



MOUNTAIN POST LEGAL BRIEF

A Preventive Law Service of The Office of the Staff Judge Advocate

Headquarters, Fort Carson

Keeping You Informed On Personal Legal Affairs



BANKRUPTCY MATTERS

Consider these questions and answers to determine whether filing for bankruptcy is in your long-term best interest.

Q: WHAT IS THE MAIN PURPOSE OF FEDERAL BANKRUPTCY LAW?

A: Bankruptcy has a wide variety of purposes, one of which is to relieve an honest debtor of certain debts, thereby providing an opportunity for a *fresh start*. Filing for bankruptcy is not necessarily a “free ride” to dispose of debt — there are long term consequences which are discussed below. Bankruptcy also benefits creditors by allowing them an opportunity to possibly collect a portion of the debtor’s debt once bankruptcy is filed.

Q: WHAT ARE THE DIFFERENT TYPES OF BANKRUPTCIES?

A: The two types of bankruptcies that individual debtors are eligible for are a Chapter 7 bankruptcy and a Chapter 13 bankruptcy under the Bankruptcy Code.

Chapter 7 bankruptcy is often referred to as a “liquidation” bankruptcy. In a Chapter 7 case, the Bankruptcy Court appoints a trustee, and the trustee is required to collect all non-exempt property from the debtor’s estate, reduce it to cash, and pay the debtor’s creditors in a prescribed manner. After this process is complete, the debtor will receive a discharge from the Court, resulting in the debtor being “debt-free.” Thus, the term “liquidation” refers to the process of reducing a debtor’s estate to cash and distributing the proceeds to the creditors in order to satisfy any existing debt. Not all of a debtor’s property is available for liquidation, as some of the property will be exempt. Exempt property will be discussed in more detail below.

Chapter 13 bankruptcy, referred to as “reorganization” bankruptcy, is designed for a debtor who has a regular source of income, and who desires to repay all or a percentage of his or her debts pursuant to a plan that the debtor proposes to the Bankruptcy Court. Chapter 13 is different than a Chapter 7, inasmuch as the Chapter 13 debtor usually remains in possession of the property of the estate and makes payments to creditors, through the Chapter 13 trustee, based on anticipated income over the life of the Chapter 13 plan.

Q: WHO IS ELIGIBLE TO FILE A CHAPTER 7 AND CHAPTER 13 BANKRUPTCIES?

A: The bankruptcy code applies to individuals, partnerships and corporations that reside or have domicile, a place of business, or property in the United States. Certain procedures must be followed in order for the debtor to be eligible for either Chapter 7 or 13. First, the debtor must take an approved financial counseling course 6 months prior to filing. Second, the debtor must compare his/her monthly income with the median income of the state in which he/she lives. Generally, if the debtor’s monthly income is below or slightly above the median, the debtor is eligible to file for Chapter 7 bankruptcy. If the debtor’s monthly income is above the median, the debtor must file for Chapter 13. Finally, the debtor must take an approved financial management course in order to receive a discharge.

Q: WHAT IS “PROPERTY OF THE BANKRUPTCY ESTATE?”

A: The creation of the bankruptcy estate occurs automatically upon the filing of a bankruptcy petition. The bankruptcy estate, often referred to as section 541 property, includes all the debtor’s property, real or personal, tangible or intangible, at the time the petition is filed. This property is the subject matter of the estate and may be available for disposition to creditors. Remember, however, that certain property may be excluded from the bankruptcy estate, and, therefore, it is important to consult an attorney regarding these issues.

Q: WHAT PROPERTY EXEMPTIONS MAY I CLAIM WHEN I FILE FOR BANKRUPTCY?

A: In most circumstances, an individual debtor does not lose all assets as a result of bankruptcy. A debtor is entitled to certain exemptions which allow the debtor to keep property of the estate. These exemptions will vary depending on the state in which the debtor lives.

Q: ARE ANY DEBTS NON-DISCHARGEABLE?

A: A discharge is when the debtor's debts are expunged at the conclusion of the bankruptcy case. However, certain debts of an individual debtor are non-dischargeable and, therefore, survive the bankruptcy. There are numerous debts that may be non-dischargeable, but some of the most prevalent are: **alimony, child support, student loans** (with some exceptions), certain fines and penalties and certain state court judgments, among others.

Q: HOW MANY TIMES MAY I FILE FOR BANKRUPTCY?

A: A debtor may file a Chapter 7 bankruptcy petition again no sooner than six years after he/she was discharged from a previous Chapter 7 filing. This rule applies to people who have been granted a discharge under Chapter 13 bankruptcy and wish to then file Chapter 7 bankruptcy. It must be noted that if an individual tried filing bankruptcy over and over again, creditors might allege that it was a pattern that showed a preconceived plan to defraud creditors, which, of course, is a violation of criminal law.

Q: HOW WILL FILING FOR BANKRUPTCY AFFECT MY CREDIT?

A: A bankruptcy filing appears on the debtor's credit report for a period of ten years. This can prevent the debtor from obtaining credit, such as certain personal loans, credit cards and private student loans, just to name a few. For that reason, one must treat bankruptcy as an absolute last resort, because the consequences of bankruptcy last a long time.

Q: ARE THERE ANY ALTERNATIVES TO BANKRUPTCY?

A: Yes. It is always a good idea to contact a local consumer credit or consolidation agency before filing for bankruptcy. Many times, these agencies can contact creditors and work out reduced interest rates or payment plans that fit within a debtor's budget. However, please note that a debtor will still be required to pay the debts in full. The agencies merely attempt to provide a means by which the burden on the debtor is eased while payments are still being made.

Q: DOES MY SPOUSE HAVE TO FILE, AND WHAT IS THE EFFECT IF HE/SHE DOES OR DOES NOT FILE?

A: A debtor's spouse does not have to file with the debtor if the debts are solely in the debtor's name. If any of the debts are also in the spouse's name, the spouse must file for that debt to qualify for a discharge. Generally, debts will only be in the spouses name if he/she personally signs the agreement or contract. In certain states, called "community property" states, either spouse can sign an agreement for a debt and both the debtor and the spouse are obligated to pay that debt. Of course, if the spouse does file, his or her credit will be affected in the same manner.

Q: WILL FILING FOR BANKRUPTCY AFFECT MY SECURITY CLEARANCE?

A: Yes. Filing for bankruptcy, under most circumstances, may prevent you from keeping or obtaining a security clearance. Pursuant to AR 380-67, the criteria for determining eligibility for a security clearance includes "excessive indebtedness, recurring financial difficulties, or unexplained affluence." Therefore, filing for bankruptcy is one factor that may be considered in deciding whether a security clearance will be issued. For more information regarding this issue, please contact a legal assistance attorney or the security manager.

Q: WHAT IF I HAVE OTHER QUESTIONS?

A: Visit <https://www.cob.uscourts.gov/> and contact the Fort Carson Legal Assistance Division to arrange a consultation with a legal assistance attorney.

Consultation with Army attorneys is free to eligible clients. If you have questions or need help with legal problems, call the Fort Carson Legal Assistance Office at 719-526-5572/5573 or come by the office (Building 6222) Monday-Friday from 9 a.m. to 4 p.m. Appointments are made on the last duty day of every week, you can call or walk-in to schedule an appointment.

MOUNTAIN POST LEGAL BRIEF is one of a series of informative handouts from the Fort Carson Legal Assistance Division containing general information on topics that legal assistance attorneys frequently advise on. Information provided is general in nature and does not constitute legal advice. Consult an attorney for specific legal advice for your particular situation. You may schedule a legal assistance appointment by calling the Legal Assistance Division at 719-526-5572.