BANKRUPTCY IN ILLINOIS

A GUIDE TO ILLINOIS LAW

The following is a basic explanation of bankruptcy law, its terms and definition, and information needed to assist you in understanding bankruptcy procedures and processes.

Table of Contents

Bankruptcy Terms and Definitions

Bankruptcy: a legal proceeding in federal court that allows a person to be released from the obligation of paying some or all debts.

Chapter 7 Bankruptcy (also known as straight bankruptcy): a liquidation proceeding where the debtor turns over all non-exempt property to the bankruptcy trustee, who then converts it to cash for distribution to the creditors. The debtor receives a discharge of all dischargeable debts, usually within four months. In the vast majority of cases, the debtor has no assets that he or she would lose, so Chapter 7 gives that person a relatively quick "fresh start".

Chapter 13 Bankruptcy (also known as reorganization bankruptcy): Chapter 13 bankruptcy is filed

by those who want to pay off their debts over a period of three to five years or who do not qualify to file a Chapter 7 Bankruptcy (see above). This type of bankruptcy tends to appeal to people who have non-exempt property that they want to keep. It is also the only option for people who have predictable income and whose income is sufficient to pay their reasonable expenses with some amount left over to pay their debts.

Eligibility/Means Test: a test that determines for which chapter of bankruptcy a person should file. If your currently monthly income is more than that of the median monthly income for the state in which that you live, then you are required to take a Means Test. This test is conducted by your attorney, The calculation for the means test is:

(Current Monthly Income - Expenses) X 60 = Result.

- If the result is more than 25% of your unsecured debt or a minimum of $10,000, you may not be eligible to file a Chapter 7 Bankruptcy. In this case, your attorney will have to prove to the court your need to file a Chapter 7 Bankruptcy versus a Chapter 13 Bankruptcy. The court will then decide which one you can file.
- If the result is less than 25% of unsecured debt or a maximum of $6,000, you may be eligible to file a Chapter 7 Bankruptcy.

Exempt vs. Non-Exempt: a categorization of property that may differ by state. Exempt property is often defined as basic necessities. The court may assign a worth to certain valuable possessions, in turn adding them to the list of non-exempt items.

Filing the petitions and schedules: a process you will go through when filing the necessary paperwork with the courts. Generally, if an attorney is representing you, he or she will file all of the necessary documentation.

Automatic Stay: by law, all actions against a debtor must cease once the documents are filed. Creditors cannot initiate or continue any lawsuits, wage garnishes, or even telephone calls demanding payments. Secured creditors such as banks holding, for example, a lien on a car, will get the stay lifted if you were to default on your payments.

Role of the Trustee: a person who has been appointed by the United States Trustee (a representative of the United States Department of Justice) to take control of the debtor's non-exempt property during the course of the bankruptcy proceedings. Protecting the interests of the creditors is the bankruptcy trustee's responsibility.

Reaffirmation: a voluntary agreement, between a debtor and a creditor, that the debtor will pay all or a portion of an otherwise dischargeable debt after the debtor has filed bankruptcy. To be valid, the agreement must be made before a discharge is granted and must satisfy a number of other technical and disclosure requirements. Unless the reaffirmation agreement is supported by an affidavit from your attorney, it must be approved by the Bankruptcy Judge. The debtor has the right to rescind a reaffirmation agreement any time prior to discharge or within 60 days after it is filed with the Court (whichever is later).

"341" Meeting of the Creditors: a meeting that the debtor must attend. Creditors can attend, but usually do not. If they attend, they usually only have a few minutes to ask questions The trustee assigned to the case presides. The meeting is either tape recorded or recorded by a court reporter. The trustee asks you questions under oath such as:

1. Did you read the schedules before signing?
2. Did you list all of your assets?
3. Did you list all of your debts?
4. Are the schedules accurate?
5. Do you want to make any corrections to the schedules?
6. Are your cars insured?
7. Have you destroyed your credit cards?

The trustee, either orally or by giving the debtor written information, will ensure that the debtor is aware of the effect on credit history; the effect of receiving a discharge; the effect of reaffirming a debt; and the ability to file a petition under a different chapter.

Discharge: when a bankruptcy is discharged, your debt is eliminated.

