CHAPTER 7 BANKRUPTCY IN KENTUCKY

If You Are Struggling to Keep Your Head Above Water Financially, With No End In Sight, Bankruptcy Is Often the Best Long-Term Solution

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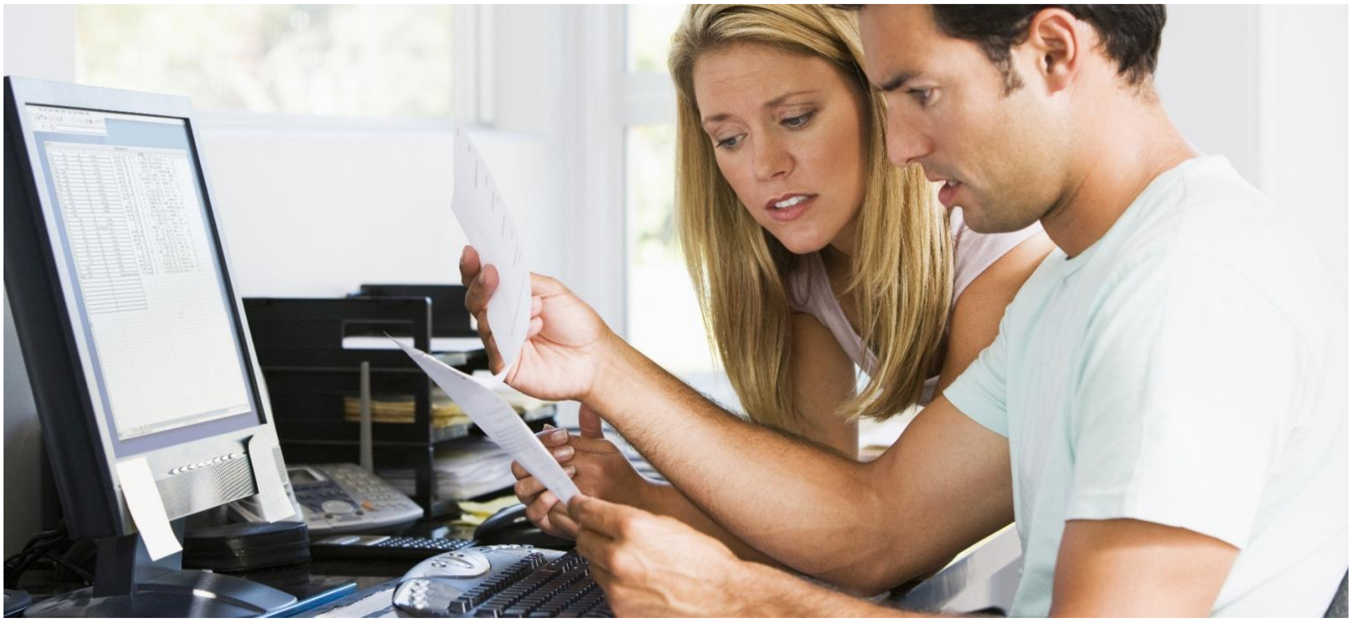
If you have made the difficult, yet usually wise, decision to file for bankruptcy protection you are hardly alone. In recent years, the number of bankruptcy petitions filed in the United States has reached record levels, due in large part to the financial crisis the country as a whole has been through. If you are struggling to keep your head above water financially, with no end in sight, bankruptcy is often the best long-term solution. Once the decision to pursue bankruptcy has been made you must then decide which chapter to use. Most debtors who qualify to file a chapter 7 bankruptcy choose to do so because chapter 7 does not require you to repay most debts.

Bankruptcy Chapters



An individual (or married) debtor must use one of four bankruptcy chapters when filing for bankruptcy.

- **Chapter 11 –** though an individual may use chapter 11 it is typically used by a business or by an individual with a significant interest in a business. It can also be used by an individual whose debt exceeds the chapter 13 limit.
- **Chapter 12 –** chapter 12 is reserved for family farmers and fisherman.
- **Chapter 13 –** chapter 13 helps you to develop a repayment plan that will catch up and/or pay off important debts over an extended period of time. Chapter 13 is often used by debtors who do not qualify to use chapter 7 or who have valuable non-exempt assets that might be lost in a chapter 7 bankruptcy or who simply elect to repay their creditors because they believe it is the right thing to do.
- **Chapter 7 –**chapter 7 results in most debt being discharged, or eliminated, without the need to repay the debts which gives the debtor a clean fresh start with their finances. For this reason debtors who qualify typically choose to use chapter 7.

