

When You Can't Pay Your Debts

INTRODUCTION

Financial difficulties can arise for many reasons, such as loss of a job, death of a breadwinner or too many credit card purchases. Money problems can be emotionally wrenching and seriously damage family relations.

However disturbing the idea of bankruptcy might initially seem, in fact, bankruptcy laws are there to help those who are unable to pay their bills. This pamphlet reviews your alternatives under the bankruptcy laws. Your lawyer can advise you about your options so that you can get the maximum advantage of the bankruptcy laws.

ALTERNATIVES TO BANKRUPTCY

Ask your lawyer about the alternatives to seeking relief under the bankruptcy laws. One option is to contact your creditors to request a discount or additional time to pay. Another way is to seek the help of a credit counseling service. These organizations, whether public or private, can help you manage your bills and work out an arrangement with your creditors. A third choice is to borrow money to pay off your debts, replacing them with a single loan and one monthly payment. Such refinancing can make sense if the repayment period is extended at a lower interest rate.

Each of these alternatives has benefits and disadvantages that your lawyer can explain. Or, you may find that bankruptcy is your best option.

CHOOSING A BANKRUPTCY OPTION

There are two options under the bankruptcy laws: a liquidation or a repayment plan.

In a liquidation, also called a Chapter 7 bankruptcy, you sell your property and use whatever cash is generated to fully satisfy creditor claims. You will be allowed to keep certain kinds of property under the exemptions allowed by federal and state bankruptcy laws. The definition of "exempt property" differs in each state, and it can include clothing, furniture, household appliances, tools of your trade and perhaps your home or car. To file under

Chapter 7, you must also qualify under a Means Test which evaluates your assets and income. Otherwise, you must look to a Chapter 13 filing. Individuals must also take a credit counseling course if they file under either chapter.

In a repayment plan, sometimes called a Chapter 13 bankruptcy, you pay a portion of your monthly income to a trustee for distribution to your creditors. A repayment plan is useful when you are behind on your home or car loan. The repayment plan can be used to extend, for three to five years, the time period for paying your bills and might allow you to pay less than you owe. The extended payment period has the advantage of allowing you to make smaller payments. You will be allowed to keep part of your monthly income to pay for living expenses, such as food, clothing, rent and medicine.

To qualify for a Chapter 13 repayment plan, you must have regular income and your debts, both secured and unsecured, must not exceed specific amounts. If your debts do exceed the limits for a Chapter 13 plan, you may be able to qualify for a repayment plan under Chapter 11. Bankruptcy proceedings under Chapter 11 are more complicated than those available under Chapter 13. Your lawyer can advise you on current limits and on the best option for you.

After you begin bankruptcy liquidation, you may not start another Chapter 7 bankruptcy for eight years. You cannot file another Chapter 13 case within two years of filing a prior Chapter 13 or four years after filing under Chapter 7.

Your lawyer can study your situation and advise whether to seek a liquidation or repayment plan. The best bankruptcy alternative for you depends on a number of things, including the source of your income, the amount and types of your bills, your desire to protect any cosigners or guarantors, and the importance to you of maintaining your record of paying your debts.

STARTING BANKRUPTCY PROCEEDINGS

Bankruptcy proceedings begin with the filing of bankruptcy forms at the federal courthouse. The forms are comprehensive and include thorough lists of your income sources, property, debts and living expenses.

About a month after your bankruptcy forms have been filed, a meeting of your creditors will take place. You

will be required to appear at this meeting with your records. Although most creditors do not attend the meeting, those who do can question you about your income, property and debts. The main purpose of this questioning is to confirm that the information in your bankruptcy forms is correct and complete.

A lawyer can help you prepare the bankruptcy forms, attend the meeting with creditors and serve as your advocate with the judge, trustee and creditors.

DEALING WITH CREDITORS

Your lawyer can help you deal with your creditors before, during and after bankruptcy proceedings. Before starting bankruptcy proceedings, you are protected by laws that prohibit creditors from harassing you to collect money. Bill collectors may not contact you at unreasonable times at home, and they may not embarrass you by telling your friends, relatives or employers about your debt. Bill collectors may not contact you at work if they know your employer disapproves. If you have a lawyer, bill collectors may only contact your lawyer.

During bankruptcy proceedings, you will receive additional protection from bill collectors. At the beginning of the proceedings, the court will order your creditors to stop their collection activities, including lawsuits, wage garnishments, repossessions and telephone calls demanding payment. It is unlawful for your employer to fire you for seeking bankruptcy protection.

After the bankruptcy proceedings have been completed, you must take care when dealing with creditors. Some creditors may try to collect debts that were discharged by the bankruptcy proceedings. These creditors may ask you to renew the debt by signing an agreement to pay it. Consult your lawyer when you are contacted by creditors so that you do not inadvertently obligate yourself to pay an old bill that has already been discharged by your bankruptcy.

WORKING WITH YOUR TRUSTEE

The bankruptcy court will appoint a trustee for your case shortly after bankruptcy forms are filed. In a liquidation proceeding, the role of the trustee is to sell your property and distribute the proceeds to your creditors. The trustee can also set aside fraudulent transfers and preferential transfers made to creditors within the 90 days prior to the bankruptcy proceedings. The trustee will also determine which items of your property are exempt from sale to pay your debts.

