



OHIO BANKRUPTCY GUIDE

Info to Help Protect You From Creditors
and to Get Out of Debt

Eric A. Stamps, Esq.

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and to Get Out of Debt

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Speakeasy Publishing
73-03 Bell Blvd, #10
Oakland Gardens, NY 11364
www.speakeasypublishinginc.com

Ordering Information:

Quantity sales. Special discounts are available on quantity purchases by corporations, associations, and others. For details, contact the publisher at the address above.

Orders by U.S. trade bookstores and wholesalers. Please contact Speakeasy Publishing: Tel: (888) 991-2766 or visit www.speakeasypublishinginc.com.

Printed in the United States of America.

Published in 2018

DEDICATION

This book is dedicated to all the hardworking people of Ohio who have hit hard times financially. I have helped thousands of people deal with the overwhelming feelings that come with financial issues. My goal is to help you get out of debt and on a path to a brighter financial future.

ACKNOWLEDGEMENTS

I want to thank my father, Dana Stamps, for his guidance and direction on my path to becoming an attorney and throughout my career as an attorney. I wanted to be an attorney and follow in my father's footsteps since the time I was a young child. My desire never changed. I have had the pleasure to work with my father since 1991. Thanks dad, I love you.

Also, thanks to my mom for all that she has instilled in me and done for me. You have always been a great inspiration and guide. All you have done for me is greatly appreciated.

Thanks to my wife Sara, for all the sacrifices that come with being married to an attorney and being there for me and supporting me in my career.

Thanks to my kids, Matthew, Nicholas, and Madison for giving me a reason to go to work even on days I don't feel like. You are all truly special.

Finally, to my brothers Shawn and Josh, for always being there when I need you.

DISCLAIMER

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TESTIMONIALS

“Years ago, I had a legal issue in Ohio, and had worked with various lawyers including ... as well as other law firms in Dayton Ohio. Unfortunately, instead of putting the client first, most of these law firms I contacted really focused on themselves — i.e., putting money and their reputation before their clients. Finding a good law firm in a small city like Dayton is not an easy task. Years later, I contacted Dana A. Stamps to ask him for help with an issue that almost every lawyer I contacted said was impossible. Dana was willing to hear me out, and after I explained to him why I thought my case was possible, he gave it a go at a very reasonable price. Not only is Dana approachable, personal but he is also a great lawyer. In court, he artfully negotiated my case in front of the judge and won me a victory I had long been seeking. I have nothing but good things to say about Dana Stamps.”

- Brandon W.

“When every other lawyer told me it was not possible, Dana Stamps took the time to listen to me, and finally accepted my case. He artfully negotiated my case with the judge and won me the victory I have been seeking. Dana is responsible, hard-working, approachable, and extremely ethical. I highly recommend him.”

- A Satisfied Client

“Very understanding, very knowledgeable and completely understanding no matter what your case involves. I would highly recommend speaking to either Eric or Dana.”

- W. R.S.

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ABOUT THE AUTHOR



Eric Stamps concentrates his practice in the areas of Bankruptcy Law and Family Law. Eric proudly serves on the Bankruptcy Law Committee, the Domestic Relations Law Committee, and the Juvenile Law Committee. He has been asked to speak on various topics regarding Bankruptcy Law and Family Law. Eric is dedicated to helping others reach their legal goals and he looks forward to helping you.

Eric has a wonderful wife, Sara, and three children, Matthew, Nicholas and Madison. Eric enjoys spending time with his family, playing sports, and coaching youth basketball, soccer and baseball. Eric also volunteers in his church and the community to help others in need.

Areas of Practice

- Bankruptcy Law

Bar Admissions

- Ohio, 1999
- U.S. District Court Southern District of Ohio, 1999

Education

- University of Dayton School of Law, Dayton, Ohio
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- Wright State University, Dayton, Ohio
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Professional Associations and Memberships

- National Association of Consumer Bankruptcy Attorneys
- American Bankruptcy Law Forum
- Bankruptcy Law Committee, Member
- Domestic Relations Law Committee, Member
- Juvenile Law Committee, Member
- Dayton Bar Association
- Ohio State Bar Association
- Ohio Association for Justice

CHAPTER 1

THE 341 MEETING OF CREDITORS



Bankruptcy code §341 requires that a hearing be held any time there is a Chapter 7 or a Chapter 13 bankruptcy filed. Although it is called a meeting of creditors, the creditors virtually never show up. It's really a trustee meeting with the individual who filed, along with their attorney, so that the trustee can ask questions to ascertain whether or not there are any type of assets available to pay off the debts. It's an informal process that takes about five minutes.

