



Bankruptcy

by John D. Whitaker

The other day somebody said that problems have solutions and dilemmas have horns. If you have ever owed more than you can possibly repay, but believed that we should all pay our bills, then you are familiar with the horns of a dilemma. But if you look at this situation as a problem then perhaps the only solution is a bankruptcy.

Bankruptcy is a legal process where people who cannot pay their bills can seek protection from their creditors. When someone files a bankruptcy petition all collection efforts by creditors must immediately cease, and the debtor is allowed time to either reorganize his financial obligations under a plan or liquidate his assets and pay his creditors from the proceeds of the liquidation.

The process is fairly complicated but essentially the debtor must file a petition in the Federal Court asking the court to stop collection proceedings while the Bankruptcy Trustee figures out what can be done to wind up the debtor's pending financial obligations. The creditors are notified that a petition has been filed and that if they want to get any of the proceeds they must file a claim in the bankruptcy proceeding seeking a share of what is left of the debtor's assets.

Individuals can file either one of two types of petitions including a Chapter 7 liquidation or a Chapter 13 adjustment of debts. The petition is just a very detailed summary of the assets and liabilities of the debtor. The debtor must be able to show his financial history for the six months prior to filing the petition. Transactions and payments occurring within about two months of the petition are presumed to be preferential transfers and may be voided by the



Trustee. If there is a fight in one of these cases it is usually because one of the creditors thinks that the debtor is hiding assets. You can't go put ten thousand dollars on your Visa card and then run to the bankruptcy court to seek discharge of Visa's debt. Timing and the circumstances are very important to this determination, but generally credit card debt is almost always dischargeable.

In a liquidation, the debtor's non-exempt property is sold and the creditors share in the proceeds. In an adjustment of debts proceeding the debtor develops a plan to pay all or some of his debts and the plan must be approved by the Court.

In 2005 Congress passed the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. There were significant changes in this law including a means testing requirement. The debtor's income is considered and the amount determines whether the debtor can seek a liquidation or, if he makes too much money, he must adjust his debts under a plan to pay his creditors over time. One large misconception people have is about how medical bills are treated in a bankruptcy. Medical bills are just like any other bill and they can be fully discharged in a bankruptcy. In 2007, 60% of bankruptcies filed were not caused by high living, but rather they were caused by staggering medical bills.

There are ways for a debtor to reaffirm on some debts on assets he wants to keep. For example if the debtor owns a car but owes the bank money on the car he can, with the creditor's consent, keep the car and remain obligated to continue making the payments.

If you have questions about this process you should call a lawyer who handles bankruptcies. Remember, unpaid bills are not like fine wine because they do not get better with age.

The Wyoming State Bar does not certify any lawyer as a specialist or expert. Anyone considering a lawyer should independently investigate the lawyer's credentials and ability, and not rely upon advertisements or self-proclaimed expertise. This informative column is brought to you by John Whitaker who practices personal injury and criminal law throughout Wyoming. He can be reached at jdwtl@mac.com or by calling his office at 307 265-6204. Past Legal Brief columns can be found at Wyoinjury.com