

THE LEGAL ASSISTANCE OFFICES OF  
III CORPS, 1ST CAVALRY DIVISION, 4TH INFANTRY DIVISION (MECHANIZED)  
FORT HOOD, TEXAS 76544

BANKRUPTCY

I. INTRODUCTION

Bankruptcy is a legal proceeding in which individuals who cannot pay their bills can get a fresh financial start. The right to file for bankruptcy is provided by federal law, and all bankruptcy cases are handled in federal court. Filing bankruptcy immediately stops all of your creditors from seeking to collect debts from you, at least until your debts are sorted out according to the law. In a bankruptcy proceeding, the person filing the bankruptcy is known as the debtor.

A. What can a bankruptcy do for you?

Bankruptcy eliminates the legal obligation to pay most or all of your debts. This is called a “discharge” of debts. It is designed to give you a fresh financial start. A bankruptcy can also stop the foreclosure on your house or mobile home, catch up on missed payments, prevent repossession of property, stop some wage garnishments, and debt collection harassment.

B. What bankruptcy cannot do.

Bankruptcy does not automatically eliminate mortgages or “secured” creditors. A secured creditor is a creditor who has taken a security interest in the property in which they extended the loan or credit for. A bankruptcy, also, cannot discharge child support, alimony, some student loans, court restitution orders, criminal fines, debts not listed or scheduled by the debtor, debts from willful and malicious injury to another, some taxes, and debts incurred through false pretenses, fraud, or false financial statements. Also, bankruptcy protection is not extended to the co-signer on a debt. Therefore, even though you have discharged a debt, the creditor can still hold the co-signer responsible for the entire amount of the debt.

II. COMMON TYPES OF CONSUMER BANKRUPTCIES

A. **Chapter 7 (Straight Bankruptcy)**. Chapter 7 is known as a “straight” bankruptcy or “liquidation”. In a Chapter 7 bankruptcy, you file a petition with the court asking the court to discharge your debts. The basic idea in a Chapter 7 bankruptcy is for your debt to be discharged in exchange for you giving up property, except for “exempt” property which the law allows you to keep. However, in most cases a person is able to keep a majority of their property.

1. Exempt Property

(a) In a Chapter 7 bankruptcy, you can keep all property that the law says is “exempt” from the claims of creditors. You can choose between the exemptions allowed by state law or federal law. However, some states, Texas not included, do not recognize the federal exemptions. In these states, the debtor can only take advantage of those exemptions allowed by state law. Exemptions allow a debtor to

protect a certain amount of equity in property from creditors. The exemptions are applied towards the debtor's equity in the property. The most commonly used federal exemptions include:

- \$15,000 in equity in your home; the homestead exemption is applicable to interest in either real or personal property, and therefore it clearly includes mobile homes, houseboats, and so on.

- \$2,400 in equity in one motor vehicle

- \$400 in equity in any item of household furnishing, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments held primarily for the personal, family or household use of the debtor or the debtor's dependent. The aggregate value of all such items is \$8,000.

- \$1,000 worth of jewelry.

- \$1,500 worth of implements, professional books, or tools of the trade that belong to the debtor or a dependent of the debtor.

- \$800 in any property; the wild card exemption.

An example of the use of the exemptions is if you owned a \$50,000 house with a \$40,000 mortgage. You would apply your homestead exemption of \$15,000 against the \$10,000 worth of equity you have in the house. Thus, your \$10,000 interest would be protected from creditors. Since your ownership interest in the house is protected, there is nothing for a creditor to take a lien on, and thus you can keep your house.

(b) In a joint filing bankruptcy by a husband and wife, both spouses must choose the same exemption scheme, federal or state. If the spouses can not agree on which exemptions to choose, they are deemed to have chosen the federal exemptions. They also, however, have the option of filing two separate petitions, with each spouse electing the exemptions of his or her choice. Because the exemptions may be claimed by each debtor individually, a husband and wife filing a joint case are each entitled to the full exemption amounts for each category of property, effectively doubling the amounts for jointly held property. Even when a state has opted out of the federal exemptions, the state exemptions can probably be asserted separately by each debtor, since the Bankruptcy Code states that each debtor's exemptions must be treated separately.

(c) While exemptions allow you to keep property in a Chapter 7 bankruptcy, exemptions do not terminate the rights of a mortgage holder, car loan creditor, or other lien holder who has the right to take the property to cover the debt that you are behind on. There are several ways that a debtor may be able to keep his/her property. The debtor can agree to keep making payments on the debt until it is paid in full, or he/she can pay the creditor the amount that the property is worth.

## 2. Filing Fee

The fee for filing a Chapter 7 bankruptcy is \$175. The fee consists of a statutory filing fee of \$130 and other fees imposed by the courts. The fee for a husband and wife filing

jointly is the same as for an individual filing alone. The fee is paid at the time of filing the bankruptcy petition. The court will accept the petition without the fee, however, if it is accompanied by an application to pay the fee in installments over the next 120 days. The statute does not allow the \$130 filing fee to be waived. If the fee is not ultimately paid, or if the required forms are not filed, the case will be dismissed.

## B. Chapter 13 (Reorganization)

A Chapter 13 bankruptcy is known as a “reorganization” or “debt adjustment”. In a Chapter 13 bankruptcy, the debtor files a “plan” showing how he/she will pay off some or all of his/her past-due and current debts over a three to five year period. The most important thing about a Chapter 13 bankruptcy is that it will allow the debtor to keep valuable property- especially a home or car- which might otherwise be lost, if the debtor can make the payments which the bankruptcy law requires to be made to creditors. In most cases, these payments will be at least as much as the debtor’s regular monthly payments on his/her mortgage or car loan, with some extra payment to get caught up on any past due amounts.

