IS BANKRUPTCY THE ANSWER?

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IS BANKRUPTCY THE ANSWER?

A 7-step guide to understanding your options for debt relief

by
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A Message from the Author

Hello. My name is Ryan B. Moran. I am an attorney and the managing member of Moran Law Offices, a firm that I established in 2007.

When I opened Moran Law, I decided that we would focus on bankruptcy and fair debt collection law. My goal was to help honest, hardworking people like you who have had their financial well-being turned head-over-feels due to unexpected events.

Unlike many of the firms that 'dabble' in bankruptcy, Moran Law handles hundreds of cases each year. This gives our firm and unmatched level of expertise and familiarity with the evolving nature of bankruptcy law.

As part of my own ongoing professional education, I work tirelessly to stay on top of the latest trends and developments so that I may provide unparalleled service to my clients.

It's human nature for people in crisis to become so overwhelmed that they go into a state of denial. This is a mistake with long-reaching negative consequences. So at Moran Law, our goal is to help people address their problems by showing them there is a light at the end of the tunnel. Unfortunately, 'the system' doesn't make it easy for individuals to get out from under excessive debts.

In fact, it works against people who don't have a lot of money and resources.

There was a government bailout for people on Wall Street when institutions teetered on the brink of financial ruin while people on Main Street – who are just trying to take care of their families – feel like they have to go it alone.

But you don't have to go it alone. Moran Law is here for you. We want to be your voice... your advocate...your solution.

We want to be your partner and your confidante as you navigate through the storm of debt that is drowning you. We'll fight your battles with your creditors for you and help you get the fresh start you deserve.

That's precisely why I created this 7-step guide. I hope that it will educate you, enlighten you, and ultimately leave you feeling empowered to move forward and change your life for the better.

The first step is Understanding Bankruptcy Basics. It will give you an easy-to-understand overview of bankruptcy laws today and talk about how and why so many people find themselves in need of financial relief.

I want to ensure that we're 'speaking the same language.' If there is a legal term you're unfamiliar with, I've added a glossary of terms frequently used when talking about bankruptcy topics, which is located at the end of this book...

Very truly yours,

Ryan B. Moran

Step One – Understand Your Rights

At Moran Law, we see it every day; people come through our doors feeling like failures or deadbeats for being unable to keep up with financial obligations. But the vast majority of people who file bankruptcy don't do it because they want to or because they're trying to abuse the system, or because they're trying to get something for free.

No, most people who file are good people who had something bad happen to them.

In our work, we see that most people who file for bankruptcy have lost their job and are struggling to put food on the table. Or they've experienced a catastrophic set-back such as their house burned down, their loved one got cancer, or they were involved in a bad car accident. And because these are good people whose lives have suddenly gone bad, they want to pay back their debts and do 'the right thing' by paying back the credit card companies.

The problem is creditors – Visa and your bank and the mortgage company. They don't care about doing the right thing. The only thing they care about is getting their money. If they were worried about doing the right thing, they would cut you a break on your debt and interest payments or at least be more understanding.

Shame and guilt keep many citizens from pursuing their right to file for bankruptcy, but here are the facts: you're not a failure, a deadbeat or 'the bad guy' because your financial obligations have gotten away from you. You're just a normal person trying to get through abnormally bad times who needs a little help to get back on track.

And because of your shame, you may not realize that debt-forgiveness and bankruptcy have a rich and 'proud' history in the U.S. Constitution...

"Congress shall have the power... to establish... uniform laws on the subject of bankruptcies throughout the United States." U.S. Constitution, Article 1, Section 8

Even the Bible talks about the importance of discharging debt...

"At the end of every seven years you must cancel debts...Every creditor shall cancel the loan he has made to his fellow Israelite. He shall not require payment from his fellow Israelite or brother, because the Lord's time for canceling debts has been proclaimed." Deuteronomy 15:1-2.

In the United States, bankruptcy is intended to benefit both debtors and creditors by seeing that debtors get relief from debts they can't pay, and that creditors get paid from whatever assets the debtor does not need to live going forward. In other words, bankruptcy is a little known and rarely used constitutional right that's designed for people in exactly your kind of situation.

