

Chapter 13 Bankruptcy Filing Process

Let us now turn our discussion to the process of bankruptcy. Although over 1.6 million people file bankruptcy every year, enough to fill every major stadium in the Country, it is very rare that I meet anyone who knows anything about bankruptcy. The remaining 260 million people know little about bankruptcy. In fact, at this moment you know more about bankruptcy than 98% of the population, even those people who have filed.

A. Cost

My charge for most chapter 7 bankruptcies is \$800.00. In very limited situations the fees are less than \$500.00. Where a business is involved in some way, the fee increases to \$1,000.00 or \$1,200.00, at a minimum. In some cases chapter 7 bankruptcies have cost two or three thousand dollars where there are substantial and complex issues. Some cost less. Your specific fee was discussed with you and will be set forth in your retainer letter. At this time, the bankruptcy court charges a filing fee of \$209.00. Therefore, for the average consumer bankruptcy, you are looking at a legal fee of \$800.00 plus a filing fee of \$209.00 for a total cost of \$1,009.00. Our fees have stayed the same for nearly thirty years. Unfortunately, the bankruptcy court has raised its fees periodically.

Whenever you are ready to go ahead, come in to see us. We will not open a file for you until our engagement letter has been signed and you have made a non-refundable deposit to conflict us out from representing your creditors or other parties in interest. If you would like to pay monthly, we are willing to accept payments. However, we ask that you not pay five or ten dollars a week. We ask that this not be a Christmas Club type account. The minimum payment we would be willing to accept is \$200.00, absent unusual circumstances. This will delay, however, the actual filing of the bankruptcy petition. We do not file bankruptcy for people who owe us money. If we did file bankruptcy for people who owed us money we would not be around very long. However, if you want to bring in the entire payment at once, that is fine.

B. Your paperwork

When you come back with your initial payment, we will give you a receipt and paperwork to fill out. It is not the court paperwork. We do the court paperwork. The paperwork we give you will be necessary so that we can do the court paperwork. It will be divided into essentially two categories. The first category are your assets. You must list everything you own. Do not list your children's items, they are not filing bankruptcy. If only you are filing and your spouse is not, you still need to list jointly held property, such as furniture. Simply indicate next to the item that it is "joint".

In addition to your list of all assets, we will need a second set of information. The second set of information we need relates to your creditors. We will need a list of every single creditor that you have. The list must include their name, address, zip code, account number, if you have one, and an approximate balance owed on the account. It is not necessary that the credit card account balance be absolutely correct, just in the ball park. It is very important that you be careful in the preparation of your list of creditors. If you

leave a creditor off, they will not get notice. If they do not get notice, the debt may not get wiped out in some situations.

If, after signing your bankruptcy petition, you find that a creditor [or, for that matter, an asset] has been omitted from your schedules or statement of financial affairs, as long as your case is still open, which it will be for five months or so, we can amend your schedules to add that creditor. The Bankruptcy Court will charge you twenty six dollars. However, if the debt greatly exceeds twenty six dollars, then it is not such a bad idea to add the debt. Then, too, failure to schedule an asset is serious business if it is discovered before you have amended your schedules. Let us know as soon as you discover any errors or omissions in your schedules or statement of financial affairs.

C. Our paperwork

After you bring your paperwork back to us, give us seven business days after you have finished paying to prepare your actual court papers, petitions, schedules, etc. We will then set up a time for you and/or you (and your spouse, if applicable) to come in and sign the papers. You will be in the office for about an hour and a half. There will be a great deal to sign, initial, go over, etc. You will be signing the petition under penalties of federal perjury. We will correct any errors or omissions you find when you meet with us to go over the petition. We certainly do not want you to be our first client in twenty five years to go to prison for bankruptcy fraud (leaving off assets, hiding assets, debts, or disclosure). After you have signed all of the paperwork, we will file it on our next batch filing day, generally around the 15th of every month. There is nothing filed on the Eastern Shore. It is all filed up in Baltimore City at the United States Bankruptcy Court. Once your papers are received by the court, the court will enter an order that stops your creditors from calling you, suing you, and anything else. Because the court system has over a million bankruptcies going through it each year, it will take the court three or four weeks to get the notice out to your creditors. However, your bankruptcy is effective once it is filed. Because your creditors will not know about your bankruptcy for three or four weeks, they may continue to call you. If they do, keep my business card next to the phone. If they call, tell them "Please call our lawyer, Alexander Gordon, IV, at 1-410-822-3702." Our fee covers everything in a standard bankruptcy, including handling those phone calls. Do not waste your time trying to explain it to them.

D. Meeting with the Trustee

The next time we meet will be about six weeks after you file bankruptcy. In every case the Department of Justice appoints a Trustee. The Trustee's job is to look over your paperwork and make sure that everything has been properly filled out. If there are valuable assets that you are not able to keep, it is the Trustee's job to sell them. The Trustee is a private attorney, such as myself. In fact, for eight years, I handled most of the cases on the Eastern Shore for the Department of Justice as their Trustee. The meeting with the Trustee will take place in Salisbury unless you live in Kent or Queen Anne's County or on the Western Shore, in which case it will take place in Baltimore City. Either I will be there or an attorney I work with, such as Chris Fascetta, will be there. The meeting with the Trustee will last only about six minutes. It is like getting a passport. The Trustee will then stamp your paperwork and send it back to Baltimore where it will sit for

eight weeks. If you have robbed a bank, killed an old lady for her money, or something like that, then you will be invited up to Baltimore by the bankruptcy judge to meet with him to talk about it. Assuming that you have not robbed any banks or killed any old ladies for their money or that sort of thing, you will never see the inside of the federal court house in Baltimore nor will you ever see a real federal bankruptcy judge. As long as there are no assets for the trustee to sell, your case will be closed fairly promptly.

