THE FLAWS AND FALLACIES OF BANKRUPTCY ISSUES IN THE SOCIETY

The general conception is that Bankruptcy laws help people and small businesses that can no longer pay their creditors to get a **fresh start** – by liquidating assets to pay their debts or by creating a repayment plan.

The fresh start aspect of the above statement can be true, but can also be false or misleading to an individual or a small business that do not have a full understanding of the bankruptcy system and how it applies to their individual case.

One first need to understand that there are different Codes or Chapters under which a bankruptcy petition can be filed, which are – Chapter 7, Chapter 11, Chapter 12 and Chapter 13.

Chapter 11 is mainly suitable for big corporations and organizations, it is not available to individual and rarely suitable for small businesses, while Chapter 12 is a special procedure to deal with famers, and these two chapters are beyond the scope of this article.

Why Individuals and Small businesses consider bankruptcy

Some people think that those who consider bankruptcy are immoral, wishing to take advantage of the system, by not paying, or taking responsibility for what they owe.

However, on the contrary those who consider bankruptcy are taking charge of their financial life; many have found themselves in dire financial difficulties, perhaps due to the loss of a job, a divorce, or a downturn in business activities as a result of the recession. Many of these people have been hounded and harassed by creditors who have turned up the heat. Sometimes going into Bankruptcy is a way of taking control and deciding what happens to you. As studies show financial pressure can be the route of many problems such as Insomnia, sickness and accidents, marital breakdown, depression and general grief to name a few.

How do you take control in Bankruptcy?

The level of actual control you take depends on the chapter of bankruptcy you file under.

The Chapter 7 Code

For those who want a quick resolution to their problems and those who do not have a regular income, Filling under chapter 7 may be the most suitable. Your assets will be liquidated and distributed to your creditors by the Bankruptcy Trustee. Once this is done, you may apply for a discharge.

Once finalized debts are discharged, the debtor no longer has any liability for those discharged debts and this allows the debtor to start the process of making a fresh start.

The Flaws of Chapter 7

- A discharge is only available to individual debtors, not to partnerships or corporations.
- Although filling under chapter 7 usually results in the discharge of debts, the right to a discharge is not absolute.
- Some types of debts are not discharged and thus continue to exist post-bankruptcy.
- A bankruptcy discharge does not extinguish a lien on properties; hence secure creditors may cease goods even after a discharge.
- A party in interest may file a complaint objecting to the discharge or may file a motion to extend the time to object. The good news however is that the grounds for denying an individual debtor a discharge are narrow and construed to the advantage of the debtor

The Chapter 13 Code

For individuals who have a regular income and especially small businesses who wish to continue in business while dealing with their debt in bankruptcy, this is perhaps the most appropriate chapter to file under.

This is an Individual Debt Adjustment plan which allows an individual develop and propose a payment plan to make installments to creditors over three to five years depending on the level of the debtor's monthly income. During this period the creditors are forbidden from starting or continuing collection efforts.

Advantages of Chapter 13

1. The most noteworthy advantage of chapter 13 is that it affords individuals an opportunity to save their homes from foreclosure and cure delinquent mortgage payments over time, though all mortgage payments that are due during the existence of the Chapter 13 plan must be paid on time i.e. as they fall due.
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2. Chapter 13 allows individuals to reschedule other secured debts and thus allows for payment over the life of the chapter 13 plan, the effect of which may be to extend the term of the debt and lower the monthly payment. It is a kind of "time order".

3. Chapter 13 may protect co-signatories or guarantors on Consumer debts.

4. The Bankruptcy trustee manages the plan and the payment with the creditors; hence the debtor is relieved by having no direct contact with creditors.

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The Flaws of Chapter 13

- There is a commitment period of three to five years in which the debtor must maintain the plan.
- The plan must pay priority claims in full unless a particular priority creditor agrees to different treatment or unless the debtor contributes all disposable income to the plan.
- If a debtor wants to keep the collateral securing a particular claim, the plan must provide that the holder of the secured claim receive at least the value of the collateral.
- For secured claims, the debtor may need to pay the full value of the loan as opposed to the value of the collateral which may be less due to depreciation.
- A creditor may object or threaten to object to a plan, this threat may compromise the ability to comply with the plan.

The fresh Start notion

Many people mistakenly believe that Bankruptcy wipes the slate clean by giving them a fresh start of their credit life; however this is not the case.

The fresh start that bankruptcy offers is a discharge or release from the liability to pay some debts. For those debts that are discharged the creditors may no longer initiate or continue any legal or collection action for the discharged obligations. Bankruptcy does not however, remove reference to this debt from your credit file.

As a general rule, the discharge simply releases the debtor from all debts provided for or disallowed in a chapter 13 plan or for all creditors settled by the liquidated assets in a Charter 7 code (note that some special debt will survive the bankruptcy e.g. child support or Alimony)

The Bankruptcy will continue to appear on your credit file for 6 to 10years and will affect your ability to get credit or you may be offered credit at a higher interest rate.

You will need to rebuild your credit life.

Fallacies and myths about bankruptcy

Contrary to popular belief:

(1) It is inaccurate to state that Bankruptcy ruined a person's credit. The credit was already ruined by the financially difficulties faced by that individual prior to undergoing bankruptcy proceedings. Many would have had arrears and or judgments before considering bankruptcy.

(2) Though Individual bankruptcies are of public records, they are not generally made public in the United States by newspaper advertisement; which are a requirement for some

countries such as the United Kingdom. In the United Kingdom bankruptcies are usually publicized in the local gazette.

(3) Bankruptcy will generally not destroy your spouse's credit, unless you are jointly responsible for the debts, in which case his/her credit would have been ruin by non-payments and arrears.

(4) Your spouse does not need to file bankruptcy just because you filed.

(5) You can keep your home, even under Chapter 7 where there is little or no equity

(6) You will not lose your job unless it is a condition of your employment or profession that you must not enter into bankruptcy. This could be because of a professional license requirement or because you work in the finance industry.

(7) You will still be able to have a bank account, though if you owe money to your bank they can freeze your funds. You should consider a new account with a bank that is not your creditor.

(8) You will still be able to get government guaranteed student loans.

(9) You can rebuild your credit it just takes time.

Author:- Lara Akinlude

About the Author:- The author is a dual qualified attorney in England and Wales, United Kingdom and Licensed to practice in California, United States. Lara has been practicing in the UK for over 10years.

To learn more about the author please visit www.laraakinlude.com , or connect on Facebook & Twitter.