

BANKRUPTCY FREQUENTLY ASKED QUESTIONS

Why would I file Chapter 13 instead of Chapter 7?

There are a lot of reasons why one Chapter is better than another. Some reasons why people choose to file Chapter 13:

1. Back taxes, arrears on mortgages and old child support/maintenance obligations can be caught up over time in Chapter 13;
2. Non-exempt property can be kept and the value repaid over time;
3. Property settlement agreement debts can be discharged in Chapter 13;
4. Keeping investment real estate that is "upside down" and cramming down the debt to current market value. We cannot do that under current law to a homestead property (your family residence) but we can strip off a debt that is totally unsecured even if there is a lien (if the house is worth less than the amount of senior liens).
5. Your income and expenses are going to be determined by guidelines that have been established by the Internal Revenue Code for tax collection purposes. We do not use "real" numbers for all of your expenses and your "current income" is an average of your last six month's income. If your income is more than the average income in Arizona for the size of your family you may have to file Chapter 13 instead of Chapter 7. There are debts that are not dischargeable in Chapter 7 that may be dischargeable in Chapter 13. For example, an equalizer payment in a divorce can often be discharged in Chapter 13.

6. What do I get to keep if I file bankruptcy?

Arizona law allows people to keep certain assets from their creditors, regardless of whether they file bankruptcy. Property you can keep is called exempt. Property you don't get to keep is called non-exempt. Examples of exempt property include:

1. For an individual or a married couple, equity in a residence up to \$150,000. Equity means the difference between the total amount of mortgage debt and/or tax liens and the fair market value of the property;
2. Each person can claim personal property exemptions in the following:
 - a. A car with \$6,000 of equity (if filing jointly, either \$6,000 in two different cars or \$12,000 in the same car);
 - b. \$6,000 of fair market (garage sale) value in household furnishings;
 - c. 75% of the wages due when the case is filed;
 - d. \$5,000 in tools of the trade. Tools of the trade are things that you need to do your job (like hand tools to a contractor. What will be allowed as a tool of the trade will vary from person to person just like the jobs are different;
 - e. All of the cash value in life insurance if the policy has been owned for two years and the beneficiary is a spouse, child, parent or sibling;

- f. All of the value of an annuity if it has been owned for two years and the beneficiary is a spouse, child, parent or sibling;
- g. Disability income;
- h. Social Security benefits;
- i. Child support and spousal maintenance (including back payments due);
- j. 6 months of food, fuel and provisions. The word provisions is not defined but is probably things like household goods and cleaning supplies;
- k. \$300 in the bank. This can be complicated. It means that, if you wrote checks totaling \$2,500 in the week before the bankruptcy is filed but they have not yet cleared the bank, then the money is still in the bank and the trustee will want that money. We want you to stop using checks for about a week or so before we file so all checks can clear. If there are bills to pay, use money orders, cashiers' checks or cash and keep a record of what you spend so the trustee can see a paper trail and won't think that you have cash buried somewhere;
- l. A wedding ring worth no more than \$2,000 and a watch worth no more than \$150.

There are some other exemptions, but this list comprises most of the property that most debtors own. Non-exempt property would include tax refunds, additional cars, real estate other than a homestead, money in the bank, accounts receivables for people who are self-employed, jewelry in excess of what is exempt (either as to type or value).

Tax refunds can also be complicated. People earn income throughout a year and they will file for Bankruptcy at different times during the year. Part of a tax refund will belong to the Debtor and part will belong to the Trustee. Assuming income is constant during the year and deductions are also constant, then it is simply a mathematical computation - the portion of the refund which relates to the number of days prior to filing belongs to the estate and the balance to the debtor - if the case is filed October 1, 9/12 of the refund belongs to the estate and 3/12 belongs to the Debtor.

Can I keep non-exempt assets?

In a Chapter 7 case, the trustee will sell non-exempt assets, but the Debtor can buy them at auction. Any offer the debtor makes to keep assets is subject to someone else offering more money. In a Chapter 11 or Chapter 13 reorganization, the Debtor keeps all of their property but the value of the property is figured in to what has to be repaid to creditors.

How will my mortgage be affected by Bankruptcy?

