankruptcy, is a liquidation proceeding. The debtor must turn over all non-exempt property to the bankruptcy trustee who then converts that property to cash for distribution to creditors.* The debtor receives a discharge for all dischargeable debts usually within four months from the date of filing. In many cases, the debtor has no assets subject to turnover.

* If you wish to keep an asset which is not exempt from turnover, there are alternatives which you will want to discuss at your initial office consultation.

- **WHAT IS A CHAPTER 13 BANKRUPTCY?**

Chapter 13 is also known as a reorganization bankruptcy. Chapter 13 is filed by individuals who want to pay off their debts over a three to five year period of time. This form of bankruptcy appeals to those individuals who have non-exempt property that they want to keep but cannot pay a Chapter 7 trustee to keep within a short period of time. It is an option only for individuals with regular income. An individual may be forced to file a Chapter 13 proceeding where the household income exceeds the median income for a household of the same size in the same region.

Chapter 13 may also be the better option for you if you have tax debt.

- **WHAT IS A CHAPTER 11 BANKRUPTCY?**

Chapter 11 was originally intended for large corporations, however individuals are now permitted to file for bankruptcy under Chapter 11 if the individual's debt exceeds the debt limit for Chapter 13. Once a Chapter 11 proceeding is filed, a debt repayment plan is developed and presented to the bankruptcy court and creditors. The plan may propose to pay all or a portion of the outstanding debt. The court will decide whether to accept the plan, modify it or dictate and altogether new repayment plan. The debtor's assets are not necessarily liquidated in a Chapter 11 proceeding. The terms of a loan may be changed so that it is easier for the debtor to repay. For example, the terms of a loan may be extended and/or the interest rate reduced, thereby reducing the monthly payment. The repayment plan may provide that creditors recover an amount much less than the outstanding loan amount. Thus, if the debtor is a business, the business may continue to operate and potentially emerge from bankruptcy as a healthy company.

- **WHAT IS THE NORMAL COURSE OF EVENTS FOR FILING?**

We will schedule an initial office consultation with you to determine what options are available to you and, if bankruptcy is your best option, we will meet with you on several occasions to gather accurate information in completion of your Bankruptcy Schedules. You will need to complete a credit counseling session required by law prior to filing. Your attorney will advise when it is appropriate to complete this credit counseling requirement, and will provide you with the completed Schedules necessary to do so.

Once the bankruptcy Petition is filed, your case will be scheduled for a creditors' meeting, which you are required to attend with your attorney. The law provides a 60-day period after this creditors' meeting in which a creditor or the trustee may object to your discharge if you have not been completely honest or for certain types of debts. This is a complicated area of the law which you will want to discuss with your attorney.

A prerequisite to receipt of your discharge is that you complete a Financial Management Course. Your attorney will advise you when to do so.

- **HOW MUCH AM I ALLOWED TO KEEP?**

Assets in excess of your allowed personal exemption, or non-exempt assets, such as real estate, automobiles and boats are subject to liquidation by your bankruptcy trustee. You will be able to keep assets valued at or less than your allowed personal exemption. For example, if you own a vehicle that is valued at \$3,500.00, and your state allows each individual to exempt \$3,500.00 in equity in a vehicle, you will be able to keep your vehicle

- **MY HOME/CAR HAS EQUITY. CAN I KEEP IT?**

If you can pay to keep an asset which contains equity, typically you can keep it. If your vehicle is worth \$10,000 and your state allows a \$3,500 exemption, if you want to keep your vehicle, you will need to pay your trustee \$6,500 in order to keep your vehicle. Your attorney will discuss with you which assets you wish to keep and the requirements to do so.

- **WILL MY CREDITORS STOP HARASSING ME?**

Yes, they will. By law, actions to collect against a debtor must cease once the bankruptcy documents are filed. Creditors cannot initiate or continue lawsuits, wage garnishments or even telephone calls demanding payments. Secured creditors such as banks holding, for example, a lien on a car, will petition the Court to have the automatic bankruptcy stay lifted to pursue collection if you do not continue payments.

- **WILL MY SPOUSE BE AFFECTED?**

In most circumstances, your husband or wife will only be affected by your bankruptcy if they are financially responsible (signed an agreement or contract) for any of your debt. If they have a supplemental credit card, they are most likely responsible for that debt.

- **CAN I KEEP MY ACCOUNT IN GOOD STANDING ON ONE DEBT?**

No. By law, you must include all of your creditors in your bankruptcy proceeding. An exception is that you may reaffirm on secured debt so as to retain possession of, for example, your car and home. In the event that you reaffirm on a debt, you will continue to pay on these debts and the creditor will continue to report your timely pay history to the credit reporting agencies.

- **WHO WILL KNOW?**

Bankruptcy filings are public records. However, under normal circumstances, no one will know you filed bankruptcy. The credit bureaus will record your bankruptcy and it will remain on your credit record for 10 years.

- **WILL I EVER GET CREDIT AGAIN?**

Yes. The first two years after filing, credit will be available on limited terms. A number of banks offer "secured" credit cards where a debtor puts up a certain amount of money in an account to guarantee payment. Usually the credit limit is equal to the security given and is increased as the debtor demonstrates his or her ability to pay the debt. Two years after a bankruptcy, debtors are eligible for mortgage loans. The size of your down payment and the stability of your income will typically be more important than the fact that you filed a bankruptcy. It becomes less significant as time passes. Most creditors will consider that you are a better credit risk after your bankruptcy than before.

- **CAN MY BOSS FIRE ME FOR FILING BANKRUPTCY?**

No. U.S.C. Sec. 525 prohibits any employer from discriminating against you because you filed bankruptcy. There are certain employment positions, however, which may be affected, for example, an insurance license may not be available to one who has recently filed a bankruptcy.

- **WHAT DEBTS ARE ERASED BY A BANKRUPTCY?**

Most unsecured debt is erased in a bankruptcy proceeding. Following are the most common exceptions:

- ▶ Child support and alimony;
- ▶ Debts for personal injury or death caused by your drunk driving;
- ▶ Student loans
- ▶ Income tax debt. NOTE: Some income tax debt may be dischargeable if your tax returns were filed timely and the debt is over three years past due. **This is a complicated area of bankruptcy law and your attorney should be consulted.**
- ▶ Debts which you incurred which are determined to be obtained through fraud, such as giving false information on a credit application, some credit purchases for goods or services made within the 70 days preceding bankruptcy filing, and loans or cash advances within a short period preceding the date of filing.
- ▶ Debts from wilful or malicious injury to another person or another person's property; Debts from embezzlement, larceny or breach of trust, and
- ▶ Debts you owe under a divorce decree or settlement unless you file a Chapter 13 proceeding and are successful in having those debts determined to be not in the nature of child or spousal support. **This is a complicated area of bankruptcy law and your attorney should be consulted.**