

**Bankruptcy &
The Military:
What You
Need to Know**



Compliments of:

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Bankruptcy for Active Duty & Retired Military

In these tough financial times, members of the U.S. Military (both active duty and retired) can experience a financial crisis that makes them need to turn to bankruptcy relief. Debt and financial problems can jeopardize your security clearance and thus threaten your military career. Bill collectors and attorneys will resort to calling your Chain of Command in order to pressure you into paying their bills. However, filing a bankruptcy case, or even retaining an attorney to represent you, can stop those harassing bill collector phone calls and embarrassing communications. Additionally, the 2005 amendments to the Bankruptcy Code provide special relief under Chapter 7 of the Bankruptcy Code to active duty and retired members of the U.S. military.

Types of Bankruptcy Relief

Both military and non-military citizens have the option of filing either a Chapter 7 bankruptcy case or a Chapter 13 bankruptcy case. A Chapter 7 bankruptcy case is a three to four month proceeding with no wage garnishment. Because of the strong federal and state exemptions available, individuals filing a Chapter 7 case in Texas are able to retain virtually all of their assets and wipe out all of their debts except for child support, student loans and some taxes. A Chapter 7 case can stop a lawsuit, stop an involuntary allotment placed on a service member's LES (paycheck) with DFAS, and stop

collection calls and letters. A Chapter 7 case can also discharge debt to a former landlord and that landlord can be forced to return a housing waiver that the landlord is retaining for unpaid rent. Since a Chapter 7 case is concluded in approximately four months, the Debtor can begin restoring his/her credit after the bankruptcy is filed. The purchase and financing of a vehicle during a Chapter 7 bankruptcy is very common with our clients and is a good way to restore credit. Chapter 7 bankruptcy the most common type of bankruptcy filed in the U.S.

A Chapter 13 bankruptcy case is a type of bankruptcy in which the individual filing bankruptcy requests the bankruptcy court to garnish his/her LES (paycheck) in order to repay debt under a reorganization plan proposed by the debtor and approved by the bankruptcy court. The individual is actually in an active bankruptcy case for three to five years. Every paycheck during that time is garnished and all income tax refunds for the three to five year term of the bankruptcy case must be turned over to a Chapter 13 bankruptcy trustee who pays those refunds as additional distributions to the creditors. During this time, the debtor cannot incur any new debt, for the purchase of a car or home, without bankruptcy court or the Chapter 13 Trustee's permission. A Chapter 13 bankruptcy case is a three to five year proceeding with a mandatory wage garnishment. If the individual experiences a pay raise during this three to five year period, the Chapter 13

Trustee must be informed so the amount of the monthly garnishment can be considered.

Chapter 13 can have a tremendous impact on your military career and can cause you to lose your security clearance. If an attorney is recommending that you file a Chapter 13 bankruptcy case, make sure to obtain a second opinion. If you live in Central Texas, call us for a free initial consultation!

Bankruptcy & your Security Clearance

Many members of the military must obtain a security clearance in order to perform their job. If a soldier has his security clearance revoked, he is at risk of dismissal from the military. The security clearance is granted after an extensive background check, including reviewing a soldier's credit with one or all of the credit reporting agencies. A soldier must have a security clearance before deployment. Security clearances are also subject to periodic review.

A credit bureau report showing multiple derogatory remarks by creditors can result in the denial of a security clearance or revocation of a security clearance. The thought is that an individual who has owes money to creditors may be susceptible to bribes. In other words, if an individual owes \$20,000.00 to creditors, the soldier might accept a \$20,000.00 bribe in order

to give classified information to another individual who might use that information to harm the U.S. Therefore, credit bureau reports are a prime reason why security clearance is not granted or is revoked.

Entering into credit counseling or a debt consolidation plan usually will not help obtain or restore a security clearance. The debt is still owed and so the military believes that the soldier is still subject to bribery. When a debt is being paid through a credit counseling plan or in a debt consolidation program, participation in that program is reported on the soldier's credit report and therefore puts the security clearance at risk.