Does The 341 Meeting Of Creditors Take Place For All Types Of Bankruptcies?

Both the Chapter 7 and Chapter 13 consumer bankruptcies require that a 341 hearing take place.

Should I Have Completed All Mandatory Classes Before The 341 Meeting In A Bankruptcy Case?

There are 2 mandatory bankruptcy classes. The first one has to be completed before the case is filed but the second one is not required to be completed until 45 days after the meeting of creditors. However, it is a good idea to take the second course before the hearing because you are not eligible to get rid of your debt through a discharge if you do not complete the course.

What Happens At The 341 Meeting Of Creditors?

There will be a trustee assigned to the case, who is acting as a middle man between the creditors and the debtor. That trustee is going to ask a series of questions to find out whether or not there are any assets or money available that can be used to pay on the debt. They want to make sure that there isn't any money coming to you,

like personal injury settlements or inheritances that aren't protected under the exemptions of the bankruptcy code.

Will I See A Judge At The 341 Meeting Of Creditors?

In most bankruptcy cases, you will never be in front of a judge. It's an informal process, where you are in a room separate from the courtroom with a trustee, not a judge.

Preparing For The 341 Meeting Of Creditors

Most people don't have to prepare for the meeting. It is basic information you are already going to be familiar with.

At What Point In The Bankruptcy Process Does The 341 Meeting Of Creditors Take Place?

341 Meetings are typically scheduled four to eight weeks after the initial bankruptcy paperwork is filed.

Who Is Present At The 341 Meeting Of Creditors?

Typically, the people present at the 341 Meeting would be the trustee, the debtor, and the attorney.

What Questions Will The Trustee Ask Me At The 341 Hearing?

The trustee will ask questions regarding finances to see whether or not you've paid any friends or relatives money within a year of filing the bankruptcy, which is prohibited, or if you took out additional debts right before the filing of the bankruptcy, which is also prohibited. The trustee will ask if you've transferred any type of assets within two years of the filing of the bankruptcy, and whether you have any money or assets available or coming to you that could be used to pay your debt.

What If I Don't Know The Answers To Some Of The Trustee's Questions At The 341 Meeting?

It would be unusual for a debtor to be unable to answer the types of questions asked at a 341 Meeting. If, for some reason, you do not know the answer to a question, let the trustee know that you need time to collect the information. Then provide the answer to your attorney to pass on to the trustee.

What Happens After The 341 Meeting Of Creditors?

The bankruptcy code requires a 60 day waiting period after the meeting of the creditors before a judge is allowed to enter a discharge order. Normally, waiting is all that is required. If you have not taken the second bankruptcy course, then you will need to take that before the 60 days expires.

CHAPTER 2

THE MEANS TEST



A means test is a formula set by Congress to determine whether or not a debtor has the ability to pay back their debt.

Is The Means Test Only Used To Qualify For Chapter 7 Bankruptcy?

The means test is for both Chapter 7 and Chapter 13, but is primarily used in the Chapter 7 to determine whether you are able to file a Chapter 7 or if you need to

file a Chapter 13. In a Chapter 13, it's used primarily to determine the length of the repayment plan.

Income Requirements To Pass The Means Test

The income requirements for the means test depend on the number of people in your household, as well as the number of dependents. They look at that to determine the amount of money that you can make in order to pass the test. For example, if it was one person, as of April of 2018, you are entitled to make up to \$48,596. If you happen to have five people in your household, that would jump up to \$93,694. The numbers are adjusted periodically.

Factoring Children In The Means Test

Children are part of the determination of the household size. The more children you have, the higher the income can be to allow for the Chapter 7 to be acceptable.

What Expenses Are Allowed In The Means Test?