Limits on future bankruptcies: a person can file a Chapter 7 again if it has been more than 8 years since he or she was discharged from the previous Chapter 7 bankruptcy.

Consequences of Filing Bankruptcy:

- Potential loss of property
- Potential impact on credit - credit report and credit scores
- Availability of future credit is limited, with increased cost, predatory lending, and secured cards.
- Potential impact on reputation
- Potential impact on employment (current or future) and security clearances
- Potential impact on mortgage and rentals
- Potential impact on availability of services such as utilities, cell phones, insurance, car rentals, or hotel rentals

Bankruptcy Law

If a person falls behind in paying off debts and it appears that the person will not be able to make payments as they come due, it is better to take action rather than let one's financial situation deteriorate. For many people, the answer to financial problems is to declare bankruptcy, a legal proceeding in federal court that allows a person to be released from the obligation of paying some or all debts.

It is often said that bankruptcy gives a debtor a fresh start, but filing bankruptcy is not a panacea for all financial problems because it is not painless. Declaring bankruptcy can seriously damage a person's credit rating, making it difficult to establish credit or take out loans. Many people can work themselves out of even very serious debt without ever going near a bankruptcy court, so declaring bankruptcy should not be an automatic first step for someone experiencing financial problems.

The Bankruptcy Code

Bankruptcy law is federal law. The United States Constitution grants to the federal government the exclusive right to make bankruptcy laws. Pursuant to this authority, the federal government created the Bankruptcy Code, Bankruptcy Rules of Procedure, and a system of Bankruptcy courts to handle bankruptcies throughout the country. This is not to say that bankruptcy law is uniform throughout the nation, however. Although the federal government has final authority to make all bankruptcy laws, in some instances the Bankruptcy Code grants to individual states the power to deviate from federal rules in limited circumstances. For instance, the bankruptcy code allows a debtor to keep certain assets, known as exempt assets, that creditors cannot reach to satisfy a debt. The bankruptcy code gives states the authority to expand the categories of exempt assets if they choose. Thus, the amount of assets beyond the reach of creditors differs depending upon the state where the debtor files for bankruptcy.

The Bankruptcy Code creates different categories of bankruptcy, known as chapters, appropriate for different debtors. The two most common forms of consumer bankruptcy are Chapter 7 and Chapter 13.

Chapter 7 Bankruptcy

The vast majority of bankruptcy cases are Chapter 7 cases. Chapter 7 is often called liquidation bankruptcy. Chapter 7 is commonly used by individuals who want to walk away from their debt simply, but it may also be used by businesses that want to terminate their operations and liquidate their assets. When a debtor files Chapter 7, the bankruptcy court appoints a person to administer the case. This person is called the trustee. The debtor turns over some or all debts and assets to the trustee. The trustee then liquidates the property by selling it off and dividing the resulting cash among the creditors.

Under Illinois law, a person who files for Chapter 7 bankruptcy is permitted to retain up to $7,500 of equity in the person's residence; up to $1,200 in equity in the person's car; up to $2,000 in personal property such as cash and furniture; all necessary clothing, books, and family pictures; up to $750 in implements, professional books or tools of the trade; and all professional prescribed health aids for the person or one of the person's family members. These assets are called exempt assets. A person filing for bankruptcy must properly request these exempt assets in a bankruptcy case.

Step 1: Petition and Schedules

A Chapter 7 case begins when the debtor files a petition with the bankruptcy court. Any individual, partnership, or corporation can file Chapter 7 regardless of the amount of debt or whether the debtor is solvent or insolvent.* The petition should be filed with the court serving the area where the debtor lives or where the debtor's principal place of business or assets are located.

Along with the petition, or shortly thereafter, the debtor files with the court several schedules listing current income and expenditures, a statement of financial affairs, all executor contracts, existing or potential lawsuits by or against the debtor, and any recent transfers of assets. If a debtor does not reveal a debt in these schedules, the bankruptcy court cannot discharge or cancel that debt. Any debt omitted from these schedules is called a non-scheduled debt and is not affected by the bankruptcy.

