

# **Consumer Bankruptcy in Florida**





## **SOME INFORMATION ABOUT BANKRUPTCY**

People who are having trouble paying their debts sometimes consider bankruptcy as a strategy for resolving this situation.

An individual, called a debtor, usually files bankruptcy to obtain a discharge, which will wipe out his or her debts so that they will not have to be paid. Once the bankruptcy begins, creditors cannot try to collect debts from the bankruptcy debtor or sue the debtor to obtain a judgment without obtaining the bankruptcy court's permission. With a few exceptions, the creditors have no claim on the debtor's future income or future assets.

## **ALTERNATIVES TO BANKRUPTCY**

Bankruptcy is not the only method of dealing with too much debt. In some situations another way might be more advantageous to the debtor than filing bankruptcy. Such alternatives may include an out-of-court settlement with creditors, reduction of payments to creditors, attaining help from a consumer credit counseling service, consolidating debts, or payment of debts by sale of assets or borrowing on assets. However, these methods require some cooperation from creditors, and the chances of success are greater if the debtor attempts these alternatives soon after financial difficulties begin.

## **TYPES OF BANKRUPTCY**

There are two main types of bankruptcy cases generally used by most consumers. These are referred to by their chapter number in the Bankruptcy Code. Determining which type of Bankruptcy to file is based upon numerous factors and analysis, including but not limited to amount of income, amount of assets, amount of debts, types of arrearages and goals of the debtor.

**Chapter 7:** This is a liquidating bankruptcy, the most common bankruptcy case. In return for having debts discharged, the debtor must turn over to the bankruptcy trustee all property except for certain assets which applicable state or federal law allows the debtor to keep as exempt. The trustee sells the property and

distributes the proceeds to the creditors according to priorities established by law. Very often there is not enough money to pay for anything more than the costs of administration, and the creditors will receive nothing. The principal advantage of Chapter 7 is that the debtor emerges from bankruptcy without any future obligations on his or her discharged debts.

**Chapter 13:** This case often used by individuals who want to catch up past due mortgage or car loan payments and keep their assets. In Chapter 13, the debtor must propose in good faith to pay all or part of the debts from future income over a period of time ranging from three to five years. If the court approves the plan of payment, the debts may be settled in this manner, even if the creditors are not willing to go along with the plan. If the debtor makes the payments as required, he or she will not have to surrender property to the trustee.

Using a Chapter 13 can be strategic for a debtor as compared to a Chapter 7 bankruptcy. Some of the debts not discharged in a Chapter 7 will be discharged once the debtor completes a Chapter 13 plan. Also, the debtor can pay most non-dischargeable federal taxes over the term of the Chapter 13 plan. However, Chapter 13 can only be used by an individual debtor, only if the total debts owed are less than certain limits for secured and unsecured debts. An individual engaged in business not as a corporation might use Chapter 13 to pay debts or settle them over a period of time while he or she continues to own and operate the business. Generally, businesses and very high debt or asset individuals may need to look to other Chapters of the bankruptcy code for protection.

## **GENERAL INFORMATION**

Generally, an individual does not necessarily lose their home or car in a bankruptcy. However, bankruptcy eliminates debt and does not generally affect creditors' liens on collateral, such as a mortgage on a home or a car loan. Judgment liens and some liens on personal property, called "non-purchase money security interests," may be avoided if they are liens on exempt property. If a debtor wants to keep his or her house, generally the debtor must continue the payments on the mortgage. If the debtor wants to

keep a car which is liened, he or she must likewise continue the payments. A debtor facing foreclosure on his or her home may use Chapter 13 to repay past due payments and other costs, while also making the regular mortgage payments, and keep the home. In a Chapter 7 liquidating bankruptcy, certain property can be “redeemed” from a lien by an appropriate proceeding in the bankruptcy, which would require paying to the lien holder the market value of the property.

If a creditor or the trustee objects to a bankruptcy, a debtor may be denied a discharge and continue to owe the debts as if the bankruptcy had never been filed. Some of the reasons for being denied a discharge are fraudulent transfer of an asset to keep it away from creditors or the bankruptcy trustee, concealment of assets, or disobeying or making a false statement to the court. Such acts may also constitute federal crimes for which the debtor can be fined or imprisoned.

