

Dealing with Your Debt Burden in Difficult Economic Times

In 1985, John Cafferty & The Beaver Brown Band said that “Things are tough all over”. Unfortunately, this sentiment really rings true today. Unemployment is at record heights and an all too large number of families struggle to make ends meet from one day to the next. Oftentimes, families find that their income isn’t sufficient to meet their monthly financial obligations, and they turn to credit cards to make up the difference. Then, something unforeseen happens. Perhaps a job loss or some large, unexpected expense comes along. Pretty soon, families find themselves burdened with overwhelming debt that they can no longer handle and things seem hopeless.

There are many ways to try to deal with crushing debt. Perhaps there is enough equity in a home that the debt can be rolled into a refinanced mortgage. You may even be able to renegotiate credit terms with your lenders to reduce interest and establish more favorable repayment terms. These and other options, however, are often not available or may not be viable for the average individual with a heavy consumer debt load. This is where the protection of the United States Bankruptcy Court comes in.

Consumers generally file for bankruptcy protection under Chapter 7 or Chapter 13 of the bankruptcy code. Chapter 11 is also available to consumers who have extraordinarily high debts, but this isn’t a terribly common occurrence.

A Chapter 7 Bankruptcy filing can allow a debtor to have all allowable debts discharged, giving the debtor a fresh start free of crushing debt. Most consumer debt, absent of fraud, is dischargeable. Some debts that are not dischargeable are, generally, student loan debt, domestic support obligations and certain tax obligations.

Chapter 7 is referred to as the “zero-asset” or “liquidation” chapter. These names are misleading. Chapter 7 debtors often have assets such as real estate and a vehicle. In theory, the Court can seize these assets, sell them and distribute the proceeds to creditors, but this rarely ever happens. Homes that are primary residences can have up to \$500,000 worth of equity protected by the Massachusetts Homestead exception, and the bankruptcy code, in various ways, allows the debtor the ability to keep a vehicle as well. Other property can also be protected with various allowable exceptions. For example, an employer-sponsored retirement plan may be protected under ERISA.

Eligibility to file a Chapter 7 bankruptcy is usually determined by the debtor’s income and, if necessary, the Means Test. The Means Test is a somewhat complicated formula involving all sources of income and allowable deductions. Simply put, if your household makes less than the median income as determined by the Census Bureau and the Internal Revenue Service, you are eligible to file for Chapter 7 Bankruptcy. If your household income is higher than the median income for Massachusetts, you must then run through the Means Test to determine if you are eligible for a Chapter 7 Bankruptcy filing. If you make too much money to qualify for a Chapter 7 filing, then Chapter 13 may be an option for you.

A Chapter 13 Bankruptcy is more like a personal reorganization. Under Chapter 13, a debtor generally pays back a portion of debt over a three to five year period, depending on what type of repayment plan the Court allows. The benefits of a Chapter 13 filing are that the debtor usually pays back only a fraction of the debt, a Chapter 13 filing can help a debtor save a house that is already in foreclosure and a Chapter 13 filing

may discharge certain long-term obligations, such as a property settlement in a divorce proceeding, that a Chapter 7 discharge would not cover.

The decision to file for bankruptcy is often a difficult one for a debtor. There are many different factors to consider when you are contemplating a bankruptcy filing, and each case presents a unique set of circumstances. If you think that a bankruptcy filing might be right for you, I would be happy to meet with you for a free consultation to discuss your situation and hopefully get you on a track to a brighter financial future.

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