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Bankruptcy Q&A

Question: What types of bankruptcy are available?

Answer: When filing a bankruptcy there are several different chapters under which you can file:

Chapter 7: This is the most basic bankruptcy and is available for individuals and businesses/individuals. To qualify for a Chapter 7 bankruptcy you must meet one of three criteria: (1) your debts must be primarily business debts, (2) your income is less than the median income for a family your size in the state, or (3) your income, after certain allowed expenses, is not sufficient to repay creditors. Under Chapter 7 all dischargeable debts are eliminated, you keep exempt assets, and the trustee sells any non-exempt assets to pay creditors. If you are an individual and cannot qualify for a Chapter 7 bankruptcy because of your income, a Chapter 13 bankruptcy may be an option.

Chapter 13: This allows you to keep assets you may not be able to keep in a Chapter 7 bankruptcy and is available only to individuals. To qualify for a Chapter 13 bankruptcy you cannot have more than \$360,475 of unsecured debt or \$1,081,400 of secured debt (effective April 1, 2010). In addition, options may be available to allow you to create a payment plan to keep a house for which you are behind on payments, eliminate a second mortgage when the first mortgage is more than the value of the house, reduce the liens on vehicles to the value of the vehicles, eliminate penalties on taxes, etc.. Under Chapter 13, you create a plan to pay creditors (typically not the entire debt) and make monthly payments for the benefit of creditors under the terms of that plan, usually for five (5) years. Once you have made all payments called for in the plan, any remaining dischargeable debt that was not paid is eliminated. If you are a farmer and have too much debt to qualify for a Chapter 13 bankruptcy, a Chapter 12 bankruptcy may be an option.

Chapter 12: This type of bankruptcy is similar to a Chapter 13 bankruptcy, but is for farmers, fishermen, and farming or fishing businesses. For an individual to qualify for a Chapter 12 bankruptcy you must meet all of the following criteria: (1) your debts cannot exceed \$ 3,792,650 (effective April 11, 2010), (2) at least 80% of your debts must be related to farming, (3) for the year prior to filing, you must have earned at least 50% of your gross income from farming, and (4) you must have sufficient income to make payments under a plan (similar to a Chapter 13 plan).

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For a business to qualify for a Chapter 12 bankruptcy, additional rules apply. Under Chapter 12, you can generally do the same things with debts that you could do in a Chapter 13 bankruptcy and you can also work to obtain operating expenses, continue to run your farm, reduce mortgages to the value of the property, pay off certain debts over longer periods of time than with Chapter 13 bankruptcy, etc.. If you have too much debt to qualify for a Chapter 12 bankruptcy, a Chapter 11 bankruptcy may be an option.

Chapter 11: A Chapter 11 bankruptcy, like a Chapter 12 or 13 bankruptcy, requires a payment plan to repay some debts. There are no debt limits on Chapter 11 bankruptcies and you may continue to run your business during a Chapter 11 bankruptcy. A Chapter 11 bankruptcy is a good option for large businesses. If you are considering a Chapter 11 bankruptcy, you should contact a lawyer to discuss your options.

Chapter 9: A Chapter 9 bankruptcy, like Chapter 11, 12, or 13 bankruptcies, requires a payment plan to repay some debts. To qualify for a Chapter 9 bankruptcy you must be a municipality. If you are considering a Chapter 9 bankruptcy, you should contact a lawyer to discuss your options.

Chapter 15: A Chapter 15 bankruptcy is for businesses that filed bankruptcies in other countries that also have US debts. If you are considering a Chapter 15 bankruptcy, you should contact a lawyer to discuss your options.

Question: Can I keep my house and car?

Answer: It depends. In Oregon, if the equity in your house is less than \$40,000 (\$50,000 if filing jointly) you can probably keep your home. A similar analysis applies with regard to vehicles. If the equity in your car is less than \$3,000 (\$6,000 if filing jointly) you can probably keep your car. Equity is the market value of the house or car minus any mortgages or liens on that particular house or car. If you meet the equity amount requirements set forth above, have a lien or mortgage on your house or car, and are up to date on your payments, you will likely be able to keep the house and/or car. Some lenders may require you reaffirm the debt to keep a car, but that can be done through bankruptcy as well.

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Question: What does it mean to reaffirm debt?

Answer: Reaffirming a debt means that despite the bankruptcy, you will continue to be responsible for repaying the amount you borrowed from a lender to buy a particular item if that lender allows you to keep the item. This is something debtors often do to keep a car.

Question: What are exemptions?

