Bankruptcy Overview

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The U.S. Constitution provides that Congress may establish uniform laws on the subject of bankruptcy. The Bankruptcy Code is contained in Title 11 of the United States Code.

In the United States, bankruptcy laws serve the dual purpose of **providing a fresh start to individuals who cannot pay their debts** and providing creditors with an orderly method to recover at least a portion of the amounts owed them. There are three major types of bankruptcy under the Bankruptcy Code, located at Title 11 of the United States Code. Chapter 7, Chapter 11 and Chapter 13.

WHO MAY BE A DEBTOR?

Only a person that resides or has a domicile, a place of business or property in the United States.

Chapter 7 – Straight Bankruptcy(Liquidation) : Certain types of business entities – e.g. , Railroads, Banks, Savings & Loans **cannot** be a debtor in a Chapter 7 .

Individuals and most business entities may be eligible for relief under Chapter 7.

Chapter 11 – Reorganization: Only a Railroad or a person that may be a debtor under Chapter 7 (except a stockbroker or commodity broker)… may be a debtor under chapter 11 -

Chapter 12 – Family farmer or family fisherman with regular annual income

Chapter 13 – To be eligible for Chapter 13 bankruptcy, an individual must have no more than $419,275 in unsecured debt such as credit cards, personal loans. They can have no more than $1,257,850 in secured debts which includes mortgages, car loans, etc. These figures are adjusted periodically to reflect changes in the consumer price index.

Chapter 7 Bankruptcy involves the liquidation of non-exempt assets for the payment of creditors. To further qualify for chapter 7 relief, debtors must have little to no disposable income after subtracting their reasonably necessary expenses from their income. Debtors must also establish they have taken an approved credit counseling course.

A case is filed under Chapter 7 and the debtor is required to file schedules of assets and liabilities; statement of current income and expenditures; schedule of secured creditors and unsecured creditors.

If the debtor's "current monthly income" (1) is more than the state median, the Bankruptcy Code requires application of a "means test" to determine whether the chapter 7 filing is presumptively abusive. This means test eliminates many people from chapter 7 eligibility of they have a regular source of income.

Due to exemptions, some debtors do walk out of Chapter 7bankruptcy with significant assets remaining. They get a fresh start but not a head start.

Chapter 11 Reorganization

A case filed under chapter 11 of the United States Bankruptcy Code is frequently referred to as a "reorganization" bankruptcy. Usually, the debtor remains “in possession,” has the powers and duties of a trustee, may continue to operate its business, and may, with court approval, borrow new money. A plan of reorganization is proposed, creditors whose rights are affected may vote on the plan, and the plan may be confirmed by the court if it gets the required votes and satisfies certain legal requirements.

A chapter 11 case begins with the filing of a petition with the bankruptcy court serving the area where the debtor has a domicile, residence, or principal place of business. A petition may be a voluntary petition, which is filed by the debtor, or it may be an involuntary petition, which is filed by creditors that meet certain requirements. 11 U.S.C. §§ 301, 303.

Unless the court orders otherwise, the debtor also must file with the court:

1. schedules of assets and liabilities;
2. a schedule of current income and expenditures;
3. a schedule of executory contracts and unexpired leases; and
4. a statement of financial affairs. Fed. R. Bankr. P. 1007(b).

If the debtor is an individual (or a married couple filing jointly), there are additional document filing requirements. Such debtors must file: a certificate of credit counseling and a copy of any debt repayment plan developed through credit counseling; evidence of payment from employers, if any, received 60 days before filing; a statement of monthly net income and any anticipated increase in income or expenses after filing; and a record of any interest the debtor has in federal or state qualified education or tuition accounts. 11 U.S.C. § 521. A married couple may file a joint petition or individual petitions.

Some benefits of **Chapter 11 bankruptcy include: The business can continue to operate while paying off debts Chapter 11 bankruptcy lets debtors partially pay back unsecured debts The automatic stay judgment gives you freedom from harassing creditors contacting you at home or at your business. Freedom to restructure secured debts where payments can be lower and spread over a longer period of time.**

Chapter 12 Bankruptcy – Family Farmers / Family Fishermen

Chapter 12 is designed for "family farmers" or "family fishermen" with "regular annual income." It enables financially distressed family farmers and fishermen to propose and carry out a plan to repay all or part of their debts. Under chapter 12, debtors propose a repayment plan to make installments to creditors over three to five years. Generally, the plan must provide for payments over three years unless the court approves a longer period "for cause." But unless the plan proposes to pay 100% of domestic support claims (i.e., child support and alimony) if any exist, it must be for five years and must include all of the debtor's disposable income. In no case may a plan provide for payments over a period longer than five years. 11 U.S.C. § 1222(b)-(c).

Chapter 13 Bankruptcy – Wage earners plan

A chapter 13 bankruptcy is also called a wage earner's plan. It enables individuals with regular income to develop a plan to repay all or part of their debts. Under this chapter, debtors propose a repayment plan to make installments to creditors over three to five years. If the debtor's current monthly income is less than the applicable state median, the plan will be for three years unless the court approves a longer period "for cause." (1) If the debtor's current monthly income is greater than the applicable state median, the plan generally must be for five years. In no case may a plan provide for payments over a period longer than five years. 11 U.S.C. § 1322(d). During this time the law forbids creditors from starting or continuing collection efforts.

