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If you've picked up this book, you probably have more debt than you can handle. You might feel overwhelmed by your financial situation and uncertain about what to do next. Maybe a friend, relative, or even a lawyer suggested bankruptcy is a huge mistake and will ruin your life. This book will help you sort through your options and choose the best strategy for dealing with your economic plight. It explains: how bankruptcy works how filing for bankruptcy under Chapter 13 (the two bankruptcy options for consumers) will affect your debts, property, home, and credit the procedures you'll follow and paperwork you'll have to complete to file for bankruptcy how to avoid common mistakes people make before, during, and after bankruptcy, and some alternative ways to handle your debt problems, outside of the bankruptcy, and some alternative ways to handle your debt problems, outside of the bankruptcy system. Armed with this information, you'll be ready to decide whether you qualify for Chapter 7 or Chapter 13 bankruptcy and, if so, which chapter makes the most sense. As you consider the strategies available to you, keep in mind that you're not alone. Despite the recent uptick in the economy, bankruptcy remains a necessary and pervasive part of our economic system. And bankruptcy might be just the ticket for you. You might be able to stop creditor collection actions (such as wage garnishments and bank account levies) and you: usually will be able to wipe out all or most of your debts in a Chapter 13 bankruptcy to stop foreclosures, reinstate mortgages, remove junior mortgages, and pay back a portion of your debts over three to five years and discharge the rest. Bankruptcy might seem like a magic wand, but it also has its drawbacks. And, because everyone's situation is a little bit different, there is no one-size-fits-all formula that will tell you whether you absolutely should not file. For many, the need for and advantage of bankruptcy will be obvious. Others will be able to reach a decision only after closely examining their property, debts, income, and recent financial transactions—and how persistent their creditors are. For some, simple nonbankruptcy options might do the trick—these are explained in Ch. 12 of this book. This chapter provides some basic background information about the two types of bankruptcies most often filed by individuals: Chapter 7 and Chapter 13. In the chapters that follow, you'll find more detailed information on the issues you are likely to be interested in, including: whether you are eligible to file which debts will and will not be canceled what will happen to your home, car, and other essential property items how your postbankruptcy credit will be affected how bankruptcy will affect your personal life, and whether you need to be represented by a lawyer or can represent yourself, perhaps with some outside help. Types of Bankruptcy Consumers and small business owners can choose from among several types of bankruptcy "chapters," including Chapter 7, Chapter 11, Chapter 12, and Chapter 7 bankruptcy, you fully disclose your property, debts, and financial activities over the past several years. Approximately three months later you receive a discharge (cancellation) of most types of debts and emerge with all or most of the property you owned going in—except luxury items and investment real estate in which you have equity. These are the types of property you might have to give up in Chapter 11. Chapter 11 bankruptcy helps a business stay afloat by encouraging negotiation and compromise by all concerned so that the business can keep going and at least pay the creditors something. While individuals can file under Chapter 11, the process is unaffordable for most primarily because attorneys' fees can easily surpass \$20,000. Even a business that starts off in Chapter 11 will often end up in Chapter 7, where the business is liquidated. Because this book is intended primarily for individual consumers, we don't discuss Chapter 12 and Chapter 13 are reorganization programs designed for individuals, except that Chapter 12 and Chapter 12 and Chapter 13 are reorganization programs designed for individuals, except that Chapter 12 and Chapter 13 are reorganization programs designed for individuals, except that Chapter 12 and Chapter 13 are reorganization programs designed for individuals, except that Chapter 13 are reorganization programs designed for individuals. everybody else, including farmers if they wish. Here we discuss only Chapter 13. As used in Chapter 13, the term "individual" includes sole proprietors and independent contractors, but not business entities, such as corporations or limited liability companies (LLCs). However, if you own a corporation or an LLC to operate a small business, you are still eligible to file for Chapter 13 as an individual and thereby get rid of your liability for the business debts (but your business will still owe the debts). In a Chapter 13 bankruptcy, you prepare and file the same basic forms as you do in a Chapter 7 bankruptcy. However, you also propose a three- or five-year plan under which you typically must repay certain types of debt in full (such as back child support) and usually some portion of your unsecured debt (such as credit card balances), although some judges will approve of plans that pay 0% of unsecured debt. Chapter 13 provides some remedies that aren't available in Chapter 7—such as the opportunity to pay off missed mortgage payments over the life of the plan so you can keep your house—but usually isn't the bankruptcy of choice because of three or five years. Chapter 7 is a three-month process that usually only requires the filing of some paperwork and one brief appearance before the bankruptcy trustee, the official appointed to handle the case for the court. You might have to make additional brief appearances before a bankruptcy judge if you seek approval of a reaffirmation agreement you signed in order to keep a car or other property you are making monthly payments on, or if a creditor wants payment for a luxury purchase made shortly before the bankruptcy filing. (You can learn more about the presumption of fraud in Ch. 2 and about reaffirmation agreements in Ch. 6.) Prefiling Credit Counseling Requirement Before you can file your papers, you must have completed a credit counseling session from a nonprofit agency, which typically costs about \$50 or less, depending on your income. The agency provides a certificate of