Answer: Exemptions are the values of different types of assets you are allowed to keep despite the bankruptcy. Exemptions exist for a wide variety of items such as houses, cars, mobile homes, books, jewelry, animals, household goods, prescriptions, personal injury claims, guns, retirement plans, tools of a trade, wages, social security, etc.. Exemptions vary from state to state, so it is important to know where you lived the 2.5 years (30 months) prior to filing bankruptcy to determine which exemptions apply. If you would like an up-to-date spreadsheet listing the majority of the exemptions in Oregon, please contact our office.

Question: Once I file bankruptcy can companies still try to get money from me?

Answer: An automatic stay goes into effect when you file bankruptcy, so if any of your creditors filed lawsuits against you, filed a foreclosure, tried to repossess a vehicle, garnished your wages, or otherwise sought money from you, the creditors must stop those actions immediately. There may be exceptions for foreclosures depending on where the creditor is in the process and the type of bankruptcy filed. Following the filing of a bankruptcy, creditor conduct that violates the stay includes calling you, sending you collection letters, attaching your bank accounts, filing lawsuits, pursuing lawsuits already filed, garnishing your wages, repossessing property, evicting you as a tenant, etc.. For a creditor to proceed against you, the creditor will have to file a motion with the court to have the automatic stay lifted and the court will have to grant the motion.

Question: Do I have to include my spouse in the bankruptcy?

Answer: When filing a Chapter 7 or a Chapter 13 bankruptcy you can file jointly, as husband and wife, or individually. If you are married and don't want to include your spouse in the bankruptcy, you can file individually; however, you will need to include your spouse's income and all debts and assets held jointly in your names. There are a few things to watch for if you elect to file individually: (1)

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some debts may be owed by both of you, so although the debt is discharged as to your liability, your spouse will owe the full debt; (2) your spouse can be held responsible for some debts held in only your name because the debts were incurred for household needs. If you are married, but are separated and maintaining separate households, you will not need to include your spouse's income as long as none of it is available to you or used for your household expenses.

Question: Will all of my debts be discharged in bankruptcy?

Answer: Most debts can be discharged in a bankruptcy. The types of debts that are generally non-dischargeable include taxes; child support; alimony; marital settlement agreements/divorce decrees; student loans; criminal restitution and fines; debts related to drinking and driving; and debts incurred by fraud, embezzlement, larceny, willful or malicious injury, or misrepresentations. Some of these debts may be dischargeable under very specific guidelines such as taxes that are more than three years old, student loans that create an undue hardship, etc.. You should talk with a lawyer about your specific debt to see if there is an exception that may allow you to discharge a debt that is normally non-dischargeable.

Question: Do I have to list all my debts on my bankruptcy petition?

Answer: Bankruptcy law requires that all debts, even those owed to friends or family members, be listed. In addition, if you do not list a debt, that debt may not be discharged.

Question: Should I stop paying debts once I decide to file bankruptcy?

Answer: When you file bankruptcy, the trustee will ask if you paid anyone an aggregate total of more than \$600.00 in the 90 days before you filed bankruptcy to determine if there were any preference payments. Accordingly, it is a good idea to stop paying creditors more than 90 days before you file. However, you should still pay monthly bills, such as mortgage payments (if you want to keep your house), car payments (if you want to keep your car), utilities bills, phone bills, etc..

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Question: What is a preference?

Answer: A preference is a payment made on an old debt when you were insolvent and allows the person or company paid to collect more on its debt than it would have been able to collect through the bankruptcy. A payment to a person or company with whom you have no connection is likely a preference if it is made within 90 days before you file bankruptcy. A payment to a friend or family member is likely a preference if it is made within one year before you file bankruptcy. Payments to mortgage holders on houses or lien holders on cars are not preferences, nor are payments for utilities, groceries, gas, etc. incurred within 30 to 45 days before the bill was paid. If you made a preference payment, the bankruptcy trustee may seek a refund of the payment from the creditor.

Question: How will this affect my credit?

Answer: If you are considering filing bankruptcy you have presumably been having financial difficulty for an extended period of time, and as such your credit score has already suffered. A bankruptcy is unlikely to make your credit score much worse, and sometimes even improves it. In addition, creditors know that people must wait eight (8) years after filing a Chapter 7 bankruptcy to file another Chapter 7 bankruptcy, so it is often possible to obtain a credit card after bankruptcy, though interest rates are generally high.

Question: How long after filing bankruptcy do I have to wait before I can file again?

Answer: If you filed a Chapter 7 bankruptcy, you cannot file another Chapter 7 bankruptcy for eight (8) years. You can, however, file a Chapter 13 bankruptcy four (4) years after you receive a discharge in a Chapter 7 bankruptcy. You can also file a Chapter 13 bankruptcy two (2) years after you receive a discharge in a previous Chapter 13 bankruptcy.