

Bankruptcy: A Fresh Start for Your Family

Compliments of:

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Introduction

Each year, more and more Americans are finding themselves overwhelmed by debt, interest payments on borrowed funds, and everyday expenses. Good hard working Americans find themselves forced to resort to credit to make ends meet. Job loss, illness, small business failures, the break-up of a marriage and other unexpected events make folks resort to trying to make ends meet through high interest credit. However, it is almost impossible to “borrow” your way out of your financial problems.

Bankruptcy is an honorable, legal way in which to discharge this debt. The United States’ Constitution provides that our Congress shall write bankruptcy laws that are available to help those who need debt relief. With the help of an experienced, knowledgeable bankruptcy lawyer, you can overcome your debt and be well on your way to a fresh start.

Types of Bankruptcy

Consumers and small businesses can choose two types of bankruptcy filings - Chapter 7 or Chapter 13. Our law firm advises that you attempt to file a Chapter 7 case which will allow you to discharge your debt and begin your fresh start in a matter of months.

Chapter 7 Bankruptcy

At our law firm, Chapter 7 is the most common type of bankruptcy used by consumers and small businesses. Chapter 7 eliminates virtually all of your personal liability for debts, including many debts owed to the IRS, while allowing you to keep all of your exempt assets. Unfortunately, student loans are not dischargeable in any bankruptcy case. The exemption laws available in Texas and under Federal law are very

generous and allow almost all Chapter 7 debtors to retain all of their assets while eliminating all of their debts. If you want to retain your home or your vehicles, you must pay the lender that loaned you the money to purchase those assets. However, virtually all your other debt is discharged, except student loans and some taxes.

A Chapter 7 discharge is only available every eight years.

Chapter 13 Bankruptcy

Chapter 13 is a type of bankruptcy in which the Debtor requests the Bankruptcy Court garnish his/her wages for three to five years in order to repay his/her debts. Wage garnishment is illegal in Texas under the Texas Constitution. However, you can ask a federal bankruptcy court to garnish your debt and that does not violate the Texas Constitution. Since wage garnishment is illegal in Texas, we very rarely recommend that a consumer file a Chapter 13 bankruptcy case. If you file a Chapter 13 bankruptcy case, you will actually be in a Chapter 13 bankruptcy case for three to five years with every one of your paychecks garnished during that three to five year period. The Waco Bankruptcy Court will also require that all of your income tax refunds be turned over to a Bankruptcy Trustee who will then receive a 10% commission from your refund and then pay the balance of your income tax refunds to your unsecured creditors. Many Texas families depend on income tax refunds in order to support their families, pay their property taxes and provide a “cushion” for hard financial times. If an attorney is suggesting that you file a Chapter 13 case, please let us give you a second opinion!

Requirements for Both Types of Bankruptcy

When an individual or business files a bankruptcy case, they are required to file Schedules and Statement of Financial Affairs, which are signed under the penalty of perjury. In these documents, which are filed with the federal Bankruptcy Court, the debtors list all of their assets and all of their liabilities. Even though the debtor must list all of their creditors under the penalty of perjury, debtors are allowed to repay any creditor that is listed on the bankruptcy schedules after the bankruptcy case is over. Those creditors are enjoined from attempting to collect from the debtor, but the debtor can repay any discharged debt. In fact, the debtor must repay the creditor who holds a mortgage on the home or a lien on the car if the debtor wants to retain that home or car. However, many individuals file bankruptcy in order to relieve themselves from the debt on a home or vehicle that they no longer want to retain. Those assets are surrendered to the creditor and the debt secured by those assets is discharged by the bankruptcy filing.

Individuals filing bankruptcy cases must complete a simple internet credit counseling course before the bankruptcy case is filed and a debt management course during the bankruptcy case.

Automatic Stay from Creditors

When a bankruptcy case is filed, an injunction or “Automatic Stay” is immediately invoked. This “Automatic Stay” stops lawsuits, garnishments, creditor calls, creditor letters, foreclosures and repossessions. It is a very powerful law that gives the debtor

filing the bankruptcy case time to either reorganize or discharge debts. If a creditor ignores the “automatic stay” and attempts to collect debt after the bankruptcy case is filed, that creditor can be fined or sanctioned. Virtually all creditors know of the serious ramifications that can occur if they violate the automatic stay by attempting to collect debt after the case is filed, and therefore very few creditors violate this powerful federal law. The filing of a bankruptcy case therefore offers welcome relief to a debtor who is being harassed by creditor calls and letters and is facing foreclosure or repossession.

Lawsuits Filed by Credit Card Companies

Credit card companies are becoming more and more aggressive. If you cannot pay a credit card, many times they will file a lawsuit, obtain a judgment and file an abstract of judgment in the county deed records, in order to place a cloud on the title of your home. A bankruptcy filing stops those lawsuits. Make sure your attorney obtains a bankruptcy court order removing those judgments from the county deed records so that your home remains clear from credit card judgments.

