

Is Filing Bankruptcy Right for Me?

Understanding the “B” Word: Debunking the Myth of Bankruptcy

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In my law practice, I spend a great deal of time speaking to consumers, who are their wits end, about the possibility of filing bankruptcy. Hardworking people, they have historically always paid their bills but an event, whether divorce, illness, or an unexpected expense, have finally pushed them over the financial brink. The harassing creditor telephone calls, unopened mail, sleepless nights and the certified foreclosure complaint leave little hope.

It is no secret our national economy continues to be in a downward spiral with unemployment hovering at 9% and foreclosures at a all time high. The cost of living continues to escalate beyond our means and healthcare coverage is unattainable for many of us. More and more people are finding themselves struggling to adequately provide for their families without incurring significant more debt and having to tap into their credit lines. This “perfect storm” has resulted in a 40% rise in bankruptcy filings nationwide. The people of Maine are no exception.

The bottom line is that, over the past twenty years, lenders have substantially extended credit to significantly increase their own profits with little or no regard for the economic impact on the individual consumer. America runs on credit, but what choice do we have? Tightening the belt is one thing, however, there has to be something there to tighten.

As people struggle to maintain the basics, credit limits are increased exponentially and people, in an effort to care for their families and maintain their homes, are forced to use it. No matter what the circumstance, one missed payment often results in numerous fees, possible rate changes and a subsequent drop in your credit score. Then there is the mortgage mess with Lenders promising loan modifications that run simultaneously with your foreclosure only to end up not being approved and you having run out of options. Let's face it; it is bad out there.

A lot of people who call me are uncomfortable talking about the “B” word. For many people, it continues to have significant stigma attached to it. However, the significant rise in bankruptcy filings statistically acknowledges that more and more people are utilizing this option. For years, large corporations, advised by a bevy of lawyers, have sought protection from their creditors under the federal Bankruptcy Code. Over the last few years, individual consumers have come to understand that they too are afforded that same creditor protection under the federal Bankruptcy Code.

When the Bankruptcy Code was modified in October of 2005, it purported two main objectives. The first objective was to provide debtors with a fresh start in their financial lives. Whether it is the crushing interest, late or over-limit fees of credit cards or mounting arrearages from adjustable rate mortgages, there comes a point where it is virtually impossible to ever overcome that mountain of exponential debt. The second objective of the Bankruptcy Code provided some equity to creditors by mandating a verification process for bankruptcy eligibility.

There are two options available to individual consumers under the federal Bankruptcy Code. The first is Chapter 7, which is a complete liquidation or what is termed as a straight bankruptcy. If you are current on your secured debts, such as a mortgage or vehicle, it is possible to discharge your unsecured debt such as credit cards or medical bills. The second options is Chapter 13, which is a reorganization of your debt and allows you to roll your secured debt arrearages into Court supervised payment plan from anywhere from 36 months to 60 months depending on your disposable income and your secured debt load.

In both Chapter 7 and Chapter 13, Maine has opted out of the federal Bankruptcy Code and has its list of statutory exemptions that are not attachable by creditors. Contrary to public opinion, it is not the intention of the federal Bankruptcy Code to leave you without a home or a vehicle to get to work. Many times, depending on your circumstances, those items, as well as others, fall well within Maine's exemptions and are retained by the debtor.

There is a significant emotional component when facing the decision to file bankruptcy. People believe that they have somehow financially failed. Nothing could be further from the truth. Those individuals who contemplate filing bankruptcy often do so out of necessity and are held to a federal standard that attempts to mitigate abuse of the system. When the new bankruptcy laws were implemented in the fall of 2005, it included a new "means test." This "means test" was a formula designed to keep debtors with higher incomes from filing for Chapter 7 and under the reorganization scheme of Chapter 13, debtors must repay a portion of their debts. Many people mistakenly believe that they must be completely penniless in order to seek protection from their creditors under the federal Bankruptcy Code. This is not true. People can earn significant monthly income and still qualify for Chapter 7 bankruptcy.

Another concern for people is the impact that a bankruptcy filing has on your credit report. However, if you are not making your credit card payments, behind in your mortgage or facing repossession of your vehicle, your credit score has already taken a significant hit. After two years, the impact of a bankruptcy filing on a credit report begins to wane and rebuilding your credit is much easier when you are not longer liable for mountains of debt.

If you have questions on whether a bankruptcy filing may be right for you, the law firm offers a free one-half hour consultation. It does not cost anything to educate yourself on your options and you may find, filing bankruptcy may be right for you.

