

FREE LEGAL SEMINAR

ON

Bankruptcy Law

February 2010

A Washoe County Law Library Community Service Program

Speaker: Patricia Phair, Esq.

Date: Thursday, February 25, 2010

**Location: Washoe County Law Library
75 Court St.- Old Courthouse**

Time: 5:00 – 7:00 PM

*Due to limited space please sign up ahead of time by
contacting the Washoe County Law Library at*

328-3250

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BANKRUPTCY

There are three general forms of bankruptcy: (1) liquidation, (2) adjustment of debts of an individual with regular income, and (3) reorganization (when debts exceed the chapter 13 limitations).

CHAPTER 7 of the Bankruptcy Code is entitled "Liquidation." The terms "straight bankruptcy" and "bankruptcy" often are used to describe liquidation cases under the bankruptcy laws because the vast majority of bankruptcy cases are liquidation cases. In a typical Chapter 7 liquidation case, the trustee collects the non-exempt property of the debtor, converts that property to cash, and distributes the cash to the creditors. The debtor gives up all the nonexempt property he/she owns at the time of filing the bankruptcy petition and hopes to obtain a discharge.

Debtors can "redeem" non-exempt property from the trustee by paying the value of the property to the trustee, and retaining the property. The Discharge will not issue until all money and/or property is turned over to the Trustee.

Debtors must continue paying secured lenders, such as auto loan, home loans, alimony, child support, student loans and IRS debt. They must remember to do this each month, because during the course of the bankruptcy case, no creditor is allowed to send a billing statement, even those creditors that you wish to keep paying.

Debtors must show the Court that the reason they cannot pay their unsecured credit card, judgments, medical debts and balances owing on repossessed or surrendered property, is because all net income earned is required for basic living expenses. If the debtors have money left over at the end of the month, they would file a Chapter 13 instead of a Chapter 7.

CHAPTER 13 of the Bankruptcy Code is entitled "Adjustment of Debts of An Individual with Regular Income), and contemplates debtor rehabilitation. In a rehabilitation case, creditors look to future earnings of the debtor, not to the property of the debtor at the time of the initiation of the bankruptcy proceeding, to satisfy their claims. The debtor generally retains his/her assets and makes payments to creditors, usually from postpetition earnings, pursuant to a court-approved plan.

The unsecured creditors of a Chapter 13 debtor must receive at least the same amount of money (as a group) that they would have received had the debtor's estate been liquidated in a Chapter 7. The value of all non-exempt assets must be paid into the plan, over the life of the plan, which can be from 36 to 60 months (3 to 5 years). The debts are paid pro-rata by the trustee, and when the debtor completes the plan, he/she receives a discharge, and any debts that still remain after receiving payments from the trustee, are discharged, with no further liability on the part of the debtor to pay them.

Only an individual with noncontingent, liquidated, unsecured debts of less than \$336,900, and noncontingent, liquidated, secured debts of less than \$1,010,650, may be debtor under Chapter 13. If they owe more in unsecured, secured, or both, they must file a Chapter 11 bankruptcy.

AVERAGE MONTHLY CURRENT EXPENSES

| | | | |
|---------------------------------|----------|---------------------------------|----------|
| Rent | \$ _____ | Property taxes: not in mortgage | \$ _____ |
| Space Rent | \$ _____ | Storage Unit | \$ _____ |
| Home, 1 st | \$ _____ | Homeowners Association | \$ _____ |
| Home, 2 nd | \$ _____ | Vehicle Payment | \$ _____ |
| Electricity, Heating | \$ _____ | Vehicle Payment | \$ _____ |
| Propane | \$ _____ | Support Paid to Others | \$ _____ |
| Water, Sewer | \$ _____ | Other Installments: | |
| Telephone | \$ _____ | _____ | \$ _____ |
| Cell Phone | \$ _____ | School Expenses | \$ _____ |
| Cable TV, Dish | \$ _____ | Student Loan | \$ _____ |
| Food | \$ _____ | IRS Payments | \$ _____ |
| Trash | \$ _____ | Gas, auto 1 | \$ _____ |
| Home Maintenance | \$ _____ | Auto license, #1 | \$ _____ |
| Clothing | \$ _____ | Auto maintenance, #1 | \$ _____ |
| Laundry/dry cleaning | \$ _____ | Gas, auto 2 | \$ _____ |
| Medical & dental | \$ _____ | Auto license, #2 | \$ _____ |
| Recreation, entertainment | \$ _____ | Auto maintenance, #2 | \$ _____ |
| Charitable contributions | \$ _____ | Day care expense | \$ _____ |
| Homeowners insurance, not | | Diapers/wipes | \$ _____ |
| in mortgage | \$ _____ | Other expenses, specify: | |
| Renter's insurance | \$ _____ | _____ | \$ _____ |
| Life insurance | \$ _____ | _____ | \$ _____ |
| Health insurance, not in check: | \$ _____ | Haircuts, grooming | \$ _____ |
| Auto insurance | \$ _____ | Tobacco | \$ _____ |
| Other insurance | \$ _____ | Bank charges | \$ _____ |
| Pet care, food | \$ _____ | Internet | \$ _____ |
| Gifts | \$ _____ | | |

Notes: _____

EXPLANATION OF BANKRUPTCY DISCHARGE
IN A CHAPTER 7 CASE

This court order grants a discharge to the person named as the debtor. It is not a dismissal of the case and it does not determine how much money, if any, the trustee will pay to creditors.