Step 2: Stay

Filing the petition automatically stops (stays) all of the listed creditors from trying to collect the money owed them. The stay arises automatically, without any judicial action, although the court usually does notify creditors of the filing of the petition. The stay is effective from the time of filing, even if the creditors do not receive notice until much later. As long as the stay is in effect, creditors cannot generally start or continue actions against the debtor to collect on the debt. Lawsuits, garnishment actions, even telephone calls to the debtor must cease.

Step 3: Creditors Meeting

After the debtor files a Chapter 7 petition, the court appoints a trustee to administer the case and liquidate assets. The trustee usually calls a meeting of the debtor, the debtor's attorney, and the creditors. The debtor must attend this meeting. Creditors may attend in order to ask questions and examine documents concerning the debtor's financial affairs and property. In most consumer bankruptcies, all of the debtor's assets are either exempt or subject to valid liens, so there are no assets for creditors to pursue. In these cases, known as "no asset" cases, it is likely that no creditors show up at the creditors meeting. If it appears that a case will have assets to pursue, creditors usually show up at this meeting to gather information about the case because they plan to ask the bankruptcy judge to declare some of the debts non-dischargeable, they plan to challenge the exempt status of some asset, or they plan to file claims.

Step 4: Claims

After the creditors meeting, the creditors can file a claim against the debtor with the court. If the case has non-exempt assets free of security interests, these will be used to satisfy valid claims.

Step 5: Liquidation, Discharge, and Reaffirmation

The trustee's primary role is to sell off the debtor's non-exempt assets in a way that maximizes the amount of creditors receive for their claims. Revenues from assets subject to security interests, such as property subject to a mortgage, is used to satisfy the debt on the particular asset. A Chapter 7 bankruptcy concludes when the trustee sells the debtor's property, distributes the cash to the creditors, and discharges the remaining debt. The discharge extinguishes the debtor's remaining personal liability on the debt. Certain items are non-dischargeable and thus unaffected by the bankruptcy. Non-dischargeable debts include:

- Alimony and child support
- Most tax obligations
- Most student loans
- Liability for damages resulting from willful or malicious acts

Creditors can ask the court to deny an individual debtor a discharge. The grounds for denial of discharge are extremely narrow and requests for denial are rarely granted. Grounds for denial include:

- The debtor fails to adequately explain the loss of assets.
- The debtor perjured himself or herself or failed to obey lawful orders of the court.
- The debtor fraudulently transfers, conceals, or destroys property that should be in the estate.

Because a secured creditor has rights that permit the creditor to seize pledged property, a debtor may want to reaffirm a debt even after it has been discharged if the debtor wants to keep the property. A reaffirmation is an agreement between the debtor and the secured creditor that the creditor will not exercise the creditor's right to take back the asset so long as the debtor makes payments.

A debtor must wait six before the debtor can file for Chapter 7 again.

Chapter 13 Bankruptcy

Chapter 13 bankruptcy is often referred to as a “wage-earner plan,” because it is generally used by people with stable incomes who want to repay at least some of the debts but are currently unable to do so. A debtor may file Chapter 13 bankruptcy if the debtor’s financial crisis is temporary and the debtor expects income will grow enough in the next few years to pay off all debts. The main advantage to Chapter 13 is that the debtor is allowed to keep the debtor’s property while a court-approved repayment plan is in effect. However, only an individual with less than $100,000 in unsecured debts and less than $350,000 in secured debts is eligible to file a Chapter 13 bankruptcy. Corporations and partnerships cannot file Chapter 13 bankruptcies, although this option is available to a small business operated by a sole proprietor. In addition, the debtor must have a job or prove to the court that the debtor has the ability to earn stable income.

Step 1: Petition

The petition required for a Chapter 13 bankruptcy is similar to that described above for Chapter 7. The debtor provides the court with the following:

- Lists of all creditors, including the amount and nature of claims
- The source, amount, and frequency of debtor income
- Lists of all property
- Detailed descriptions of the debtor's monthly living expenses, including food, clothing, shelter, utilities, taxes, transportation, and medical care.

Step 2: Stay

Filing a Chapter 13 petition automatically stays most actions against the debtor. So long as the stay is in effect, creditors generally cannot start or continue lawsuits or garnishment actions, or even phone the debtor demanding repayment. Chapter 13 also has a special stay provision that prohibits creditors from collecting consumer debt owed to the debtor by a third person.