completion that you file with your other papers. There are a couple of exceptions to this prefiling counseling requirement, discussed in Ch. 2. The counselor is available online, over the telephone, and through the mail. Take the time to shop around; you might be able to get counseling for much less. The Automatic Stay After completing the credit counseling, your next step is to file your case and obtain a bankruptcy filing number. You can do this by filing the full petition, or, if you need to file in a hurry, a shortened version known as a skeleton or an emergency petition (the remaining paperwork must be filed within 14 days). Either way, once you have a filing number, you have a powerful shield—called the automatic stay—against any efforts by most creditors to collect their debts. All you have a filing number, you have a filing number, the date of filing, and the name of the court in which you filed. The creditor will immediately back off. All proceedings to garnish wages, repossess cars, and foreclose homes will also grind to a halt, with a few exceptions. Collection of child support and alimony can proceed, and the stay may expire sooner than you would want if you have had a bankruptcy case dismissed in the previous year. Still, as a general rule, filing for bankruptcy will give you almost total relief from your creditors while the bankruptcy is pending. For more information about the automatic stay, see "How Bankruptcy stops Collection Efforts," later in this chapter. Lifting the Stay In some situations, creditors can successfully request that the court remove (lift) the stay in their particular situation. For instance, if the automatic stay derailed a foreclosure action, the mortgage owner can request permission from the bankruptcy judge to proceed with the foreclosure. Other common reasons for lifting the stay are car repossessions and evictions of month-to-month tenants. The Skeleton Petition Sometimes it's important to obtain a filing number fast. For instance, if you're faced with an imminent foreclosure or car repossession, you'll need the automatic stay to keep your house or car. But a complete bankruptcy filing involves a lot of forms and disclosure of information, and you might not have the time to prepare them all. Fortunately, you can file a skeleton petition, which requires just a few forms, and file the rest of your paperwork within 14 days. The required forms in a skeleton filing are: the petition (three pages plus exhibits) a mailing list of your creditors a form showing your complete Social Security number, and the certificate showing you've completed your credit counseling. The Big Choice: Use a Lawyer or Handle Your Own Case? When you file your bankruptcy, your case will automatically fall within one of two categories: You will be represented by a lawyer who will sign your petition as your petition as your representative. You will be represented by a lawyer who will sign your petition as your petition as your case will automatically fall within one of two categories: You will be represented by a lawyer who will sign your petition as your case will automatically fall within one of two categories: You will be represented by a lawyer who will sign your petition as your petition as your case will automatically fall within one of two categories: You will be represented by a lawyer who will sign your petition as your p If you are represented by a lawyer, the lawyer's responsibility is to help you select the type of
bankruptcy that will be most appropriate for your situation. If, on the other hand, you are acting as your own lawyer, you will be responsible for these same tasks. While print and online resources will give you the information you need to make informed decisions and properly complete the paperwork, you will be solely responsible for the outcome of your case. The court wants to make sure you understand these duties. It requires you to sign a form that explains: the different types of bankruptcies (discussed earlier) the services available from credit counseling agencies the penalties for knowingly and fraudulently concealing assets or making a false statement under penalty of perjury, and the fact that all information you supply is subject to examination by the employees of the U.S. Department of Justice. A Brief Description of the Chapter 7 Paperwork Ch. 9 gives you a more detailed look at these and other official forms, and in Appendix A, you'll find a list of the resources you can download from this book's online companion page, including a sample of the paperwork involved in a typical Chapter 7 case. The text that follows is just an overview. In addition to the paperwork required for a Chapter 7 skeleton petition, you'll need to file forms that: describe all your personal property and real estate, including where it is located and its approximate value provide information about your debts and creditors describe certain economic and financial transactions that occurred within the previous several years, such as property you sold or gave away within the previous two years, or certain payments you may have made to creditors, especially family and other "insiders" state how you want to handle debts concerning cars and other property that is collateral for loans (called secured debts) disclose your monthly income and monthly expenses state whether you want to keep any leases and contracts you have in effect or cancel them, and summarize your assets and liabilities. Also, you'll need to complete a form in which you provide your average monthly gross income figure will be your starting point for deciding whether you are eligible to file a Chapter 7 bankruptcy or whether you'll have to use Chapter 13. This form is popularly known as the "means test" and must be filed in every Chapter 7 case. The Creditors' Meeting About 30 days after you file your bankruptcy papers, you will be required to attend a hearing known either as the "creditors' meeting" or the "341 hearing." You and your spouse (if your spouse is filing with you) are required to attend. You both must bring photo identification and official proof of a Social Security number. This event is held in a hearing room in the courthouse or federal building, but not in the bankruptcy court itself. A bankruptcy trustee, the official appointed to handle your case for the court, conducts the meeting. Another official known as the U.S. Trustee might also attend your meeting and ask questions that bear on your possible ineligibility for Chapter? Decause of the