

PURPOSES, BENEFITS AND COSTS OF BANKRUPTCY
Bankruptcy Code Sections 527(a)(1) & § 342(b)(1)

This discussion is intended only as a brief overview of the types of bankruptcy filings and of what a bankruptcy filing can and cannot do. Anyone considering this course of action is encouraged to seek the advice and assistance of an attorney specializing in bankruptcy law.

Types of Bankruptcy

The Bankruptcy Code is divided into chapters. The chapters which usually apply to consumer debtors are chapter 7, known as a Liquidation, and chapter 13, known as an Adjustment of the Debts of an Individual with Regular Income.

An important feature applicable to all types of bankruptcy filings is the automatic stay. The automatic stay means that the mere request for bankruptcy protection automatically “stays” or forces an abrupt halt to repossessions, foreclosures, evictions, garnishments, attachments, utility shut-offs, and debt collection harassment. It offers debtors a breathing spell by giving the debtor and the trustee assigned to the case time to review the situation and develop an appropriate plan. Creditors cannot take any further action against the debtor or the property without permission from the bankruptcy court.

Chapter 7

In a chapter 7, or liquidation case, the bankruptcy court appoints a trustee to examine the debtor’s assets and divide them into exempt and nonexempt property. Exempt property is limited to a certain amount of equity in the debtor’s residence, motor vehicle, household goods, life insurance, health aids, specified future earnings such as social security benefits and alimony, and certain other personal property. The trustee may then sell the nonexempt property and distribute the proceeds among the unsecured creditors. Although a liquidation case can rarely help with secured debt (the secured creditor still has the right to repossess the collateral), the debtor will be discharged from the legal obligation to pay unsecured debts such as credit card debts, medical bills and utility arrearages. However, certain types of unsecured debt are allowed special treatment and cannot be discharged. These include some student loans, alimony, child support, criminal fines, and some taxes. Attorney’s fees in Chapter 7 cases are usually charged on a flat fee basis (with the court’s filing fee over and above the attorney’s fee).

Chapter 13

In a chapter 13 case, the debtor puts forward a plan, following the rules set forth in the bankruptcy laws, to repay all creditors over a period of time, usually from future income. A chapter 13 case may be advantageous in that the debtor is allowed to get caught up on mortgages or car loans without the threat of foreclosure or repossession and is allowed to keep both exempt and nonexempt property. The debtor’s plan is a simple document outlining to the bankruptcy court how the debtor proposes to pay current expenses while paying off all the old debt balances. The debtor’s property is protected from seizure from creditors, including mortgage and other lien holders, as long as the proposed payments are made. The plan generally requires monthly payments to the bankruptcy trustee over a period of three to five years. Arrangements can be made to have these payments made automatically through payroll deductions. Attorney’s fees in Chapter 13 cases are usually charged on a flat fee basis (with the court’s filing fee over and above the attorney’s fee).

Chapter 11

A case filed under Chapter 11 of the United States Bankruptcy Code is frequently referred to as a “reorganization” bankruptcy.

Generally, the debtor, as “debtor in possession,” operates the business and performs many of the functions that a trustee performs. A written disclosure statement and a plan of reorganization must be filed with the court that will voted on by creditors.

While individuals are not precluded from using chapter 11, it is more typically used to reorganize a business, which may be a corporation, sole proprietorship, or partnership. A corporation exists separate and apart from its owners, the stockholders. The chapter 11 bankruptcy case of a corporation (corporation as debtor) does not put the personal assets of the stockholders at risk other than the value of their investment in the company’s stock.

Attorney’s fees in Chapter 11 cases are usually charged on an hourly fee basis (with the court’s filing fee over and above the attorney’s fee) and since Chapter 11 cases are complex in nature, fees tend to be substantial.

Chapter 12

Chapter 12 of the Bankruptcy Code was enacted by Congress in 1986, specifically to meet the needs of financially distressed family farmers. The primary purpose of this legislation was to give family farmers facing bankruptcy a

chance to reorganize their debts and keep their farms. Attorney's fees in Chapter 12 cases are usually charged on a flat fee basis (with the court's filing fee over and above the attorney's fee).

What Bankruptcy Can and Cannot Do

Bankruptcy may make it possible for financially distressed individuals to:

1. Discharge liability for most or all of their debts and get a fresh start. When the debt is discharged, the debtor has no further legal obligation to pay the debt.
2. Stop foreclosure actions on their home and allow them an opportunity to catch up on missed payments.
3. Prevent repossession of a car or other property, or force the creditor to return property even after it has been repossessed.
4. Stop wage garnishment and other debt collection harassment, and give the individual some breathing room.
5. Restore or prevent termination of utility service.
6. Lower the monthly payments on debts, including secured debts such as car loans.
7. Allow debtors an opportunity to challenge the claims of certain creditors who have committed fraud or who are otherwise seeking to collect more than they are legally entitled to.