Pay Day Lenders

Many individuals facing financial difficulties resort to obtaining “pay day” loans and title loans. These lenders scare consumers by telling them that they will go to jail if they do not pay a pay day loan or that pay day loans are “exempt” from bankruptcy. This is absolutely not true. Pay day loans are dischargeable in bankruptcy cases. Title loans are also dischargeable.

Obtaining Credit After Bankruptcy

Many people think that they will never be able to finance a car or get a credit

card if they file a bankruptcy case. This is absolutely not true. You are actually a better credit risk after you have filed a Chapter 7 bankruptcy case because you have discharged all of your debt (except your student loans and some taxes) and you cannot file another Chapter 7 bankruptcy case for another eight years. Some law firms have a relationship with local car lenders who actually finance Chapter 7 clients with late model cars while their Chapter 7 cases are pending. These clients discharge virtually all of their debt and re-establish their credit while their case is pending by obtaining a car loan during the Chapter 7 case. Your attorney should run a credit check on you with the three major credit reporting agencies before filing your bankruptcy case and notify those credit reporting agencies after the discharge is received. Doing so will make sure that all derogatory remarks on the credit report are discharged in the bankruptcy case, allowing you to begin to restore your credit with a car loan obtained during your bankruptcy case.

Means Test

In 2005, Congress amended the Bankruptcy Code by requiring an analysis of the income and expenses in the six months preceding the filing of a bankruptcy case. This analysis determines whether potential debtors are “over” or “under” the median average income according to the U.S. Census in their zip code. This analysis is commonly referred to as the “Means Test”. The “Means Test” is a very difficult document to complete accurately. The credit card industry, who lobbied heavily for the “Means Test” amendments to the Bankruptcy Code, intended the Means Test to make more

Debtors file Chapter 13 wage garnishment cases. However, nationwide studies have shown that it has had little or no effect on forcing consumers into Chapter 13. It is vital that you choose an experienced bankruptcy lawyer to accurately prepare and file your bankruptcy schedules which will include the “means test”.

Conclusion

Bankruptcy is an honorable, legal method for honest Americans, who have experienced financial difficulties, to obtain a fresh start. Millions of Americans find, through no fault of their own, that their debt is insurmountable. Bankruptcy stops lawsuits, harassing creditor calls and letters and allows consumers and small businesses to begin to restart their financial lives.

About Our Law Firm

Erin B. Shank has been exclusively practicing bankruptcy law in Texas for almost thirty years. Her law practice is devoted exclusively to representing consumers and small businesses in Chapter 7, 11, 12 and 13 bankruptcy cases. Erin is the president of the Central Texas Bankruptcy Bar Association and is the State Chair for the Western District of Texas of the National Association of Consumer Bankruptcy Attorneys. Because of Erin’s extensive experience in bankruptcy law, she is asked to teach other lawyers about bankruptcy law in local, state, national and international bankruptcy conferences. Erin taught Debtor’s Rights and Creditor’s Remedies for ten years at Baylor Law School in Waco, Texas as an adjunct law professor.

Erin is assisted in the representation of her clients by a strong staff of paralegals and legal assistants. Virtually all of her paralegals and legal assistants met Erin as clients when she filed their bankruptcy cases. Her staff therefore all have personal experience with the entire bankruptcy process and are uniquely qualified to help you through every step of the bankruptcy process. Erin provides every paralegal and legal assistant with one hour of daily in-house bankruptcy training. Working directly and through her paralegals, Erin ensures that each of her clients receives the personal attention that they need through this difficult time.

Erin has offices in both Waco and Killeen Texas and is therefore able to represent clients throughout Central Texas with representation in the federal bankruptcy court in Waco, Texas. Her Waco office is located just blocks from the Waco Bankruptcy Court at 1902 Austin Avenue, Waco, TX 76701. Her Killeen office is located just a few miles away from Ft. Hood in the One Killeen Center office building located at 1711 East Central Texas Expressway, Killeen, TX 76541. Please call us in Waco at **(254) 296-1161** or in Killeen at 254-690-4110 or visit us online at **www.centraltexasbankruptcy.com**.

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Best Legal Practices is the vision of Robert Armstrong and Sandford M. Fisch, co-founders of the American Academy of Estate Planning Attorneys and co-authors of *The E-Myth Attorney: Why Most Legal Practices Don't Work and What To Do About It* and most recently *Dominant Your Market! The Attorney's Complete Guide to Online Marketing and Social Media*.

Best Legal Practices was founded to provide a comprehensive selection of educational tools and resources to attorneys of all areas of practice.