creditors' meeting is to have you affirm under oath that the information contained in the papers you filed is honest, complete, and accurate to the best of your ability. The trustee might also question you about property you've described in your paperwork, to see whether you gave it a proper value and whether you have equity that could be used to make some payment toward your unsecured debt (debt that isn't secured by collateral). Also, the trustee might inquire further about: anticipated tax refunds recent large payments you are claiming as exempt, such as a house or car whether you should be required to proceed under Chapter 13 rather than Chapter 7 your failure to file any of the required documents, if applicable, and inconsistencies in information you provided that might indicate you are being less than honest. If you've done a good job on your paperwork, your income and expenses qualify you for filing under Chapter 7, and you filed all required documents, your participation in the creditors' meeting will likely be brief. Creditors rarely show up at these meetings, and the bankruptcy trustee is typically the only one asking the questions. Before ending the meeting, the trustee will ask whether all the information in your papers is 100% correct and whether you expect to receive any further money. The Role of Lawyers in Creditors' Meetings Many people hire lawyers to represent them because they don't want to attend creditors' meetings on their own. When the trustee and are expected to be knowledgeable about the information you provided in your papers. Having an experienced lawyer at your side can be helpful if anything you'll need to explain to the trustee requires legal analysis. Also, having a lawyer can help you relax and soothe your nerves. Which Debts Are Discharged In approximately 60 to 90 days after the creditors' meeting, you will receive a discharge order from the court. The discharge order won't refer to your specific debts but instead will say that all legally discharged (wiped out) in your case. In a Chapter 7 bankruptcy, absent a successful objection by a creditor (which is rare), most credit card, medical, and legal debts are discharged, as are court judgments deficiencies owed because of a foreclosure or repossession, and personal loans. For many filers, this means that all of their debts are discharged in Chapter 7 bankruptcy. The most common of these are: debts incurred to pay nondischargeable taxes (see Ch. 3) court-imposed fines and restitution back child support and alimony debts owed to an ex-spouse as a result of a divorce or separation loans owed to a retirement plan, such as a 401(k) (because you are the creditor as well as the debtor in this situation, bankruptcy doesn't discharge the debt) student loans (unless you can show that repaying the loans would be an undue hardship, which is tougher than you might think and requires a separate trial in the bankruptcy court) federal and state taxes that first became due less than three years before your bankruptcy filing date (for example, taxes due on April 15, 2017, for tax year 2016 will not qualify for discharge until April 16, 2020), and debts for personal injuries or death resulting from your drunk driving. Keep in mind that property liens remain after bankruptcy unless you file a motion with the bankruptcy court and the judge agrees to lift the lien. So while a money judgment will remain. You'll have to repay the lien amount, plus interest, before transferring the property to someone else. Some types of debt will survive your bankruptcy, but only when the creditors seek and obtain orders from your fraudulent actions, recent credit card charges for luxuries, and willful and malicious acts causing personal injury or property damages. (For more on which debts are and are not discharged in a Chapter 7 bankruptcy, see Ch. 3.) What Happens to Your Property you own or are entitled to receive becomes part of your bankruptcy estate and is managed by the bankruptcy trustee. In addition, property you transferred within the previous two years (up to ten years for certain transfers) for significantly less than its value, and certain types of property you have come to own within the six-month period after you file, are also considered part of your bankruptcy estate. Marital property in community property states is also part of the bankruptcy estate, even if only one spouse files. There are other categories of property that might belong in your estate, but these are the main ones. See Ch. 4 for more on what property that, when sold, will generate a profit that can be used to pay your creditors. In fact, that's how these trustees earn a living—from commissions on property and use the sales proceeds to pay off any outstanding loans before paying other creditors. For example, if you owe more on your house or car than it's worth, you have no equity and the trustee won't be interested in selling it. The proceeds from the sale would, by law, all go to the lender. On the other hand, if you have equity in your house or car (or any other property, for that matter), the trustee will evaluate the property's worth and consider selling it for the benefit of the creditors (and the trustee). How Exemptions Help You Keep Your Property Fortunately, all states have laws that allow you to keep a portion of your certain types of property when you file for Chapter 7 bankruptcy. The idea is that you need things such as household furnishings, clothing, a reasonably-priced car, and your retirement savings to maintain a home and job, and to get the fresh start promised by bankruptcy. This is accomplished through laws—called exemptions—that let you protect the equity you have in various property items from being used by the trustee to benefit your creditors. Each state has a set of exemption laws for use by its residents, and some states allow filers to choose between the state's list and the federal exemptions. Either way, the state decided on the particular property you'll be able to protect. In some instances, property is exempted regardless of its equity value. For instance, under one of the two California exemption systems, your furniture is only exempt up to \$725 per item (as are appliances, animals, musical instruments, personal effects, and clothing). You can keep up to \$145,425 worth of equity in your home in Ohio, and up to \$500,000 in Massachusetts. Most people who file for bankruptcy use the exemptions in that state for at least two years, you might have to use the exemptions from the state from which you came. In 15 states, you have a choice of exemptions—you can use your state's exemptions or a list of federal exemptions. To find out whether your state gives you this choice, turn to the exemption chart on the online companion page and look at the entry just below your state or the exemption chart on the online companion page and look at the entry just below
