

I wrote this article in the late in 2003. In the past few years, legislation has made it a bit more difficult for individuals to file for bankruptcy but the overall explanation of the process is still pretty much the same. The best thing to do is consult a reputable attorney first who will direct you to a certified financial counselor who can legally explain your options. (I can explain them but I am not registered with the court.) The job of the financial counselor is to explore if there are other viable measures before filing for bankruptcy. If you are in the Pittsburgh area, a visit with me would be a low-cost, first step toward understanding your situation. Doing so will save you the initial consultation fees with an attorney. An evaluation of your debt situation is just \$20.

BANKRUPTCY BASICS

Bankruptcy is an economic last resort for people who find themselves in a financial crisis that is otherwise irresolvable. Under bankruptcy, the courts take over the relationship between a debtor and his or her creditors. Because most creditor/debtor agreements are contractual, it is a legal way of nullifying or redefining the terms of the original contract. Some individuals view bankruptcy as a way of avoiding having to pay their debt—a quick and easy way out. In reality, it is a public declaration that the debtor is failing to complete a contract.

The reasons for not completing a financial contract may or may not be honorable. Unless fraud is suspected, the trustee may not really be interested in why the consumer finds him or herself in financial difficulty. The trustee is concerned with whether or not the consumer can pay any or all of the debt.

There are several different kinds of bankruptcy. Individuals usually file for either Chapter 13 or Chapter 7 Bankruptcy. Under Chapter 13 bankruptcy, the court decides what percentage of the debt the debtor can actually pay. Then the court establishes repayment plan monitored by the Bankruptcy Trustee's office. (This process is like a court-ordered debt management plan which requires the creditors to participate.) Under Chapter 7 bankruptcy, the petitioner contends that he or she cannot pay any of the debt. If the court agrees, the debt will be discharged to the loss of the creditors.

The decision to file either a Chapter 13 or Chapter 7 bankruptcy is usually based on the debtor's ability to pay the debt either in whole or in part and the availability of the debtor's assets, which exceed federal and/or state limitations. The debtor can keep are established in both state and federal bankruptcy codes. The courts may mandate the liquidation or sale of certain assets to repay creditors. The limitations on what a filer is allowed to keep are statutory and complicated both in the federal and state levels. Only a qualified and experienced bankruptcy attorney should advise you as to which type of bankruptcy is best for your situation.

Filing for bankruptcy without an attorney can be dangerous and without legal council, you may end up in a worse financial position than when you started.

Bankruptcy exists for a reason. It is sometimes the best choice available to a consumer, particularly when the consequences of filing are less damaging than not filing. A good attorney will advise the consumer of the best kind of bankruptcy that is most appropriate for their situation and will guide them through the process. They will also advise them of the alternatives.

Not all lawyers are created equally. If you have a family attorney that you trust, ask for a referral to an ethical bankruptcy attorney. If you do not have an attorney you can trust, you'll need to shop around and take your chances.

How BK works...

A consumer who files for Chapter 7 Bankruptcy contends that he or she is unable to pay any portion of the debt unreasonable difficulties or hardships. The assets he or she will keep are minimal and must be within federal or state exemptions.

The petitioner must complete a complicated set of forms in which the consumer declares and lists assets, and living expenses. He or she also provides a complete list of debts to be included in the bankruptcy.

Any debts not listed will not be covered by the bankruptcy. Once the creditors have been informed that the consumer has filed for bankruptcy protection, all collection efforts on their part must stop, including things like foreclosure.

A meeting (called a 341A) is held 20 to 40 days after the filing. At the 341 A, the petitioner, under oath, must answer questions of the Trustee and any of the creditors involved. (Yes, they are invited to attend.)

Creditors and the Trustee then have 60 days to dispute the petition. Reasons for disputes are also based on statutes. If disputes are filed, a court date is set. After all disputes are reconciled, the petitioner will receive a letter indicating that debts have or have not been discharged.

Note: It is possible to go through the entire process of filing for Bankruptcy and if dispute support is sufficient, hidden assets are discovered or fraudulent activity is perceived by the trustee, the petition can be denied. This means the consumer has to pay back the debt **and** has the bankruptcy filing notation on his or her credit report for up to 10 years.

