CHOOSING THE RIGHT TYPE OF BANKRUPTCY

In many cases, the type of bankruptcy filed will be contingent on three factors: income, property, and debt. Your income is important because it may preclude you from filing a simple Chapter 7 case, and your property is important because if you have nonexempt property, you might lose it in Chapter 7, but can protect it in Chapter 13. The different types of debt that you have is also an important factor in determining which chapter is right for you.

Here are a few scenarios that explore which bankruptcy strategy would be best:

1. Employed or Unemployed Debtors With Few Assets – Chapter 7.
A reduction or loss of income combined with a large amount of debt is the number one reason people file for bankruptcy. Compounding factors like divorce, medical emergencies, or the death of a family member are also common. Assume that in this scenario the debtor has below median income or none at all, does not own a home, and has one car with a loan against it.

In cases like this, a Chapter 7 bankruptcy is the fastest, easiest, and most effective means of getting rid of debt. As a matter of fact, this is the most common bankruptcy case, often called a "no asset" bankruptcy.

2. Employed or Unemployed Homeowners – Upside-Down Mortgage – Chapter 7.
Homeowners who are experiencing a loss of income also have options under bankruptcy law. For those homeowners whose property value has fallen below the value of the loan against it, Chapter 7 is probably still the best option. Since the value of the home is less than the value of the lien against it, the homeowner has no equity in the bankruptcy estate, so the house is protected from liquidation. A Chapter 7 bankruptcy can quickly relieve them of their obligations to repay unsecured debts, making monthly bills much more manageable.

3. Employed or Unemployed Homeowners – Significant Equity – Chapter 7 or 13.
If a homeowner has a significant amount of equity in property, then Chapter 7 may or may not be the best option. However, Arkansas Exemptions offers an exemption that can protect an unlimited amount of equity in a home (with certain restrictions and limitations) – where in some instances will allow a debtor to file a Chapter 7 to discharge debts while keeping a home with an unlimited amount of equity. Also, the homeowner can keep the home in Chapter 13 bankruptcy if he or she stays current on the mortgage. Keep in mind though, there must be enough income available from the petitioning household to fund a repayment plan.

4. Employed Homeowners Facing Mortgage Delinquency or Foreclosure – Chapter 13.
For homeowners who have fallen behind on mortgage payments, Chapter 13 offers a way to catch up or "cure" past due mortgage payments while simultaneously eliminating some portion of dischargeable debt. This means they can save the home from foreclosure and get rid of a lot of credit card debt, medical debt, and possibly even second and third mortgages or HELOCs. Chapter 7 bankruptcy does not provide a way for homeowners to make up mortgage arrears.

5. Petitioners With High Incomes and Large Amounts of Debt - Chapter 13.
Very wealthy debtors often need to file a Chapter 13 debt repayment plan. This is because debtors with high incomes and significant property ownership will have both “disposable income,” and “non-exempt assets.”