



5 Minute “Cheat Sheet” Chapter 7, Chapter 13, and Non-Bankruptcy Options

Filing Bankruptcy in General

Filing bankruptcy is a difficult but important decision. Even if it's very clear that you need to file some kind of a bankruptcy, it's sometimes difficult to get started. We hope the information that you find in our website and on these guides will help you determine if you need this kind of help and, if so make it easier for you to get started sooner rather than waiting, as many people do, too long.

No doubt you've heard many things about bankruptcy from your friends, family and coworkers. I'm sure that they all mean well, but I'm also sure that most of what you heard is probably wrong. I've been practicing bankruptcy law for nearly 25 years and it never ceases to amaze me how much misinformation people have about bankruptcy. And, the way bankruptcy works has changed greatly over the years. Today, it is not uncommon for people to be able to buy real estate and cars are shortly after their bankruptcy cases over. 20 years ago this was not the case.

In our present economy, many people are out of work. Others have seen their wages go down. Real estate values have dropped so much that houses that were once good investments are now better off in left to foreclosure because they are worth so much less than what is owed on them. Matter what your situation is, you can be assured that we have seen it, probably many times, and can tell you exactly what you need to know order for you to make the best decision about your circumstances.

Filing a bankruptcy begins with gathering information. That's what you're doing right now. Once you have gathered all the information that you can from various sources, the next step would be to actually talk to a bankruptcy attorney.

You can talk to us simply by scheduling a telephone appointment. There is no need to actually visit the attorney in the office, although that's what most people do. We've tried to make it easy for people to get the information in a gradual

step-by-step way. Oftentimes they begin by reading the website. Then they download some of our information to read. The next step would be to call the office and make a telephone appointment to talk to an attorney over the phone. Then, if it makes sense to you and the attorney, you could follow up with an appointment in our office.

Chapter 7

Chapter 7 is the most commonly filed form of bankruptcy. Many people who come to see us think that it is the best form of bankruptcy. This is not true. There is no best form of bankruptcy. The form of bankruptcy that's right for you is the best one for you. Sometimes no bankruptcy at all is the better choice. We'll discuss that later in this paper.

Chapter 7 is generally filed by people who have lower incomes, not much equity in property, and the kind of debt that is dischargeable and bankruptcy. This does not mean that you can only go unsecured debts like medical bills and credit cards in order to file chapter 7. In fact, most of our clients have houses and cars, trucks, motorcycles, boats, and other property. Because the law allows you to keep a certain amount of property, most Chapter 7 bankruptcy consumers not lose any property.

Sometimes, however, the goal of the bankruptcy is to get out from under property that no longer extends to keep. So, for example, if you have a house that's worth \$100,000 in your hundred and \$50,000 on it and it's in foreclosure it might make sense to file Chapter 7 bankruptcy to discharge that debt. By discharging that debt you can be assured that you will not be faced with collection actions later, like wage garnishment and bank account seizure. All of the debts discharged Chapter 7 results in no adverse tax consequences. This is a tremendous benefit over some non-bankruptcy forms of debt relief because workouts with creditors that do not involve bankruptcy results in taxable income in the eyes of the IRS. We'll talk about that more in detail later.

Most people want to keep their cars in bankruptcy. However, sometimes the plan is not to do that at all. Let's just say you have a car that, due to negative equity trade in, you've rolled the negative equity from previous car or cars into the car you're currently driving. I've seen cars that are worth about \$10,000 and my clients more than \$30,000 on them. Clearly it doesn't make sense to continue in this kind of a situation by keeping the car. Therefore, in a bankruptcy we might surrender the car to the creditor and discharge the

amount of the debt that's it after or above the value the car. The car would be repossessed voluntarily as part of bankruptcy process the creditor would sell the car at auction in whatever is left over on the card that would be discharged in bankruptcy and the consumer would not know it anymore.

If we know in advance if this is going to be the way we're going to treat a particular car, sometimes people will go out and buy a car you for their bankruptcy is filed. That way, when their bankruptcy is filed they will reaffirm, or cheap, the car that they have purchased and allow the other car, the one with the negative equity, to be sent back to the bank and ultimately auctioned off. Because we all have to have transportation, this certainly makes a great deal of sense.

Chapter 7 cases are generally about five months in length. Normally, you only have to go to one meeting, that's called a 341 meeting, with their attorney. The meeting is not held in a courtroom and is not presided over by a judge. The consumer and the attorney would go and meet with a bankruptcy trustee who will briefly examine the consumer to have him verify all the information the petition as true and accurate.

Creditors are permitted to attend these meetings but very seldom do. When they do it is generally only to make sure that there is insurance on cars or houses that the consumer wants to keep, or if the consumer has indicated that they want to surrender a vehicle, for example, the creditor might make arrangements at that time for the surrender of the vehicle back to the creditor.

Chapter 13

Chapter 13 is an excellent choice for people who are attempting to stop repossessions and foreclosures. Even if you are months behind in your house payment or the repossession man is following you around with his truck, you can stop the repossession and stop a foreclosure instantly by filing a Chapter 13 bankruptcy. You get up to 60 months to catch up the missed payments on the house or car and the creditor, in most cases, cannot stop you. It is your right to do this a Chapter 13.

