



Law Offices of  
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## Consumer Bankruptcy

### GENERAL BANKRUPTCY INFORMATION

No matter how hard one may work and plan, sometimes life can take an unexpected turn resulting in financial burdens out of your control. Anyone can be hit with an unexpected medical emergency, job loss or family tragedy, leaving them facing thousands of dollars of debt. You may be able to obtain relief under the new bankruptcy laws allowing you to start over and get out from under what seems like insurmountable debt. A decision to file for bankruptcy should be made only after determining that bankruptcy is the best way to deal with your financial problems.

The following information is intended to provide you with a basic understanding of the bankruptcy process and is not meant to explain every aspect of the bankruptcy code. If you still have questions after reading this information, and/or if you want to learn more specifically about the relief bankruptcy could offer in your personal situation, call us for a free consultation and evaluation. You will meet with an attorney who will give your case the personal attention it deserves and the expertise developed from 30 years of experience representing both debtors and creditors in the area of bankruptcy, including an appointment as the former Clerk of the United States Bankruptcy Court and former Chapter 13 Trustee staff attorney.

### WHAT IS BANKRUPTCY?

Bankruptcy is a legal proceeding in which a person who cannot afford to pay his or her debt can get a fresh financial start. The right to file for bankruptcy is provided by federal law, and all bankruptcy cases are handled in federal court. As a general rule, filing bankruptcy immediately stops all of your creditors from seeking to collect debts from you, at least until your debts are sorted out according to the law. In most cases, if your creditors continue to contact you after they learn of your bankruptcy filing, the Bankruptcy Court can punish these creditors. .

### WHAT CAN BANKRUPTCY DO FOR ME?

Bankruptcy may make it possible for you to:

1. Eliminate the legal obligation to pay most or all of your debts. This is called a "discharge" of debts. It is designed to give you a fresh financial start. When the debt is discharged, the debtor has no further legal obligation to pay the debt.
2. Stop foreclosure on your house or mobile home and allow you an opportunity to catch up on missed payments. However, bankruptcy does not automatically eliminate mortgages and other liens on your property without payment.
3. Prevent repossession of an automobile or other property, or force a secured creditor to return to you such property after it has been repossessed.
4. Stop wage garnishment, debt collection harassment and similar creditor actions to collect a debt.
5. Restore or prevent termination of certain types of utility service.
6. Lower the monthly payments and interest rates on certain debts, including secured debts such as automobile loans.
7. Allow you to challenge the claims of creditors who have committed fraud or who are otherwise trying to collect more than you actually owe them.

## WHAT BANKRUPTCY CANNOT DO

The United States Bankruptcy Code provides that some debts are "non-dischargeable." This means that even after your bankruptcy case is completed, you will remain legally liable for repayment of the unpaid amount of such debts. These debts include, but are not limited to, child support, alimony, certain other debts related to divorce proceedings, most student loans, court restitution orders, criminal fines, certain taxes, and debts incurred through fraud or misrepresentation. Whether certain debts are "non-dischargeable" depends on the nature of the debt and the type of bankruptcy proceeding that is filed.

Bankruptcy may not protect cosigners on your debts. In other words, when a relative or friend has cosigned on a loan, and you discharge your liability for that debt in bankruptcy, the cosigner may still have to repay all or part of the debt. In addition, as a general rule, bankruptcy does not discharge debts that arise after the bankruptcy petition has been filed with the court.

Bankruptcy cannot cure every financial problem. Nor is it the right step for every individual. In bankruptcy, it usually is not possible to eliminate certain rights of "secured" creditors. A "secured" creditor is one that has taken a mortgage or other lien on your property as collateral for a loan. Common examples of secured creditors are those who have made an automobile loan and noted a lien on the certificate of title to the automobile or those that have extended a mortgage loan and obtained a deed of trust placing a lien on the real property. You can force secured creditors to accept payments over time in a Chapter 13 bankruptcy proceeding, and bankruptcy can eliminate your obligation to pay any additional money if the collateral is taken back by the secured creditor. Nevertheless, you generally cannot keep property that secures your debt to a secured creditor unless you continue to pay the underlying debt.