In a repayment plan proceeding, the trustee coordinates the arrangements between you and your creditors. The trustee will collect payments from you and distribute them to your creditors. The trustee is also responsible for approving any new credit obligations that you undertake before the completion of your repayment plan.

KEEPING YOUR PROPERTY

Your lawyer will advise you how a bankruptcy proceeding can protect your property. For example, in a liquidation proceeding, the bankruptcy laws allow you to keep your exempt property.

Prior to beginning bankruptcy proceedings, your lawyer may advise that you sell some of your nonexempt property and use the cash to purchase exempt property. Although you may convert your nonexempt property into exempt property, you will be subject to severe penalties if you try to hide your property.

In a liquidation proceeding, you may be able to keep mortgaged property like a home or a car if you "reaffirm" your loan with your lender. Reaffirming the loan means that you agree to pay it in full. The "reaffirmed" loan will not be affected by the discharge that you receive at the completion of the bankruptcy proceedings. Any property that you receive after 180 days from the start of the bankruptcy proceedings is yours to keep, including inheritances, gifts, and life insurance. Your lawyer may recommend that you speed up your bankruptcy filing if you expect to receive a substantial amount of property in the near future.

EFFECTS OF BANKRUPTCY

The end of your bankruptcy proceedings can provide you with a fresh start. The court order will end your responsibility for dischargeable debts. The order will not affect non-dischargeable debts such as alimony, child support, educational loans, taxes or debts that you incurred by deliberately injuring someone. After the bankruptcy, your creditors may no longer try to collect the discharged debts.

Your bankruptcy proceedings will be noted on credit records for up to ten years after your bankruptcy filing. During that time, lenders, stores or finance companies may consider your bankruptcy among the many factors they review when you apply for a loan or credit. Surprisingly, since you cannot file again for Chapter

7 for eight years, it may be easier for you to obtain a mortgage loan or installment credit for an auto or other purchase. An application for such credit is generally easier if you wait at least a year before applying for credit and can show you have paid your bills on time since the bankruptcy.

FEES AND EXPENSES

The bankruptcy courts currently charge a filing fee to cover court costs. The fee is paid to the clerk when you file your bankruptcy forms at the courthouse. Additionally, the trustee will receive a fee of about 10% of the amounts paid to your creditors if you choose a repayment plan.

The fee charged by your lawyer will depend on the complexity of your case. In bankruptcy matters, a lawyer's expertise usually results in savings that far outweigh the amount of legal fees.

CONCLUSION

You may need the protection of the bankruptcy laws if you are unable to pay your bills on time. Bankruptcy proceedings can help protect you against aggressive bill collectors and preserve as much of your property for you as possible.

A lawyer can advise you about your bankruptcy options and help you make the best of the situation. If you cannot manage your bills, call your lawyer immediately to find out your rights—and take advantage of them.

BANKRUPTCY CHECKLIST

To discuss with your lawyer

1 BUDGETING FOR EXPENSES

- A. Housing
- B. Food
- C. Insurance
- D. Transportation
- E. Education
- F. Clothing
- G. Medical
- H. Child care
- I. Entertainment

2 WARNING SIGNS OF BANKRUPTCY

- A. Frequent calls from bill collectors
- B. Inability to pay bills
- C. Liens filed on your property
- D. Garnishment taken on your wages
- E. Foreclosure begins on your home

3 BANKRUPTCY ALTERNATIVES

- A. Asking creditors for time
- B. Seeking credit counseling
- C. Obtaining loan to pay bills
- D. Seeking bankruptcy liquidation (Chapter 7)
- E. Obtaining bankruptcy repayment plan (Chapter 13)

4 BENEFITS OF BANKRUPTCY PROCEEDINGS

- A. Creditors may not phone you
- B. Garnishment stops
- C. Repossessions stop
- D. Interest charges stop

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5 DEBTS THAT MAY NOT BE DISCHARGEABLE

- A. Alimony
- B. Child support
- C. Educational loans
- D. Secured loans
- E. Income taxes
- F. Bills for luxury items
- G. Debts arising from drunken driving, willful and malicious injury, or fraud

6 partly protected PROPERTY

- A. Primary residence
- B. Automobiles
- C. Household goods
- D. Bank accounts
- E. IRA/pension plans
- F. Boat
- G. Jewelry
- H. Computers and electronic equipment

7 OTHER PROPERTY

- A. Stocks and bonds
- B. Mutual funds

8 BANKRUPTCY SCHEDULES

- A. List of real property
- B. List of personal property
- C. Property claimed as exempt
- D. Creditors holding secured claims
- E. Creditors holding unsecured priority claims
- F. Creditors holding unsecured nonpriority claims
- G. Executory contracts and unexpired leases
- H. Co debtors
- I. Current income of individual debtors
- J. Current expenditures of individual debtors

This pamphlet provides general information. Laws develop over time and differ from state to state. This pamphlet does not provide legal advice about specific legal problems. Let us advise you about your particular situation.

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