

## **BANKRUPTCY GENERALLY**

Bankruptcy can be a very useful tool in rehabilitating a person's financial situation. A Chapter 7 or Chapter 13 Petition may be filed.

### **DO YOU GIVE UP ALL YOUR PROPERTY?**

No! 98% of all people in bankruptcy lose none of their property. Both Federal and State law provide rather generous lists of things you can keep. Under both, you can keep your clothing and your furniture. State law permits an individual to keep up to \$75,000 in equity in his or her home (\$150,000 if a husband and wife file together.) (Equity in your home is what you could sell your home for, minus your mortgage balances.) There are additional exemptions for specific assets. You and your bankruptcy attorney will work together to list and protect your property.

### **WHAT ABOUT LIENS ON PERSONAL PROPERTY?**

In a Chapter 7 Bankruptcy, if you pledged your furniture you already owned as security for a loan, we can wipe out the lien entirely. If you pledged a car or bought the furniture with the loan, the lien remains, but we'll work out a repayment plan for you. In a Chapter 13, the Bankruptcy Court will be paying creditors. The amount required to be paid is based on a number of things.

### **WHAT HAPPENS TO YOUR CREDIT?**

Some people think that if they file bankruptcy, they cannot get a new loan for seven years. This is not true. A creditor can give you a new loan the day after you file your Petition, if the creditor wants to.

Realistically, you should only compare your credit situation after filing bankruptcy with what it is now. For practical purpose, your credit is often considered improved upon filing bankruptcy, as your budget will be able to handle a new loan, and your creditors know that you cannot file a Chapter 7 again for eight years. Of course, each creditor makes up its own mind on whether it will extend credit to you or not.

### **WHAT IS A CHAPTER 7?**

Most people in bankruptcy file a Chapter 7 Petition. This immediately wipes out most of your debts. This includes even loans secured by a car or home if you don't want to keep the collateral. (If you want to keep the collateral, and are current on the payments, you will simply continue to make the contract payments.) Certain debts, like taxes, child support and student loans are not wiped out. You may file a Chapter 7 Petition every eight years.

### **WHAT IS A CHAPTER 13?**

Chapter 13 is quite different, as it is a repayment Plan. A Chapter 13 can be filed by anyone who has a regular source of income, whether from wages, AFDC payments, unemployment compensation, or earnings from their own small business. There must be income in order to make the required payments.



In preparing the Plan, the person's total debts are computed (not including home mortgage payments that are not yet delinquent) and a Plan is proposed to pay the debts over a 3-5 year period. Unsecured debts (creditors having no lien against your property) usually are not paid in full. Under some circumstances, the Bankruptcy Court will allow a Chapter 13 Plan that pays nothing, or a very small percentage of the unsecured claims. Once the Chapter 13 Plan has been completed, and a Discharge is issued by the Bankruptcy Court, the unsecured creditors cannot look to you for any further payment.

If you are behind on your mortgage payments or real estate taxes, a Chapter 13 will allow you to pay the mortgage delinquency over time through the Chapter 13. While you are in the Chapter 13, you must also make your regular monthly mortgage payments and must make them on time.

If you purchased a vehicle within the 910 days of the filing date, you will have to pay the loan in full through the Chapter 13, but the interest rate can usually be substantially reduced. If you bought the vehicle more than 910 days before the filing date, the amount you pay is limited to the current retail value; again the interest can be reduced.

A Chapter 13 Plan is a very useful device in saving a home or car if you have fallen behind in payments. For example, suppose you are 10 months behind on your mortgage payments of \$717 per month, and that the savings and loan has foreclosed on your home and is going to sell it at public auction in two weeks. By filing the Chapter 13, the savings and loan is prohibited from conducting the auction and you now will repay the \$7,170 through the Plan. (Of course, you will also have to start making your regular \$717 per month payments as well.) If you do not desire to keep the house, a Chapter can buy you some time to sell it, pay the mortgage from the sale, and perhaps walk away with a profit. The Chapter 13 Plan could then be dismissed.

### **WHY DO A CHAPTER 13 INSTEAD OF 7?**

Chapter 7 will not help in all situations. A Chapter 13 can be used to pay delinquent income taxes, stop home foreclosures or pay student loans. If you were assigned debts in a divorce, you may have to file a Chapter 13. Chapter 13 is always available, even if you filed a Chapter 7 less than eight years ago. Individuals with higher than the allowed median income (based on the number of people in the household), can be forced to file a Chapter 13 and repay creditors some portion of what is owed. There is a further complicated calculation to determine who is required to file a Chapter 13 rather than a Chapter 7, even if the income is higher than median.

### **WHAT BASICALLY HAPPENS?**

When your Chapter 7 or Chapter 13 Petition is filed, the Federal Court in Milwaukee will issue an Order (called a Stay) prohibiting all of your creditors from suing you, garnishing your wages or bank accounts, foreclosing on your property, writing you nasty letters, or calling you.

For Chapter 7, only one brief, informal hearing is necessary, with the Trustee asking a few questions to verify that the Petition information is correct. For Chapter 13s, and there is a discussion about the feasibility of the Plan. If the Plan is approved, the Trustee makes payments to your creditors from the money received from you.

Attorney Michelson will represent you at the bankruptcy hearing. Generally, Chapter 7 hearings are held in Kenosha County and the Chapter 13 hearings are held in Racine County.