Collection of Discharged Debts Prohibited

The discharge prohibits any attempt to collect from the debtor a debt that has been discharged. For example, a creditor is not permitted to contact a debtor by mail, phone, or otherwise, to file or continue a lawsuit, to attach wages or other property, or to take any other action to collect a discharged debt from the debtor. *[In a case involving community property: There are also special rules that protect certain community property owned by the debtor's spouse, even if that spouse did not file a bankruptcy case.]* A creditor who violates this order can be required to pay damages and attorney's fees to the debtor.

However, a creditor may have the right to enforce a valid lien, such as a mortgage or security interest, against the debtor's property after the bankruptcy, if that lien was not avoided or eliminated in the bankruptcy case. Also, a debtor may voluntarily pay any debt that has been discharged.

Debts That are Discharged

The chapter 7 discharge order eliminates a debtor's legal obligation to pay a debt that is discharged. Most, but not all, types of debts are discharged if the debt existed on the date the bankruptcy case was filed. (If this case was begun under a different chapter of the Bankruptcy Code and converted to chapter 7, the discharge applies to debts owed when the bankruptcy case was converted.)

Debts that are Not Discharged.

Some of the common types of debts which are not discharged in a chapter 7 bankruptcy case are:

- a. Debts for most taxes;
- b. Debts incurred to pay nondischargeable taxes;
- c. Debts that are domestic support obligations;
- d. Debts for most student loans;
- e. Debts for most fines, penalties, forfeitures, or criminal restitution obligations;
- f. Debts for personal injuries or death caused by the debtor's operation of a motor vehicle, vessel, or aircraft while intoxicated;
- g. Some debts which were not properly listed by the debtor;
- h. Debts that the bankruptcy court specifically has decided or will decide in this bankruptcy case are not discharged;
- i. Debts for which the debtor has given up the discharge protections by signing a reaffirmation agreement in compliance with the Bankruptcy Code requirements for reaffirmation of debts.
- j. Debts owed to certain pension, profit sharing, stock bonus, other retirement plans, or to the Thrift Savings Plan for federal employees for certain types of loans from these plans.

This information is only a general summary of the bankruptcy discharge. There are exceptions to these general rules. Because the law is complicated, you may want to consult an attorney to determine the exact effect of the discharge in this case.

THIS IS A GENERAL LIST, AND IS NOT MEANT TO BE EXHAUSTIVE

BANKRUPTCY EXEMPTIONS

(Property that cannot be used to pay your creditors)

Equity in home, up to \$550,000.00:

1. You must have purchased the home more than 1,215 days before filing a bankruptcy petition, and recorded your Declaration of Homestead at least 1,215 days before filing your bankruptcy petition to receive the \$550,000 Homestead Exemption.
2. If you purchased your home less than 1,215 days ago, you will only receive a homestead exemption of \$136,875.00, providing you recorded a Declaration of Homestead.
3. If you record your Declaration of Homestead within 1,215 days, or less, before the date of filing bankruptcy, you will only be entitled to a homestead exemption of \$136,875, even if you purchased your home more than 1,215 days before filing bankruptcy.

The following may be homesteaded, providing you are using the unit as your residence:

1. A mobile home on leased or rented land;
2. A travel trailer; and
3. A fifth-wheel trailer.

Equity in car or motorcycle, up to \$15,000.00. Husband and wife may each have \$15,000.00 equity in one vehicle (2 vehicles maximum); if husband and wife have only one vehicle, up to \$30,000 equity.

Household goods, clothing up to \$12,000.00; a computer is now considered household goods; wedding rings are household goods (value placed on furniture and clothing should be yard-sale prices).

Seventy-five percent (75%) of wages that are in a bank account, and that can be proven (by deposit shown on bank statement) to be wages or salary. One hundred percent (100%) of social security, disability, unemployment, alimony, child support exempt.

Deposits with landlords

Any tax refund that is derived from the earned income credit, section 32 of the IRS Code.

Private libraries, works of art, musical instruments, jewelry - \$5,000.00

One gun each No limit on value Social Security No limit on value

Disability No limit on value VA or Military Pension No limit on value

401(k), IRA, pension fund Depending on type, \$500,000 to no limit

Annuity Only \$350 per month of any annuity you are receiving will be exempted, and the monthly amount paid to you in excess of \$350 will be collected by the Trustee assigned to administer your case until all creditors who filed a Proof of Claim have been paid in full.

