

**PERSONAL BANKRUPTCY:
IS IT RIGHT FOR YOU?**



Updated August 2016

PERSONAL BANKRUPTCY: IS IT RIGHT FOR YOU?



**CITY BAR JUSTICE CENTER
AND
COMMITTEE ON BANKRUPTCY &
CORPORATE REORGANIZATION
AND
COMMITTEE ON CONSUMER AFFAIRS
OF THE NEW YORK CITY BAR**

The City Bar Justice Center is grateful to the American College of Bankruptcy, and the Eastern District Civil Litigation Fund for making this publication possible.

©2013 The Association of the Bar of the City of New York. All rights reserved.

PERSONAL BANKRUPTCY: IS IT RIGHT FOR YOU?

Table of Contents

Introduction.....	1
Types of Individual Bankruptcy	2
Consequences of Bankruptcy	2
Frequently Asked Questions About Being In Debt And Filing For Bankruptcy.....	3
The Advantages of Filing for Bankruptcy Protection.....	7
The Disadvantages of Filing for Bankruptcy Protection	7
Document Requirements for Filing and Maintaining a Personal Bankruptcy	8
The “Means Test”	9
Mandatory Credit Counseling and Debtor Education.....	10
Filing for Bankruptcy under Chapter 7.....	10
Filing for Bankruptcy under Chapter 13.....	12
The Discharge.....	14
Non-Dischargeable Debts.....	14
Appendix: Where to Go for Help or Further Information.....	16

Personal Bankruptcy: Is It Right For You?

INTRODUCTION

The prospect of filing for bankruptcy is not something people want to consider; however, sometimes a person's financial situation takes a turn for the worse, usually due to circumstances beyond their control, such as illness, unemployment or divorce. At such a time, filing for an individual bankruptcy to eliminate a crushing load of debt may be the most appropriate course of action. It is a legal and proper step to take when the circumstances warrant it.

The purpose of this pamphlet is to briefly explain to individuals who are in debt (“**debtors**”) and considering filing for personal bankruptcy, what the process is and the advantages and disadvantages of taking such action. **This is not a step- by- step guide on every aspect of the bankruptcy process; however, it will provide the general knowledge needed to help make an informed decision as to whether a personal bankruptcy may be right for you.**

While it is possible to file for bankruptcy *pro se* (“on your own”) it is not a step that should be taken without serious consideration and proper advice and assistance. Properly filing for bankruptcy takes careful preparation and knowledge of the law. The bankruptcy laws are complex and debtors who fail to comply with the requirements of the law or do not file all required paperwork and supporting documents risk the dismissal of their case. If a debtor files for the wrong type of bankruptcy under his or her circumstances, the debtor could lose valuable property. It is always better for an individual to speak with and retain an attorney familiar with bankruptcy law who can guide him or her through the process.

The information contained in this pamphlet applies only to people living in New York State. Residents of any other state should consult with legal advisors familiar with the laws of that state because certain applicable local laws vary from state to state.

Generally, voluntary bankruptcy is a legal process established under federal law to allow people who cannot pay debts to eliminate (“**discharge**”) the legal obligation to pay most, or all, of certain types of consumer and business debts, and to obtain a financial “fresh start.” Not all debts are dischargeable, but most common consumer debts are. There is no minimum amount of debt necessary in order to file for bankruptcy, however, the amount should be high enough that it is beyond the debtor's ability to repay it in the foreseeable future, or the debtor is about to suffer the loss of essential income or property to a creditor due to the collection of an outstanding debt.

Filing a bankruptcy case with the U.S. Bankruptcy Court will immediately stop (“**stay**”) most of the creditors from taking collection action, at least until the debts are sorted out

under the law. In most cases, the filing will end collection calls, letters, lawsuits, garnishments and other collection practices until there is a final ruling by the court. If a discharge in bankruptcy is granted, and there has been no ruling by the Court denying the dischargeability of any the listed debts, the affected creditors will be prohibited from taking any further collection action against the debtor.

TYPES OF INDIVIDUAL BANKRUPTCY

Most individual debtors file under one of the consumer bankruptcy proceedings known as Chapter 7 and Chapter 13 bankruptcies, both of which will be discussed in more detail later. In a **Chapter 7** case (also known as a “straight bankruptcy” or a “**liquidation**”), the debtor is asking the Bankruptcy Court to release (“**discharge**”) him or her from personal liability from specific debts and to prohibit creditors from taking any further action against the debtor personally to collect those debts. If the debtor owns certain types of valuable property, he or she may be required to surrender it, so the property can be sold and the proceeds used to pay the creditors. However, items such as basic household furnishings, clothing, pension plans and retirement accounts are protected (“**exempt**”) to a certain extent and debtors are allowed to keep them.

Debtors considering filing for Chapter 7 bankruptcy must pass an eligibility standard known as the “**means test**” to determine whether they qualify to file for such relief. This test is done by calculating the debtor’s “current monthly income,” which is the average income of the debtor, and the members of the debtor’s household, for the past 6 months. If this average income exceeds a certain level, the debtor may not be eligible to file for Chapter 7 relief and may have to consider filing a Chapter 13 case. The “means test” is explained in more detail later in this pamphlet..

A **Chapter 13** bankruptcy is a reorganization case (also known as a “debt adjustment” or “**wage earner plan**”), where debtors may keep all of their property, including things such as real estate, subject to certain conditions, in return for filing a “plan” to repay part or all of the debt out of their disposable income over a period of up to 5 years.