First of all, if you are below the allowable income level, you don't have to worry about expenses. If you are above the allowable income level, then there is a series of questions regarding expenses. All expenses under the

formula are taken into consideration to see whether you have enough expenses to still allow you to file a Chapter 7, even if you are over the income limit.

What Is The Marital Deduction Adjustment?

If an individual is filing bankruptcy without their spouse, then certain taxes, payroll deductions, debts, etc. that the spouse has can be a marital deduction, so the trustee can take that into consideration to determine whether or not a Chapter 7 is appropriate.

What Do I Do Next If I Pass The Means Test?

If you have passed the means test, next you would meet with your bankruptcy attorney to start the process of gathering documentation. Your attorney will prepare the legal forms and have you review and sign them. You will then be required to take the credit counseling course.

If I Fail The Means Test For A Chapter 7, Can I Still File A Chapter 13 Bankruptcy?

Many times the Chapter 13 is used because a person failed the Chapter 7 means test. Chapter 13 is a fallback so that you are able to reorganize your debts and not get stuck paying each creditor back in full.

CHAPTER 3

WHAT DO I HAVE TO DO BEFORE FILING FOR BANKRUPTCY?



The first thing you have to do is to set up an appointment with a bankruptcy attorney at our office. The attorney will go through with you all the documents that need to be obtained, go through the process with you, and explain the credit counseling that will need to be taken prior to filing.

Should I Sell Things Before Filing For Bankruptcy?

If there are things that you want to sell before filing bankruptcy, you would want to discuss those with your attorney at the initial consultation. Some things that are sold prior to the bankruptcy could be a fraudulent transfer. The trustee would then be required to go after you and/or the person who bought the property in order to get it back, sell it, and distribute it to the creditors.

Can I Load Up On Debt Just Before A Bankruptcy?

Taking on excessive debt just before a bankruptcy is considered fraud and you would, at minimum, have to pay that debt back. You could be facing jail time and a large fine if it turns out that you did it on purpose to defraud the creditors.

Should I Pay Back Any Family Or Friends I Owe Before Bankruptcy?

The Bankruptcy code specifically prohibits any payments to friends or relatives totaling more than \$600.00 made within a year of the bankruptcy filing. It's considered a preferential payment, meaning you chose to pay them

instead of paying other creditors. The trustee would have to go after your friends or family to get the money back.

When Must I Complete The Pre-Bankruptcy Credit Counseling Course? If I Don't Get It Done Right Away, Will It Hold Up My Bankruptcy Case?

The pre-bankruptcy credit counseling course is mandatory to be eligible to file. The certificate is good for 180 days from the time you take it. As long as you know you are going to file a bankruptcy within 180 days, you should take it immediately so that it will not hold up the bankruptcy filing. Therefore, if you are wanting to file and haven't taken it, we would have to hold up the filing until we get confirmation that it was taken.

How Long After Filing For Bankruptcy Will Creditors Stop Calling Me?

Most creditors will stop calling within three days after you file for bankruptcy. The bankruptcy court will be mailing them a notice, and mail is usually received within three days.

CHAPTER 4

HOW LONG DOES A BANKRUPTCY STAY ON CREDIT REPORT?



A Chapter 7 bankruptcy typically stays on a person's credit report for up to 10 years, and a Chapter 13 stays on for up to 7 years.

How Does A Bankruptcy Affect The Credit Score?

Filing of a bankruptcy is a major hit on anyone's credit score. However, the bankruptcy wiping out the debt will actually improve most people's income to debt ratio and give them the ability to improve their credit

very quickly. In many cases, if someone takes the necessary steps to re-establish their credit after a bankruptcy, they will see an increase of 100 points or more within one year after the bankruptcy. Also, many clients report to me huge increases in their credit scores while in a Chapter 13.

How Many Years Will It Take To Rebuild My Credit After A Bankruptcy?

If you take the necessary steps, such as timely paying for a house or a car, and you get credit and make payments on time, your credit will rebuild much quicker than someone who doesn't get any type of credit or doesn't pay on time. Most people see a major increase in their credit score within a year.

Do I Have To Pay Income Taxes On Debt Discharged In My Bankruptcy?

Any debt discharged in a bankruptcy is protected from any type of income taxes.

How Long After Filing For A Bankruptcy Might I Qualify For A Mortgage?