And although bankruptcy can't solve all of your problems, it can take some of the stress out of your life and get rid of a lot of your financial worries.

4 Types of Bankruptcy Proceedings

Bankruptcy is a legal process that was created to give people who are in serious financial troubles a fresh start. It is governed by the federal law found in Title 11 of the United States Code and with the exception of allowed exemptions; the laws governing bankruptcy are the same from state to state.

There are four kinds of bankruptcy proceedings referred to by the chapter of the federal Bankruptcy Code that describes them:

Chapter 7

Chapter 7 is the most common form of bankruptcy. Chapter 7 is available to individuals, married couples, corporations and partnerships. Individual debtors get a discharge and are released from their financial obligations within 4-6 months of filing the case.

The vast majority of Chapter 7 cases we deal with at Moran Law are what we refer to as 'no asset' cases, meaning that the debtor does not have enough property to exceed the exemption limit. Nearly all of our clients finish their cases without paying anything to the Trustee, or losing any of their property. As I tell most potential clients, "You can keep your house, you can keep your car, and you can keep all your possessions."

The only payments you are likely to make when you file under Chapter 7 will be a filing fee to the Bankruptcy court and legal fees to your attorney.

Chapter 11

Chapter 11 is a reorganization proceeding, typically for corporations or partnerships. (Individuals, especially those whose debts exceed the limits of Chapter 13, may also file Chapter 11.)

In Chapter 11, the debtor usually remains in possession of his assets and continues to operate any business, subject to the oversight of the court and the creditors committee.

Chapter 12

Chapter 12 is a simplified reorganization for family farmers modeled after Chapter 13 (described below) where the debtor retains his property and pays creditors out of future income.

Chapter 13

Chapter 13 is a repayment plan for individuals with regular income. It provides a mechanism for individuals to prevent foreclosures and repossessions, while catching up on their secured debts. Repayment of unsecured creditors in Chapter 13 can range from 0% to 100% depending on the debtor's income and the make up of the debt.

However even Chapter 13 filers only 'pay out' from their salary. That is to say, they pay a monthly fee to the Trustee, but hold on to all the rest of their property. This is true for 99 out of 100 cases. It is a very exceptional person who has so much property that they exceed the exemption limits and have to surrender any of it; even then, the Trustee is more likely to ask for a cash equivalent rather than seize and auction it.

Another federal law that affects bankruptcy is the Bankruptcy Abuse Prevention and Consumer Protection Act. It was developed and pushed for by lobbyists for the credit card industry and written by Phil Gramm, the 'genius behind' the sub-prime mortgage debacle.

Bankruptcy Abuse Prevention and Consumer Protection Act

Despite its name, BAPCPA does not protect consumers. In fact, this legislation makes it harder for the average consumer to file bankruptcy and it also punishes attorneys who represent them.
The philosophy behind it is that only deadbeats file bankruptcy and that only shyster lawyers represent people who file bankruptcy.

This is insulting to the honest bankruptcy attorneys who want to help their clients navigate the complexities of bankruptcy so that they may take advantage of their rights under the law. But it is an even bigger slap in the face to all the honest people who have always paid their bills, but find themselves in need of debt relief due to circumstances beyond their control.

How Good People End Up with Bad Debt

The roads that lead to bankruptcy are as unique as the individuals who travel along them. For some, poor money management skills are the problem. For others, buying into the American philosophy of 'buy now, pay later' has caused them to live beyond their means. It's a shame really.

For the vast majority however, illness, job loss, death, divorce, or even 'acts of God' -- such as Hurricane Katrina and the oil spill in the Gulf of Mexico –suddenly and dramatically affect a person's income and finances. Most recently, national economic problems and poor governance have thrown the lives of millions of Americans into financial chaos.

When money is tight, people turn to their credit cards to help tide them over until they get on their feet again. They charge groceries so they can feed their families. Or charge utility bills to keep the lights on. When credit card balances begin to climb, they use one credit card to pay off another. Or they make take out a second mortgage or home equity loan to pay off their unsecured debit.

