

A Guide to
Bankruptcy
in Georgia

“Helping people
get out of debt.”

THE LAW OFFICE OF JEFFREY B. KELLY, P.C.

Disclaimer:

Any information contained within is intended for informational use only. It is not intended to be legal advice, nor should you make legal decisions based on this information. Please consult with me to see how the law applies in your particular situation.

We are a debt relief agency. We help people obtain relief from their creditors by filing for bankruptcy.

**Copyright © 2009 Law Office of Jeffrey
B. Kelly, P.C. All rights reserved.**

Table of Contents

- 1. Chapter 7 – “Fresh Start” 4
- 2. Chapter 13 – “Catch Your breath” 8
- 3. What Will Bankruptcy Get Rid Of? 11
- 4. Garnishments 17
- 5. Foreclosures 20
- 6. Will I Keep My...? 23
- 7. How Long Does It Take to Get a Case Number? 27
- 8. Will I Have To Go To Court? 29
- 9. How Long Will It Stay On My Credit Report? 33
- 10. Other Questions 34
- 11. Appendix I : After Bankruptcy 37
- 12. Appendix II : Office Information 41
- Important Places..... 42

1

Chapter 7 “Fresh Start”

What is Chapter 7 Bankruptcy?

Chapter 7 bankruptcy is also known as the “fresh start” provision of the bankruptcy code. It allows you to wipe out all of your debt and get a fresh start. In a Chapter 7 bankruptcy, we show the court that you are unable, based upon your budget, to pay the debt that currently hangs over you. Approximately 90 days after we file your Chapter 7 bankruptcy, you are granted a discharge, and you no longer owe the debt.

How much does it cost?

I charge \$1,400 to file a Chapter 7 bankruptcy. This cost includes the filing fee, attorney fee, and both classes that are required by the code. While a Chapter 7 bankruptcy is as simple in theory as described above, there are a number of factors to consider. For example, not every kind of debt can be discharged in a Chapter 7 bankruptcy. Debts arising from drunk driving or intentional acts are not dischargeable in bankruptcy. Also, most student loans, child support, post-petition HOA fees, post-petition timeshare fees, and tax debts less than 3 years old cannot be discharged in bankruptcy. If you have secured debt (debt tied to collateral like a car note or a mortgage), you have to decide if you wish to keep the property. If so, you must reaffirm the debt which means you must continue to pay the debt so that you may keep the collateral.

What is a reaffirmation agreement?

A reaffirmation agreement is basically a contract between you and your creditor, in which you agree to give up your Chapter 7 bankruptcy rights to wipe out the debt and legally treat the debt as if you have never filed bankruptcy. After a reaffirmation agreement is filed, the creditor that you reaffirmed is now in a better position than they were before you filed because you can't file Chapter 7 bankruptcy against them for 8 years.

Does the creditor have to let me reaffirm?

No. They are not required to let you reaffirm a debt, but almost always do when you are current on your payments. The reason for this is that you are putting them in a great position after you reaffirm. After filing Chapter 7 bankruptcy, the only debt you owe are the debts you reaffirm, and you can't file Chapter 7 bankruptcy again for 8 years.

When is it a bad idea to reaffirm a debt?

Reaffirm means you re-obligate yourself on the debt. Or, in other words, you legally agree to treat the debt as if you have never filed Chapter 7 bankruptcy against it. If you are in a situation where you expect your income to drop in the near future, why would you ever want to reaffirm any car debt? You can file Chapter 7 only once every eight years, why put yourself on the hook for some car payment if you know you won't be able to pay for it in a few months? Another type of debt you should never reaffirm is unsecured debts. An unsecured debt has no collateral that backs up the debt. Signature loans, medical debt, and credit card debt are examples of unsecured debts.

In most Chapter 7 situations, the debtor cannot afford to pay for the consigned loan. The purpose of a Chapter 7 bankruptcy is to give you a fresh start. Why would you want to weigh yourself down with some unsecured debt? Furthermore, there is a provision in most reaffirmation agreements where your bankruptcy attorney must sign stating that it is in your best interest to reaffirm. Reaffirming an unsecured debt is never in your best interest.

Will the Chapter 7 trustee come to my house?

No. I have been practicing since 1998, and I have never heard of a case in Georgia where the trustee actually went to a person's house. It is possible that a Chapter 7 trustee will send a real estate expert to drive by your house if they think you have not listed an honest value for the house in the Chapter 7 petition.

When is it better to file a Chapter 13 bankruptcy?

When you have a car that you have owned for more than 2.5 years and you owe more on the car than its worth, you should take a look at how much your Chapter 13 payment would cost. In a Chapter 13 bankruptcy, if you have owned the car for more than 2.5 years, you can cram down the debt. This means that you pay back only the value of the car and not the total amount owed. Also, the interest rate on paying a car back in a Chapter 13 bankruptcy ranges from 6 to 9 percent on average. If you are behind on house payments, Chapter 13 bankruptcy allows you to take the back payments on your house and spread out the debt over a longer period (60 months is the limit for a Chapter 13 plan). Also, if you have two mortgages on your house, you might be able to wipe out the second mortgage in a Chapter 13 bankruptcy.

What is the means test?

Basically, if you have made more money in the past six months than an average family of your size, you might be barred from filing Chapter 7 bankruptcy. Chapter 13 bankruptcy might be your only option under the Bankruptcy Code. To give you an answer about your particular situation, I need to review your last six months pay stubs.

What is a discharge?

The filing of a Chapter 7 bankruptcy is designed to result in a discharge of most of the debts you list on your Chapter 7 bankruptcy schedules. A discharge is a court order that says you do not have to repay your debts.

However, there are a number of exceptions to a discharge. For example, debts which may not be discharged in your Chapter 7 are most taxes, child support, alimony, student loans, court ordered fines and restitution, debts obtained through fraud or deception, and personal injury debts caused by driving while intoxicated or taking drugs. Your Chapter 7 discharge may be denied entirely if you destroy or conceal property; destroy, conceal, or falsify records; or make a false oath. Creditors cannot request you to pay any debts which have been discharged in your Chapter 7 bankruptcy.