## WHAT DIFFERENT TYPES OF BANKRUPTCY CASES SHOULD I CONSIDER?

There are four types of bankruptcy cases provided under the law:

1. Chapter 7 is often referred to as "straight" bankruptcy or "liquidation." It requires a debtor to give up property that has a value in excess of certain limits referred to as "exemptions," and this property, if any, will be sold by a trustee in order to generate proceeds to pay your creditors.
2. Chapter 11 is often referred to as "business reorganization," and it is used primarily by businesses and a few individuals whose debts are very large.
3. Chapter 12 is reserved for family farmers and fishermen.
4. Chapter 13 is often referred to as a "wage earner's plan" or a "reorganization." It requires a debtor to file a plan to repay some or all debts from future income.

Most people filing bankruptcy usually file under either Chapter 7 or Chapter 13. Either type of case may be filed individually or by a married couple filing jointly.

## Chapter 7 ("Straight" Bankruptcy or Liquidation)

In a bankruptcy case under Chapter 7, an individual files a bankruptcy petition requesting that the Court discharge his or her debts. The basic idea in a Chapter 7 bankruptcy is to wipe out or discharge your debts in exchange for an individual giving up any "non-exempt" property that he or she may own. Again, North Carolina has very favorable exemption laws that allow many individuals to protect all of their property from their unsecured creditors. In most Chapter 7 cases, all of the debtor's property is exempt or protected from the debtor's creditors. However, it is possible for an individual to have so much equity in his or her property that a Chapter 7 Trustee would have a right to sell the property and use the sale proceeds to pay toward the debts owed to unsecured creditors.

If an individual wishes to keep property that serves as collateral for a secured creditor, such as a mortgage holder, and he or she has fallen behind in making regular monthly payments to such creditor, Chapter 7 may not be the best alternative for that individual. That is because Chapter 7 bankruptcy does not eliminate the right of secured creditors to repossess their collateral if the debtor is behind on his or her payments when he or she files a bankruptcy petition. However, a Chapter 7 case will usually discharge or wipe out an individual's personal liability to such creditors if the repossession and sale of the collateral does not satisfy the debt in full.

## Chapter 13 (Reorganization)

In a Chapter 13 case, an individual files a Chapter 13 Plan showing how he or she will pay off some or all of his or her past due and current debts over a period of three to five years. The most important benefit of a Chapter 13 case is that it will allow an individual to keep his or her valuable property, including a home or automobiles, as long as that individual can afford to make the payments that the bankruptcy laws require him or her to make to the creditors. In most cases, mortgage payments continue to be made directly to the mortgage company by a Chapter 13 debtor, as opposed to being included in the debtor's payment to the Chapter 13 Trustee. However, any mortgage arrearage, which is the amount that an individual may be behind in his

or her mortgage payments when the Chapter 13 petition is filed with the Court, is caught up through the debtor's payments to the Chapter 13 Trustee. In most cases, a debtor's Chapter 13 plan payments are more than their current automobile payments, but substantially less than the total monthly payments that are required by all of their creditors. However, each person's situation is different, and Chapter 13 plan payments are determined by a number of different factors, including an individual's income and living expenses, the type of debt that is owed and property values.

A Chapter 13 bankruptcy proceeding will usually be most beneficial for individuals who own a home, who have fallen behind in their mortgage payments and who are in danger of losing their home as a result of their financial problems. In addition, a Chapter 13 bankruptcy proceeding generally benefits those individuals who are behind on their debt payments and can afford to repay at least a portion of this debt from their monthly income while protecting their valuable property that would not be exempt from the claims of their creditors. However, Chapter 13 debtors must have enough income to pay their recurring living expenses for necessities (such as mortgage payments or rent, food, clothing, utilities, insurance, etc.) and still have enough left over to make the Chapter 13 plan payments that would be required by the bankruptcy laws.

