

THE LAW OFFICE OF TRACY A. BROWN, P.C.

ATTORNEYS AND COUNSELORS AT LAW

1034 S. BRENTWOOD BLVD., SUITE 1830
ST. LOUIS, MISSOURI 63117

PHONE: (314) 644-0303
FAX: (314) 644-0333

GENERAL BANKRUPTCY INFORMATION: PURPOSES, BENEFITS AND COSTS

The United States Constitution provides a method **whereby individuals burdened by excessive debt, can obtain a “fresh start”** and pursue productive lives unimpaired by past financial problems. It is an important alternative for persons strapped with more debt and stress than they can handle.

The **bankruptcy laws were enacted to provide good, honest, hard-working debtors with a fresh start** and to establish a ranking & equity among all the creditors clamoring for the debtor’s limited resources. Bankruptcy helps people avoid the kind of permanent discouragement that can prevent them from ever re-establishing themselves as hard-working members of society. To the extent that there may be money or property available for distribution to creditors, creditors are ranked to make sure that money is fairly distributed according to the established rules as to which creditors get what.

This discussion is intended only as a **brief overview** of the types of bankruptcy filings and of what a bankruptcy can and cannot do. No one should base his or her decision as to whether or not to file bankruptcy solely on this information. Bankruptcy law is complex & there are many considerations that must be taken into account in making the determination whether or not to file. Anyone considering bankruptcy is encouraged to make no decision about bankruptcy without seeking the advice and assistance of an experienced attorney who practices bankruptcy law on a regular basis and has filed numerous cases over many years.

Types of Bankruptcy - The Bankruptcy Code is divided into *chapters*. The chapters, which almost always apply to consumer debtors, are Chapter 7, known as a “straight bankruptcy”, and Chapter 13, which involves an affordable plan of repayment. An important feature applicable to *all types* of bankruptcy filings is the **automatic stay**. The automatic stay means that the mere request for bankruptcy protection automatically stops most lawsuits, repossessions, foreclosures, evictions, garnishments, attachments, utility shut-offs, and debt collection harassment. It offers debtors relief by giving the debtor and the *trustee*, the court appointed individual assigned to the case, time to review the situation and develop an appropriate plan. In most circumstances, creditors cannot take any further action against the debtor or the property without permission from the bankruptcy court.

Chapter 7 In a chapter 7 case, the bankruptcy court appoints a trustee to examine the debtor’s assets to determine if there are any assets not protected by available *exemptions*. Exemptions are laws that allow a debtor to keep, and not part with, certain types and amounts of money and property. For example, exemption laws allow a debtor to protect a certain amount of equity in the debtor’s residence, motor vehicle, household goods, life insurance, health aids, retirement plans, specified future earnings such as social security benefits, child support, and alimony, and certain other types of personal property. If there is any non-exempt property, it is the Trustee’s job to sell it and help with secured debt (the secured creditor still has the right to repossess the collateral if the debtor falls behind in the monthly payments), the debtor will be discharged from the legal obligation to pay unsecured debts such as credit card debts, medical bills and utility arrearages. However, certain types of unsecured debt are allowed special treatment and cannot be discharged. These include some student loans, alimony, child support, criminal fines, and some taxes.

In addition to attorney fees, there is a filing fee of \$335 that must be paid to the Bankruptcy Court.

Chapter 13 - In a chapter 13 case, the debtor puts forward a plan, following the rules set forth in the bankruptcy laws, to repay certain creditors over a period of time, usually from future income. A chapter 13 case may be advantageous in that the debtor is allowed to get caught up on mortgages or car loans without the threat of foreclosure or repossession, and is allowed to keep both exempt and nonexempt property. The debtor’s plan is a document outlining to the bankruptcy court how the debtor proposes to dispose of the claims of the debtor’s creditors. The debtor’s property is protected from seizure from creditors, including mortgage and other lien holders, as long as the proposed payments are made and necessary insurance coverages remain in place. The plan generally requires monthly payments to the bankruptcy trustee over a period of three to five years. Arrangements can be made to have these payments made automatically made through payroll deductions.