They do it in 'good faith.' Most people who incur debt do so with every intention of repaying it. Unfortunately, for most people, credit is a short-term solution. In the long term, credit purchases and loans saddle people with a mountain of fees that result in even more debt consumers can't pay off. (Is this what happened to you?)

YOU Are Not the Guilty Party

While BAPCPA makes it appear that consumers are the problem, it's really the credit card companies and mortgage companies that are the real architects of the financial crisis that many consumers find themselves in. It is in the best interest of these businesses to keep you paying and paying and paying. That's where their profits come from.

Lenders have recently come under attack for the deceptive practices they use to lure people into incurring debts that they cannot afford...and then punish their customers for missed payments with things like late fees, overdraft fees, and increasing interest rates. It's literally a vicious cycle and one that is virtually impossible for the consumer to escape.

Bankruptcy is the antidote to the toxic environment created by these predatory lenders.

Congratulations! You've just completed the first step. You now have an understanding of what bankruptcy is and the different kinds of bankruptcy. You've also learned that many good people accrue bad debt and find themselves unable to meet their financial obligations. And you've discovered that credit card companies and mortgage brokers, take advantage of people's short-term financial needs with unsavory lending practices that make things go from bad to worse.

Now that you understand what bankruptcy is, it's time to move on to Step 2: the advantages of bankruptcy and whether or not it is a good solution for you.

Step Two – Understand the Benefits of Filing

When you wipe your debt completely clean through bankruptcy, it is called discharge of debt. The goal of this is to help reduce your overall debt and allow you to start again with a clean slate.

As such, the bankruptcy option is, in many ways, integral to American life and American commerce. Without bankruptcy, fewer of us would be able to take the risks necessary to build new businesses or better our lives.

6 Ways Bankruptcy Improves Your Life

If you are overwhelmed with debt you can no longer pay, bankruptcy might be a viable option for you. And while it is true that filing for bankruptcy will have an impact on your credit, this important legal action solves more problems than it creates.

Gives You Peace of Mind
When your finances are in turmoil, you are constantly on edge, wondering how to solve your problems. Bankruptcy puts an end to that worry because bankruptcy is a plan.

Stops Creditor Harassment
Today with automated 'robo-calls,' creditors and collection agencies can harass you dozens of times a day or night, whether it's dinner time, your kids bed time, or 6 a.m. on the weekend. When you file for bankruptcy, the harassing phone calls stop...completely and immediately.

As soon as a creditor is notified that you have filed for bankruptcy, they are prevented from continuing any of their collection efforts, including telephone calls, letters, lawsuits, garnishments, foreclosure, and repossession.

Lets YOU Prioritize Your Debts, Not Your Creditors
The advantage of filing for bankruptcy is that it protects your property. You see, in a bankruptcy, your secured creditors get paid first. If there's nothing left after they're paid, your unsecured creditors are out of luck and the debt is simply erased.

Secured debts are generally big-ticket items you own such as cars and homes where you made an initial financial investment upfront and then agree to a payment plan. If you fail to keep up with your payments, then the bank or lender can repossess the item you purchased

Unsecured debts usually refer to money owed on credit cards and personal loans. Medical bills are also considered an unsecured debt since you did not have to put up an item as collateral in order to obtain the debt.

The advantages to filing for bankruptcy are obvious. What may not be as obvious is whether or not you should file. The next section will help make that decision.

The Bankruptcy Self-Assessment Quiz

There is no specific formula or list of criteria for determining whether or not bankruptcy is a good option for you. That's why most bankruptcy attorneys, including Moran Law, offer free consultations on the subject.

Still, there are some common indicators that you can use as a litmus test for bankruptcy.

General Questions about Your Finances
Are you living paycheck to paycheck with no 'wiggle room'?
Do you write checks even when you know there is no money in your account to cover them?
Do you frequently have to pay overdraft charges
Do you regularly pay your bills late?
Do you have to juggle utility, telephone, and cable bills and payments to keep creditors off your back?
Do you currently have a title loan or a payday loan?
Have you had to dip into savings or retirement accounts to pay bills?