That is a complicated question and will often depend on whether the Debtor files for Chapter 7, Chapter 11 or Chapter 13. In a Chapter 7 case, the Debtor cannot change the terms and conditions of a mortgage. The Debtor can keep the house if all payments are made. There is no opportunity to force the creditor to extend the time to cure back payments or to alter the terms and conditions of the mortgage. The debt may be discharged through the bankruptcy, but the lien will remain. That means that the car lending company cannot demand that you pay them money but they can repossess the car if you don't pay them. They cannot come after you for any money that represents the difference between the loan and the amount that the bank received when it sold the car. In reorganization (either Chapter 11 or 13) the debtor can cure arrears on the residence over a period of time. In addition, under the law as of April 15, 2020, the debtor can wipe out a lien on the family residence for which there is absolutely no equity to secure it. The debt would then be treated as a general unsecured debt. For example, if the debtor owns his or her family residence and it is worth \$350,000 with a \$400,000 first mortgage and a \$100,000 second

mortgage, the second mortgage can be wiped out in a reorganization, but the first lien has to be paid in full. Investment property can always be modified in Chapter 11 or 13 to adjust principal to fair market value with the difference treated as general unsecured debts. There are now mortgage modification programs in Chapter 13 that may also assist in modifying a mortgage on a family residence. It is consensual and can be done through the Court with a special mediator.

What about a business that I own?

If the debtor is the owner of a business that is operated through an entity, such as a corporation or an LLC, that ownership interest is an asset of the bankruptcy estate. If it has value over and above the labors of the debtor (it has equipment, receivables, etc.) and the assets are worth more than the liabilities that the business has, the trustee can try to sell the business or liquidate it and use the equity to pay creditors. If the business has no value, the trustee will let the debtor keep the business.

What debts do not go away after Bankruptcy?

Some debts are not discharged in Bankruptcy. Many types of taxes, back child support and spousal maintenance, student loans, property settlement agreement debts to a former spouse (other than in Chapter 13 where this debt can be discharged) and drunk driving accidents that result in personal injury are examples of debts which are not discharged simply because of what they are. There are some debts that are not discharged if the creditor can prove that the debtor committed fraud, embezzlement, committed an intentional act to damage property or personal injury and misdeeds while acting as a fiduciary. If the creditor does not file a separate lawsuit the debt will be discharged.

What is a discharge?

A discharge is a permanent injunction issued by the Bankruptcy Court which keeps many of your former creditors from trying to collect money from you. Some debts, for example, some taxes, student loans and domestic support obligations do not get discharged. Speak with the attorney about a specific debt you have questions about. A creditor that has a lien (such as a mortgage company, a car lender or a tax lien) keeps its lien unless the Bankruptcy Court does something to set it aside. A lien holder can only take back the property that covers its lien - it cannot come after you for any money, unless you have reaffirmed the debt.

What is the means test?

The means test was an analysis of income and expenses put into the bankruptcy laws by Congress in 2005. It is very complicated, but is meant to be a snapshot of the debtor's financial condition at the time of the filing of the bankruptcy. If the debtor has primarily consumer debts, makes more money than the median income for the state and has more income than expenses, the court will require the debtor to file a reorganization rather than file a Chapter 7. It is something that requires some discussion between you and the lawyer.

Do I have to go to Court?

There is a hearing that takes place about 40 days after the filing of the bankruptcy called a meeting of creditors. It is required that the debtor attends unless the court waives the requirement for very good cause. Creditors can attend, although usually they do not. If they do attend, they can ask questions about assets and liabilities. The trustee conducts the meeting in Chapter 7 and 13 cases and the US Trustee (a

division of the Justice Department) conducts the meetings in Chapter 11 cases. In most cases, this is the only time you will have to go to the Courthouse. You will probably never see your judge.

What is a trustee?

The trustee is the person appointed by the court to supervise the case. In a Chapter 7 case, the trustee looks to see if there are assets he or she can liquidate to pay creditors. In a chapter 13 case, the trustee collects the payments made by the debtor and disburses the money to creditors once the court approves the plan of reorganization. The Chapter 13 trustee will make a recommendation to the court on whether the plan should be confirmed. The debtor has to cooperate with the trustee. The trustee will ask the debtor to provide some basic financial information-tax returns, bank statements, insurance policies, car titles, house deeds and anything else that the trustee thinks will help in determining if there are assets to be collected. Trustees get paid based upon what they can collect, so they are fairly aggressive in looking for assets.

Can I pay creditors that I want to keep?

After the debtor files Chapter 7, all money the debtor makes from that point on is theirs to keep and do with what they please. If you want to pay a creditor, that is your decision. No one can force you to pay a debt which you have discharged. Before the bankruptcy is filed, paying a creditor may be a preference and you should talk to the attorney before you do that. It is a little complicated to explain here, but if you have questions about paying someone before the case is filed, please call first. If you are simply paying a debt in the ordinary course, like a regular utility bill, that is okay. If you are paying an old debt, please call first.