Step 3: Plan

Within 15 working days of filing a Chapter 13 bankruptcy, the debtor presents a plan to the court that spells out how the debtor proposes to pay off debts over a three-year period, or by permission, over a five-year period. The plan must provide for the full payment of claims entitled to priority. For reasons of public policy, the Bankruptcy Code has several categories of unsecured claims that have priority over other unsecured claims, including:

- Costs of administering the bankruptcy
- Employees' wages, salaries, and commissions
- contributions to employee benefit plans
- Deposits accepted by the debtor for personal items or services that the debtor did not deliver
- Taxes

Step 4: Creditors Meeting

A creditors meeting is usually held about 20 to 40 days after the petition is filed. The debtor and trustee must attend the conference, but creditors have the option to attend. Trustee and creditors can question the debtor about financial affairs and terms of the plan. Any problems with the plan are usually solved during or shortly after this meeting.

Step 5: Confirmation Hearing

After the creditors meeting, the bankruptcy court determines at the bankruptcy hearing whether the plan is feasible and meets the standards for confirmation set by the bankruptcy code. Creditors are allowed to object to confirmation. The most common objections are that the debtor has not pledged sufficient disposable income to the plan or that creditors receive less than they would if the debtor's assets were liquidated in a Chapter 7 proceeding.

For most plans in Illinois, the Bankruptcy Court allows a five-year repayment plan. The court occasionally reduces the size of some of the dischargeable debts. During this five-year period, a portion of the debtor's paycheck goes to a court-appointed trustee who divides the money among the debtor's creditors.

If approved by the Bankruptcy Court, the plan prevents a debtor's creditors from garnishing wages or repossessing property.

Step 6: Discharge

A Chapter 13 debtor is entitled to a discharge if the debtor successfully completes all payments under an approved plan. The discharge releases the debtor from all debts provided for or disallowed under the plan. Creditors provided for under the plan may not start or continue actions against the debtor to collect a discharged obligation.

Advantages of Chapter 13 over Chapter 7

Filing a Chapter 13 bankruptcy has advantages over a Chapter 7 liquidation. Unlike a Chapter 7 bankruptcy, there is not a six-year waiting period before the debtor can file bankruptcy again. Thus, with only a few exceptions, the debtor can file a Chapter 7 bankruptcy at any time after filing Chapter 13 bankruptcy. This means that if the debtor is unable to make the payments specified in a Chapter 13 bankruptcy plan, the debtor can still act to discharge debts through a Chapter 7 liquidation.

The non-dischargeable debts under a Chapter 13 bankruptcy are generally the same as the non-dischargeable debts in a Chapter 7 bankruptcy. However, a Chapter 13 bankruptcy allows the debtor to discharge a few more types of debts than does a Chapter 7 bankruptcy.

If the debtor owns an unincorporated business, such as a freelance consulting business, the debtor can continue to own and operate the business under a Chapter 13 plan. Under a Chapter 7 liquidation, a Bankruptcy Court may order that such a business or its assets be sold. Also, the automatic stay of a Chapter 13 bankruptcy protects any co-signers of consumer debts, whereas a Chapter 7 offers only a very limited protection of others who may share the debtor's obligation.

Finally, certain homeowners may prefer a Chapter 13 bankruptcy because in many instances it allows them to make up past payments on their mortgage. When someone falls behind in making mortgage payments or is in actual default, a lender quite often "accelerates" the payments. For a debtor in this situation, filing a Chapter 13 bankruptcy may allow the debtor to "decelerate" or reduce those monthly payments and may even reinstate the mortgage by wiping out a prior default. However, if saving a house is the primary reason for filing bankruptcy, the homeowner should talk through all of the possibilities with an attorney, because the law governing this area are extremely complicated and it is easy to make a costly misstep.

Conversion

The bankruptcy Code allows a debtor to convert a Chapter 7 case to Chapter 13 or vice versa as long as the debtor meets the eligibility requirements of the new chapter and the case has not previously been converted from the new chapter. In other words the debtor is not allowed to repeatedly convert the case from one chapter to another.

