

CAN BANKRUPTCY HELP?

Who needs bankruptcy?

- those with debts but no reserves, retirement or expectation of ever paying off debt
- those with non dischargeable debts like taxes or support & dischargeable debt
- those with no objective exposure to creditors where debt degrades quality of life

Bankruptcy unnecessary

- Debt small or income expected to increase
- All assets and sources of income exempt from creditors

Bankruptcy alternatives

- Debt management programs thru reputable counselors www.cccssf.org
- Avoid debt settlement programs-they don't work
- Cutting off collection calls via do-not-contact rights - CA Rosenthal Act

What bankruptcy discharges

- Unsecured debts: credit cards, loans, old tax debt, medical bills & judgments
- Pending or potential claims from auto accidents or other negligent torts
- Liens remain charge on the collateral unless avoided in bankruptcy

Debts that survive bankruptcy

- Child support or alimony
- Recent or unfiled taxes
- Student loans

Exemptions protect most typical assets

- State exemptions in CCP 704 protect listed assets in and out of bankruptcy
- Bankruptcy filers can use CCP 703 or 704 (but not both) to keep assets
- Exemptions apply to the equity in asset after deducting any liens

Retirement savings fully protected

- Social Security, worker's comp, and disability payments totally safe
- Pensions, 401(k)s and IRA's beyond reach of creditors

Mortgage debt options

- Modification through HAMP (makinghomeaffordable.gov) or lender's programs
- Cure arrears in Chapter 13 bankruptcy; Strip off underwater junior liens in 13
- Utilize HUD certified housing counselors: Project Sentinel 650 321-6291
- Stop paying and await foreclosure---it takes a long while

Bankruptcy impact on future credit

- Immediate effect of bankruptcy on credit worthiness both positive & negative
- Most folks considering bankruptcy don't have meaningful credit
- Hit to credit score heals over time well short of 10 years

Bankruptcy in a Nutshell

Filing	Spouses can file alone; only spouses may file together Bankruptcy paperwork must list all debts, dischargeable or not, even if disputed
Chapter	Chapter 7 is a liquidation where trustee may sell non exempt property Chapter 13 debtor keeps assets & makes payments of part of debt over time
Assets	All community property comes into bankruptcy estate, even if only one files Trustee can claw back property given away, retitled, or hidden
Exemptions	Filer can elect one of two CA exemption schemes to select property to keep Exempt property is safe from creditors with unsecured discharged debts
Value	Trustee values assets at fair market value, not purchase price or replacement Trustees do not sell assets with no meaningful equity after liens and exemptions
Duration	Chapter 7, from filing to discharge, generally runs 4-6 months Chapter 13 runs 3-5 years, with discharge entered at after last payment
Eligibility	Chapter 7 discharge available every 8 years Above median income earners must complete means test to determine chapter
Discharge	Discharge in bankruptcy permanently wipes out personal liability for debt Voluntary liens on assets generally survive bankruptcy
Scope	Debts for recent taxes, court ordered support, student loans not dischargeable Debts incurred by fraud, dishonesty, or intentional bad acts may survive
Liens	Judicial liens impairing exemptions can be eliminated Liens securing equalizing payments generally can't be altered
Stay	Bankruptcy filing automatically stops collection of debts existing at filing Foreclosures and garnishments halted
Support	Support is not dischargeable in bankruptcy Support is priority for payment; must be paid in full in Chapter 13
Taxes	Income taxes more than 3 years in past for which return filed dischargeable Tax liens can be paid or pared down in Chapter 13
Trustees	Chapter 7 trustee administers assets with non exempt equity after costs of sale Chapter 13 trustee is disbursing agent for plan payments made by debtor