

BANKRUPTCY



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INTRODUCTION

11 USC §101, et seq.

Bankruptcy is a federal court proceeding that may allow a person with large debts to get a “fresh start” by freeing them from many or all of their debts. Bankruptcy can also benefit creditors by providing for an orderly means by which they may be paid all or a portion of what they are owed either through liquidation of the debtor’s property or through a court-approved repayment plan.

There are two types of consumer bankruptcy: **Chapter 7** and **Chapter 13**. In a Chapter 7 bankruptcy, the court sells off your property and uses that money to pay off your creditors. A Chapter 7 bankruptcy cancels all dischargeable debts. Keep in mind that there are non-dischargeable debts as well. A Chapter 13 bankruptcy, on the other hand, allows you to enter into a debt repayment plan. Under this chapter, you get to keep your property but must repay your creditors all or most of what is owed. A Chapter 13 bankruptcy stops interest from accruing on some debts and allows you to pay off your debts over a longer period of time. This plan also keeps creditors from suing you, garnishing your wages, or taking other legal

action to collect while you are making payments under the plan.

SHOULD I CONSIDER BANKRUPTCY?

Bankruptcy should only be considered as a method of last resort for handling your debts. It is very difficult to obtain credit once you have filed bankruptcy. It is better to work with your creditors to avoid bankruptcy rather than filing for bankruptcy. Another alternative to bankruptcy is consulting with a Consumer Credit Counseling Service which will assist you in finding a way to pay your debts and will help negotiate with your creditors. This is a non-profit service that charges a modest fee to assist you.

In addition, bankruptcy is not free. The court charges a filing fee, and your attorney will charge for his or her services. The attorney will require advance payment. Otherwise, he or she becomes a creditor as well.

WILL BANKRUPTCY AFFECT MY MILITARY CAREER?

The Air Force would never discipline you merely because you filed for bankruptcy. However if the reason that you are filing is due to “financial irresponsibility,” then you

may be subject to discipline for being financially irresponsible. In addition, filing for bankruptcy could impact your security clearance if you have one, or could affect your ability to obtain one.

WHAT IS THE PROCESS INVOLVED IN FILING FOR BANKRUPTCY?

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The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) requires people to get credit counseling from a government approved organization before they file (with limited exceptions). After filing, the bankruptcy court will have control over the proceedings regardless of where the member's property or creditors are physically located.

Once a bankruptcy petition is filed, an automatic "stay" takes effect and protects the debtor and his property from certain creditors' actions. This means that with regard to all debts covered by the bankruptcy, creditors may not take any action to collect payment nor repossess any property which is collateral for a debt. A stay allows for the orderly administration of the bankruptcy case, but it is conditioned on many circumstances. Filing bankruptcy will not stay acts to collect back support or debts to creditors not listed. Landlords are free to complete evictions, even when the tenant-debtors are paying rent.

WILL BANKRUPTCY CANCEL ALL OF MY DEBTS?

No. It does not cancel items such as alimony or child support, state or federal taxes, federally guaranteed student loans, and any debts that you either failed to list in your bankruptcy petition or incurred after filing the

bankruptcy petition. In addition, bankruptcy will not relieve you of damages resulting from operation of a motor vehicle while legally intoxicated or debts for fraud, embezzlement or larceny.

If you are married and your debts arose during the marriage, both spouses need to file bankruptcy or all the debts will be transferred to the other spouse.

EXEMPT PROPERTY IN NEBRASKA

If you file for bankruptcy under Chapter 7, the court will LIQUIDATE (that is "sell") all of your property and then pay your creditors with the proceeds. Nebraska does, however, exempt certain property thereby not allowing the court to sell it.

CONCLUSION

If you realize that you have no other alternative to filing for bankruptcy, you should consult a civilian attorney who is competent in bankruptcy proceedings. Legal Assistance attorneys can give you general advice but cannot represent you in court or prepare any court documents for you. If you would like more information, you can access the Federal Judiciary website at <http://www.uscourts.gov/bankruptcycourts/bankruptcybasics.html> and the United States Bankruptcy Court for the District of Nebraska publishes an online information packet you can access at <http://www.neb.uscourts.gov/pdf/prose.pdf>.

*The information in this handout is general in nature and is subject to changes. It is not to be used as a substitute for legal advice from an attorney regarding individual situations.

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