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A photograph of two men in business suits. The man on the left is holding a large stack of cash. The man on the right is pointing towards the cash. The image is overlaid with two red banners containing text.

# BANKRUPTCY 101

WHAT YOU NEED TO GET  
FAST DEBT RELIEF

# **BANKRUPTCY 101:**

## **What You Need to Get Fast Debt Relief**

It happens.

Everyone has at some point gone through the rigors of debt problems. It is no easy task, overcoming your debt problems, and rarely do people ever come out of it unscratched. In fact, for some people, bankruptcy is a very real possibility.

So what exactly is bankruptcy? How do you know if you even need it? And after you file one, what happens next? These are only some of the questions you may have about bankruptcy.

Here, you will learn the answers to some of the all-important questions involved in bankruptcy, including the types of bankruptcy you may file, the pros and cons of filing for bankruptcy, plus a brief history primer on how bankruptcy came to be.

### **What is Bankruptcy?**

Bankruptcy, or insolvency as it is otherwise known, is a legal declaration of an inability or an impairment to pay for the debts owed to creditors. To put it simply, it is an option that debtors and creditors have whenever an individual cannot pay his debts when they fall due.

There is admittedly a bad stigma around bankruptcy. However, when it comes to dealing with individual insolvency cases, it should always be considered. Note

that bankruptcy is not permanent. It is a temporary case, thus, allowing you, the debtor, to gain a fresh start.

### **Who should file for Bankruptcy?**

As a general rule, anyone can go bankrupt. Even individual members of a partnership can become insolvent. However, the rules governing company or partnership bankruptcy and the procedures to follow may be different from that filed by an individual.

There are three ways by which one becomes bankrupt:

- ***Voluntary***

The insolvent debtor files for bankruptcy in a voluntary capacity.

- ***Involuntary***

The creditor takes the initiative to request that debtor should file for bankruptcy for the purpose of collection.

- ***Supervisor-Initiated***

Or anyone bound by an IVA.

More often than not, bankruptcy is legally declared by the debtor himself. However, there are cases wherein a case of bankruptcy may be requested by the creditors in order to get reimbursement from the debtor for the portion of the total amount owed to them. This is what is meant by involuntary bankruptcy.

In an involuntary bankruptcy case, a court order is usually issued to the debtor who is obliged to acknowledge the proceedings or agree to them.

If you are the debtor, it is advised that you fully cooperate with the bankruptcy proceedings, even when you are disputing the creditor's claim. Any attempts at settlement should be addressed *before* the bankruptcy petition is due to be heard. To do so otherwise would be both expensive and difficult.

### **Why is there a law on Bankruptcy?**

What is the purpose of bankruptcy?

Bankruptcy is seen as a graceful way out of a debt. Its primary purpose is to give an honest debtor a "fresh start" in life. Hence, bankruptcy is essentially ***for the benefit of the debtor*** who can no longer pay for the debts that he owed.

Most of the time, individuals or organizations owe money to more than just one people and when the assets are no longer enough to pay for all the debts owed to each creditor, it is but fair to take the sum total of the assets and divide it up equally among the creditors in proportion to the debt owed.

The legal principle behind bankruptcy is that "one may not unjustly enrich himself at the expense of others." If the bankrupt person were only to pay one creditor, what happens to the other creditors?

Hence, the other purpose of bankruptcy law is ***to repay creditors in an orderly manner*** to the extent of the total amount of properties and other assets that the debtor has available for payment.

The resolution of the debtor's debts is accomplished through bankruptcy by dividing all his assets among the creditors. The assets may not be enough to pay all, but the declaration does allow the debtor to partially pay off his debts and other financial obligations.

### **Where the Word “Bankruptcy” Came From**

The word bankruptcy was coined from the ancient Latin *bancus*, meaning “bench” or “table.” By adding *ruptus* (“broken”) as a suffix, bankruptcy thus came to mean what it is now.

In the early Latin days, bankers used to keep benches in the public places, in markets, and fairs and on them, they sold their money and wrote their bills of exchange. When a banker failed in his trade, they would break his bench to signify to all that he is no longer in business. This was how the idea came to be.

### **Should you file?**

There is no doubt that deciding whether or not you should file for bankruptcy is a difficult, agonizing choice to make. Because bankruptcy, though temporary, is nevertheless long-lasting and far-reaching, it would most certainly affect your future credit, your relationships, and your self-image.

