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COMMON BANKRUPTCY QUESTIONS

Bankruptcy is a legal action in which a person who cannot pay his or her bills can get a fresh financial start. The right to file for bankruptcy is provided by federal law, and all bankruptcy cases are handled in federal court and, therefore, it is wise to have an attorney.

A person who files for bankruptcy is called a **DEBTOR**. By filing for bankruptcy, you may:

- (1) get most or all of your bills wiped out (**DISCHARGED**);
- (2) get to keep most or all of your property which otherwise might have been lost to creditors (people to whom money is owed); and
- (3) get extra time to pay bills, if you have regular income.

There are two kinds of bankruptcies for individuals: Chapter 7 (straight bankruptcy) and CHAPTER 13 (Monthly payments required).

CHAPTER 7 BANKRUPTCY (STRAIGHT BANKRUPTCY)

In a straight bankruptcy under Chapter 7, you, the debtor, file a petition asking the court to discharge your debts. The basic idea in a Chapter 7 bankruptcy is to wipe out (discharge) your debts in exchange for you giving up your property, except for EXEMPT property which the law allows you to keep. In many cases, much or all of your property may be exempt. Property which is not exempt is sold and the money distributed to creditors.

CHAPTER 13 BANKRUPTCY (TRUSTEE PAYMENTS REQUIRED)

In a Chapter 13 case, you, the debtor, file a PLAN showing how you will pay off some of your past-due and current debts over an extended period, normally 3 years. This is different from Chapter 7 bankruptcy, where you ask the court to wipe out (discharge) your debts.

The most important thing about a Chapter 13 case is that it will allow you to keep valuable property - especially your home - which might otherwise be lost.

You should consider filing a Chapter 13 plan if you:

- (1) own your home or car and are in danger of losing them because of money problems;
- (2) are behind on debt payments, but can catch up if given some time; and
- (3) have regular income (including government benefits such as social security or public assistance.)

WHAT DOES IT COST TO FILE FOR BANKRUPTCY?

My fee for a simple Chapter 7 is \$665.00. The fee in a Chapter 13 will be more and depend on the complexity of the case.

The Bankruptcy Court charges \$335.00 to file for Chapter 7 and \$310.00 for Chapter 13 bankruptcies, whether for one person or a married couple. Depending on your financial situation, the court may waive the filing fee for a Chapter 7. In either type of bankruptcy the court may allow you to pay the filing fee in installments if you cannot pay all at once.

WHAT PROPERTY CAN YOU KEEP?

You can keep all property which the law says is **EXEMPT** from the claims of creditors.

The statutory exemptions include:

- ! \$21,500 in equity in your home (equity is the value of the property minus the amount you still owe on mortgages.) (You may get value from your tax assessor)
- ! \$5000 in equity in your car;
- ! \$300 per item in any household furnishings, including clothing, appliances, books, animals, crops and musical instruments, up to a total of \$5,000;
- ! \$500 in jewelry;
- ! \$1500 in things you need for your job (tools, books, etc.);
- ! \$1200 in any property, plus any part of the unused exemption in your home up to \$10000; and
- ! your right to receive certain benefits such as social security, unemployment compensation, veteran=s benefits, public assistance, child support and pensions - regardless of the amount.

The amounts of the exemptions are doubled when a married couple files together.

Some of your creditors may have a **SECURITY INTEREST** in some of your property - that is, certain rights in your property to make sure you pay your debt. When you borrow money, the lender may take a security interest in some of your property (collateral). If you don't make your loan payments, the lender may be able to take and sell that property.

Other creditors may not have any security interest in your property. Such creditors are called unsecured or general creditors. Secured creditors generally have greater rights to your property than unsecured creditors.

A creditor may have a security interest or other claim against property which you claim as exempt. You may be able to keep this property in some situations.

CAN YOU OWN ANYTHING AFTER BANKRUPTCY?

YES! Many people believe they cannot own anything for a period of time after filing for bankruptcy. This is not true! However, if you receive an inheritance, a property settlement, or life insurance benefits, that money or property may have to be paid to creditors if

- ! the property or money is not exempt, and
- ! you receive it within 180 days after filing for bankruptcy.

WILL BANKRUPTCY WIPE OUT ALL YOUR DEBTS?

Yes, except for:

- (1) money owed for child support or alimony, fines, some taxes, and limited other kinds of debts;
- (2) debts not listed on your bankruptcy petition;
- (3) loans you got by knowingly giving false information to a creditor, who reasonably relied on it in making you the loan;
- (4) debts resulting from willful and malicious harm and
- (5) student loans owed to a school or government body, except if payment would be an undue hardship

DISCHARGE

If everything goes normally in a bankruptcy case, the final thing the court does is to grant you a **DISCHARGE**, which excuses you from paying all of your debts (except possibly for the few mentioned above). The discharge order also forbids creditors from doing anything to try to collect a debt that has been discharged.

The court can refuse to grant a discharge, but only in very limited cases if you have done something improper, such as: trying to cheat a creditor by hiding your property; giving false information to the court; refusing to obey a court order, etc.

WILL BANKRUPTCY AFFECT YOUR CREDIT?

There is no clear answer to this question. The fact that you've filed a bankruptcy can appear on your credit record for 10 years. But since bankruptcy wipes out your old debts, you are likely to be in a better position to pay your current bills, so you may be able to get new credit.

OTHER INFORMATION

- ! Utility service and public utilities, such as the electric company, cannot refuse or cut off service because you have filed for bankruptcy. However, the utility can require a deposit for future service.
- ! Discrimination - An employer or government agency cannot discriminate against you because you have filed for bankruptcy.
- ! Driver=s license - If you lost your license solely because you couldn=t pay court-ordered damages caused in an accident, bankruptcy will allow you to get your license back.
- ! Co-signers - If someone has co-signed a loan with you and you file bankruptcy, the co-signer may have to pay your debt.