A creditor can challenge a discharge of their debt by filing a complaint to determine dischargeability. If the creditor wins the lawsuit against you, the debt will not be discharged.

If a creditor who was discharged in your Chapter 7 tries to collect from you after the discharge is granted by the bankruptcy court, you will have a claim against that creditor.

In some situations a debtor may choose to voluntarily pay back a creditor who was discharged in a Chapter 7. I have seen this happen with clients who owe money to a doctor that they really like and want to continue to see after the bankruptcy case is closed. The repayment of discharged debt must be completely voluntarily on the part of the debtor.

Typically, a debtor will receive a discharge within four months of the filing of the case. A person may receive a Chapter 7 discharge once every eight years.

2

Chapter 13 “Catch Your Breath”

What is Chapter 13 Bankruptcy?

Many people like to refer to Chapter 13 bankruptcy as the “catch your breath” provision of the Bankruptcy Code. It is designed for people who have money to pay back their creditors but who can’t do it all tomorrow like their creditors are demanding. Chapter 13 bankruptcy allows you stop the harassing phone calls and lawsuits. It gives you time to catch your breath while you pay your creditors. It stops garnishment of your pay, foreclosure of your house, and repossession of your car. You do not need the permission of your creditors to obtain Chapter 13 bankruptcy protection.

What do I need to file Chapter 13?

The first step is to make a list of all of your debts. when you come to my office, I am going to review your income and expenses and create a budget for you. Then, we can propose a monthly payment that you can afford. You pay this new amount to the trustee each month and it covers all of your consumer debt. This one amount covers all credit card debt, medical bills, finance companies, and car notes. In some cases, we can even include IRS tax debt in this total. It even lets you get caught up on back mortgage payments and stops the interest and penalties on back taxes. In your Chapter 13 bankruptcy plan, the credit card companies and all other unsecured creditors are barred from collecting interest. If you owe \$10,000 in credit card and have an interest rate of 25 percent, you can save \$2,500 per year in just credit card

interest alone. If Chapter 13 bankruptcy is not a good option for you, I will tell you. I receive many referrals from my clients because they know I will provide honest information about what is best for each client.

How much will it cost to file?

I file cases only in the Rome and Atlanta divisions of the northern district of GA. \$281 is your filing fee; \$25 is for your class; and \$4 is a processing fee. You may see some other attorneys advertise that they will file your case for \$75 or \$281. From my viewpoint, I don't think this is an honest way to advertise. Your filing fee is \$281 no matter who you file with.

If you file your case for \$75 and agree to pay the rest of the filing fee in installments to the court, your case will be automatically dismissed if you miss a single installment. It is much safer for you to pay the entire filing fee upfront. No matter who you file with, you have to take a consumer counseling course BEFORE YOU FILE YOUR CASE. While there might be cheaper classes out there, \$25 is the cheapest class I have found. When you hire me, I am going to be completely honest and upfront with you. In a Chapter 13, your attorney's fees are paid through your Chapter 13 plan. Attorney's fees in Chapter 13 plan vary from case to case.

How much you pay each month depends on what you can afford, not what the creditors demand. Depending on your income and budget we may be able to wipe out all unsecured debt in your Chapter 13 bankruptcy plan. It doesn't cost you anything to come into my office, meet with me, and see what kind of plan might work for you.



Is Chapter 13 a debt consolidation plan?

Some bankruptcy attorneys will advertise Chapter 13 as bill consolidation. Personally, I don't think this type of advertising is completely honest. Chapter 13 works like a bill consolidation, but there is no loan being made to consolidate everything. In a Chapter 13, you are protected from the collection efforts of your creditors while you pay them back over the life of your Chapter 13 plan.

3

What Will Bankruptcy Get Rid Of?

I have friends who buy into this myth that people who file bankruptcy go out and run up their credit cards right before filing. The truth is that almost no one does this and those few that do end up paying it all back.

In a Chapter 7 bankruptcy, you cannot incur debt with the intention of discharging it in your case. Under section 523(a)(2)(A) of the Bankruptcy Code, a discharge under Chapter 7 “does not discharge an individual debtor from any debt for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by...false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor’s or an insider’s financial condition.” 11 U.S.C. 523(a)(2)(A).

A great example of a debtor getting nailed by the Bankruptcy Court for going into debt with the intention of wiping it out in a Chapter 7 is the case of Bucciarelli (Bankruptcy case no. 07-13114). In this case, the Bankruptcy Court in the Newnan Division of the Northern District of Georgia ruled that the debtor could not wipe out legal fees she incurred from her divorce proceedings because she incurred the debt with the intention of discharging it in her Chapter 7 case.

The facts of the case are summarized as follows: In Bucciarelli, the debtor filed her Chapter 7 case in December 2007. In January 2008, she entered into a contract for legal representation in her divorce proceedings. In addition, she signed

a promissory note agreeing to pay her divorce attorney \$25,000 for representing her. The promissory note granted her divorce attorney a lien on her interest in her ex-husband's 401k. Her divorce case never actually went to trial. Her divorce attorney billed her for \$35,625. When the debtor did not pay her divorce attorney, she was sued in the Georgia state court. The Georgia state court proceeding was stopped because of her active Chapter 7 case. In response, her divorce attorney filed an adversary proceeding against her to declare the debt nondischargeable.

In Bucciarelli, the court noted, "To establish that a debt is excepted from discharge under section 523(a)(2)(A), the creditor must prove by a preponderance of evidence that:

- (1) the debtor made a false representation, other than an oral statement respecting the debtor's financial condition with intent to deceive the creditor;
- (2) the creditor actually relied on the misrepresentation;
- (3) the creditor's reliance was justifiable; and
- (4) the misrepresentation caused a loss to the creditor."