Lifestyle Questions
Are creditors calling you repeatedly?
Are your receiving notices and threatening letters from collection agencies?
Have you had to ask friends or family to help you out with loans to pay your bills?
Have you been denied credit, insurance, employment, or a security clearance because of poor credit?

Questions About Your Credit Card
Do you use more than 3 credit cards?
Are they maxed out or close to it?
Do you pay late or overdraft fees on all or most of your cards?
Do you use credit cards to pay for necessities such as food, medication, or gas?
Do you make only the minimum payment on your credit cards each month?

Questions About Your Home
Are you one month or more behind in your mortgage payments?
Are you in pre-foreclosure?

Questions About Your Car
Are you one month (or more) behind on your car payment?
Is your auto finance company threatening to repossess your car?
Have you recently had a vehicle repossessed?

Step 3 – Understand the Penalties of Doing Nothing

An important part of achieving financial freedom is to face your problems head on instead of burying your head in the sand. So if you answered “yes” to any of these questions, it’s time to stop procrastinating and to do something about your situation.

It doesn’t matter if you know for certain that you’re underwater or fear that if you don’t do something soon that your debt problems will spiral out of control. If you have any doubt whatsoever that you will be able to keep up with your financial obligations, it’s time to turn to an established bankruptcy attorney for guidance and assistance.

An honest bankruptcy attorney will evaluate your unique situation and advise you if it’s in your best interest to file for bankruptcy or whether you’d be better off taking another route.

You see, bankruptcy is not the only option available to people who are in financial peril. So your third step, and what we’ll talk about in this chapter, is understanding the consequences of not filing for bankruptcy, whether that means doing nothing at all (a mistake) or seeking out the services of a debt counseling agency (another mistake).

The recession has left a lot of good people so financially shell-shocked that they are completely paralyzed. But ignoring your financial problems won’t make them go away. They’re like an infection. If nothing is done to stop them, financial problems can spread until they kill you financially.

If you ignore your creditors and simply do nothing, things are going to get worse...much worse...fast.

Collection Agencies

If you missed several payments, and fail to communicate with your credit card company or other lender about your situation, they will turn your account over to a collection agency. Collection agencies are even more aggressive than lenders themselves when it comes to getting your money. Their representatives will make threatening phone calls and send threatening notices to you in the mail.

To add insult to injury, collection agencies charge a fee...and that fee gets passed on to you and is included in the debt figure that you owe.

Collection agencies cannot go into your bank account and take your money. They cannot garnish your wages. But don’t be fooled into thinking that you can ignore them, too. Collection agencies have a fall-back.

Lawsuits

When a collection agency is unable to get a consumer to make debt payments, a lawsuit is the next step. The suit will either be filed by the collection agency or by the bank that issued you the credit card. This is a worst case scenario because it is very difficult to win this type of lawsuit.
The 'proof' against you is the merchandise listed on your bill.

Lawsuits are expensive. And if you lose yours, you'll be required to pay your original debt in its entirety plus any associated penalties and fees (including those of the collection agency), plus your attorney's fees and costs...as well as the attorney's fees of the creditor.

It gets worse: if you can't pay all at once, you'll be put on a payment plan. If you fall behind in your payments, the judgment creditor will often begin to garnish your wages. All the while, interest will continue to accrue until your account is paid in full. But bankruptcy stops all this from happening.

Foreclosure and Repossession

Now if you lose the lawsuit (as is likely) or if you fail to appear in court when summoned, a judgment will be entered against you. This judgment will become a matter of public record, as do most court decisions. That means that anyone who looks into your background will find it.

Once this happens, the creditor can garnish your paycheck or bank account. Moreover, the creditor can have the sheriff in your county levy on other property that you own and sell it to pay off or pay down the judgment. This includes your home (which will go into foreclosure) and your automobile
(which will be repossessed).

It's Better to Act Immediately, If Only to Get Advice

People who are deeply in debt are at risk for losing their families, their jobs, their homes, and -- if depression sets in – they are at risk for losing their lives. According to the Pennsylvania Adult Suicide Coalition "Mounting debt (can) be linked to a wide variety of negative health outcomes. Such stressors may lead to thoughts of suicide or even to attempts and completions."

