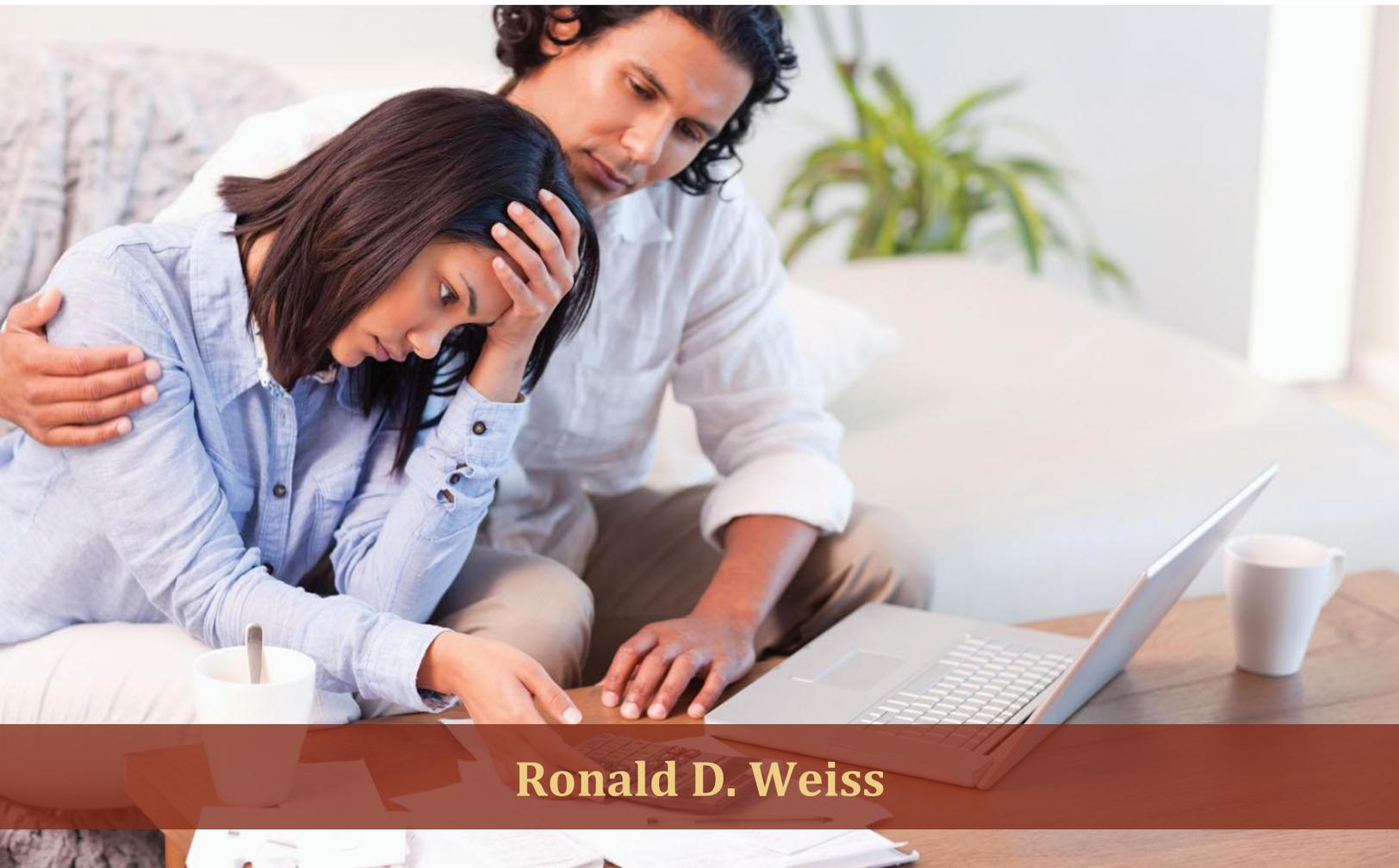
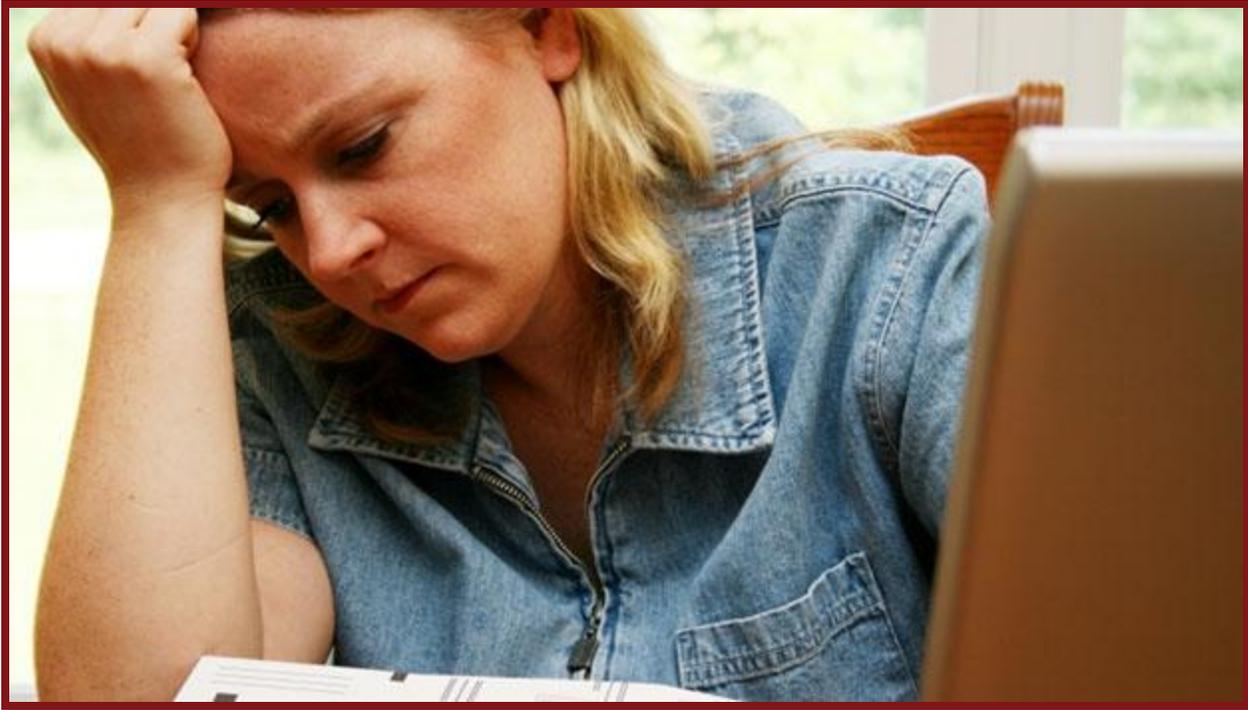