Which type of bankruptcy is best for individuals depends on their own circumstances, including their income and the type and amount of property they own. A debtor considering filing for bankruptcy protection is strongly encouraged to consult an attorney knowledgeable in bankruptcy law.

CONSEQUENCES OF BANKRUPTCY

When thinking about bankruptcy a debtor must also consider the cost and consequences of filing, which will be set out in more detail below. There may be Court filing fees, costs for taking required credit counseling courses, and possible surrender or loss of property depending on the debtor’s circumstances.

If a discharge is issued in a Chapter 7 case, a debtor cannot file again for such relief for 8 years. In addition, a report of a bankruptcy filing goes on a debtor's credit report for up to 10 years, which may affect the debtor's ability to get future credit.

The debtor must take great care to fully and accurately disclose all information required in the bankruptcy forms. Failure to do so may result in the denial of discharge, dismissal of the debtor's bankruptcy case, and/or criminal prosecution.

Bankruptcy cannot cure every financial problem, and it is not the right step for everyone who is in debt. Due to the requirements and the consequences, careful consideration must go into any decision to seek individual bankruptcy relief.

FREQUENTLY ASKED QUESTIONS ABOUT BEING IN DEBT AND FILING FOR BANKRUPTCY

- **Have changes in the bankruptcy law eliminated the right to file for personal bankruptcy for most people?**

No. Changes in federal bankruptcy laws did not eliminate either Chapter 7 or Chapter 13 bankruptcy as an option for most individuals. However, changes in the law did make it more complicated and expensive to file for such relief. The law has an income eligibility requirement known as the "means test". The income level is based on a debtor's family size and state of residence, but in most cases is high enough that most people who need to file for Chapter 7 relief in New York will be eligible to do so. Further details about these requirements can be found on the bankruptcy court website at:

<http://www.uscourts.gov/FederalCourts/Bankruptcy/BankruptcyResources.aspx>

The law also requires almost every debtor to comply with a mandatory two-part credit counseling and debtor education program, at his or her own expense. The approximate total cost for the two courses is about \$100.

A number of documents are required to be filed, including the last 60 days' worth of the debtor's pay stubs and a copy of their last filed federal and state income tax returns, or a transcript of the returns.

There are required bankruptcy court filing fees. Effective December 1, 2014, they were \$335 for a Chapter 7 or \$310 for a Chapter 13 case. However, in a Chapter 7 case only, if a debtor's income is below a certain level, he or she can apply for a waiver of the fee. The debtor may also request permission to pay the fee in installments for periods up to four months. These sums are always subject to change and should be checked with the clerk of the Bankruptcy Court.

- **Can debtors be arrested or put in jail for owing money to creditors?**

No. Debtors are not arrested or put in jail for owing bills and consumer debts to creditors unless they have committed a crime in connection with obtaining the debt. Creditors can legally seek to collect money on a debt only in certain ways, including suing a debtor in civil court and obtaining a “money judgment.” Once they have a judgment, creditors can then seek to collect the money by placing a “**garnishment**” against a salary and taking no more than 10% of the debtor’s paycheck. A judgment creditor may also place a “**Restraining Notice**” on a bank account and “freeze” it before they obtain the funds in the account. In New York, the **Exempt Income Protection Act** limits the right of a judgment creditor to place a restraining notice on a bank account. Creditors can go after other types of property to collect what is owed, but they cannot put the debtor in jail.

- **Can creditors take away necessities such as basic household furnishings and clothing to satisfy what is owed to them?**

No. The purpose of a bankruptcy is to give debtors a financial “**fresh start**” and not to remove all of their property. Therefore, the law allows debtors to protect certain property from their creditors, even if the value of the assets is greater than their debts. Bankruptcy laws specify that certain items of personal and real property belonging to a debtor cannot be taken by creditors in order to satisfy their claims. Such items are protected (“**exempt**”) property. New York State has laws specifying what property may be claimed as exempt when a debtor files for bankruptcy. These items include, but are not limited to:

- Clothing and household goods such as household furniture, a stove, refrigerator, radio, television, cookware, tableware, sewing machine, books and pets up to \$11,025.
- Cash up to \$5,525 (this can include an income tax refund); unless an exemption for real property (real estate) is claimed.
- Alimony, maintenance or child support owed to the debtor.
- The right to receive certain awards and benefits such as Social Security, SSI, Unemployment Compensation, Public Assistance Veteran’s Benefits, Disability Benefits, Worker’s Compensation Benefits.
- Personal Injury recoveries (up to \$8,275 under NYS law and \$22,975 under the federal exemptions, not including pain and suffering and actual monetary loss).
- Pensions, Keogh, 401(K), 403(B) Plans, IRA and most annuities.
- A cemetery plot.

- A motor vehicle, up to \$4,425 in market value over any financed amount owed on the vehicle.
- Tools of the trade and necessary working tools up to \$3,300.
- Watch, jewelry, and art up to \$1,100.

The amounts for exemptions on the items listed above are effective as of April 1, 2015 and are adjusted every three (3) years to reflect the changes in cost of living.

Expensive cars (see below), jewelry, real estate or investments (except retirement accounts) might have to be surrendered as a result of filing a Chapter 7 case, but a debtor may retain such property if he or she files a Chapter 13 case with an approved repayment plan.

As a general rule, New York debtors also have the right to choose the alternate Federal Property Exemptions. If a debtor is not claiming a Homestead Exemption, Federal Property Exemptions may offer higher exemption values for certain personal property, allowing the debtor to protect more of his or her property. This can include a “wild card” exemption of approximately \$12,225 that can be applied to protect any of the debtor’s personal property.