Once you come to know that you are facing a financial trouble, you should act immediately. The longer you wait, the deeper and deeper you are getting into debt. As you learned previously, lenders will charge you over-the-limit fees and raise your interest rates. If you're overdrawn in your checking account, you'll pay insufficient funds fees to your bank and you'll probably also have to pay another fee to the company that took your 'bad check.'

First, you have to decide what action you should take to control the situation. You'll need to choose between bankruptcy and one of the options that you'll read about below. For many people, the enormity of the decision they need to make keeps them stuck in place.

One worry is that the decision will backfire, leaving them worse off then when they began. Others are simply afraid. Many people are simply too embarrassed by their situation to want to admit it out loud.

But really, the biggest obstacle is that people don't have the adequate information they need to understand bankruptcy and its alternatives. So they're afraid to act because they are not fully aware of the possible impact that filing for bankruptcy will have on them.

This is where a bankruptcy professional comes in. When you work with a competent and qualified bankruptcy attorney, you don't have to make this decision alone.

Step 4 – Evaluate the Alternatives

Deciding to file bankruptcy can be a tough decision. Almost everyone confronting the decision goes back and forth with ‘fight or flight’ impulses, wondering if they should struggle to pay their debts or get relief from the constant pressure through bankruptcy and start over.

There is no easy way to get out of debt. Bankruptcy is one solution and there are alternatives as well. But if financial problems are an infection, some of the ‘cures’ are worse than the disease.

As I wrote previously, there are lots of unlicensed, unqualified so-called authorities on financial problems out there. So if you’re even thinking about using a debt counseling service or taking out a debt consolidation loan, you must take the time to investigate the company before signing an agreement with them. You want to be sure that nothing that is done supposedly on your behalf will leave you off in a worse situation than when you started. (Some attempts to avoid bankruptcy might have a negative impact if you latter decide to file bankruptcy.)

The main alternatives for avoiding bankruptcy are:

Out-of-court settlement with creditors
Debt counseling services
Debt consolidation loans

Let’s talk a little about each one.

Out of Court Settlement

It may surprise you to learn that you, yourself, can negotiate with your creditors to reduce debts, eliminate fees and penalties, and give you other ‘relief’ from your financial problems. If you can afford to settle an account by paying a lump sum (as opposed to a payment plan), you’ll have more negotiating leverage.

But there’s a problem with this approach. The person you’re negotiating with is a trained professional when it comes to debt collections. They have many tactics and techniques at their disposal, such as using complex legal terminology in order to confuse or intimidate you. They use your lack of knowledge or hesitation to stand up for your rights as a way to get the upper hand.

In an effort to avoid being taken advantage of by creditors and collection agencies, many consumers seek the assistance of debt counseling services.

Debt Counseling Services

Debt counseling services deal with creditors on your behalf to reduce interest rates, adjust monthly payment minimums, and sometimes even lower the balances that are due. Then they ‘consolidate’ all of your debts. You make a single monthly payment to the debt counseling service and they, in turn, pay your creditors.

It’s common for debt counseling services to sell their client accounts to other companies. This is the same kind of ‘bundling’ of debt that led to the financial failure on Wall Street. The problem is that the new company -- either intentionally or due to bad record-keeping -- fails to make the payments to their clients’ creditors or they make those payments late.

When that happens, creditors place the account in a default status and once again begin attempting to collect the debt. And the money you paid to the debt consolidation service is lost.

Debt Consolidation Loans

People who are optimistic and/or can demonstrate that their financial situation is about to change often opt to get a loan to tide them over. One option is a debt consolidation loan. You find a lender that will give you enough money to pay off all your other loans and then you make one payment to the new lender. This is similar to what a debt consolidation service does.

One downside to a debt consolidation loan is that you may be subject to heavy pre-payment penalties. In other words, if you come into a sum of money before the debt consolidation loan is due, and you attempt to pay off more than you owe, your extra payments may be subjected to heavy surcharges or fees. This doesn’t mean that you can’t pay off your debt consolidation loan early -- just that doing so may prove costly. The debt consolidation loan companies build in these prepayment penalties not to punish borrowers but to ensure that they profit according to an easily worked out scheme.

