

Bankruptcy plans (continued)

Other Chapter 11 plans, as well as plans in Chapter 12 and 13, provide for the payment of creditors from future income. The failure to perform a plan may result in the dismissal of the bankruptcy case or the conversion of the bankruptcy case to another chapter under which the debtor can still qualify. Usually, these cases are converted to Chapter 7, and the debtor's non-exempt assets are liquidated.

What is involuntary bankruptcy?

Creditors holding claims against a debtor may initiate a bankruptcy by filing an involuntary petition against the debtor. Involuntary bankruptcies are available only under Chapters 7 and 11. Where a debtor has 12 or more creditors, an involuntary petition requires the participation of at least 3 creditors who hold unsecured claims totaling at least \$13,475 that are not subject to a bona fide dispute as to liability or amount. In a case where the debtor has fewer than 12 creditors, a single creditor may initiate an involuntary petition, but the creditor must have an unsecured claim of at least \$13,475 that is not subject to a bona fide dispute as to liability or amount. A "bona fide dispute" may involve a reasonable issue of whether the debtor is liable on the debt.

What information is required to file for bankruptcy?

(1) The names, addresses, contact persons of all creditors, together with the type of debt and amount of debt owed; (2) The source, amount, frequency, and reliability of the debtor's income, a list of all of the debtor's assets; and (3) A detailed list of the debtor's monthly expenses. The debtor cannot exclude assets or creditors. Failure to include any creditor or asset is a federal crime.

How can I get started?

Call Hawai'i Lawyer Referral & Info. Service at (808) 537-9140; or Wednesday evenings from 6:00 p.m. - 7:00 p.m. HST at (808) 537-1868.

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Disaster Legal Services (684) 258-9830 Bankruptcy Issues

What is bankruptcy?

Bankruptcy is a federal law governed by the United States Bankruptcy Code. Bankruptcy cases are filed in federal bankruptcy courts. A bankruptcy case is commenced upon the filing of a bankruptcy petition. The person filing the petition is known as the "debtor", regardless of whether the person is an individual or some other entity like a partnership or a corporation. The petition and accompanying documents are forms that must be completed under penalty of perjury.

Where can I file for bankruptcy?

Because there is neither a bankruptcy court in American Samoa nor any provision designating American Samoa as part of any district with a bankruptcy court, there exists no court with jurisdiction to entertain a bankruptcy action when the debtor's residence, domicile, principal place of business, and principal assets are in American Samoa.

Usually, a debtor is required to file the petition in the federal bankruptcy court in the district in which the debtor has its domicile, residence, principal place of business or principal assets for the 180-day period preceding the filing, or the longer portion of that period than any other location.

Where to file for bankruptcy (continued)

Nevertheless, the U.S. Department of Justice has issued special guidelines for persons affected by natural disasters. The special guidelines provide that the Department will not raise or support objections to filing in a different location, if the debtor was displaced due to a natural disaster, unless the filing constitutes a systemic abuse or presents extraordinary circumstances.

The nearest federal district court in which to file for bankruptcy is in Hawai'i. If you file a bankruptcy petition in Hawai'i, the Hawai'i court may issue a judgment which is binding in American Samoa.

How much does it cost to file a bankruptcy petition?

The filing of a bankruptcy petition must be accompanied by the required filing fee, unless the debtor is an individual and either qualifies as unable to pay the filing fee or files an application to pay the filing fee in installments and sets out the appropriate basis for such application. As of November of 2008, the filing fees were as follows: Chapter 7 -- \$299.00; Chapter 11 -- \$1,039.00; Chapter 12 -- \$239.00; and Chapter 13 -- \$274.00.

The filing fee covers only the filing of the petition. It does not include lawyers' fees and other fees that may be required to prepare the petition and other documents required for filing or required during the bankruptcy case.

What are the various types of bankruptcies?

The Bankruptcy Code provides several options for individuals and businesses to liquidate or to reorganize their debts. Each of these options is referred to by its chapter in the Bankruptcy Code. Some options, like Chapter 7 (liquidation), Chapter 11 (reorganization), and Chapter 12 (family farmers and family fishermen), are available to individuals and other legal entities.

Bankruptcy types (continued)

Chapter 13 (individuals with regular income) is available only to individuals. Chapter 13 permits individuals who are conducting business in their personal names as a "dba" to reorganize their assets and liabilities (including the assets and liabilities of such a business) by proposing a plan to pay creditors from future income. Chapters 12 and 13 provide inexpensive alternatives to the more complicated Chapter 11 reorganization. However, Chapters 12 and 13, unlike Chapter 11, have limits on the amount of debt the debtor can owe to creditors, so that some debtors doing business may not be able to qualify for Chapters 12 or 13.

What is an "automatic stay" and how can it help me?

The filing of a bankruptcy case under any chapter of the Bankruptcy Code triggers a statutory injunction against the commencement or continuance of most actions by creditors against the debtor or the debtor's property, such as starting or continuing collection actions, like lawsuits, repossessions, foreclosures and dunning letters or telephone calls. This injunction is referred to as the "automatic stay." The automatic stay is one of the most important features of bankruptcy.

This is helpful because it provides debtors with a breathing spell to get its financial situation in order and make a fresh start. In some cases (Chapters 12 and 13), the automatic stay also protects certain types of persons who are liable with the petition filer from actions by creditors.

How does bankruptcy help me discharge my debts?

Each type of bankruptcy offers a discharge of certain debts of the debtor. However, the type of debts discharged and the qualifications to receive a discharge vary with each chapter and also vary among the different types of debtors.

Discharge of debts (continued)

For example, a debtor other than an individual can receive a discharge only by having a confirmed plan of reorganization in a Chapter 11 case that proposes to continue the business of the debtor. Once a debt is discharged, it can no longer be collected from the debtor. Creditors are enjoined from collecting their debts except as provided in the plan (in Chapters 11, 12 and 13) or in the discharge order (in Chapter 7). However, if the debt is secured by property of the debtor, like a car or a house, the creditor can continue to collect its debt against the property, subject only to the terms of the plan that might be in place for the debtor.

Can bankruptcy help me claim that some of my assets are exempt from creditors' claims?

Certain assets of an individual debtor are exempt by the Bankruptcy Code or by applicable State law from the claims of creditors. Exempt assets can be retained by an individual debtor after filing for bankruptcy and cannot be sold by a trustee in bankruptcy to pay the claims of creditors. Whether an asset is exempt often will depend on applicable State law. While the Bankruptcy Code contains a list of exempt assets, each State is entitled to opt out of the Code's exemptions and adopt its own exemptions. Whether a particular asset is or is not exempt is not always clear and is sometimes the subject of dispute.

What are bankruptcy "plans"?

Every chapter, except for Chapter 7, contemplates that the debtor will file a plan to pay creditors. Chapter 7, on the other hand, provides for a liquidation of the debtor's assets by a trustee in bankruptcy. The trustee takes title to the debtor's assets, sells non-exempt property, and distributes the proceeds to creditors. Chapter 11 can also be used to liquidate the debtor's assets, but the liquidation must be done under a plan that is approved by creditors.