



# LEGAL BRIEFS

From the Fort Knox Legal Assistance Office

## BANKRUPTCY

### WHAT IS BANKRUPTCY?

Bankruptcy is a legal action in which a person who cannot pay his or her bills can get a fresh financial start. The right to file for bankruptcy is provided for by federal law, and all bankruptcy cases are handled in federal court.

A person who files for bankruptcy is called a Debtor. By filing for bankruptcy, you may:

- 1) Get most or all of your bills wiped out (Discharged);
- 2) Get to keep most or all of your property which otherwise might have been lost to creditors (people to whom money is owed);
- 3) Get extra time to pay bills, if you have regular income;
- 4) Stop wage garnishment, debt collection harassment, and similar creditor actions to collect a debt;
- 5) Restore or prevent termination of utility service.

There are two kinds of bankruptcies for individuals: straight bankruptcy (Chapter 7) and Chapter 13.

### CHAPTER 7 - STRAIGHT BANKRUPTCY

In a straight bankruptcy under Chapter 7, a debtor files a petition asking the court to discharge his or her debts. The basic idea in a Chapter 7 bankruptcy is to wipe out (discharge) your debts in exchange for you giving up your property except for EXEMPT property which the law allows you to keep. In many cases, much or all of your property may be exempt. Property which is not exempt is sold and the money distributed to creditors.

### CHAPTER 13 BANKRUPTCY

In a Chapter 13 case, you, the debtor, file a PLAN showing how you will pay off some of your past-due and current debts over an extended period, normally three years. This is different from Chapter 7 bankruptcy, where you ask the court to wipe out (discharge) your debts.

The most important thing about a Chapter 13 case is that it will allow you to keep valuable property - especially your home - which might otherwise be lost.

You should consider filing a Chapter 13 plan if you:

- 1) Own your home and are in danger of losing it because of money problems;
- 2) Are behind on debt payments, but can catch up if given some time;
- 3) Have regular income (including Government benefits such as social security or public assistance);
- 4) Have filed a Chapter 7 within the last six years.

### WHAT DOES IT COST TO FILE FOR BANKRUPTCY?

Filing fees with the court are currently \$175.00. These must be paid to the clerk of the court at the time of filing. Attorney fees for representing you throughout the case are in addition to the filing fee. The cost of representation is a matter between you and your civilian lawyer; however, a legal assistance attorney can provide you with a range of the prevailing attorney fees in the Fort Knox area.

### WHAT PROPERTY CAN YOU KEEP?

You can keep all property which the law says is EXEMPT from the claims of creditors. In Kentucky, the following exemptions, among others, apply:

- 1) \$3,000 in household goods;
- 2) \$5,000 in equity in your home (equity is the value of the property minus the amount you still owe on mortgages);
- 3) \$2,500 in equity in your car;
- 4) \$1,000 general exemption for any property;
- 5) Any amount in retirement accounts such as pensions and IRAs;
- 6) Your right to receive certain benefits such as social security, unemployment compensation, veterans' benefits, AFDC, workers compensation, and most other public assistance, regardless of the amount.

The amounts of the exemption are doubled when a married couple files together.

## SECURED CREDITORS

Some of your creditors may have a SECURITY INTEREST in your home, car, or personal property. This means that you gave the creditor a mortgage on your home, a lien on your car, or put your property up as collateral for a debt. If you don't make your payments on the debt, the creditor may be able to take and sell the home, the car, or the property.

There are several ways that you can keep collateral or mortgaged property after you file bankruptcy. One way is to agree to keep making your payments on the debt until it is paid in full. This is called reaffirming a debt.

If you put up your household goods as collateral for a personal or consolidation loan, you can usually keep your property without making any more payments on the debt.

Other creditors may not have any security interest in your property. Such creditors are called unsecured or general creditors. Secured creditors generally have greater rights to your property than unsecured creditors.

A creditor may have a security interest or other claim against property which you can claim as exempt. You may be able to keep this property in some situations.

### DOES BANKRUPTCY WIPE OUT ALL DEBTS?

Yes, except for:

- 1) Money owed for child support or alimony, fines, some taxes, and limited other kinds of debts;
- 2) Debts not listed on your bankruptcy petition;
- 3) Loans you got by knowingly giving false information to a creditor, who reasonably relied on it in making you the loan;
- 4) Debts resulting from "willful and malicious" harm;
- 5) Student loans owed to a school or Government body, except if:
  - the loan first became due more than seven years before the bankruptcy was filed or
  - payment would be an undue hardship.

### WILL I HAVE TO GO TO COURT?

In most bankruptcy cases, you only have to go to a proceeding called the "meeting of creditors" to meet with the bankruptcy trustee and any creditor who chooses to come. Most of the time, this meeting will be a very short and simple procedure where you are asked a few questions about your bankruptcy forms and your financial situation.

## DISCHARGE

If everything goes normally in a bankruptcy case, the final thing the court does is to grant you a DISCHARGE, which excuses you from paying all of

your debts (except possibly for the few already mentioned). The discharge order also forbids creditors from doing anything to try to collect a debt that has been discharged.

### WILL BANKRUPTCY AFFECT YOUR CREDIT?

There is no clear answer to this question. Unfortunately, if you are behind on your bills, your credit may already be bad. Bankruptcy will probably not make things any worse. The fact that you have filed a bankruptcy can appear on your credit record for ten years; however, because bankruptcy wipes out your old debts, you are likely to be in a better position to pay your current bills and you may be able to get new credit.

### OTHER INFORMATION

- Utility service. Public utility, such as an electric company, cannot refuse to provide or cut off service because you have filed for bankruptcy, however, the utility can require a deposit for future service.

- Discrimination. A Government agency cannot discriminate against you because you have filed for bankruptcy.

- Driver's license. If you lost your license solely because you couldn't pay court-ordered damages caused in an accident, bankruptcy will allow you to get your license back.

- Co-signers. If someone has co-signed a loan with you and you file for bankruptcy, the co-signer may have to pay your debt.

---

Remember: The law often changes. Each case is different. This pamphlet is meant to give you general information and not to give you specific legal advice.

If you have any questions concerning these matters, please call the Legal Assistance Office for an appointment at (502) 624-2771. Our hours of operation are Monday through Friday, 0800 - 1600. The Fort Knox Legal Assistance Office is located in Building 1310, Pike Hall (north of the post office on Knox Street).