

# Mullins Law LLC



## Bankruptcy

Welcome to our E-Pamphlet on Bankruptcy.

I have put together this e-pamphlet to provide some basic information on bankruptcy to help you make a more informed decision in determining if bankruptcy is the right step for you. Bankruptcy is not the right answer for everyone but it is for many and we recommend you seek personal advice from an attorney.

If you are thinking of filing a bankruptcy that often means that you are struggling with meeting your current debt obligations and your creditors have become aggressive in their collection attempts. The first step you need to consider is what types of bankruptcy there are and which one may be best for your situation.

### Types of Bankruptcy

There are several chapters, or types, of bankruptcy you may file.

You must decide which chapter you qualify to file or wish to file under.

<ul style="list-style-type: none"><li>• Chapter 7</li></ul>	<ul style="list-style-type: none"><li>• Chapter 13</li></ul>	<ul style="list-style-type: none"><li>• Chapter 11</li></ul>	<ul style="list-style-type: none"><li>• Chapter 12</li></ul>
All debts allowed and filed against are eliminated with this chapter. •	You pay a portion or all the debt owed back with this chapter in a 3 or 5 year payment plan. •	Is a reorganization for businesses usually. •	Is for use by farmers or fisherman. •

Most people file under the chapter 7 or chapter 13 bankruptcies and that is where I will focus my comments. If you are looking to file under a chapter 11 or chapter 12 most attorneys will be happy to discuss those options with you.

- What is meant by “allowable debts” in this e-pamphlet article are that some debts are not discharged in a bankruptcy, they include;
  - Child support
  - Divorce ordered/settlement debts
  - Taxes that have been filed under --- days
  - Student loans
  - Others type of debts may be included in this list, see an attorney or the bankruptcy court for a full list of non-dischargeable debts in relation to the chapter you may wish to file.
  - All other debts are allowed and discharged in a bankruptcy.

### Stopping the Creditors

All bankruptcies will stop the creditors from pursuing the debt upon the date you file for a time, this includes calls, letters, lawsuits and garnishments, even if they are already started or in place.

The one exception to this is that if you choose to not use an attorney but file yourself, the creditor has a right to contact you directly in connection with the bankruptcy, although they may not pursue the owed debt.

Certain types of creditors can ask the court to be released from pursuing the debt if it is not your or their intention for you to keep the property.

An example would be a mortgage company can ask the court to be allowed to start or follow through with a foreclosure.

All garnishments and lawsuits will stop for the duration of the bankruptcy. They will either be discharged if an allowable debt in a chapter 7 or they will be included in a chapter 13 payment plan in most cases.

Many people feel they have no other options available to them and they just need to start over, a wiser person for their experiences with past debt. There are many benefits to filing a bankruptcy and disadvantages as well. Listed below are a few.



Disadvantages

- There is no maximum or minimum amount of debt you can include.
  - \* Lower credit rating
  - \* Stays on your credit report for 10 yrs
  - \* You usually can't file again for 8 yrs
- The bankruptcy process is a relatively quick process for items you obtain on credit in the first years after you have filed.
  - \* You usually incur a higher interest
- You will be able to start rebuilding your credit free from creditor calls and fairly quickly. Bankruptcy court.
  - \* A portion of your tax return for one year will usually be retained by the

**Determining your eligibility**

- You may file a new bankruptcy if you have never filed before or you have filed in the past and it was not completed or discharged or it has been over 8 years since your last bankruptcy was discharged.
- You must qualify for a chapter 7 (an attorney can make that determination for you) if your current income falls below the median household income, for the number of wage earners or people in your household, by your geographic area you qualify to file a chapter 7. There are other ways to qualify, an income to expense calculation can be made, if you are disabled or have served in the reserve services, the latter two having additional stipulations to qualify, again an attorney can help you determine if you qualify under one of these other methods.
- A chapter 13 eligibility requires a debt and expense calculation to determine your eligibility to accomplish a repayment plan.
- If you are married and living with your spouse their income and expenses are included in determining your bankruptcy eligibility, even if they are not filing.



## Myths and Misconceptions

- I will lose all my property. This is wrong. Often the fear of losing all their property stop people from filing bankruptcy, however you can “exempt” property from being taken in a chapter 7 bankruptcy, and a chapter 13 allows you to keep all your property you but will maintain any debt obligation you may have on that property. An attorney can review your property values with you and advise you as to it exemption, as there are limits to these exemptions and you should be aware of these before filing. Most people find that most if not all of their property are exempt from the bankruptcy which means they are allowed to keep that property.
- I will never be able to get credit again. This is wrong. There are certain creditors that will actually pursue you right after filing a bankruptcy, offering you credit to purchase items. This often helps you rebuild your credit, however we advise caution as you do not want to find yourself in financial stress again with no means of relief for years. Most creditors are willing to offer you credit again a few years after you are discharged, without the high interest rates.
- I cannot file against taxes I owe. This is wrong. You may file against state and/or federal taxes owed (some other types of taxes may be excluded) and be discharged, if it has been at least 3 years since you filed the tax return in connection with these taxes. Other restrictions may apply see an attorney to review your specific situation.

## General bankruptcy information

- In most cases you do not go before a court for your bankruptcy, but instead attend one 341/creditor meeting with your appointed trustee.
- You must take two financial education type classes for your bankruptcy to be discharged. Your attorney can help you choose a class approved by the bankruptcy courts. These classes can be taken by internet, phone or in person.
- You are not required to file against all your creditors. In a chapter 7 you may keep whatever creditors/debts you choose to keep out of the bankruptcy and continue to pay those debts. Many people choose to keep/reaffirm their home or cars.
- You may not keep/affirm a first mortgage on your home but file against a second mortgage or other type of loan secured by your home without surrendering you home to the creditor.
- If part or all of your income is received through a small business (you business income is treated as personal income for tax purposes) you will be required to complete a separate income and expense sheet for the trustee.
- Make sure that all information given the bankruptcy court is true, accurate and complete as changing or adding information after filing includes additional costs by the bankruptcy court and usually your attorney.



This e-pamphlet is a general over-view of some bankruptcy points and is not meant as a exhaustive discussion of bankruptcy and in particular it is not to be taken a legal advice, as everyone's circumstances, assets and debts are unique and require a one-on-one discussion with an attorney to apply the general bankruptcy guidelines given above to your particular circumstances to determine how a bankruptcy may affect you, your assets and liabilities. We do not attempt here to apply any bankruptcy principle to any particular situation but only offer some general bankruptcy principles for your review. We recommend that you seek legal counsel from an attorney before making any decision regarding filing a bankruptcy. An attorney can offer specific advice regarding your personal situation and how bankruptcy may or may not be a solution for you after reviewing such with you. Call us for a free bankruptcy consultation.