

## **BANKRUPTCY**

Roslyn C. Lewin, P.A., is a "debt relief agency" as defined under the Bankruptcy Reform Act.

The following is general information about chapter 7 and chapter 13 Bankruptcy. Chapter 7 and chapter 13 are two types of personal bankruptcy. If you would like to set up a FREE consultation to talk about your specific needs, please contact our firm at 954-749-9991.

### **Introduction**

The Law Firm of Roslyn C. Lewin, P.A., has been helping individuals file Bankruptcy for 15 years. We have an excellent reputation in the South Florida area and are in good standing with the Florida Bar Association. We concentrate our practice in the area of Bankruptcy and do not "spread ourselves too thin" so that we can offer you the best advice and service possible. Our clients enjoy personal service from Roslyn Lewin, Attorney at Law, and her staff of well informed paralegals. We encourage our clients to stay in touch with us and always call us when they have questions or concerns. Our interest in your case does not end when you pay your fee. Many attorneys are unavailable to their clients after the initial meeting. We are always ready, willing and able to help. We will follow through with your case and ensure that you are well informed, that you are prepared for any court requirements and that you are completely satisfied. Our reputation depends on it. In fact, much of our business is built on client referrals, the ultimate compliment!

Bankruptcy is available to help people discharge (wipe out) debts they cannot afford to pay. Under certain circumstances your debts may be totally discharged (wiped out). Examples of the types of debts that you may receive help with in Bankruptcy would be credit cards, medical bills, utility bills, unsecured loans, overdrawn bank accounts, and balances owed for repossessed cars. These types of debt are known as unsecured debts. Examples of secured debts would be home mortgages, car payments, and furniture accounts that you want to keep. These debts must be paid back or the property surrendered. If you wish to surrender the property the debt then becomes unsecured and may be discharged. Lawsuit can also be stopped by Bankruptcy. Each person's case is different from another's. It is important to have a personal consultation during which your debts, income and assets can be evaluated and the correct chapter of bankruptcy can be recommended.

A new bankruptcy law went into effect on October 17, 2005. I am pleased to say that most of the clients I see still have the opportunity to file a simple chapter 7 case and discharge their debts. In fact, the statistics show that almost 90% of the people still qualify to file a bankruptcy. Happily, in our office, it is business as usual.

### **Who Can File Bankruptcy in Florida**

A permanent resident of Florida can file bankruptcy in a Florida bankruptcy court. Our firm handles cases in Miami-Dade, Broward and Palm Beach counties. You must file bankruptcy in the county you live in or possibly the county you work in.

## **Exemptions**

"Exempt property" is property that a debtor is allowed to keep. What property is exempt is determined by state law. In certain states you are required to use the exemptions under your state's laws. In other states you can choose the exemptions that work the best for you – either the federal exemptions or your state's exemption.

The Trustee cannot take your exempt property and you may keep all of your exempt property regardless of its value and amount. What property is "exempt" and what property is "non-exempt" depends on the laws of the applicable state. Therefore, before you file bankruptcy we will determine which state or federal law your exemptions fall under. Even if you live in Florida, depending on how long you have lived here, you may be eligible for the exemptions in another state or possibly the Federal Exemptions.

Under the bankruptcy law the state exemption law applicable to your bankruptcy is determined by the state in which you have been domiciled for the 730 days (two years) immediately preceding your filing date. If you have not been a permanent resident of Florida for the two-year period immediately preceding your bankruptcy, then your bankruptcy exemptions will be those allowed by the state in which you were domiciled for 180 days immediately preceding the two-year period, or the state in which you were domiciled for the Chapter 7

Chapter 7, otherwise known as "straight" or "liquidation" Bankruptcy is generally the simplest and quickest form of bankruptcy and is available to individuals, married couples, corporations and partnerships.

Most chapter 7 cases are "no-asset" cases, which simply means that you do not have any non-exempt property for the trustee to sell. In the unlikely event that you file a chapter 7 with non-exempt assets the debtor turns over all non-exempt property to the bankruptcy trustee who then converts it to cash for distribution to the creditors. The debtor receives a discharge of all dischargeable debts usually within 3 ½ months. In the vast majority of cases the debtor has no assets that he would lose, so Chapter 7 will afford that person a relatively quick "fresh start".

## **Eligibility for Chapter 7**

You must undergo a "means test" to qualify for Chapter 7 bankruptcy. The "means test" is prepared by our office with documents supplied by you. It is not actually a test you take! Your income and expenses are examined in detail by our office to see how they compare to the standard for your area as set by the IRS. If you earn less than the median income for a family of your size in your state, you can file for Chapter 7 bankruptcy. But if your income from the last six months is greater than the median income and you can

pay at least \$6,000 over five years or \$100 a month toward your debt, you are not allowed to file for Chapter 7 but must file for Chapter 13 instead. There is one more opportunity to file chapter 7 in that case. If your disposable income is not enough to pay at least 25% of your unsecured debts, you may still file for chapter 7. In the event that you have to file chapter 13 you will be required to repay a portion of your debts over three to five years. This amount is almost always a small fraction of your total debt, no interest accrues on the unsecured claims (credit cards etc.) if you make all plan payments and you are protected from your creditors longer portion of such 180-day period. during this time that you are in the chapter 13, i.e. no lawsuits, collection etc.

