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# BENEFITS AND DRAWBACKS OF BANKRUPTCY

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**E**very year thousands of people seek debt relief through bankruptcy. Bankruptcy can provide an effective solution for many people struggling with debt. However, bankruptcy is not always the best choice for everyone with debt problems. Each person's situation should be evaluated individually.

Some of the benefits and drawbacks that affect most bankruptcy filers are outlined below. A bankruptcy attorney can review your case and help you better understand how these (and other) factors will affect you. Armed with this information, you can intelligently weigh your options and make the best decision.

## **BENEFITS OF FILING FOR BANKRUPTCY**

### **Protection from creditor harassment by the automatic stay**

One of the immediate advantages to filing for bankruptcy is the protection of the automatic stay. The automatic stay puts a stop to creditors' collection efforts during the pendency of your bankruptcy. The stay allows the Bankruptcy Court to prevent creditors from trying to claim your assets while the case is pending. The automatic stay can be used to temporarily stop foreclosure actions and garnishments. This delay may provide enough time for you to get your affairs in order and get back on your feet.

### **Discharge eligible debts**

The main reason that most individuals file for bankruptcy is to eliminate unsecured debts such as credit card and medical debt. Once these debts are discharged in bankruptcy, you no longer need to repay them. They are eliminated. The discharge releases you from the legal obligation to pay. Creditors can no longer sue you or take any other collection action, such as garnishing your wages or draining your bank account. Not all debts can be eliminated in bankruptcy, however, so before you file you want to make sure that the debts you want to wipe out are dischargeable.

### **Get a fresh-start and regain control of your finances**

After a bankruptcy discharge, you may have a renewed sense of financial breathing room. With the debt gone, you have the opportunity to make a fresh start. Furthermore, you can no longer be harassed by creditors or feel the threat of being sued. You can now begin the process of financial planning, rebuilding credit and goal setting. Most of our clients are excited to see their credit score rising fast after bankruptcy.

### **Keep all or most of your property**

What property you get to keep in a bankruptcy filing varies from state to state. The good news is that bankruptcy exemptions (state and federal laws that specify property that cannot be taken by creditors to satisfy debts) allow most debtors to go through Chapter 7 bankruptcy without losing any of their property. We have even more options to protect assets in a Chapter 13 bankruptcy.

## **Qualified retirement plans are protected**

Under the Bankruptcy Code, most pension plans, 401(k)s, and IRAs are protected from creditors' claims in bankruptcy. In other words, no matter how much money you have in one of these "ERISA-based" plans, it is protected. You can keep all of that money and wipe out your debt at the same time!

## **Help with home foreclosure and vehicle repossession**

If your home is in foreclosure and you want to keep it, a Chapter 13 bankruptcy may be a solution. In Chapter 13, you devise a repayment plan to catch up on overdue mortgage payments, as well as make your current payments in a timely manner.

If you are underwater on your mortgage and don't want to stay in the home or don't have the income to fund a repayment plan, Chapter 7 bankruptcy can give you more time to stay in your home while you make arrangements for another place to live. As soon as you file bankruptcy, the automatic stay stops creditors from continuing foreclosure efforts. We have even filed bankruptcies on the day of a foreclosure sale and stopped the auction with minutes to spare.

If you already lost your home to foreclosure, bankruptcy can help you discharge any deficiency you may owe on your mortgage (the amount you still owe minus whatever your lender sells the home for). That way, your mortgage company cannot come after you for the difference.

Chapter 13 may also help you if you are behind on car payments and want to keep your vehicle. Filing will prevent the creditor from seizing your car. You can then propose a repayment plan that will allow you to get caught up on your past due payments while making your current ones. Chapter 13 can also, in certain situations, lower the balance owed or interest rate on your loan.

If your vehicle has already been repossessed, the creditor may auction it off for less than you still owe on your car loan and then get a judgment against you for the remaining balance. Bankruptcy can eliminate that debt and prevent the creditor from garnishing your wages or seizing your bank accounts for the balance due on a repossessed car.

## **DRAWBACKS OF FILING FOR BANKRUPTCY**

### **Does not automatically remove property liens**

A bankruptcy discharge does not automatically eliminate liens on your property. In some instances, you may be able to remove judicial liens or non-purchase liens on certain assets like tools of your trade, clothing, and household goods and furnishings, but you need the help of an experienced bankruptcy attorney. Also, bankruptcy will not allow you to remove statutory liens, such as tax liens, a mortgage on your house, or a car lien. If you want to keep a house with a mortgage or car that has a loan, you will have to continue making payments and determine if the lender will allow it.

### **Stays on credit report up to 10 years**

A bankruptcy filing can stay on your credit report for up to 10 years from the filing date. However, our clients typically report that their credit score improves dramatically in the first year or two after filing bankruptcy. By discharging all or most of your debt, you are now actually a pretty good credit risk to lenders.

### **May not get to keep all your property**

There are limitations on the amount of property you can keep, especially in Chapter 7. Your bankruptcy attorney can give you the tools and resources to determine if you can keep all your property in the event you file for bankruptcy. The exemptions vary widely from state to state and even if you move, your old state's exemptions apply for a period of time, regardless of where you currently reside. An experienced bankruptcy attorney can make the difference between keeping your assets and losing them.

### **Certain banks have their own rules for secured property**

Even if your property is exempt, if you have a secured loan with a particular bank and want to keep the property, the bank has the final say. For example, if you want to keep a car with a loan balance after bankruptcy but do not want to reaffirm the debt (*i.e.*, promise (again) to repay the debt), the bank will decide if it will agree to those terms. In particular, credit union loans and car loans should receive special consideration before you decide to file. Your bankruptcy attorney can help you better understand how particular banks might handle your situation.

## **Not all debts discharged**

A bankruptcy discharge has many advantages and can eliminate significant amounts of debt. However, bankruptcy does not wipe the slate clean of all types of debt. Debts that are not discharged include student loans, debts associated with drunk driving judgements, past-due child support and/or alimony, divorce settlements, fraud, and recent income taxes (although some older income taxes may be dischargeable).

## **SPECIAL CONSIDERATIONS**

### **Business owners**

Personal bankruptcy for small business owners or shareholders of a business requires careful evaluation and special consideration. If you are a small business owner, it is important to consult with your bankruptcy attorney before filing any court paperwork. Each situation is unique. Whether a bankruptcy will affect the business depends on the status of the business itself and its debts.

### **Inheritances**

The Bankruptcy Code provides special rules about inheriting property or money. These rules can extend well beyond your case filing date. If you receive an inheritance after filing bankruptcy, the bankruptcy trustee may be able to take it to pay your creditors. Whether your inheritance is safe depends on the date you became entitled to receive the inheritance and whether the money is exempt.

### **Alternatives**

If you and your attorney determine that bankruptcy might not be the best course of action for you, there are alternatives you might consider. These include debt settlement, liquidating assets, or working to improve your budget.

### **Summary**

Whether you should file for bankruptcy is based on your own personal situation, the types of debts you have, and the property you need to protect. Your bankruptcy attorney can help you evaluate all the benefits, drawbacks, and special considerations of your particular situation.