Most mortgage companies want to see two years post-bankruptcy that the person is taking necessary steps, such as having a steady job, and having some type of credit that they are paying on time to rebuild. If you want to go through VA, FHA or other government programs for your mortgage, they may want to see three years post-bankruptcy.

How Soon After A Bankruptcy Might A Person Finance A Car?

Some car companies will get you a car while still in bankruptcy, so there is no waiting time. You can finance a car either while in, or right after, a bankruptcy.

What Happens If I Fall Behind On Payments After Filing A Chapter 13 Bankruptcy?

If you fall behind on payments in a Chapter 13, you should immediately have a consultation with your bankruptcy attorney to determine why you fell behind and whether or not you have the ability to catch up. The

trustee will file a motion to dismiss for failing to make appropriate payments. If it looks like you are going to be able to make your payments then you are put on probation. If you continue to miss payments, then your bankruptcy case will be dismissed.

What Is A Reaffirmation Agreement?

A reaffirmation agreement is a mutual agreement between the creditor and the debtor saying that you wish to continue on with the contract under the terms as written. It does require both the debtor and the creditor's consent. If the creditor doesn't consent, then you just continue to make your payments even without the reaffirmation agreement if you are keeping property such as a house or a car.

Can I Make Payments On a Discharged Debt Without A Reaffirmation Agreement?

Typically, a creditor will continue to accept payments and will continue to keep collateral once your bankruptcy is over. There is nothing preventing you from paying a discharged debt. However, you are not legally obligated to.

What Steps Should I Take Post Bankruptcy To Close Out The Process?

Once you've had your meeting of creditors there is usually nothing else to do, other than to wait, in a Chapter 7 bankruptcy. In a Chapter 13, there is going to be a discharge that you have to sign, stating that you've completed everything needed in order for the discharge to be granted.

CHAPTER 5

CHAPTER 7 BANKRUPTCY



Chapter 7 is considered a complete bankruptcy; a fresh start. It typically does not require the repayment of any debt that is unsecured. You would be required to repay debt tied to a car or a house (if you are keeping them) but any debts like credit cards, medical bills, or anything not attached to property would be wiped out.

What Is A Chapter 7 Bankruptcy Discharge?

The discharge is the actual event where your debts are deemed no longer a legal obligation to you.

What Debts Are Released By A Chapter 7?

Most unsecured debts, such as personal loans, credit cards, and medical bills are released by a Chapter 7 Bankruptcy. Anything that does not have property attached to it is released, with few exceptions.

What Might Be Some Of Those Exceptions?

One of the most common types of debt not discharged in a bankruptcy is student loans. Those are not discharged, unless you can show an undue hardship, which is a very difficult standard to meet. Other debts that are not discharged are domestic support obligations (spousal or child support), and taxes that became due within the last three years. Also, any type of secured debt that you are trying to keep, such as a house or a car.

Will I Lose All Of My Property And Assets In A Chapter 7 Bankruptcy?

Most people do not lose any property in a chapter 7 Bankruptcy. They are called “no-asset” cases; meaning there is nothing taken from the individual to pay any of the debt because of exemptions. Exemptions protect

property up to a certain dollar amount. For example, if you have equity in your vehicle, in Ohio, there is a protection of \$3,775, which is usually high enough for most people, because most people have a lien on the car and owe as much as the vehicle is worth.

Can I Keep Any Of My Property In A Chapter 7 Bankruptcy Without Paying Off A Creditor?

If the creditor has a lien, you would not be able to keep the property unless you pay for it. If a vehicle, for example, has a lien, you would either have to pay the lien holder, or you would have to give the vehicle back. It is the same with a house. If you have a mortgage, you would have to pay the mortgage or you would have to surrender the house. The exception to that would be if you have a lien on a house that was a judgment lien. A judgment lien may be removed through what is called a 522F Motion, a procedure where you ask the bankruptcy court to remove any judgment lien from your house. That is the one exception. Otherwise, you would lose any property that has a lien and you do not pay for. Most pieces of property, though, you do not have any debts on, so you would not lose them. Your furniture, clothes, and

personal possessions would not be lost, as you do not owe money on them.

What Are The Requirements To Be Eligible To File For A Chapter 7 Bankruptcy?