What sank the debtor in Bucciarelli was the testimony from her "friend." Her friend testified under oath that Bucciarelli told her that she incurred the legal fees from her divorce with no intention of ever paying it back. The "friend" also testified that Bucciarelli told her that the purpose of her bankruptcy was to discharge all obligations arising from the attorney fees in her divorce case. The Bankruptcy court took note that this same friend testified in the debtor's favor during the debtor's divorce proceeding. A judgment was entered by the Bankruptcy Court in favor of the divorce attorneys against the Debtor. The debt was ruled to be non-dischargeable.

Can I wipe out tax debt in bankruptcy?

You can wipe out some tax debt in bankruptcy depending on the type of tax debt.

Personal Income Taxes

If the tax liability is less than three years old, it cannot be wiped out. If the tax liability is more than three years old, we may be able to wipe out the debt. I want to emphasize the words “may be able” to wipe out. Dealing with IRS taxes is tricky. An important question that I will ask you is, “has any tax lien been filed against you and in which Georgia county was the tax lien filed?” Tax liens can make your tax liability secured. IRS tax liens attach to every single thing you own down to your underwear, regardless of any state exemption. The age of tax debt is determined by the date of the filing of the tax return. As a result, if you have not filed any tax returns for the past five years, none of your tax debt can be wiped out.



Property Taxes

Property taxes in Georgia attach to house. If you are planning on keeping the house, you will have to pay the property taxes. If you are going to surrender the house back to the mortgage company, you will not be liable for the property taxes.

Sales Taxes

Small business owners in Georgia who owe sales taxes cannot wipe out their liability in bankruptcy. There is no way around sales taxes. A business owner technically holds the sales tax money in trust for the state of Georgia. Sales tax money should never be spent operating a business. Sales tax must be paid.

Can bankruptcy get rid of payroll taxes?

A person cannot wipe out payroll taxes in Chapter 13 or Chapter 7. Payroll taxes are not considered property of the business. The business is considered to have held the payroll taxes in trust for the government. Failure to pay payroll taxes will be treated as a non-dischargeable debt.

Using payroll tax money for any purpose other than paying to the IRS is a considered a crime. There are people who have actually gone to jail for failure to pay payroll taxes to the Internal Revenue Service.

I recently met with a client who worked for a small company that owed over 50,000 to the Internal Revenue Service in payroll taxes. Since she allowed herself to be listed with the state as an officer of the corporation, she was held liable for the taxes along with the other officers of the corporation. If she had been a merely an employee of the corporation, she would not have been held liable. Her mistake was that she allowed the to owner to list her as “secretary” of the corporation. After spending thousands of dollars in attorney fees trying to fight the IRS, the client finally was able to work out a payment schedule with the IRS.

Whenever a business ever gets to a point where it becomes difficult to pay payroll taxes, it is time to close the business. Never miss a payroll tax payment. No business is worth risking jail.

Can bankruptcy wipe out my second mortgage?

You can wipe out a second mortgage in a Chapter 13 bankruptcy in some situations. In order to eliminate your second mortgage, the value of your house must be lower than what you owe on your first mortgage. If the value of your house is one penny more than what you owe on the first mortgage, you cannot wipe out the second mortgage in your Chapter 13 bankruptcy.

If a large number of foreclosures have occurred recently in your neighborhood, this will bring down the fair market value of your house. As a consequence, this will make it easier to eliminate the second mortgage in a Chapter 13 bankruptcy case.

When trying to determine the value of your house, a good place to start is your property tax bill from your county. Somewhere on the bill, you will find a statement that says fair market value. While this is a good place to start, you will need more evidence than your tax bill because most counties tend to understate the fair market value of houses. In some areas of Georgia, housing values are so depressed that even the county estimated fair market values are too high.

A much more reliable source of evidence is a written appraisal by a certified expert. When getting your appraisal make sure you explain to the expert that you may wish to hire them to testify in court if necessary. Some appraisers want to stay away from court at all costs.

Cost for appraisals can vary based on the size and nature of the real estate. Another factor to consider when hiring an appraiser is the cost for them testify for you in court if the second mortgage company decides to challenge your appraisal in bankruptcy court with their own appraisal. Court fees incurred by the appraisal are your responsibility.

If you live in a mobile home and have a second mortgage, the chances of you eliminating the second mortgage are much higher than someone who owns a house because mobile home values depreciate so rapidly.

Can bankruptcy wipe out my bad checks?

No. Bankruptcy does not protect you from criminal prosecution for writing bad checks. In fact, bankruptcy does not protect you from any criminal prosecution. I spoke with a client in my office in Rome, Georgia, a few weeks ago who wrote some bad checks to a local grocery store. She told me that she was buying food for her kids. I felt terrible explaining the cold, hard truth to her. The grocery store has the right

to criminally prosecute her even if she filed a Chapter 13 bankruptcy. Even in cases where all the debt is being paid at 100 cents on the dollar will not stop a criminal prosecution. However, it is possible that the 100 percent Chapter 13 plan might persuade a judge that the person is making the best possible effort to rectify the situation.

Can bankruptcy wipe out my traffic tickets?

Traffic tickets are technically criminal fines. No criminal fine can be wiped out in bankruptcy. However, in a Chapter 13, we can set up a special provision in the plan to pay the traffic tickets at 100 cents on the dollar. Paying traffic tickets is a much easier after we come up with a plan that deals with your entire economic picture.

4

Garnishments

"A garnishment is a means of collecting a monetary judgement against a defendant by ordering a third party (the garnishee) to pay money, otherwise owed to the defendant, directly to the plaintiff. In the case of collecting for taxes, the law of jurisdiction may allow for



collection without a judgment or other court order." (<http://en.wikipedia.org/wiki/Garnishment>)

When your employer is served with a garnishment, it is extremely important that you take action as soon as you can. If you do nothing, the creditor is going to garnish up to 25 percent of your disposable wages.

