Helping Older Persons With Legal & Long-Term Care Problems

Bankruptcy

1. What is bankruptcy?

"Bankrupt" means filing a petition in federal bankruptcy court asking for protection from those to whom you owe money, the creditors. A single petition may cover an individual or married couple. The instant you, the debtor, file for bankruptcy, the court takes legal control of your assets and stops all debt collection efforts.

Shortly after the filing, a court-appointed trustee convenes a meeting to inventory your assets and debts and determine which assets are exempt from seizure. Ohio law regulates these exemptions, which include in part: pensions, clothes, household goods, and some equity in a home.

At the conclusion of the bankruptcy, you are freed from most debts, but taxes, student loans, alimony, and child support remain payable in full, and you must make payments on all secured loans (such as home mortgages and car loans) or forfeit the collateral (the house and the car.)

Two chapters of the bankruptcy section of the U.S. Code, regulate individuals filing bankruptcy: Chapter 7, liquidation, and Chapter 13, reorganization.

2. What is a Chapter 7 liquidation?

When you file under Chapter 7, the bankruptcy trustee collects your non-exempt property, sells it and distributes the proceeds to your creditors. Your remaining debt is discharged, allowing you to have a fresh start, debt free.

3. What is a Chapter 13 reorganization?

A Chapter 13 filing allows you to create a plan to use future earnings to pay off debt. The repayment plan can take 5 years and may not pay 100% of your debt. But Chapter 13 debtors retain their property so long as they stay current with their repayments, and at the end of the plan, they too are debt free.

4. What changes are there in the new bankruptcy law?

On October 17, 2005 the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) went into effect. It changes many long-standing bankruptcy practices, including:

A. The Chapter 7 "means test.":

The biggest change in the new law is the creation of a "means test" formula (similar to a tax return) to identify debtors who are presumed ineligible for a Chapter 7 discharge.

However, debtors can skip the test and proceed with a Chapter 7 if their current monthly income, multiplied by 12, is equal to or less than Ohio's highest median family income. Ohio's figures, in 2004 inflation-adjusted dollars, are:

Household	Annual	Monthly
1 person:	$36,109	$3,009
2 person:	$46,042	$3,837
3 person:	$56,949	$4,746
4 person:	$64,665	$5,389

About 90% of Chapter 7 filings will not be affected by the means test. But those with income above Ohio's highest median income who can pay at least $6,000 over five years, $100 a month, will have to file a five year Chapter 13 plan to repay creditors.

B. Waiver of filing fee:

Debtors whose annual incomes are at or below 150% of the Federal Poverty Level ($14,356 – 1 person) and who are not able to pay the $209 Chapter 7 or other bankruptcy filing fee in installments, will not have to pay it at all.

C. The automatic stay:

By law, the instant a bankruptcy is filed, an automatic stay is issued to all creditors prohibiting them from all debt collection efforts including letters, phone calls, repossessions, garnishments, lawsuits and sheriff's sales.

Under the new law, the automatic stay no longer stops or postpones an eviction based on a judgment obtained prior to the bankruptcy filing. Moreover If the landlord can show "endangerment" of the property or "illegal use of controlled substances" on the property in the 30 days before the bankruptcy filing, the landlord can go ahead with the eviction.

Additionally, if it is the debtor's second bankruptcy filed in the past 12 months, the automatic stay lasts only 30 days but the debtor can request that it be extended. If the debtor had 2 or more dismissed bankruptcies in the past year, there is no automatic stay at all and a motion must be filed to obtain one.

D. State exemptions:

A debtor cannot use Ohio exemptions, the list of property that the debtor is allowed to keep, unless he has lived here for at least two years before filing. If a debtor moved during this two-year period, the state exemptions are those of the state in which the debtor lived the majority of the time in the six months before this two-year period.

E. Divorce property settlement debts?

These debts are non-dischargeable even though they are neither child support nor alimony related.

F. Time between discharges:

The length of time between Chapter 7 discharges has increased from 6 to 8 years. A Chapter 13 will be denied when the debtor has received a Chapter 7 discharge within the last 4 years, or has received a discharge from a previous Chapter 13 proceeding within 2 years.

G. Proof of income:

All filers must give the Trustee a copy or transcript of their most recent tax returns at least 7 days before the creditors' meeting or their case will be dismissed. Also those filing for Chapter 13 have to be current on tax returns for the previous four years.

H. Credit counseling:

The new law requires all filers to attend credit counseling with an approved non-profit credit counseling service within 6 months prior to filing bankruptcy. As part of the course, the debtor must complete a budget and receive a certificate of attendance. In addition, debtors have to complete a course on personal financial management before completing a Chapter 13 bankruptcy.

I. Vehicles:

Chapter 13 debtors who wish to keep their cars are now required to pay the full loan amount on car loans, rather than reducing vehicle liens to the value of the vehicle, as is currently done in Chapter 13 plans. The new rule applies to all car loans less than two and a half years old as of the date you file. Similar new rules apply to all other property purchased within the last year prior to filing.

J. Recent debt:

Certain debts will be harder to discharge, including: debts for luxury goods of more than $500, made within 90 days before filing, and cash advances of $750 made within 70 days before filing.

K. Child support & alimony:

These debts are given a higher priority under the new law. The automatic stay does not apply to the enforcement of a wage withholding order under a judicial or administrative order or under a statute, including obligations accruing from both before and after the filing.

L. Student loans:

Student loans are non-dischargeable, in the absence of undue hardship, regardless of the lender. This will cover loans from non-governmental and profit-making organizations.

M. Miscellaneous:

Under the new law the judge can dismiss a bankruptcy if it is in the best interest of the debtor's violent crime victim. Also debtors have to complete longer, more complicated forms and must keep more detailed records of their finances. Lawyers will be required to certify that debtor disclosures are correct, similar to a tax audit. Lawyers also will have a marked increase in the number of files they have to keep and notices they have to provide, all of which will result in more attorney fees.

5. Do I need an attorney?

Always consult a bankruptcy attorney for advice specific to your situation. There are many other bankruptcy laws, not set forth here, that may affect you.

Pro Seniors' Legal Hotline for Older Ohioans provides free legal information and advice by toll-free telephone to all residents of Ohio age 60 or older. If you have a concern that cannot be resolved over the phone, then the hotline will try to match you with an attorney who will handle your problem at a fee you can afford.

In southwest Ohio, Pro Seniors' staff attorneys and long-term care ombudsmen handle matters that private attorneys do not, such as nursing facility, adult care facility, home care, Medicare, Medicaid, Social Security, protective services, insurance and landlord/tenant problems.

This pamphlet provides general information and not legal advice. The law is complex and changes frequently. Before you apply this information to a particular situation, call Pro Seniors' free Legal Hotline or consult an attorney in elder law.

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