Filing a Chapter 13 case can be very detrimental to a security clearance. Since the service member must request DFAS (the military payroll service) to garnish the LES (wages), the military and chain of command are definitely notified of the filing of a Chapter 13 bankruptcy. Debt is not discharged in a Chapter 13 bankruptcy case until the end of the three to five year wage garnishment plan, and so the service member is still subject to bribery during that entire period in the eyes of the military.

A Chapter 7 bankruptcy is the best way to address the risk of losing a security clearance. Chapter 7 cases only last approximately four months and debt is discharged. Wages are not garnished in Chapter 7 cases and so DFAS is not

notified of the filing of the Chapter 7 case. Creditors are enjoined from collecting debt during the Chapter 7 case and are permanently enjoined from collecting debt after the Bankruptcy Court issues the federal discharge order. Since debt in a Chapter 7 bankruptcy case has been completely discharged by a federal court order, the soldier is no longer subject to bribery. If a soldier is filing a Chapter 7 case in order to address a security clearance issue, it is important that the bankruptcy attorney insure that all derogatory remarks on both the soldier and spouses credit bureau reports are placed on the Chapter 7 bankruptcy matrix so that all of those debts are included in the Chapter 7 discharge order. Additionally, it is important that after obtaining the Chapter 7 discharge, the three credit bureaus are notified of the discharge order and requested to change all credit bureau reporting to reflect that those debts have been discharged in the Chapter 7 bankruptcy case.

Filing a Chapter 7 bankruptcy case and obtaining a Chapter 7 discharge is not a "guarantee" that a security clearance can be obtained or restored. However, it is the best alternative when an individual has debt which, in the eyes of the military, makes the granting of a security clearance a risk to the U.S. military. A soldier's relationship with the chain of command and the reason precipitating the filing of the bankruptcy case can also impact the granting or denial of a security clearance.

The "Means Test" and the Military

In 2005, Congress made substantial amendments to the Bankruptcy Code. The U.S. was in two wars during that time and Congress made filing a Chapter 7 bankruptcy code easier for those who serve or have served our country. Members of the military are able to use these exceptions which make the "Means Test" inapplicable.

The "Means Test" is an analysis of the debtor's gross income in the six months preceding the filing of the bankruptcy case. If the average of the six months of income in the six months preceding the filing of the bankruptcy case is less than the median income of the population in the debtor's zip code according to the census, the debtor is considered to be "under the median". If the income is more, the debtor is considered to be "over the median". Most "under the median" debtors can file a Chapter 7 bankruptcy case with no challenge to the filing. "Over the median" debtors may still file a Chapter 7 case, but must also complete the expense portion of the "Means Test" which is more difficult and can make filing a Chapter 7 problematic. The myth that "over the median" debtors cannot file a Chapter 7 case is simply not true. However, over the median Chapter 7 cases are definitely more challenging.

The 2005 amendments make the "Means Test" inapplicable if the debtor

is a disabled veteran and the debt was primarily incurred during a time in which the debtor was on active duty or performing a homeland defense activity. The debtor does not have to be 100% disabled in order to meet this exception to the "Means Test". Disabilities as low as 20% allow veterans to take advantage of this exception to the "Means Test". "Homeland defense" is a term that was created after the attacks of September 11, 2001. This exception to the "Means Test" should be used to assist our disabled veterans experiencing financial challenges to obtain the financial relief that they deserve.

The 2005 amendments also make a call to active duty a "special circumstance" that may make the "Means Test" inapplicable. "Special circumstances" have to be evaluated on a case by case basis for each service member.

Amendments to the Bankruptcy Code also have made special exceptions to the "Means Test" for members of the reserves or National Guard. The "Means Test" is inapplicable if a member of the reserves or National Guard was called to active duty after September 11, 2001 for at least 90 days and is still on active duty or was released from active duty within the 18 months before the filing of the Chapter 7 bankruptcy case. The "Means Test" is also not applicable for a member of the reserves or National Guard if they were performing a homeland defense activity for at least 90 days and are still performing homeland

defense activities or were performing a homeland defense activity within the 18 months before the Chapter 7 case was filed.

These exceptions should be considered to enable those who have served our country file a successful Chapter 7 case, especially in light of the threats to a security clearance imposed by the existence of debt or other types of bankruptcy filings.