### 1. Who can qualify for a Chapter 13?

To be eligible for a Chapter 13 the debtor must have income that is sufficiently stable and regular to enable him/her to make payments under a Chapter 13 plan. However, Chapter 13 is not available to debtors (or debtor couples) with over \$250,000 of noncontingent, liquidated, unsecured debts or over \$750,000 of noncontingent, liquidated, secured debts.

### 2. The Plan

a) In the plan, the debtor must state how they intend to pay his/her existing debts over the next three to five years. The debtor must begin making plan payments within thirty days after filing of the plan, unless the court orders otherwise. Failure to make payments within 30 days of the filing could be grounds for dismissal of the bankruptcy case. Once the debtor files his/her plan, there will be a meeting of the creditors of the estate to determine if the plan is acceptable to the creditors. Any creditor who disagrees with the debtor’s plan has the right to submit its own repayment plan.

b) The debtor has great flexibility in the development of the Chapter 13 plan. However, the plan must conform to the statutory requirements in the payment of certain types of debts. A successful Chapter 13 results in a court-approved debt reorganization plan that takes from three to five years to complete.

c) Chapter 13 provides the following advantages over a Chapter 7 bankruptcy: (1) temporary protection for codebtors; (2) the debtor, rather than the Bankruptcy Trustee, retains possession and control over most, or all, non-exempt property; (3) some debts not dischargeable under Chapter 7 are partially dischargeable under Chapter 13; (4) debtors ineligible for Chapter 7 might be eligible under Chapter 13; and (5) the negative effects on future credit are less severe. The major disadvantages are (1) it is lengthier and more expensive; and (2) it requires sufficient current income to make partial payments of at least some debts.

### 3. Filing Fee

The fee for filing a Chapter 13 bankruptcy is \$160. The fee is the same whether the petition is for an individual or joint bankruptcy. The fee is comprised of a statutory filing fee of \$130 and a \$30 noticing fee. The fee is paid at the time of filing of the bankruptcy petition. The court will accept the petition without the filing fee, however, if the petition is accompanied by an application to pay the fee in installments over the next 120 days. A court may extend the time period, for cause, to 180 days. However, waiver of the \$130 filing fee is not allowed by statute.

### III. THE AUTOMATIC STAY

A. Simply by filing a bankruptcy petition, a debtor brings to his/her aid an instrument of power- the automatic stay of the Bankruptcy Code. The automatic stay takes effect the moment a petition for bankruptcy is filed. The automatic stay stops all collection efforts, all harassment, and all foreclosure actions. It permits the debtor to attempt a repayment or reorganization, or simply to be relieved of the financial pressures that drove him/her into bankruptcy.

B. The automatic stay in a Chapter 7 bankruptcy guarantees the protection of the debtor's property or equity therein, both so it can be exempted to provide a fresh start and so nonexempt property can be fairly distributed to creditors. In a Chapter 13 bankruptcy, the stay ensures protection of property that may be necessary not only for the debtor's fresh start but also for the success of the debtor's plan. In a Chapter 13 bankruptcy, the automatic stay protection also extends to a codebtor.

C. The duration of the automatic stay can vary significantly depending upon the circumstances. The court has the ability to lift the stay on certain property while maintaining the stay against the rest of the property. As a practical matter, the stay usually is not lifted by the court in much less than 30 days; however, it may last the duration of the case, a matter of three to six months in a Chapter 7 case and up to five years in a Chapter 13 case.

D. An individual creditor may request that the court lift the stay on certain property connected to their debt. The creditor must file a motion with the court seeking relief from the stay. Reasons for a creditor to request that a stay be lifted is 1) if the debtor has no, or very little, equity in the property, and thus would have no right to keep the property once the bankruptcy was concluded, 2) the actions to be taken by the creditor would have no effect on the bankruptcy, such as the continuation of a child custody suit, 3) the creditor does not have adequate protection for their secured debt.

### IV. TRUSTEE

In every case under Chapter 7 and Chapter 13 of the Bankruptcy Code, a trustee is appointed. The trustee's basic role is to represent the interests of the unsecured creditors. An unsecured creditor is a creditor who has extended credit but does not hold a lien on any property to secure the payment of that credit. The duties of the trustee

include collecting property of the estate, invalidating certain transfers made by the debtor, objecting to a claim of exemption, objecting to discharge, liquidating any nonexempt property and distributing it to creditors with valid claims, and making a final accounting to the court.

## V. DISCHARGE

Ultimately, the principal goal of most bankruptcies is the discharge, which frees the debtor from personal liability on almost all debts. It is this clean slate that normally gives debtors the fresh start that bankruptcy is meant to provide. In a Chapter 7 case, a discharge order is usually entered a little over sixty days after the first date set for the meeting of creditors, assuming that no objection to discharge has been filed by that time. In a Chapter 13 case, the discharge is granted after the debtor completes payments under a confirmed plan or upon application by the debtor for a hardship discharge.

Bankruptcy is a very technical and complicated area. This Fact Sheet barely scrapes the surface—it is intended merely to provide some very general information. The importance of dealing with financial problems before they become overwhelming cannot be overemphasized. However, when bankruptcy becomes the only remaining option, it is critical that the debtor consult an experienced bankruptcy practitioner and provide complete and accurate information regarding all assets and liabilities.

FOR ADDITIONAL INFORMATION CONTACT THE LEGAL ASSISTANCE OFFICES ON FORT HOOD: III Corps, Building 1001, Room C224, 287-7901/3199; 1st Cavalry Division, Building 28000, Room 1155, 287-6060; 4th Infantry Division (Mech), Building 410, Room 175, 287-1850.