

BANKRUPTCY

JB LANGLEY-EUSTIS LAW CENTER

INTRODUCTION

Bankruptcy is a process under federal law that may allow a person with large debts to get a “fresh start” by freeing him or her from many or all of his or her debts. Bankruptcy benefits creditors by providing for an orderly means by which they may be paid all or a portion of what they are owed—either through liquidation of the debtor’s property or through a court-approved repayment plan.

The most common types of bankruptcy are: *Chapter 7* and *Chapter 13*. Both types of bankruptcy may get rid of unsecured debts and stop foreclosures, repossession, garnishment, utility shut-offs and debt collection activities.

In a Chapter 7 bankruptcy, straight bankruptcy, the court sells off all of your assets that are not exempt and uses that money to pay off your creditors. Exempt property may include cars, work-related tools, and basic household furnishings. A Chapter 7 bankruptcy cancels all of your debts except for the non-dischargeable debts listed below. You must wait eight years after receiving a discharge in Chapter 7 before you can file again under that chapter.

A Chapter 13 bankruptcy, on the other hand, merely allows you to enter a debt repayment plan. Under this chapter, you get to keep all of your property but you must repay your creditors all or most of what is owed. A Chapter 13 bankruptcy stops interest from accruing on some debts and allows you to pay off your debts over a longer period of time. This plan also keeps creditors from suing you, garnishing your wages, or taking other legal action to collect while you are making payments under the plan. The Chapter 13 waiting period can be as little as two years between filings.

SHOULD I CONSIDER BANKRUPTCY?

Bankruptcy should only be considered as a method of last resort for handling your debts. A bankruptcy stays on your credit report for 10 years. It is very difficult to obtain credit, buy a home, and even get life insurance once you have filed bankruptcy. It is better to work with your creditors to avoid bankruptcy rather than filing for bankruptcy. Another alternative to bankruptcy is consulting with a Consumer Credit Counseling Service, which will assist you in finding a way to pay your debts and will help negotiate with your creditors. This is a non-profit service that charges a modest fee to assist you. Before filing a Chapter 7 bankruptcy case, you must satisfy a “means test” which requires you to confirm that your income does not exceed a certain amount. This amount varies by state and is found at www.usdoj.gov/ust.

Bankruptcy is not free. The court charges a filing fee and your attorney will charge for his or her services. The attorney will require advance payment; otherwise, he or she becomes a creditor as well.

It is possible that the Servicemembers Civil Relief Act (SCRA) may provide an alternative to bankruptcy for active duty servicemembers, allowing them to postpone or suspend some civil obligations so they can devote energy and attention to the defense needs of the country.

WILL BANKRUPTCY AFFECT MY MILITARY CAREER?

The Air Force would never discipline you merely because you filed for bankruptcy. However, if the reason that you are filing is due to “financial irresponsibility,” then you may be subject to discipline for being

financially irresponsible under article 134 of the UCMJ. In addition, filing for bankruptcy could impact your security clearance if you have one, or could affect your ability to obtain one.

WHAT IS THE PROCESS INVOLVED IN FILING FOR BANKRUPTCY?

Bankruptcy must be filed on a bankruptcy petition in the federal bankruptcy court where you (1) are domiciled (i.e., your State of legal residence) or (2) have lived at least 180 consecutive days preceding the date of filing. After filing, the bankruptcy court will have control over the proceedings regardless of where your property or creditors are physically located.

Once a bankruptcy petition is filed, an automatic "stay" takes effect and protects the debtor and his property from certain creditors' actions. This means that with regard to all debts covered by the bankruptcy, creditors may not take any action to collect payment or repossess any property which is collateral for a debt. A stay allows for the orderly administration of the bankruptcy case.

WILL BANKRUPTCY CANCEL ALL OF MY DEBTS?

No. Bankruptcy does not cancel alimony or child support, state or federal taxes, most student loans (unless debtor can show extreme hardship), fines, and any debts that you either failed to list in your bankruptcy petition or incurred after filing the bankruptcy petition. In addition, bankruptcy will not relieve you of damages resulting from operation of a motor vehicle while legally intoxicated or debts for fraud, embezzlement or larceny.

Both spouses are responsible for debt. If you are married and your debts arose during the marriage, both spouses need to file bankruptcy or all the debts will be transferred to the other spouse.

CO-SIGNING A LOAN

You should be aware of the risks involved if you co-sign a loan for a friend or a family member. If you co-sign for a loan, then you become responsible for paying the loan if the original signer is not able to. If the original signer of the loan files for bankruptcy, then their responsibility to pay the loan might get discharged. However, as a co-signer, you are still responsible to pay the loan.

CREDIT COUNSELING AND DEBT EDUCATION

With limited exceptions, people who plan to file for bankruptcy protection must get credit counseling from a government-approved organization within 180 days *before* they file. They also must complete a debtor education course to have their debts discharged. For more information you can visit <http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre41.shtm>.

CONCLUSION

If you realize that you have no other alternative to filing for bankruptcy, you should consult a civilian attorney who specializes in that field. Legal Assistance attorneys can give you general advice but cannot represent you in court or prepare any court documents for you.

Note: The information in this handout is general in nature. It is not to be used as a substitute for legal advice from an attorney regarding individual situations.