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Considering Bankruptcy?

Answers to Common Questions So You Can Make an Informed Decision

Many people find themselves in the difficult situation of having mounting debts and feel that there is no light at the end of the tunnel. Some decide to keep plugging away and others consider whether or not bankruptcy is for them. Like most areas of law, bankruptcy law is very complicated and regrettably trying to figure this all out often comes at a time when financial pressures are mounting. To assist you, here are some commonly asked bankruptcy questions and answers. Also, if you require further assistance, please contact Scott Legal Services, P.C. at 1-888-LAW-2964 or email us at iscott@legalservicesincorporated.com. We are here to help.

What is Bankruptcy?

Bankruptcy is a legal proceeding in which a person who cannot pay his or her bills can get a fresh financial start and reduce the impact of financial failure. Filing bankruptcy immediately stops all of your creditors from seeking to collect debt from you and ultimately all of your debts may be discharged in bankruptcy. Although there is a stigma associated with bankruptcy, it can be the most economically sound financial decision you make. Please note that the terms in bankruptcy law can be a bit confusing. You are considered the “Debtor” or the person who owes money. The person who loaned you the money is considered the “Creditor.” The Trustee is the person that will decide whether or not to grant the discharge of your debts.

Who Can Benefit From Bankruptcy?

Individuals, businesses, and creditors can all benefit from bankruptcy. For the individual who owes money, bankruptcy law eliminates debts and in some cases gives you the ability to restructure debts. Bankruptcy also has other advantages for individuals as it can stop foreclosure on your home, prevent repossession of your car or other property, stop wage garnishments & debt collection harassment, and restore utility services. For businesses, bankruptcy allows reorganization of secured and unsecured debts, as well as the reorganization of equity interests. Reorganization of a business aims to prevent a company that owes money from going into liquidation and to prevent the loss of jobs and possible misuse of economic resources. People who lend money (creditors) can also benefit from the bankruptcy process as the orderly and centralized liquidation or reorganization allows creditors to get something back.

Does It Matter How Much Debt I Have?

Generally speaking it does not matter how much debt you have. You can have a small amount of debt or a large amount. Remember though that some debt cannot be discharged in bankruptcy. For example, most student loans cannot be discharged. You should also keep in mind that

bankruptcy stays on your record for a long time so if you have very little debt, you may want to consider just paying it off. We can guide you through this process.

Are There Debts That Are Not Discharged?

Regrettably not all debts are discharged in bankruptcy. For example, students loans can only be discharged in rare circumstances. Other debts that cannot be discharged are certain government taxes, alimony or child care payments, debt incurred through fraud, certain government fines and penalties, condo or coop fees and a few other items.

What Type Of Bankruptcy Should I Select?

Your individual circumstances dictate the best type of bankruptcy chapter for you. Your lawyer will advise you which option is best for you and for which you qualify.

You can qualify for different bankruptcy chapters depending on your legal status. Generally, individuals can apply for chapter 7, chapter 11 & chapter 13 where partnerships and corporations can only qualify under chapter 7 & chapter 11.

What Are The Different Types of Bankruptcy?

The main purpose of each bankruptcy chapter can illuminate some general differences but there are complexities here that this brief summary does not go into.

- Chapter 7: The purpose of chapter 7 bankruptcy is to discharge the debtor's debts by selling the property of the debtor and distributing the proceeds to creditors.
- Chapter 11: The purpose of chapter 11 is to provide a mechanism for the reorganization of a financially distressed business or individual in the hope that a profitable and productive member of its economic community can once again emerge. Reorganization is a negotiation process, and the Bankruptcy Code provides the rules that foster negotiation and bargaining.
- Chapter 13: The purpose of chapter 13 is to use future income for the payment of debt to the extent possible, but to permit debtors to keep other assets. Think of this as an extended payment plan where you can pay over time.

What Are Some Of The Features Of Chapter 7 Bankruptcy? (Liquidation/Debt Discharge)

(1) What must I show to qualify?