The Automatic Stay in Bankruptcy

The filing of any type of bankruptcy case operates as an "automatic stay" against virtually all types of creditor collection activity. Chapter 7 bankruptcy can put a stop to involuntary allotments placed on a soldier's pay by creditors. A Chapter 13 bankruptcy case stops involuntary allotments but that is replaced with a voluntary allotment that the service member must place on his LES in order to fund the Chapter 13 Plan. In both a Chapter 7 or Chapter 13 case, the automatic stay stops garnishments, foreclosures, repossessions, lawsuits and creditor collection calls and letters. One of the most powerful laws in the U.S., it enables the debtor to have the breathing room while the debts are forgiven in a Chapter 7 case or a Chapter 13 reorganization plan is proposed and implemented by the debtor during the three to five year life of the Chapter 13 case.

Return of the Housing

Waiver

Most military installations offer a housing deposit waiver to ease soldiers relocation expenses. Housing waivers are given by the base's housing departments and are given to landlords or utility companies who then do not require the soldier to make a deposit before renting a house or an apartment or establishing utility service. If a soldier must break a lease, many times the landlord will not return the housing waiver to the soldier until the unpaid rent under the lease is paid. After a bankruptcy case is filed, a landlord who is retaining a soldier's housing waiver must return the housing waiver to the soldier or risk threat of suit or sanctions for violating the bankruptcy automatic stay. Withholding a housing waiver due to past due rent is clearly an attempt to collect debt which violates the automatic stay in bankruptcy. Withholding a soldier's housing waiver is a stay violation and can result in sanctions being imposed against the landlord by the federal bankruptcy court. Soldiers must be able to return all housing waivers when they leave a particular military installation and so return of a housing waiver is vital in order for the soldier to "clear post". The filing of a bankruptcy case and demand for return of the housing waiver can help a soldier whose prior landlord is retaining a housing waiver leave a military installation when requested to do so as a part of his/her military orders.

Conclusion

All branches of the U.S. military have policies regarding soldiers that file bankruptcy cases. A soldier is encouraged to speak to his/her chain of command or other soldiers who have filed bankruptcy to determine the specific ramifications a bankruptcy filing. Soldiers should also discuss their particular financial problems and fears of ramifications due to a bankruptcy filing with an experienced bankruptcy lawyer. Filing a Chapter 7 case and quickly and honorably discharging debt may enable a soldier to recover from a financial hardship and enjoy a long, rewarding career serving their country.

About Our Law Firm

Erin B. Shank has been practicing exclusively bankruptcy law in Texas for almost 30 years. She represents debtors in Chapter 7, 11, 12 and 13 cases in Central Texas. Erin is currently the President of the Central Texas Bankruptcy Bar Association and the State Chairperson for the Western District of Texas for the National Association of Consumer Bankruptcy Attorneys. Erin taught a course entitled "Debtor's Rights and Creditor's Remedies" as an adjunct law professor for over ten years at Baylor Law School in Waco, Texas.

Erin is the daughter, daughter-in-law and wife of veterans. She is honored to serve those who have served their country. Her middle son, Billy, is a member of the ROTC and is considering

a career in the military after his high school graduation.

Erin maintains a law office in Killeen, Texas that is located just a few miles outside of the entrance of Ft. Hood Military Installation, the largest military installation in the United States. All of her legal assistants and paralegals in her Killeen office are all members of military families. They all met Erin when she served as their attorney and filed a bankruptcy case for them and their families. Therefore, her paralegals and legal assistants in her Killeen office are uniquely qualified to assist Erin represent soldiers and veterans who are struggling with the decision to file a bankruptcy case and making sure each bankruptcy case is properly and timely filed.

Erin's office in Killeen is located at 1711 E. Central Texas Expressway. The phone number of the Killeen office is 254-690-4110. She also maintains an office in Waco just blocks away from the federal bankruptcy court where all Killeen and Ft. Hood bankruptcy filings are filed. The Waco office is located at 1902 Austin Avenue, Waco, Texas and its phone number is 254-296-1161.

Erin offers a free initial consultation and convenient payment plans. Consultations with Erin are by appointment only. Call us at **(254) 690-4110** to schedule an appointment or visit our websites on the internet at www.centraltexasbankruptcy.com or www.texasmilitarybankruptcy.com.

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