

DEBT SETTLEMENT OR BANKRUPTCY by Peter S. Grain, Esq.

Despite the critics, Debt Settlement is a viable alternative to Bankruptcy. Chapter 7 candidates would be better served filing bankruptcy in most cases. However, if a Chapter 7 candidate has the ability to settle debts with creditors, then it should be attempted prior to filing. If settlement negotiation is unsuccessful with all creditors, then a Chapter 7 candidate should file. My suggestion is to contact a good bankruptcy attorney in your area and determine what course of action is best in your case.

Chapter 13 candidates are placed in a Bankruptcy Court/Trustee supervised repayment plan over a 3 to 5 year period. Many Chapter 13 candidates would be better served with Debt Settlement. By attempting debt settlement with all your creditors you can determine the costs-benefits of debt settlement versus bankruptcy in your situation.

Debt Settlement works best if you have a lump sum available for settlement. Creditors are more likely to settle for less if they know you have a certain amount available immediately for settlement. Payment plan- debt settlements by debtors often result in larger settlement amounts and defaults which defeat the whole point of debt settlement.

When analyzing and/or settling your unsecured debt:

First be sure to check the Statute of Limitations to see if it has run.

Second, make your creditor Validate the Debt by producing proof of claim including copies of signed written contracts, statement of accounts, invoices, payment history etc.

Third, make an offer based on a bankruptcy filing whether Chapter 7 or Chapter 13 for consumers. Chapter 7 candidates might offer 10% lump sum for unsecured debt. Chapter 13 candidates should attempt to settle for less than 50% by offering 20% initially.

Fourth, make the creditors aware of your financial condition. For instance, Net Worth equals Assets minus Liabilities. A Negative Net Worth should result in a smaller settlement amount. Your income is relevant because if you pass your state's Means Test for annual income you may be a Chapter 7 candidate.

Fifth, get all settlement offers in a signed writing from creditor/debt collector. Terms of settlement including settlement amount, payment plan if any, account to be reported as settled in full to credit reporting agencies.

Sixth, mark settlement check paid in full, write account number on front of check and send it where the creditor/debt collector requested.

Seventh, follow up to get a paid in full or settled in full letter from creditor/debt collector.

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Eighth, check all three credit reports for free once a year at www.annualcreditreports.com. Correct any incorrectly reported information.

Ninth, make sure you do not relapse in accumulating debt that you cannot repay.

Tenth, Debt Settlement can result in income tax being due for those with a positive net worth. For those with a negative net worth, no tax should be due on the amount of debt you saved if it is equal or less than your negative net worth. For example, if you have a negative net worth of \$10,000 and you save/settle \$10,000 of debt, no tax should be due. Your creditor will send you a 1099-C form for any settlement/savings. Be sure to contact your accountant or financial advisor.

Your credit score or FICO will decrease with debt settlement but not as much as with a bankruptcy. Be very careful before starting a do it yourself debt settlement. Your local bankruptcy attorney can give you valuable advice on how to attempt debt settlement and prepare for the possibility that you may need to file bankruptcy at a later date.

A good alternative, would be to pay your bankruptcy attorney a deposit/retainer for debt settlement that would be credited in full towards any bankruptcy fee paid if necessary.

Best Regards,

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