## **Filing Chapter 7**

A bankruptcy starts with the filing of the official petition and related documents with the bankruptcy court, all of which are prepared by our office and reviewed and signed by you, the debtor. In order to complete these documents we will give you a list of information which you must provide to us. This list of information will be specific to your case and given to you after your consultation.

As soon as you file for bankruptcy, your creditors are prevented from trying to collect on your debts. All activity must now go through our office. You therefore get legal protection for your property and a break from the harassing creditors as well as resolution from litigation you may be involved in or threatened with.

## **Personal Income Taxes in Chapter 7 Bankruptcy**

You can discharge (wipe out) debts for federal income taxes in Chapter 7 bankruptcy only if all of these five conditions are true:

1. The taxes are income taxes.
2. You did not commit fraud or willful evasion. You did not file a fraudulent tax return or otherwise willfully attempt to evade paying taxes, such as using a false Social Security number on your tax return.
3. You pass the three-year rule. The tax return was originally due at least three years before you file for bankruptcy.
4. You pass the two-year rule. You actually filed the tax return at least two years before filing the bankruptcy. -- having the IRS file a substitute return for you doesn't count unless you agreed to and signed the substitute return.
5. You pass the 240-day rule. The income tax debt was assessed by the IRS at least 240 days before you file your bankruptcy petition, or has not yet been assessed.

If any of the following situations apply to you, you will have to add time to the three-year, two-year or 240-day rules for your debts to qualify for discharge in bankruptcy:

1. If you submitted an Offer in Compromise, the 240-day rule is delayed by the period of time from when the Offer is made until the IRS rejects it or you withdraw it, plus 30 days.

2. If you obtained a Taxpayer Assistance Order from an IRS Problems Resolution Officer preventing the IRS from collecting, the bankruptcy court may require that you add the time collection was suspended to the three-year, two-year and 240-day requirements.
3. If you filed a previous bankruptcy case, all three time periods stopped running while you were in the prior bankruptcy case. You must add the length of your case plus six months to all three.
4. After your bankruptcy, the IRS can seize any property you owned at the time the bankruptcy was filed. But this doesn't mean that after your bankruptcy case is over the IRS will come and grab your property. Post-bankruptcy, the IRS tends to seize only real estate and retirement accounts or pensions. And even then, IRS seizures generally take place only when a taxpayer has made no efforts to otherwise resolve the problem.
5. Caution! A Chapter 7 bankruptcy will wipe out only your personal obligation to pay the debt. Any lien recorded before you file for bankruptcy remains.

## **CHAPTER 13 BANKRUPTCY**

Chapter 13 Bankruptcy is also known as a reorganization bankruptcy. Chapter 13 bankruptcy is commonly filed by individuals who need a payment plan to “catch up” on mortgage, car, property tax, income tax or homeowners association payments, or who have non-exempt property they do not want to surrender in a chapter 7 Bankruptcy. If you are in a foreclosure lawsuit on your home you may stop that case and save your home by filing a chapter 13 case. You cannot do this in Chapter 7 bankruptcy. You can make up missed payments only in Chapter 13 bankruptcy. Some individuals who otherwise qualify for chapter 7 may wish to file chapter 13 because they have a sincere desire to repay a portion or all of their debts, but you need the protection of the bankruptcy court to do so. You may think filing Chapter 13 bankruptcy is simply the "Right Thing To Do" rather than file Chapter 7. If you received a Chapter 7 discharge within the previous eight years you cannot file for Chapter 7 again until the eight years are up

### **341 Hearing/Meeting of Creditors**

Shortly after we file your petition, the trustee will hold the "first meeting of creditors" (also called a “341” meeting). You must be present for that meeting. The trustee will ask you questions under oath about your property and debts. Creditors can also question you on those subjects, but seldom do. This is typically the one and only time you have to come to court.

Creditors have 60 days after the 341 meeting to convince the bankruptcy court you shouldn't be allowed to discharge your debts. This is rarely done and usually the case closes without further activity and the debts are discharged.

Creditors may also approach you about what's called “reaffirmation” of debts. Reaffirmation is an agreement between you and a creditor that you will remain liable on a

debt and will pay the remaining portion of the amount owed in order to keep certain property, such as an automobile. Our office will carefully go through any such agreements with you at the appropriate time.

Under the old bankruptcy law, you could make your car payments when they came due. When the loan was fully paid, title to the car would be transferred to you. If you defaulted on the loan after discharge, the creditor could repossess the car, but the repossession deficiency amount that you owed would still be wiped out and you would owe nothing. Under the new law, you have to reaffirm your car loan within 45 days after the "341 meeting." You no longer have the option of continuing your car payments without reaffirming the loan. Once the loan is reaffirmed, if you default on your payments and the car is repossessed, you are liable for the repossession deficiency.

### **Discharge**

If creditors haven't filed a suit to stop you from getting out from under your debts within 60 days of the 341 meeting, the court will enter an order granting the "discharge" of all dischargeable debts that existed on the date the case was filed.