Chapter 13 offers individuals a number of advantages over liquidation under chapter 7. Perhaps most significantly, chapter 13 offers individuals an opportunity to save their homes from foreclosure. By filing under this chapter, individuals can stop foreclosure proceedings and may cure delinquent mortgage payments over time. Nevertheless, they must still make all mortgage payments that come due during the chapter 13 plan on time. Another advantage of chapter 13 is that it allows individuals to reschedule secured debts (other than a mortgage for their primary residence) and extend them over the life of the chapter 13 plan. Doing this may lower the payments. Chapter 13 also has a special provision that protects third parties who are liable with the debtor on "consumer debts." **This provision may protect co-signers. Finally, chapter 13 acts like a consolidation loan under which the individual makes the plan payments to a chapter 13 trustee who then distributes payments to creditors. Individuals will have no direct contact with creditors while under chapter 13 protection.**

Automatic Stay:

The Automatic Stay is the part of a bankruptcy case that protects you from creditors after you file your bankruptcy case. It stops creditors from taking legal action against you regarding debts you may owe.

Filing your Bankruptcy Petition with the Bankruptcy Court triggers the automatic stay. After your bankruptcy case is filed with the Bankruptcy Court, within a day or two, the bankruptcy court will mail a written notice, called the “automatic stay,” to all the creditors you owe that are listed on Schedule F of your Bankruptcy Petition and Creditor Matrix

This written notice of automatic stay is a Court Order that prohibits your creditors from taking several different types of legal actions against you such as:

- contacting you , continuing collections activities; placing liens on your property; holding sheriff sale of your home; repossessing vehicles; bank and wage garnishments; evictions; utility disconnections.

Creditors who violate the automatic stay can be sanctioned but ONLY if they have received actual notice of the bankruptcy filing.

Section 341 Meeting of Creditors:

The Bankruptcy Clerk will send notice of the filing of the Bankruptcy to creditors. Typically within 60 days of the filing the debtor must personally attend a meeting of creditors and submit to examination under oath. The meeting is conducted by the Bankruptcy Trustee. The Bankruptcy Judge is not a participant. The Trustee can ask the debtor questions to help determine whether the debtor should be granted the relief under the Bankruptcy Code – e.g. the Discharge of debts. Creditors may attend and ask questions - If a creditor attends it is most likely a Secured Creditor wanting information on the debtor’s intentions regarding a reaffirmation agreement (an agreement to be bound by the terms of the loan/security agreement) and the status of the secured property.

Proof of Claim – a creditor who wants to be paid out of the bankruptcy case must file a written proof of claim. This document states the name the debtor, creditor, the amount of the debt as of the date of filing of the petition and whether the debt is secure or unsecured. If secured, supporting documentation is required

OKLAHOMA Exemptions – Property Exempt from Attachment, Execution or other Forced Sale. Oklahoma uses its own exemptions instead of federal exemptions.

1. **The home of the debtor provided it is the principal residence**
2. **A manufactured home provided it is the principal residence**
3. **All household and kitchen furniture held primarily for the personal, family, educational or household use of such person or dependent, including personal computer and related equipment.**
4. **Any lots in a cemetery.**
5. **Implements/ farm tool, items used in trade or business up to $10,000**
6. **All books, portraits and pictures held primarily for personal family or household use**
7. **The person's interest, not to exceed $4,000 in aggregate value in wearing apparel.**

Wedding and anniversary rings not to exceed $3,000 in the aggregate.
All professionally prescribed health aids
Five milk cows and their calves under 6 months
100 chickens…
Two horses and bridles, two saddles
Up to $7,500 in value in one motor vehicle.
Guns not to exceed $2,000 in aggregate value
Ten hogs; twenty head of sheep,
Right to receive alimony, child support, etc.
Retirement plans
Claim for personal injury not to exceed $50,000
Funds received due to Earned income credit.

Federal Exemptions – cannot be used in Oklahoma

1. Homestead - $25,150 in equity (married can double)
2. $4,000 in motor vehicle
3. $1,700 for jewelry
4. $13,400 household goods , furnishings, etc.
5. $2,525 for tools of the trade.
6. Personal injury claim up to $25,150
7. Retirement accounts – Roth capped at $1,362,800

Discharged Debts:
Chapter 7 and 13 – credit card, medical bills, lawsuit/judgment
Most debts arising under car accidents unless DUI; personal loans, some taxes (very limited application)
.
Chapter 13 only: marital debts arising from divorce agreement OTHER than support; court fees, debts for loan from a retirement plan; debts that couldn’t be discharged in a previous bankruptcy

Debts that are Never Discharged:

CHILD SUPPORT OR ALIMONY
FINE, PENALITIES AND RESITITUTION FOR BREAKING THE LAW
CERTAIN TAX DEBTS (very limited)

Creditors may Object to discharge and file a Nondischargeability complaint for:

Debts arising from actual fraud

Debts for luxuries of more than $725 purchased within 90 days of filing or cash advance of more than $1,000 within 70 days of filing

Debts from embezzlement; larceny, breach of fiduciary duties

Creditors not listed in bankruptcy filing