

## Chapter 7

A chapter 7 bankruptcy case does not involve the filing of a plan of repayment as in chapter 13. The Bankruptcy Code will allow the debtor to keep certain "exempt" property like household goods and vehicles, if there is not too much equity in the vehicles or other items. If the equity in any particular item (or items) is greater than your exemptions, then that item (or items) may be sold and the funds used to pay your debts.

A chapter 7 case begins with the debtor filing a petition with the bankruptcy court serving the area where the individual lives or where the business debtor is organized or has its principal place of business or principal assets. In addition to the petition, the debtor must also file with the court: (1) schedules of assets and liabilities; (2) a schedule of current income and expenditures; (3) a statement of financial affairs; and (4) a schedule of executory contracts and unexpired leases. Debtors must also provide the assigned case trustee with a copy of the tax returns, deeds to real estate, pay stubs, bank statements and other documents. Individuals who file must file: a certificate of credit counseling and a copy of any debt repayment plan developed through credit counseling. A husband and wife may file a joint petition or individual petitions. Even if filing jointly, a husband and wife are subject to all the document filing requirements of individual debtors. If a joint petition is filed, only one filing fee is charged.

In order to complete the Official Bankruptcy Forms that make up the petition, statement of financial affairs, and schedules, the debtor must provide the following information:

A list of all creditors and the amount and nature of their claims;

The source, amount, and frequency of the debtor's income;

A list of all of the debtor's property; and

A detailed list of the debtor's monthly living expenses, i.e., food, clothing, shelter, utilities, taxes, transportation, medicine, etc.

Married individuals must gather this information for their spouse regardless of whether they are filing a joint petition, separate individual petitions, or even if only one spouse is filing. In a situation where only one spouse files, the income and expenses of the non-filing spouse are required so that the court, the trustee and creditors can evaluate the household's financial position.

Among the schedules that an individual debtor will file is a schedule of "exempt" property that allows an individual debtor to protect his/her property from the claims of creditors because it is exempt under bankruptcy law or under the laws of the debtor's home state.

Filing a petition under chapter 7 "automatically stays" (stops) most collection actions against the debtor or the debtor's property. But filing the petition does not stay certain types of actions, and the stay may be effective only for a short time in some situations. The stay arises by operation of law and requires no judicial action. As long as the stay is in effect, creditors generally may not initiate or continue lawsuits, wage garnishments, or even telephone calls demanding payments. The bankruptcy clerk gives notice of the bankruptcy case to all creditors whose names and addresses are provided by the debtor.

Between 21 and 40 days after the petition is filed, the case trustee will hold a meeting of creditors. During this meeting, the trustee puts the debtor under oath, and both the trustee and creditors may ask questions. The debtor must attend the meeting and answer questions regarding the debtor's financial affairs and property. If a husband and wife have filed a joint petition, they both must attend the creditors' meeting and answer questions.

It is important for the debtor to cooperate with the trustee and to provide any financial records or documents that the trustee requests. The Bankruptcy Code requires the trustee to ask the debtor questions at the meeting of creditors about the information provided to the bankruptcy court and to make the person aware of effects of the bankruptcy. Some trustees provide written information on these topics at or before the meeting to ensure that the debtor is aware of this information. In order to preserve their independent judgment, bankruptcy judges are prohibited from attending the meeting of creditors.

In order to accord the debtor complete relief, the Bankruptcy Code allows the debtor to convert a chapter 7 case to a case under chapter 11, 12, or 13 as long as the debtor is eligible to be a debtor under the other chapter. The debtor will not be permitted to convert the case repeatedly from one chapter to another.

### Alternatives to Chapter 7

You should be aware that there are several alternatives to chapter 7 relief. For example, debtors who are engaged in business, including corporations, partnerships, and sole proprietorships, may prefer to remain in business. Such debtors should consider filing a petition under chapter 11 of the Bankruptcy Code. Under chapter 11, the debtor may seek an adjustment of debts, either by reducing the debt or by extending the time for repayment, or may seek a more comprehensive reorganization. Sole proprietorships may also be eligible for relief under chapter 13 of the Bankruptcy Code.

In addition, individuals who have regular income may seek an adjustment of debts under chapter 13 of the Bankruptcy Code. A particular advantage of chapter 13 is that it provides individuals with an

opportunity to save their homes from foreclosure by allowing them to "catch up" past due payments through a payment plan.

If the debtor's "current monthly income" is more than the state median, the Bankruptcy Code requires application of a "means test" to determine whether the chapter 7 filing is presumptively abusive. One may rebut a presumption of abuse only by a showing of special circumstances that justify additional expenses or adjustments of current monthly income. Unless the debtor overcomes the presumption of abuse, the case will generally be converted to chapter 13 (with the debtor's consent) or will be dismissed.

Also be aware that out-of-court agreements with creditors or debt counseling services may provide an alternative to a bankruptcy filing