Bankruptcy law provides for two main types of consumer bankruptcies: chapter 7 and chapter 13. You should decide with your attorney which is the better chapter for you.

If a chapter 7 bankruptcy will accomplish your goals, it is generally the best choice because it is simpler and quicker than a chapter 13 bankruptcy. Once the papers are filed, unless unusual issues are raised, you will receive a discharge within three to five months.

Generally, chapter 7 is the best option when two factors are present:

1. All or nearly all of your property is exempt; and
2. The debts that are causing you problems are unsecured and dischargeable in chapter 7.

Even if some of your property is not exempt, you may be able to exchange small amounts of nonexempt property for exempt property before you file, as discussed above under exemption planning.

Where there are secured debts, a chapter 13 filing may not be necessary, particularly if you are current on your mortgage, car loan, and other secured debt payments. Then you can keep your home or other collateral, if it is exempt, even while going through a chapter 7 bankruptcy. A chapter 13 filing is generally preferable if you are delinquent on a secured debt (such as your mortgage or car loan) and want to cure this default over time.

The amount you will have to pay to your attorney will be considerably greater in chapter 13 than in chapter 7. However, the chapter 13 attorney fees can be paid over several years and the benefits of a chapter 13 may far outweigh the increased attorney costs if you are seeking to protect your home.

The most common reason for filing a chapter 13 petition is that one or more secured creditors (such as your mortgage or auto lender) cannot be dealt with satisfactorily in any other way. Few legal procedures create opportunities to deal with foreclosures and repossessions as quickly and effectively as a chapter 13 bankruptcy. Another reason to file a chapter 13 bankruptcy is to protect nonexempt assets, which would be sold in a chapter 7 case. However, the current value of the nonexempt property usually has to be paid over the course of the plan.

Other important reasons favoring a chapter 13 filing include:

1. Some debts that are not dischargeable in chapter 7 can be discharged in chapter 13.
2. Some creditors consider a chapter 13 filing, compared to a chapter 7, to be less harmful to your credit rating and reputation.
3. If you obtained a chapter 7 discharge within the previous eight years, a new chapter 7 filing is not an option; only chapter 13 is available.

Even if you cannot afford payments to cure a default on your home mortgage, you can use the chapter 13 process to sell your home so that you can keep your equity and avoid the problems of a foreclosure sale.

You can change the type of bankruptcy you choose. Except in rare cases where the debtor engaged in some kind of fraudulent conduct in bankruptcy, it is easy to convert a case (at least once) from chapter 7 to chapter 13 or vice versa.

Source: National Consumer Law Center, Surviving Debt [50th NCLC Anniversary Edition], updated at www.nclc.org/library
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