

BANKRUPTCY

During this difficult economic period, more and more people are filing for bankruptcy protection in order to save their homes and to obtain a financial fresh start by discharging credit card and other unsecured debts, which often carry crushingly-high interest rates. The filing of a bankruptcy petition results in an immediate prohibition - the stay - of efforts by creditors to collect on the filer s - the debtor s - debts. All phone calls and other communications must stop. Wage garnishments and foreclosure sales are halted. Judgments obtained in state courts cannot be collected upon.

Bankruptcy cases are filed in federal courts under one of several chapters. Individuals usually file under chapter 7 or chapter 13. Chapter 7 is the simplest method of obtaining a discharge, but individuals and couples whose incomes are too high - as compared with average incomes for families in California (or wherever the filers live) - may have to file under chapter 13 and pay back some of their unsecured debts. Under chapter 7, a petition and schedules of assets, debts, income and expenses and other forms are filed in the district in which the filer has lived for the past six months. About a month later, the debtor must attend a creditors meeting with a trustee appointed by the court. This meeting is held in a conference room and is an opportunity for creditors to question the debtor. However, creditors rarely attend the meeting, which usually lasts less than five minutes. The trustee asks if the debtor listed all his or her assets and debts and read all the forms before they were filed and then concludes the meeting. The filer obtains a discharge and the case closes in three to four months.

Filers who need to pay back some of their unsecured debts due to higher than average incomes must file under chapter 13. Those who are behind on mortgages or car payments can also file under this chapter and pay back the missed payments over three to five years. Under chapter 13, if the filer s home is worth less than the first mortgage, home equity lines and second mortgages can be "stripped" off and turned into unsecured debts, which can then be discharged. With the unprecedented drop in real estate prices in the last few years, many filers are able to take advantage of this provision. Under chapter 13, the same forms as under chapter 7 are filed, but an additional form - the plan - is added. Under this plan, debtors pay back secured debts, taxes, and, if necessary, some portion of unsecured debts by making monthly payments to the trustee. (Most people filing under chapter 13 pay back little or no unsecured debt, but file under this chapter to save their homes or cars.) As in chapter 7, debtors must also attend a brief creditors meeting.

Whether filing under chapter 7 or 13, debtors must take a credit counseling course before filing and a financial management course after filing. These courses can be taken online or by phone.

Bankruptcy filings stay on the filer s credit report for seven to ten years. However, filers often receive offers for new credit cards after filing and can build back good credit by making small charges on a card and paying the balance in full each month. Alternatively, filers can obtain a secured card by depositing money with a bank.

Johnson & Nixon

142 George Street, San Jose, CA 95110
408-287-7717