## WHAT DOES IT COST TO FILE FOR BANKRUPTCY?

The Bankruptcy Court now charges a filing fee of \$335.00 to file for bankruptcy under Chapter 7 and a filing fee of \$310.00 to file for bankruptcy under Chapter 13, regardless of whether the petition is filed individually by one person or jointly by a husband and wife. However, only a married couple can file a joint bankruptcy petition. This filing fee is paid to the United States Bankruptcy Court, but it is paid through the debtor's attorney. In addition, if an individual retains the services of a bankruptcy attorney, he or she will also have to pay attorney's fees that he or she agrees to pay the attorney. All attorneys' fees and the filing fee in a Chapter 7 case must be paid in full prior to the filing of the Chapter 7 bankruptcy petition. In the Western District of North Carolina, the bankruptcy judges have approved of some standard or "presumptive" fees in Chapter 13 cases. These fees set limits on the amount that can be charged by bankruptcy attorneys without first requesting Court approval of additional attorney's fees. The Court will generally deny a request to charge fees in excess of these limits unless unusual circumstances justify payment of such additional fees. Furthermore, Local Bankruptcy Rules in the Western District of North Carolina require bankruptcy attorneys to provide each potential client with full and complete disclosure of information regarding fees that may be charged to the client if a bankruptcy case is filed on their behalf. This safeguard ensures that you will be aware of all potential fees, and you always have a right to petition the Bankruptcy Court to disallow fees charged by your attorney if you believe that they are unreasonable.

## WHAT PROPERTY CAN I KEEP?

In a Chapter 7 case, you can keep all property that the law says is "exempt" from the claims of your creditors. Each state has different exemption laws that allow individuals to protect certain property from their creditors. The United States Bankruptcy Code provides that the applicable exemption laws are those for the state in which a debtor has been domiciled during the past two years. A person's domicile is defined as "that place where a person has his or her true, fixed, and permanent home and principal establishment, and to which whenever he or she is absent, he or

she has the intention of returning, or the permanent residence of a person or the place to which he or she intends to return even though he or she may actually reside elsewhere." If a person's domicile has changed during the past two years, then the applicable state exemption laws would be those for the state in which the individual was domiciled during the six-month period immediately preceding the past two years (in other words, the period of time ranging from between two and two and a half years ago). In short, if an individual has been domiciled in North Carolina for the past two years, then the North Carolina exemptions laws apply in determining the property that can be protected from unsecured creditors. If North Carolina exemption laws apply, then the following property can be protected from unsecured creditors:

1. Up to \$35,000.00 in equity (fair market value in excess of debt secured by the property) in an individual's residence (if a husband and wife own property together, then this exemption is doubled).
2. If the exemption in Paragraph 1 above is not used (i.e., the debtor does not own any real estate or has no equity at all in the real estate that he or she does own), then an individual gets a "wild-card" exemption that he or she can use to protect equity of up to \$5,000.00 in any property of his or her choice.
3. Up to \$3,500.00 in equity in any one automobile (if a husband and wife own an automobile jointly, then they can combine their exemptions and protect up to \$7,000.00 in equity in a jointly owned automobile).
4. Up to \$5,000.00 in equity in household goods (again, this exemption is doubled for a husband and wife), plus \$1,000.00 per dependent (up to a maximum of four dependents). In other words, for a husband and wife with four children, their household goods are protected up to a total value of \$14,000.00.
5. Up to \$2,000.00 in equity in tools or equipment used in an individual's trade or business.
6. Certain other property including, but not limited to, certain personal injury proceeds, certain life insurance policies, certain retirement plans and social security benefits.

In determining whether an individual's property is exempt, there are several things to keep in mind. First, the value of property is usually not the purchase price of that property. Instead, the value is what the property would be worth if it was sold in its current condition. Usually, personal property depreciates substantially over time. In addition, exemptions are used to protect an individual's equity in property. Equity is the difference between the value of property and the total amount of debt that is secured by that property. For example, if an individual owns a residence that is worth \$100,000.00 and is subject to a mortgage with an outstanding balance owed of \$92,000.00, then the amount of equity in that residence is \$8,000.00. It is also important to note that exemptions allow an individual to protect his or her property from unsecured creditors (those creditors who do not have a lien on the property), but exemptions do not protect property from the legal rights of creditors whose claims are secured by a lien on that property. Secured creditors may have a right to repossess property that serves as collateral for their loans if the debtor does not make payments in a timely fashion.

