

MYTHS AND MISCONCEPTIONS ABOUT BANKRUPTCY

by Jeff Schreiber*

Is the fear of the unknown preventing you from protecting you and your family? Don't you and your loved ones need and otherwise deserve a financial fresh start? You have probably heard many stories about bankruptcy. Although everyone's situation is different, there are many myths and misconceptions about bankruptcy I will dispel in this article. Consequently, you will clearly understand your options.

DO I HAVE TO FILL OUT A LOT OF COMPLICATED FORMS?

No! The forms are not complicated, and your lawyer will assist you in making sure that your bankruptcy petition is complete and accurate. In a nutshell, you must list your assets and their value, your monthly income and expenses, and the names and addresses of your creditors and the approximate amount owed to each.

CAN I KEEP THE MONEY I EARN AFTER FILING BANKRUPTCY?

Yes! Consumers who file a Chapter 7 bankruptcy are entitled to keep any money earned after filing bankruptcy. This includes the part of any income tax refund based on income earned after filing bankruptcy.

AM I THE ONLY PERSON FORCED TO FILE BANKRUPTCY?

No! Economists are predicting that bankruptcy filings in the United States will top 1.6 million consumers in 2005. The rate of consumer bankruptcy filings has increased 40 per - cent over the last 10 years

WILL THE HARASSING CALLS STOP?

Yes, immediately! The moment you file bankruptcy, creditors are barred from contacting you to collect the debt while the bankruptcy case is pending. Violation of this rule, known as the automatic stay, can result in the Bankruptcy Court awarding you damages against the creditor. Furthermore, once you obtain a discharge from the Bankruptcy Court, the creditor is forever barred from contacting you or taking any action to collect the debt.

CAN I LOSE MY JOB BECAUSE I FILED BANKRUPTCY?

No! The government or a private employer may not terminate a person solely because the per - son filed bankruptcy or failed to repay a debt which was discharged in bankruptcy.

DO I QUALIFY FOR FILING BANKRUPTCY?

Yes! Any person residing in the U.S. may file a Chapter 7 bankruptcy. You need not be insolvent, although in very limited circumstances, a Chapter 7 case may be dismissed for "substantial abuse." This usually involves a consumer whose monthly income exceeds his monthly expenses or is hiding assets

DO I LOSE ALL OF MY PROPERTY WHEN I FILE BANKRUPTCY?

No! In Indiana, the law provides that a consumer can exempt certain assets which are protected from distribution to your creditors. The equity in your home is exempt up to \$7,500 for each debtor. The equity in your personal property such as furnishings, clothing, sporting goods, boats, motorcycles, and cars is exempt up to \$4,000 per debtor. Your entire 401(k) savings account is exempt. A traditional IRA is exempt to the extent the amount sought to be protected is reasonably related to your enjoyment of the necessary comforts of life.

WILL BANKRUPTCY RUIN MY CREDIT RATING?

No! Most debtors who file bankruptcy already have blemished credit. The filing of a bankruptcy petition is a public record, and this factual event can be reported for as long as ten years. However, it is not an indelible stain on your credit report or your credit rating. In fact, most Chapter 7 debtors are better credit risks the day after they file bankruptcy than the day before because all of their prebankruptcy dischargeable debts will be discharged! Of course, on any credit application, you will have to be truthful and disclose that you have filed bankruptcy previously, but most credit extenders are more interested in your current income and your prospects for future income rather than past financial problems. A bankruptcy discharge will enable you to rebuild your credit when otherwise it would be impossible to do so.

WILL THE BANK TAKE MY CAR AND HOUSE AFTER I FILE BANKRUPTCY?

No! Banks would prefer you to continue to pay your loan rather than foreclose the mortgage encumbering your house or repossess your car. So as long as you are: 1) current on your monthly payments, 2) have exempted any equity you may have in the property, and 3) enter into an agreement with the bank to keep paying the loan and be financially responsible for any future default (called a reaffirmation agreement), the bank will let you keep your house or your car. Another option to help you keep your car is known as redemption. If you are able to pay a lump sum equal to your car's wholesale value, you can pay this to the bank in satisfaction of the entire debt even if the amount you owe is greater.

* Mr. Schreiber is the founding attorney of the bankruptcy law firm of The Schreiber Law Firm, LLC, in Marion, Indiana. He has concentrated his practice in business reorganization and bankruptcy since 1983.

Mr. Schreiber may be reached at 765-673-6300.