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BANKRUPTCY MYTHS AND REALITY

Since the passage of bankruptcy reform in October of 2005, several myths have proliferated regarding the bankruptcy process. Most are perpetuated by creditors and collection agencies who have a financial interest in making people think they cannot file bankruptcy.

In today's difficult economic climate, bankruptcy can be an effective way of saving your home from foreclosure, saving a car from repossession, getting out from under bills you cannot afford to pay and obtaining a fresh start.

The following is a list of common myths about bankruptcy:

Myth #1: Chapter 7 Bankruptcy is no longer available. Not True. While one of the changes included in bankruptcy reform now requires every debtor in Chapter 7 Bankruptcy to be "means tested", Chapter 7 Bankruptcy continues to be viable option for many debtors. Most debtors with relatively low incomes will qualify for filing under the means test. In a Chapter 7 Bankruptcy, a debtor can discharge most non-priority, unsecured debts and get a fresh start.

Myth #2: If I already filed for Bankruptcy, I cannot file again. Not True – but you may have to wait. Someone who has filed bankruptcy in the past can file bankruptcy again, with certain restrictions. If you filed a Chapter 7 in the past and received a discharge of your debts, you will not be eligible for another Chapter 7 discharge for eight years from the date of your previous discharge. However, you are eligible to file a Chapter 13 four years after obtaining a Chapter 7 Discharge.

Myth #3: I will have to repay all of my debts in a Chapter 13 Bankruptcy. Not necessarily true. A Chapter 13 bankruptcy is a reorganization of your debts, as opposed to a liquidation of your debts, which occurs in a Chapter 7 bankruptcy. Under Chapter 13, a portion of the debtor's future income is used to pay as much of a person's debts as possible under the person's individual circumstances, after taking into account other household expenses. While a Chapter 13 case typically lasts much longer than a Chapter 7 case, it also allows a debtor to keep his or her non-exempt property and provides a mechanism for curing mortgage defaults and stopping foreclosures.

Myth #4: If I file bankruptcy, I will never be able to get credit again. Not True. Certainly, filing bankruptcy may have a negative effect on future credit and will remain on your credit report for ten years (not seven). However, most people that file bankruptcy already have bad credit. Therefore, in some circumstances, a bankruptcy could be helpful in obtaining future credit since your debt to income ratio will be reduced. Furthermore, most people that file bankruptcy can qualify for a mortgage within about two years after their bankruptcy.

Myth #5: I will lose everything. Not True. Colorado has exemption laws which apply to personal homes, household goods, and vehicles with a certain amount of equity. Retirement funds are completely exempt. If certain property is exempt, it means that the bankruptcy court cannot make a claim on it or use it to pay your debts. An experienced bankruptcy attorney can advise you about what property may be exempt.

Myth #6: I don't need to file bankruptcy because I'm unemployed and my debts are uncollectible. Maybe. If you have no non-exempt assets or income, your debts are uncollectible – now. However, if you get a job in the future, your creditors can garnish your wages, bank account and tax refund. Further, depending upon the amount of your future income, you could be required to file a Chapter 13 bankruptcy when you otherwise could have filed a Chapter 7 Bankruptcy while you were unemployed.

Myth #7: It is difficult and confusing to file bankruptcy. No it's not. An experienced bankruptcy attorney can make the bankruptcy process easy to understand and will be able to guide you through the process of obtaining a bankruptcy discharge and obtaining a fresh start.

For questions about Bankruptcy, please contact Bob directly at 303-333-9810 or via email at bob@fostergraham.com