Unfortunately, people who get debt consolidation loans don’t always use the money to pay off their existing debts. They only pay off part of what they owe and in a very short time find their credit maxed out again, only now they have the additional weight of the consolidation loan on their shoulders.

Payday Loans

A payday loan (also called a paycheck advance or payday advance) is a small, short-term loan that is intended to cover a borrower’s expenses until his or her next payday. But what sounds like a quick, easy solution to financial problems comes at a high cost.

Generally, payday loans must be paid in a short period of time; they come due within 14 to 30 days. If you’re not truly certain that you will have the money at that time, this is not a realistic option.

Furthermore, payday loans can carry interest rates of 15% or more. This may not sound like very much, but the annual percentage rate calculates to almost 1200%!

Auto Title Loans

Auto title loans, like payday loans, make quick money available for a short time at high interest. The loans carry interest rates as high as 500% percent and usually mature in 30 days. Unlike payday loans, auto title loans frequently offer rollover option that allow a borrower to extend the term of the loan for another thirty days.

This extension is what gets most people in trouble. After the first 30 days, all payments are applied to the interest first and the interest continues to accumulate day after day after day...at that 500% rate... until you are able to pay the loan in full.

If 60 days go by and you are still unable to repay the loan, the lender can legally repossess you car and sell it to recover the amount of the loan along with any outstanding interest and fees that may be due.

And you know what's really crazy? In some states, if the repossessed vehicle is sold for more than what is owed on the loan, the lender is not required to turn the excess revenue over to the borrower.

Step 5 – Sort Out Fact from Fiction

Sadly, there has been a willful attempt to convince consumers that they no longer have the right to file for bankruptcy...and if they do, that they will lose everything they own. The architect of this mis-information campaign is the powerful credit card lobby (the people behind the mis-named Bankruptcy Abuse Prevention and Consumer Protection Act)...aided and abetted by a mainstream media which circulates the story.

So before you decide whether or not to file, it's important to be able to separate fact from fiction...

•Fact #1 – BAPCPA Legislation Has Effectively 'Halted' Bankruptcy Filings
Although the BAPCPA has changed the methods by which people qualify to file bankruptcy, and its intended goal was to make it much more difficult for people to file, in most cases, people are able to get the same or better relief under the new laws as they were before the legislation was enacted.

•Fact #2 – Filing for Bankruptcy Is Not Confusing and Hard to Do
A large piece of mis-information that circulates regarding bankruptcy is that filing is difficult.
It isn't...because bankruptcy does not have to be a do-it-yourself endeavor. There is assuredly a lot of paperwork involved, but the skilled and experienced bankruptcy attorney you choose to represent you will make the process much less stressful and complicated.

Good News!
It is now mandatory that all filings must be done electronically, so that makes the entire process much easier.

•Fact #3 – Filing Will Not Make You a Credit 'Untouchable' for 10 Years
While it is true that bankruptcy will appear on your credit report for 7-10 years, it does not mean that you will become a credit pariah whom no lender will work with for a decade. If you work to re-build your credit immediately after you file and keep your record 'clean,' you can repair bad credit in a little over a year.

You have options! The easiest way to re-build your credit standing is with a secured credit card that you use regularly and pay promptly. To obtain a secured card, you give the lender a cash deposit (collateral) that becomes the credit line for your account. For example, if you put $500 in the account; you can charge up to $500. You may be able to add to the deposit to add more credit, or sometimes a bank will reward you for good payment history and add to your credit line without additional deposits.

Warning!
Beware of secured credit cards (and unsecured cards) that take advantage of consumers with bad finances by charging high annual fees and exorbitant interest rates. You should also avoid secured cards that do not convert to an unsecured card after eighteen months of on-time payments.

Another alternative for re-building credit is to get an installment loan or personal loan. One good thing about many installment loans is that they have a set payment, due at a specified time, and the total amount of the loan gradually decreases (there are many lenders who offer this type of loan).
And if you have a student loan that was not paid in full during your bankruptcy, continue making your payments after your bankruptcy case is discharged. This is another great way to reestablish your good credit standing.