



BANKRUPTCY: FRESH START AFTER A NATURAL DISASTER

BANKRUPTCY AS AN OPTION

In the aftermath of natural disasters, such as Superstorm Sandy, many victims find themselves having lost income or property and overwhelmed by debt. Potential insurance payments or subsidies from government assistance programs often do not materialize or take years to be paid. Personal bankruptcy can help victims protect remaining assets, including a home, and help an individual eliminate various types of debt and obtain a financial fresh start.

This information sheet provides general bankruptcy information for New York consumer debtors and homeowners who have been affected by a disaster. This information is not complete and debtors may need to seek further legal advice. Filing for bankruptcy takes careful preparation and is best done if debtors speak with and retain an attorney familiar with the bankruptcy law who will be able to provide guidance through the process.

TYPES OF BANKRUPTCIES AVAILABLE

Bankruptcy is a legal process established under the United States Constitution and Federal Law that allows people who cannot pay their debts to eliminate (or discharge) many of their consumer debts and, thus, obtain a financial “fresh start.” Most individual debtors file under consumer bankruptcy proceedings known as Chapter 7 or Chapter 13 bankruptcy. Victims of natural disasters who have suffered income loss or property damages and have incurred debt may consider bankruptcy as a way to gain relief from overwhelming debt.

Chapter 7 Bankruptcy

Under **Chapter 7** bankruptcy, also known as liquidation, debtors petition the Bankruptcy Court to release them from personal liability on specific consumer debts. Under Chapter 7 bankruptcy, debtors must surrender certain types of valuable property which will be sold and the proceeds used to pay creditors. However, basic personal property such as household furnishings, clothing, pension plans, and retirement accounts are usually protected (or are exempt) and debtors are allowed to keep them.

Debtors considering Chapter 7 bankruptcy must pass an income eligibility standard known as the “means test”. This is done by calculating the debtor’s average monthly household income over the last six months. If the debtor’s income exceeds a certain level, he or she may not qualify for Chapter 7 bankruptcy relief.

Chapter 13 Bankruptcy

In a **Chapter 13** bankruptcy, debtors reorganize their debts into a plan to repay over a period of three to five years part or all of the debts owed. Typically debtors file Chapter 13 bankruptcies because they are behind on mortgage payments, car loans or other secured debts or their income level is too high to file a Chapter 7 bankruptcy. Under this type of bankruptcy, debtors may keep all of their property, including things such as real estate, if they are successful in carrying out the “plan” approved by the Court.

In order to qualify for a Chapter 13 bankruptcy, debtors must have sufficient regular income with enough other disposable income so that, after paying their monthly household expenses, they are able to fund the repayment plan approved by the Court.

REQUIRED DOCUMENTS FOR FILING BANKRUPTCY

When filing for bankruptcy, debtors must provide certain documents, such as income information for the past 60 days, tax returns for the last two years, and copies of documents regarding property. Often times, victims of a natural disaster have not only had damage or loss of property but they have also lost important documents. For ways to recover copies of those lost documents, see the following:

To obtain copies of tax returns, contact:

Internal Revenue Service

www.irs.gov

(212) 436-1000

and

NYS Department of Taxation

<http://www.tax.ny.gov/>

(518) 457-5431

To obtain copies of deed or mortgage papers, contact:

ACRIS

<http://a836-acris.nyc.gov/CP/>

or

the County Clerk’s Office

To obtain copies of home flood insurance policies, contact:

National Flood Insurance Program

<https://www.fema.gov/national-flood-insurance-program>

(800) 621-FEMA

To find out who holds the home insurance policy, contact:

the mortgage company

SOME ADVANTAGES OF FILING BANKRUPTCY

- Filing for bankruptcy triggers an immediate “automatic stay,” which stops all collection activities, including wage garnishment, foreclosures of property, repossession, and utility shut-off.
- A bankruptcy will discharge most unsecured debts, such as general consumer debt, personal loans and medical bills, allowing a debtor to use future income to pay for living expenses, repairs, replace damaged property, or continue mortgage payments.
- Debtors may be able to protect and keep most or all of their personal property, including basic household goods and furnishings, 401k and retirement plans. Under certain circumstances, debtors may be able to protect and keep their homes.
- In a Chapter 7 bankruptcy, homeowners who have not been able to maintain their home mortgage payments due to loss of income may surrender the property and have the remaining mortgage discharged.
- In a Chapter 13 bankruptcy, homeowners who are affected by a natural disaster and fall behind on their mortgages may be able to repay their mortgage arrears in a repayment plan of three to five years and, thus, keep their homes.
- In a Chapter 13 bankruptcy, homeowners who are affected by a natural disaster and fail to pay for repairs and construction done on their homes may be able to pay off mechanic’s liens that have been placed on their homes.

SOME DISADVANTAGES OF FILING BANKRUPTCY

- Not all debts may be discharged in bankruptcy. Secured liens such as mortgages, mechanic’s liens, debts such as child support, alimony, fines, student loans, and some tax obligations will not be discharged and will survive a bankruptcy.
- In a Chapter 7 bankruptcy, assets that are not exempt may be sold in order to pay creditors. Also, while a debtors’ obligations to pay their consumer debts may be eliminated, any co-debtors still will be responsible for the debt and creditors may pursue them for any debt for which they co-signed.
- If a debtor has a pending claim or lawsuit for money damages, that claim may be considered to be a non-exempt asset which a bankruptcy trustee can take over and use the proceeds to pay creditors.

RESOURCES

For legal assistance, contact:

City Bar Justice Center
Consumer Bankruptcy Project
www.citybarjusticecenter.org
(212) 626-7383

or

New York City Bar
Legal Referral Service
www.citybarlegalreferral.org
(212) 626-7373

To read more about bankruptcy, see:

“Personal Bankruptcy: Is It Right For You?”
<http://www2.nycbar.org/citybarjusticecenter/images/stories/publications/individual-bankruptcy-pamphlet-2013-update.pdf>

To obtain the official bankruptcy forms, contact:

www.uscourts.gov/bankruptcycourts/bankruptcybasics

To obtain a list of approved credit counseling and debtor education agencies, contact:

www.usdoj.gov/ust

To obtain more information, contact the

U.S. Bankruptcy Courts:

U.S. Bankruptcy Court of the Southern District of New York
(for Manhattan & Bronx residents)
1 Bowling Green, New York, NY 10004
www.nysb.uscourts.gov

U.S. Bankruptcy Court of the Eastern District of New York
(for Brooklyn, Queens, & Staten Island residents)
371 Cadman Plaza East, Brooklyn, NY 11201
www.nyeb.uscourts.gov

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