Most low income debtors who do not own valuable property should be able to keep all or most of their personal property using the New York State or Federal Property Exemptions.

- **Can debtors who file for personal bankruptcy lose their home or car?**

Sometimes. While it is possible to lose such property in a bankruptcy, in most cases debtors will not lose their home or car if the value of such property does not exceed the exemption amount. However, due to the potential risk, it is important to determine whether or not such a risk exists before the bankruptcy case is filed because a Chapter 7 case cannot be withdrawn without the permission of the court after it has been filed.

Creditors or others can have a secured interest in a home or automobile that is being purchased over time with periodic payments. The creditor holding such an interest is known as a “**secured creditor**” since they have a “**security interest**” in the property, which is collateral for the debt. A mortgage on a piece of real estate or house would be an example of a secured debt. Such property may be taken and sold if the required payments are not made. Bankruptcy does not make these security interests go away. If the debtor intends to keep the property he or she may have to “**redeem**” it by purchasing the property for the current market value or “**reaffirm**” the debt and continue making the required payments to the secured creditor.

When debtors file for Chapter 7 bankruptcy all of their property becomes the property of the “**bankruptcy estate**”, however certain items qualify for exemption and cannot be taken for the benefit of the creditors if they meet certain conditions. For example, as of April 1, 2015, in New York State a “**Homestead Exemption**” of **\$165,550 per debtor** may be claimed for residents of Kings, Queens, Manhattan, Bronx, Richmond, Nassau, Suffolk, Rockland, Westchester, and Putnam Counties; \$137,950 per debtor for residents of Dutchess, Albany, Columbia, Orange, Saratoga, and Ulster Counties; and \$82,775 per debtor for residents in remaining N.Y. counties. This includes a house, condominium, cooperative apartment or motor home, which is used as the **primary residence** of the debtor located in New York State. If the “equity” (the difference between the current market value of the home and the remaining balance due on the mortgage) exceeds the homestead exemption amount, then the trustee in the case could take the property and sell it for the benefit of unsecured creditors after paying off the mortgage and giving the debtor his or her homestead exemption in cash. In such a case it might not be in the debtor’s best interest to file a Chapter 7 because the debtor could lose his or her home. The debtor might be better off filing a Chapter 13 proceeding, which would allow the debtor to keep his or her property provided the debtor could make all his or her regular mortgage payments plus the plan payments to the trustee.

As mentioned, an exemption of up to \$4,425 may be claimed against the market value of an automobile over and above the remaining balance due on any outstanding auto loan. As long as a debtor can reaffirm the debt and continue to make the required payments to the creditor and the equity in the auto does not exceed the \$4,425, the debtor should be able to keep the car.

If a debtor owns such valuable property he or she must be very careful in determining what may happen to it if the debtor files for bankruptcy. It is advisable for a debtor to consult with an attorney if he or she owns any valuable property the debtor is concerned about losing in a bankruptcy.

- **Does an individual who files for bankruptcy lose future income and property?**

No. Many people believe that they cannot own anything for a long time after filing for bankruptcy. This is not true. A debtor can keep exempt property and anything obtained after filing with some exceptions. One exception is if the debtor becomes entitled to receive an inheritance, a property settlement, or life insurance benefits within 180 days (6 months) after filing a bankruptcy. That money or property may have to be turned over to the trustee for distribution to the creditors. Another exception is if a debtor has the right to sue someone, or is in the process of suing someone on or before he or she files for bankruptcy and the debtor may receive money for that claim, the trustee has the authority to take over the claim and use some portion of it to pay some of the creditor’s claims. Under New York State law an award on a personal

injury or medical malpractice claim in excess of \$8,275 (or approximately \$22,975 if Federal Property Exemptions are used) will have to be turned over to the trustee to the extent necessary to cover the outstanding debts. If there is balance left over after the debts and expenses are paid it must be returned to the debtor.

All income earned by debtors after a Chapter 7 bankruptcy is theirs to keep and to use as they see fit.

Income earned by a debtor who files a Chapter 13 case is subject to the requirements of the Chapter 13 plan. Any “**disposable income**” (income in excess of the debtor’s living expenses) of the debtor must be allocated to the payments required by the plan. The life of the plan is between three and five years.

THE ADVANTAGES OF FILING FOR BANKRUPTCY PROTECTION

- **The Automatic Stay:** Filing for Chapter 7 or 13 relief triggers an “automatic stay” against the collection of pre-filing debts, which will delay and may stop foreclosures, repossessions, garnishments, utility shut-off’s and debt collection activities.
- **The Discharge of Unsecured Debts:** Either Chapter 7 or 13 cases eliminate (discharge), fully or partially, most unsecured debts, such as credit card debt, personal loans and medical bills. However, not all debts are dischargeable as described in the section on Disadvantages.
- **Debtors Can Keep Their Property By Filing Under Chapter 13:** Filing for Chapter 13 allows debtors to keep their property, such as a house or car. In order to file Chapter 13 a debtor must have regular income and be financially able to make monthly payments to a trustee on an approved plan over a three to five year period.
- **Fresh Start:** The elimination of most of a debtor’s overwhelming debt will stop the collection process and result in an economic fresh start so as to enable the debtor to begin the process of rebuilding his or her financial life.