In Georgia, if your employer messes up the garnishment, they can be held liable to the creditor for the entire amount of the debt. How happy is your employer going to be with you if they end up having to pay a large lump sum to the creditor? When you file a Chapter 13, it not only protects you from collection, but it also protects your employer from messing up a garnishment as long as the bankruptcy filing is communicated to the creditor.

When you file Chapter 13 with my office, we will file a Plea of Stay with the court where your garnishment was filed. In addition, we will send a copy of the Employer Deduction Order, which has the bankruptcy judge's signature on it, to your employer so that the garnishment will be stopped. If you bring us the fax number to your payroll department, this will help us notify your employer even faster. Chapter 7 also stops garnishment of your wages.

I have seen Georgia consumers who have allowed themselves to be garnished for months before coming to see me. During this time, they missed mortgage payments and car payments because of the large amount of money that was being taken out of their check as a result of the garnishment. Some clients even let their car get repossessed. You don't have to miss car payments and mortgage payments because of a garnishment of your paycheck. We can come up with a plan to stop the garnishment of your wages.

Is there a difference between a garnishment and an EDO?

A Chapter 13 EDO is much different than a state ordered garnishment of your wages. EDO is an abbreviation for an Employer Deduction Order which is a signed order by a Federal Bankruptcy Judge.

In Georgia, the most important difference is the liability for your employer. Under Georgia State Law if your employer makes an error in paying a Georgia garnishment, they can be held liable for the entire amount of your debt. For this reason, most employers hate garnishments because of the potential liability. In contrast, there is very little liability for an employer with respect to a Chapter 13 EDO. For example, if an employer deducts the wrong amount from a debtor's paycheck in a Chapter 13, it is the debtor's responsibility to send in the difference to the trustee. This type of error can be easily fixed by your bankruptcy attorney calling your payroll department and faxing them another copy of the EDO.

A second difference between a Chapter 13 edo and a Georgia garnishment is the creditors that are covered by the deduction. With a Georgia garnishment, the only creditor that receives money is the one who filed the judgment and the subsequent garnishment papers. Paying your house payment can be extremely difficult when one single creditor soaks up one fourth of your take home pay with a garnishment of your paycheck.

A third difference is the amount of money you pay. With a Georgia garnishment, twenty-five percent of your net income will be taken out of your paycheck regardless of your ability to pay. In contrast, your employer deduction order is determined by your ability to pay.

An employer deduction order commands employers to stop all Georgia garnishments of your wages. As a result, you should never have to worry about an employer deduction order and a Georgia state court ordered garnishment coming out of your paycheck at the same time.

5

Foreclosures

Can bankruptcy stop my foreclosure?

Don't wait until the last second to meet with a bankruptcy attorney. We don't need the permission of your mortgage company or the foreclosure attorney. The bankruptcy automatic stay stops the foreclosure of your home. You must get a bankruptcy case number before the foreclosure takes place. Don't wait until it is too late!

A few months ago, I was meeting with a bankruptcy client from Dallas, GA who was shocked that his house was foreclosed without him knowing about it. The reason this happened was because his wife was trying to "protect" him from the



stress of the situation by hiding the letters from the mortgage company and the foreclosure attorney. For some strange reason, she did not take the letters seriously and did not notice that her house was being advertised in the *Dallas News Sun* in the foreclosure section! It is too bad she did not take advantage of a free consultation with a bankruptcy attorney. If you have received threatening letters from a foreclosure attorney, bring them to my office. I will be happy to explain them to you.

If you have had a Chapter 13 bankruptcy dismissed within the past year, I must file a motion to extend stay to protect your house. If you have had two Chapter 13 bankruptcy cases dismissed within the past year, I am not going to take your case because a motion to impose the stay must be filed and heard by the court before the foreclosure date.

6

Will I keep my . . . ?

Will I keep my house?

If you have fallen behind on your mortgage payments, Chapter 13 can save your house. Here is how it works. We take all of the past due mortgage payments and put them into your Chapter 13 plan. Most Chapter 13 plans run for 3 to 5 years. If we need to, we can wipe out credit card debt and medical debt in your Chapter 13 plan. Making your mortgage payments will be much easier once we remove the burden of credit card and medical debt.

For more information on keeping your house under bankruptcy please refer to chapter 5: foreclosures.

Will I keep my car?

Will you be able to keep your car after you file bankruptcy in Georgia? The answer to this question depends on what type of bankruptcy case you file and the specific facts of your case.

Let's start with chapter 13 bankruptcy. If you owe money on the car and we file a Chapter 13, the balance that you owe on the car will be paid in your Chapter 13 plan. Thus, in most cases, people keep their cars.

People who lose cars after they file Chapter 13 bankruptcy usually do so for one of three reasons. First, the balance they owe on the car is so high that it's not worth keeping it and paying for it through a Chapter 13 plan. In many Chapter 13

plans, we can give the car back to the creditor and wipe out any balance owed. For some clients, this option is extremely attractive. The second reason some people lose their car in a Chapter 13 is that they let the insurance lapse on the vehicle which forces the creditor to take back the car in order to protect it. A third reason is that the debtor quits making the Chapter 13 plan payments. In this situation a car creditor will file a Motion for Relief to take back the car.

When you file Chapter 13 bankruptcy in Georgia your creditor is barred from repossessing your car. If you file Chapter 13 bankruptcy your car is protected while your case is active. Chapter 13 bankruptcy stops repossessions of vehicles. Just last week, I was meeting with a client in Rome, GA who told me that we could not protect his car because he had signed a contract stating that he could not file bankruptcy on his car without the permission of his creditor. The truth is that we don't need the car company's permission to protect your car. You cannot waive your bankruptcy rights in a contract. The key is to get a case number before the creditor repossesses your car. Once you have a case number, your car is protected by the automatic stay in bankruptcy.

In cases where the car is paid for, the question that we need to answer is "How much is your car worth?" The Georgia exemption for cars is \$3,500.00. Also, depending on the circumstances of your case, we may be able to use the wildcard exemption to protect an additional \$5,000.00 on your vehicle. If your car is paid for and worth more than \$8,500, you most likely need to consider Chapter 13 to protect it. If you know that your car is worth more than \$8,500, make sure you point this out to your Georgia bankruptcy attorney at your first meeting.

