

FORT BELVOIR LEGAL ASSISTANCE OFFICE

Bankruptcy Assistance

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Soldiers facing hard financial times have resources available to help alleviate their problems, such as Army Emergency Relief, Command Financial Counselors, and the Legal Assistance Office. The initial approach to crushing debt should always be strict budgeting, starting with cutting costs and perhaps getting even a second job to help pay off debt. However, if no debt management plan is feasible even after talking to a credit counselor, bankruptcy may be the answer. If you are an active duty military member, a retiree, or a dependant ID card holder, the Fort Belvoir Legal Assistance Office can assist you with filing bankruptcy certain bankruptcy petitions.

Personal bankruptcies typically fall into one of two categories. Under a “Chapter 7” bankruptcy, also known as “straight bankruptcy,” the individual’s unprotected assets (which are determined under state law) are sold to repay creditors. In Chapter 7 cases, property associated with certain “secured” loans, (such as real estate or cars), is normally turned over to the lender. Thereafter, most of a person’s debts are legally discharged by the bankruptcy court.

Under the law, if an individual’s Chapter 7 bankruptcy filing is determined to be “abusive,” it is converted to a Chapter 13 reorganization bankruptcy (see below). Abuse of the bankruptcy process is determined in one of two ways. First, the behavior of the debtor may strongly indicate abuse, such as running up tremendous credit card debt immediately before filing. Alternatively, a presumption of abuse may arise upon comparison of the debtor’s income to the median income in the state under a complicated “means test.” The essence of this “means test” is to determine if enough disposable income exists to repay the debt, justifying the conversion to a Chapter 13 bankruptcy.

The other bankruptcy for individual debtors is the “Chapter 13 reorganization.” This type of bankruptcy gives relief to debtors with regular income from some common collection tactics in addition to allowing them to keep property. To satisfy the Chapter 13 bankruptcy requirements, the debtor must fulfill a court approved financial reorganization and debt rehabilitation plan, with the end goal of repaying creditors according to the plan within 3 to 5 years. If the debtor sticks to the plan, remaining debt is canceled, even though many creditors will not receive the full amount due.

Chapter 13 bankruptcies are subject to certain limitations both practically and by law. First, in order to file a Chapter 13 reorganization bankruptcy, the debtor must have enough regular income to fund a viable debt repayment plan over 3 to 5 years. Second, Title 11 of the United States Code limits the amount of debt that an individual may have and still file a Chapter 13 bankruptcy, however these limits are so high that they are not a hindrance to most consumers. Though a Chapter 13 bankruptcy does not offer the immediate relief from debt like a Chapter 7 bankruptcy, it does have several advantages. It prevents collections against non-bankruptcy co-signers, stops foreclosures, and reinstates accelerated mortgages.

If you decide that bankruptcy is necessary, take these steps to ensure a smoother process. First, contact the Legal Assistance Office at (703) 805-2856, or hire a reputable bankruptcy attorney for help with filing the complex paperwork. When you speak to your attorney, be sure to bring all deeds, vehicle titles, tax returns and creditor letters as well as any other relevant financial documents. After filing either type of bankruptcy you will need to get credit counseling from an approved agency and take a class in financial management. Perhaps most importantly however, do not run up credit card debt in anticipation of filing for bankruptcy because most courts will consider that fraud, and you will have to repay that amount in full despite filing for bankruptcy.

Once you've filed for bankruptcy, it is time to rebuild your financial reputation. By managing your finances wisely and with discretion, you can rebuild your credit score, especially after the bankruptcy comes is deleted from the credit report ten years after filing. Most of all however, learn from past mistakes and handle your financial affairs diligently in the future.