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When Chapter 7 Bankruptcy Isn't the Right Choice

Chapter 7 bankruptcy may make you sacrifice property, yet not discharge all your debt.

If you are inclined to file for Chapter 7 bankruptcy, take a moment to decide whether it makes economic sense. You need to consider three questions:

- Are you judgment proof -- that is, are creditors legally barred from taking your property or income even if you don't file for bankruptcy?
- Will bankruptcy discharge enough of your debts to make it worth your while?
- Will you have to give up property you really want to keep?

Are You Judgment Proof?

Most unsecured creditors are required to obtain a court judgment before they can start collection procedures, such as a wage garnishment or seizure of personal property. (Collections for taxes, child support, and student loans are exceptions to this general rule.)

If your debts are mainly of the type that require a judgment, the next question is whether you have any income or property that your creditors can seize if they go to the trouble of obtaining a judgment. For instance, if all of your income comes from Social Security (which can't be taken by creditors), and all of your property is exempt, there is nothing your creditors can take from you to satisfy their judgment. That makes you "judgment proof."

While you may still wish to file for bankruptcy to get a fresh start, nothing bad will happen to you if you don't file, no matter how much you owe.

Will Bankruptcy Discharge Enough of Your Debts?

Certain categories of debts cannot be discharged in Chapter 7 bankruptcy. It doesn't make much sense to file for Chapter 7 bankruptcy if your primary goal is to eliminate these nondischargeable debts. The main nondischargeable debts are:

- back child support and alimony obligations
- student loans, unless repayment would cause you undue hardship
- income taxes less than three years past due



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- recent debts for luxuries (more than \$550 to any one creditor incurred within 90 days before you file for bankruptcy, and cash advances of more than \$825 within 70 days before you file), and
- court judgments for injuries or death to someone arising from your intoxicated driving.

The bankruptcy judge may rule some types of debts nondischargeable if the creditor objects to a discharge in the bankruptcy court. These debts include:

- debts incurred on the basis of fraud, such as lying on a credit application or writing a bad check
- debts from willful or malicious injury to another or another's property
- debts from larceny (theft), breach of trust, or embezzlement, or
- debts arising out of a marital settlement agreement or divorce decree that aren't otherwise automatically nondischargeable as support or alimony.

If the bulk of your indebtedness is from debts that creditors may request be discharged, it may still make sense to file for bankruptcy and hope your creditors don't object.

Codebtors will still be on the hook. If you want to discharge debts for which you have a codebtor (such as someone who cosigned a loan for you, or a business partner who is equally liable for the debt), bankruptcy won't wipe out the debt. If the debt is of a type that can be discharged in bankruptcy, you will no longer be legally responsible for paying it, but your codebtor will.

How Much Property Will You Have to Give Up?

Whether or not you decide to file for bankruptcy may depend on what property of yours will be taken to pay your creditors ("nonexempt" property) and what property you get to keep ("exempt" property).

Certain kinds of property are exempt in almost every state, while others are almost never exempt. The following are items you can typically keep (exempt property):

- motor vehicles, up to a certain value
- reasonably necessary clothing (no mink coats)
- reasonably needed household furnishings and goods (the second TV may have to go)
- household appliances
- jewelry, up to a certain value
- personal effects



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- life insurance (cash or loan value, or the proceeds of life insurance), up to a certain value
- pensions
- part of the equity in your home
- tools of your trade or profession, up to a certain value
- a portion of unpaid but earned wages, and
- public benefits (welfare, Social Security, unemployment compensation) accumulated in a bank account.

Items you must typically give up (nonexempt property) include:

- expensive musical instruments (unless you're a professional musician)
- stamp, coin, and other collections
- family heirlooms
- cash, bank accounts, stocks, bonds, and other investments
- a second car or truck, and
- a second or vacation home.

Is Bankruptcy More Than You Need?

You may be considering bankruptcy just to stop harassment by your creditors. However, in most cases, you can stop creditors from making telephone calls to your home or work by simply telling them to stop.

What to Do

If you determine that you are judgment proof, that you'll be stuck with significant debt following bankruptcy, or that you may have to give up too much property, Chapter 7 bankruptcy may not make sense for you.

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