

THIS DOCUMENT, WHICH IS BASED ON GEORGIA LAW, IS INTENDED
TO INFORM NOT

TO ADVISE. NO ONE SHOULD ATTEMPT TO APPLY OR INTERPRET
ANY LAW

WITHOUT THE AID OF A LAWYER WHO KNOWS CRIMINAL LAW AND
COURT RULES,

BECAUSE THE FACTS OF EACH INDIVIDUAL CASE ARE DIFFERENT
AND MAY CHANGE

THE APPLICATION OF THE LAW.

WHAT IS A BANKRUPTCY?

Bankruptcy is a legal proceeding in federal bankruptcy court, by which a person who has more debts than he or she can pay seeks relief from those debts. The right to file a bankruptcy exists under the law, and this law was designed mainly to take care of serious problems with debts and to allow a fresh financial start.

The most common type of bankruptcy is straight bankruptcy. You may also hear it referred to as a Chapter 7 or liquidation proceeding. A person who files for such a bankruptcy is legally referred to as a debtor; the former designation of "bankrupt" is no longer used. A straight bankruptcy proceeding includes a court-administered sale of any of the debtor's property that does not fall under the exemption described below, with distribution of the sale proceeds to the creditors (persons whom the debtor owes). The result of a successful bankruptcy proceeding is a discharge in bankruptcy, which releases the debtor from payment of affected debts. Most of the information in this pamphlet deals with a straight bankruptcy proceeding.

There is also a special type of bankruptcy, called Chapter 13 bankruptcy. It is also sometimes referred to as a "wage-earner plan," although it is available to persons on welfare or with other kinds of regular income. In a Chapter 13 plan, a person continues to pay off debts under an installment payment plan administered by a trustee. There are some advantages of Chapter 13 in dealing with secured creditors, such as mortgage companies and banks, who might otherwise repossess property of the debtor. And, a Chapter 13 plan may extend the time to pay off debts and reduce the amount to be paid. The plan suspends legal and collection actions against the debtor for the period it is in effect, which is usually three or five years, and it may also suspend such actions against persons who co-signed loans with the debtor, such as friends or relatives.

WHO CAN FILE BANKRUPTCY?

In general, any person or business can file for bankruptcy. There is no minimum amount of debt required; however, in most cases, a person who files does owe considerably more in debts than he or she can pay.

WILL ALL MY DEBTS BE DISCHARGED IF I FILE FOR BANKRUPTCY?

No. A debtor will still owe certain debts, including some taxes, alimony and child support, fines and certain other non-dischargeable debts.

WILL I BE ABLE TO KEEP ANY PROPERTY IF I GO BANKRUPT?

Yes. Certain property is exempt from a bankruptcy proceeding and can be kept by the debtor. There is a choice for the debtor between a state or federal exemption standard.

The Debtors, aggregate interest, not to exceed \$5,000 in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence or in a burial plot for the debtor or a dependent of the debtor. If a husband and wife file together, the above amounts under the Georgia standard are doubled.

There are other exemptions that apply to specific types of property and situations. The exemptions apply only to equity in real or personal property, which means that if property has been placed as security for a loan (such as a mortgage on a residence or a lien on the title of a car), the availability of the exemption may be affected.

DOES MY SPOUSE HAVE TO FILE WITH ME?

No. Although one advantage of filing together is the doubling of the amount of exemptions, there is no requirement that a husband and wife file bankruptcy together. In some instances, if most debts are owed only by one spouse, it may be appropriate for that spouse to file alone. But, jointly owned property may be affected if only one spouse files. And, in most cases, a husband and wife have the same debts or have co-signed the same loan agreements. If only one spouse files in this situation, the creditors can continue to demand payment from the spouse who did not file.

WHAT IF I HAVE NO ASSETS?

