



**U.S. AIR FORCE**

# **PERSONAL BANKRUPTCY**



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2006



## **FILING FOR PERSONAL BANKRUPTCY**

If you are unable to pay your debts, you may be entitled to file for bankruptcy under Chapter 7 or Chapter 13 of the Federal Bankruptcy Code.

The goal of the federal bankruptcy law is to relieve an honest debtor of his debts, thereby providing him or her with an opportunity for a fresh start financially. The bankruptcy law also benefits creditors by providing for an orderly means by which they may be paid all or a portion of what they are owed either through liquidation of the debtor's property or through a court-approved repayment plan.

### **WILL MY FILING FOR BANKRUPTCY AFFECT MY CAREER?**

It depends. The Air Force generally takes a neutral position with regard to a member's filing for bankruptcy, however, if the reason that you are filing is due to "financial irresponsibility", then you may be disciplined for being financially irresponsible. Of course, you would never be disciplined merely because you filed for bankruptcy. However, filing for bankruptcy could affect your security clearance (if you have one) or could affect your obtaining one (if your application for a clearance is pending).

In addition, with regard to obtaining future employment at a state or federal agency, employment applications for such positions often require you to state whether you have ever filed for bankruptcy. Although filing for bankruptcy will not bar you from future civilian government employment, it MAY affect your chances of obtaining such employment.

Thus, although you certainly have a right to file for bankruptcy if you choose, you should consider the potential negative consequences. Unless there is absolutely NO OTHER MEANS by which you can meet your financial responsibilities short of filing for bankruptcy, we strongly discourage you from taking this action.

### **HOW DO I FILE FOR BANKRUPTCY?**

You may file for bankruptcy by filing a bankruptcy petition in the bankruptcy court in the federal district where you have either maintained (1) a residence, or (2) a domicile for 180 days preceding the date you file. After filing, the bankruptcy court will then have control over the proceedings regardless of where your property or your creditors are physically located. Remember that there are filing fees involved, so if you have no money at all, you cannot file for bankruptcy.

### **WHAT HAPPENS WHEN I FILE THE PETITION?**

When you file the bankruptcy petition, an automatic "stay" takes effect and protects the debtor and his property from certain creditors' actions. This means that with regard to many debts covered by the bankruptcy, creditors may not take any action to collect payment nor repossess

any property which is collateral for a debt. This stay allows for the orderly administration of the bankruptcy case. Note, if one of your creditors contacts you and asks you to "reaffirm" your debt to him (promise that you will repay this debt despite the bankruptcy), DO NOT make any promises; tell this creditor to speak to your attorney. Some actions will not be delayed or stopped by the automatic stay. For example, bankruptcy no longer delays or stops eviction actions, driver's license suspensions, legal actions for child support, or divorce proceedings.

### **WHICH DEBTS ARE DISCHARGEABLE UNDER THE BANKRUPTCY?**

All debts which were incurred BEFORE the petition was filed and not considered to be "non-dischargeable" are dischargeable by bankruptcy court after the terms of Chapter 7 or Chapter 13 have been met. If a debt is "non-dischargeable", then you will still be required to pay these debts after the bankruptcy proceeding is over. Whether you file under Chapter 7 or under Chapter 13, the following debts are NEVER dischargeable: (1) certain taxes, (2) alimony and child support, (3) certain student loans, (4) damages resulting from operation of a vehicle while legally intoxicated, (5) debts from a previous bankruptcy for which a discharge was not granted, (6) debts not listed in any of the debt information provided to the bankruptcy court, and (7) debts for fraud, embezzlement or larceny.

### **BEFORE YOU CAN FILE**

The new bankruptcy laws went into effect on 17 October 2005. Now, before you can file under Chapter 7 or Chapter 13 you must complete credit counseling with an agency approved by the United States Trustee's Office.

These can be found at: [www.usdoj.gov/ust](http://www.usdoj.gov/ust) (click on "Credit Counseling and Debtor Education.")