Tools required for work, \$10,000.00; once again, yard-sale value.

Domestic pets (dogs, cats, fish, small birds).

If you have lived in Nevada for less than 2 years, the exemptions of the state you came from must be used instead of Nevada exemptions (which may not be as generous as Nevada's exemptions).

SECOND MORTGAGES, HOME EQUITY LINES OF CREDIT

If you have a first mortgage and a second mortgage on your home, and wish to retain your home, you must stay current on your monthly mortgage payments, even if the total balance owed on the 1st and 2nd exceeds the value of your property. It may seem foolish to continue paying on the second mortgage when your home is worth less than what is owed, but if you fail to pay the monthly payments on the second mortgage, and the economy recovers, your home may again appreciate in value, and the second may again become secured by your home. In that event, the second mortgage holder would come to you asking for all the back payments you did not make, plus late fees for each month the payments were not made, and cause you more stress. This would also be true if you have a third mortgage on your home.

ARREARAGE ON FIRST MORTGAGE

If you are behind in monthly mortgage payments to the first mortgage holder, and you wish to keep your home, you must be current when we file your bankruptcy if it is a Chapter 7. There is no mechanism in a Chapter 7 that allows you to make-up back payments. A Chapter 13 allows you to make up the back payments by paying into a plan for 3-5 years. However, you must be able to make the regular monthly house payments, plus pay into a Chapter 13 plan to make up the delinquent payments, pay some money to your unsecured creditors (credit cards, medical bills), pay the balance of the attorney fees, and the fees of the Chapter 13 Trustee. If you could not make your regular monthly house payments before, and there has not been a significant change in your income since you fell behind, you probably will not be able to save your home in a Chapter 13.

HOMEOWNERS ASSOCIATION FEES

If you move out of your home before a foreclosure has been completed, you may owe all homeowners association fees incurred until the foreclosure. The fees that were unpaid before the filing of your bankruptcy (pre-petition) can be included in the bankruptcy, but all homeowner association fees that become due after the date of filing of your bankruptcy (post petition) cannot be included and will not be discharged in your bankruptcy, and you **MUST MAKE THOSE MONTHLY HOMEOWNERS ASSOCIATION PAYMENTS**, until a foreclosure is completed.

PAYMENTS TO SECURED CREDITORS

If you are paying a creditor that is secured by a vehicle or other personal property, you must make the monthly payments on time. The secured creditor is not allowed to send you monthly billing statements, even though you wish to keep the property that is collateral for the secured creditor. You will have to remember to make the payment each month, know the address you must send the payment to, the account or loan number, and the correct amount of the payment. Retaining a copy of a recent billing statement is a must.

SECURED CREDITORS and BANKRUPTCY

1. Secured creditors are creditors who have loaned you money to purchase a home, mobile home, vehicle, items such as TV's, washers, dryers, cameras, and jewelry, to mention a few. This property is "secured property" (collateral), and is "security for the loan" from the creditor. If you borrowed money on property you already owned, the creditor is not secured unless they filed a UCC-1 Financing Statement on the collateral.
2. Secured creditors must be paid for the property, or the property must be surrendered to the creditor. You cannot discharge a secured creditor in bankruptcy and retain the secured property.
3. If you wish to retain the property which is security for a loan, you will have to continue paying the secured creditor.
4. Creditors will not send you monthly billings during the course of the bankruptcy. You must remember to make the monthly payments on the secured loans. Have the proper mailing address of the creditor, account number, due date for payments, and amount of the payments. Make the monthly payments in a timely manner during the course of the bankruptcy. Billings will resume after the discharge is issued by the bankruptcy court. If the billings do not resume immediately, continue making the payments. You will receive billings sooner or later.
5. If you are paying a creditor by having the payment automatically deducted from your checking account, the automatic deduction will stop upon the filing of the bankruptcy petition. You must make the payments on your own. Have the proper mailing address of the creditor, account number, due date for payments, and the amount of the payments. Make the monthly payments in a timely manner during the course of the bankruptcy. If your bankruptcy petition is filed a week or less before a payment is due, **MAKE THE PAYMENT** by check. It will not be automatically withdrawn, and if you do not make the payment, a late charge will be assessed by the creditor. After the bankruptcy discharge is issued, you may be able to make arrangements with the creditor to resume automatically deducting the payment from your checking account. Make sure you have the proper mailing address, account number, due date for payments, and the amount of the payments. Make the monthly payments in a timely manner during the course of the bankruptcy.
6. Some creditors may raise the interest rate on the loan for which you have an automatic deduction payment from your checking account. Some creditors offer a lower interest rate if you agree to the automatic deduction at the time of the loan. Once a bankruptcy is filed, and the automatic deduction can no longer be accomplished, the interest rate may be increased by the creditor. Make sure you have the proper mailing address, account number, due date for payments, and the amount of the payments. Make the monthly payments in a timely manner during the course of the bankruptcy.