On the other hand, it could also improve your short-term quality of life and possibly keep you from losing your home, car, and other essentials.

Think of bankruptcy as the financial equivalent of major surgery. It is the debt managing tool resorted to only at the last moment when no other remedy is available in the normal course of finance management.

For this reason, it is very important that you should carefully study your options and look at both sides of the coin before making any final decisions.

### ***PROs***

- The moment you file for bankruptcy, all collection actions by your creditors, including foreclosures, repossessions, and garnishments, are automatically stopped.
- Your bankruptcy lawyer, if you decided to hire one to handle your case, will shield you from any inquiries made by your creditors.
- Most states allow your home, car, and other essentials to be exempt. Consequently, bankruptcy means that you will not wind up homeless and unable to get around.
- Declaring bankruptcy means that you can get started on rebuilding your credit and your life sooner. Moreover, if something unfortunate happens, you are allowed to amend your existing Chapter 13 plan to accommodate it.
- While student loan debt will remain, filing for bankruptcy will protect you from lenders taking aggressive collection action.

### ***CONs***

- You will lose all your credit cards. However, if you have paid off your credit cards before filing, there is a good chance you may still keep some of them.

- You may have to give up some of your luxury possessions.
- You will have some impossibly tough time getting a mortgage after recently filing a bankruptcy. It will get easier, however, after about five years from filing.
- A bankruptcy is a spot on your credit report and tends to remain there for ten years. This, of course, makes it difficult for you to acquire credit, buy a home or car, get life insurance, or sometimes get a job.
- Not all debts may be “discharged” in a bankruptcy. (More on this later).

## **Types of Bankruptcy**

You may have heard of someone filing for Chapter 11 or Chapter 7. What do they mean by this?

These are actually the types of bankruptcy, so-named after the title of the Chapter of the Federal Bankruptcy Act in which they appear. There are three common types of bankruptcy available. Here is a quick rundown of each one:

### ***Chapter 7***

This is also known as *liquidation*. In a Chapter 7 bankruptcy case, all the assets and nonexempt properties, if any exists, of the debtor must be turned over to a trustee for the purpose of converting them into cash to pay the debtor’s creditors.

In return, the debtor receives a Chapter 7 discharge in the form of a court order, releasing the debtor from all of his or her dischargeable debts. This order also has

the effect of preventing creditors from attempting to collect these dischargeable debts from the debtor.

Note that there are some debts which cannot be discharged with a Chapter 7 bankruptcy.

### ***Chapter 11***

This type of bankruptcy is typically used for business bankruptcies and restructuring. As such, this is not an option for individual consumers. Besides being far more complex, it is also more expensive to pursue.

A Chapter 11 bankruptcy gives businesses the opportunity to reorganize themselves, restructure debt, and get out from under certain burdensome leases and contracts. “Business” here may include a corporation, sole proprietorship, or partnership.

When a corporation files for a Chapter 11 bankruptcy, the stockholders’ personal assets are not at risk. Since a corporation exists separate and apart from its owners, the stockholders, the only asset the latter stands to lose are the value of their investment in the company’s stock.

### ***Chapter 13***

This is sometimes referred to as a “mini Chapter 11” because it allows small proprietary business owners and certain qualified individuals to file for it in order to repay their creditors but still retain your property.

So how is this different from a Chapter 7 bankruptcy, which likewise allows you to retain certain exempt properties and assets? Chapter 13 is different in that it

enables a debtor to retain the assets that would otherwise be liquidated by a Chapter 7 trustee.

In most cases, you can keep your home and your car under either Chapter 7 or Chapter 13. However, there are certain instances under Chapter where you would not be able to keep your rental properties, antique gun collections, etc. Whereas, if you file for a Chapter 13 bankruptcy, you may be able to keep these “luxurious items” and submit yourself to a Plan where you can make repayments.

The goal of a Chapter 7 bankruptcy is to discharge your existing debts so you can get a “fresh start” on your finances. A Chapter 13, on the other hand, obliges you to repay most or all of your debts before your slate is wiped clean. It is because of this – you repay your debts – that you gain a certain advantage over a Chapter 7.

Make no mistake that bankruptcy is a complex process. There are many intricate details involved in this legal process that should be taken into consideration before making any decisions involving bankruptcy. The information above is only basic. There are still many important questions that may arise and only your bankruptcy lawyer who knows more about your particular situation can authoritatively answer.

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