



Is Bankruptcy Right for You?

By Kristen M. Jackson, Attorney at Law

My husband and I are facing foreclosure and other financial difficulties that have led to the failure of our marriage. Now faced with bankruptcy, would it be better for us to file before or after our divorce is final?

With the current state of our uncertain and volatile economy, many people are facing family and life changing decisions that have caused, or will cause, financial and emotional hardship and impact in their lives. Many of the factors contributing to such life altering decisions are the increase in mortgage defaults (due to subprime loans causing foreclosures to spike nationwide), high credit card debt resulting from easy credit approval, rise in unemployment and the collapse of financial institutions. This year, these financial and emotional impacts have resulted in an increase in bankruptcy filings nationwide (38 percent above previous records) and are the leading cause for divorce (57 percent of divorces). If you are experiencing these or similar obstacles, take heart; there are options to assist you in dealing with them.

SHOULD YOU FILE BANKRUPTCY?

Bankruptcy laws were designed to help you to get a fresh start when you are financially in over your head. It is a legal procedure that allows you to seek protection from your creditors. Typically, you can utilize one of two types of bankruptcy filings. Chapter 7 is the liquidation or selling of your assets to pay your creditors. With certain limitations, it liquidates all unsecured creditors, freeing you from most debts. The downside is that, most of the time, in a Chapter 7, you must sell or relinquish secured property if you are not

current with your payments at the time that you file bankruptcy.

Unlike Chapter 7, Chapter 13 restructures the debt into a payment plan, to pay back a portion of the debt to creditors over time, usually three to five years. There are criteria that you must meet for both Chapters 7 and 13 in order to file bankruptcy.

WILL IT STOP HOME FORECLOSURE?

While owning a home is part of the American dream, circumstances can lead you to fall behind on mortgage payments, including a medical crisis, loss of employment, divorce or death of a spouse or child. Filing a Chapter 7 bankruptcy temporarily stalls your lender's right to foreclose, until the lender gets permission from the court to continue with the foreclosure proceedings. If you can eliminate other unsecured debts and continue to pay the mortgage, you may be able to keep your home.

Chapter 13 makes sense for homeowners in temporary financial trouble due to a job loss, medical bills, etc. and allows them to keep their home as long as they can pay on a court ordered payment plan. If you don't have sufficient income, or fall behind with your payments again, the bankruptcy will be dismissed, and the foreclosure will resume.

WHAT IF YOU ARE FILING FOR DIVORCE?

Sometimes a divorcing couple should

file a joint bankruptcy since it can allow you and your spouse to get rid of joint debt, surrender a house or motor vehicles and cancel leases and other executory contracts. Filing a joint bankruptcy may assist in settlement since the amount of debts and liens to be divided is reduced. A husband and wife can file a joint case under Chapter 7 or 13. In a Chapter 13, you and your spouse would have to show that, even with two households, you can make the payments you each agree to pay.

However, a joint Chapter 13 will be in place for years after a divorce, which can be difficult. In addition, certain debts, such as alimony or child support, are non-dischargeable. If you do not file jointly, consider what might happen if, once divorced, your ex-spouse files his/her own bankruptcy. You may be stuck with joint credit card bills, a vehicle loan or tax debt. You should include provisions covering this scenario in the divorce agreement that will protect your interests after the divorce.

Remember, filing bankruptcy is not immoral. The bankruptcy laws were implemented to help you start over. If you are facing financial difficulties, are in or anticipate foreclosure or are involved in divorce proceedings, bankruptcy may or may not make sense. The advice of an experienced bankruptcy attorney is essential in making the best choice for you and your family. ■

Kristen M. Jackson, attorney and founding partner of the Jackson Montoya Law Firm (407-363-9020), has over 29 years of experience in estate planning, business, real estate and family law. She has earned an AV rating from Martindale Hubbell signifying the highest level of professional excellence as obtained through opinions from members of the Bar and Judiciary.



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