

BASIC INFORMATION ABOUT CHAPTER 7 FOR INDIVIDUALS

Summary: Chapter 7 bankruptcy is designed to provide a fresh start for individuals whose assets and/or income is insufficient to pay their debts. Chapter 7 bankruptcy is commonly referred to as a "straight bankruptcy" or "liquidation." In a Chapter 7 case, the debtor is permitted to retain (or keep) certain property. The remaining non-exempt property is liquidated, or sold, by an impartial trustee and the proceeds are paid to creditors. In exchange for surrendering the debtor's non-exempt assets, the debtor is discharged from most debts.

Filing Chapter 7: A Chapter 7 case begins with the filing of a petition. Generally, the petition is filed with the bankruptcy court for the area where the debtor lives. Only a husband and wife may file a joint petition. The filing fee for Chapter 7 is \$299. The fee is due at the time of filing and must be paid by cash, money order, or with an attorney's or certified check. With the court's permission, the fee may be paid in installments.

Along with the petition, the debtor must file a list (matrix) containing the names and addresses of all creditors. The debtor must also file a bankruptcy statement of financial affairs and bankruptcy schedules, including a list of assets, liabilities, income and expenses, and property claimed exempt. Failure to timely file these documents may result in the dismissal of the case.

Automatic Stay: The filing of a bankruptcy petition operates as an "automatic stay." The automatic stay prohibits action against the debtor and the debtor's property. As long as the stay is in effect, creditors generally may not continue any lawsuits, garnishments, foreclosures, or demands for payment. The court sends notice to the creditors listed on the matrix advising them of the filing of the bankruptcy case, the automatic stay, the meeting of creditors, and other important deadlines.

Meeting of Creditors: The United States Trustee appoints an impartial trustee to administer the case. The trustee holds a "meeting of creditors" within 20 to 40 days after the petition date in the Eastern Division (St. Louis) and within 20 to 60 days in the outlying divisions. The debtor (both husband and wife in a joint case) must attend the meeting but may be accompanied by an attorney. The purpose of this meeting is to allow the trustee and the creditors to ask questions regarding the debtor's financial affairs. The debtor must answer questions under

oath and must provide the trustee with tax returns, pay stubs, bank statements, and other financial records.

Property of the Estate & Exemptions: All property in which the debtor has any interest on the date of filing becomes property of the bankruptcy estate. The estate includes the debtor's real and personal property as well as less obvious interests, such as the right to a tax refund, certain inheritances and lawsuit proceeds. Most Chapter 7 cases are "no asset" cases, meaning the debtor has no property with a market value above the amount of any liens plus the amount allowed as exempt. State and federal law permit the debtor to "exempt" (or keep) certain property from payment to creditors. If the debtor has equity in his property that cannot be exempted, or if the debtor does not claim allowed exemptions, the case will be an "asset" case. In asset cases, the trustee takes possession of the assets and sells them to pay creditors. Creditors will be notified to file proofs of claim in asset cases.

Discharge: Unless a complaint is filed objecting to discharge, the debtor generally will receive a discharge within 60 to 90 days after the meeting of creditors. The discharge extinguishes the debtor's obligation to pay most debts and prohibits the collection of those debts after bankruptcy. Certain obligations, however, including most taxes, student loans, child support and alimony are not dischargeable. Other debts, such as debts for fraud, intentional injuries, and other divorce related obligations can be non-dischargeable if determined by the court.

Reaffirmation: Although the discharge prohibits creditors from taking action against the debtor personally, most liens remain intact after bankruptcy, and unless the debtor and the creditor agree, the creditor may foreclose or repossess its collateral after the case closes. To retain collateral, the debtor must either reach an agreement with the creditor for payment or take action to avoid the creditor's lien. One such agreement is an agreement to repay, called a "reaffirmation agreement." A reaffirmation agreement is enforceable only if it is voluntary, made before the discharge is entered, and filed with the court. If an attorney is not involved, in most cases, the court must hold a hearing to approve the agreement. Failure to pay a reaffirmed debt can result in the creditor collecting directly from the debtor as if the debtor had not filed bankruptcy.

Closing: Generally in a no-asset case, the court will close the case shortly after discharge. Asset cases are closed after full administration. The debtor should keep a copy of the discharge order with his or her other important personal records.

The foregoing is very basic information. A Chapter 7 case may involve many other issues. The Bankruptcy Court, Chapter 7 Trustee and the United States Trustee cannot give legal advice. Use of competent legal counsel is recommended.