your state or the exemption chart on the online companion page and look at the entry just below your state or the exemption chart on the online companion page and look at the entry just below your state or the exemption chart on the online companion page and look at the entry just below your state or the exemption chart on the online companion page and look at the entry just below your state or the exemption chart on the online companion page and look at the entry just below your state or the exemption chart or the exemption allows the federal exemptions, you can find those exemptions after Wyoming. Houses and Cars People often ask whether they can keep their home and car in a Chapter 7 bankruptcy. The answer is yes in the following circumstances: You are current on your mortgage or car note. You have no significant nonexempt equity in the house or car. Mortgages If there is no nonexempt equity, the trustee won't be interested in selling the house, which means you can keep it—unless you are behind on your mortgage lender can initiate foreclosure proceedings and will probably be able to get permission from the bankruptcy judge to proceed. It works a bit differently if you have equity that you can't protect with an exemption. The trustee will sell the home, give you the exemption amount, and use the remaining proceeds to pay creditors. Car Loans Cars and car notes work pretty much the same way as houses. If you can protect all of the equity in your car with an exemption, you can keep it as long as you are current on the note, but if you are behind, the lender could attempt to get permission. Your Car or Home After Bankruptcy Meeting the requirements for keeping your home or car as described just above doesn't mean that your bankruptcy will end your obligation to the mortgage holder or bank. To understand what happens next, let's back up a little bit. When you take out a mortgage or car loan, you are actually doing two things: signing a promissory note for the amount of the loan, and agreeing that if you default on the loan the lender can foreclose or repossess the property and use the property and use the property is worth more than an exemption allows, the trustee can: seize and sell the property at auction, even if you own the property jointly with others pay any lender in the picture the amount that's owed on the property, if any give you the amount you are entitled to under the exemption system you are using distribute what remains to your unsecured creditors, and put in for a commission on the sale. Frequently, before selling property with nonexempt equity, the trustee will give you an opportunity to buy it back at whatever amount you can agree upon. For instance, if you have a motorcycle that could be sold for \$8,000 and you only have \$3,000 worth of exemption (meaning \$5,000 is nonexempt), the trustee might let you buy it back for the amount the trustee would end up with after a sale. Since sales of personal property cost time and money, the trustee might let you buy the motorcycle back for 20% less, or as little as \$4,000. When the mortgage is recorded at your local land records office, it becomes a lien (a claim) against the house. Similarly, when you take out a car loan, you are signing a promissory note and a "security agreement" that allows the car to be repossessed in case you default. When the seller records the security agreement, it becomes a lien against the car. When you file for bankruptcy, the promissory note part of a secured debt is canceled. However, the lien securing your payment remains. For example, if you owe \$400,000 on your house when you file, the \$400,000 promissory note is canceled. The lender cannot come after you and force you to make a payment. However, that doesn't mean that you can stop paying on your mortgage and keep your home. If you don't pay (default), the mortgage lender still has the lien—which hasn't been affected by your bankruptcy—and can foreclose on the lien, take the home, and sell it at auction. Similarly, for secured debts involving a car, your Chapter 7 bankruptcy will cancel the amount you owe on the promissory note but it won't affect the lien—which means that even though the lender can't force you to pay the debt by garnishing your wages or through some other collection means, the lender can repossess the car if you default To avoid foreclosure or repossession, you must continue paying the amount that you owe. Especially in the case of car notes, many lenders don't like the idea of your not being legally liable for the balance after bankruptcy. While many will let you keep the car after a debt discharge as long as you continue making the payment, most lenders would prefer to keep you on the hook for the underlying debt so you don't, at some point in the future, trash the car, give it back, and walk away from the whole thing. Bankruptcy gives them the option of requiring you to sign an agreement reaffirming the underlying promissory note (called a "reaffirmation agreement") so you can't just walk away from the debt after bankruptcy. EXAMPLE: Marisol owes \$25,000 on her GMC Denali when she files for Chapter 7 bankruptcy will cancel the \$25,000 debt, which means she'll still have to make her payments under power of the lien but won't owe the actual debt. If, after her bankruptcy, Marisol decides to turn owe the money to prevent her from escaping liability if the car is repossessed or she gives it back. See Ch. 6 for more on reaffirmation is rare. Instead, lenders have historically relied on foreclosure as their enforcement remedy and haven't worried home, and Ch. 6 covers cars and other property that secure a loan. Costs and Fees As of this writing, the filing fee for a Chapter 7 bankruptcy is \$335. If you can't afford the fee, you can apply for a fee waiver or permission to pay in getting a fee waiver are available at www.uscourts.gov/forms/bankruptcy-forms. If you want to be represented by a lawyer, you will likely have to pay an additional \$1,200 to \$2,000 in attorneys' fees. Not everyone has that kind of money, however, especially when you're facing bankruptcy. If you decide to handle your own