In Chapter 7 bankruptcy cases where you owe money on the car, you will usually be able to keep the car as long as you are current on your payments and the creditor allows you to reaffirm the debt. A reaffirmation agreement is basically a contract between you and your creditor that states you will legally agree to treat the

debt as if you have never filed. Car creditors don't have to let you reaffirm if they don't want to deal with the hassle of a reaffirmation agreement. However, in almost all cases, the car creditor is willing to enter into a reaffirmation agreement because it puts them in a solid position. You can't file Chapter 7 against them again for 8 years! For this reason, I tell all of my Chapter 7 clients to think long and hard before they sign any reaffirmation agreement.

Will I keep my 401k?

When you file bankruptcy in Georgia you will most likely keep all of your 401k retirement. I have been practicing consumer bankruptcy law since 1998, and I've never seen any debtors lose any of their 401k after they filed bankruptcy in Georgia.

I meet with clients all the time who are scared to death that they are going to lose everything they own when they file bankruptcy. Fortunately, Georgia has exemption laws that protect most of your personal assets. In my humble opinion, one of the best Georgia exemption laws is the protection of 401k and retirement assets. People filing bankruptcy should not have to worry about losing their 401k retirement.

Section 44-13-100 of the Georgia Code states,

“Exemptions for purposes of bankruptcy and intestate insolvent estates

(a) In lieu of the exemption provided in Code Section 44-13-1, any debtor who is a natural person may exempt, pursuant to this article, for purposes of bankruptcy, the following property: ”

And the GA Code continues with the following:

“2. The Debtor's right to receive.....(F) A payment from an individual retirement account within the meaning of Title 26 U.S.C. Section 408

to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;”

The key words in the statute are “to the extent reasonably necessary.” How much of your 401k will you need to support yourself during your retirement to the extent reasonably necessary? How many years will you live after you retire? Ten years? Twenty years? How much will you have to spend on medicine? How much will you need to spend on housing? How much will you need to spend on food? How much money would it take to reasonably support you for twenty years after you retire? For most people, the answer is all of their 401k.

In conclusion, you should take a deep breathe and relax. Your 401k is safe. When you meet with your bankruptcy attorney, make sure all of your assets are listed on your bankruptcy petition so that your bankruptcy attorney can claim every exemption possible.

Can I keep a credit card?

As a general rule, you cannot keep a credit card after you file bankruptcy. I meet with clients from all over North Georgia, who will ask, “Why can’t I keep just one credit card for emergency situations?”

When you file Chapter 13 bankruptcy, you cannot incur any new debt after the case is filed. For this reason, the bankruptcy trustee will specifically ask you at your hearing if you are in possession of any credit cards. If you answer yes, the bankruptcy trustee will file an objection to your case. Also, if you answer yes, your bankruptcy attorney might be a little upset that you did not tell him or her about the cards beforehand.

Filing bankruptcy in Georgia is a matter of public record. Credit card companies keep a close eye on who is filing for bankruptcy. As a consequence, most credit card companies will cancel your charging privileges whether you list them in your case or not. It does not matter whether you file Chapter 7 or Chapter 13 bankruptcy.

If you have zero balance on your card, you won't need to list it in your bankruptcy case in Georgia. However, you will need to tear it up and throw it away if you are filing Chapter 13. In a Chapter 7 case, the creditor will most likely cancel your use of the card after the bankruptcy is filed.

In some Chapter 13 cases, we have situations where a debtor needs to keep a credit card so that they can travel for their job. In these situations, we file a motion with the bankruptcy court to seek the approval of the bankruptcy judge. In these rare situations, the court will most likely insist that the debtor agrees not to make any non-business related charges on the credit card and will use all reimbursement funds from the employer to pay off all monthly balances on the card.

Even if you could keep a credit card, why would you want to? Keeping a credit for emergency situations is a bad idea. As you already know, most credit card companies charge you thirty percent interest. This means that if you get stuck behind the debt snowball, your debt could double in three years! Imagine how much money you will save over your lifetime if you never pay anymore interest on credit cards.

The solution is to establish an emergency fund. This emergency fund should never be touched unless you absolutely cannot go on without tapping it. Every single Georgia family will have some type of financial emergency at some point. For example, you know your car will break at some point. Do you have an emergency fund to cover the car repairs? If you own a house, you know that the roof is going to leak at some point. Some major appliance in your kitchen will break some day. It might be a few years from now but you know its coming. start building the emergency fund now.

7

How long does it take to get a case number?

How long will it take to get my case filed?

In emergency situations, it does not take long to get your bankruptcy case filed. If I have room in my schedule, I can get your Georgia bankruptcy case filed the same day you come into my Rome office. However, if you have an emergency filing, you need to plan on spending the entire day in my office while we prepare your bankruptcy petition. We file all of our bankruptcy cases on the electronic system. We can file a bankruptcy any time of day as long as the court system has not been shut down for maintenance.

In most situations, my Georgia clients like to take a week or two before they make the decision to file. I don't believe in pressuring anyone to file. If you ever feel like a bankruptcy attorney is pressuring you to file bankruptcy, find another attorney.

Most clients will come to my office for a 30 minute consultation where we go over your debts, assets, and income. We make every effort possible to minimize your time in the waiting room. It is extremely rare for anyone to have to wait more than five minutes past their appointment time. Every now and then, we have emergency situations that put us behind schedule.

During our meeting, I have a long list of questions I like to go through with you. I want to give my clients enough time to give me all of the background information

that has led to the case filing. During your initial free consultation, I will be looking for potential pitfalls in your case. If I find any, I will explain them to you in great detail.

