

CHAPTER 7 BANKRUPTCY

In Chapter 7 which some people call "straight bankruptcy" but is more accurately called a "liquidation" case, you essentially give up all of your assets and in return get out of all of your debts. This is a gross oversimplification of course but it illustrates the difference between Chapter 7 and Chapter 13. A Chapter 13 case is designed for a wage earner who has the means to pay at least some amount of money toward his/her debts. It provides for a debtor to create a Plan to repay part of his/her debts back over a period of time, usually 36 or 60 months depending on the debtor's situation.

Of course you do not give up "all of your assets" in Chapter 7. Certain assets are exempt which means that you get to keep them. For example, people in California who do not own a homestead (or if their home has no equity) can claim "wild card" exemptions of just over \$23,000. This means that the first \$23,000 of your assets cannot be taken in Chapter 7 which does not include retirement accounts. Most of our clients do not have to worry about giving up anything in Chapter 7.

Similarly you are not relieved of all of your debts either. Some debts such as student loans can almost never be discharged. Others such as income taxes can be discharged under limited circumstances. Debts that have arisen due to fraud or intentional tort (for example, O.J. Simpson's civil judgment) are generally nondischargeable.

A trustee will be appointed to your case. The trustee is in charge of your "bankruptcy estate" and technically controls all of your assets while you are in bankruptcy. The trustee will determine whether you have any non-exempt assets and if you do, will liquidate those assets and distribute the proceeds to your creditors.

A discharge is an order entered by a U.S. Bankruptcy Court Judge that forever prevents creditors from taking any action to collect on your personal liabilities existing at the time you filed for bankruptcy. The discharge is the order that you want and is the reason why you file bankruptcy. In most cases it takes 4 to 5 months from the time of filing until you receive your discharge. The Judge will issue a discharge after the Court determines that you qualify for a Chapter 7 discharge. Usually you do not have to appear in front of the Judge in Chapter 7.

Certain requirements must be met for filing in Chapter 7. You may not be permitted to file under Chapter 7 if you have enough money after meeting expenses to repay your unsecured creditors. In that case a Chapter 13 bankruptcy may be appropriate. Other requirements exist; please contact an attorney for additional details.

Most Chapter 7 clients do not pay or give up anything in liquidation because they do not have anything to begin with. When clients do have assets that they want to keep through bankruptcy and those assets cannot fit into an exemption, we usually encourage those clients to consider Chapter 13.

In Chapter 7, you are generally allowed to keep assets that secure a loan (like for a car or home) provided that you are current on the payments. You will have to surrender or catch up the payments on a secured asset if you want to keep it in Chapter 7.

Chapter 7 is generally the simplest and most streamlined form of bankruptcy that consumers might consider. It takes less time and costs less in attorney's fees, however Chapter 7 has limitations. Chapter 7 will not be right for you if you earn too much money, have a demonstrated ability to repay your debts (even if just a small amount), or if you are behind on your home or car payment(s) and want to keep it. If you want to make use of an option in bankruptcy such as redemption (repaying the fair market value of a vehicle or home instead of what you owe), you will definitely want to examine the benefits of repaying over 3 or 5 years in Chapter 13 before you consider filing Chapter 7.

Chapter 7 is the best alternative for many people. Although you can file Chapter 7 without an attorney and the forms are readily available, we strongly discourage this practice. It is easy to make a mistake in your disclosures or exemption elections which cost much more than the lawyer would have cost in the first place.