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Bankruptcy  
Mortgage Law & Financing  
Divorce and Family Law

Real Estate, Evictions, Foreclosures  
Wills, Trusts, Probate, Guardianship  
Corporations, Contracts & Small Business

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## BANKRUPTCY

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The Bankruptcy Code is designed to provide relief to people and businesses in financial distress.

Although bankruptcy can benefit some people, a person cannot obtain these benefits without assuming certain duties. If after considering the benefits and burdens associated with bankruptcy you want to obtain the relief provided by the Bankruptcy Code, you must file a petition and a list of all your debts and your property, together with the appropriate filing fee, with the Federal Bankruptcy

Court. These lists of debts and property must be prepared on forms approved by the court. It is very important that these lists of debts and property are accurate and complete in all respects. You may file either an individual bankruptcy petition or a joint bankruptcy petition with your spouse.

There are four types of bankruptcies available to individuals: Chapter 7 liquidation, Chapter 11 reorganization, a Chapter 12 adjustment of debts for family farmers only, and a Chapter 13 adjustment of debts. Chapter 7 liquidation allows an individual to obtain a discharge, which relieves the debtor from any debts owed as of the date that the bankruptcy petition is filed. Creditors then will be unable to try to collect those debts or sue the individual and obtain a valid judgment. With a few exceptions, the creditors have no claim on the individual's

income or future assets. Certain debts are "no dischargeable" which means that a bankruptcy will not excuse them. "No dischargeable" debts include child support, alimony, federal taxes, certain student loans, payment of a fine in a criminal case and debts arising from the commission of a willful wrongful act.

On April 20, 2005 and October 17, 2005, major changes went into effect in the bankruptcy laws. Many of these changes impose new requirements on consumer debtors.

Before a person may file a consumer bankruptcy petition, within 180 days before filing her petition, she must complete a credit counseling briefing given by a U.S. trustee approved agency. There are some exceptions for genuine emergencies where the debtor has tried to, but is not able to get the counseling before filing her petition with the court. In order to receive a discharge of debts from the court, the debtor must take an education course after she files her case and before discharge of her case. There are now two courses debtors must take: one to get the case filed and a second one to receive a discharge.

Debtors now must file more documents with the court when they file bankruptcy. They must give the trustee, and creditors who request them, copies of their recent tax returns. Debtors must file with the court any pay stubs they received in

the 60-day period prior to filing their petition with the court.

Debtors are now subject to the means test. If a debtor's family monthly income is greater than the median income for her state, she may be subject to a means test (after deducting allowable expenses based on IRS guidelines for necessities).

Once you have filed, the court will set a date for an appearance which is called the "first meeting of creditors." The court will notify you and all of your creditors of the time and place of the meeting and you will be required to attend. When a bankruptcy case is filed, an estate is created comprised of all your property as of the date the bankruptcy petition is filed. The judge will appoint a trustee who will act as the representative of your estate. The trustee's duty is to take possession of your property, to examine claims creditors may file and determine whether they are proper, and to sell the property of your estate in order to reduce it to cash for distribution to your creditors. It is also the duty of the trustee to determine whether you have properly listed all of your assets, whether you are entitled to a discharge of your debts, or whether there is some reason why he or she should ask the bankruptcy judge to deny your discharge.

You should understand that in some cases the trustee or a creditor may object to your eligibility to receive a discharge of your debts. If the trustee or a creditor objects to the discharge of a debt, for example, on the basis that the debt arose through the debtor's fraud, then the creditor would actually have to prove the case before the bankruptcy judge as with any other lawsuit. If there is no objection to the dischargeability of a particular debt, then it will be discharged. There are also instances where a discharge will be denied as to all debts; for example, where the debtor has purposely concealed records from the trustee in order to hide assets.

If you have been permitted to have your debts discharged, you must turn over to the bankruptcy trustee all of your property except for certain assets which the law allows you to keep as "exempt."

For example in Florida, an individual may keep up to \$1,000 in personal property and \$1,000 of their interest in a motor vehicle. An individual's home is also considered exempt, but bankruptcy does not wipe out most mortgages. If an individual wants to keep his or her house, generally he or she must continue the payments on the mortgage.

A major change affecting Florida debtors as of April 20, 2005 is the limit on the homestead exemption.

Debtors may use Florida exemptions as long as they have resided in Florida for 730 days (2 years) before filing their case. With respect to the homestead exemption, if a debtor has resided in Florida for 1,215 days (about 3 years and 4 months) before filing bankruptcy, she may use Florida's unlimited (as to value) homestead exemption. However, if she has acquired a home within 1,215 days of filing bankruptcy, her homestead exemption is limited to \$125,000 in equity (unless she owned a home in Florida more than 1,215 days before filing bankruptcy and used those proceeds to buy another home in Florida.)

Chapter 11 reorganization is generally used by businesses or by individuals with substantial assets that would be lost in Chapter 7 liquidation. In a Chapter 11 proceeding, the creditors are temporarily stopped from taking any action against an individual while he or she tries to work out a plan of reorganization, in which he or she proposes a method of paying or settling his or her debts. The creditors vote on the plan and it must also be approved by the court.

Chapter 13 adjustment of debts enables an individual with regular income to propose in good faith to pay all or part of his or her debts from future income over a period of time. If the court approves the plan of payment, the debts may be settled in this manner, even if the creditors are not

willing to go along with the plan. If the individual makes the payments as required, he or she will not have to surrender his or her property. Unsecured debts may not exceed \$307,675, generally, with a maximum of \$922,975 for secured debt obligated.

Chapter 12 is similar to Chapter 13 but Chapter 12 is designed to be used only by family farmers with regular income, and it gives them a chance to reorganize their debts and keep their land. The \$250,000 to \$750,000 debt limit does not apply in Chapter 12.

There are many more changes that went into effect in 2005. In Chapter 13 cases, a debtor may cram down an automobile loan only if she purchased the car more than 910 days before filing bankruptcy.

The new law also limits the automatic stay after the court has dismissed a previously filed case and the debtor tries to file another case within a year of the dismissal.

While Congress made major changes to bankruptcy law, people are still able to file bankruptcy and get protection from creditors. You should consult with an attorney before filing bankruptcy since there are many changes to the law. If a debtor does not follow the requirements closely, the court could dismiss her case, which can lead to loss of shelter, transportation and income.

How does bankruptcy affect your credit rating? The fact of bankruptcy is picked up and noted by various commercial credit reporting companies. Federal law limits the length of time this information may be carried on a report. The law also prevents certain governmental units and agencies from discriminating against persons who have filed bankruptcy. Most people find that if, after filing bankruptcy, they promptly make the payments that they are left with such as car payments, house payments, rent or utility payments, they can reestablish some

credit in about two year's time.

Bankruptcy is not the only method of dealing with a debt problem. In some situations, other methods might be more advantageous to an individual than filing bankruptcy. Such alternatives may include an out-of-court settlement with creditors, reduction of payments to creditors, obtaining help from a consumer credit counseling service or payment of debts by sale of assets or borrowing on assets.

Call us for a free consultation to discuss your options.

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