case, you will probably want to be represented by a lawyer, especially when you're facing bankruptcy. If you decide to handle your own case, you will probably want to be represented by a lawyer, especially when you're facing bankruptcy. If you decide to handle your own case, you will probably want to be represented by a lawyer, especially when you're facing bankruptcy. If you decide to handle your own case, you will probably want to be represented by a lawyer, especially when you're facing bankruptcy. If you decide to handle your own case, you will probably want to be represented by a lawyer, you will probably want to be represented by a lawyer, you will probably want to be represented by a lawyer are also as a lawyer are also to get some outside help. This will typically consist of some of the following: one or more do-it-yourself books on bankruptcy (roughly \$30 a pop) telephonic legal advice from a lawyer (roughly \$100 an hour, although many lawyers provide one free consultation), and clerical assistance with your form preparation from a bankruptcy petition preparer part. However, you and your attorney (if you have one) will have to appear before a judge in the following cases: Your income appears to make you ineligible for Chapter 7 bankruptcy and you want to argue that an exception should be made in your case. A creditor contests your right to file for Chapter 7 bankruptcy and you want to argue that an exception should be made in your case. (which is rare, but it does happen). You want the judge to rule that you are entitled to discharge a particular type of debt (such as student loans—see Ch. 3 for more information on debts that can be discharged in Chapter 7 bankruptcy (see Ch. 10). You are handling your own case, are making payments on a car or other personal property, and want to keep the property and continue the contract. (See Ch. 10 for more on these and other types of issues that require action by a judge. How a Chapter 7 Case Ends If you complete all of the necessary requirements, Chapter 7, see Ch. 3.) When a debt is discharged in Chapter 7 bankruptcy ends with a discharged in Chapter 8 bankruptcy ends with appear on your credit report as "discharged in bankruptcy." Government entities cannot discriminate against you simply because you've received a bankruptcy discharge, but private companies can and do in some circumstances. (See Ch. 9 for more on the consequences of receiving a bankruptcy discharge, but private companies can and do in some circumstances. to the requirement that you obtain credit counseling before you file for bankruptcy, you must also participate in a course on budget management before you can get your discharge. Most filers use the same agency for budget counseling as they used for prefiling credit counseling. See Ch. 2 for more information about this requirement. Changing Your Mind If you file for Chapter 7 bankruptcy and then change your mind, you can ask the court to dismiss might be denied if you have significant nonexempt assets that the trustee could sell to raise money to pay your creditors. Example: Jake files for Chapter 7 bankruptcy, thinking all of his property is exempt. Shortly after he files, Jake's mother tells him that he is on the deed for a 20-acre ranchette that he, his sister, and his mother inherited from his father. Under the exemption laws applicable to Jake's bankruptcy, his share of the ranchette is not exempt which means the trustee can sell the property and distribute Jake's share to his unsecured creditors. Jake wants to keep the property and so requests that his case be dismissed. His request is denied because it would not be in the best interest of Jake's creditors. The point should be clear: Don't file Chapter 7 unless you know what property you own and what will happen to it in
bankruptcy. If you do dismiss your case, you can file again later, although in some circumstances you might have to wait 180 days and pay a new filing fee. Instead of dismissing your Chapter 13 for individuals In Jake's case, for example, he could convert to a Chapter 13 bankruptcy to save the ranchette. However, in his plan, Jake would have received had Jake filed under Chapter 7—essentially, the market value of his share of the ranchette, less sale costs and the trustee's commission. Jake should plan to pay an amount equal to the unprotected equity amount, minus sales costs, throughout his three- or five-year bankruptcy Plan. (See below, to learn more about the Chapter 13 Bankruptcy Plan.) Chapter 13 Bankruptcy Plan. (See below, to learn more about the Chapter 13 Bankruptcy Plan.) property and assets to repay your creditors. You use a portion of your income to pay some or all of what you owe to your creditors over time (anywhere from three to five years, depending on your income and how much of your debt you can afford to repay). But, many people are surprised to learn that a significant number of debts, such as some taxes and domestic support arrears, must be paid in full through the plan. The trick to successfully using Chapter 13 to get out of debt is to make sure you have enough income to meet all of your payment obligations under the Chapter 13. (See Ch. 2 to learn about the eligibility requirements for filing under Chapter 13.) Why File a Chapter 13 and 7 choose Chapter 13 and 7 choose Chapter 13 and 7 choose Chapter 13 if you hire a lawyer, and you don't have to pay down any of your dischargeable debt. So, why would you choose to file a Chapter 13 bankruptcy? You can accomplish some things in Chapter 13, you can get rid of a second mortgage lien on your real estate—called a lien strip—if the market value of the house is less than the amount owed on the first mortgage. Chapter 13 can provide a way to reduce your secured debts to the value of the collateral so you pay only what the property is worth currently (for instance, reducing a \$10,000 car note on a \$5,000). Chapter 13 lets you make up for missed payments on a house, car, or other collateral over a three- to five-year period so you can keep the property instead of losing it to foreclosure or repossession. Chapter 13 gets rid of certain types of debts that aren't discharged in Chapter 13 allows you to operate a business while you are in bankruptcy (unlike Chapter 7, which might require that you close the business). If you previously received a Chapter 7 discharge (but you won't get a discharge). (See Ch. 2 for reasons why this can help.) See Ch. 7 for an example of a conversation between a bankruptcy lawyer and client in which they