

BANKRUPTCY



**Office of the Staff Judge
Advocate
Eielson AFB, Alaska**

354 FW/JA

**Legal Assistance & Preventive
Law
Pamphlet Series**

As of 3 January 2017

INTRODUCTION

Bankruptcy is a set of federal laws and rules that can help individuals who owe more debt than they can pay. Bankruptcy cases cannot be filed in state court. Bankruptcy laws help people who can no longer pay their creditors get a fresh start by liquidating their assets to pay their debts, or by creating a repayment plan. At the same time, a trustee of the court can sell the person's property (unless it's exempt) and divide the proceeds to pay off the person's creditors.

SHOULD I CONSIDER BANKRUPTCY?

It is your statutory right to declare bankruptcy. However, the exercise of that right has consequences. The Air Force views bankruptcy in a strictly neutral light. In fact, it is illegal for any federal or state agency to discriminate against you for the exercise of your right to declare bankruptcy. However, this does not mean that filing for bankruptcy won't affect your military career. It can affect your security clearance as well as other aspects of your military career specific to your career field. Additionally, private agencies can, and do, discriminate against people who declare bankruptcy.

The decision you must make is whether or not the consequences in terms of lost credit and discrimination outweigh the benefits. Those benefits can be quite substantial. Virtually all your unsecured debt will be wiped out. You will have a fresh start. On the other hand, you will have at least seven years of bad credit. Make your decision carefully.

EXEMPT PROPERTY IN ALASKA

Under the Bankruptcy Code, "exempt property" is defined as certain property owned by an individual debtor that the Bankruptcy Code or applicable state law permits the debtor to keep from unsecured creditors. The availability and amount of property the debtor may exempt depends on the state the debtor lives in. Debtors who file bankruptcy

petitions in Alaska may claim either state or federal exemptions. Alaska state law provides for the following exemptions:

- Up to \$54,000 equity in a house. AS § 09.38.010.
- 20% of a permanent fund dividend. AS § 09.38.015 & AS § 43.23.065.
- The interest of the individual in a retirement plan and the money or other assets payable to the individual from a retirement plan. AS § 09.38.017.
- Certain household items provided the total value is \$3,000 or less, which includes household goods, wearing apparel, books, musical instruments, family portraits, and heirlooms of sentimental value to the individual. AS § 09.38.020(a).
- One motor vehicle to the extent of a value not exceeding \$3,000 if the full value of the vehicle does not exceed \$20,000. AS § 09.38.020(e).
- With some limitations, unmatured life insurance and annuity contracts owned by the individual. AS § 09.38.025.
- The individual debtor's weekly net earnings not to exceed \$350. AS § 09.38.030.

Your property is valued at the time of filing; not at the time you purchased it. It is assessed at fair market value, which is the amount someone would pay for your property if it were to be sold.

Additionally, in some cases, a married couple may be able to claim a **double** exemption amount.

There are exceptions to the exemptions if you owe child support, spousal support, or state and federal taxes. To satisfy these debts, you might be forced to sell exempt property.

HOW DOES BANKRUPTCY WORK?

Bankruptcy begins by filing a petition in federal bankruptcy court listing your debts and property. The filing of the petition automatically prevents, or “stays,” debt collection actions against the debtor and the debtor’s property. A bankruptcy trustee then holds a hearing to review the petition, determine your debts, and plan repayment.

Non-exempt property may then be sold and the proceeds divided among the creditors. Property worth more than the exempt amount may be sold and the exempt amount returned to you. For example, if you own a house worth \$120,000, the trustee can sell the house and give you back \$54,000, the exempt amount.

Later, a second hearing will be held where you may receive a final discharge from your debts.

WILL BANKRUPTCY CANCEL ALL DEBTS?

No, not all debts are discharged. Therefore, the debtor must still repay the nondischargeable debts after bankruptcy. The most common types of nondischargeable debts are debts for spousal or child support, state or federal taxes, most student loans, and any debts that you failed to list in your bankruptcy petition. Also, any debts procured by fraud will not be discharged by bankruptcy. Bankruptcy may not cancel “secured debts.” A debt is secured if you gave the seller or the money-lender the right to repossess the property or goods used as collateral.

If you are married and your debts arose during the marriage, both spouses need to file bankruptcy or all the debts will be transferred to the other spouse.

BANKRUPTCY AND CREDIT

Not all creditors react the same way to bankruptcy, but your credit will be hurt. This does not mean that you will not be able to obtain credit. Some companies extend credit to individuals that have

declared bankruptcy because they know that you can only file bankruptcy once every six years. However, the interest rates on such credit may be abnormally high.

ALTERNATIVES TO BANKRUPTCY

Contact your creditors, explain the situation, and ask if they will agree to restructure your debts so that you can meet the revised payments.

You can consult with a “Consumer Credit Counseling Service” which will assist you in finding a way to pay your debts and help negotiate with your creditors. This is a non-profit service that charges a modest fee to assist you.

Another alternative is a “Debt Adjustment Plan” under Chapter 13 of the Bankruptcy Code. Under this court-controlled plan, debtors are allowed to pay their bills through the court over a specific period of time. During this time the law forbids creditors from starting or continuing collection efforts.

WHAT NOT TO DO

Avoid finance companies that offer debt consolidation plans. Many of these companies charge high interest rates.

This pamphlet is for basic information on bankruptcy as it relates to military personnel stationed in Alaska. It is not intended to take the place of legal advice from a Judge Advocate. There may be important exceptions in some states to the information presented here. Please contact the 354th Fighter Wing Legal Office for questions and further information.



354 FW/JA
Tel: (907) 377-4114 / DSN 377-4114