THE DISADVANTAGES OF FILING FOR BANKRUPTCY PROTECTION

- **Long Term Negative Impact on Credit Report/Credit Score:** The details of a bankruptcy case will remain on a debtor’s credit report for

up to ten years and can impair the debtor's ability to obtain a mortgage, auto loan, credit, insurance or even rent an apartment. In fact a debtor should have stopped using credit cards at least 3 months before filing a Chapter 7 case.

- **In Chapter 7 -- The Sale of Assets That Are Not Exempt:** In some cases, when a debtor files for Chapter 7, certain assets that are not exempt might be sold or turned over to his or her creditors to pay debts.
- **Time Period During Which a Debtor May File For Bankruptcy Again:** A debtor who receives a discharge in a Chapter 7 case must wait eight years after the date of filing the last Chapter 7 before he or she can file again under that Chapter. Chapter 13 also involves a waiting period of at least two years. Any new debts incurred after filing for bankruptcy are not subject to the discharge in the first case and will be subject to the collection process.
- **Not All Debts May Be Discharged:** Personal bankruptcy does not erase debts such as child support, alimony, parking violations and fines, student loans and recent income taxes owed to the IRS or NYS("income tax arrears").
- **Co-Signers May Continue To Be Liable:** Any co-signer on a debt will continue to be liable even if the debtor has filed for a Chapter 7 bankruptcy, unless the co-signer also files for similar protection. If the debtor filing a Chapter 13 petition agrees to pay in full a debt with a co-signer, the co-signer cannot be pursued for the debt as long as the debtor remains in Chapter 13 and continues to make payments.

DOCUMENT REQUIREMENTS FOR FILING AND MAINTAINING A PERSONAL BANKRUPTCY

There are a number of documents that debtors must be prepared to provide in order to determine their eligibility to file for bankruptcy and to complete the requirements of the process. These items include:

- Evidence of any prior bankruptcy filings within the last eight years.
- Certificate of Counseling from an approved credit counseling program issued within six months prior to filing for bankruptcy.
- Proof of all income during the preceding 6 months (and that of a spouse, if filing jointly), including: copies of pay stubs from employers, unemployment income, pension, child or spousal support.

- At the time of filing the debtor must submit copies of “pay advices” (pay stubs, statements from employers, or affidavits) for the period 60 days prior to the filing date. If no such advices are available then a written explanation signed by the debtor must be provided.
- Federal and State Income Tax Returns or Tax Transcripts for the previous 2 years. At the time of filing a copy of the debtor’s last filed Federal and State Income Tax Return, or a Transcript, must be submitted to the case trustee. If none is available an explanation signed by the debtor must be provided.
- Bank statements for the previous 6 months.
- Credit Reports and information about all of the debtor’s creditors, including credit card statements, collection letters, and legal papers.

Failure to provide required documents and information could lead to the dismissal of the bankruptcy case.

THE “MEANS TEST”

The “Means Test “ was added to the Bankruptcy Code to create a standard for determining whether individuals who wish to file Chapter 7 bankruptcy are eligible for such relief. If a debtor does not meet requirements of the means test, then his or her Chapter 7 case might be dismissed or the debtor may have to file for Chapter 13 relief. (Chapter 13 bankruptcy is explained later in this pamphlet). While the requirements of the means test are complicated, the reality is that the income of many debtors does not trigger the means test and even where it does apply most debtors will still be found eligible to file for Chapter 7 relief.

In order to demonstrate eligibility to file for Chapter 7 relief all individual consumer debtors must file a form in which they calculate their “**current monthly income.**” This is the debtor’s average total gross income from all sources for the past 6 months (income from any type of Social Security benefits does not have to be counted for this purpose). The form also calls for the income of the spouse of the debtor (provided they are living together) and any other household member who contributes to the support of the household. If a debtor’s current monthly income falls below the state’s “**median family income**” established for the State of New York, then the means test does not apply and the debtor will be eligible to file for Chapter 7 bankruptcy relief. The Median Family Income for New York State can be located at:

http://www.justice.gov/ust/eo/bapcpa/20151101/bci_data/median_income_table.htm

For example, in 2016, if a family with three people in the household made less than \$71,989 annually based on the current monthly income, the debtor would be eligible to file for Chapter 7 relief. If the income were above that level, the “means test” criteria

must be applied to determine whether the debtor is still eligible to file or if a “presumption of abuse” exists which could make the debtor ineligible to file for Chapter 7 relief.

One purpose of the means test is to determine whether the debtor has “disposable income”, that is, income over certain allowable living expenses that could be used to make payments of debts to creditors. Debtors who pass the means test and have no “disposable income” can continue to file for Chapter 7 relief. If the debtor is not eligible to file a Chapter 7 case then they might then have to file for Chapter 13 relief.