The purpose of this counseling is to give you an idea of whether you really need to file for bankruptcy or whether an informal repayment plan would get you back on your economic feet. The counseling will be required even if it's obvious that a repayment plan is not feasible for your circumstances. You are only required to attend, and you cannot be forced to go along with any repayment plan that the agency suggests. However, if the agency comes up with a plan, you'll be required to submit it to the court along with a certificate showing that you completed credit counseling.

At the end of your bankruptcy you will again be required to attend counseling, this time regarding personal financial management. Only after you submit proof to the court that you completed the counseling will the court grant you the bankruptcy discharge that relieves you from certain debts.

### **WHAT HAPPENS IF I FILE UNDER CHAPTER 7?**

If you file under Chapter 7, the court will LIQUIDATE ("sell") your property and then pay your creditors with the proceeds. Specifically, at the conclusion of the bankruptcy proceedings, all of your "non-exempt property" will be liquidated and used to pay your creditors; even if this money

is not enough to pay your debts, all of the debts incurred before you filed will be discharged. In New Mexico, the following property is exempt from the liquidation process: (1) personal property valued at no more than \$500.00, (2) one motor vehicle valued at no more than \$4,000.00, (3) jewelry valued at no more than \$2,500.00, (4) furniture, clothing, books, and medical health equipment used for the health of the person and not for his profession, (5) proceeds from a pension or retirement fund of any person supporting another person, and (6) a home valued at no more than \$30,000.00.

Under the old bankruptcy law, the personal property debtors were allowed to keep in Chapter 7 bankruptcy was determined by the laws of the state where they lived (as long as they lived there for at least three months). Under the new law, you must live in a state for at least two years prior to filing in order to use that state's exemption laws. Otherwise, you must use the exemptions available in the state where you used to live. Similar rules apply to homestead exemptions, which determine how much equity in a home you can keep when filing for Chapter 7 bankruptcy. However, to use your new state's homestead exemption, you must live there for at least 40 months. Because exemption amounts vary widely from state to state, these new residency requirements could make a big difference in the amount of property you get to hold on to.

This means that all of your property (with the exception of the exempt property listed above) will be sold in order to pay your creditors. After your creditors have been paid the proceeds of the liquidation, all of the debts that arose prior to the filing of the petition will be discharged, with the exception of the non-dischargeable debts under Chapter 7 which are listed above (i.e., alimony or child support).

Since the law changed in October 2005, it is much more difficult to file under Chapter 7. Under the new rules, a "means test" is used figure out whether you have enough income to make payments under a Chapter 13 filing.

Under the new rules, the first step in figuring out whether you can file for Chapter 7 is to measure your "current monthly income" against the median income for a family of your size in your state. Your "current monthly income" is not your income at the time you file, however: It is your average income over the last six months before you file. For many people, particularly those who are filing for bankruptcy because they recently lost a job, their "current monthly income" according to these rules will be much more than they take in each month by the time they file for bankruptcy.

Once you've calculated your income, compare it to the median income for your state.

You can find median income tables, by state and family size, at the website of the United States Trustee, [www.usdoj.gov/ust](http://www.usdoj.gov/ust); (click "Means Testing Information.")

If your income is less than or equal to the median, you can file for Chapter 7. If it is more than the median, however, you must pass "the means test" in order to file for Chapter 7. To find out whether you pass the means test, you start with your "current monthly income," calculated as described above. From that amount, you subtract both of the following:

- (1) Certain allowed expenses, in amounts set by the IRS. Generally, you cannot subtract what you actually spend for things like transportation, food, clothing, and so on; instead, you have to use the limits the IRS imposes, which may be lower than the cost of living in your area.
- (2) Monthly payments you will have to make on secured and priority debts. Secured debts are those for which the creditor is entitled to seize property if you don't pay (such as a mortgage or car loan); priority debts are obligations that the law deems to be so important that they are entitled to jump to the head of the repayment line. Typical priority debts include child support, alimony, tax debts, and wages owed to employees.

