

Summary of Bankruptcy Laws for Individuals

When individuals are not able to pay their creditors, they may seek the protection of the federal bankruptcy laws. According to Congress, the bankruptcy is intended to give the individual creditors a "fresh start" to straighten out some of their credit issues.

The main reasons individuals file for bankruptcy are medical bills and divorce, or some catastrophic event, such as the loss of one's job.

There are kinds of bankruptcy for companies, but for individuals there are two main choices: (1) Chapter 7, or "straight bankruptcy"; and (2) Chapter 13, or "wage earners plan".

Chapter 7

If a debtor has no real ability to make payments towards one's creditors, a Chapter 7 allows the debtor to discharge, or wipe out, most of the debtor's unsecured debts. (For example, credit card debts.) Other debts, such as claims of creditors who have a lien on your house or a lien on your vehicle, must be repaid or those properties can be sold to pay the creditors.

To give debtors a fresh start, the law provides certain exemptions to debtors. The law rightly reasons that you cannot have a fresh start if you do not have just a few basic items of property with which to make a fresh start, what you might call "the shirt on your back". Debtors can exempt, or protect, certain dollar amounts of the value of a car, a home, clothing, tools of the trade, household furnishings, and certain other property.

There are certain debts that are not discharged in bankruptcy such as certain taxes, child support, alimony, fraudulent debts, criminal restitution, student loans, and other obligations arising out of a marital property distribution.

If a debtor has a certain level of income, the law reasons that the debtor is able to pay something on the dollar towards one's unsecured debts. A determination has to be made based on a formula about whether or not the debtor has to file a Chapter 13 wage earner plan and pay something on the dollar to ones unsecured claims, or file a Chapter 7.

Chapter 13

Chapter 13, commonly called a "wage earners" plan, is different. Rather than pay off one's unsecured debts with no payment, the debtor will be required to pay part of future income over a period of time, which typically runs from 36 – 60 months (3 – 5 years).

During the Chapter 13 proceeding, creditors cannot generally proceed to collect their debts from the debtor without permission of the bankruptcy court. Also, someone in a chapter 13 is not allowed to use credit during this bankruptcy without court approval.

A Chapter 13 is often filed when a debtor is behind on mortgage payments, or payments on a vehicle. The law provides the debtor a reasonable amount of time to cure, or make up, the back payments.

The debtor must make monthly payments and continue to follow the instructions of the Chapter 13 trustee, which is an individual appointed by the court to monitor the plan. When the plan is successfully completed, the debts listed in the original petition are discharged; however, there are certain debts which continue to be owed, such as mortgage debts, child support, alimony, and others.

Individuals should not consider bankruptcy lightly. However, the overwhelming majority of individuals who seek the protection of the bankruptcy court are good, honest, hard-working individuals who have difficult circumstances thrust upon them by causes largely beyond their control, such as unpaid medical bills.

Before an individual should consider filing bankruptcy, they should consider contacting a reputable credit counselor, such as Consumer Credit Counseling Service of Forsyth County, a non-profit organization (336-896-1191) to discuss if bankruptcy may be avoided.

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We help people file for bankruptcy relief under the Bankruptcy Code.