Once a client decides to file, we will set up a two hour sign appointment. I am a firm believer that anyone who is considering filing bankruptcy should carefully review every single page of the petition with their bankruptcy attorney. If some bankruptcy attorney tries to rush you through the process, you are being set up for disaster. You should not be made to feel like a hamburger in fast food joint. When you sign a bankruptcy petition, you are signing it under penalty of perjury. Take your time! In my opinion, the most important part of the petition is your list of creditors.

****You must make sure that every single creditor you have is listed on the petition. You are required by law to list them all. Even if you are cosigned on a debt, you must list it as well. ****

In some situations, clients need to get a case number as soon as possible. For example, if the car creditor says to you, "I am going to repo the car tomorrow," you will need a case number today to prevent tomorrow's repo.

Some bankruptcy attorneys will file a front page petition. I will not. A front page bankruptcy petition is basically your name and address. You get a case number but you must file the rest of the petition within a short period or your case will be dismissed. Rather than running the risk of you not being able to make back into my office before the deadline, I prefer to get it all done in one day so that we know we have a case that will work well when it is filed.

8

Will I have to go to court?

When you file Chapter 13 bankruptcy, you must attend two court hearings. The first is called the section 341 meeting of creditors and the second one is called your confirmation hearing. If you have had a Chapter 13 bankruptcy case dismissed within the past year, you may also be required to attend a motion to extend stay hearing.

341 - Meeting of Creditors:

This hearing will take place about six weeks



after your case has been filed. During the hearing the trustee will ask you questions about your case. Your creditors will have the opportunity to attend the hearing and ask you questions as well. Usually, the only creditor who attends these types of hearings are attorneys who represent car companies. It is not uncommon to have the hearing without any creditors in attendance.

What do I need to bring to my 341 Meeting of Creditors?

For both Chapter 7 and Chapter 13, you absolutely must bring a copy of your driver's license and your social security card to the 341 Meeting of Creditors. If you can't find your social security card, bring a W-2 or a 1099. If you don't have both a state issued picture I.D. and proof of your social security number, your hearing will not be held. If you can't find any proof of your social security number, go to your local social security office and have them issue you a letter with your social security number on it. It is also a good idea to bring proof your car insurance.

Confirmation Hearing:

This is the most important hearing for your case because the judge will decide whether your case can go forward or if it will be dismissed.

What is an objection to confirmation?

In a Chapter 13, an objection to confirmation is basically a written statement from the Chapter 13 trustee or a creditor that there is something wrong with the case that needs to be fixed before the confirmation hearing.

I advise all of clients try not to panic when they receive an objection to confirmation. Most objections can easily be worked out. The key is to stay in contact with your bankruptcy attorney.

The Chapter 13 Trustee's objections usually read something like this, "Comes now, the Chapter 13 Trustee and objects to the confirmation of the plan for the following reasons." The objections will go on to list reasons like:

1. funding the case is not current,
2. the applicable commitment period needs to be changed,

3. a 401k loan was not listed on schedule I,
4. some asset was not properly listed on schedule B and on and on.

The part that scares the daylight out of my clients is the bottom part of the objection which reads, "Wherefore, the Trustee moves the Court to inquire into the above objections, deny confirmation of the Debtor's plan and to dismiss the case; or in the alternative, convert the case to one under Chapter 7." Some panicked clients will read this last sentence to mean that they are going to lose everything they own.

Whenever I sign up a new Chapter 13 case in the Northern District of Georgia, I advise all of my clients that objections are routine and no one should panic when they receive one. However, objections to confirmation must be dealt with before the Chapter 13 case can succeed. Any Chapter 13 debtor who receives an objection to confirmation should first take a deep breath and relax. Then, they should pick up the phone and call their bankruptcy attorney and ask for an explanation of the objections. In the vast majority of cases, the objections can easily be fixed.

Most creditor objections in the Northern District of Georgia usually relate to the valuation of collateral in the case or the amount of adequate protection paid to the creditor under the plan. Again, these types of objections can usually be worked out well in advance of the confirmation hearing.

A few weeks ago, a client from my Rome, Georgia, office called me in tears about an objection to confirmation she received in the mail. "Jeff, I know you told me not to panic but I am scared to death!" Her voice trembled as she explained to me that she was not able to sleep all night because of the objection she received. After I got her calmed down, I explained to her that her funding objection was one of the most routine objections made in Chapter 13 cases. Her employer was deducting the money from her paycheck and all we needed to do was show the trustee a copy of the paystub showing the year to date deduction for the Chapter 13 payment.

In the rare case where a resolution to an objection to confirmation cannot be resolved through negotiation or agreement, a bankruptcy judge will make a ruling. All debtors should plan on attending their confirmation hearing unless they have been specifically instructed otherwise by their bankruptcy attorney.

Motion to Extend Stay:

If you have had a case dismissed within the last year, you must have a hearing before a bankruptcy judge within 30 days of the filing of your case. If we don't have this hearing your bankruptcy protection will end. One week after your case is filed, you must call our office and confirm the dates of all your hearings.

Meeting of Creditors for Chapter 7 :

This is usually the only hearing you will have to attend in a Chapter 7. You will be required to swear under penalty of perjury that the documents you submitted to the court are true and accurate. In a Chapter 7 meeting of creditors, the trustee will focus on the assets you listed in your petition and ask if you have sold or transferred any assets within the last two years.

9

How long will it stay on my credit report?

Chapter 13 stays on your credit report for 7 years and Chapter 7 stays on for 10 years. You can start rebuilding your credit as soon as your case is discharged.



10

Other Questions

What is the Automatic Stay in bankruptcy?

The Automatic Stay is an injunction against the continuance of any legal action against a debtor or the debtor's property according to 11 U.S.C. 362. The automatic stay protects a debtor from harassing collection calls, repossessions, foreclosure sales, and garnishments of wages. The protection from the Automatic Stay starts as soon as the debtor gets a bankruptcy case number.

For example, let's say a creditor files a lawsuit against a person and that person comes to see me to file a Chapter 13 bankruptcy. As soon as we get a bankruptcy case number and notify the creditor of the bankruptcy filing, the creditor must stop all collection actions. Our normal course of action is to file a Plea of Stay in the local court requesting that the lawsuit be put on hold while the bankruptcy is active.

