

TOP 6 THINGS TO KNOW ABOUT BANKRUPTCY

If you are deeply in debt and considering filing for bankruptcy, you are probably worried and brimming with anxiety. Not only must you fend off collection calls, but you must think about the possibility of bankruptcy, which can be a complex and confusing process. However, by understanding the following six aspects of bankruptcy, you will be more prepared to take the next step to a life free from debt.

- ▶ **Bankruptcy is not an “in and out” process.** If you are inexperienced with how bankruptcy courts operate, you might think that bankruptcy operates similar to small claims court, which concludes in one day. Chapter 7 bankruptcy, the most common bankruptcy chapter for individuals, lasts an average of four months. The processes for the second and third most frequently filed bankruptcy chapters, 13 and 11, can last much longer. A Chapter 13 bankruptcy plan will last for three to five years. Similarly, a Chapter 11 case may endure for two years or longer. You must be prepared to stick it out if you want to obtain the coveted bankruptcy “fresh start.”
- ▶ **Bankruptcy opens your finances to public scrutiny.** Are you uncomfortable with merely discussing your salary with your friends and family? In bankruptcy, you must be prepared to expose your financial life, mistakes and all, to the public. If you file for bankruptcy protection, you will be required to attend a meeting of creditors. During the meeting, the bankruptcy trustee will ask you probing questions in a public room. One of your creditors can also question you at the meeting. This can be an extremely uncomfortable and embarrassing process for many individuals. Be prepared to air your financial dirty laundry.
- ▶ **Failure to disclose all of your financial information result in harsh penalties.** Total and complete honesty is of the utmost importance in bankruptcy. It is the position of bankruptcy courts that only the honest debtor is entitled to a discharge of debt. This means that you must list all of your property, debts, and creditors. If your lack of honesty is discovered, not only may you lose the bankruptcy discharge, but you may face investigation by the FBI. Dishonesty in bankruptcy is a serious federal crime.
- ▶ **Bankruptcy forms are complicated and require great attention.** Many people perceive bankruptcy as simple and straightforward, as it is mostly based on forms. Unfortunately, bankruptcy forms are more like confusing tax returns than “check the box” forms. The forms contain complex, seemingly trick questions about your financial affairs. It is necessary to give yourself sufficient time to digest the bankruptcy forms before filing for bankruptcy. The most critical forms include Schedules A through J and the Statement of Financial Affairs.
- ▶ **The bankruptcy discharge is personal.** The discharge is the ultimate goal of bankruptcy. It bars your creditors from ever attempting to collect debts from you. This means that the bankruptcy discharge is personal and only protects you. It does not eliminate the debt. For example, if you have a lien of a previously recorded Abstract of Judgment, an Order of Discharge does not remove the lien from the debtor’s real property. It does not matter that the debt may have been listed in the debtor’s schedules. The fact remains that the lien survives (even though many and even their attorneys mistakenly believe otherwise). The Judgment Lien Creditor (like any other secured creditor) still enjoys a security interest in the real property which they can seek to foreclose either during the pending bankruptcy (upon being granted relief from stay) or following the close of the case. In order to remove the lien from the real property, that debtor must bring a Motion Order Avoiding Lien pursuant to Bankruptcy Code Section 522(f), even if it means re-opening their previously closed Bankruptcy Case. If the Motion is granted an Order Avoiding Lien will be issued.
- ▶ **Filing for bankruptcy is not cheap.** Although you may be in financial ruin, filing for bankruptcy can cost you a significant amount of money. The amount largely depends upon whether or not you hire an attorney. Retaining a bankruptcy attorney may cost anywhere from several hundred dollars to several thousand dollars. However, even if you prepare and file your own bankruptcy case, the filing fees alone are substantial. Destitute debtors may find relief from filing fees by petitioning the bankruptcy court for a fee waiver. The court will base its waiver decision on your income, which generally must not be greater than 150% of the federal poverty level.

