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Top 5 Frequently Asked Questions About Bankruptcy.

1. What is Bankruptcy?

Bankruptcy is a set of federal laws and rules that can help individuals and businesses who owe more debt than they can pay. In bankruptcy, the person, corporation, or partnership that owes money is called the debtor. Bankruptcy permits the debtor to work out a plan to repay some or all of the debt, to liquidate assets (sell or dispose of assets/convert to cash), or to have some of the debt forgiven ("discharged") in an effort to obtain a "fresh start". The bankruptcy laws give the debtor protection and benefits not available outside of bankruptcy, such as requiring that creditors stop all collection efforts while the debtor is in bankruptcy, unless otherwise ordered by the Bankruptcy Court. In bankruptcy, a debtor must make full disclosure of all assets, liabilities, and other financial information, and must either (1) surrender non-exempt (protected) property for liquidation and distribution to creditors, or (2) formulate a plan providing creditors at least as much as they would receive if the assets were liquidated.

2. What is the Bankruptcy Code?

The Bankruptcy Code is a federal law, Title 11 of the United States Code. It provides help for individuals and businesses in financial difficulty while at the same time dealing with their creditors evenhandedly. The Bankruptcy Code is divided into several chapters. Chapters 7, 11, and 13 are the most commonly used. Each of these chapters offers debtors a different set of options for dealing with debt. The Bankruptcy Code is available in law libraries, or on the internet at http://www4.law.cornell.edu/uscode/11/.

3. Is the Bankruptcy Court a State or Federal Court?

The Bankruptcy Court is a federal court. It is a unit of each U.S. District Court. The state of Colorado comprises the federal District of Colorado.

4. Who can file bankruptcy?

A person, partnership, corporation, or business trust may file a bankruptcy case. Corporations, partnerships and business trusts cannot proceed if they are not represented by an attorney. Only an individual can proceed without an attorney. However, the bankruptcy process is extremely complex, and individuals are strongly encouraged to seek competent bankruptcy counsel.

If a person or the entity who owes the money, called the debtor, starts the bankruptcy, it is called a voluntary bankruptcy. If a creditor or creditors start the bankruptcy, it is called an involuntary bankruptcy. In an involuntary bankruptcy, the debtor has an opportunity to respond to the petition and show why the debtor should not be in bankruptcy.

5. What are the different "Chapters" in bankruptcy?

Chapter 7 is the liquidation chapter of the Bankruptcy Code. Chapter 7 cases are often referred to as "straight bankruptcy" or "liquidation" cases. They may be filed by an individual, a corporation, or a partnership. Under Chapter 7, a trustee is appointed to collect and sell all property that is not mortgaged or exempt and to use any proceeds to pay creditors. In the case of an individual, the debtor is allowed to claim certain property as exempt pursuant to federal bankruptcy law and Colorado law. An individual debtor gets a discharge, which means the debtor does not have to pay certain types of debts. Corporations and partnerships do not receive discharges in Chapter 7.

Chapters, other than Chapter 7, require the confirmation of a plan of reorganization or liquidation and it is extremely difficult to obtain confirmation of a plan without an attorney.

Chapter 9 provides for bankruptcy relief for municipalities and governmental units. This chapter can be used by school districts, water districts, etc.

Chapter 12 is for use by those who qualify as "family farmers" under the Bankruptcy Code. There is a maximum debt a Chapter 12 debtor may have, and a certain portion of the debtor's income must come from operation of a farming business. Family farmers must propose a plan to repay their creditors from future income over a period of time. The plan must be approved by the Court. Plan payments are made through the Chapter 12 trustee, who also monitors the debtor's farming business operations while the case is pending.

Chapter 11 is the reorganization chapter available to businesses and individuals who have substantial debts or income to restructure and repay their debts. Creditors vote on whether to accept or reject a plan of reorganization, which must also be approved by the Court. In addition to the case filing fee, Chapter 11 debtors must pay a quarterly fee to the United States Trustee. There is no debt limit under Chapter 11. Debtors who qualify as "small businesses" may receive "fast track" treatment under Chapter 11. To be considered a "small business", a debtor must be engaged in commercial or business activities, other than the ownership of real estate, and the total of the debtor's secured plus unsecured debts must be less than $2,490,925.

Chapter 13 is the debt repayment chapter for individuals with regular income whose debts do not exceed $360,745 in unsecured debts and $1,081,400 in secured debts, including individuals who operate businesses as sole proprietorships. Corporations and partnerships cannot file under Chapter 13. Chapter 13 generally allows a debtor to keep property by repaying creditors out of future income. Each chapter 13 debtor proposes a repayment plan which must be approved by the Court. The amounts set forth in the plan must be paid to the Chapter 13 Trustee, who distributes the funds for a small fee. Some non dischargeable debts can be paid over time in a Chapter 13 plan. After the completion of all the plan payments, over three to five years, Chapter 13 debtors receive a discharge of most debts.

(Infomation provided from the United States Bankruptcy Court, District of Colorado | www.cob.uscourts.gov)