10 THINGS YOU MAY NOW KNOW ABOUT BANKRUPTCY

1. Personal Bankruptcy Is Also for the Middle Class

It is not uncommon for people to build their lives around a six-figure income. But when households divorce or businesses fail along with the most recent credit-crunch, something must give. People often find themselves face-to-face with a financial crisis they never anticipated. Meet the new face of bankruptcy. This nation's worst downturn in 70 years has pushed more affluent people into bankruptcy than in recessions past. Overall, personal bankruptcy filings were up 36.5% in the first half of 2009 from the same time a year ago, and experts predict the number of filings will keep rising even as the economy recovers.

Some call it a middle-class recession or working class recession. From the clients we have seen in our offices over the past couple of months, such a remark could not be anymore true. In a survey last year conducted by the Institute for Financial Literacy, they found 8.1% of those expecting to file bankruptcy made more than $60,000.00, up from 6.9% in 2007. Real estate and jobs associated with home construction have resulted in huge job losses, which has cut deeply into professional positions. At our office, we have seen a lot of mortgage brokers and real estate developers. Those people used to make a lot of money and now they find it difficult to put food on the table every night.

2. One Size Does Not Fit All in Bankruptcy

No type of bankruptcy can eliminate certain kinds of obligations, such as child support and most student loans. After the amendments to the bankruptcy code in 2005, it became increasingly difficult to discharge debts from divorce, but not impossible.

There are differences in the way debt gets handled in personal bankruptcy, often depending on which kind you file for, either Chapter 13 or Chapter 7. And each has pros and cons. Chapter 13 allows those with regular income to repay debts over three to five years. That drags things out a bit, but it stops the foreclosure process, meaning debtors behind on their mortgage can keep their house and catch up on payments over time. It also can eliminate finance charges and late fees from accruing further.

Those without regular income are limited to filing Chapter 7, which does not involve any type of repayment plan. All eligible debt, such as credit card balances, get wiped out. Although this may seem like a free ride, most people that file bankruptcy find the process pretty traumatic and it does damage your credit score. Also, if you are behind on your mortgage payments, Chapter 7 may only delay the foreclosure as the banks will eventually seek a sheriff sale for the home.

How do you know which bankruptcy filing is right for you? Bankruptcy law is complex, and certain provisions vary from state to state, so it is often best for potential filers to consult an attorney before deciding.

3. <u>We Don't Want Your House</u>

A common belief about bankruptcy is that it will leave you with nothing but the clothes on your back. That could not be further from the truth. Even in Chapter 7 cases, you get to exempt certain property based upon the Indiana exemption statute. Certain assets, such as individual retirement accounts and other retirement plans are completely exempt (i.e. they don't count against you and they cannot be touched by the trustee appointed by the court). In theory, Chapter 7 involves liquidating most of a debtor's assets to pay creditors, including the home. But in reality, homeowners typically do not have enough equity in their home to benefit creditors, either because they have taken out a second mortgage, the home's value has fallen, or both. In such cases, the trustee handling the bankruptcy often abandons the home back to the Debtor.

It is important to note that a Chapter 7 does not stop foreclosure – although it tends to delay it by a few months – and those behind on their mortgage often can lose their home. In a Chapter 13 case, court-approved arrangements can be made to catch up arrears and enable someone to keep their house.

4. <u>Bankruptcy Could Actually Improve Your Score</u>

Yes, bankruptcy will tar and feather your credit score like no tomorrow. However, bankruptcy can be less damaging in the long run than juggling late payments on credit cards for years in a bid to postpone the inevitable. A Chapter 7 bankruptcy will stay on your credit report for 10 years, a Chapter 13 case for 7 years. With that said, you can begin repairing it immediately, if gradually. The fact is that most people go bankruptcy with lousy credit. They will be able to return to (and maybe rise above) their pre-bankruptcy FICO score more quickly than the rare debtor with pristine credit who needs to file bankruptcy after, say, a serious illness (which could cause your score to drop over 100 points). A little over a third of one's credit score is based upon the payment history. As such, once the bankruptcy is filed, you begin getting farther away from any missed payments, and over time, your score improves. If you reaffirm a debt, that will also help you increase your FICO score after the bankruptcy.

5. <u>Debt-Settlement Firms Don't Always Help and Sometimes Make Things Worse</u>

Debt settlement firms typically play hardball with creditors and attempt to whittle balances away by up to 80%. These services are billed as an alternative to bankruptcy, but they can sometimes hurt more than they help a debtor. These firms are unregulated, for-profit agencies that often require a regular payment stream before they begin taking any action on a consumer's behalf. This model works squarely against the debtor's interests because they get fees every month, so they have no incentive to settle (with creditors) as fast as possible. Further, creditors are less inclined to negotiate with you until you are several months behind and your credit is in shambles.

