

# **BANKRUPTCY: A LAST RESORT...A FRESH START**

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**T**he information in this article is not intended as legal advice but to provide a general understanding of the law. Any readers with a legal problem, including those whose problems are addressed here, should consult an attorney for advice on their particular circumstances.

## **A Last Resort**

Has your mortgage company threatened to foreclose on your home? What can you do to stop the finance company from repossessing your car? Are you harassed by constant telephone calls from creditors demanding payments on your credit card bills? Have you recently lost your job and there just isn't enough money to pay your bills? Has credit counseling been unsuccessful for you? When these problems persist, many individuals, as a last resort, consider filing for bankruptcy.

Generally, individuals who file bankruptcy are a) recently unemployed, b) have suffered a dramatic reduction in income, c) have acquired major medical expenses not covered by insurance, d) are recently divorced or disabled, e) have experienced a business failure, or f) have large outstanding tax obligations.

Filing a bankruptcy petition stops all creditor contact. No more harassing telephone calls, letters, or direct communications from creditors or bill collectors.

## **Chapter 13-Reorganization**

A Chapter 13-reorganization bankruptcy allows for the reorganization and restructuring of secured and unsecured debts. Past due mortgage payments, delinquent vehicle payments, outstanding tax obligations, and student loans are some circumstances that can lead to a Chapter 13 filing.

A Chapter 13 requires the debtor to have sufficient monthly income to accomplish two goals: 1) income to pay all regular monthly expenses, which includes mortgage note, car payment, utilities, food, and clothing; and 2) additional income so that a Chapter 13 plan can be proposed to the bankruptcy court to pay delinquent debt obligations to all creditors (secured and unsecured) for a maximum period of 60 months (5 years).

After a bankruptcy is filed, the bankruptcy court will appoint a Chapter 13 Trustee to pay the delinquent creditors. Based on an individual's income and expenses, a Chapter 13 plan generally allows at least 10% repayment to the unsecured creditors. For example, if \$100.00 is owed to XYZ credit card company, the minimum amount XYZ will receive under the Chapter 13 plan is \$10.00. If there is sufficient income, the unsecured creditors could receive up to 100% of the amount they are owed under the plan.

Once the delinquent creditors have been paid in accordance with the Chapter 13 plan, the bankruptcy court will issue an order discharging the individual from the debt obligations.

### **Chapter 7-Discharge/Liquidation**

Individuals who are delinquent on their unsecured credit obligations (for example, credit card bills, unsecured loans, medical expenses, etc.) may consider filing a Chapter 7-discharge/liquidation bankruptcy. A Chapter 7 is generally filed when the majority of debts are unsecured, with high interest rates, and payments are not reducing the principal owed to creditors. A Chapter 7 may eliminate your debt obligations. A Chapter 7 takes approximately four to six months before a discharge order is issued by the bankruptcy court, which declares that an individual is relieved of the debts listed in the Chapter 7 petition.

### **Property Exempt from Bankruptcy**

Concerns for most individuals who consider filing bankruptcy include: “Will I lose my home if I file?” “What about my retirement that I have accumulated?” “Can I keep my car?” Bankruptcy law provides that certain property can be retained after a bankruptcy is filed.

In Texas, two options are available to protect assets from creditors, the Texas or Federal Exemption. The Texas real and personal property exemptions are usually preferred because they are generally more liberal. For example, a married couple who elects to use the Texas Property Exemption is allowed to keep: 1) the homestead property; 2) personal property worth a maximum of \$60,000.00; 3) any money in retirement accounts; and 4) a vehicle for each licensed driver over the age of 16.

### **A Fresh Start**

A decision to file a bankruptcy should be considered very carefully. Once a bankruptcy is filed, the filing remains a part of the individual's credit history for ten (10) years. After filing, many individuals who were burdened by excessive debts that they could not pay have expressed relief that they are now in control of their financial affairs. After bankruptcy, many persons have rebuilt their credit worthiness by establishing a new credit history based upon the timely payment of their debt obligations. Bankruptcy, although a last resort, can be a fresh start.