For another example, let's say I have a client from who is worried that their car creditor is about to repossess their car. Once we have a bankruptcy case number and we have notified the car creditor, the car creditor must stop all efforts to repossess the car. Any car creditor that ignores the filing of a bankruptcy case and repossesses a car post-petition can be severely punished by a bankruptcy court.

Another great benefit of the Automatic Stay is co-debtor protection. A Chapter 13 can protect a co-debtor who is liable with the debtor on a specific debt. In order to keep this protection, the debtor must pay back the entire cosigned debt along with contract interest to fully protect the co-debtor.

In Northwest Georgia, the Automatic Stay gives a debtor protection from creditors subject to the oversight of the bankruptcy judges in Rome, Georgia. After a bankruptcy case is filed, the automatic stay remains in effect until the judge grants a request of a creditor to end the stay or the debtor gets a discharge.

The automatic stay does not protect a bankruptcy debtor from criminal proceedings or actions to modify child support orders.

What is a Motion for Relief from the Automatic Stay in Bankruptcy?

A Motion for Relief from the Automatic Stay is basically a request from a creditor to the Bankruptcy court for permission to take back collateral. Motions for Relief are set down for hearings before the bankruptcy court. In Northwest Georgia, these hearings are held at the Federal Building in downtown Rome, GA. Debtors and their bankruptcy attorney have the opportunity to defend against the motion. If a creditor has good cause for filing the motion, it will be granted. If the debtor and the bankruptcy attorney can mount a reasonable defense, the request will be denied.

For example, let's say a person in a Chapter 13 bankruptcy case falls behind on their mortgage payments. A mortgage company will file a Motion for Relief so that they may begin the foreclosure process. In this case, the debtor must prove they are current on payments or work out some type of deal to get current with the mortgage company.

Another example is when a person who is in a Chapter 13 bankruptcy lets their car insurance lapse. The car creditor will file a Motion for relief so that they can take car away from the debtor. Most automobile contracts in Georgia require debtors to maintain full coverage insurance on vehicles that are collateral for loans. A car creditor usually withdraws the motion when the debtor proves she has insurance.

A third example is when a tenant falls behind on rent. Before a landlord can begin an eviction process against a Georgia bankruptcy debtor, they will file a Motion for Relief as well. If the debtor can prove that the rent payments have either been made or have been caught up, the motion will be denied.

In a Chapter 7, creditors will routinely file a Motion for Relief for any collateral that the debtor is surrendering. Many of my Chapter 7 clients get extremely frustrated when they receive these types of motions. They will usually call me and say, “Hey, what is the deal? I have already agreed to surrender the car to creditor. The bankruptcy petition is clear. Why is this being set down for a hearing?” The reason for the motion is that the creditor cannot take action to repossess a car or foreclose on a house without permission from the court.

11

Appendix I: After Bankruptcy

Can they repossess my car?

The answer to this question depends on what type of case you file. If you file a Chapter 13 with a plan to keep the car, the creditor cannot repossess it unless you let the insurance on the vehicle lapse or stop making your Chapter 13 payments. As long as you keep your Chapter 13 payments current and keep insurance on the vehicle, the creditor cannot legally take it.

In contrast to Chapter 13, if you file a Chapter 7 and you are not current on your car payments, the creditor will file a Motion for Relief from the Automatic Stay. After the motion is filed with the court, a hearing will be held roughly 30 days after the filing of the motion. If you are behind on payments the motion will be granted and you are most likely going to lose your car. As a general rule, if you stay current on your car and sign a reaffirmation agreement you will be able to keep the vehicle.

When do I have to move out of my house?

After bankruptcy, many clients wonder how fast they will have to move out of the house in cases where it is the intention of the debtor to surrender the house. In the North Georgia area, it can be difficult to find the right place to rent. No one wants to rush out and sign a lease without having time to investigate the area. At the same time, most debtors want to stay in their house as long as they can so that they will be able to save money for future rent payments.



In a Chapter 13 and a Chapter 7, the automatic stay stops all creditor actions. Even in cases where it is the intention of the debtor to surrender the house, a mortgage company will file a Motion for Relief so that they may begin the foreclosure process. As a general rule, a hearing will be held in the bankruptcy court approximately thirty days after the Motion for Relief is served on the debtor.

After the Motion for Relief is granted, the mortgage company will begin advertising your house for foreclosure in the local newspaper. In Georgia, a mortgage company must advertise your house in the legal organ of your county for four consecutive weeks before the foreclosure date. As a general rule in Georgia, foreclosures take place the first tuesday of every month.

If your bankruptcy case was just filed in Georgia, you should have somewhere between two and three months before you have to move out. however, some mortgage companies may drag their feet before they start the foreclosure process. I have seen some cases where the debtor stayed in the house rent free for one year before the mortgage company foreclosed!

I have also seen a case where the debtor moved out of the house and then the mortgage company called the debtor and begged them to move back in. In that case, the mortgage company reworked the loan and the debtors did in fact move back in. It doesn't hurt to ask your mortgage company if they would be willing to do a loan modification.

If you decide to move out, make sure you give your new address and phone number to your bankruptcy attorney so that they will be able to keep you updated on your bankruptcy case.

Can I get a student loan after I file?

You can get a student loan after you file for bankruptcy. According to the unified student Loan policy common Manual of April 2005, Chapter 5, paragraph 5.6, the Bankruptcy Reform Act of 1994 prevents a school or lender from denying a federal loan or grant to an applicant solely because he or she has filed a bankruptcy petition.

I frequently meet with clients who are concerned that they will not ever be able to continue their education if they file for bankruptcy. The truth is that bankruptcy will not prevent you from pursuing your education dreams. I've had clients who were able to get student loans while they were in active Chapter 13 bankruptcy cases. Any loan that is obtained during a Chapter 13 bankruptcy must be approved by the trustee.

