Chapter 7

A Chapter 7 case is often referred to as a "liquidation" or "straight" bankruptcy. Although it is the most common form of consumer bankruptcy, it is limited to persons who have gross income below a certain level. In a Chapter 7 case, the person (“debtor”) is forgiven from paying certain debts in an attempt to provide a "fresh start" on life. The debtor is permitted to keep a certain amount of belongings (“exempt property”) while a Trustee collects all of the "non-exempt assets" and sells them in order to pay as much to the creditor as possible. Creditors get paid in order of their priority, with debts such as child support, taxes, and trustee expenses being paid first.

Certain property is exempt, such as a vehicle of up to $5,000 for each person who is filing, equity in your primary residence of up to $60,000 ($90,000 if you are over age 60), retirement accounts and benefits, and various types of household goods and personal property. In most cases, the debtor does not own sufficient non-exempt assets of value to make it worth the Trustee’s efforts to collect and sell them. In this case, the proceedings are closed as a "no asset" case. If you do have non-exempt property worth collecting by the Trustee, the debtor is often given the opportunity to keep these assets by making a payment equaling the value of those assets to the trustee over several months. If you are unable to make enough payments to keep this "non-exempt" property, the Trustee will sell it.

Secured debts can be either dumped (and the collateral returned to the lender) or you can continue making the regular payments and keep the collateral. However, if you are behind in making your regular car or house payments, a secured creditor will normally be permitted to foreclose or repossess that collateral as normal. If you are behind on a secured loan and you want to keep the collateral, you may want to consider filing a Chapter 13 case.

In a Chapter 7, usually the largest portion of debt is unsecured debt, such as medical debts, credit card debts, and loans that are not backed by collateral. These "unsecured debts" are typically discharged in a Chapter 7 case and you do not owe the debt any further. However, there are certain types of debts that cannot be discharged and you will continue to owe these despite filing a bankruptcy. These include most taxes, student loans, divorce obligations (child support, alimony, custody fees, etc), and debts that you incurred due to illegal acts or fraud. This is a complicated area and is one of the reasons you should speak with an attorney if you have any unusual or suspect debts.

Basically, “In a Chapter 7, you are saying to creditors, I may have a job, but my debts are eating up my income so I can’t afford to pay you,” said Robert Cohen. “In other words, you need to dump the debt.”

Upon filing your Chapter 7 case, bankruptcy will brings an automatic stop to collection calls, collection law suits, judgments, garnishments, pending car repossessions and even home foreclosures. This may give you some breathing room. However, the mortgage company or car creditor may still pursue their rights to take your house or car at a later date if you remain behind on payments. Still, Chapter 7 bankruptcy may give you the critical time you need to eliminate or renegotiate your debts.

Unless your case is VERY simple, the bankruptcy laws are NO LONGER simple. In fact they are so complex that even attorneys (especially those who have not practiced in the field of bankruptcy for a substantial number of years or have recently become "bankruptcy lawyers" because of a lack of divorce and other types of work) often make mistakes to the client's detriment. It is a complex and detailed type of law. Be sure to talk to a bankruptcy attorney before going forward.