Most of the people that I talk to are very misinformed about Chapter 13. The most serious misunderstanding is about the amount of debt that has to be paid back in a Chapter 13 bankruptcy. When you file Chapter 13 bankruptcy you are

not required to pay back all of your creditors in most cases. In fact, in several of my Chapter 13 only 1% of the unsecured debt is paid back.

This makes the Chapter 13 similar to Chapter 7, where there is a 0% payment to the unsecured creditors.

In Chapter 13 is sometimes possible to strip off negative equity from cars. So, in the example I gave above in the Chapter 7 case, if you owed \$30,000 on a \$10,000 car, you might be able to pay only \$10,000 for the car in your Chapter 13 and the \$20,000 that is owed on the car over and above its value would be paid as an unsecured debt, sometimes as low as 1%.

So, a Chapter 13 is sometimes better than a Chapter 7, depending on what your goals are.

Many people have been laid off or suffer medical issues that keep them out of work for a period of time. While unemployed or unable to work, the bills get behind. When the bills get behind sometimes a foreclosure is filed or repossession is threatened.

Sometimes people are actually sued and creditors are able to garnish wages or take money out of bank accounts. When this happens, a Chapter 13 is sometimes the better choice.

In a chapter 13, you get up to five years to catch on house and car payments. Sometimes car payments are lower. Again using the above example of the \$10,000 car, a car payment would be generally cut down to about 25% of what the payment was before the bankruptcy. Therefore, it is possible for you to keep the cars and houses, get caught up over a period of time because of the lower payments, and emerge from bankruptcy keeping all of your property safe from repossession foreclosure.

There are other benefits in Chapter 13 as well. Although student loans are not dischargeable, by filing a Chapter 13, youi might be able to wipe out enough consumer debt to free up enough money to be able to pay the student loans when the Chapter 13 is over. During the period of time you are in a Chapter 13, the student loan creditors cannot garnish wages or take any action against you to collect the student loan.

The student loan is an unsecured debt that is not discharged at the end of the case. So, if you can increase your income during the period of time you are in a Chapter 13, and wipe out all the unsecured debt at the same time, you would be in a better position to be able to pay the student loans after the Chapter 13 is over.

So even when the debt is not discharged in a Chapter 13, the Chapter 13 can give you the breathing room and the time you need to become financially stable so that you will be able to meet your expenses and pay off the non-discharged student loans after the 13 is over.

Certain other debts are not discharged in any kind of bankruptcy. We've already talked about the student loans that are not discharged but other debts are not dischargeable as well. Alimony and child support are not dischargeable. Most taxes unless they are older than three years are not dischargeable. And, if someone has an accident and is either drinking or taking drugs, and causes personal or property damage, those debts would not be discharged in bankruptcy either.

Non-Bankruptcy Options.

If your debts are not overwhelming and you have higher than average income that is stable, then certain non-bankruptcy options may be available to you. There are two main kinds of non-bankruptcy options for people who have debt problems. Debt management programs and debt consolidation.

Debt management programs

Debt management programs operate somewhat similar to a Chapter 13. You would basically ask a company to negotiate the best deal they can with your creditors and you would pay this company who would then pay the creditors off over time. Unlike Chapter 13, where creditors are basically told what they will get, debt management programs have to negotiate with creditors.

Some creditors will not negotiate. Other creditors will but only to a certain extent. In Chapter 13 the interest rate on unsecured debts like credit cards medical bills goes to zero. In debt management programs this is seldom the case. Oftentimes they can get the interest rate lowered but not all the way to zero like you can in a Chapter 13.

In Chapter 13 all creditors become part of the plan, they are not permitted by law to refuse. In a debt management program, on the other hand, participation in the debt management program is totally voluntary.

Creditors can simply refuse to cooperate or participate. Often they do refuse.

In a debt management program, at the end you will be required to pay taxes on any of the debt that was forgiven by the creditor. This means that the amount of relief that you actually get in a debt management program is really less than the amount forgiven by the creditor because of this tax you will end up having to pay.

In my experience, if you have the kind of debt situation that is well-suited to a debt management program, you're probably going to be able to do as good a job negotiating yourself with creditors as any debt management program could do. And if you do it yourself, of course, there is no fee.

One of the problems that we have seen repeatedly reported in the newspapers is that debt management programs can take all of the fees up front, and don't make any payments to creditors, and then end up with clients being sued because of nonpayment.

Debt management programs cannot protect you from lawsuits or collection actions from creditors. With bankruptcy, on the other hand, you are totally protected from creditor action the entire time that you were in the bankruptcy.

Debt Consolidation.

Debt consolidation is borrowing money to pay bills. This is generally not a good idea. If, however, your debts are small and the interest rate that you have on them is high, and if you have a good credit rating, you might be able to borrow money at a lower interest rate to pay off the credit cards and other bills at the higher interest rate.

Actually, this is just substituting a lower interest loan for a higher interest loan. This does sometimes work but generally, as indicated, only for people who don't have very much debt and also have the ability, either by themselves or through family members, to obtain loans and interest rates significantly less than the debt that they're paying off.

Conclusion

All of these debt relief options make sense for different people.

When you come to see us at West Hurley Malkiewicz, we will look at all of your options and tell you what option makes the most sense for you. Sometimes you will have different options available. When this happens, we will compare the different options and the pros and cons of one as opposed to the other.

Then, after we have answered all of your questions and thoroughly explored all your options, you will be in the best position to make the right decision for yourself and your family.

And that's the goal. Yours, and ours.