MANDATORY CREDIT COUNSELING AND DEBTOR EDUCATION

Debtors considering filing for bankruptcy under Chapter 7 or Chapter 13 must have completed a pre-filing credit counseling program and received a “**Certificate of Counseling**” from an approved agency issued within 180 days prior to filing for bankruptcy. In addition, after filing for bankruptcy, debtors must complete a personal financial management course with an approved agency and submit another “**Certificate of Debtor Education**” to the court within 60 days of the “First Meeting of Creditors” or they will not receive a discharge. The agency may charge a fee for the course (up to \$50 per course), which the debtor must pay unless the fee is waived. (A fee waiver may be granted to debtors with incomes at or below 150% of the Federal Poverty Guidelines. See <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Eligibility/Downloads/2013-Federal-Poverty-level-charts.pdf> for the Guidelines.) In order to comply with these credit counseling and debtor education requirements, filers must work with agencies that have been approved by the Office of the United States Trustee (a branch of the U.S. Department of Justice that is responsible for overseeing bankruptcy cases). Links to information on credit counseling and debtor education and lists of agencies that have been approved by the U.S. Trustee may be found at <http://www.justice.gov/ust/eo/bapcpa/ccde/index.htm>

FILING FOR BANKRUPTCY UNDER CHAPTER 7

Every consumer bankruptcy case requires the filing of a significant number of complex forms and documents. In particular, a Chapter 7 filing contains three major parts: the Voluntary Petition, Schedules A through J, and a Statement of Financial Affairs. There are also additional forms that various bankruptcy courts require. Information about these forms can be obtained from the Clerk’s Office in the U.S. Bankruptcy Court. Although these three parts are commonly referred to as a “petition,” the petition is really only one of several of the documents required in a bankruptcy filing. These forms require the debtor to list all of their income from any source, all of their real and personal property located anywhere in the world, and all of their creditors including relatives to whom money is owed. The schedules are lengthy and complicated. The schedules must be filled out completely and accurately and timely filed with the Bankruptcy Court

All the required papers must be signed by the debtor in various places before being filed. When a debtor signs the papers he or she is doing so under penalties of perjury, which means the contents are as complete and accurate as possible and the debtor has not made any false or misleading statements or omissions. Failure to be truthful in these circumstances may constitute a federal crime.

The First Meeting of Creditors

Once the debtor has completed and filed all the required documents and paid the non-refundable filing fee, what happens next? The answer to that question will vary widely from case to case. However, there are a few general observations that can be made.

When the bankruptcy court receives a Petition, the case is assigned to a Bankruptcy Judge. In addition, the Office of the United States Trustee assigns the case to an attorney known as a **Panel Trustee**. The duties of the trustee are wide-ranging but he or she can be best thought of as a case administrator. The trustee will review the papers, investigate the facts and meet with the debtor at the First Meeting of Creditors (“Section 341 Meeting”). He or she will determine what assets the debtor owns, and whether there is any income or assets available for the benefit of the creditors.

The First Meeting of Creditors (which each debtor is required to attend) is normally held about one month after a petition is filed. Prior to the meeting the debtor must submit to the trustee, copies of their last 8 weeks of “pay advices” and a copy of their last filed Federal and NYS Income Tax Return or a Transcript. At the First Meeting of Creditors, the trustee will question the debtor, under oath, about the information listed in the debtor’s Petition. Also, any creditor of the debtor may attend and be heard. Based on the examination, the trustee may ask the debtor to supply further information in order to give the trustee a more accurate picture of the debtor’s financial affairs.

If the trustee is satisfied with the information provided by the debtor in his or her schedules and the debtor’s sworn testimony at the 341 meeting and it further appears that there are no non-exempt assets available for the benefit of the creditors, the trustee will usually indicate the meeting is “closed.” Sometimes the Trustee will adjourn the meeting and require the debtor to submit additional information. Even after the meeting is closed, the trustee will continue to administer the debtor’s bankruptcy estate. This can include filing objections to exemption claims or seeking to discover substantial non-exempt assets. If such assets are located, the trustee might recover and liquidate (sell) them for the benefit of the estate and creditors. If no non-exempt assets are recovered, the trustee will file a “report of no distribution.” During the period the case remains open after the initial 341 meeting, creditors also have a window period (approximately 2 months) to file an objection to discharge of their claim. Once that period passes with no objections and provided the trustee has filed a report of no distribution, the Bankruptcy Judge will sign a final order of discharge which the clerk of the court will send to the debtor and the case will be closed.

FILING FOR BANKRUPTCY UNDER CHAPTER 13

A **Chapter 13** filing is formally known as an “Adjustment of Debts for an Individual with Regular Income.” It is more commonly called a “wage earners plan” because the debtor must be an individual with a regular income. This income may consist of wages, commissions, rents, public benefits, social security, unemployment compensation, alimony, child support, pension or other types of regular income.

Typical Chapter 13 debtors file because they are behind (“in arrears”) on mortgage payments, car loan or other secured debts or because they have some other substantial debt which cannot be discharged in a Chapter 7 case, or they have a substantial asset that they want to keep, but which cannot be claimed as exempt (such as a house with equity that exceeds the homestead exemption). Under the bankruptcy law, some debtors may have to consider filing for Chapter 13 relief because they have an income that is high enough to prevent them from passing the means test which would allow them to be eligible for Chapter 7 relief.

Under a Chapter 13 case the debtor prepares a “**plan**” in which he or she proposes to partially or fully repay the debts out of future earnings over the life of the plan, which can be three to five years. The plan payments are made to a person known as a Chapter 13 Trustee, who is appointed by the Bankruptcy Court to oversee the case. The trustee distributes the payments to the creditors.

Chapter 13 is more lengthy and complex than a Chapter 7 case. To succeed in a Chapter 13 filing, a debtor must be able to come up with a feasible plan to repay some or all of his or her debts. If the total debt burden is too high or the debtor’s income is too low or irregular, a debtor may not be able to propose a workable plan. Once a plan is accepted, or “**confirmed**,” by the court, the burden is on the debtor to make it work. This requires discipline and effort because for the entire length of the plan (3 to 5 years) the debtor has to live on a strict budget. If the debtor fails to make the required payments to the trustee each month, the trustee will ask the court to dismiss the case or the debtor may have to convert it to a Chapter 7 case. Statistics show that many debtors are not able to successfully complete their plans and their cases are dismissed before a discharge can be issued. If a debtor believes that a Chapter 13 case is best under the particular circumstances, it is strongly recommended that the debtor use the services of an attorney who specializes in the field so as to maximize the chances of a successful outcome.