Certain types of debts, such as child support, alimony, some federal income taxes, and all employer withholding taxes cannot be discharged in bankruptcy. Generally, student loans cannot be discharged. The debtor’s wrongful conduct may make some debts non-dischargeable in a liquidation bankruptcy, such as incurring credit card charges when the debtor had no intent or ability to repay, or obtaining loans using false financial information.

## **HOW DO I FILE A BANKRUPTCY PETITION?**

A bankruptcy case is started by filing a petition including various supporting schedules of the debts and assets with the Bankruptcy Court in the federal judicial district and division where the debtor resides. There are filing fees payable to the court associated with filing bankruptcy. If the debtor is filing a Chapter 7 or 13, the debtor must first obtain a certification that he or she received credit counseling to be eligible to file a bankruptcy petition. The petition contains a request for relief under one of the chapters of the Bankruptcy Code. A debtor must file a statement regarding various financial matters and disclose all creditors and assets. A debtor is required to appear at a meeting, called a 341 meeting, conducted by either a trustee or the United States Trustee, during which creditors may ask questions regarding the debtor’s finances, assets, and liabilities. Depending on the chapter in which the

bankruptcy is filed and the complexity of the case, the debtor may also be required to appear at hearings before the bankruptcy judge. If the debtor's debt is primarily consumer debt, he or she must also complete a means test calculation (Official Form B22C).

## **DO I NEED A LAWYER?**

As in any court, individuals have a right to represent themselves before the Bankruptcy Court. However, bankruptcy is a complex area and involves many considerations, including whether to file, the election of the appropriate chapter, the use of exemptions, understanding all of the protections of the Bankruptcy Code and using them to the debtor's advantage. The right decision for you depends on an evaluation of your family status, your assets, your obligations, and other factors. It is a very serious step that could affect you for the rest of your life. It is possible in a bankruptcy that a debtor will lose all assets and still come out owing all of his or her debts. A lawyer can explain to you how the process works and can help you reach an intelligent decision.

Some debtors use non-lawyer bankruptcy petition preparers or filing services to complete the schedules and documents which must be filed with the bankruptcy petition. While this may cost less initially than consulting an attorney, these non-lawyer services by law cannot give legal advice before or after the filing, and cannot represent the debtor in the Bankruptcy Court.

If you are contemplating a Chapter 7 or Chapter 13 case, then you need to consider hiring an attorney. Certain complexities in the law make it extremely difficult for a debtor to successfully conclude a Chapter 13 case without the assistance of an attorney.

A corporation cannot represent itself in a bankruptcy case and must be represented by an attorney.

## **WHAT ABOUT MY CREDIT RATING?**

The bankruptcy filing is picked up and noted by the commercial credit reporting companies. Federal law limits the length of time that this information may be carried on a report. Today, the limit on reporting bankruptcy filing is 10 years. Also, the law prevents certain governmental units and agencies from discriminating against persons who have filed bankruptcy. Again, a

lawyer can give you guidance in this area.

After filing bankruptcy, some people have found that if they timely make the payments they are left with, such as the car, house, rent or utility payments, then they can begin to re-establish their credit. However, individual credit ratings are based on overall credit history, as well as income and assets, and it may be harder for some people to re-establish a good credit rating than it is for others.

## HOW DO I FIND A LAWYER?

If you need a lawyer and don't know how to find one, call your county's local bar association and inquire what referral services are available. Many areas in Florida have lawyer referral services listed under "attorney" or "information and referral services" in the yellow pages of the telephone book. This service will give you an appointment with a lawyer for a nominal fee.

If there is no lawyer referral service in your city, the statewide Florida Bar Lawyer Referral service can locate a lawyer for you. You can call this service, toll-free, at 1-800-342-8011. The statewide service, which operates only in cities where there is no local program, will refer you to an attorney for an initial one-half hour consultation for a reduced fee.

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