It is important to note that student loan debt is virtually impossible to discharge in any type of bankruptcy. As a consequence student loans have been easy to obtain in the past. The scary aspect of student loans is that if you borrow too much, you could be putting yourself into economic slavery. I have some lawyer friends who claim that they will be paying on their student loan debt until the day they die!

Before taking on student loan debt you should consider whether the potential income you are going to earn will be enough to pay off the student loan over a reasonable amount of time. I know quite a few college graduates who can't get a job making more than \$10 per hour. What is the total amount you intend to borrow to complete your education? What is the salary expectation after you graduate?

Can I have a bank account after I file?

Just because you file a Chapter 13 or a Chapter 7 bankruptcy does not mean that you can't have a bank account in Georgia. However, if you have no bank account at all before your case is filed, it is possible that you may have difficulty opening a new one after bankruptcy. When you file, your case is a matter of public record. Banks can check to see if you have filed bankruptcy before they allow you to open an account with their institution.

If you have a checking account with a bank that you owe money for a loan, credit card, or any other type of debt, I would recommend that you close that account and open a new one with an institution that you do not owe any money to before you file. Under Georgia law, a bank has a right to setoff. This means that if you have \$100 in an account that bank can take your \$100 as soon as you file a bankruptcy if you owe a bank any money. If money has been seized through this type of setoff after the bankruptcy case is filed, we cannot get the money back. The money is gone.

If you decide to open a new bank account before you file, make sure you don't forget to change any direct deposit orders as well. Nothing is worse than having your entire paycheck seized by a bank because you forgot to change the order. Get some type of confirmation from your payroll department that the change order has been received and processed.

I recently met with a client in my Dalton office who works for a large carpet company. My client completely forgot to close her bank account and open another one with a bank that she owed no money. After we filed the case, her paycheck was directly deposited into her bank account. Since she had a credit card with this same bank, they seized a good chunk of money. Don't let this happen to you. Plan carefully before you file.

12

Appendix II: Office Information

Rome

My Rome office is located at 107 East Fifth Avenue, Rome, GA 30161. We are located on top of Clock Tower Hill in the historic district of Rome. We are catacorner from the Clock Tower. If you are driving from Turner Mccall down Broad Street, take a left onto East Fifth Avenue. We are on top of the hill on your left.

Cartersville

My Cartersville office is located at 1202 North Tennessee Street, Suite 102 , Cartersville, GA 30120. We are located on the back side of the building at the far end. If you are driving from downtown Cartersville going north on Tennessee Street, we are on your left just past the Citgo gas station.

Dallas

My Dallas office is located at 1491 Merchants Drive, Dallas, GA 30132. We share office space with Premier West Realty. We are across the street from Hardy Auto Resales and are at the intersection of Atlanta Hwy/Merchants Drive and Paris Road.

Dalton

My Dalton office is located at 101 Thornton Avenue, Suite 219, Dalton, GA 30720. We are directly across the street from the post office on the 2nd floor. We share office space with the Luffman Law Firm.

Kennesaw

My Kennesaw office is located at 2914 Cherokee Street, Suite B-1, Kennesaw, GA 30144. We are located near the water tower in downtown Kennesaw.

Important Places

FEDERAL BUILDING (BANKRUPTCY COURT FOR ROME DIVISION)

600 East First Street

Rome, Georgia 30161

Directions from Cartersville/Atlanta:

1. From Atlanta, take Interstate 75 North to exit 288, the "Cartersville-Main Street" exit.
2. Turn left and go about 2 miles to Highway 41.
3. Turn right onto Highway 41 and go north approximately 6 miles to the "Rome - Highway 411" exit. From there it is about 21 miles to downtown Rome.
4. Follow the exit signs to come into downtown Rome onto Highway 27 North.
5. Turn left in Rome at the first light past the Etowah River bridge onto East 1st Street .
6. The Federal Building is one and a half blocks away on the left.

Directions from Dallas/Rockmart:

1. Take state Highway 278 to Rockmart.
2. At the intersection of Highway 278 and Highway 101 in Rockmart, turn right onto Highway 101 and follow the signs to downtown Rome. Rome is 20 miles away.
3. Turn left in Rome at the first light past the Etowah River bridge onto East 1st Street at CVS and Georgia Power Co.
4. The Federal Building is one and a half blocks away on the left.

Directions from Dalton/Calhoun/Chattanooga:

1. Take Interstate 75 South to exit 312, the "Rome - Fairmont" exit.
2. Take a right onto state Highway 53 and follow the signs to Rome. It is approximately 23 miles from the exit to the Federal Building. (No turns!)
3. At the fourth red light as you come into Rome, bear left past Old Tymer BBQ and stay in the middle lane.
4. Go straight through the next light at Turner McCall Blvd.
5. The Federal Building will be one and a half blocks down on the left.

RICHARD B. RUSSELL BUILDING
(BANKRUPTCY COURT FOR ATLANTA DIVISION)

75 Spring Street South West

Atlanta, GA 30303

Directions from North Atlanta:

1. Take I-75 / I-85 South to Martin Luther King, Jr. Drive (Exit 248A).
 2. Follow Martin Luther King Jr. Drive for seven blocks to Forsyth Street.
 3. Turn right and follow Forsyth Street one block to Alabama Street.
 4. Turn left and follow Alabama Street for one block to the parking lot entrance.
- (Bring cash for parking!)

Directions from West Atlanta (I-20 West):

1. Exit at the Spring St./Windsor St. (Exit 56B)
 2. Turn left and follow Spring Street for four blocks to Mitchell Street.
 3. Turn right onto Mitchell Street and go one block to Forsyth Street.
 4. Turn left and follow Forsyth Street for two blocks to Alabama Street.
 5. Turn left and follow Alabama Street for one block to the parking lot entrance.
- (Bring cash for parking!)

“Helping people get out of debt.”

THE LAW OFFICE OF
JEFFREY B. KELLY, P.C.

706-295-0030