A Chapter 13 bankruptcy can offer individuals certain advantages over a Chapter 7 proceeding. For example, it may allow debtors an opportunity to save their homes from foreclosure and allows time to catch up on delinquent mortgage payments. It can also stop debt collection by creditors and allow the debtor to reschedule and repay both secured and unsecured debts over a fixed period of time.

A Chapter 13 bankruptcy case starts in the same manner as a Chapter 7 case. A Voluntary Petition must be filed in the clerk’s office of the U.S. Bankruptcy Court in the district of the debtor’s residence for the majority of the last six months. The debtor must also have completed a pre-filing credit counseling course within 180 days of filing the

case and submit a certificate of completion. The filing fee must be paid or a request made to pay it in installments. At the same time or within 15 days of filing, the debtor must submit various schedules (A through J as previously discussed) with information including, but not limited to, income, assets, debts, and living expenses. Other documents that must be provided include pay stubs for the last two months and a copy of the tax return or transcript for the most recent tax year. The debtor will also have to provide the trustee with copies of his or her tax returns each year the case is ongoing and provide copies of returns or transcripts for any prior year that had not been filed when the case began. Married individuals who are not filing a “joint” petition will have to include their spouse’s income information unless they are legally separated.

In addition to these forms, the debtor must file a proposed repayment “plan” within 15 days of the filing and must be prepared to start making payments under the plan within 30 days of filing the plan with the court. The plan is reviewed by the trustee and submitted to the court for confirmation; it must provide for the payment of a fixed amount to the Chapter 13 Trustee, usually on a monthly basis. Generally the plan must provide that certain debts such as secured claims (mortgages, auto loans) and priority claims (alimony, maintenance and child support, taxes) must be paid in full. Unsecured claims (such as credit card debt) generally do not have to be paid in full as long as the debtor agrees to pay all “disposable income” over an “applicable commitment period” (generally 3 to 5 years) and as long as the creditor will receive as much as it would have received if the debtor’s assets were sold under a Chapter 7 case. Whether the plan is 3 or 5 years in length depends on a number of circumstances, but in no instance may it go beyond 5 years.

At the conclusion of the case the court will issue a Discharge which releases the debtor from all the remaining debts provided for in the plan. Most, but not all, Chapter 13 debts can be discharged. Some debts will not be discharged. These include, but are not limited to: certain long term obligations such as a mortgage, debts for domestic support obligations such as alimony and child support, certain tax arrears, most student loans, or debts arising from death or personal injury caused by driving while intoxicated or under the influence of drugs, and criminal restitution or fines.

A Chapter 13 bankruptcy can be an extremely good way for someone who has debts, owns property, and has some form of regular income to reorganize his or her financial life and protect his or her property from creditors. However, it is a complex and lengthy procedure that requires planning and discipline to succeed. It is highly recommended that the advice and assistance of an experienced attorney be sought. Such guidance can increase the chances of a successful outcome and help avoid costly mistakes.

THE DISCHARGE

The primary objective of filing a bankruptcy petition is to obtain a discharge of debts. The discharge means that no creditor may, in the future, make any effort to collect the debts that have been discharged. If a creditor whose debt was discharged in bankruptcy

tries to collect a debt that arose prior to the bankruptcy, and after the creditor has been notified of the discharge, the creditor may be held in contempt of court.

The issuance of the discharge is usually automatic but in some cases the court may deny it. Reasons for a denial may include:

- The debtor has failed to pay the filing fee in full.
- Failure of the debtor to complete both an approved credit counseling and personal financial management course.
- The debtor did not comply with directives of the trustee or orders of the bankruptcy judge.
- The debtor concealed, destroyed or transferred property with the intent to hinder, delay or defraud before the bankruptcy petition was filed or after filing.
- The debtor intentionally concealed or destroyed records of financial dealings unless he or she can show a good reason for doing so.
- The debtor lied under oath at the First Meeting of Creditors or any other court hearing.

The discharge is the debtor's alone and it does not affect anyone else's obligations. If someone co-signed for one of the debts, the discharge will not eliminate the co-signer's liability. Unless the debtor has agreed to pay the debt in full, the creditor may pursue the co-signer.

NON-DISCHARGEABLE DEBTS

Except in rare cases, certain types of debts will not be discharged even though they are required to be listed in the bankruptcy papers. These debts will have to be paid despite the fact that the debtor has filed for bankruptcy. Such debts include:

- Taxes and tax penalties that accrued during the last 3 years.
- A debt obtained by fraud, false pretenses, a false representation or a false written statement regarding the debtor's financial condition.
- Debts for luxury purchases of more than \$500 within 90 days before the petition is filed, or cash advances of more than \$750 within 70 days before the petition is filed.
- A debt not listed in the petition and schedules.

- A domestic support obligation such as alimony, maintenance and child support due to a child or former spouse of the debtor.
- Fines and penalties to a government agency, including parking tickets and moving violations.
- Student loans, unless the debtor can prove they should be discharged due to “undue hardship.” This is a very difficult standard to meet and usually requires further litigation.