discuss whether the client should file a Chapter 13 bankruptcy, you must complete a credit counseling course, then fill out and file a packet of forms mostly the same forms as you would use in a Chapter 7 bankruptcy—and provide the court with: a feasible plan to repay some or all of your debts over the plan period (three years if you qualify for Chapter 7 and are electing to file for Chapter 13; five years otherwise) proof that you've filed your federal and state income tax returns for the previous four years, and a copy (or transcript) of your most recently filed IRS income tax return. (See Ch. 10 for more on Chapter 13 paperwork.) The Repayment Plan Under a Chapter 13 repayment plan, you make payments, usually monthly, to the bankruptcy trustee, the official who oversees your case. The trustee uses that money to pay the creditors covered by your plan and to pay his or her statutory fee (usually 10% or less of the amount distributed under your plan). Under Chapter 13, you are required to devote all of your "projected disposable income" to your plan (essentially, the amount left over after paying your allowed expenses) or the value of your nonexempt property, whichever is more. Your repayment period could be as short as three years if you qualify for Chapter 7 (your gross average income over the six months before you file is below your state's median income) and five years if your income is above the amount allowed for a Chapter 7 discharge. (See Ch. 2 for more on making this calculation.) In some cases, the file needs a five-year plan to make all required payments regardless of whether his or her income is above or below the median income level that increases after the court confirms your plan, the trustee can request the court to order a jump in your monthly payments due to your new ability to pay this extra amount. The basic idea in Chapter 13 is that you have to devote all your disposable income to your plan payments. In Chapter 13, some creditors are entitled to receive 100% of what you owe them, while others may receive a much smaller percentage or even nothing at all. For example, a Chapter 13 plan must propose that any child support you owe to a spouse or child (as opposed to a government agency) will be paid in full over the life of your plan; otherwise, the judge could approve a plan that doesn't repay any portion of your credit card debts if you won't have any projected disposable income left after paying obligations that must be paid in full under the Chapter 13 laws, such as support arrearages or recent tax debt. To have your debts fully discharged under Chapter 13, you must usually make all payments required by your plan and: remain current on your federal and state income taxes remain current on any child support or alimony obligations and annually file a copy of your federal income tax return or transcript of the return with the court. You also have to provide your creditors with copies of the income tax returns or transcripts you file with the court if they request them. Which Debts Are Discharged If your Chapter 13 bankruptcy pays your unsecured debts in full, then you will receive a complete discharge of those debts no matter what type they are. If your plan pays less than 100% of a debt, the balance will be discharged unless it is a type of debt that isn't discharged in Chapter 13 law is that your qualifying disposable income could be different than your actual disposable income. It's usually more than what you have left over after paying your monthly expenses—which is one of the reasons why finishing a plan can be tough. Here's how it works. Your first step will be determining whether you will have a three- or five- year "commitment period." Your average gross income over the six months before your filing date will determine the plan length. If your gross income falls above the median for your state, you'll pay into a five-year plan. If it falls below, you'll be obligated for three years. Your disposable income comes into play only if you must pay into a five-year plan, and you'll be obligated for three years. Your disposable income comes into play only if you must pay into a five-year plan. If it falls below, you'll be obligated for three years. Your disposable income comes into play only if you must pay into a five-year plan. If it falls below, you'll be obligated for three years. Your disposable income comes into play only if you must pay into a five-year plan. If it falls below, you'll be obligated for three years. Your disposable income comes into play only if you must pay into a five-year plan. If it falls below, you'll be obligated for three years. gross income. In some cases, you'll deduct your actual expense. In others, you're limited to the amount allowed by law, which is why after completing the disposable income, the amount of funds remaining after paying your monthly bills. (Ch. 2 explains owed to an ex-spouse or child recent back taxes unfiled taxes, and debts you owe because of a civil judgment arising from your fraudulent actions or recent credit card charges for luxuries will not be discharged if the creditor gets a court order to that effect. Ch. 3 explains which debts are discharged in a Chapter 13 bankruptcy. Which Property Is at Risk in Chapter 13 bankruptcy case. In Chapter 13, your income is used to pay off some portion of your debt. However, as mentioned earlier, the value of your non- exempt property can be the determining factor regarding your ability to propose a valid repayment plan. In that case, you might be able to lower the payment by choosing to sell property and using the funds to pay down debt. Chapter 13 Plan Must Pay Unsecured Creditors as Much as They Would Receive in a Chapter 7 Bankruptcy People sometimes choose to avoid Chapter 13 you don't have to give up any property. Rather, your obligations under your plan are based on your disposable income However, even though Chapter 13 won't take your property, it does require that you pay your unsecured creditors the value of what they would have received in Chapter 13 bankruptcy, but you would have to propose a plan that pays your creditors at least \$50,000 less sale costs and the trustee's commission. This rule often makes it difficult to propose a feasible Chapter 13 plan, due to the size of the required payment, although making such large Chapter 13 bankruptcy lets you keep your house and car as long as you stay current on the payments and can afford to pay for any nonexempt equity, as discussed above. You can also pay off arrearages you owe when you file, which is a mechanism particular to Chapter 13 that will allow you to keep your house. For instance, if you are \$5,000 behind on your mortgage payments, you can pay an extra amount and catch up over the course of the plan. That's why Chapter 13 has typically been the remedy of choice for people facing foreclosure. (See Ch. 5 for more on what happens to your home when you file for either type of bankruptcy.) Costs and Fees The filing fee for a Chapter 13 has typically been the remedy of choice for people facing foreclosure. \$310. If you want to be represented by a lawyer, you will probably have to pay \$2,500 to \$4,000 in legal fees, most of which can be