Involuntary Bankruptcy

Unlike the types of situations described above, in which the debtor decides whether to file bankruptcy, in an involuntary bankruptcy creditors force the debtor into bankruptcy. Under certain conditions, creditors can petition the Bankruptcy Court to initiate a Chapter 7 or 11 (but not a Chapter 13) bankruptcy against a debtor. The court will only accept such a petition if it is signed by at least three creditors who are owed a total of at least $5,000 in unsecured debt. If a debtor has fewer than 12 unsecured creditors, however, just one unsecured creditor owed at least $5,000 can file an involuntary bankruptcy petition.

Involuntary bankruptcy is rare, but if someone does file a petition against a debtor in Bankruptcy Court, the debtor has an opportunity to file an answer to the petition and refute any charges made by creditors in the petition. If the judge sides with the debtor, the court dismisses the petition and can make the creditors pay reasonable attorney's fees and any money debtor loses in defending the case. In addition, if the judge decides that the petition was filed in bad faith, the court may also award the debtor punitive damages.

Effects of Declaring Bankruptcy

The old adage that it is better to know how to swim before jumping into deep water applies to anyone considering filing bankruptcy. Although under federal law it is illegal for an employer to discharge or discriminate against an employee who has filed a bankruptcy case, there are other potentially adverse effects of which to be aware.

Poor Credit Rating

Consumer laws allow credit agencies to list on reports of a person's credit history all of that person's bankruptcy filings in the preceding ten years. This means that mortgage companies, banks, credit card companies, landlords, employers, and all others who can legally obtain a copy of a person's credit report will know about that person's troubled financial past. Filing bankruptcy can make it difficult to obtain credit for those ten years.

According to the Illinois State Bar Association, while each case is different, some people find that obtaining future credit is easier if they file a Chapter 13 bankruptcy and attempt to repay some of their debts, rather than file a Chapter 7 bankruptcy and make no attempt to repay.

Creditor Scrutiny

One of the first events in a bankruptcy is a meeting between the debtor and all the debtor's creditors. At this meeting, the creditors and a court-appointed trustee are allowed to examine all of the debtor's financial records, such as bank statements and loan documents, and ask questions about how money has been spent. For anyone with anything unsavory or illegal to hide, such as gambling debts with a bookie, a bankruptcy proceeding can be incriminating.

Cost

Understandably, bankruptcy attorneys are very careful about a client's ability to pay legal bills. A bankruptcy attorney will usually collect enough money in advance from a near-bankrupt client to handle a typical bankruptcy filing. This may be more than some clients can pay, especially if there is any contest with creditors. In addition, the trustee in charge of a bankruptcy case is paid by commission, a percentage of the money that the trustee distributes to pay creditors.

Other Forms of Bankruptcy

There are three other kinds of bankruptcy filings that are not discussed more fully in this guide because of their limited relevance to consumers. Knowing about them can help one better understand bankruptcy options.

Chapter 9

Chapter 9 is a very rare form of bankruptcy available only to municipalities.

Chapter 11

Chapter 11 is available for corporations, partnerships, and individuals but is mostly used by troubled corporations and partnerships. Chapter 11 allows the debtor to remain in operation while being sheltered from some of its debts.

Farm Bankruptcies

Chapter 12 is available only to family farmers and is designed to allow farmers to stay in business while attempting to pay off their debts. Chapter 12 offers several advantages over other bankruptcy chapters because it recognizes the seasonal nature of most agricultural income, the difficulty of predicting in advance how much a farmer will profit from a crop, and the fact that most farmers need much more credit than do most individuals. Chapter 12 was originally scheduled to be repealed on October 1, 1993, but the repeal date was pushed back to October 1, 1998.

Transfers to Avoid Losing an Asset in Bankruptcy

Some transfers that are valid outside the context of bankruptcy are invalid in bankruptcy. The Bankruptcy Code empowers a bankruptcy trustee to invalidate certain transfers made prior to a bankruptcy filing.

Fraudulent Conveyances

The Uniform Fraudulent Transfer Act is designed to remove any temptation a debtor may have to hide property, by giving it to a relative, for example, before declaring bankruptcy. Any transfer of the debtor’s assets made within 90 days of filing bankruptcy, or one year if a relative or business associate is involved, is carefully scrutinized by the Bankruptcy Court. If the court determines that the debtor attempted to defraud creditors by selling property at a below-market price, the court can order that property or other assets be given over to the trustee. Anything sold at a reasonable market value before a bankruptcy filing cannot be recovered by the court under the rules of the Uniform Fraudulent Transfer Act.