The foregoing should not be interpreted as a complete outline of the bankruptcy process. It is urged that any party wishing to file bankruptcy seek bankruptcy advice from an attorney knowledgeable in bankruptcy law before filing. Debtors who utilize a typing or “petition preparation” service to prepare the petition should not rely solely on any advice of such typist or non-attorney preparer.

APPENDIX: WHERE TO GO FOR HELP OR FURTHER INFORMATION

Legal Assistance:

- **Consumer Bankruptcy Project of the City Bar Justice Center:** The Pro Bono Consumer Bankruptcy Project, with the assistance of volunteer attorneys, advises low-income* New Yorkers who are considering filing for Chapter 7 personal bankruptcy and assists with the preparation of bankruptcy petitions and schedules. All clients file and appear pro se. This Project does not handle Chapter 13 matters. The Project also administers the Bankruptcy Pro Bono Panel that can seek volunteer attorneys to assist low-income debtors on limited litigated matters referred by the Bankruptcy Courts.

*Those with incomes at or below 200% of the Federal Poverty Guidelines based on their family size.

Contact: City Bar Justice Center, Legal Hotline, Monday through Friday 9:00 a.m. – 5:00 p.m. (212) 626-7383. Website: www.citybarjusticecenter.org.

- **New York City Bankruptcy Assistance Project of Legal Services for New York City (“NYC BAP”):** The NYC BAP assists low-income* New York City debtors prepare and file pro se Chapter 7 bankruptcy petitions in the bankruptcy courts for the Southern and Eastern Districts. This Project also administers the Bankruptcy Pro Bono Panel and can seek volunteer attorney representation for limited litigated bankruptcy matters, such as a hearing or an adversary proceeding which are referred by the Bankruptcy Court.

*Those with incomes at or below 200% of the Federal Poverty Guidelines based on their family size.

Contact: LSNY, (646) 442-3630 (leave a message and a staff member will return your call within 48 hours). Website: www.lsnyc.org (NYC Bankruptcy Assistance Project).

- **Low Income Bankruptcy Project at MFY Legal Services Inc:** This program provides bankruptcy assistance to low income people who are NYC residents.

* Those with incomes at or below 150% of the Federal Poverty Guidelines based on their family size.

Contact the Hotline at (212) 417- 3799 on Wednesdays between 2:00 and 4:00 P.M. Website: www.mfy.org/get-help.

- **Legal Referral Service of the New York City Bar (“LRS”):** New Yorkers who need referral to a lawyer in private practice for representation on a bankruptcy matter can call the Legal Referral Service. Callers are screened by Referral Counselors, who are lawyers or paralegals trained to help evaluate the various options and who can recommend appropriate legal help. The LRS can make referrals to lawyers in private practice that can provide bankruptcy assistance for a fee.

Contact: Legal Referral Service, LRS Hotline, Monday through Friday 8:30 a.m. – 5:30 P.M. (212) 626-7373(English) or (212) 626-7374 (Spanish). Website: <http://www.abcny.org/get-legal-help/legal-referral-service> or www.ilawyer.org.

- **Volunteers of Legal Service (VOLS) Elderly Project:** The VOLS Elderly Project provides free civil legal assistance to elderly (60+) low income residents of Manhattan through legal clinics, legal information seminars, telephone consultations with senior center staff, and direct referrals of appropriate legal matters to volunteer lawyers.

Contact: Telephone: (212) 966-4400. Website: www.volsprobono.org.

- **Legal Aid Society, Harlem Community Law Office (HARP UNIT) – HIV/AIDS Representation:** This group provides bankruptcy assistance to low-income* NYC residents who are HIV- positive (or those related to an HIV- positive individual).

* Those with incomes at or below 150% of the Federal Poverty Guidelines based on their family size.

Contact: Telephone: (212) 426-3000. Website: www.legal-aid.org.

- **Brooklyn Bar Association Volunteer Lawyers Project, Inc.:** This group can provide limited direct legal services on Chapter 7 matters to low income Brooklyn residents only.

Contact: The Volunteer Lawyers Project, 123 Remsen Street, 2nd Floor, Brooklyn, NY 11201. Telephone: (718) 624-3894. Website: www.brooklynvlp.org.

- **Gay Men’s Health Crisis – Legal Department:** This group provides legal assistance to HIV positive individuals.

Contact: GMHC, 446 West 33rd Street, 6th Fl., New York, NY 10001. Telephone: (212) 367-1134. Website: www.gmhc.org/get-support/stay health/legal services.

Other Bankruptcy Assistance:

- **Eastern District Bankruptcy Court Pro Se Law Clerk:** If you do not have a lawyer, and you are involved in a consumer bankruptcy case in the U.S. Bankruptcy Court for the Eastern District of New York, you may get information about the bankruptcy process and bankruptcy filing requirements from the Bankruptcy Court Pro Se Law Clerk's Office. Staff may answer questions about the bankruptcy forms, schedules, and process, but cannot prepare your petitions or forms for you or give legal advice. Schedule: Mondays through Fridays, 9:00 AM to 12:00 PM and 1:00 PM to 3:00 PM. Location: Brooklyn: Clerk's Office (First Floor) 347-394-1700, U.S. Bankruptcy Court for the Eastern District of New York, 271 Cadman Plaza East, Brooklyn 11201. Central Islip: Long Island Federal Court House, 290 Federal Plaza, Central Islip, NY 11722 (available on Wednesday 9:00 A.M. to 3:00 P.M.). Telephone: (631-712-6200)
- **Non-Attorney Petition Preparation Services: A word of warning -** Organizations that charge a fee for preparing a bankruptcy petition, also known as bankruptcy petition preparers, should not be depended upon for legal advice. Only a licensed attorney can properly provide legal advice and counsel regarding bankruptcy law and a debtor's particular situation. Filing for individual bankruptcy protection is a decision that should be made after careful consideration. Do not rely solely on a non-attorney bankruptcy petition preparation service to advise you on whether filing for bankruptcy relief makes sense for you or to complete the petition and required schedules in compliance with the legal requirements.