First, if you have filed a previous bankruptcy, then you have to wait eight years if it was a Chapter 7 Bankruptcy, or six years if it was a Chapter 13 Bankruptcy. Second, your income will be considered. Depending on your household size, Ohio sets an amount of money that you are allowed to make to still be eligible for a Chapter 7 Bankruptcy. This will be discussed at your first consultation with our office.

How Does Filing A Chapter 7 Bankruptcy Affect Lawsuits Or Any Attachments That Have Already Been Filed Against Me?

A Chapter 7 Bankruptcy immediately stops any type of lawsuit proceedings, including garnishments. Once you file, the individual creditors and the courts involved will be notified that all proceedings must stop instantly.

How Long Does It Take To Go Through A Chapter 7 Bankruptcy?

From the time it is filed, it is typically a four month process to go through a Chapter 7 Bankruptcy. It is six to eight weeks before the hearing (which is called the 341 meeting of creditors although creditors almost never come to the hearing). Then, the judge is required to wait 60 days before the discharge can be entered. Thus, resulting in approximately four months for the process after filing.

CHAPTER 6

THE 341 MEETING OF CREDITORS IN A CHAPTER 7 BANKRUPTCY



The 341 Meeting of Creditors is a very informal meeting. The creditors almost never come to the hearing. The trustee assigned to your case will ask a series of questions that usually takes approximately five minutes. They are looking to see whether or not you have the ability to pay back your debt. The trustee is looking for any assets valued higher than your exemptions. Also, the trustee is looking for any assets that may be coming to you that could pay on this debt, such as an inheritance or

life insurance proceed. They are trying to find out if there is any way for your creditors to be paid.

What Other Options Do I Have If I Am Not Eligible For Chapter 7 Bankruptcy?

The best other option for most people who are not eligible for Chapter 7 Bankruptcy is the chapter 13 Bankruptcy, which is an income-based reorganization of debt. A lot of people who are not eligible for Chapter 7 end up paying very little back to their creditors, often pennies on the dollar. A Chapter 13 Bankruptcy can be a very good tool to use if you do not qualify for Chapter 7.

What Are The Main Differences Between A Chapter 7 And A Chapter 13 Bankruptcy?

One of the main differences is the amount of time it takes. The Chapter 7 Bankruptcy takes approximately four months, whereas Chapter 13 takes three to five years. The next big difference is Chapter 7 Bankruptcy usually does not require repayment of any debt, while Chapter 13 does. Additionally a Chapter 13 Bankruptcy is a reorganization of debt and Chapter 7 is an elimination of debt.

There are advantages to a Chapter 13 Bankruptcy that do not exist in a Chapter 7. For instance, some people may be behind on their mortgage. In a Chapter 13, you are eligible to catch your mortgage up over that five-year period, while in Chapter 7, you are not. Also, in cases with two mortgages, in a Chapter 7 you would have to keep both mortgages if you are keeping your house. In a Chapter 13, if you have two mortgages, many times it is possible to get rid of the second mortgage and only pay on the first. A Chapter 13 also offers ways to reduce the amount you pay on a car if you have a lien on it. Principle, interest, or both may be reduced. In a Chapter 7, the creditor/lien holder is usually paid whatever is owed under the contract.

Why Do I Need An Attorney To Help Me With My Chapter 7 Bankruptcy Case?

The difficulty with handling a bankruptcy of Chapter 7 on your own is the complexity of the bankruptcy code. Even for attorneys who are skilled in the law, the code is so complicated that they should really focus their practice on bankruptcy, in order to navigate correctly through the system. If an individual files a

bankruptcy and anything they do is deemed to be wrong or fraudulent, they are facing an FBI investigation and up to five years in prison and up to a \$250,000 fine.

What Sets You And Your Firm Apart In Handling Bankruptcy Cases?

Our vast level of knowledge and the number of cases we have handled sets us apart. I have been practicing bankruptcy law since 1999, my father since 1977. I also worked for him from 1991 to 1999. It is similar to someone who has a heart condition; if you have a heart condition, you do not want to go to a general practitioner, you want to go to a cardiologist. In a bankruptcy case you want an attorney who focuses in bankruptcy. This is your financial health and you need to place it in the hands of someone who is able to help you. I know the ins and outs of bankruptcy and I can navigate you through each and every situation.

