

What is Bankruptcy?

Written by Alex
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The purpose behind a bankruptcy is to give the honest, but unfortunate debtor a “fresh start”. There is an automatic stay in a Bankruptcy that once it is filed, that generally that all collection activities or foreclosures, repossessions, court actions are put on hold.

There are two main types of bankruptcies. One is the simple bankruptcy, which is called Chapter 7 Bankruptcy.

Where the idea is that the debtor tries to keep the property and finds that their property is hopefully exempt property while the trustee is seeing whether the debtor has non-exempt property, and then the trustee will try and distribute those proceeds to the creditors.

Generally, most Chapter 7 cases are considered No Asset cases, meaning that the assets are protected or exempt. There are certain debts which are not discharged in a Chapter 7, examples of those might be student loans or domestic support obligations and that what would end up happening is if the petition was allowed is all other debt would likely get discharged, meaning you would not have to pay it.

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There is another type of Bankruptcy, which is called a Chapter 13 Bankruptcy and there are reasons why you do not qualify for a Chapter 7 based on either a needs test or income or other reasons including filing for bankruptcy in the past.

There are also tactical reasons for filing a Chapter 13.

Here what happens is the debtor keeps their property, but there has to be a plan that the debtor has to prove that they have sufficient income to support a 3 to 5 year plan; which they have to pay fully on secured debt such as on a auto loan and mortgages and this includes back money that is owed and non-dischargeable items.

In addition, the unsecured creditors would get a small portion of the debt paid, which might be pennies on

the dollar, but it depends on a formula that is used. Sometimes debtors facing mortgage foreclosures, there can be a real benefit to file a Chapter 13 and in today's economy sometimes certain home equity, lines of credit or second mortgages may be striped.

Chapter 13 plans are harder to complete where some statistics show that fewer than 50% of the Chapter 13 plans ever completed. There are other types of chapters of bankruptcies; including, Chapter 11, which is a more complicated type of bankruptcy primarily dealing with debt and business restructuring.