

WHAT IS BANKRUPTCY?

Bankruptcy is a federal law created to help consumers and businesses eliminate their debts or repay them under the supervision of the United States Bankruptcy Court.

There are two basic types of bankruptcy proceedings. A filing under Chapter 7 is called a "Liquidation". It is the most common type of bankruptcy proceeding. The second type of bankruptcy proceedings are to restructure debts for consumers. This type of bankruptcy proceeding is filed under Chapter 13 and is called a "Wage Earner Plan." Bankruptcy proceedings under Chapter 13 involve the rehabilitation of the debtor to allow him or her to use future earnings to pay off creditors catch-up house payments and stop foreclosures and repossessions. A Trustee is appointed to supervise the assets of the debtor, and the debtor(s) repay part or all of the debts over a three to five-year period.

A Chapter 11 Reorganization is used mostly by businesses and will not be addressed here. But in general, business debtors in Chapter 11 continue to operate their business with no Trustee appointed, Debtors must file monthly operating reports showing income and expenses, and eventually file a Plan of Reorganization to the Court proposing a plan of repayment. We handle many of these cases for small businesses and corporations across the state.

All types of bankruptcy cases have numerous rules and provisions detailing what type of debts are covered, who can file and what property you can or cannot keep.

CHAPTER 7 -- LIQUIDATION

Chapter 7 can be filed by individuals or businesses. A Chapter 7 bankruptcy usually lasts around five to six months.

In a Chapter 7 most of your unsecured debt (where no collateral has been pledged) will be permanently cancelled. You can to keep any property that is "exempt" under the available

laws. Federal law governs how bankruptcy cases are handled, but each state may decide how much you can keep or “exempt”. The state laws that apply would be the laws of the state where you lived exactly 27 months before you filed your case. If you do not have a lot of property or money, the chances are very good that everything will be exempt, and you will not lose anything.

If you're buying something on credit (like a car, a four-wheeler, mobile home, furniture, or a house), you generally have the choice of allowing the creditor to repossess the property and pay nothing further (regardless of what they resell it for) or continuing to make your normal payments and retain the property. In some cases, you can pay a lump sum equal to the value of the property.

Under bankruptcy law changes enacted in 2005, not everyone can file for Chapter 7. If your income is sufficient to fund a Chapter 13 repayment plan, after subtracting certain permitted expenses and monthly payments for certain debts, then you may not be allowed to use Chapter 7. We will evaluate your circumstances and try our best to let you know what chapters are available to you.

Bankruptcy doesn't discharge or eliminate all kinds of debts. While most debts, such as credit cards, medical bills, unsecured loans, and other normal bills, are covered by the bankruptcy discharge, there are certain types of debts like child support, alimony, taxes, 401(K) and retirement loans, criminal fines and restitution, and debts agreed or ordered to be paid in a divorce that cannot be wiped out by bankruptcy. There are complicated rules regarding dischargeability of debts, and our office can advise you on these issues.

Before filing either a Chapter 7 or a Chapter 13, you must attend a credit counseling course with an approved agency. Our office will direct to the most convenient one for you. They charge a small fee for the counseling, usually \$35 per person or \$50 for a couple.

The moment we file your papers at the courthouse, an “Order for Relief” is entered which stops creditors from trying to collect from you. They cannot attach your wages, take your bank account, repossess your car, house or other property or cut off utility service. Once they know you have filed, creditors and bill collectors have to quit calling you.

Approximately a month after you file, you will have a hearing called a “Meeting of Creditors”, although creditors rarely attend. This hearing takes place in Charleston and is conducted by a Trustee who is a lawyer or accountant assigned to oversee your case. The hearing takes just a few minutes, and the Trustee asks certain questions to confirm the nature of your debts and assets. He or she will look at your past transactions to see if anything can be done to free up assets to distribute to your creditors. Most property owned by Chapter 7 debtors is either exempt and protected under state law or is worthless and of no interest to the Trustee for the benefit of creditors. In the vast majority of the cases, the Chapter 7 Trustee finds no assets and the case is closed as a “no asset” case. Usually, this Meeting of Creditors is the only time you have to appear in person regarding your Chapter 7 bankruptcy. In a Chapter 13 proceeding, an additional hearing occurs.

When you put up collateral for a loan, such as a car title or a deed of trust or mortgage on your house, this creates what is called a secured debt. We advise our Chapter 7 clients to be current on their secured debt payment when they file if they want to keep that collateral. You continue to make the payment just as if there was no bankruptcy. In some cases the creditors will discontinue sending invoices or monthly statements and you have to pay the debt on your own each month without receiving a statement.

If the creditor has sued you and placed a judgment lien against your house, you will need to bring that to our attention because we can file pleadings with the Court to remove judgment liens against your real estate in most cases. Unfortunately, in West Virginia debtors are not required to be notified when a judgment lien is placed against their real estate. We,

therefore, recommend that if you have ever been sued that you should go to the record room in the courthouse in the county in which you own real estate and see if there are any “judgment liens” recorded. If any exist, you need to have the clerk make you a photocopy and mail or bring it to our office right away.

