BANKRUPTCY LAW IN UTAH: CHAPTER 7 v. CHAPTER 13

CHAPTER 7 BANKRUPTCY –

COMMONLY USED WHEN:

- Debtor has little property except for the basic necessities like furniture and clothing.
- Debtor has little or no money left after paying basic expenses each month.

ADVANTAGES OF CHAPTER 7:

- Most unsecured debts can be discharged (completely eliminated).
- Process moves quickly – you may receive your discharge in just a few months.
- Creditors can't contact you while the automatic stay is in effect or after debts are discharged.

Chapter 7 Bankruptcy is commonly known as a liquidating bankruptcy. The concept of Chapter 7 Bankruptcy is that all of a Debtor's ***non-exempt*** property becomes property of the bankruptcy estate and is liquidated by the bankruptcy trustee. The sale proceeds are then distributed among the Debtor's creditors. However, in the majority of consumer Chapter 7 bankruptcy cases, most assets owned by the Debtor are ***exempt*** from execution under applicable State and Federal laws. Therefore, in most cases, a Debtor can file Chapter 7 and retain possession and ownership of his or her property. In Chapter 7, the Debtor receives a discharge which eliminates credit card debt, medical bills, and other similar debt, plus debts secured by vehicles, real or personal property or other assets surrendered to the Debtor's secured creditors. A Debtor may have the option of retaining possession of assets (such as a vehicle) securing a Creditor's claim, provided the Debtor agrees to continue paying the debt secured by the asset the Debtor desires to keep.

CHAPTER 13 BANKRUPTCY –

COMMONLY USED WHEN:

- Debtor has significant equity in a home or other property/assets debtor wants to keep.
- Debtor has regular income and can pay living expenses, but can't keep up the scheduled payments on debts.

ADVANTAGES OF CHAPTER 7:

- You can keep most of your property while spreading out time to pay past due accounts.
- You will have 3-5 years to catch up delinquent accounts according to a schedule that you and the trustee have agreed is workable for you.
- You'll make one monthly payment to the bankruptcy trustee and you will have no direct contact with creditors during the protection period of 3-5 years.
- Co-signers may be protected.

Under Chapter 13, the Debtor retains all of his or her assets, and the Debtor formulates a plan under which the Debtor proposes to re-pay Creditors all or a portion of the debt owed to them over a period of three to five years. The Debtor must make a single monthly plan payment to the bankruptcy trustee throughout the duration of the plan, and the bankruptcy trustee distributes the plan payment among all of the Debtor's Creditors in amounts and priorities specified in the plan. (Certain obligations including long-term secured liabilities may be paid outside of the plan.) The amount of the plan payment is an amount equal to all of the surplus income of the Debtor and the Debtor's spouse. Surplus income is all income received by the Debtor and his or her spouse that is not reasonably necessary for the support of the Debtor and the Debtor's dependents.

Many interesting and valuable options are available to Debtors in Chapter 13 cases that are not optional in Chapter 7 cases. For example, arrears owed to a secured creditor can be cured within the Chapter 13 Plan. This is particularly valuable to Debtors behind on their home mortgages. In addition, secured claims need only be fully paid to the extent of the value of the property securing the claim. Home mortgages have special rules in this regard under recent amendments.