

## **New bankruptcy law will still allow debtors to obtain a fresh start**

The Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCA) that took effect October 17, 2005, has added a few new twists to filing bankruptcy. However, those who deserve a fresh start will still be able to get relief from their debts.

If you have high medical bills, lost your job, are going through a divorce, or have other sorts of financial problems, you can still start over.

Here's what you can expect:

### **Credit Counseling requirement**

You will have to go to an approved credit counseling service within 180 days before filing a Chapter 7 or 13 for a "briefing," and after the filing you will have to attend financial education classes (again given by an approved agency) following filing. The certificate stating you have attended the counseling will have to be filed at the Bankruptcy Court.

### **Counseling fees**

Paul Atkinson, president of Consumer Credit Counseling Services of Buffalo, says the fees at his agency will be \$50 for the briefing and \$50 for the financial education. Married couples can attend at the same time and each get a certificate, but the fee will remain at \$50 for the couple for each section of the counseling.

### **Current Monthly Income documentation**

For a Chapter 7, you will have to provide your attorney with your two previous years of tax returns and 60 days of recent pay stubs. In a Chapter 13, your attorney will need the previous four years of tax returns and 60 days of pay stubs.

Your Current monthly income (CMI) will be based on your income over the past six months.

### **The `Means Test`**

Only 10 to 15 percent of debtors will have to undergo the “Means Test.”

If your income is over the median income (in New York this is \$39,463 for a single person; \$48,496 for a family of two; \$57,430 for three; \$67,564 for four; and \$73,864 for five) you will have to undergo the “means test.”

There are certain expenses allowed (for basic needs such as rent or a mortgage, food, transportation, etc.) that the IRS has said are reasonable. Many actual expenses are also allowed. When you do a means test these expenses are deducted from your income. If you have more than \$166 per month left over, you will most likely have to file a Chapter 13 plan and repay part of your debts over three to five years.

### **Other `Means Test` considerations**

In another scenario, if the income left after the means test is between \$100 and \$166 and that amount would allow you to pay off 25 percent of your unsecured debts over five years, you will probably have to go into a Chapter 13 plan.

For example, say you have \$100 a month left after you pay your living expenses and you owe a total of \$24,000. The court would want you to do a Chapter 13 plan paying the \$100 a month for 60 months. After the 60 months, you would have paid \$6,000 or 25 percent of your total debt. The remainder would be discharged.

### **Special exceptions**

The courts may make some exceptions and allow a Chapter 7 if the debtor can show special circumstances, but these will be determined on a case-by-case basis.

If the excess income after the means test is under \$100, then most likely the debtor will be able to file a Chapter 7.

### **Exemptions**

Under the previous law, clients were allowed certain exemptions according to the laws of the state in which they filed.

The new law states, however, that if you lived in any other state than the one in which you are filing within two years of filing your petition, the local state exemptions might not apply. The exemptions allowed will be those of the state you lived in during the longest part of the 180-day period before the start of those two years.

### **Notifying creditors**

Your creditors may give you a specific address that is the only address where they will officially receive notices of your intent to file a Chapter 7 or Chapter 13.

If your creditor doesn't receive a notice at that specific address, any material goods (cars, televisions, computers etc.) that would normally be protected by automatic stay can be repossessed at no risk to the creditor.

### **What debts can be discharged?**

There are also new rules on what debts are dischargeable under Chapters 7 and 13.

If you have purchased a luxury item valued at \$500 within 90 days of filing, or taken a cash advance of \$750 or more within 70 days of filing, it is possible that those debts will not be discharged under a Chapter 7 or a Chapter 13.

If the Court determines you incurred credit card debt knowing you might file bankruptcy, the amount you owe might not be forgiven in Chapter 7 or Chapter 13.

### **Longer time periods between filings**

Debtors will not be eligible to get another Chapter 7 discharge for eight years after filing a Chapter 7. Previously you could file again after six years.

If you file a Chapter 13 plan you cannot get a Chapter 7 discharge for four years after filing the Chapter 13. A second Chapter 13 plan cannot be filed until two years have passed after filing the first.

### **`Cram downs' on motor vehicles in Chapter 13**

The `Cram down' allows the client to pay the fair market value of the car not what is owed.

Chapter 13 debtors will not be able to “cram down” secured claims as easily as in the past.

For example, if you took out a car loan less than two and a half years before filing your petition, you will have to pay the full amount of the loan.

If, however you took out a car loan more than two and a half years prior to filing, you would be allowed to ‘cram down’ and pay the NADA retail value (Blue Book price) instead of what is owed on the contract.

### **‘Cram downs’ on other goods**

For other secured items, if the purchase was made within the past year you must repay the full amount of the loan. If the purchase was made more than 365 days prior to filing you can “cram down” and only pay back the fair market value (what the goods would sell for second-hand).

### **BAPCA is a new challenge**

BAPCA is going to be a new challenge for attorneys in their efforts to help clients who have fallen on financial hard times through job loss, serious illness or injury.

Jeffrey Freedman Attorneys has been a leading law firm in filing personal bankruptcies. The firm has helped over 25,000 clients since 1980. Our attorneys and paralegals have learned the new law inside and out.

We will continue to do our best to help clients who deserve a fresh start get relief from their debts.

