

Houston Business Daily Advisor Reviews Bankruptcy Options

By Houston Business Daily

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In the first article in the series, Krasney wrote:

Over the next few weeks, I will address a very important topic that has been on the minds of many Texans during this recession—bankruptcy. This, often times, is a taboo subject that many choose not to think about or investigate until it is too late. Bankruptcy should not be feared and instead seen as a chance to start over. With that, there are several types of bankruptcy filings depending on each debtor's circumstances (i.e. full discharge or repayment plan). This article will address different types of bankruptcies and their effect on your finances. Future articles will address the procedure for filing and exempt property. As always, should you find that you need legal advice, contact an attorney and do not rely on this article as your sole source of advice.

Six basic types of bankruptcy cases are provided for under the Bankruptcy Code, and named according to the chapters that describe them.

Chapter 7 – Liquidation

This orderly, court-supervised procedure requires the bankruptcy trustee to take over the assets of the debtor's estate, reduce them to cash, and make distributions to creditors, subject to the debtor's right to retain certain exempt property and the rights of secured creditors. Usually, however, little or no nonexempt property exists in most chapter 7 cases. A creditor holding an unsecured claim will get a distribution from the bankruptcy estate only if the case is an asset case and the creditor files a proof of claim with the bankruptcy court. In most chapter 7 cases, if the debtor is an individual, he or she receives a discharge that releases him or her from personal liability for certain dischargeable debts. The debtor normally receives a discharge just a few months after the petition is filed. The recent amendments to the Bankruptcy Code require the debtor to qualify for relief according to the "means test". If the debtor's income is in excess of certain thresholds, Chapter 7 may not be available.

Chapter 13 – Adjustment of Debts of an Individual With Regular Income

Here, an individual debtor who has a regular source of income is enabled to keep a valuable asset, such as a house, according to a proposed "plan" to repay. This repayment is done over time – usually three to five years. Chapter 13 is also used by consumer debtors who do not qualify for chapter 7 relief under the means test. At a confirmation hearing, the court either approves or disapproves the debtor's repayment plan, depending on whether it meets the Bankruptcy Code's requirements for confirmation. Chapter 13 is very different from chapter 7 since the chapter 13 debtor usually remains in possession of the property of the estate and makes payments to creditors, through the trustee, based on the debtor's anticipated income over the life of the plan.

No immediate discharge of debt occurs; instead, the debtor is allowed to pay a percentage of the debt to the creditor over time. Once the payments are made, the bankruptcy trustee will discharge the debt. The debtor is protected from lawsuits, garnishments, and other creditor actions while the plan is in effect.

Chapter 11 – Reorganization

A Reorganization is used by commercial enterprises that desire to continue operating a business and repay creditors concurrently through a court-approved plan of reorganization. A debtor may file a reorganization plan within 120 days after it files the case and must provide creditors with a disclosure statement containing information adequate to enable creditors to evaluate the plan. The court will approve or deny the plan and if confirmed, the debtor can reduce its debts by repaying a portion of its obligations and discharging others.

The debtor can also terminate burdensome contracts and leases, recover assets, and rescale its operations in order to return to profitability. In the end, the debtor emerges from the bankruptcy with a reorganized business and reduced debt load (presumably one that they can handle).

Chapter 12 – Adjustment of Debts of a Family Farmer or Fisherman with Regular Annual Income

This Chapter is reserved for family farmers and fishermen with regular income. The process under chapter 12 is very similar to that of chapter 13, under which the debtor proposes a plan to repay debts over a period of time – no more than three years unless the court approves a longer period, not exceeding five years while utilizing a trustee. The family farmer or fisherman is allowed to continue to operate the business while the plan is being carried out.

Chapter 9 – Adjustment of Debts of a Municipality

Here, Only a “municipality” (cities and towns, as well as villages, counties, taxing districts, municipal utilities, and school districts) may file for this reorganization which is much like a reorganization under chapter 11.

Chapter 15 – Ancillary and Other Cross-Border Cases

This section deals with cases of cross-border insolvency where a debtor or its property is subject to the laws of the United States and one or more foreign countries.

Clearly, most readers need only be cognizant of the Chapters 7, 11 and 13 depending on the circumstances. The stigma of bankruptcy is not as bad as thought and many businesses and people not only file but emerge with a renewed energy for business and see much success.

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