TEN BANKRUPTCY MYTHS

Notwithstanding the amount of information that can be found on the Internet, the average American knows very little about bankruptcy, its procedures and processes, not to mention substantive bankruptcy law.

Most people probably are aware of bankruptcy's ability to discharge[1] debt and give "honest debtors a fresh start". Some of the information you might have heard is correct, but some is not. The purpose of this article is to dispel some of the most common bankruptcy myths.

EVERYONE WILL KNOW I'VE FILED BANKRUPTCY: Mostly False. Unless you are very well know/famous person or a major corporation and the filing is picked up by the media, the chances are very good that the only people who will know about a filing are your creditors. While it's true that bankruptcy is a public legal proceeding, the numbers of people filing are so massive, very few publications have the space, the manpower or the inclination to run all of them.

ALL DEBTS ARE WIPED OUT IN A CHAPTER 7 BANKRUPTCY: False. Certain types of debts cannot be erased, including child support, alimony, most student loans[2] and debts incurred as the result of fraud. In certain situations, past due income taxes may be dischargeable. Make sure to hire an attorney experienced in discharging taxes and have the attorney work closely with your accountant or whoever may be assisting you in any negotiations with taxing agencies. Payroll taxes and sales taxes are not dischargeable.

I'LL LOSE EVERYTHING I HAVE: False. While it is one of the duties of a Chapter 7 bankruptcy trustee to sell assets, the trustee cannot necessarily reach all of your assets. There are many factors that must be examined before this happen. The type of bankruptcy has a lot to do with how much the trustee can seize/liquidate. For example, a chapter 13 is a reorganization bankruptcy. Simply, the debtor keeps the majority if not all of his assets and forms a repayment plan to satisfy interested creditors. In a chapter 7 filing the debtor gets to keep many assets. By claiming exemptions in property (i.e., cars, homes, tools of trade, jewelry, retirement accounts, all household goods etc.). There is a federal set of exemptions and many states have a separate set of exemptions. In most chapter 7 cases, debtor generally keep all of their assets.

DESPITE FILING FOR BANKRUPTCY, CREDITORS CAN STILL HARASS ME. False. The moment your case is filed bankruptcy law imposes an automatic stay. The automatic stay prevents creditors from attempting to collect any debt from you, repossessing property (e.g. car, home, etc.) or even contacting the debtor in regard to the debt – unless and/or until the specific

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[1] A "discharge" is a legal Court Order issued to the debtor at the end of the bankruptcy case. The "Discharge Order" legal effect is that the debtor no long has an personal liability for their debts, other than those debts that the bankruptcy laws state are not dischargeable in bankruptcy.

[2] Private Student Loans are dischargeable. Government Student loans may be dischargeable or subject to being reduced if you can show that having to pay the loans will cause you substantial hardship. Seeking to discharge student loans will require you to file an action in the Bankruptcy Court asking the Court to discharge the loan. You should be represented by competent/experienced bankruptcy counsel in order to give yourself the best chance at reducing or discharging your student loan(s).

creditor obtains relief from the stay from the bankruptcy court. If a creditor violates the automatic stay, the debtor may be able to sue the creditor and collect damages.

IF I FILE FOR BANKRUPTCY, I WILL NEVER GET CREDIT AGAIN: False. If you think about it, no one would file for bankruptcy if they could never again get credit. If you own a house or car on which you make monthly payments prior to a bankruptcy and are able to keep the house and car AND you continue to make timely payments, these payments will help reestablish your credit. In addition, a number of banks/lenders offer secured credit cards. You deposit a certain amount in a savings account and you receive a credit card with a limit equal to the amount in the savings. Even if you don't own a house or car, you would be eligible for a home loan within about two (2) years after your bankruptcy.

PEOPLE WHO GO BANKRUPT ARE IRRESPONSIBLE AND/OR BAD PEOPLE. False. Debtors are often stereotypies as irresponsible, untrustworthy, worthless, etc., taking advantage of a loophole-ridden legal system to dump their moral obligations on the backs of the rest of us. This is false, discriminatory, and manifestly unfair. In my thirty-five (35) years of practice, I have not had one client who I would classify as irresponsible, untrustworthy, worthless, etc. and none of my client who filed bankruptcy wanted to file bankruptcy.

Bankruptcy is an equal opportunity phenomenon that strikes every socioeconomic bracket. Bankruptcy filers are generally an ordinary, honest, hardworking, middle-class consumer who suffered an illness and don't have insurance or insurance didn't cover all of the medical bills, suffered the death of a spouse who was the main income earner and now can't pay the bills; went through a divorce and is not receiving court ordered support, was terminated by their employer through no fault of their own, etc.

HONEST PEOPLEPAY A "TAX" TO SUPPORT THOSE WHO ARE BANKRUPT: False. The theory is that hundreds of thousands of Americans routinely ignore their obligations, intentionally or recklessly drive up their debts, and then declare themselves insolvent, stiffing creditors, and ultimately, all hard-working, patriotic Americans. Creditors complain that they have to write-off billions of dollars in debts every year and if access to bankruptcy were restricted, the credit industry wouldn't suffer losses that it must pass along to consumers.

In 2005 Congress passed the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA). Although passed by Congress it was generally written by the credit industry with the specific intention of making it harder for consumers to file Chapter 7 and discharge their debt and instead, force consumers to file Chapter 13 requiring them to payback a percentage of their debt to their creditors. Critics of BAPCPA contend that the legislation did nothing to curtail what many characterize as predatory practices of credit card companies, such as exorbitant interest rates, rising and often hidden fees, and targeting minors and college students.

IF YOU'RE MARRIED, BOTH SPOUSES HAVE TO FILE FOR BANKRUPTCY. Maybe/Maybe Not. If spouses have debts they want to discharge that they're both liable for, they should file together. Otherwise, the creditor will simply demand payment for the entire amount from the spouse who didn't file. Further, in Community Property states, a trustee, in a Chapter 7 will look at ALL community property assets for potential liquidation (subject to exemptions – see above).

YOU MAY INCLUDE ONLY CERTAIN ASSETS AND CERTAIN CREDITORS IN YOUR BANKRUPTCY FILING: False. If you file a bankruptcy you are required to disclose all of your assets and all of your creditors. If there's a particular creditor you want to pay back, the bankruptcy laws allow you to voluntarily repay any of your creditors. However, they must be listed in the paperwork filed with the bankruptcy court.

IT'S HARD TO FILE FOR BANKRUPTCY. False. Individuals who file bankruptcy are not required to have an attorney. However, while individual don't technically need an attorney, bankruptcy is very procedural with many deadlines and if you don't fully comply your case could be dismissed which could impact any refiling. It's strongly recommended that you retain a knowledgeable and experienced bankruptcy attorney. Don't be afraid to do some research and ask questions to make sure that your case will proceed and be concluded without problems.