Most debtors do not have the "time, stamina or desire" to do it themselves. Additionally, and something that is often overlooked or not disclosed, is the fact you will owe taxes on any amount saved on your debt. Uncle Sam considers forgiven debt taxable income. In bankruptcy, debt that is erased as part of bankruptcy, is not taxable.

6. Paying Relatives Before Filing – Don't Even Consider It

Paying back your folks and other family members prior to the filing of a bankruptcy case can be a huge mistake, both for you, and then them for receiving the funds. Money paid to "insiders" – which includes dear mom and dad, brothers, sisters, uncles, aunts, and cousins, within two years of the filing of a bankruptcy, is recoverable by the trustee appointed to your case. Don't whether they will pursue the funds, as they are required to do so as part of their duties as a trustee. If your family members do not voluntarily surrender the funds to the trustee, then the trustee will initiate litigation against them. More problematic is when Debtors attempt to hide assets from the trustee and court. Others have tried selling assets for cheap in order to protect the assets from creditors. This is unacceptable as bankruptcy debtor(s) must list everything they have sold, transferred or given away over the past two years. Nothing can be transferred, given away or sold for less than market value.

If you make an attempt to conceal assets, don't be surprised if you get caught. "Hell hath no fury like a woman scorned." Former lovers and spouses are great sources of concealed information for trustees. Not only can you lose your discharge, but you can also be prosecuted by the office of the United States Trustee for bankruptcy fraud and you can be fined, jailed or both. Keep in mind this is only money and it surely is not worth going to jail over.

7. Bankruptcy Isn't Cheap – But It Beats Having Your Wages Garnished

Sometimes Debtors realize they are in over their head when it is too late. Some people incur too much debt when starting up a business or they face mounting debt after a divorce has been finalized, and they do not have the income to support the debt. Attorneys will often urge you to borrow money from family or friends if you are completely desperate. This can be embarrassing for some people, but when you face the imminent threat or are having your wages garnished, you may be left with little choice.

Fees in a Chapter 7 case are usually paid up front or your lawyer ends up becoming a creditor (they would not be in business very long if this is how they operate). In Chapter 13, legal fees become part of the payment plan, so attorneys can be more flexible with the initial attorney fees. In either case, the bankruptcy court does charge a filing fee to initiate a case, which is $274 in a Chapter 13 case or $299 in a Chapter 7 case (as of 10/1/2009 as these fees occasionally are increased by the court.)

8. You Still Need to Pay Your Regular Bills

Once your bankruptcy is filed, the phone calls stop. This will provide you with a huge sense of relief. However, it is not uncommon for your other bills to stop coming too. When your case is filed, the automatic stay goes into effect and it prohibits collection actions against the debtor or his property. If you have secured obligations for which you intend to keep the property, you will want to continue to make the regular monthly payments on those items (such as a car or house). You will need to remember what you need to pay in the event you do not receive a monthly bill. This can last for a couple of months as a typical Chapter 7 case lasts a little over four (4) months.

9. When Is It Time to File?

When you owe more than you own, it is time to consult a lawyer. If you can't afford all of your monthly payments, it is time to file. If you are having to borrow from one credit card to make a payment on another, it is time to file.

Just because you are broke, you may still want to wait to file. It is best to wait until the worst is nearly over or it has passed altogether. If you file too soon, you could incur some unintended debt as then be stuck paying it as it will not be discharged in your bankruptcy. The best example would be major medical expenses, and the realistic potential of major expenses still to come. Holding off on filing can also maximize the amount of time one could live in your residence with respect to a imminent foreclosure proceeding.

On the other hand, there are situations when you need to file quickly. If there is no hope of repayment, with little to gain by postponing, it may be better to file the case sooner than later.

10. It Is Not The End of the World

Bankruptcy is not easy. Middle class income filers take a good hit to their credit and it will impact their ability to acquire debt in the future. If you file for medical reasons, you are getting the burden of a financial crisis in addition to your illness. It is normal for people to feel frustrated, fear, anger, depression, failure, or embarrassment. You must remember that you are not alone in this process, you are not the first to go through it, and you will not be the last.

Many people emerge from bankruptcy stronger than they expected. Donald Trump has even filed bankruptcy (and emerged stronger than ever). Bankruptcy is fairly widespread these days due to the housing crisis, unemployment, and the closing of factories. All of this has helped reduce the stigma that is attached to bankruptcy. People also find that not only do they still have some of their material belongings after a bankruptcy, but they also emerge with their family, friends and faith intact.

Regardless, learn your options by discussing your situation with an attorney.