CHAPTER 7

CHAPTER 13 BANKRUPTCY



A chapter 13 bankruptcy is the reorganization of your debt over a period of three to five years.

What Is A Chapter 13 Discharge?

At the end of the bankruptcy case, the court will grant a discharge to the debtor and that's when the debts are officially eliminated.

Debts Relieved By A Chapter 13 Bankruptcy

Debts to unsecured creditors such as medical bills, credit cards, utility bills, rent, and other miscellaneous debts are relieved. Also, if you have a vehicle payment, it will be paid in a chapter 13, and so will debts that are owed to taxing authorities, such as the IRS.

Is There Any Debt Which Is Not Dischargeable In A Chapter 13 Bankruptcy?

Student loans, child support, and spousal support are not dischargeable.

Will I Lose All Of My Property And Assets In A Chapter 13 Bankruptcy?

Most people don't lose any property in a Chapter 13. The idea behind the reorganization is to be able to keep everything, even if you have a car that is paid off or a house that is paid off. Even if your house payment is behind, it gives you an opportunity for the payments to be caught up while in the bankruptcy.

May I Keep All My Property In a Chapter 13 Without Paying Off My Creditor?

Typically, if it's a secured debt, the secured creditor will be entitled to get paid. Otherwise, they would be able to take the property. There are some exceptions to that. In certain circumstances, we are able to get the principal amount reduced on a vehicle, if it was purchased more than 910 days before the filing of the bankruptcy, or if it was refinanced at some point. Then we are able to get it at the current value as opposed to the loan amount. For instance, if somebody owes \$15,000 and the value is \$10,000 for the car, we are able to reduce the loan to \$10,000. Also, if there is a second mortgage or a third mortgage, many times we are able to have them treated as unsecured debt. We have to first look at the value of the individual's home and what the first mortgage is to determine whether or not that is possible in each case.

Requirements To Be Eligible To File For A Chapter 13 Bankruptcy

There are requirements for filing and requirements for discharge. To be eligible for a discharge, you must not have a discharge of a previous chapter 7 that was filed in the past four years or filed within 2 years for a chapter 13 and you are required to have some form of income to fund the payment plan. For filing, most people are able to file a chapter 13 at any time, depending on what they are attempting to accomplish. If they are not eligible for a discharge, then their debts would still survive the bankruptcy. The filing is all it takes to stop the lawsuits, garnishments, repossessions and/or foreclosures.

How Does Filing A Chapter 13 Bankruptcy Affect Lawsuits Or Any Attachments That Have Already Been Filed Against Me?

Once the case is filed, all lawsuits are stopped, as well as all garnishments. Generally, it has the effect of complete annihilation of those things even before the discharge can be entered.

CHAPTER 8

TRUSTEE IN A CHAPTER 13 BANKRUPTCY CASE



A trustee is assigned by the court to oversee the case. Basically, it is the trustee's job to collect any assets and distribute payments to the creditors. Instead of paying all your creditors individually, the trustee takes one monthly payment and distributes it for you.

How Long Does A Chapter 13 Bankruptcy Take To Complete?

The bankruptcy code requires a minimum of 36 months and a maximum of 60 months under the Chapter 13, and the number of months is primarily based on income.

What Options Do I Have If I Am Not Eligible To File For a Chapter 13 Bankruptcy?

There are options like debt consolidation or debt settlement if you are not eligible for a Chapter 13. The only other bankruptcy option for high wage earners is Chapter 11, which is usually reserved for businesses. There are rare exceptions where Chapter 11 can be filed by individuals.

Why Do I Need An Attorney To Help Me With My Chapter 13 Bankruptcy Case?

The bankruptcy code itself is very complicated. Dealing with a Chapter 13 is even more difficult than a Chapter 7, because you have to come up with an actual plan that deals with every type of debt that you may have. If they are not dealt with appropriately, the court will throw your case out, and then you'll just be back at square one.

Difference Between A Chapter 7 And A Chapter 13

The chapter 7 is a complete bankruptcy, where there is not going to be a monthly payment after the case is filed. It generally eliminates all the debts that are unsecured and then you would pay back any debts that were secured by property you want to keep. In the chapter 13, you are reorganizing your debts and making a monthly payment.

