

## A. CHAPTER 7: LIQUIDATION OF YOUR DEBTS

## B. CHAPTER 13: REPAYMENT OF ALL OR PART OF YOUR DEBTS

### A. CHAPTER 7: LIQUIDATION OF YOUR DEBTS

Chapter 7 is designed for debtors in financial difficulty who do not have the ability to pay their existing debts. Debtors whose debts are primarily consumer debts are subject to a “means test” designed to determine whether the case should be permitted to proceed under chapter 7. If your income is greater than the median income for the State of Ohio and family size, in some cases, the United States trustee, the chapter 7 trustee, or creditors have the right to file a motion requesting that the court dismiss your case under §707(b) of the Code. It is up to the court to decide whether the case should be dismissed.

Under chapter 7, you may claim certain of your property as exempt. The most frequently taken exemptions are for vehicles, homes, retirement accounts, 401(k) plans, cash deposits and personal items. A trustee may have the right to take possession of and sell the remaining property that exceed the exemption amount or is not exempt and use the sale proceeds to pay your creditors. However, in vast majority of cases this does not occur and if it does the amount is nominal and the debtor is entitled to retain the property by buying the property back from the trustee, with payments.

The purpose of filing a chapter 7 case is to obtain a discharge of your existing debts. The discharge prohibits any attempt to collect from the debtor a debt that has been discharged. For example, a creditor is not permitted to contact a debtor by mail, phone, or otherwise, to file or continue a lawsuit, to attach wages or other property, or to take any other action to collect a discharged debt from the debtor. A creditor who violates this order can be required to pay damages and attorney’s fees to the debtor.

However, a creditor may have the right to enforce a valid lien, such as a mortgage or security interest, against the debtor’s property after the bankruptcy, if that lien was not avoided or eliminated in the bankruptcy case. Also, a debtor may voluntarily pay any debt that has been discharged.

The chapter 7 discharge eliminates a debtor’s legal obligation to pay a debt that is discharged. Most, but not all types of debts are discharged if the debt existed on the date the bankruptcy case was filed. You may still be responsible for most taxes and student loans; debts incurred to pay nondischargeable taxes; domestic support and property settlement obligations; most fines, penalties, forfeitures, and criminal restitution obligations; certain debts which are not properly listed in your bankruptcy papers; and debts for death or personal injury caused by operation of a motor vehicle, vessel or aircraft while intoxicated. Also, if a creditor can prove that a debt arose from fraud, breach of fiduciary duty, or theft, or from a willful and malicious injury, the bankruptcy court may determine that the debt is not discharged.

## CHAPTER 13: REPAYMENT OF ALL OR PART OF YOUR DEBTS

Chapter 13 is designed for individuals with regular income who would like to pay all or part of their debts in installments over a period of time. You are only eligible for chapter 13 if your debts do not exceed certain dollar amounts set forth in the Bankruptcy Code.

Under chapter 13, you must file with the court a plan to repay your creditors all or part of the money that you owe them, using your future earnings. Unsecured creditors, such as credit cards, may receive only a fraction of what is owed to them. This is dependent upon your income, household expenses and payments to secured creditors, such as mortgages and car notes. The period allowed by the court to repay your debts may be three years or five years, depending upon your income and other factors. The court must approve your plan before it can take effect.

After completing the payments under your plan, your debts are generally discharged except for domestic support obligation; most student loans; certain taxes; most criminal fines and restitution obligations; certain debts which are not property listed in our bankruptcy papers; certain debts for acts that caused death or personal injury; and certain long term secured obligations. Such as a home mortgage.

The discharge prohibits any attempt to collect from the debtor a debt that has been discharged. For example, a creditor is not permitted to contact a debtor by mail, phone, or otherwise, to file or continue a lawsuit, to attach wages or other property, or to take any other action to collect a discharged debt from the debtor. A creditor who violates this order can be required to pay damages and attorney's fees to the debtor.

However, a creditor may have the right to enforce a valid lien, such as a mortgage or security interest, against the debtor's property after the bankruptcy, if that lien was not avoided or eliminated in the bankruptcy case. Also, a debtor may voluntarily pay any debt that has been discharged.

*This information is only a general summary of the bankruptcy chapters and discharge. There are exceptions to these general rules. Because the law is complicated, you need to consult with us to determine the exact effect of a discharge based upon your situation.*