Bankruptcy Basics: Chapter 13 and Chapter 7

Here is a basic summary of the differences between two types of bankruptcy cases: Chapter 13 and Chapter 7. These are general statements only. In order to see what type of bankruptcy case might be appropriate for you, it is important for you to consult with a bankruptcy attorney and to provide the attorney with complete information regarding your own particular financial situation. Essential information that the attorney will require at the initial consultation is: a summary (a list) of all of your assets, with approximate values; a list of all of your debts, with the amount owed on each one; a summary of your current monthly income from all sources, a complete list of all income you have received in the past 6 months; and a statement of your current monthly living expenses

Chapter 13:

Consolidates all debts under a payment plan approved by the Bankruptcy Court; plan payment is affordable, based on your income and living expenses.

Classifies debts into 3 categories: Secured (mortgages and auto loans); Priority (most tax debts and court fines); and General Unsecured (credit cards; medical bills; most all other debts);

Each class of debt can be dealt with differently;

Usually *does not* require full repayment of all debts (especially general unsecured);

Repayment plan typically lasts 60 months; may be as short as 36 months in some cases;

Debtors usually *must* file under Chapter 13 if they already filed Chapter 7 in the last 8 years; or if their assets exceed exemption limits (homestead limit on home equity is now $125,000.00); or if their income for the past 6 months exceeds State median income based on family size;

In addition to reasons above, Debtors *should* file Chapter 13 if they can afford to repay a portion of their debt; or if they are facing foreclosure on their home and want to try to save it; or if they have a second mortgage on their home that is completely unsecured by any equity in the property; or if they have non-dischargeable debts such as most income taxes; or if their driver's license is suspended for failure to pay tickets and court fines; or if they recently incurred a substantial amount of unsecured debt (credit card cash advances, balance transfers, etc)

Attorneys fees are substantially higher than for Chapter 7, but benefits usually outweigh the additional cost and most attorney fees can be wrapped into the repayment plan.

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Chapter 7:

If none of the reasons for filing Chapter 13 are present, then (and only then) should debtors file under Chapter 7;

Chapter 7 is generally meant for debtors who do not have the ability to pay back even a fraction of their unsecured debts out of their current income;

If debtor qualifies, Chapter 7 will wipe out general unsecured debts (medical bills, credit cards, deficiency balances on repossessed vehicles) without any further payment;

Does not affect secured debts such as home mortgages and auto loans, or priority debts such us unpaid taxes or court fines; won't work for recently incurred debts, such as cash advances or balance transfers or recent charges on credit cards.

Can not strip off (get rid of) an unsecured second mortgage, as can be done under Chapter 13

Entire process takes about 4 months from start to finish (measured from filing date of the case), compared to 3 to 5 years for Chapter 13

Attorneys fees usually are less than Chapter 13, but must be paid up-front or soon after filing. (No repayment plan to take care of the attorney fees, as in Chapter 13)

Non-dischargeable debts: Student Loans; child support; most taxes. Debtors must make their own arrangements to continue to pay these debts once the Chapter 7 case is done.

NOTES:

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