In addition to attorney fees, there is a filing fee of \$310 that must be paid to the Bankruptcy Court.

GENERAL BANKRUPTCY INFORMATION (CONTINUED)

Chapter 11 - By and large, chapter 11 is a type of bankruptcy reserved for large corporate reorganizations. Chapter 11 shares many of the qualities of a chapter 13, but tends to involve much more complexity on a much larger scale. However, since chapter 11 does not usually pertain to individuals whose debts are primarily consumer debts, further information about chapter 11 will be provided by reference to the following resource: The Bankruptcy Basics brochure prepared by the Administrative Office of the United States Courts can be accessed via the internet.

Chapter 12 - Chapter 12 of the Bankruptcy Code was enacted by Congress in 1986, specifically to meet the needs of financially distressed family farmers. The primary purpose of this legislation was to give family farmers facing bankruptcy a change to reorganize their debts and keep their farms.

However, as with chapter 11, since chapter 12 does not usually pertain to individuals whose debts are primarily consumer debts, further information about chapter 12 will be provided by reference to the same "Bankruptcy Basics" brochure referred to above, which can be accessed via the internet.

What Bankruptcy Can and Cannot Do

Bankruptcy may make it possible for financially distressed individuals to:

- Discharge liability for most or all of their debts and get a fresh start. When the debt is discharged, the debtor has no further legal obligation to pay the debt.
- Stop foreclosure actions on their home and allow them an opportunity to catch up on missed payments.
- Prevent repossession of a car or other property, or force the creditor to return property even after it has been repossessed.
- Stop wage garnishment and other debt collection harassment, and give the individual some breathing room.
- Have the utility company restore or prevent termination of certain types of utility service. Lower the monthly payments and interest rates on debts, including secured debts such as car loans.
- Allow debtors an opportunity to challenge the claims of certain creditors who have committed fraud or who are otherwise seeking to collect more than they are legally entitled to.

Bankruptcy, however, cannot cure every financial problem. It is usually not possible to:

- Eliminate certain rights of secured creditors. Although a debtor can have a Plan for secured creditors to take payments over time during bankruptcy, a debtor generally cannot keep the collateral unless the debtor continues to pay the debt.
- Discharge types of debts singled out by the federal bankruptcy statutes for special treatment, such as child support, alimony, student loans, certain court ordered payments, criminal fines, and some taxes.
- Protect all cosigners on their debts. If relative or friend co-signed a loan which the debtor discharged in bankruptcy, the cosigner may still be obligated to repay whatever part of the loan not paid during the pendency of the bankruptcy case.
- Discharge any debts that are incurred after bankruptcy has been filed.

Bankruptcy's Effect on Your Credit

By Federal law, a bankruptcy can remain part of a debtor's credit history for 10 years. However, the negative credit being reported now for delinquent payments will continue for 7 years after you pay it in full (the last payment) which could make the total negative time more than 10 years. Many creditors will issue credit shortly after the Bankruptcy is filed because you no longer have many of the current drains on your resources like you do now. Whether or not the debtor will be granted credit in the future is unpredictable, and probably depends, to a certain extent, on what good things the debtor does in the nature of keeping a job, saving money, making timely payments on secured debts, etc. However, many times, the credit score will increase during the year following bankruptcy because the Debtor has the ability to pay the important things and no longer has to spread money out trying to cover numerous obligations.

Services Available from Credit Counseling Agencies

If all you need is a little lowering of your interest rates on some unsecured debts, a credit counseling agency might be the answer. However, if what you really need is to reduce the amount of your debt, bankruptcy may be the solution.

STATEMENT OF INFORMATION REQUIRED BY 11 U.S.C. 341

INTRODUCTION

Pursuant to the Bankruptcy Report Act of 1994, the Office of the United States Trustee, United States Department of Justice, has prepared this information sheet to help you understand some of the possible consequences of filing a bankruptcy petition under Chapter 7 of the Bankruptcy Code. This information is intended to make you aware of:

1. The potential consequences of seeking a discharge in a bankruptcy, including the effects on credit history;
2. The effect of receiving a discharge of debts;
3. The effect of reaffirming a debt; and
4. Your ability to file a petition under a different Chapter of the Bankruptcy Code.