paid through your plan. If you decide to handle your case (as some do), you will likely want to get some outside help. This will typically consist of one or both of the following: using one or more self-help law books on Chapter 13 bankruptcy (roughly \$40), and retaining a lawyer to provide legal answers as needed. Unlike the situation in Chapter 13 cases. Also, keep in mind that due to the complexity of Chapter 13 cases, bankruptcy courts strongly recommend retaining a bankruptcy attorney. See Ch. 11 for more on resources you can use to file for bankruptcy petition, the court schedules a "meeting of creditors" (usually within about a month) and sends an official notice of the bank-ruptcy filing and the meeting to you and all of your creditors. You (and your spouse if you have filed jointly) are required to attend. You'll need to bring two forms of identification—a qualifying picture ID and proof of your Social Security number. A typical creditors' meeting in a Chapter 13 case lasts less than 15 minutes. The trustee is likely together to attend. You'll need to bring two forms of identification—a qualifying picture ID and proof of your Social Security number. A typical creditors' meeting in a Chapter 13 case lasts less than 15 minutes. The trustee is likely together be most interested in whether your repayment plan meets all legal requirements and whether you will be able to make the payments you have proposed. (See Ch. 2 for more on Chapter 13 process because the trustee gets paid a percentage of all payments doled out under your plan; however, the trustee's first responsibilities are to the creditors and ensuring that legal requirements get followed. Challenging the Legality of a Mortgage in Chapter 13 Bankruptcy When you owe. This entire the trustee's first responsibilities are to the creditors and ensuring that legal requirements get followed. proof of claim will determine how much they get paid as part of your Chapter 13 plan. If a secured creditor fails to file a proof of claim, you can file one on their behalf. If the court does not approve the claim, don't expect to get out from under the mortgage entirely. It's much more likely that legal defects in lenders' claims will result in negotiated settlements reducing the amount of your mortgage principal and interest. You'll likely want to retain an attorney to help you navigate this process. For instance, the trustee will continue the creditors' meeting to give you a chance to file these returns or provide proof of filing if you've already done so. You cannot proceed with a Chapter 13 bankruptcy unless and until you bring your tax filings up to date. When the trustee is finished asking questions, any creditors who show up will have a chance to question you. Secured creditors might come if they have any objections to the plan you have proposed as part of your Chapter 13 filing (but will usually file a motion with the court instead). They might claim, for example, that you're not paying sufficient interest on a secured debt. (See Ch. 6 for more information on collateral and other property that secures a loan.) An unsecured creditor who is scheduled to receive very little under your plan might object, too, if that creditors are paid). Come to the meeting prepared to listen to disgruntled creditors or the objections of the trustee. If you agree to make changes to accommodate objections, you must submit a modified plan and have it served on all of your creditors. While any objections raised by creditors won't be trustee might raise these objections by filing a motion with the bankruptcy court, which will be scheduled for a couple of weeks later. Your creditors can file a motion objecting to the plan, as well. You will want to respond in writing to any motion, either by agreeing to make the correction, or by explaining why the party bringing the motion is wrong. In most cases, you'll probably choose the former approach (because let's face it, if you file on your own behalf, the debts—such as a car note or mortgage. For more information on Chapter 13 confirmation hearings, see Ch. 10. You are entitled to amend your proposed plan until you get it right, or until the judge decides that it's hopeless. Each amendment requires a new confirmation hearing and appropriate written notice to your creditors. You'll pay the proposed monthly payment while you go through this process. You don't wait until the plan confirmation to start paying. Because it's not unusual for it to take upwards of six months to confirm a plan, paying the proposed payment amount from the beginning helps ensure that you complete your plan no later than five years after the initial filing date. Other Common Reasons to Go to Court In addition to attending the confirmed value an asset (if your plan after it has been confirmed value an asset (if your plan after it has been confirmed value an asset (if your plan after it has been confirmed value an asset (if your plan after it has been confirmed value an asset (if your plan after it has been confirmed value an asset (if your plan after it has been confirmed value an asset (if your plan after it has been confirmed value an asset (if your plan after it has been confirmed value an asset (if your plan after it has been confirmed value an asset (if your plan after it has been confirmed value an asset (if your plan after it has been confirmed value an asset (if your plan after it has been confirmed value an asset (if your plan after it has been confirmed value and asset (i a creditor who opposes your right to discharge a particular debt (perhaps because of an allegation that you engaged in fraud when incurring the debt) discharge a type of debt that can be discharge a particular debt (perhaps because of an allegation that you engaged in fraud when incurring the debt) discharge a type of debt that