Only property of the debtor which is not exempted is available to be sold and used toward payment of debts. Many persons, including those in low and middle income ranges, may only have property which falls under the exemptions and therefore have no assets available to be sold to pay creditors. The absence of such assets will not affect the bankruptcy. And, as in cases where there are assets available, creditors in a "no-asset" case will not be able to sue the debtor after the bankruptcy is filed.

WILL I BE ABLE TO OWN ANYTHING AFTER BANKRUPTCY?

As a general rule, there is no limitation on the future ability of a debtor to own or acquire real or personal property. In most cases, creditors whose claims are discharged in bankruptcy will not be able to take property or earnings acquired after the filing of bankruptcy. However, some special types of interests, such as inheritances, property settlements, and life insurance proceeds, if acquired within six months after bankruptcy, may become available for payment to creditors.

HOW WILL BANKRUPTCY AFFECT MY CREDIT?

Bankruptcy may appear on a person's credit record for ten years. It may hamper access to credit for a time. Yet, at the same time, a person contemplating bankruptcy may already have a poor credit rating. In some cases, bankruptcy may actually improve the ability to obtain credit, since many of the debtor's former debts are discharged. Your local credit bureau may be able to provide information about the policy of lenders and creditors in your area with regard to the effect of bankruptcy on a person's ability to obtain credit.

HOW WILL BANKRUPTCY AFFECT PERSONS WHO CO-SIGNED LOANS WITH ME?

A person who co-signed with you on a loan may still be held responsible for the debt if you file for straight bankruptcy. A Chapter 13 bankruptcy may suspend legal and collection actions against your co-signers for some time. Your attorney will explain the effect your bankruptcy will have on anyone who co-signed with you.

CAN MY CREDITORS PREVENT A DISCHARGE?

Under limited circumstances, a creditor may be able to block a bankruptcy discharge of his debt. If a creditor can prove that he gave a loan in reasonable reliance on a financial statement which was false in important details and given with the intent to deceive him, he may avoid having the debt discharged. If a creditor tries to avoid the discharge for this reason and fails, the bankruptcy judge may order the creditor to pay of the debtor's attorney fees and costs in defending the action.

It is also possible for the bankruptcy court to set aside any transfer of property made to conceal ownership or to avoid having it included in the bankruptcy, or made to defraud creditors. If this happens, the court can take the property and order it sold, with the proceeds distributed to the creditors.

These are just example of problems that may occasionally arise in a bankruptcy proceeding. They are among the many matters which you will discuss with your attorney.

CAN I FILE FOR BANKRUPTCY MORE THAN ONCE?

Yes, but there may be a limit on how soon you can file. Six years must expire from the date of a straight bankruptcy discharge before straight bankruptcy can be filed again. Following certain Chapter 13 proceedings, there is no waiting period for the filing of a straight bankruptcy. And, there is no waiting period at all for the filing of a Chapter 13 bankruptcy after any prior bankruptcy.

HOW CAN I TELL WHETHER I SHOULD FILE FOR BANKRUPTCY?

If you have only a few debts, it is advisable to contact your creditors to try to work out a payment plan with them, rather than filing for bankruptcy. Sometimes you can find assistance in avoiding bankruptcy by contacting a local consumer credit counselling agency, consumer credit bureau or legal services office.

If you feel bankruptcy may be necessary, you should consult an attorney. If bankruptcy is appropriate, you will need an attorney to handle the filing, explain all procedures, evaluate your exemptions and non-dischargeable debts, and attend to all the other matters involved in a bankruptcy proceeding. The attorney will also assist you in determining whether a Chapter 13 plan may be appropriate for you.

HOW CAN I LOCATE AN ATTORNEY TO ASSIST ME?

If you have limited income and feel that you cannot afford a private attorney, you should contact the legal services office nearest you to inquire whether you qualify for assistance. The legal services office will be listed in the yellow pages of your telephone directory under the heading of "Lawyers" or "Attorneys". If you want to locate a private attorney, but you do not know how to locate one who handles bankruptcy matters, you may contact the lawyer referral service for your county.