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Bankruptcy

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Bankruptcy is a right to proceed in federal court to get relief from debts when they are too much to pay. It is a right under Federal law. Although these rights were changed in 2005, they still exist.

A bankruptcy case appears on a credit record for 10 years and may affect the ability to get a good credit score. However, people considering bankruptcy may already have a poor credit rating due to lateness or the failure to pay bills. In some cases, bankruptcy may provide a chance to improve their credit after the bankruptcy helps resolve their debts. Local credit bureaus may provide help about the policies of lenders and regarding bankruptcy and its affect on obtaining credit.

What Is Bankruptcy?

There are several types of bankruptcy cases and they fall generally into two categories. One type is a liquidation and the others have a plan for restructuring debts. The most common case is a Chapter 7. It is a liquidation and is often referred to as straight bankruptcy. All people, corporations, businesses, and other entities can be Chapter 7 debtors. In Chapter 7, individuals can keep some property and get a fresh start through the use of exemptions. In all cases, the court administers a sale of non-exempt property and the proceeds go towards debts. The result of a successful bankruptcy is a discharge of debts, which releases the debtor from

liability.

Chapter 13 bankruptcy, also called a "wage-earner plan", is only available to individuals with any kind of regular income and debts below certain limits. In Chapter 13 the debtor keeps some property, restructures his debts, and pays a percentage of them under an installment plan managed by a trustee. The amount paid to the creditors depends on the debtor's ability to pay, not the amount of debt.

A chapter 11 case is a restructuring of debts above the chapter 13 limits and other chapters restructure debts of family farmers and municipalities.

All bankruptcies provide for a stay of proceedings, which stops all collections, lawsuits, phone calls or repossessions.

Who Can File For Bankruptcy?

In general, any person, business or legal entity can file for a straight bankruptcy proceeding. For consumers, if their income is above certain thresholds, called the means test, they may be forced to file a Chapter 13 instead of a chapter 7. Only an individual and, if desired, the individual's spouse, with regular income and who owe debts under certain limits may file for Chapter 13 relief.

Will All Debts Be Discharged?

No. Some debts will survive a bankruptcy, including some taxes, alimony and support, fines, student loans, and other debts classified as non-dischargeable debts.

Will I Be Able To Keep Any Property?

Individuals can keep some property through the use of exemptions. In some states a debtor can choose between state and federal exemption law. Corporations and other entities are not allowed exemptions.

In Pennsylvania, the main state exemption is an unlimited exemption in home equity owned by a Pennsylvania married couple, retirement benefits, clothing owned by the debtor, certain pension benefits, workers' compensation payments and disability insurance payments. One reason to hire a lawyer is to make sure you choose the best exemption plan available.

The federal exemptions have limits on the value that can be exempted by a debtor, but they include:

- Equity in a home;
- One motor vehicle per debtor;
- Household furnishings or other consumer goods;
- Jewelry for personal use;
- A "wild card" exemption for any property, plus a limited amount not used to protect home equity (for debtors with no real estate equity); and
- The right to receive Social Security, unemployment compensation, welfare, VA disability, support and certain pension benefits.

If a husband and wife file together, the exemptions are doubled. The exemptions apply only to the debtor's equity in property. Therefore, if the debtor pledged property as security for a loan, such as a mortgage on a residence or a lien on a car, the exemption only applies to the amount that exceeds the loan balance.

Does My Spouse Have To File?

No. A married couple can file bankruptcy together or not. Two advantages to a joint case are that the amounts of the exemptions are doubled and there is only one filing fee. If most of the debts are owed by only one spouse, it may be best for that spouse to file alone. If a husband and wife have the same debts or have co-signed the same loan agreements, a case filed by one spouse won't prevent the creditors from demanding payment from the other. Also, if one spouse files first, and the other spouse files later, the second case may require the same exemptions chosen by the spouse in the first case. Again, this is a good reason to hire a lawyer for your case.

What If I Have No Assets?

Only the debtor's property that is not exempt is available to be sold and used toward payment of his or her debts. Many individuals may only have property that is protected by the exemptions and, therefore, have no assets available to be sold to pay creditors. This does not affect the bankruptcy, and in that case the unsecured creditors don't get paid anything.

Under a Chapter 13 case, the debtor develops a budget and a repayment plan that is funded by their regular income. The plan must be between three to five years long and the debtor pays a percentage of his income towards the debts based on the budget, rather than the amount of debt demanded by creditors.

Will I Be Able To Own Anything After Bankruptcy?

Yes. There is no limitation on the future ability of a debtor to own real estate or to acquire personal property. Usually, creditors whose claims are discharged in bankruptcy will not be able to take property or earnings acquired by the debtor after the bankruptcy is filed. However, if the debtor receives some property, such as inheritances, property settlements, and insurance proceeds, within 180 days after the bankruptcy is filed, it may be seized by the trustee to pay creditors.

Will Co-Signers Be Affected?

A person who co-signed with a debtor on a loan may still be held responsible for the debt if the debtor files for bankruptcy. A Chapter 13 bankruptcy may keep creditors from taking any legal or collection actions against the co-signers during the case.

Is A Discharge Of Debt Assured?

No. Under certain limited circumstances, a creditor may be able to keep a particular debt, or even the debtor's obligations in general, from being discharged. Debts obtained by fraud may avoid a discharge. But, if a creditor tries to avoid the discharge and fails, the judge may order the creditor to pay for the debtor's attorney fees and costs in defending the fraud action.

If the debtor lies on the bankruptcy papers, hides his assets, defies a court order or acts in bad faith, a discharge of debts may not be granted.

What Is The Means Test?

The means test is a test to determine if a consumer debtor can file a chapter 7 case. It does not apply to debtors whose debts were acquired from a business. The debtor's income and expenses are compared to other similar debtors in the local area, based on household size, income, expenses, mortgage payments and many other measures, and if the debtor's income is above the legal limits only chapter 13 is available. It does not prevent bankruptcy entirely.

Can I File More Than Once?

Yes. How soon you can re-file depends on what kind of bankruptcy was filed first. The longest period is eight years from the date of the first filing of a straight bankruptcy where discharge of debts occurred before a straight bankruptcy can be filed again. Following certain Chapter 13 proceedings, there is a smaller time limit for the filing of a second chapter 13 or a straight bankruptcy.

How Do I Know If I Should File For Bankruptcy?

The legal test for bankruptcy is if your assets are less than your liabilities. However, asset values vary over time, so you should consider carefully whether you are in a temporary situation. If you have only a few debts, and your income is steady or substantial, you may want to work out a payment plan, rather than filing for bankruptcy. Sometimes you can find assistance in avoiding bankruptcy by contacting a local consumer credit counseling agency, consumer credit bureau, or legal services offices.

Business can benefit during downturns by rejecting leases of equipment they don't need, restructuring contracts and stopping collection activities and proposing a recovery plan.

Is My Credit Permanently Ruined?

No. After the discharge is granted in a consumer case, your lawyer or a credit counseling agency can show you how to restore a good credit score. It requires diligence over time, but it can be done by following simple, common sense steps.