

Bankruptcy Overview

- ▶ **Why file for a Bankruptcy?**

Loss of job? Medical bills? Foreclosure? Divorce? Just a run of bad luck? A fundamental goal of the federal bankruptcy laws is to give debtors a financial “fresh start” from burdensome debts.

- ▶ **Are there alternatives to filing Bankruptcy?**

Yes! Bankruptcy may not be the only solution to assist you during your financial hard times. Contact our firm for comprehensive consultation with a skilled bankruptcy attorney.

- ▶ **Which chapter do I file?**

It depends. There are 6 basic types of bankruptcy cases provided for under the Bankruptcy Code. The most common are Chapter 7 and Chapter 13, which generally is used for individual debtors. Chapter 11 ordinarily is used for business reorganizations.

Common Bankruptcy Terminology

- ▶ **Automatic Stay:** It is an injunction that automatically stops lawsuits, foreclosures, garnishments, and all collection activity against you the moment a bankruptcy petition is filed.
- ▶ **Bankruptcy Estate:** All legal or equitable interests of the debtor in property at the time of the bankruptcy filing. (This includes all property in which the debtor has an interest, even if it is owned or held by another person.)
- ▶ **Bankruptcy Petition:** This is the document filed by the debtor or by creditors which opens the bankruptcy case.
- ▶ **Debtor:** A person who has filed a petition for relief under the Bankruptcy Code.

Common Bankruptcy Terminology

- ▶ **Exemptions, Exempt Property:** Certain property owned by an individual debtor that the Bankruptcy Code or applicable state law permits the debtor to keep from creditors. For example, in Florida you most often will be able to exempt all or a portion of the equity in the debtor's primary residence (homestead exemption). The availability and amount of property the debtor may exempt depends on the state the debtor lives in.
- ▶ **Fraudulent Transfer:** A transfer of a debtor's property made with intent to defraud or for which the debtor receives less than the transferred property's value.
- ▶ **"Fresh Start":** Giving debtors a "fresh start," i.e., *free from most* debts*, is one purpose of the Bankruptcy Code.
** Please note that although most debts are dischargeable, some are not, such as child support obligations.*
- ▶ **Reaffirmation Agreement:** An agreement by a Chapter 7 debtor to continue paying a dischargeable debt (such as an auto loan) after the bankruptcy, usually for the purpose of keeping the item (i.e., the car) that would otherwise be subject to repossession.

What is a Discharge in Bankruptcy?

- ▶ **When does a discharge occur?**

The timing of the discharge varies, depending on the chapter under which the case is filed. In a Chapter 7 case, for example, the court usually grants the discharge promptly on expiration of the time fixed for filing a complaint objecting to discharge and the time fixed for filing a motion to dismiss the case for substantial abuse (60 days following the first date set for the 341 meeting). Typically, this occurs about four months after the date the debtor files the petition with the clerk of the bankruptcy court. Since a Chapter 13 plan may provide for payments to be made over three to five years, the discharge typically occurs about four years after the date of filing.

- ▶ **How do you get a discharge?**

Generally, unless there is litigation involving objections to the discharge, the debtor will usually automatically receive a discharge.

- ▶ **Are all my debts discharged?**

Not all debts are discharged. The debts discharged vary under each chapter of the Bankruptcy Code. Section 523(a) of the Code specifically excepts various categories of debts from the discharge granted to individual debtors. Therefore, the debtor must still repay those debts after bankruptcy.

What is a Discharge in Bankruptcy?

- ▶ **Can creditors object to a discharge?**

In Chapter 7 cases, the debtor does not have an absolute right to a discharge. An objection to the debtor's discharge may be filed by a creditor, by the trustee in the case, or by the U.S. trustee. In Chapter 13 cases, the debtor is usually entitled to a discharge upon completion of all payments under the plan.

- ▶ **Can creditors collect from me after I get a discharge?**

A debtor who has received a discharge may voluntarily repay any discharged debt. A debtor may repay a discharged debt even though it can no longer be legally enforced.

- ▶ **Can an employer terminate your employment solely because you were a debtor or failed to pay a discharged debt?**

The law provides express prohibitions against discriminatory treatment of debtors by both governmental units and private employers. A governmental unit or private employer may not discriminate against a person solely because the person was a debtor, was insolvent before or during the case, or has not paid a debt that was discharged in the case.

Do Servicemembers get “extra” protections?

- ▶ There are three primary areas of coverage under the Servicemembers’ Civil Relief Act (“SCRA”):
- ▶ (1) protection against the entry of default judgments; (2) stay of proceedings where the servicemember has notice of the proceeding; and (3) stay or vacation of execution of judgments, attachments and garnishments.
- ▶ The language of the SCRA states that it is generally applicable in any action or proceeding commenced in any court. Therefore, the SCRA also applies to all actions or proceedings before a bankruptcy court.

Remember Bankruptcy law is complicated...

- ▶ *While the information presented is accurate as of the date of publication, it should not be cited or relied upon as legal authority.*
- ▶ *The information provided is a very basic presentation and is not in any way intended to be a complete representation of the intricacies and complexities of the Bankruptcy Code.*
- ▶ *This publication should not substitute for the advice of competent legal counsel.*

Would like more information or
want to set up an appointment to
speak with a Bankruptcy attorney?

If so, please contact:

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Thank you for viewing this presentation.