

Over the years I have had many clients who live outside the United States of America that need to file bankruptcy here. This is a tricky and, to the courts and many trustees, a confusing proposition, but I assure you that if you meet the requirements, it is perfectly legal.

A full legal treatment of this subject can be seen in my article published in the Central District Consumer Bankruptcy Attorneys' Association newsletter at <http://www.bklaw.com/newsletterexcerpt.pdf>.

### Do you Need to File your Bankruptcy From a Foreign Country?

The first question one must ask in this circumstance is whether it's even necessary to file a bankruptcy case in the United States if you live abroad and plan to remain outside the USA. Filing bankruptcy in the USA basically protects your assets and income in the USA from your creditors by discharging the debts. It may or may not protect assets you have in foreign countries, depending on their laws. In most cases, US creditors are not going to come after your assets in a foreign country and, if they did, you can always avail yourselves of that country's bankruptcy laws.

But, there are times when it is necessary, such as if you do still have assets in the USA or receive income from a US company, or plan to return in the near future. So then, the questions become A. Can you file bankruptcy in the USA and, if so, B. WHERE in the USA can you file?

### Are you Eligible to be a Bankruptcy Debtor?

My article covers this in more detail, but to summarize:

11 U.S.C. 109 allows any person to file bankruptcy in the USA if they reside, have a domicile, place of business OR property in the USA. What constitutes sufficient "property"? That depends on the court, but for most, even a simple bank account will suffice. Sometimes merely depositing funds into an attorney's trust account meets the requirement. In other words, in most cases almost any asset here in the USA will make a person eligible to be a debtor in bankruptcy. (what chapter you're eligible for is another matter altogether). For practical purposes, you also must have a mailing address in the USA where you regularly receive mail. This is not a legal requirement, but is practically necessary.

### Where in the United States Can you File Your Bankruptcy Case (VENUE)?

The next question becomes WHERE in the USA you can file bankruptcy. Typically, federal venue laws require that your case be filed in the district where you have resided for the greater part of the 180 day period prior to filing your bankruptcy case. But what happens if you've lived outside the USA for more than 180 days? Venue would then be where your principal assets in the USA were located for the greater part of the 180 days prior to filing your bankruptcy case. In cases where a bank account is the only asset you have in the USA, your case would need to be filed in the jurisdiction where the bank account was located during that period. Theoretically, it may be possible to move the bank account to a location of your choosing and file there after 91 days.

None of the above affects which state's exemption laws will apply to your case (which can be a very complicated analysis if you've lived outside the USA for more than 2 years) but it does affect where you will have to appear for your mandatory meeting with the Trustee.

Ultimately, the need to appear for the 341a meeting and the costs associated therewith, may outweigh the benefits to filing the bankruptcy. In some cases, depending on the reasons why, the US Trustee's office or the court may excuse physical appearance at the meeting, but this usually requires a showing of medical necessity or military obligations.

#### Circumventing the ECF System: For Attorneys

One practical problem that may arise is how to list a foreign address on a petition and still get past the ECF filing process. This can be tricky. At the very least, it requires your case to be filed manually, and not using the automated software most bankruptcy filing programs use. But you (the attorney) will still run into a skeptical ECF quality control processor who will tell you this can't be done because venue is not proper or for some other reason. One must be creative in figuring out ways around this, such as putting the local mailing address as the main address and explaining this in the Statement of Financial Affairs or elsewhere.