You must be an individual, partnership, corporation, or other business entity.

An individual debtor whose current monthly income is less than the State median qualifies for Chapter 7 bankruptcy without having to show anything else. However, if your current monthly income is greater than the state median, you must show that either (1) Chapter 7 bankruptcy filing is not abusive, or (2) if it is abusive, you must show special circumstances that justify additional expenses or adjustments of current monthly income. This is a very confusing and complex area so you should seek legal advice.

(2) Do I Have To Do Credit Counseling?

To qualify for any bankruptcy filing, you are generally required to receive credit counseling from an approved credit counseling agency 180 days within a bankruptcy filing.

(3) Can I keep my belongings?

Yes, some or all of them but you may have to give some up too. Generally, the debtor's assets must be liquidated so that proceeds are used to pay the creditors. However, the Bankruptcy Code allows you to protect some property from the claims of creditors. For example, the bankruptcy court is not going to take the clothes off your back. The complete list of exemptions is another complicated area and you should consult a lawyer to go through these.

(4) Will all my debts be discharged?

Possibly but there are some that will not ever be discharged. Many debts can be discharged regrettably some cannot. For example, alimony and child support, certain taxes, debts for certain educational benefit overpayments or loans made or guaranteed by a governmental unit (for example student loans), among other types of debts. For a complete list of things that are excluded, consult with your lawyer.

What Are Some Of The Features Of Chapter 13 Bankruptcy? (Payment Plan)

(1) What must I show to qualify?

Only an individual, an individual and his/her spouse, or a sole proprietor may qualify. Chapter 13 is not available to corporations or partnerships. The individual must have a sufficiently stable and regular income out of which plan payments may be made. The idea here is that the person has the means to pay the debts off over time so it would not be fair to discharge all of the debts.

(2) Can I keep my belongings?

Yes. The funds that pay for the claims of creditors come from future income. Current assets remain unaffected.

(3) Will all my debts be discharged?

Possibly. Like in a chapter 7, there are certain non-dischargeable debts. The debtor receives his or her discharge when the plan has run the course of the agreed payment plan, and after the debtor has completed a course in financial education.

(4) How does it work?

The debt adjustment plan provides for payment out of future income. Payments are made from the debtor's disposable income. The Code does not require a minimum amount of payment. What constitutes disposable income depends on whether the debtor's annualized

“current monthly income” is less than the “median family income” of the debtor’s state. The plan normally extends over a three-year period unless the court approves a five-year plan, or unless the debtor is required to have a five-year plan.

What Are Some Advantages and Disadvantages of Bankruptcy?

(1) Disadvantages of Bankruptcy

Bankruptcy negatively affects the debtor’s credit rating for 10 years and credit rating is very important in this country. Damage to credit rating may adversely affect the debtor when he/she applies for credit, rents/buys a house, and seeks future employment. That being said, many that apply for bankruptcy already have poor credit.

(2) Advantages of Bankruptcy

Bankruptcy is beneficial because it discharges debts or provides for a more beneficial payment plan to satisfy creditors. Without bankruptcy, a debtor may continue to damage their credit due to inability to pay creditors and may suffer great financial hardship in attempting to pay creditors. The debtor may take longer to rebuild his/her credit without declaring bankruptcy than it would take him/her to rebuild his/her credit after bankruptcy. In fact, a credit rating often improves after 15 months. Also, bankruptcy can stop things like foreclosure and repossession allowing you to keep your assets. Finally, bankruptcy give you a fresh start and at times that is all one needs.

Do You Need A Lawyer?

Yes. While you do not have to hire an lawyer to file a bankruptcy petition, bankruptcy law is complicated and the Trustee can deny your petition. If you are thinking of bankruptcy, you should discuss your choice of bankruptcy with a qualified lawyer. Let Scott Legal Services, P.C. be your guide. For more information click [here](#). Also, if you require further assistance, please contact Scott Legal Services, P.C. at 1-888-LAW-2964 or email us at iscott@legalservicesincorporated.com.