Preferences

A preference occurs when a debtor treats one creditor more favorable than another. For instance, if a debtor with only $100 owes $100 each to creditors A and B and pays A completely, leaving nothing for B, then A has received a preference. Bankruptcy condemns preferences if the following conditions exist:

- Transfer is for the benefit of a creditor
- Transfer is made for the debt owed prior to the initiation of bankruptcy
- Debtor is insolvent at the time of the transfer

- Transfer is made 90 days before filing of the bankruptcy or one year before filing if made to an insider such as a relative or director of a corporate debtor.

Creditors receiving preferences can be forced to return them to the debtor's estate.

Collection Agencies and the Law

Although not a part of Bankruptcy Code, laws regulating collection agencies are usually of concern to anyone experiencing financial difficulties. Both state and federal laws limit the kinds of activities that a collection agency can engage in as it tries to collect a debt. These laws only apply to third-party collection agencies and not to in-house collections. That is, if a creditor tries on its own to induce its delinquent accounts to pay their overdue bills it is not required to follow the laws governing collection agencies. But if a creditor turns collection matters over to a collection agency, the collection agency's employees must follow the rules.

Alternatives to Bankruptcy

Anyone in financial trouble has undoubtedly received many letters from creditors demanding payment on debts owed. Even a very demanding creditor may have a change of heart once a debtor mentions the possibility of filing bankruptcy, because creditors know that bankruptcy means that they may only get a fraction of what is owed them.

Anyone confident that existing financial problems are only temporary may want to consider asking major creditors to accept reduced payments for a short period or asking for a short delay in making payments. Provided that the debtor has not already given creditors reason to doubt the debtor's sincerity, e.g., by completely ignoring their letters or by consistently breaking promises, chances are good that creditors will agree to one of these plans.

As mentioned above, creditors know that bankruptcy means they will probably get just a small fraction of the total sum owed them. A creditor also knows that if it sues to collect its money, it must ask a judge to issue a court order to garnish the debtor's wages. This is time-consuming and costly. All of these factors make it more likely that a creditor will agree to a repayment plan.

Many creditors can be understanding if approached with a reduced or delayed payment plan accurately spelling out the debtor's financial situation and showing that the debtor is trying to spread out meager resources in a way that tries to please everyone. A consumer credit counselor can help set up such a plan. Credit counselors can help to analyze and organize one's finances to set up a deferred or reduced payment plan.

In a typical case, a credit counselor devises a repayment plan that is then described in a form letter to be mailed to the debtor's major creditors. There are both advantages and disadvantages to using credit counselors, however. On the plus side, creditors who see the debtor has taken the effort to consult with a credit advisor may be more likely to accept a repayment plan because seeing a credit counselor shows that the debtor is serious about getting out of debt. But credit counseling services also charge fees for their work, which may be more than an already-stressed budget can handle. However, there are some nonprofit agencies that offer credit counseling for a sliding-scale fee.

Exemptions

In a bankruptcy proceeding (or any other collection case brought against you), you are allowed to keep certain property or assets. The below is a list of those assets you can keep. Anything over these "exemption" amounts will have to be turned over to the Bankruptcy Trustee for liquidation and distribution to the creditors who file claims. The amounts shown are for individuals and spouses.

Item	Amount Exempt:	Individual	Spouses
a.	Clothes, pictures, school books	Unlimited	Unlimited
b.	Equity interest in any one	$2,400.00	$4,800.00
c.	Tools of trade	$1,500.00	$3,000.00
d.	Doctor-prescribed health aids	Unlimited	Unlimited
e.	Life insurance proceeds paid due to death of a provider upon whom beneficiary relied upon	Unlimited	Unlimited
f.	Debtor's right to receive social security benefits, unemployment benefits, veteran benefits, public assistance benefits, disability or illness benefit, alimony, child support, or maintenance.	Unlimited	Unlimited
g.	Personal injury award	$15,000.00	Up to $15,000.00 each
h.	Equity value in any other property (called the "Wild Card")	$4,000.00	$8,000.00
i.	Workers compensation settlements/award	Unlimited	Unlimited
j.	Equity interest in residence	$15,000.00	$30,000.00

These exemptions are the most commonly used, and the above is a general listing of the same. please note that there are some other less common exemptions available. please note that some of the above may have certain restrictions making them unavailable or limited in nature. Your attorney will advise you if that is the case.