What Sets You And Your Firm Apart In Handling Chapter 13 Bankruptcy Cases For Your Clients?

The vast amount of knowledge we have about each individual part of the bankruptcy process, the chapter 13 plan, collecting of the documents, and explaining everything sets us apart. We are very thorough with each individual that comes in and we make sure that they understand the process and we walk them through it. Many firms just hand them paperwork and have them try to figure it out. We take the time to make sure you have all your questions answered and that what you file is as thorough and accurate as possible.

CHAPTER 9

CAN STUDENT LOAN DEBT EVER BE FORGIVEN IN A BANKRUPTCY?



It's very unlikely for student loan debt to be forgiven in a bankruptcy. It is possible, but the standard is extremely hard to meet.

What Circumstances Do I Need To Prove To Have My Loan Discharged In a Bankruptcy?

You must prove what is called an undue hardship. First, you have to prove that your current level of income is insufficient to support you and your dependents if you

are forced to pay back the student loan. Second, you must prove that there are circumstances which exist that would lead the court to believe that you are not going to be able to repay the student loan during the period the loan is set to be repaid. Third, you must show that you have made good faith efforts to repay the loan.

How Do Bankruptcy Courts Determine Undue Hardship?

Bankruptcy courts determine hardship based on the factors that are mentioned above: income, inability to pay the loan in the given time period, and good faith effort.

What Happens To My Loan If The Bankruptcy Court Determines Payment Would Cause Undue Hardship?

The court has two options if it is determined that a payment would cause undue hardship. (1) The judge is able to discharge all your student loan debt, or (2) the judge is able to discharge part of your debt and require that you pay back the rest.

Is There Anything I Can Do If The Bankruptcy Court Doesn't Discharge My Loan But I Still Can't Afford To Make Payments?

There are multiple programs available to aid with the repayment of student loans. One of the options is to apply for an income-based repayment plan.

Misconceptions About Discharge Of Student Loans

Many people believe that student loans don't have to be listed in a bankruptcy, or believe that they are able to be discharged, and both of those are typically false. First, we have to show the court that the loans exist by listing them on the bankruptcy, and, second, it's extremely rare for the court to determine that you qualify under the undue hardship standard in order to discharge your student loans. Most of the time, student loans survive the bankruptcy and will have to be repaid, either under the current payment plan or through an alternative such as the income-based repayment option.

CHAPTER 10

WHY WOULD SOMEONE HAVE A SECOND MORTGAGE ON HOME?



Some people have second mortgages because they attempted to consolidate or pay off their other debts, and took out a second mortgage on their home in order to be able to pay those debts. Other people have second mortgages because they don't want to have to pay PMI. If you don't have enough equity, you can avoid PMI, if you get two loans from the beginning, one for 80% and one for 20%, so the PMI charge is avoided each month.

Although not a second mortgage, there can be second liens or third liens that can be brought on by judgments, and those are considered involuntary. If someone filed a lawsuit against you and they were successful, they can put a lien on your house, and if they don't get paid by you, then they can eventually take your house or get their money when your house is sold.

Is It Possible To Get Rid Of A Second Mortgage On Your Home?

Under the bankruptcy code, Chapter 13 does allow for the removal of the second mortgage, if the appraised value of the house is less than the amount owed on the first mortgage.

What Is Lien Stripping?

Lien stripping is a process by which we ask the court to remove the lien and treat the second mortgage or the judgment lien as if it was an unsecured debt, which would be similar to a credit card or a medical bill, as opposed to a lien, which is attached to secure property.

When Does My Second Mortgage Go Away?

If the court determines that the second mortgage can be stripped, then it remains until the Chapter 13 is completed and a discharge is rendered.

Does This Work In Both Chapter 7 And Chapter 13 Bankruptcy?

The actual second mortgage can only be stripped in a Chapter 13. If it is a non-consensual or involuntary lien, like a judgment, then it can be done in either Chapter 7 or Chapter 13.