The Means Test

Chapter 7 bankruptcy was created to help low and moderate income debtors. A chapter 7 does not require a debtor to repay debts as chapter 7 is generally used by debtors who do not realistically have the ability to repay all or a significant portion of their debts. Unfortunately, chapter 7 was sometimes abused prior to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA). To prevent debtors who have the ability to repay debts from discharging those debts through a chapter 7 bankruptcy, the means test was introduced through the BAPCPA. The means test compares your income to that of other similarly situated households in your geographic area to determine if your income falls at, or below, the median. If it does you may proceed using chapter 7. If it does not you must apply a set of guidelines to your income and indebtedness to determine if you qualify to proceed with a chapter 7. After completing the means test if you do not qualify then you must use another chapter such as chapter 13. Just because you qualify for a chapter 7 does not mean you are required to use chapter 7. You may choose to use chapter 13 if you are behind on a mortgage payment and need the additional time to catch up or if you have important non-exempt assets you wish to protect.

What Does "Liquidation" Mean?

Chapter 7 bankruptcy is often referred to as a "liquidation" bankruptcy which can give debtors the wrong impression. While it is true that the Trustee in a chapter 7 bankruptcy may seize and sell non-exempt assets and use the proceeds to repay creditors, most debtors who file a chapter 7 bankruptcy have little, or no, non-exempt assets for the Trustee to seize. Therefore, a typical debtor does not lose assets when filing a chapter 7 bankruptcy.

Kentucky Exemptions

The reason why debtors are able to protect assets when filing a chapter 7 bankruptcy is because they are able to use the bankruptcy exemptions.

An exemption works to protect an asset by making it unavailable to be seized and sold. Although bankruptcy falls under the jurisdiction of the federal courts in the United States, exemptions are state-specific. The U.S. Bankruptcy Code includes a list of exemptions a debtor may use; however, each individual state may also create list of exemptions. Each state also decides if a debtor must use the federal exemptions, the state exemptions, or has the option to choose between the two. In Kentucky, a debtor may use either the federal or state exemptions – but not both. Some common examples of Kentucky exemptions include:

- **Homestead –** up to $5,000 worth of equity in your primary residence
- **Personal property –**$3,000 in household furnishings and $3,000 worth of tools or livestock used for farming
- **Motor vehicle --** $2,500
- **Pensions/retirement –** ERISA qualified retirement accounts and most state pensions
- **Wildcard --** $1,000 in real or personal property

As a point of comparison, the federal exemptions for the same assets are as follows:

- **Homestead –** $22,975 of equity
- **Personal property –** $12,250 aggregate value ($575 per individual item)
- **Motor vehicle –** $3,675
- **Pension/retirement –** most tax-exempt retirement accounts
- **Wildcard -** $1,225 plus up to $11,500 of the unused portion of your homestead exemption if you do not need it

As you can see the federal exmptions are much more generous than the exemptions provided under Kentucky law and for that reason the vast majority of debtors use the federal exemptions.

Discharge in a Chapter 7 Bankruptcy

A typical chapter 7 bankruptcy only takes about four to six months to complete. The debtor will be required to appear for the 341 hearing, also referred to as the meeting of creditors; however, this meeting is often more of a formality presided over by the Trustee. Creditors do have the right to attend and question the debtor about assets, income, and debts but it is not uncommon for creditors to forego the meeting in a chapter 7 bankruptcy. Once the Trustee is satisfied that the debtor has answered any questions truthfully, and that the documents filed in the case are complete and accurate, the Trustee will pass the case on for discharge. When the bankruptcy is discharged, most debts are eliminated, meaning the debtor is no longer responsible for paying them. Some debts, such as child support, certain tax debts, and student loans cannot be discharged through bankruptcy.

Life after a Chapter 7 Bankruptcy – Can You Ever Purchase on Credit Again?

Each debtor's situation is unique; however, most debtors who go through the chapter 7 process are able to enjoy a fresh start financially once the bankruptcy is discharged. Because your debt to income ratio should be significantly improved, you may even qualify to finance a vehicle or obtain a new credit card within a few months after your discharge. To qualify for a mortgage loan you will typically need to wait about two years for an FHA or VA loan and up to four years for a conventional loan.

If you are considering bankruptcy, consult with an experienced Kentucky bankruptcy attorney as soon as possible to get started on your fresh start.

References

United States Courts, Chapter 7

United States Department of Justice, Statement of the U.S. Trustee Programs' Position on Legal Issues Arising Under the Chapter 7 Means Test

NOLO, Kentucky Bankruptcy Exemptions

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