

## U.S. Department of Justice

# Bankruptcy Information Pamphlet



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**Bankruptcy Law is Federal Law. This pamphlet gives you some general information about what happens in bankruptcy. The information here is not complete. You may still need legal advice.**

### *When you file bankruptcy:*

There are several types of bankruptcy. There are certain requirements to qualify for each, and if you have already filed under Ch 7 you may be able to change to another chapter:

**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 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 that income to 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 plan.

**Chapter 12:** Like Chapter 13, but it is only for family farmers and fishermen.

**Chapter 11:** This is used mostly 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.

You should also be aware that 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.

### *Bankruptcy Discharge*

One of the reasons people file bankruptcy is to get a "discharge". A discharge is a Court order that says 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
- ◆ most student loans
- ◆ court fines and criminal restitution
- ◆ personal injury caused by drunk driving or under the influence of drugs.

The discharge only applies to debts that you owed on the date you filed bankruptcy. Also, if the judge finds that you received money or property by fraud, that debt may not be discharged.

### Discharge:

It is important to list all of your property and debts in your bankruptcy schedules. If you do not list a debt, it may not be discharged.

The Judge can also deny your discharge if you do something dishonest in connection with your bankruptcy case, such as destroying or hiding property, falsifying records, or lying, or if you disobey a Court order.

You can only receive a chapter 7 discharge once every eight years. No one can make you pay a debt that has been discharged, but you can voluntarily pay any debt that you wish. You do not have to sign a reaffirmation agreement or any other 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 car). You do not have to pay a secured claim if the debt is discharged, but the creditor can take the property if you don't pay.

### Reaffirmation Agreements

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 the Court.

### "Reaffirmation"

Reaffirmation agreements are under special rules and are completely voluntary. They are not required by bankruptcy law or by any other law.

Reaffirmation agreements:

- ◆ must be voluntary;
- ◆ must be in your best interest; and must not place too heavy of a burden on you or your family;
- ◆ can be canceled anytime before the court issues your discharge or within 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, or your case is "presumed abusive" the Court must hold a hearing to decide whether to approve the reaffirmation agreement or not. 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 that debt just as if there was no bankruptcy. That debt will not be discharged and the creditor can take action to recover any property on which they have a lien or mortgage. The creditor can also take legal action to recover a judgment against you.

***Negotiations with reaffirmation agents should not take place in the meeting rooms, in the hallways outside the meeting rooms, or in the waiting area.***

### Risk of Civil and Criminal Penalties

Debtors who obstruct the efforts of the trustee risk civil and criminal penalties which can include fines of up to \$250,000 and prison terms of up to five years. Federal bankruptcy crimes include: knowingly and fraudulently concealing assets, making false oaths, declarations or accounts, presenting a false claim against the estate, transferring or concealing property, and destroying or concealing books, records or documents.

### Role of the United States Trustee

The United States Trustee is responsible for overseeing the administration of all bankruptcy cases. The United States Trustee appoints and supervises the chapter 7 trustees as well as monitors compliance by debtors.

Complaints about a chapter 7 trustee's administration of an estate or misconduct by a debtor should be addressed in writing and mailed to the United States Trustee at the address on the front of this pamphlet.

**If you want more information or if you have questions about how the bankruptcy laws affect you, you may need legal advice. You should contact an attorney. Your trustee is not responsible for giving you legal advice.**