

**This is the year of government. Many have prophesized that the people will rise up this year and restore justice.**

## **Bankruptcy**

**Compiled by Shawndrica Simmons, Esq.**

**What is Bankruptcy?** Bankruptcy is a legal proceeding in which a person can get a fresh financial start. Bankruptcy can be very useful and effective in resolving financial problems in certain cases. However, it is not the answer to all financial problems or the right step for everyone. Also, it can be very important to choose the right time to file for bankruptcy relief.

For instance, in general, you should always wait as long as possible before filing bankruptcy because you can do so only once every six years. In most cases, you will want to save this valuable option until you really need it. Also, you may not need to file bankruptcy even though creditors are threatening you because you may have no nonexempt property or wages. This means you have nothing the creditors can take from you. You can't be put in jail for failing to pay your civil debts (other than fines or other court ordered amounts).

The only way to be sure bankruptcy is right for you is to discuss your situation with a lawyer familiar with bankruptcy. Every case is different, and laws change from time to time. This article gives you some basic information, but it does not substitute for consultation with an attorney.

### **Some things bankruptcy can do:**

- Eliminate the legal obligation to pay most or all of your debts. This is called a "discharge" of debts.
- Stop foreclosure of your home and allow you to catch up on missed payments.
- Stop repossession of a car or other property, or, in some situations, force the creditor to return property even after it has been repossessed.
- Stop wage garnishments.
- Stop debt collection harassment.
- Restore or prevent termination of utility service for nonpayment of previous bills (you will probably have to pay a deposit, but the deposit cannot be more than 1-1/2 to 2 times your previous regular bills according to the Arizona Administrative Code).
- Get your driver's license back if it has been suspended because you didn't pay court-ordered damages for a driving accident (unless you were driving under the influence of drugs or alcohol).

### **Some things bankruptcy can't do:**

- Eliminate certain rights of secured creditors. Some examples of secured debts are car loans and home mortgages. You can force secured creditors to take payments over time, but generally, you cannot keep the collateral unless you continue to pay the debt.
- Discharge debts that arise after the bankruptcy has been filed.
- Discharge certain types of debts, such as child support, alimony (spousal maintenance), certain other debts related to divorce, most student loans, court restitution orders, criminal fines, and most taxes.
- Eliminate the obligation of a co-signer on your loan in most cases.

## **Bankruptcy (continued)**

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Under the U.S. Constitution, you have the ability to relieve all or part of your debts when you can no longer meet your obligations to creditors and lenders. Two major types of personal bankruptcy apply to consumers. **Chapter 7 bankruptcy** allows debtors to discharge all or part of their debt. In **Chapter 13 bankruptcy**, debtors repay all or part of their debt based on a payment plan.

**In Michigan, you have the choice of using the federal exemption statutes instead of your Michigan exemptions.**

An exemption limit applies to any equity you have in the property. Equity is the difference between the value of the property and what is owed on the property. For example, a car valued at \$5000 with a loan of \$4500 has an equity value of only \$500.

If the property is secured by a loan, such as a car or home, and you are current on the payments, the equity is covered by your exemptions, and you elect to keep making payments on the loan you generally can keep this property through the bankruptcy. If all the equity is not covered by your exemptions the trustee may elect to liquidate this asset and distribute the assets. Generally, in this case, you would be entitled to the value of your exemption in the asset as a cash payment.

Bankruptcy law allows married couples filing jointly to each claim a full set of exemptions, unless otherwise noted.

To keep non-exempt property, a debtor must generally pay the trustee the value of the non-exempt property.

When you file bankruptcy in Michigan you may also use certain federal exemptions in addition to your Michigan exemptions.

### **Michigan Bankruptcy Exemptions**

1. Homestead (real property, property held as tenancy by the entirety)
2. Insurance (disability, health, mutual life, endowment, annuity, life)
3. Property of business partnership
4. Pensions
5. Personal Property (appliances, burial plots, clothing, food & fuel to last at least 6 months)
6. Public Benefits (AFDC, Unemployment, workers' comp, veteran's benefits)
7. Tools of Trade (arms you are required to keep, tools, motor vehicle)
8. Wages (60% of earned but unpaid wages for head of household)