## **WHAT WILL HAPPEN TO MY HOME AND CAR IF I FILE BANKRUPTCY?**

In a Chapter 7 case, a debtor will not lose his or her home or car as long as his or her equity in this property, if any, is fully exempt and the debtor remains current in his or her payments to the creditors who have a lien on this property. In a Chapter 13 case, a debtor will not lose his or her home or car as long as the debtor remains current on his or her Chapter 13 plan payments and his or her post-bankruptcy mortgage payments and maintains adequate insurance coverage on this property. Even if a debtor owns property that is not fully exempt and which would be sold in a Chapter 7 case, he or she can file a Chapter 13 case and keep the non-exempt property from his or her creditors as long as the amount of non-exempt equity in that property is paid to unsecured creditors during the term of the Chapter 13 plan. It is important to remember that the filing of a bankruptcy case generally does not wipe out any liens that creditors may have on a debtor's property. If these secured creditors do not receive timely payments on debts that are secured by a debtor's property, then they may have a right to repossess and sell the collateral during or after the bankruptcy case.

There are several ways that a debtor can keep collateral or mortgaged property after he or she files bankruptcy. If the debtor is current in making his or her regular monthly payments to the secured creditor, then the debtor can continue to make the regular monthly payments to the creditor and abide by the terms of his or her loan agreement with that creditor. If a debtor is delinquent in his or her regular monthly payments to a secured creditor and he or she files a Chapter 13 case, then the debtor may be able to reduce the amount of monthly payments to be paid to the secured creditor (unless the secured creditor is a mortgage company) through his or her Chapter 13 plan payments. Generally speaking, an individual will not be able to reduce the amount of his or her monthly mortgage payments, but he or she may be able to catch up the mortgage payment arrearage over an extended period of time through his or her Chapter 13 plan payments. If a debtor is behind in his or her regular monthly payments to a secured creditor and he or she files a Chapter 7 case, then the debtor will have three options concerning the property that serves as collateral for such debt. First, the debtor can surrender the property and return it to the secured creditor; and, in most cases, the debtor's personal liability to this creditor will be discharged or wiped out. Second, the debtor can sign a new debt agreement (a "reaffirmation agreement") with the creditor in which the debtor agrees to keep making regular monthly payments to the secured creditor until the debt is paid in full in exchange for the secured creditor's promise to allow the debtor to keep the collateral as long as all future payments are kept current. If a debtor signs this type of agreement, then his or her personal liability to repay the debt is not discharged in the Chapter 7 bankruptcy case. This means that if the debtor defaults in making the payments required by the reaffirmation agreement, then the secured creditor can repossess and sell the collateral and take action to collect any remaining amount owed on the reaffirmed debt. Finally, a debtor can pay a secured creditor, in one lump-sum payment, the value of any collateral for a loan if the debtor wishes to keep that collateral from the creditor. This is known as "redeeming" the collateral. However, most individuals who file a Chapter 7 bankruptcy proceeding cannot afford to pay a secured creditor, in one lump-sum payment, the value of the collateral (which is often an automobile) that secures the creditor's claim. Although there are some companies that engage in the business of helping Chapter 7 debtors obtain loans to redeem certain debts, this is usually not a viable alternative for most Chapter 7 debtors.

In certain circumstances, a debtor may be able to challenge the validity of a debt that is owed to a creditor who has engaged in improper conduct. In addition, if a debtor has listed his or her household goods as collateral for a personal loan (other than a loan that was obtained to pay the

purchase price of such household goods), then it might be possible to take action to avoid or wipe out such a lien after the filing of a bankruptcy petition. In addition, it is often possible to avoid or wipe out liens on a debtor's property that arise from judgments that have been obtained against the debtor.

## CAN I OWN ANYTHING AFTER BANKRUPTCY?

Many people believe that they cannot own any property for a period of time after filing for bankruptcy. This is not true. You can keep your exempt property and, as a general rule, you can keep any property that you obtain after the bankruptcy petition is filed with the Court. However, if you receive an inheritance, a property settlement or life insurance benefits within 180 days after filing for bankruptcy, that money or property may have to be paid to your creditors if the property or money is not exempt. Again, in a Chapter 13 case, income that is earned after the petition is filed must be used to pay your Chapter 13 plan payments until your payments are completed in accordance with the terms of your Chapter 13 plan.