Credit Counseling Services and Debt Management or Negotiation Services:

- Under the Bankruptcy law individual debtors must undergo credit counseling before filing for bankruptcy. In order to receive a discharge of debt, an individual debtor who files for bankruptcy must complete an instructional course in personal financial management after filing for bankruptcy. A list of approved debtor education course providers is posted on the United States Trustee Program's website at www.usdoj.gov/ust.
- Many **debt-counseling organizations** are non-profit and work with you to solve your financial problems. **Beware** -- just because an organization says it is non-profit, this is not a guarantee that its services are legitimate. In fact, some debt counseling organizations charge high fees, which may be hidden, or urge consumers to make voluntary contributions causing them to fall further into debt. **Tips** --

Avoid organizations that charge you for information. Ask about fees. Make sure all verbal promises are in writing. Look for a New York State licensed credit counselor. Find out whether your information will be kept confidential and secure. Ask how employees are compensated – if they are paid more if you sign up for certain services, pay a fee or make a contribution, go elsewhere.

- **Debt Management Plans:** A credit counseling agency may recommend that you enroll in a debt management plan (DMP). A DMP on its own is not credit counseling. **Beware** -- Do not consider signing a DMP until after a certified credit counselor has spent time thoroughly reviewing your financial situation, and has offered customized advice on managing your money. **Tips** -- If an organization only offers DMPs, find another credit counseling organization that will also help you create a budget and teach you money management skills. Don't sign up for a DMP if you can't afford the payments. Ask whether you will be provided with regular, detailed statements about your account. Ask what debts will not be included in the DMP. Contact your creditors to confirm that they have accepted the DMP before you send any payments to the credit counseling organization for your DMP.
- **Debt Negotiation Programs:** Debt negotiation is not the same thing as credit counseling or a DMP. It can be very risky and have a long-term negative impact on your credit report. **Beware** of debt negotiation companies that: guarantee they can remove your unsecured debts, requires substantial monthly fees, demands payment of a percentage of savings, tells you to stop making payments or stop communicating with your creditors, requires you to make monthly payments to them rather than your creditors, or claims that they can remove accurate negative information from your credit report. If you decide to work with a debt negotiation company, be sure to check it out with your state Attorney General, local consumer protection agency and the Better Business Bureau.

Creditor Harassment:

- The Fair Debt Collection Practices Act (FDCPA) requires debt collectors to deal fairly with debtors. A debt collector may contact a debtor in person, by mail, telephone or fax, but not at inconvenient times (such as before 8 a.m. or after 9 p.m., unless a debtor agrees), or at inappropriate places such as at work. The FDCPA prohibits harassing and deceptive collection practices, such as telling third parties like neighbors, friends or relatives about the debt; contacting a debtor if they have an attorney, or calling the debtor at work. For more information on the FDCPA, see the Federal Trade Commission's website at www.ftc.gov/bcp/online/pubs/credit/fdc.htm.

- New York City’s Department of Consumer Affairs provides information regarding Debt Collection practices within the City of New York. See its website at <http://www.nyc.gov/html/dca>. Scroll down the page to section “5-77 Debt Collection Practices.”

Useful Bankruptcy Websites:

- www.uscourts.gov/bankruptcycourts/bankruptcybasics.html
- www.lawhelpny.org
- www.consumer.ftc.gov
- www.ftc.gov/bcp
- www.debtoeducation.org
- www.uscourts.gov/bankruptcycourts.html
- www.nysb.uscourts.gov
- www.nyeb.uscourts.gov

Bankruptcy Courts for the Southern and Eastern Districts of New York:

- The **Southern District** services the counties of Bronx, Manhattan, Westchester, Rockland, Putnam, Dutchess, Orange and Sullivan. The website address for the Southern District of New York bankruptcy courts is www.nysb.uscourts.gov. If you live in Manhattan or the Bronx, you may file at any of the following Southern District of New York bankruptcy court locations, but your case will be assigned to the Bowling Green courthouse, which is located in Manhattan:
 - 1 Bowling Green, New York, NY 10004. Telephone: (212) 668-2870
 - 300 Quarropas Street, White Plains, NY 10601. Telephone: (914)-390-4229
 - 355 Main Street, Poughkeepsie, NY 12601. Telephone: (845) 451-6362
- The **Eastern District** services the counties of Brooklyn, Queens, Staten Island, Nassau and Suffolk. The website address for the Bankruptcy Courts of the Eastern District of New York is www.nyeb.uscourts.gov. If you live in Brooklyn, Queens or Staten

Island, you may file at any of the following Eastern District of New York bankruptcy court locations, but your case will be assigned to the Cadman Plaza courthouse, which is located in Brooklyn:

- Conrad B. Duberstein U.S. Courthouse, 271-C Cadman Plaza East, Brooklyn, NY 11201. Telephone: (347) 394-1700
- Alfonse M. D'Amato U.S. Courthouse, 290 Federal Plaza, Central Islip, NY 11722. Telephone: (631) 712-6200