There are many other provisions of the Bankruptcy Code that may affect your situation. This information sheet contains only general principles of law and is not a substitute for legal advice. If you have questions or need further information as to how the bankruptcy laws apply to your specific case, you should consult with your lawyer.

WHAT IS A DISCHARGE?

The filing of a Chapter 7 petition is designed to result in a discharge of most of the debts you listed on your bankruptcy schedules. A discharge is a court order that says you do not have to repay your debts, but there are a number of exceptions. **Debts which may not be discharged in your Chapter 7 case include, for example, most taxes, child support, alimony and student loans; court-ordered fines and restitution; debts obtained through fraud or deception; and personal injury debts caused by driving while intoxicated or taking drugs. Your discharge may be denied entirely if you, for example, destroy or conceal property; destroy, conceal or falsify records, or make a false oath. Creditors cannot ask you to pay any debts which have been discharged.** You can only receive a Chapter 7 discharge once every eight (8) years.

WHAT ARE THE POTENTIAL EFFECTS OF A DISCHARGE?

The fact that you filed bankruptcy can appear on your credit report for as long as 10 years. Thus, filing a bankruptcy petition may affect your ability to obtain credit in the future. Also, you may not be excused from repaying any debts that were not listed on your bankruptcy schedules that you incurred after bankruptcy filing.

WHAT ARE THE EFFECTS OF REAFFIRMING A DEBT?

After you file your petition, a creditor may ask you to reaffirm a certain debt or you may seek to do so on your own. Reaffirming a debt means that you sign and file with the court a legally enforceable document, which states that you promise to repay all or a portion of the debt that may otherwise have been discharged in your bankruptcy case.

BANKRUPTCY LAWS RELATE TO YOUR SPECIFIC CASE

Reaffirmation agreements must generally be filed with the court within 60 days after the first meeting of creditors. Reaffirmation agreements are strictly voluntary - they are not required by the Bankruptcy Code or other state or federal law. You can voluntarily repay any debt instead of signing a reaffirmation agreement, but there may be valid reasons for wanting to reaffirm a particular debt. Reaffirmation agreements must not impose an undue burden on you or your dependents and must be in your best interest. If you decide to sign a reaffirmation agreement, you may cancel it at any time before the court issues your discharge order or within 60 days after the reaffirmation agreement was filed with the court, whichever is later. If you reaffirm a debt and fail to make the payments required in the reaffirmation agreement, the creditor can take action against you to recover any property that was given as security for the loan and you may remain personally liable for any remaining debt.

OTHER BANKRUPTCY OPTIONS

You have a choice in deciding what chapter of the Bankruptcy Code will best suit your needs. Even if you already filed for relief, you may be eligible to convert your case to a different chapter.

Chapter 7 is the liquidation chapter of the Bankruptcy Code. Under a chapter 7, a trustee is appointed to collect and sell, if economically feasible, all property you own that is not exempt from these actions.

Chapter 11 is the reorganization chapter most commonly used by businesses, but it is also available to individuals. Creditors vote on whether to accept or reject a plan, which must also be approved by the court. While the debtor normally remains in control of the assets, the court can order the appointment of a trustee to take possession and control of the business.

Chapter 12 offers bankruptcy relief to those who qualify as family farmers. Family farmers must propose a plan to repay their creditors over a three to five year period and it must be approved by the court. Plan payments are made through a Chapter 12 trustee, who also monitors the debtors' farming operations during the pendency of the plan.