can be discharge a type of debt that can be discharge a particular debt (perhaps because of an allegation that you engaged in fraud when incurring the debt) discharge a type of debt that can be discharged only if the judge decides that it should be (such as discharged only if the judge decides that it should be (such as discharged only if the judge decides that it should be (such as discharged only if the judge decides that it should be (such as discharged only if the judge decides that it should be (such as discharged only if the judge decides that it should be (such as discharged only if the judge decides that it should be (such as discharged only if the judge decides that it should be (such as discharged only if the judge decides that it should be (such as discharged only if the judge decides that it should be (such as discharged only if the judge decides that it should be (such as discharged only if the judge decides that it should be (such as discharged only if the judge decides that it should be (such as discharged only if the judge decides that it should be (such as discharged only if the judge decides that it should be (such as discharged only if the judge decides that it should be (such as discharged only if the judge decides that it should be (such as discharged only if the judge decides that it should be (such as discharged only if the judge decides that it should be (such as discharged your Chapter 13 bankruptcy unless the judge removes it, or oppose a secured or unsecured claim filed by a creditor. These procedures are described in Ch. 10. How a Chapter 13 Case Ends If you complete your full three- or five-year repayment plan, are current on your income tax returns and your child support or alimony payments, and complete a budget management course approved by the U.S. Trustee, the remaining unpaid balance on any of your debts that qualify for discharge will be wiped out. If any balance remains on a long-term debt that doesn't qualify for discharge will be wiped out. discharge in a Chapter 13 bankruptcy are explained in Ch. 3.) Modifying the Plan and Alternatives to Full Discharge If you can't complete your Chapter 13 plan as written, you can ask the court to modify the plan, you might still be able to get what's called a "hardship" discharge if both of the following apply: You failed to complete your plan due to circumstances "for which you should not justly be held accountable" (like a job loss). Your unsecured creditors have received at least what they would have gotten if you had filed for Chapter 7 bankruptcy (that is, at least the value of your nonexempt property less sale costs and the trustee's commission). If the bankruptcy court won't let you modify your plan or give you a hardship discharge, you can: convert your Chapter 7 bankruptcy to a Chapter 7 bankruptcy, unless you received a Chapter 7 bankruptcy to a Chapter 7 bankruptcy court won't let you
modify your plan or give you a hardship discharge, you can: convert your Chapter 7 bankruptcy to a Chapter 8 bankruptcy to a Chapter 8 bankruptcy to a Chapter 9 bankruptcy 1 bankruptcy Ch. 10), or dismiss your Chapter 13 case. In this case, you'll owe your creditors the balances on your debts from before you filed your Chapter 13 case was open. As you can imagine, Chapter 13 bankruptcy requires discipline. For the entire length of your case, you will have to live strictly within the Chapter 13 plans were completed. Some Chapter 13 filers drop out early in the process, without ever submitting a feasible repayment plan to the court. Recently, the number of people finishing Chapter 13 plans appears to be on the rise. And, keep in mind that even if you fail to complete your plan, filing Chapter 13 bankruptcy Stops Collection Efforts One of the most powerful features of bankruptcy is that it stops most debt collectors dead in their tracks and keeps them at bay for the rest of your case. Once you file, all collection activity (with a few exceptions, explained below) must go through the bankruptcy to stop your that you leave the creditor with no choice other than to forget about the debts, medical Debts, medical Debts, and Attorneys' fees, debts arising from breach of contract, or legal judgments against you (other than child support and alimony) must cease all collection activities after you file your bankruptcy. They cannot: file a lawsuit or proceed with a pending lawsuit or that ground. Domestic Relations Proceedings Almost all proceedings related to a divorce or paternity action continue as before—they are not affected by the automatic stay. These include: the setting and collection of current child support and alimony trom property that is not in the bankruptcy estat (see Ch. 4 for more on what's in the bankruptcy estate) the determination of child custody and visitation a lawsuit to establish paternity an action to modify child support and alimony proceedings to protect a spouse or child from domestic violence withholding of income to collect child support reporting of overdue support to credit bureaus the interception of tax refunds to pay back child support, and withholding, suspension, or restriction of drivers' and professional licenses as leverage to collect child support. Criminal Proceedings If you have a case filed against you, the criminal component will be allowed to continue. For example, if you were convicted of a minor vandalism offense and have been sentenced to community service, your obligation to do community service will not be stopped by the automatic stay does not stop the eviction of a tenant if: the landlord obtained a judgment of possession before the bankruptcy filing, or the tenant is endangering the property or using controlled substances on it. Ch. 5 explains when evictions on these grounds may occur. It also covers the law in a few states allowing a tax deficiency notice, demanding a tax return, issuing a tax assessment, or demanding payment of a post petition assessment. The automatic stay does, however, stop the IRS from issuing a lien or seizing (levying against) any of your property or income. Pension Loans The stay doesn't prevent withholding from a debtor's income to repay a loan from an ERISA-qualified pension (this includes most job-related pensions and individual retirement plans). See Ch. 4 for more on how pensions are treated under bankruptcy. We hope you enjoyed this sample of The New Bankruptcy: Will It Work For You? To read the rest of this chapter, please purchase the book.

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