An overview of chapter 7 bankruptcy

Finance, Banks

An Overview of Chapter 7 Bankruptcy This essay will address the basic functions of a Chapter 7 bankruptcy and changes to Chapter 7 laws which make it more difficult to qualify for this type of bankruptcy. As a preliminary matter, " To qualify for relief under chapter 7 of the Bankruptcy Code, the debtor may be an individual, a partnership, or a corporation or other business entity" (Chapter 7 Liquidation: np). Thus, in general, this type of bankruptcy is available to both individuals and to businesses. In the past, it was relatively easy for individuals and these types of business entities to qualify for the liquidation process. This, however, has changed as a result of intensive lobbying by creditor associations a growing sense that the Chapter 7 process was being abused. As a result, Congress recently passed the Bankruptcy Abuse Prevention and Consumer Protection Act 2005. This Act makes a number of significant changes to the Chapter 7 Bankruptcy framework (The New Bankruptcy Law: np).

One major change is the need for all debtors considering bankruptcy under Chapter 7 or Chapter 13 to undergo credit counseling. This counseling is designed to aid debtors in determining whether bankruptcy is truly necessary and how a repayment plan might be worked out. Significantly, debtors must select an approved credit counselor. In addition, an income test is now applied to determine whether filers are eligible for the more popular Chapter 7 bankruptcy filing. To this end, a " means test" is employed to evaluate disposable income and to classify debts as secured, unsecured, and the degree of priorities. Another requirement imposes higher ethical duties on bankruptcy lawyers so that the attorneys must personally vouch for the accuracy of all information provided by the debtor. The expected

effect is to make it somewhat more difficult and more expensive to retain a bankruptcy lawyer. There have also been changes to the formulas dealing with repayment plans, the valuation of assets, state residency exemptions, which would appear to discourage both abusive and non-abusive bankruptcy filings. The changes are quite strict.

People file bankruptcy for many reasons. The main reason is that a person or a business entity is no longer able to service debts. By filing for bankruptcy, a debtor may be able to liquidate debts or pursue a court-approved repayment plan or a business rehabilitation. On certain occasions a bankruptcy is pursued in order to get a fresh start. In other cases, a bankruptcy is used as a strategic business tool to hold off demands by creditors while the debtor attempts to reorganize its financial affairs. It must be noted, however, that bankruptcy is not always a voluntary act. There are provisions under which creditors can force an involuntary bankruptcy. It has yet to be seen whether the recent changes to the bankruptcy laws will allow debtors to resist a creditor's petition attempting to force the debtor into bankruptcy, although this was not the underlying motivation for the changes.

Finally, a bankruptcy has several negative consequences. This is particularly true in the period following the bankruptcy filing. A public record follows the debtor for ten years and although the debtor's finances may be in better shape, it is typically much more difficult to secure loans or to obtain credit cards on the same terms as before the bankruptcy filing. Credit is often denied, and terms dealing with security and interest rates are often more unfavorable. In general, interest rates are higher for loans and for credit

cards and collateral is often sought as a hedge against default. Credit is a complicated area, however, and there are creditors willing to make some exceptions.

References

Chapter 7 Bankruptcy Information. BankruptcyHome. com. Retrieved 7 September 2006.

Available: http://www. bankruptcyhome. com/chapter7. htm

Chapter 7 Liquidation Under the Bankruptcy Code. U. S. Courts: The Federal Judiciary.

Retrieved 7 September 2006. Available:

http://www. uscourts. gov/bankruptcycourts/bankruptcybasics/chapter7. html

Chapter 7, Title 11, United States Code. The Wikipedia free encyclopedia. Retrieved 7

September 2006. Available: http://en. wikipedia. org/wiki/Chapter_7

New Bankruptcy Law: Alert! New bankruptcy law effective October 17, 2005. FindLaw.

Retrieved 7 September 2006. Available: http://bankruptcy. findlaw. com/new-bankruptcy-law/

What Every Investor Should Know: Corporate Bankruptcy. U. S. Securities and

Exchange Commission. Retrieved 7 September 2006. Available:

http://www. sec. gov/investor/pubs/bankrupt. htm