Finally, **Chapter 13** generally permits individuals to keep their property by repaying creditors out of their future income. Each Chapter 13 debtor writes a plan which must be approved by the bankruptcy court. The debtors must pay the Chapter 13 trustee amounts set forth in their plan. Debtors receive a discharge after they complete their Chapter 13 repayment plan. Chapter 13 is only available to individuals with regular income whose debts do not exceed \$1,000,000 (\$360,475 in unsecured debts and \$1,081,400 in secured debts).

PLEASE SPEAK TO YOUR LAWYER IF YOU NEED FURTHER INFORMATION OR EXPLANATION, INCLUDING HOW THE BANKRUPTCY RELATE TO YOUR SPECIFIC CASE

11 U.S.C. § 527(a)(2) Disclosure

Attorney's Note: This notice and the Statement are required by legislation adopted by Congress in 2005 after intense lobbying by the credit industry. In our opinion they are designed to intimidate people who need debt relief under Bankruptcy Code and are based on the erroneous assumption that Debtors are dishonest. So long as you are honest and meet the requirements set out under the law you are entitled to debt relief. We can guide you through all the requirements of filing bankruptcy, so as long as you provide us accurate and complete information.

In accordance with section 527(a)(2) of the Bankruptcy Code, be advised that:

1. All information that you are required to provide with a bankruptcy petition and during a bankruptcy case must be complete, accurate, and truthful.
2. All assets and liabilities must be completely and accurately disclosed, with the replacement value of each asset as defined in section 506 listed after reasonable inquiry to establish such value.
 - a. 11 U.S. Code § 506 (2): "...such value ... shall be determined based on the replacement value of such property as of the date of the filing of the petition without deduction for costs of sale or marketing. With respect to property acquired for personal, family, or household purposes, **replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined.**"
3. Current monthly income, the amounts specified in the "means test" under section 707(b)(2), and disposable income in chapter 13 cases must be stated after reasonable inquiry.
4. Information that you provide during your bankruptcy case may be audited, and the failure to provide such information may result in dismissal of the case or other sanction, including a criminal sanction.

IMPORTANT INFORMATION ABOUT BANKRUPTCY ASSISTANCE SERVICES

If you decide to seek bankruptcy relief, you can represent yourself, you can hire an attorney to represent you, or you can get help in some localities from a bankruptcy petition preparer who is not an attorney. **THE LAW REQUIRES AN ATTORNEY OR BANKRUPTCY PETITION PREPARER TO GIVE YOU A WRITTEN CONTRACT SPECIFYING WHAT THE ATTORNEY OR BANKRUPTCY PETITION PREPARER WILL DO FOR YOU AND HOW MUCH IT WILL COST.** Ask to see the contract before you hire anyone.

The following information helps you understand what must be done in a routine bankruptcy case to help you evaluate how much service you need. Although bankruptcy can be complex, many cases are routine.

Before filing a bankruptcy case, either you or your attorney should analyze your eligibility for different forms of debt relief available under the Bankruptcy Code and which form of relief is most likely to be beneficial for you. Be sure to understand the relief you can obtain and its limitations. To file bankruptcy case, documents called a Petition, Schedules and Statement of Financial Affairs, as well as in some cases a Statement of Intention need to be prepared correctly and filed with the bankruptcy court. You will have to pay a filing fee to the bankruptcy court. Once your case starts, you will have to attend the required first meeting of the creditors where you may be questioned by a court official called a “Trustee” and by Creditors.

If you choose to file a Chapter 7 case, you may be asked by a Creditor to reaffirm a debt. You may want help deciding whether to do so. A Creditor is not permitted to coerce you into reaffirming your debts.

If you choose to file a Chapter 13 case in which you repay your Creditors what you can afford over 3 to 5 years, you may also want help with preparing your Chapter 13 Plan and with the Confirmation hearing on your Plan which will be before a bankruptcy Judge.

If you select another type of relief under the Bankruptcy Code other than Chapter 7 or Chapter 13, you will want to find out what should be done from someone familiar with that type of relief.

Your bankruptcy case may also involve litigation. You are generally permitted to represent yourself in litigation in bankruptcy court, but only attorneys, not bankruptcy petition preparers, can give you legal advice.