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Will I have to give up all my assets?

No. The Bankruptcy Code provides that a debtor filing for bankruptcy can keep certain assets for a "fresh start" by exempting property from the bankruptcy estate.

The vast majority of bankruptcy cases are "no asset" cases, in which the debtors have claimed an exemption in everything they own; there are then no assets from which to pay creditors.

The exemptions that are available vary from state to state: this is the only area in which bankruptcy law is not the same in all states.

Do I have to list all my debts?

Yes, you must list all of your debts on your bankruptcy schedules, even debts that are non-dischargeable or secured.

However, you can choose to reaffirm any debt you choose after the filing. Or, you can voluntarily pay a creditor after you receive a discharge, without becoming legally liable to continue paying.

Thus listing a creditor does not prevent you from paying creditors you wish to pay after bankruptcy.

Also, omitting a credit card company from your schedules, because you want to retain the use of the card, does not assure continued access to the card: most major credit card issuers use a national

data base to determine who has filed bankruptcy, independently of the court's notice to them of bankruptcy filings. They routinely cancel cards of everyone who has filed bankruptcy, whether or not a balance is owed.

You can't assure that your creditors won't find out about your bankruptcy by not listing a debt. And omitting a debt constitutes perjury which could result in your discharge being denied.

Will I lose my house if I file bankruptcy?

Not necessarily.

Is there equity in the property?

If there is no equity in the house (today's value less costs of sale less payoff balances on all liens) the trustee in a Chapter 7 will abandon the house to you. That is, you keep it, as long as you pay the mortgages.

A bankruptcy does not relieve the property of the liability for voluntary liens, like mortgages or deeds of trust, nor for tax liens. So, the lender retains the right to foreclose if you don't pay.

If you pay, everyone is happy. Remember, the lender doesn't want the property; it wants you to pay regularly on the loan.

Foreclosure is a last resort for the lender if it concludes it can't get its money any other way.

If there is equity

Determine whether the exemptions available to you equal or exceed the equity in the property. If the equity is all exempt, you can keep the house, so long as you pay the mortgages.

Will the trustee visit my house?

In most jurisdictions, no one will come to your home to examine your personal belongings, unless there is a suspicion that you have hidden assets or undervalued what you own. That is VERY RARE and should not worry you at all.

The trustee and the judge assume that you have truthfully scheduled your assets. Anxiety about the bankruptcy process and the fear of exposure or humiliation is created in the mind of the debtor to a far greater degree than by the reality of the judicial process.

Does my spouse have to file bankruptcy with me?

No, you may file without your spouse. The effect on your spouse and any debts you have jointly will vary depending on the marital property laws in your state.

In community property states, all of the community property (the debtor's half and the non debtor's half) becomes property of the estate. In return, the community property acquired by a debtor and his non debtor spouse after the bankruptcy is not liable for payment of community claims listed in the bankruptcy though the non debtor spouse may have liability to the extent of the non debtor's separate property.

Will bankruptcy stop wage garnishments?

Yes. Once your case is filed, creditors are no longer entitled to garnish your wages for debts that existed at the beginning of the case. The only exception may be for on-going child or family support ordered by a court.

Are there debts that I cannot discharge?

Yes. The scope of the discharge varies in each chapter: in Chapter 7, debts incurred by fraud, intentionally harmful actions, dishonesty, as well as priority taxes, unfiled taxes, family support and debts to a former spouse, student loans, criminal fines and restitution cannot be discharged.

In Chapter 13, you can discharge non support debts to a former spouse, government fines, and some intentional torts that could not be discharged in Chapter 7.

Is the IRS affected by my bankruptcy filing?

The IRS must cease collection actions after a bankruptcy is filed, just like all other creditors. The automatic stay protects the debtor and the debtor's property.

Can I keep my car?

Yes. What you must do to keep the car through a Chapter 7 varies depending on whether there is non exempt equity in the car. If there is no equity in the car, after subtracting any car loan and exemption from the car's present sale value, the bankruptcy trustee will not take the car. If there is equity in the car over and above the value of the exemptions available, a debtor can usually buy any unprotected equity from the Chapter 7 trustee.

Can I discharge my student loans in bankruptcy?

Student loans are no longer dischargeable in any chapter of bankruptcy unless you can prove that repaying the loan creates an undue hardship on you or your family. Prior law allowed their discharge once they had been in pay status for 7 years. The law changed in the fall of 1998. Proving hardship usually requires showing that you can't provide a minimum standard of living for yourself and your dependents if you have to repay the loan. Some courts will discharge part of the loan on a showing that repaying it all would be a hardship.

Can I get credit after bankruptcy?

Filing bankruptcy does not prevent you from getting new credit. An entire class of lenders targets the recently bankrupt as customers! Immediately after a bankruptcy filing, you can expect credit to be more difficult to get, more expensive, and limited in amount. Two years after a bankruptcy discharge, debtors are eligible for mortgage loans on terms just as good as those with the same financial characteristics who have not filed bankruptcy. That is, in getting a home loan after a bankruptcy, the size of your down payment and the stability of your income will be much more important than the fact you filed bankruptcy in the past. There is no "right" to credit. Landlords and credit card companies are well within their rights to consider your financial history in their credit decision. However, debtors are protected from discrimination in employment and governmental licensing based solely on the fact that they have filed bankruptcy by provisions of the Bankruptcy Code § 525.

While the fact that you filed bankruptcy stays on your credit report for 10 years, it becomes less significant the more time elapses. In fact, you are probably a better credit risk after bankruptcy than before.

Will I have to go to court after I file bankruptcy?

Technically, no. You are required to attend what is called a "meeting of creditors" which is usually scheduled for 30 days after the date of filing. The meeting does not take place in court and you will not see a judge. After filing, the court will assign your case to a "trustee" who will ask you questions under oath at the meeting of creditors. The purpose of the meeting of creditors is for the trustee to make sure you read, reviewed and signed your bankruptcy paperwork. No decisions are made at the meeting. Although its called a meeting of creditors, it is rare for creditors to actually show up to these meeting.

How long does a bankruptcy stay on my credit record?

A Chapter 7 bankruptcy may show on your credit for 10 years from the date of filing. It cannot legally be removed so don't be fooled by scams offering to remove a bankruptcy from your credit report (unless you didn't file a bankruptcy and it is on your report by mistake).

What are some of the questions I will be asked at the meeting of creditors?

At the meeting, you are sworn in by the trustee first. Then, usually after reviewing your identification card and social security card, the trustee asks the following questions: 1) Did you read the petition and schedules before signing them? 2) Was everything true and correct? 3) Did you list all of your assets? 4) Did you list all of your debts? 5) Have you lived in the state for the past 2 years? 6) Do you owe anyone domestic support? The trustee may ask other specific questions about your schedules, but most of the hearings are short and uneventful.

When will I get my discharge?

BK FAQ

Typically, it can take anywhere from 120 to 160 days from the date of the first meeting of creditors to get the Discharge Order from the Court.