CHAPTER 11

CAR LOAN CRAM DOWN



Cram down means taking whatever the actual loan amount is and reducing it to the current value of the car. Oftentimes, car loans are greater than the value of the car, either because once you drive cars off the lot they reduce in value, or because you originally rolled another car loan into this one, which means you owed more on it even before you drove it off the lot.

How Does The Cram Down Work?

There are two basic types of cram downs. In a Chapter 7, it's called a redemption, which means you have to find financing through an individual company that will buy out your current loan. This is accomplished by filing a motion through the bankruptcy court. In essence, you get a new loan. The more common type is under the Chapter 13. In a Chapter 13, if the vehicle was purchased more than 910 days prior to filling the Chapter 13 or if the loan was refinanced or not the original loan, the loan may be crammed down. For example, if the vehicle is worth \$12,000, then the bankruptcy court is going to pay only \$12,000 as a secured debt even if \$20,000.00 is owed on the loan. Thus, cramming down the loan to the current value or \$12,000 instead of requiring you to pay the entire loan of \$20,000. In this example, the \$12,000 would be paid with interest, and then the other \$8,000 would be paid as an unsecured debt, which typically do not receive any type of interest and are only paid a fracture of the total.

What About The Remaining Balance On My Loan?

The remaining balance would be treated as an unsecured debt. For example, if you owe \$20,000 on a car and the value is set at \$8000, there is a \$12,000 remaining balance, which would be treated as unsecured. In the Chapter 13 bankruptcy, if there is any money being paid to unsecured creditors, then that \$8000 would be subject to the same percentage as everybody else. In a Chapter 7, where there is a redemption, the \$8000 would be discharged without any payments made towards it.

Benefits Of Using A Car Loan Cram Down

The biggest benefit of a car loan cram down is that you knock off some of the principal balance owed. Instead of owing the full loan, you only owe the current value.

Limitations To A Car Loan Cram Down

You have to have obtained the loan more than 910 days prior to filing your Chapter 13, refinanced the loan, or acquired the loan after the vehicle was purchased in order to qualify for a car loan cram down. In Chapter 7, with a redemption, there limitations on the age of the vehicle as

well as the number of miles on the vehicle because most of the companies that will loan money for redemption have their own sets of criteria that they follow.

Give All Your Car Loan Details To Your Attorney

It's important that you bring all the details of your car loan to your bankruptcy attorney. Whether you purchased the car, refinanced it, or had a car paid off and then got a title loan and put the vehicle up as collateral can all make a difference in whether or not the cram down is going to be an effective tool to use.

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Ohio Bankruptcy Guide

Info to Help Protect You From Creditors
and to Get Out of Debt



Eric A. Stamps, Esq.

Eric concentrates his practice in the areas of Bankruptcy Law and Family Law. Eric proudly serves on the Bankruptcy Law Committee, the Domestic Relations Law Committee, and the Juvenile Law Committee. He has been asked to speak on various topics regarding Bankruptcy Law and Family Law. Eric is dedicated to helping others reach their legal goals and he looks forward to helping you.

Eric has a wonderful wife, Sara, and three children, Matthew, Nicholas and Madison. Eric enjoys spending time with his family, playing sports, and coaching youth basketball, soccer and baseball. Eric also volunteers in his church and the community to help others in need.

"Years ago, I had a legal issue in Ohio, and had worked with various lawyers including ... as well as other law firms in Dayton Ohio. Unfortunately, instead of putting the client first, most of these law firms I contacted really focused on themselves — i.e., putting money and their reputation before their clients. Finding a good law firm in a small city like Dayton is not an easy task. Years later, I contacted Dana A. Stamps to ask him for help with an issue that almost every lawyer I contacted said was impossible. Dana was willing to hear me out, and after I explained to him why I thought my case was possible, he gave it a go at a very reasonable price. Not only is Dana approachable, personal but he is also a great lawyer. In court, he artfully negotiated my case in front of the judge and won me a victory I had long been seeking. I have nothing but good things to say about Dana Stamps."

Brandon W.

"When every other lawyer told me it was not possible, Dana Stamps took the time to listen to me, and finally accepted my case. He artfully negotiated my case with the judge and won me the victory I have been seeking. Dana is responsible, hard-working, approachable, and extremely ethical. I highly recommend him."

A Satisfied Client

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