

BANKRUPTCY FOR NON-LAWYERS

Bankruptcy Overview

Federal Legislation 11USC §101 et. seq.

No bankruptcy under State law

Who may be a debtor? 11 USC §109

- Individual, Partnership or Corporation or other business entity §101(41)

Persons that reside or have a domicile a place with residential property in the United States.

Filing Fee

- Individual
- Joint Petition - Husband and Wife

1. Income
2. Expenses
3. Debts
4. Assets
5. Exemptions

Bankruptcy Considerations:

WHY FILE?

Most common causes:

- cards
- medical
- job loss
- garnishment
- foreclosure

WHERE TO FILE?

Venue:

- Where resided last 90 days (better part of 180 days).

Exemptions:

- Where resided for the last three years determines which state exemptions and/or if federal exemptions can be used.

Credit Implications

Counseling

Creditor's Meeting

Must have filed 1040's for preceding two years.

Non-Bankruptcy Considerations:

- Work out among creditors - (ABC's)

- Covenants not to execute

- Stipulated Judgments

- Fight through it (< \$5,000)

- Allow judgments to occur (Social Security Recipients)

Solvency:

Paying bills as they become due.

Types of Bankruptcy - Consumers

Chapter 7

- Complete Liquidation

Chapter 13

- Wage Earner Plan (Monthly Income)
- Substantial Income
- Excessive Assets
- Repayment of debt over time
- Breather - Need time to repay debts
- Moratorium on debt collection

Chapter 13 Plan:

Minimum length: 36 Months
(Unless 100% debt can be paid in less time.)

Maximum length: 60 Months

Special Feature:

- Chapter 13 cram down
- Proof of Claim

Time Limitations: (filing to filing)

- 8 Years between Chapter 7's
- 4 Years between Chapter 13's
- 4 Years between Chapter 7 and Chapter 13
- 6 Years between Chapter 13 and Chapter 7

1. **INCOME:**

Normal wages

- Last 6 Month's average income for employment

Small businesses

- Profit & Loss Statement

Social Security

- Counted for Chapter 7 purposes
- Not counted for Chapter 13 purposes

Means Test:

Average current monthly income over 6 months (x2 = Annual)

Presumptive abuse of Chapter 7

Annual income cannot exceed the following based on family size:

<u>Family Size</u>	<u>Income</u>
1	\$63,376
2	\$75,012
3	\$86,630
4	\$102,418
5	\$110,818
6	\$119,218

2. **EXPENSES:**

Rent or home mortgage payment

Utilities:

- Electricity and heating fuel
- Water and sewer
- Telephone

Home maintenance

Food

Clothing

Laundry and dry cleaning

Medical and dental

Transportation

Charitable contributions

Insurance:

- Homeowner's or renter's
- Life
- Health
- Auto

Taxes

Installment payments:

- Auto

Alimony, maintenance, and support paid to others

Regular expenses from operation of business, profession, or farm

Expenses: Common sense

Reviewed by Trustee for abuse.

3. **DEBTS**

Secured:

- Mortgage
- Vehicle Loan

Unsecured:

- Credit Cards
- Medical Bills

Priority:

- Most Taxes
- Child Support
- Must be paid in Chapter 13
- Non-dischargeable in Chapter 7

Creditors with special places in bankruptcy.

- Secured Creditors
- Lien Holders
- Automobile lien/Reaffirmation
- Cross-collateralization of Debt
- Personal Lines Of Credit/Credit Card
- Medical
- Federal Income Tax

4. **ASSETS:**

- Do you own real property, motor vehicles?
- Property held by another?
- Household Goods/Clothing?
- Anticipatory assets/Inheritance?
- Rental deposits?
- Potential claims for damages?
- "Toys"?

5. **CLAIMS OF EXEMPTION**

Federal Exemptions vs. State Exemptions

State:

Real Property:

- generous real property/homestead \$125,000
- automatic homestead exemption vs. homestead declaration

Personal Property:

- automobile \$3,250 (\$6,500 for community)
- household goods \$6,500 (\$15,000 for community)
- tools of the trade \$10,000
- personal injury settlement \$20,000
- life insurance proceeds 100%
- Retirement funds under IRC 100%

Federal:

Real Property:

Real Property	\$22,975 (\$45,950 for community)
➤ generous grab bag exemption	\$1,225 plus up to \$11,500 of unused real property exemption. (\$2,500 plus up to \$23,000 for community)

Personal Property:

➤ automobile	\$3,675 (\$7,350 for community)
➤ household goods	\$12,250 (\$24,500 for community)
➤ tools of the trade	\$2,300
➤ personal injury settlement	\$22,975
➤ life insurance proceeds	100%
➤ Retirement Funds under IRC	100%

What bankruptcy does:

- Automatic stay
- Creditor action immediately stops upon filing
- Discharge of all dischargeable debts
- Fresh start
- Discontinuation of all creditor action, lawsuits, garnishments, foreclosure
- Garnishments/Refunds
- Lift driver's license suspension
- Void judgment liens on real property.

Chapter 7/Chapter 13 Discharge

Objections:

- Incurred Via Fraud
- Intentional Torts
- Luxury Purchases
- Misrepresentation In Schedules
- Chapter 13 Best Efforts Discharge

What debts aren't discharged:

- Fraudulent transactions
- Child/spousal support
- Debts incurred through dissolution decree
- Student loans
- Injuries resulting from alcohol/drug related accidents
- Most taxes