Can I sell or transfer property before I file?

The simple answer is that the debtor can sell anything for fair value to anyone at any time before the before the case is filed. If the sale is to a friend or family member, the trustee will be very curious as to how value was determined. Any and all sales or transfers have to be disclosed on the paperwork filed with the court. The attorney should be consulted before selling or transferring property.

What can I spend money on before I file?

This should be discussed with the attorney before the money is spent. Do not give things away, put things in other people's names or make elaborate travel plans. There is an old bankruptcy expression that says "pigs get fat and hogs get slaughtered." It can be a very narrow walk and you should seek consultation before doing anything out of the ordinary.

Do I have to tell them about.....?

YES!!! Failure to accurately list all of your income, expenses, assets, and liabilities or transfers made within two years of bankruptcy can be a felony. Enough said.

What is a stay lift motion?

A stay lift motion is a pleading filed by a creditor that wants to pursue a remedy against property under state law. For example, a mortgage company will ask for stay relief to resume or start a foreclosure. A car lender will ask for stay relief so it can repossess and sell a car. The court has to decide whether to

let the creditor do that and it will depend on a number of factors. In a Chapter 7 case, there is not much that can be done to stop a stay lift motion since the debtor is not trying to reorganize and there is no opportunity to repay a creditor over time through the bankruptcy process. Curing defaults on back payments is one of the reasons debtors choose to file for reorganization under Chapter 11 or Chapter 13 rather than liquidation in Chapter 7.

What is abandonment?

Abandonment is a process to get property out of the jurisdiction of the court and back to the debtor. A debtor will ask for abandonment if the property has no value to the trustee, but the debtor wants to keep it (like a business owned by the debtor that has no value but it is the business that the debtor runs to earn a living or a house with less than \$150,000 of equity). The Court has to approve the abandonment. A separate motion has to be filed with the court.

What is a reaffirmation?

A reaffirmation is a contract that you sign with a creditor in which you agree to be bound by the original terms of your agreement (like a car loan) and the lender agrees to let you keep the property and continue to make payments. This is a voluntary arrangement, but the new bankruptcy laws now require it if the debtor wants to keep secured property. The debtor has to declare an intention to either reaffirm, surrender or redeem the property. Redemption means to pay the lender right now the current market value of the property-it cannot be paid over time unless the creditor agrees to it. If you reaffirm the debt and later default and the lender takes back the collateral, you will be liable for the deficiency if that deficiency right exists under state law. The lawyer for the debtor has to sign an affidavit that the debtor can afford to make the payments. If the lawyer does not sign that affidavit, the court has to hold a separate hearing to determine if the reaffirmation should be approved.

Do I have to take a class before filing bankruptcy?

You have to take a "Credit Counseling Class" from an approved provider before filing for bankruptcy, unless you are filing in the name of your business. We will give you a list of the approved providers and you can choose which one to use. The class is given online and on the telephone and costs approximately \$50. Tell the provider that you are represented by us and after you complete the class, they will fax or email your Certificate of Completion to us. You should not take this class until all corrections have been made to your legal paperwork and you have signed the final draft.

Do I have to take any other classes before my bankruptcy discharge?

You must take a "Financial Management" course before your debts can be discharged. This class should be taken AFTER your "First Meeting of Creditors" from an approved provider. It can be taken online and on the phone. Tell the provider that you are represented by us and after you complete the class, they will fax or email your Certificate of Completion to us. You cannot get your Discharge until this is done. It is very important.

What do I have to do to start my bankruptcy?

Make a down payment on your quoted retainer fee. We will send you an "invitation" to the website that provides you a tool to download your information so we can prepare the Bankruptcy Petition and Schedules and Statement of Financial Affairs. These are the documents that must be filed with the

Court to start your Bankruptcy. You are not protected from your creditors until the case is filed with the Court. We will need some additional documents as well, such as paychecks for the last six months, tax returns and bank statements.

What if I have a Trustee Sale on my residence soon?

Bring us the notice of "Trustee Sale". We can file an emergency bankruptcy, but you will have to complete the entire bankruptcy packet with a couple of days, so we can submit the rest of the information to the court within 10 to 14 days.

How do I know you will submit the correct information to the bankruptcy court?

You will review the bankruptcy petition and schedules and will sign off that everything is accurate and correct. Once we get the signed paperwork, we file everything electronically with the court and email you a "Notice of Bankruptcy Filing", so you know your case number and the day your case was filed. If a creditor calls you after the case is filed in the Court you can give the creditor the case number and our name and phone number. If the creditor continues to contact you after that, let us know.