

A General Overview of Bankruptcy

by Dean Weber, Esq.

The purpose of this article is to give the reader a non-technical, easy to understand overview of Bankruptcy. Typically, a person contacts an attorney when he or she is thinking about filing for bankruptcy, usually as a result of an overwhelming amount of credit card debt, or perhaps, the perspective client is behind on their home mortgage. In either case, the first step is to meet with a qualified attorney - one who is experienced with all of the ins and outs of bankruptcy law. The attorney will take a detailed history and fact gathering with regard to the client's problem. Does the person own a home? Is the client married? Any children? Does the client lease or own any autos? Is there money in the bank- or in stocks, bonds, or mutual funds? Is there a retirement account? (IRA or 401k, etc). What is the client's income? All of these items, and more, are important for the attorney to know- so that a knowledgeable decision can be made as to the type of bankruptcy that can or may be filed- a Chapter 7 or 13? (I am leaving out Chapter 11 for now because that is for businesses generally and will be the subject of another article).

Once the attorney has gathered all relevant facts, and documents have been produced by the client to support those facts, a bankruptcy petition can be prepared- which includes all information just mentioned above, and more. What property may be exempt- or, protected under the law? Can the client keep his house? His or her auto? These are important questions and answers must be had prior to filing the petition. What about tax refunds?

After the many page bankruptcy petition is prepared, the client(s) then come in to sign the petition. Then, the petition is filed with the Federal Bankruptcy Court (located at Central Islip here on Long Island) and this filing is normally done electronically- that is, it is uploaded into the Court's Server.

Upon filing, the client's case is assigned a case number, and, importantly, a trustee is appointed, and this trustee is the person who oversees the bankruptcy case. Approximately 6 weeks after the petition is filed, the client, and his or her attorney, meet with the trustee at the Court- not in a courtroom, but rather, just at the courthouse building, in a room, at a table, where usually, many other people- debtors, are, waiting for their turn to meet with the trustee. This meeting is called a 341 meeting of creditors. The client is sworn in- by raising his or her right hand, and swearing to tell the truth. The attorney is sitting right next to his clients, and he identifies him or herself for the record. The purpose of the meeting is for the trustee to fact-gather- to see if the petition is accurate and to see if everything is good- that is- in the case of a chapter 7- is there anything for the trustee to liquidate to pay off the client's debts- perhaps the client owns something that can be sold. The attorney, knowledgeable in the ways of this complex area of law, has apprised the client before they filed, as to the status of any non-exempt property- that is, property that could be sold by the trustee. For example, in New York, if a client owns a car worth 8000 dollars- then, in that case, the trustee could sell that car to pay off some of the client's debts- because a client can only protect up to 2,400 dollars in his or her auto. There are other important exemptions such as those that protect a client's home. Generally, the meeting of creditors takes no more than ten minutes- or less- although, in a Chapter 13 case- where the client pays back some or all of his debts over three or five years, the meeting can, and often does, take a bit longer.

In the case of a Chapter 7, where the goal is to wipe out all dischargeable debts (some are not dischargeable- such as nearly all student loans, IRS, child support, and criminal fines), the client receives of his or her discharge several months after the meeting with the trustee. If the trustee was to object to such a discharge, this would occur (the objection) some time after the meeting, and the client's attorney would had to mount an opposition to the trustee's objection. However, in the vast majority of cases, the case goes smoothly, and the client gets

out of all of his or her dischargeable debts. In the case of a Chapter 13, the client, as mentioned, attends a meeting with the trustee- as in the chapter 7- but there is, thereafter, a further hearing- called a "confirmation hearing"- where the "plan" that is proposed- specifying what percentage of the client's debts are to be paid back- and what the monthly payment is to be paid to the trustee (over a 3-5 year "plan"), this hearing is for the purpose of giving the court's stamp of approval for that plan. Usually, the client need not attend that hearing, but sometimes it is required. Chapter 13 is more complex than a Chapter 7- for a number of reasons. First, the attorney must craft a plan- for the repayment of some or all of the client's debts, and second, the client and the attorney have a relationship for several years- and the file stays open and is subject to the court's perusal- for example, if the client's income changes a lot, the plan might change. Tax refunds may have to go to the trustee during the life of the case. There are many issues to attend to in a 13 that are not necessary in a Chapter 7.

The costs involved, for the client, are reflective of the varying degrees of difficulty of the different Chapters- 7, and 13. A Chapter 7 normally costs, as for attorney's fees, about 1500 to 2500 dollars, plus filing fees, depending upon several factors, including level of debt, number of creditors involved, and other factors. A Chapter 13, which as mentioned is more complex, can range in fees from 2500 to 4000 dollars plus filing fees. Of course, these are just approximate ranges, and can vary depending upon the peculiar facts and circumstances of each case, but it does serve as a general guideline for the reader.

There is a lot more to discuss, since Bankruptcy Law is complex, and Bankruptcy cases, petitions, meetings of creditors, motions, confirmation hearings, and dischargeability issues are all very vast in scope, but the PROCESS of bankruptcy is relatively easy to understand and is what I wanted to convey to the reader in this article.