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Briefly Legal: Time to declare bankruptcy?

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You have poured your time, energy and nest egg into what you thought was a foolproof business idea. Perhaps you overspent on inventory. Perhaps you underestimated the costs of your high-end location (rent, utilities, décor, and taxes) and simply couldn't cover the overhead. Perhaps a medical emergency or some other crisis necessitated re-directing your profits to pay unexpected bills.

Perhaps it is time to declare bankruptcy.

It's never easy to come to the conclusion that you can no longer stay financially solvent. Declaring bankruptcy is a gut-wrenching resolution for most people.

Most cases filed by individuals are under Chapter 7 of the federal bankruptcy code, and are typically filed by people experiencing a crisis that prevents them from meeting their financial obligations.

There are common misperceptions associated with filings under Chapter 7:

- Common negative assumptions about the character of people filing for bankruptcy – that they are failures in some way, or worse, that they are engaging in unsavory conduct, such as hiding assets. Neither is typically the case.
- The fear that one’s financial affairs will become widely known. This is unlikely. While bankruptcy proceedings are open for public review in the courts, they are not published. In addition, the Chapter 7 process rarely involves a court appearance.
- Many individuals fear they will lose everything they possess in a bankruptcy. This is not the case. Many assets are exempt and can be kept by the filer.
- Fortunately, individuals need not fear repercussions from their employers. Connecticut law prevents all forms of discrimination against individuals who sought bankruptcy protection — employers cannot fire or discriminate against employees who have filed under Chapter 7.

Once these misperceptions are dispelled, the decision to declare bankruptcy might become easier.

The steps are straightforward. People contemplating bankruptcy should first meet with their financial and legal advisors. Once the decision has been made to move forward, the case is filed in the federal district in which the debtor resides. A meeting is conducted by a non-judicial officer, known as a trustee. Since the meeting is recorded and testimony is taken under oath, debtors are allowed to have an attorney present to help them through the process. Unless the case involves prominent public figures, this record is rarely sought by the media or the curious.

Once a case is filed and all the schedules and financial statements required are completed, the trustee reviews these documents to determine if there are non-exempt assets that can be liquidated and distributed to creditors.

In Connecticut, exempt property includes \$75,000 per person of equity in the debtor’s home (\$150,000 per married couple), household goods, clothing, engagement and wedding rings, and \$1,000 per person in a bank account. A Chapter 7 trustee will not sell a home simply because the mortgage loan is in default, and will have little interest in a residence unless it has a market value exceeding the mortgage and other liens by more than \$75,000.

Those filing under Chapter 7 also may retain their retirement accounts, social security payments and other government-subsidized benefits. Properly funded college accounts for the debtor’s children also are beyond the reach of creditors in Chapter 7. Personal injury claims and payments also can be protected with proper planning. In addition, all debts or claims existing at the time of filing are immediately affected by an automatic stay that prevents creditors from contacting the debtor, enforcing a judgment or continuing a lawsuit. The annoying calls and letters from creditors stop.

Before the Chapter 7 process is successfully completed, the debtor will receive an order of discharge, representing a permanent injunction against the collection of a discharged debt. Legally, the creditor has no enforceable right to collect the discharged debt.

Nevertheless, there are areas where bankruptcy can have a negative impact. Private employers can refuse to hire a person who filed for bankruptcy. Landlords can refuse to lease to a Chapter 7 debtor, and private colleges can deny transcripts if money owed is not paid.

In my experience, the conclusion of a bankruptcy proceeding will generate more relief than anxiety.

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