Filing under Chapter 13 indicates that the debtor intends to repay the debt but is unable to do so at the current time under the current terms. Chapter 13 involves a restructuring and reorganization of the debt and allows the debtor to maintain ownership of greater assets than under Chapter 7.

Under Chapter 13, the debtor completes a complicated set of forms that outline his or her assets, living expenses and debts. *The debtor designs a payment plan* and indicates the amount he or she will pay against the total debt. This plan is submitted to the Trustee's office, which will either approve the plan or ask the consumer to adjust it. Upon completion of the plan, the remainder of the petitioner's debt is discharged.

Pay attention here. If you got yourself into this mess, what makes you think you can make a reasonable plan to get yourself out? It is important to note that a lot of people who file for Chapter 13 end up filing for Chapter 7 later because they find it too difficult to comply with the court's arrangement.

Many people who file for Chapter 13 end up subsequently filing for Chapter 7 mostly because the causes of the financial failure may not be addressed. Attitudes or behaviors on the part of the consumer that may have contributed to the crisis are not taken into consideration and despite the efforts of the consumer and the trustee's office, the consumer often defaults on the restructured debt.

Consider the consequences...

- ❑ Filing for bankruptcy without an attorney can have devastating effects on your financial life. Things could actually get worse.
- ❑ Not all debts can be included in a bankruptcy. Chapter 7 bankruptcy, for example, excludes most taxes; child support or alimony; most student loans; court fines and criminal restitution; debts incurred through fraud or deception; and personal injury debts caused by driving while under the influence of alcohol or drugs.
- ❑ Creditors and the Bankruptcy Trustee may call into question debts that seem to have been incurred in anticipation of filing for bankruptcy. Such debts may not be discharged.
- ❑ In Chapter 7, asset exemptions, (what you are allowed to keep) are very small. The trustee must identify, collect and liquidate (sell), the debtor's non-exempt assets and debtors must fully cooperate with the trustee to accomplish this.
- ❑ Filing for bankruptcy is noted on your credit report and the notation can remain there for ten years!
- ❑ Your petition can be denied entirely if, for example, you destroy or hide property, make a false oath, destroy, hide or falsify records or disobey a court order.
- ❑ If your petition is denied, the fact that you filed will still be noted on your credit report.

- ❑ You will be offered credit again but at the worst possible terms. Until you completely reestablish a positive credit history, your bankruptcy will continue to cost you in terms of interest and unfavorable credit terms.
- ❑ You can be denied more than credit after filing for bankruptcy. A notation of bankruptcy on a credit report to some is an indication of a lack of reliability. You can be denied employment, insurance, rental housing as well as credit in the future.
- ❑ Bankruptcy proceedings and completed forms are public record and are available to absolutely anyone who chooses to look at them.

Some of the alternatives to bankruptcy are:

Debt Settlement: Negotiated payment of a balance less than the total amount owed. Though difficult to negotiate for most consumers, some debt settlement experts have been known to negotiate debt payment for pennies on the dollar. There is usually a high fee for this service. The resulting notations on the consumer's credit report also need to be included in the negotiations. The portion of the debt that is not-collected by the creditor is considered taxable income for the consumer. The debt settlement industry is rife with unskilled, incompetent and even fraudulent practitioners.

Debt Consolidation: Usually a collateralized loan, most often home equity or a second mortgage, that is used to pay off other creditors. There are common dangers in debt consolidation that most consumers don't consider. Subsequent default may result in the loss of assets. Many consumers run up new credit card debt after the consolidation process.

Debt Management: Often seen advertised on television or heard on the radio, these services have existing agreements with creditors to lower interest rates and payment terms. Terms differ among creditors. Damage to credit reports is not only possible but probable—no matter what they say. Consumers can minimize the financial consequences by taking steps that often go either unmentioned by the debt management agencies or unheeded by the consumers.

Before deciding to file for bankruptcy or choosing one of the alternatives, consider consulting with me, a certified financial counselor and practicing personal finance coach. I can help you analyze your situation, consider your alternatives and choose the one that best fits you situation and your lifestyle. Visit my website at www.walletwizard.com.