Debtor Educational Courses: Credit Counseling & Financial Management

Certification of debtor education is a requirement the individual debtor must meet in order to file and receive a discharge in bankruptcy. In order for an individual debtor to be eligible to file bankruptcy, he must first complete a credit counseling course, and in order to be eligible for a discharge, he must complete a financial management instructional course after the case is filed.

This brochure, prepared by the Public Information Committee of the Louisiana State Bar Association, is issued to inform and provide general information, not to advise. If you have a specific legal problem, you should not try to apply or interpret the law without the aid of an attorney who knows the facts as the facts may change the application of the law.

Louisiana State Bar Association

Serving the Public. Serving the Profession.

For further information, call or write to:
Louisiana State Bar Association
601 St. Charles Ave.
New Orleans, LA 70130-3404
(504)566-1600

www.lsba.org

Revised July 23, 2013

BANKRUPTCY

What is Bankruptcy?

The main function of bankruptcy is to provide individuals struggling with debt with a fresh start by extinguishing their debts through what is known as discharge. The debtor's property becomes part of the bankruptcy estate and is subject to the control of the bankruptcy trustee, who administers the case in the best interest of all parties involved. Once the debtor is granted a discharge from the debt, he is relieved or discharged from personal liability for those debts.

The Automatic Stay

When a bankruptcy is filed, an automatic stay goes into effect. The automatic stay protects the property of the bankruptcy estate and gives the debtor relief from collection attempts and harassment by creditors. In most cases, once the automatic stay takes effect, creditors may not attempt to collect debts.

Discharge in Bankruptcy

An order of discharge relieves the debtor of personal liability for his debts and gives the debtor a fresh financial start. The debtor is no longer legally required to pay any debts that are discharged.

Not all debts, however, are dischargeable. Some debts may survive bankruptcy and remain enforceable after the debtor is granted a discharge. This is because some debts are not dischargeable as a matter of law or because the court may deny a debtor's discharge of some or all debts. The reasons for denying a debtor's discharge include fraud, concealment of property, or post-filing misconduct.

Additionally, a debtor is not eligible for Chapter 7 discharge if he has been granted a prior discharge in a Chapter 7 bankruptcy, and the prior case was filed within 8 years. This time period is 6 years if the debtor's previously filed case was a Chapter 13.

The Bankruptcy Estate

The filing of a bankruptcy case creates a bankruptcy estate, which is made up of all legal or equitable interests of the debtor in property as of the date the bankruptcy case is filed.

Exempt Property

Certain property is exempt from the bankruptcy estate, and the debtor is allowed to keep such property after the bankruptcy. This helps the debtor achieve a fresh start by leaving him with enough property to meet his needs after bankruptcy.

Louisiana is an "opt-out" state, which means its own state law governs what property is exempt. The purpose of the state exemption statute is to allow the debtor to support himself at a minimum level and independently fulfill his basic needs.

Some examples of exempt property include:

- ► 75% of disposable earnings
- ► Property necessary for one's trade or profession (tools, instruments, books, one utility trailer)
- ► Family portraits
- ► Wedding and engagement rings that are less than $5,000 in value
- ► $7,500 in equity value for one motor vehicle
- ► $35,000 of equity in principal residence

Chapter 7 vs. Chapter 13

Chapter 7 bankruptcy provides for liquidation and distribution of the debtor's assets. The debtor's nonexempt assets are brought into the bankruptcy estate and sold by the bankruptcy trustee. The money collected by the sale of the assets is then used to repay the creditors. A Chapter 7 debtor may lose all nonexempt assets through the liquidation or have the opportunity to purchase those assets from the trustee. Typically, a Chapter 7 debtor will receive his discharge within 6 months of filing the case.

Chapter 13 bankruptcy is more of a reorganization or rehabilitation plan designed for individual debtors with regular income. Rehabilitation is achieved with an approved repayment plan over a longer period of time to pay back all or some debts. The debtor makes payments to creditors according to the repayment plan over a period of 3 or 5 years using income earned during that time period. An advantage of this type of bankruptcy is that a Chapter 13 debtor may keep nonexempt property as long as payments are made in accordance with the plan. Typically, a Chapter 13 debtor will receive his discharge at the end of the repayment period.

The "Means Test" Requirement

To qualify for a Chapter 7 bankruptcy, the debtor must pass an income threshold "Means Test." This test compares the debtor's projected income with his debts when he files for bankruptcy and prevents abuse of the bankruptcy system by weeding out debtors who are actually able to pay their creditors. If the debtor cannot pass the "Means Test," there is a presumption that his bankruptcy filing is an abuse of the system. A debtor who does not pass the income threshold of the Chapter 7 "Means Test" may be eligible to file a Chapter 13.