Bankruptcy, however, cannot cure every financial problem. It is usually not possible to:

8. Eliminate certain rights of secured creditors. Although a debtor can force secured creditors to take payments over time in the bankruptcy process, a debtor generally cannot keep the collateral unless the debtor continues to pay the debt.
9. Discharge types of debts singled out by the federal bankruptcy statutes for special treatment, such as child support, alimony, some student loans, certain court ordered payments, criminal fines, and some taxes.
10. Protect all cosigners on their debts. If relative or friend co-signed a loan which the debtor discharged in bankruptcy, the cosigner may still be obligated to repay the loan.
11. Discharge debts that are incurred after bankruptcy has been filed.

Bankruptcy's Effect on Your Credit

By federal law, a bankruptcy can remain part of a debtor's credit history for 10 years. Whether or not the debtor will be granted credit in the future is unpredictable. In some cases it may actually be easier to obtain future credit, because new creditors may feel that since the old obligations have been discharged, they will be first in line. They also recognize that the debtor cannot again file bankruptcy for (up to) the next eight years.

Debtors have the option after bankruptcy of voluntarily paying some creditors, such as a doctor or hospital, with whom they wish to maintain credit. The payments are voluntary and do not reaffirm the past obligation.

Credit Counseling

The following information is taken verbatim from the web site of the Federal Trade Commission. www.ftc.gov

If you're not disciplined enough to create a workable budget and stick to it, can't work out a repayment plan with your creditors, or can't keep track of mounting bills, consider contacting a credit counseling organization. Many credit counseling organizations are nonprofit and work with you to solve your financial problems. But be aware that, just because an organization says it's "nonprofit," there's no guarantee that its services are free, affordable, or even legitimate. In fact, some credit counseling organizations charge high fees, which may be hidden, or urge consumers to make "voluntary" contributions that can cause more debt.

Most credit counselors offer services through local offices, the Internet, or on the telephone. If possible, find an organization that offers in-person counseling. Many universities, military bases, credit unions, housing authorities, and branches of the U.S. Cooperative Extension Service operate nonprofit credit counseling programs. Your financial institution, local consumer protection agency, and friends and family also may be good sources of information and referrals.

Reputable credit counseling organizations can advise you on managing your money and debts, help you develop a budget, and offer free educational materials and workshops. Their counselors are certified and trained in the areas

of consumer credit, money and debt management, and budgeting. Counselors discuss your entire financial situation with you, and help you develop a personalized plan to solve your money problems. An initial counseling session typically lasts an hour, with an offer of follow-up sessions.

Debt Management Plans

If your financial problems stem from too much debt or your inability to repay your debts, a credit counseling agency may recommend that you enroll in a debt management plan (DMP). A DMP alone is not credit counseling, and DMPs are not for everyone. You should sign up for one of these plans only after a certified credit counselor has spent time thoroughly reviewing your financial situation, and has offered you customized advice on managing your money. Even if a DMP is appropriate for you, a reputable credit counseling organization still can help you create a budget and teach you money management skills.

In a DMP, you deposit money each month with the credit counseling organization, which uses your deposits to pay your unsecured debts, like your credit card bills, student loans, and medical bills, according to a payment schedule the counselor develops with you and your creditors. Your creditors may agree to lower your interest rates or waive certain fees., but check with all your creditors to be sure they offer the concessions that a credit counseling organization describes to you. A successful DMP requires you to make regular, timely payments, and could take 48 months or more to complete. Ask the credit counselor to estimate how long it will take for you to complete the plan. You may have to agree not to apply for — or use — any additional credit while you're participating in the plan.

Required Section 342(b)(2) notice: *A person who knowingly and fraudulently conceals assets or makes a false oath or statement under penalty of perjury in connection with a case under the Bankruptcy Code shall be subject to fine, imprisonment, or both, AND all information supplied by a bankruptcy debtor in connection with a case under the Bankruptcy Code is subject to examination by the U.S. Attorney General.*

REQUIREMENT OF FULL DISCLOSURE
Bankruptcy Code Section 527(a)(2)

1. The information that you provide to your attorney, the bankruptcy trustee, and the court in the course of your bankruptcy, both before and after you file your bankruptcy petition, must be complete, accurate and truthful.
2. All of your assets (everything you own that has value, such as real estate, personal items, vehicles, money, etc.) and all of your liabilities (all of your debts) are required to be completely and accurately disclosed in the documents filed to start your case. The value of any asset that serves as loan collateral will be the replacement value of the asset in the same or similar condition of your asset as established after reasonable inquiry of such value.
3. You must provide your attorney with a monthly budget, including your current monthly income, all of your regular expenses, and the amount of your income that is left over after deduction of expenses, if any. In listing your income and expenses, you must be accurate and truthful. For income, you are required to provide information about all sources of your income, including your employment, any government assistance you may receive, social security, pension or other retirement income, income from side jobs, investment income, and similar sources.
4. The information that you provide to your bankruptcy attorney, the bankruptcy trustee, or the bankruptcy judge may be audited and will be available for inspection by the office of the United States Trustee, which is a branch of the U.S. Department of Justice. Additionally, if you fail to honestly and fully provide information about your property, income, expenses, and other financial circumstances, your case could be dismissed, and you could be subject to criminal sanctions.

ACKNOWLEDGMENT OF RECEIPT

Received from the Law Offices of John A. Vos.

(Sign above, Print name below line)