

Is Filing for Bankruptcy a Good Choice To Your Mortgage Situation?

Jan. 11, 2008

By Syndicated Columnist Cathy Harris

Is filing bankruptcy a choice? Bankruptcy is a legal proceeding that allows you to get out of excessive debt and gain a fresh start financially. Bankruptcy is governed by federal law. Individual states have no important role in bankruptcy except that state laws, along with federal bankruptcy laws, determine the assets you may keep under a bankruptcy.

If there are no other options, then seek out a bankruptcy attorney. It's imperative that you secure an attorney that specializes in bankruptcies and not a "catch-all" attorney, or a "jack of all trades."

You should avoid large bankruptcy firms that treat you like a "herd of cattle." They won't return your calls or answer your questions without an appointment. Some large firms also rotate you from attorney to attorney, leaving no stability and no one really knowing your case directly.

Bankruptcy attorneys typically charge anywhere from \$500 to \$1,500 or more. If you do not have the money to give a bankruptcy attorney, you can file the bankruptcy yourself. Go to an office supply store such as Office Depot or Staples, and buy the bankruptcy kit for a very low price. Fill out the forms to the best of your ability, take it to the courthouse and obtain a case number. This process will cost around \$75. Fax the sheet with the case number on it to the mortgage company. This should stop the foreclosure. It will buy you some time (3 or 4 months or longer until you can regroup) so you can obtain the rest of the funds to solicit help from a bankruptcy attorney and keep your home or until you have time to move and take your household goods.

It's imperative that you receive help from someone who is experienced with bankruptcy law to represent you at your hearings. Otherwise, there could be serious consequences of attempting to represent yourself in a bankruptcy court. If you have made an error in the filing of the bankruptcy, it will be easier for an attorney to catch and amend it accordingly, as needed.

There are four (4) common types of bankruptcies: 1) Chapter 7 allows either an individual or business to discharge virtually all unsecured debts; 2) Chapter 11 is for individuals or corporations engaged in business who desire to reorganize their debts and seek court protection while they negotiate a plan of reorganization with creditors; 3) Chapter 12 is like a Chapter 13 but is only for family farmers; and 4) Chapter 13 is an alternative to a Chapter 7 bankruptcy. It is designed for "wage earners" with relatively small amounts of consumer debt (as opposed to business debt).

Remember if you file for bankruptcy it will stay on your credit for 10 years from the filing date not the discharge date. But if you are faced with homelessness, this could be your only viable option to remain in your home.

People file bankruptcies and go on to build more fortunes. For instance, Donald Trump filed for bankruptcy at one point in his life. So don't listen to people when they tell you your life is over because you filed a bankruptcy. It will however hurt you financially, if you try to pursue any type of credit in the future.

In the past it was a norm for people to go out and make these lavish purchases and file for bankruptcy under a Chapter 7. As soon as certain groups started carrying out this same practice, the laws changed in October 2005.

Whether you file under Chapter 7, 11, or 13, once a bankruptcy petition is filed it operates as an automatic stay. Generally, all debt collection or repossession activities by creditors must come to a halt. Likewise, all lawsuits must stop while the bankruptcy action is before the bankruptcy court. The purpose of the automatic stay is to transfer all collection and debtor-creditor matters to the bankruptcy court. For example, creditors may not enforce prior judgments or liens against either the debtor or his property.

Criminal actions against the debtor do continue as do actions for the collection of back alimony or child support.

If you haven't already stopped making payments to creditors, you should stop once your petition is filed. You should, however, stay current on debts incurred after you file the petition.

Debts in bankruptcy are considered either dischargeable or non-dischargeable. Most debts are dischargeable under Chapter 7 bankruptcy. This means that you no longer have to pay the debt as it is deemed cancelled. Certain debts are not dischargeable.

Again, remember the new bankruptcy laws that went into effect in October 2005, which will make it harder for some to file for bankruptcy.

Debts are not discharged under either Chapter 11 or 13. In each instance the debts are only adjusted according to a plan of repayment approved by a majority of creditors and the court.

Other debts that are normally dischargeable may be denied a discharge because of the actions of the debtor. One of the creditors may petition the court to deny the discharge on one specific debt or on the entire bankruptcy, leaving the debtor without relief from creditor claims.

If you chose to file the bankruptcy yourself or have an attorney do it for you, don't wait until the last day in which your house is suppose to be sold on the courthouse steps to file this paperwork. Homes are sold on the courthouse steps the last Tuesday of each

month in the state of Georgia. I am not sure of the date in other states. Many people wait and sometimes the mortgage company decide to sell the property even if they know the homeowner has filed a bankruptcy. If that happens you definitely will have to obtain a bankruptcy attorney to have the sell reversed, if that is even possible.

Property owners need to be very careful with utilizing the Chapter 13 bankruptcy attorney protection solution. Compare everything and make sure that the courts and/or your bankruptcy attorneys and lenders have not “set you up to fail.”

There have been many cases where the debt was not spread out appropriately in the bankruptcy program which resulted in the property owner paying much higher monthly payments.

In some scenarios, courts will order the property owner to pay the bankruptcy court a certain amount that only covers all other debts outside of the mortgage. Then they will have you spend a higher amount in most cases. Watch out because this procedure will set you up to fail without question because if you couldn't afford the payments before the bankruptcy at whatever amount, what makes anyone think that you can afford to pay a much higher amount?

In the future, when you tell potential creditors that you had a bankruptcy, they will ask if you had a discharge. One of the reasons people file bankruptcy is to get a “discharge.” A discharge is a court order which states that you do not have to pay most of your debts. Some debts cannot be discharged. For example, you cannot discharge debts for most taxes, child support, alimony, most student loans, court fines, criminal restitution, and personal injury caused by driving drunk or under the influence of drugs. The discharge only applies to debts that arose before the date you filed.

Being a homeowner is a true American dream. Many people go their whole lives and never experience that dream. Your goal is to seek out the American dream but before seeking out that dream, make sure you become empowered by learning your rights and options as a homeowner.

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