At the end of the case, the bankruptcy judge enters a “Discharge Order” which means that all of your debts are wiped out by the Court except those debts that automatically continue in effect, such as child support, taxes, student loans, and the like.

Once you have received your discharge, you no longer owe any creditors for any discharged debts and you are free to manage your finances without court supervision. The only exception is if you would receive an inheritance, insurance proceeds or a divorce settlement within six months after the date you originally filed your bankruptcy. In that case, you must notify us and we will disclose this information to the Court.

Your Chapter 7 filing may be reported on your credit record for as long as ten years.

CHAPTER 13 – WAGE-EARNER

Chapter 13 is also known as wage-earner bankruptcy because you must have a reliable source of income (or wage) that enables you to pay some portion of your debt. You have to prove to the Court that you can afford to meet your regular expenses of living as well as make your plan payment. If your income is sporadic or too low, the Court might not allow you to file for Chapter 13. In order to file a Chapter 13, your secured debts (debts where there is a lien or collateral) must be less than \$1,010,650 and your unsecured, general debts, must not exceed \$336,900.

When you file a Chapter 13, you and your lawyer propose a repayment plan that details how you’re going to pay back your debts over the next few years. The normal repayment period is three to five years. The amount you have to pay depends on how much you earn, how much you owe creditors and how much, if any, they would have received if you instead

filed a Chapter 7. One advantage of a Chapter 13 is that you can make up missed payments to avoid repossessions or foreclosure. You can include these past due payments in your repayment plan and make them up over time.

Ordinarily, if you have a regular job and a regular income, your employer is directed to automatically deduct your plan payment from your pay and send it directly to the Bankruptcy Trustee. If for some reason you cannot finish the Chapter 13 plan, such as when you lose your job, have major medical problems or get a divorce, you may have to convert to a Chapter 7 bankruptcy, if you are eligible.

If you complete your repayment plan in a Chapter 13, all remaining debts eligible for discharge other than large secured debts (like home loans) will be cancelled. In many Chapter 13 cases, the total amount that an unsecured creditor receives over the three to five-year period may only be five to ten percent of the total debt. You only pay the Bankruptcy Trustee a sum that you can afford to pay in light of your expenses and income.

HOW TO LEARN MORE

If you are interested in learning more about bankruptcy or to explore whether it might be feasible for you, then the first step would be to call our office at (304) 346-0361. The receptionist will offer to send you a bankruptcy questionnaire which must be filled out before we can schedule your appointment. If you would like to expedite matters, please click on the tab that says "Bankruptcy Questionnaire" and you can print off your own copy now. The bankruptcy questionnaire requires you to provide a great deal of detailed information about your income, expenses and financial history. It may take a while to fill out. All of this information is essential, and we will use what you tell us to prepare your bankruptcy papers if you decide to file. Please be as complete as possible in preparing the bankruptcy questionnaire. Make sure the name and addresses of the creditors and/or collection agencies are legible and accurate.

It is important that you list all your property and debts in your bankruptcy schedules. If you do not list a debt, for example, it is possible the debt will not be discharged. You must list all debts, even ones you intend to pay. The Judge can also deny your discharge if you do something dishonest in connection with your case, such as hide property, falsify records or lie.

Once you have completed your bankruptcy questionnaire, either by printing it off this web site or by having it mailed to you from our office, then you are ready to schedule your appointment. Call our receptionist and let her know that you have your bankruptcy questionnaire completed and she will then make your appointment to see one of our attorneys, who will go over your questionnaire with you and discuss how the bankruptcy would apply to your case and what chapter would be feasible. She will tell you to bring your last two federal IRS tax returns with you to the office consultation. At your initial office visit, you will actually speak to the attorney that will be handling your case, not a secretary or assistant. He will spend as much time as necessary at this first office meeting to answer your questions and go over the facts of your case and make recommendations. We charge nothing for this initial evaluation. While you are here, we will tell you in writing what the cost would be should you wish to proceed on, if you will ready for us to begin working on your case, then you make an initial payment and we will open a file and begin representing you. You are then to begin referring creditor calls to a special phone number at our office. We give our clients ninety (90) days to pay the balance and we deal with your creditor calls while you are preparing your bankruptcy legal fees and court costs. The case gets filed once all the legal fees and costs are paid.

The least expensive simple Chapter 7 bankruptcy is \$1,100, and this **includes** both the lawyer fee and the court costs. Most of our clients are charged that sum. There would be nothing further to pay unless complications arise. If your income is over the statewide average for your household and you are subject to the "Means Test" (something we will discuss at the

office meeting), or if you have a business or are self-employed, then the total of the legal fees and court costs often is \$1,500, but if you have a business or are self-employed, then the cost can be higher, depending on the complexity of the case. But whatever the fees ultimately are, there is never any charge for the initial review and consultation, so feel free to call the office and schedule an appointment at your convenience.