MEREDITH LAW FIRM, LLC
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BANKRUPTCY IN GENERAL

There are all sorts of myths, rumors and horror stories about bankruptcy that simply aren't true. This page will give you some very basic information about bankruptcy and chapters 7 and 13. You shouldn't rely upon this outline as legal advice, but we will be happy to answer your questions if you call our office.

Bankruptcy is a means to address a debt problem and obtain a financial fresh start. The Bankruptcy Code is provided under Title 11 of the U.S. Code. You obtain bankruptcy protection by filing a petition under one of the different chapters of the code. Individuals usually file under Chapter 7 or Chapter 13. Chapter 11 is for businesses or individuals with very large debts. Chapter 12 is for farmers.

As soon as the petition is filed with the United States Bankruptcy Court you are protected from your creditors by the **automatic stay**. This means your creditors cannot call you, harass you, repossess your car or foreclose against your home. Once your case is successfully concluded, you receive a **discharge** of your debt, meaning your debt is eliminated and your creditors can never again pursue collection against you. The slate is essentially wiped clean. There are certain exceptions to the debts that may be discharged including alimony obligations, child support, certain student loans, etc. We can advise you whether the debts affecting your situation are dischargeable and the proper chapter to employ to achieve your goals.

CHAPTER 7

Chapter 7 is a liquidation under the Bankruptcy Code. That sounds scary, but the vast majority of consumer cases are "no asset" cases, meaning you do not surrender any property. Chapter 7 is usually for people with excessive credit card debt, medical bills or other unsecured debts with no real ability to make payments to their creditors after providing for reasonable living expenses. Your monthly income and the allowed monthly expenses are crucial to determine if you are eligible for protection under Chapter 7. Individuals with an annual income of more than approximately $46,000 are rarely able to simply eliminate their debts under Chapter 7. The income amount increases with the size of your family and changes under certain circumstances if your household income has not been a consistent amount over the last six months.

Under Chapter 7 the debtor typically emerges free from all unsecured debt by receiving a discharge approximately six months after filing. Chapter 7 is generally <u>not</u> the answer for someone who is: (1) behind on their mortgage or car payments; (2) someone who has a significant amount of income remaining in their monthly budget after providing for their reasonable living expenses (but not including debt payments); or (3) someone whose property or assets are worth more than certain protected amounts thereby exposing those items to their creditors in a liquidation– those situations are properly handled in Chapter 13.

CHAPTER 13

Chapter 13 is a reorganization under the Bankruptcy Code. Under Chapter 13 the debtor files a plan with the court that provides for payment of at least a portion of his or her debts over a period usually between three and five years. The plan will require the debtor to make a single monthly payment to a Chapter 13 Trustee who takes the money and distributes it under the terms of the debtor's plan. Your monthly payment is generally determined by your household income and the amount you are able to pay after providing for reasonable living expenses. The debtor's plan usually stands if it is feasible and properly addresses each of the creditors. The creditors can object to the plan, but objections are most often resolved by negotiation.

In certain circumstances you can remake certain debts, like car loans, to lower the monthly payments and sometimes reduce the total amount of the loan. You can catch up on missed mortgage payments, stop foreclosures and protect your home. In many cases unsecured creditors (like credit cards and medical bills, etc.) can receive as little as one percent of the total debt with no interest. Chapter 13 is often the correct choice for individuals who do not properly fit in Chapter 7 because their budget does not comply with the Chapter 7 insolvency requirements (meaning that you cannot have disposable income remaining in your budget after payment of all of your reasonable monthly living expenses not including payments towards any of your debt) or they have valuable assets that might become threatened in a liquidation under Chapter 7.