## WILL BANKRUPTCY WIPE OUT ALL OF MY DEBTS?

As a general rule, most debts are wiped out or discharged in bankruptcy. However, the United States Bankruptcy Code provides that some debts may not be discharged in bankruptcy. Whether a debt is discharged or not depends on the nature of the debt and the type of bankruptcy proceeding (i.e., Chapter 7 or Chapter 13). Generally speaking, some types of debts that normally will not be discharged in bankruptcy include, but are not limited to, the following:

1. Money owed for child support or alimony, criminal fines, and some taxes.
2. Debts that are not listed in your bankruptcy petition.
3. Loans that you obtained by knowingly giving false information to a creditor who reasonably relied on such information in making you the loan.
4. Debts resulting from "willful and malicious" harm.
5. Student loans owed to a school or a governmental body (in most cases).
6. Mortgages and other liens that are not paid in full in the bankruptcy case (but bankruptcy will often wipe out or discharge your personal obligation or liability to pay any additional money if the property is sold by the creditor).

## WILL I HAVE TO GO TO COURT?

In most bankruptcy cases, you only have to go to a proceeding that is referred to as the "first meeting of creditors" to meet with the bankruptcy trustee and any creditor who chooses to appear at that meeting. Most of the time, this meeting will be a short and simple procedure where you are asked a few questions about the information that is contained in your bankruptcy petition and

about your financial situation. This is a fairly informal meeting, and there is no judge present. However, you should dress as if you were going to a court proceeding.

Occasionally, if you fail to make your Chapter 13 plan payments in a timely fashion or if you dispute a debt, then you may have to appear before a bankruptcy judge at a formal hearing. If you need to go to court, you will receive notice of the court hearing date and time from the Court and/or your attorney. For this reason, you should always keep your attorney advised of your current address.

## WILL BANKRUPTCY AFFECT MY CREDIT?

Unfortunately, if you are behind on your payments to your creditors or weighed down in debt, your credit may already be adversely affected. Bankruptcy won't make things any worse and can provide you with an opportunity to rebuild.

The fact that you have filed a bankruptcy can appear on your credit record for up to ten years. Whether or not you will be able to obtain credit in the future is unpredictable, and it probably depends more on what good things you are able to do in terms of keeping a job, saving money, making timely payments on secured debts, etc., than the fact that you filed bankruptcy. In some cases it may actually be easier to obtain future credit after filing bankruptcy because new creditors may feel that you are likely to be in a better position to pay new debt after a discharge. Creditors will also realize that you cannot discharge your debts in a subsequent bankruptcy case that is filed within four years of the filing of a previous Chapter 13 case or within eight years of the filing of a previous Chapter 7 case. However, while your bankruptcy proceeding is still pending (i.e., until the Discharge Order and Final Decree is entered by the Court), you are prohibited from obtaining new credit without first obtaining permission from the Bankruptcy Court.).

## WHAT ELSE SHOULD I KNOW?

**Utility services.** Public utilities, such as the electric company, cannot refuse service or terminate service because you have filed for bankruptcy. However, if you are behind in your payments to a utility company when you file your bankruptcy petition, then the utility can require you to pay a reasonable deposit for future service and you do have to pay bills for utility services that are provided after the bankruptcy petition is filed with the Court.

**Discrimination.** An employer or government agency cannot discriminate against you because you have filed for bankruptcy.

**Driver's License.** If you lost your driver's license solely because you could not afford to pay court-ordered damages caused by an accident, then bankruptcy will allow you to get your license back.

**Co-signers.** If someone has co-signed a loan with you and you file for bankruptcy, then the co-signer may have to pay whatever portion of the debt that you do not pay.

**Calls and Letters from Creditors.** After you file for bankruptcy, all of your creditors should stop calling or writing you demanding payment of your debts. If one of your creditors contacts you, you should inform that creditor that you have filed for bankruptcy and give that creditor

your case number and the name and address of your attorney. If the creditor asks you to pay your bill after you have given the creditor this information, make a note of the time and content of the conversation and provide this information to your attorney. All letters or other correspondence that you receive from your creditors more than one month after you have filed for bankruptcy should be given to your attorney.

**Accurate Information.** All information that you provide to your bankruptcy attorney, the bankruptcy trustee, and the Bankruptcy Court must be "the truth, the whole truth, and nothing but the truth." Providing false information, or the intentional failure to provide complete information, in connection with your bankruptcy case can constitute a federal crime that results in a fine and/or a prison sentence. Much of the information that you provide in your bankruptcy petition and through your testimony, if any, to the trustee and the court can, and will be verified.