Please note that there is not a specific exemption for receipt of tax refunds. If the proceeds you received, either together with other assets or alone exceeded the above "Wild Card" exemption, those tax refund proceeds (or a portion) thereof may be subject to turnover to the Trustee.

Bankruptcy: A Summary of the Guide

Bankruptcy law is federal law. This sheet gives you some general information about what happens in a bankruptcy case. The information here is not complete. You may need legal advice.

When you file bankruptcy:

You can choose the kind of bankruptcy that best meets your needs:

> Chapter 7 - A trustee is appointed to take over your property. Any property of value will be sold or turned into money to pay your creditors. You may be able to keep some personal items and possible real estate depending on the law of the state where you live.
>
> Chapter 13 - You can usually keep your property, but you must earn wages or have some other source of regular income and you must agree to pay part of your income to your creditors. The Court must approve your repayment plan and your budget. A trustee is appointed and will collect the payments from you, pay your creditors, and make sure you live up to the terms of your repayment plan.
>
> Chapter 12 - Like Chapter 13, but it is only for family farmers.
>
> Chapter 11 - This is mostly used by businesses. In Chapter 11, you may continue to operate your business, but your creditors and the Court must approve a plan to repay your debts. There is no trustee unless the Judge decides that one is necessary; if a trustee is appointed, the trustee takes control of your business and property.

If you have already filed bankruptcy under Chapter 7, you may be able to change your case to another chapter.

Your bankruptcy may be reported on your credit record for as long as ten years. It can affect your ability to receive credit in the future.

<u>What is a Bankruptcy Discharge and how does it operate?</u>

One of the reasons people file bankruptcy is to get a “discharge.” A discharge is a Court order which states that you do not have to pay most of your debts. Some debts cannot be discharged. For example, you cannot discharge debts for most taxes, child support, alimony, student loans, Court fines and criminal restitution, and personal injury caused by driving drunk or under the influence of drugs.
This discharge only applies to debts that arose before the date you filed.

Also, if the Judge finds that you received money or property by fraud, that debt may not be discharged.

It is important to 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.

The Judge can also deny your discharge if you do something dishonest in connection with your bankruptcy case, such as destroy or hide property, falsify records, or lie, or if you disobey a Court order.

You can receive a chapter 7 discharge once every six years. No one can make you pay a debt that has been discharged, but you can voluntarily pay any debt you wish to pay. You do not have to sign a reaffirmation agreement or any other kind of document to do this.

Some creditors hold a secured claim (for example, the bank that holds the mortgage on your house or the loan company that has a lien on your cat). You do not have to pay a secured claim if the debt is discharged, but the creditor can still take the property.

<u>What is a reaffirmation agreement?</u>

Even if a debt can be discharged, you may have special reasons why you want to promise to pay it. For example, you may want to work out a plan with the bank to keep your car. To promise to pay that debt, you must sign and file a reaffirmation agreement with te Court. Reaffirmation agreements are under special rules and are voluntary. They are not required by bankruptcy law or by any other law. Reaffirmation agreements:

- must be voluntary;
- must not place too heavy a burden on you or your family;
- must be in your best interest; and

- can be canceled anytime before the Court issues your discharge or within sixty (60) days after the agreement is filed with the Court, whichever gives you the most time.

If you are an individual and you are not represented by an attorney, the Court must hold a hearing to decide whether to approve the reaffirmation agreement. The agreement will not be legally binding until the Court approves it.

If you reaffirm a debt and then fail to pay it, you owe the debt the same as though there was no bankruptcy. The debt will not be discharged and the creditor can take action to recover any property on which it has a lien or mortgage. The creditor can also take legal action to recover a judgement against you.

If you want more information or have questions about how the bankruptcy laws affect you, you may need legal advice. The trustee in your case is not responsible for giving you legal advice.