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Should You File for Bankruptcy



Get the Answers You Need

Should You File for Bankruptcy?

Most people who are confronted with this tough decision vacillate between “fighting” to “fleeing.” Do you want to struggle to pay the debts? Or do you get relief from the constant pressure and start over.

Well, if you put it that way, it does not look all that bleak. Unfortunately, the situation is often not that simple. And changes to the law effective October 17, 2005 has made the decision even more important.

Whether or not you should file for bankruptcy is a personal decision on your part. The factors are far too numerous and the overall impact of bankruptcy on your future finance far too important to treat a decision such as this lightly.

Before you decide, here are the things that you need to know:

- What are your alternatives to bankruptcy?
- Which chapter of the Bankruptcy Code should you file under?
- What debts will be discharged in bankruptcy?

Weigh Your Options

Some people make the mistake of treating bankruptcy as the be-all and end-all of everything. They think that once you get to that point where your debts far outweigh your assets and the chances of paying them off is not likely to happen anytime soon, the situation is ripe to file for bankruptcy.

Stop right there.

Bankruptcy is not the only way. It is not the only solution. What you believe is an unsolvable problem may turn out to be quite solvable, if you only take the time to weigh your options well.

Always keep in mind that filing for bankruptcy has the possibility to be devastating both economically and emotionally. While there is less public stigma attached to the act for filing for bankruptcy these days, it could still do things to your confidence in making important financial decisions.

One of the positive aspects of filing for bankruptcy is that most bankruptcy cases are granted. So it is instant relief from debts versus toiling for years to pay off your debts. However, contrary to popular belief, bankruptcy is not an easy way out of a sticky situation.

Whether you are filing under Chapter 7 or Chapter 13, the end result is almost always the same – extensive damage to your credit and long-term economic issues. Now, you know, of course, what this means. These credit issues brought on by bankruptcy would cause many problems in the years to come.

So what, then, are your options besides bankruptcy?

That, my friend, is the question.

Renegotiate Secured Loans

First of all, what is a secured loan? How is it different from all other loan types out there? Is it any different from a credit card debt?

The answer to the third question is: It is *very* different. In fact, a secured loan could not be any farther from a credit card debt.

Simply put, a secured loan is one where you are made to mortgage your property so that the lender can forcibly sell it to get its money back if you can't repay.

Now, if you think that once you file for bankruptcy, you can escape all your debts and start with a clean slate (so to speak), well think again. Because not all debts can be discharged with bankruptcy. And one such debt is a secured loan.

Now, the thing with secured loans is that they usually involve large sums of money – generally the largest most people have. Your car and/or your house are secured loans. So even if you file for bankruptcy, these debts will neither lessen nor disappear.

A better option would be to try to renegotiate these loans with the creditors. That is, if your debt has not completely caught up with you and ruined your credit already. Or you could take the loan elsewhere.

Let's say, for instance, that you have a home loan that is several years old. You can try to renegotiate for a lower interest rate on this. And depending on your principal balance and current terms, there is every chance that you can see your payment go down by several hundred dollars per month. That is money in your pocket which you can use to pay off other debts.

If your home loan has only a few more years left, you can also try to lengthen the period or ask for an extension so you can reduce your payments even more.

Debt Consolidation

If you are like most people, then you probably have multiple payments that you must make every month. From high interest credit card bills to car loans, house mortgage to doctor or hospital bills – all these can add up, forcing you to deal with serious money issues every month.

There is a way for you to deal with this instead of immediately filing for bankruptcy. Debt consolidation can provide some immediate relief from you high interest loans and debts. But be sure to run the numbers first. There isn't much sense in consolidating debts if it cannot significantly increase your ability to pay.

For instance, you have a car loan that runs for 15 years. By computing your monthly payments and interest rates, you come up with \$40,000, which is the total payments, including interest, you would have to make for the car loan. In addition to the car loan, you also pay \$15,000 for items on a credit card if you pay the minimum for 30 years.

If you take a debt consolidation loan as a second mortgage, you can use the money to pay off other debts. In most cases, this could significantly reduce your monthly payments and even stave off bankruptcy proceedings.

There are, of course, several more options available that you can take to avoid bankruptcy. But the ones above are the easiest routes to take and the most convenient, not to mention most effective.

If you want, you can also ask for a professional's help such as a debt reduction attorney or professional debt negotiation companies that can take your case to the creditors. There are also some communities that have volunteer organizations that can do some of the negotiation for you.

There are always other alternatives, if you keep your eyes open and leave bankruptcy as a last resort.

Chapter 7 vs. Chapter 13

If none of the above-given alternatives work for you, then you are down to no other option but to file for bankruptcy. The relevant law to consider is the

Bankruptcy Code, which defines and outlines the procedures involved in filing for bankruptcy under each chapter.

The two most common types of bankruptcy in the United States are Chapter 7 and Chapter 13. The first is available only to individual consumers while the latter is available to both individual debtors and business organizations. The first involves a liquidation of all nonexempt assets and properties, while the latter allows you to keep your properties in exchange for signing up for a repayment plan.

Dischargeability of Debts

If there is one thing you should take note of bankruptcy, it is that not all debts can be discharged. Keep this always in mind. Because you might think that you can get away with your debts scot-free after filing for bankruptcy only to find out later on that you are still obliged to pay for some certain non-dischargeable debts.

NON-DISCHARGEABLE DEBTS UNDER CHAPTER 7:

- Recent taxes
- Trust fund taxes
- Child or family support
- Criminal fine or restitution
- Accident claims involving intoxication
- Unscheduled debts

- Penalties payable to the government other than tax penalties
- Student loans
- Debts listed in prior bankruptcy where debtor was denied a discharge

NON-DISCHARGEABLE DEBTS UNDER CHAPTER 13:

- Debts for alimony, support, and maintenance
- Debts for death or personal injury related to drunk driving
- Debts for criminal fines and restitution
- Most debts for student loans
- Debts not covered by the plan
- Installment debts maturing after the close of the plan

It is important to know what debts are dischargeable and what debts are non-dischargeable under any of these two bankruptcy types.

If you have substantial debts that are dischargeable under Chapter 13 but non-dischargeable under Chapter 7, then a Chapter 13 bankruptcy might be preferable to Chapter 7.

A sub-factor to consider in this is your eligibility for a discharge. The law states that a person who has received a Chapter 7 discharge in a case that was filed within six years is not eligible for a Chapter 7 discharge. In that case, the only other option you have is to file for a Chapter 13 discharge.

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