If your total monthly disposable income after subtracting these amounts is less than \$100, you pass the means test, and will be allowed to file for Chapter 7. If your total remaining monthly disposable income is more than \$166.66, you have flunked the means test, and will be prohibited from using Chapter 7. If your remaining monthly disposable income is between \$100 and \$166.66, you must figure out whether what you have left over is enough to pay more than 25% of your unsecured, nonpriority debts (such as credit card bills, student loans, medical bills, and so on) over a five-year period. If so, you flunk the means test, and Chapter 7 won't be available to you. If not, you pass the means test, and Chapter 7 remains an option.

### **WHAT HAPPENS IF I FILE UNDER CHAPTER 13?**

If you file under Chapter 13, the court will devise a REPAYMENT PLAN and so, you will repay your creditors all or most of what they are owed, but over a longer period of time. A Chapter 13 bankruptcy differs from a Chapter 7 bankruptcy mainly in that you may usually keep your property (there is no liquidation sale) and you must repay your debts on a periodic bases. After you have complied with the payment plan, all of the debts that arose prior to the filing of the petition will be discharged, with the exception of the non-dischargeable debts under Chapter 13 which are listed above.

Under the old rules, people who filed under Chapter 13 had to devote all of their disposable income, what they had left after paying their actual living expenses, to their repayment plan. The new law adds that filers have to calculate their disposable income using *allowed* expense amounts dictated by the IRS, and not their actual expenses. These expenses are often lower than actual costs.

Additionally, these allowed expense amounts have to be subtracted from the filer's average income during the six months before filing, and not from the filer's actual earnings each month. This means that filers may be required to pay a much larger amount of "disposable income" into their plan than they actually have to spare every month.

### **IF I AM CONSIDERING FILING FOR BANKRUPTCY, WHAT SHOULD I DO FIRST?**

If you are considering filing for bankruptcy, see a legal assistance officer before you hire an attorney or attempt to file any paperwork with the bankruptcy court by yourself. Although a

legal assistance attorney MAY NOT represent you in a bankruptcy court, nor may she/he assist you in filing paperwork with the court, she/he can explain the general procedures of a bankruptcy proceeding so you will know what to expect and assist you in finding an attorney.

In addition, after speaking with a legal assistance officer, you may decide that you do not really need to file for bankruptcy in order to pay your debts. Some people simply need to reorganize their debts in such a way that they can pay them, without any court intervention. The Family Support Center offers a financial service where a financial advisor will assist military members and their dependents devise a budget so that the individuals may pay their debts without any court intervention.

If Family Support cannot help you, then you should try the Consumer Credit Counseling Service of Eastern New Mexico (CCCS) which is a business located in Clovis, which will work with you AND your creditors in order to devise a debt repayment plan that both the debtors and the creditors can live with. If CCCS can help you, then you will pay all your bills to CCCS and then CCCS will pay your creditors. Your repayment plan may even involve your not paying each creditor the entire amount due each billing period.

Thus, it is best to see the financial advisors at Family Support and CCCS BEFORE you attempt to file for bankruptcy. If you do not really need to file for bankruptcy, you should not file. The use of above mentioned services as a means to pay your bills will certainly not harm your credit rating as much as filing for bankruptcy will.

### **MY EX-SPOUSE IS FILING FOR BANKRUPTCY, WILL THIS AFFECT ME IN ANY WAY?**

It depends. In most divorce decrees, the parties have resolved to assume responsibility for certain debts. However, if the debt originated as joint debt, then it will be passed on to you solely by the bankruptcy, despite the split in the divorce. If the debt was entirely your ex-spouse's debt (e.g., he or she applied for and signed for the credit cards alone), the debt will be extinguished in her bankruptcy.

### **CONCLUSION**

In conclusion, should you decide to file for bankruptcy, you should consider hiring a bankruptcy attorney to assist you in the process. However, your first stop should always be the legal assistance office for a more detailed explanation of your options.