E. Other things to keep in mind

For most cases, this is the totality of the bankruptcy procedure. There are a few other items to keep in mind.

First, if you have **real estate** that you hope to keep, and you want to sell it or mortgage it later on, you must make sure that you have received both your discharge order and that you have also received the order closing the case. **There are two separate court orders and you must have both of them before you can sell or mortgage your real estate.**

Second, if you receive an **income tax refund** after you file bankruptcy, if it is too large for you to schedule under your exemptions, you may have to turn it over to the trustee. This rarely happens. However, if you are entitled to a \$50,000.00 income tax refund, you can be certain that it is property of the bankruptcy estate for your creditors and not for you. You are required to disclose to the trustee income tax refunds that you receive while your case is still open. Before you spend the money, check with us.

Third, if anyone dies within 180 days of filing your bankruptcy petition, that **inheritance** becomes part of your bankruptcy estate. You must disclose the inheritance to the trustee and you cannot spend the money. Remember, it is the death within 180 days that counts, not the distribution of the money in the 180 day period.

The day you met with me or contacted our office and received this booklet is a very special day. ***Now that you know about bankruptcy, you must not attempt to take advantage of the system. Put away your credit cards. Do not go out and buy expensive products or luxury items on your lines of credit.*** Do not pay for your bankruptcy with your lines of credit. Your creditors will know the day that you came to see me or called us. If, after today, you go on a spending spree for the next three or four months, your creditors will not appreciate it. They will ask the court to deny your discharge because of your conduct. Also, related to this, keep in mind that you cannot go around giving away expensive assets to defeat the system. Any gift that you make within one year of bankruptcy which exceeds \$1,000.00 is going to be questioned by the court. People who are heavily into debt should not be giving away their cars and their appliances to their children and friends. So do not attempt to hide assets by concealing them or by giving them to a friend. Finally, within 90 days of filing bankruptcy you should not go and make payments on "old" accounts. You can keep making your regular monthly payments right up to and through bankruptcy on your telephone, your rent, etc. What I am talking about here are old bills. For example, suppose you owe a friend of yours \$10,000.00 from three years ago, do not go to your friend and repay them at this time. It is called a preference.

The trustee will make them give the money back. It is not up to you to decide who does and does not get paid, based on who you do or do not like.

If you borrow the money for your bankruptcy from a friend or family member, you may not have any legal obligation to repay them, but you will certainly feel a moral obligation. You will be glad to know that it is legal to repay a family member or friend after you file bankruptcy with money that you earn after you file bankruptcy. That is legal.

IV. CONCLUSION

Finally, the timing for your bankruptcy is entirely up to you. For example, a real estate broker will want to file bankruptcy after he or she receives all of his outstanding commissions and has an opportunity to spend them. A pregnant woman may want to wait until after the delivery of her child where she does not have medical insurance. A person who is sick and receiving medical treatment without insurance, would want to wait until most of the treatment has been received. If in divorce, you may want to wait until the State Court Judge has ruled on alimony, child support, and the like. If your creditors are not bothering you, you may want to wait until they do. If you are giving up your house but want to live there rent free as long as possible, file the day before the auction. If you do not want to lose your home, you **MUST** file before the hammer comes down at the auction. If you want to stop a pending wage garnishment, you should file as soon as possible. The timing for bankruptcy is entirely up to you.

Where you owe income taxes, keep in mind that they must be more than three years old (extended if you received extensions or did not file) and the assessment itself must be more than two hundred and sixty days prior to the filing. So the timing for filing the bankruptcy petition could be critical for a discharge of income tax obligations. *Be sure to look into this carefully **WITH YOUR ACCOUNTANT** if you owe back income taxes.*

Remember, if you are also filing bankruptcy for your corporation, the corporation must completely shut down and cease doing business. We need all shareholders to sign a consent Board of Director's Resolution to file bankruptcy. The moment the bankruptcy petition is filed in Baltimore the corporation **SHUTS DOWN**. Corporate checks that are received post-petition must be held for the Trustee. No exceptions. Our representation of a corporation, LLC, or partnership in bankruptcy does not include representation of any individual, shareholder, member, partner, officer, director or employee absent a signed retainer agreement and receipt of the fee.

This summarizes our discussion during your initial consultation. You will want to read the free information booklet that follows. It answers most of these questions from a slightly different angle. If you have any other questions or a specific problem, be sure to discuss it with me or my staff. Please keep this booklet and all papers you receive for ten years to save you money and aggravation later on.

I believe that you will find that you will feel as though a burden has been lifted from your shoulders. Most marriages are not able to long survive not having money for fun and entertainment. It is very difficult for a parent to be spending more money on Mr. Sears

and Mr. Mastercard than on their own children who need new shoes, food or medical care. Once this burden of oppressive debts is lifted from your shoulders, you will feel as though you have had a fresh start, which was the Congressional purpose for enacting the Bankruptcy Reform Act of 1978.

More information: http://www.russacklaw.com/chapter_13.html