WHAT IS BANKRUPTCY IN NEW YORK?

It is Important to Understand How the Bankruptcy Code Works and which is the Appropriate Chapter to File Under



Ronald D. Weiss



Bankruptcy is the legal process by which debts are forgiven. The Bankruptcy Code is a part of federal law and uniform laws apply throughout the United States, with individual states passing their own regulations related to exempt property. There are different chapters of the bankruptcy code that apply in different situations and that provide an opportunity for debtors to take advantage of various methods of debt relief.

Bankruptcy can be invaluable to those who are facing serious debt problems and who are unable to repay their bills. Both individuals and businesses can benefit from a bankruptcy filing, and even governments can sometimes file for bankruptcy protection. It is important to understand how the bankruptcy code works and which is the appropriate chapter to file under. An experienced [New York bankruptcy attorney](#) can assist debtors in understanding their rights and taking advantage of legal protections available to them.

Consumer Bankruptcy

Consumer bankruptcies are generally filed under Chapter 7 or Chapter 13 of the bankruptcy code.



Chapter 7 bankruptcy is sometimes referred to as “total liquidation bankruptcy.” A debtor who files for Chapter 7 bankruptcy will be required to turn over non-exempt assets and property to the bankruptcy trustee. This property will become part of

the bankruptcy estate. Items of value may be sold and the money generated from the sale, as well as the cash in non-exempt accounts, will be used to repay the debts owed. Debts must be repaid according to statutory rules that set the order of preference of creditors. Debtors may not transfer money or assets, nor repay preferred creditors, in the days leading up to bankruptcy or after the bankruptcy has been filed.

Changes to the bankruptcy code in 2005 limited the number of debtors who may file for Chapter 7 bankruptcy protection. Debtors must now make below the median income in their state based on family size, or must pass a means test in

which they demonstrate insufficient funds to put towards debt repayment after required fixed expenses have been paid.

Chapter 13 is the other common type of consumer bankruptcy, and is available to those who do not pass the Chapter 7 means test. Chapter 13 is also referred to as “wage earner’s bankruptcy.”

Under Chapter 13 of the bankruptcy code, a debtor’s assets and property are not impacted and he or she is permitted to keep all money and possessions. However, debtors in a Chapter 13 filing must repay a portion of their debts over a period of three to five years. The specific amount that must be paid in a Chapter 13 bankruptcy is going to be determined by the amounts owe and types of debts the debtor has, as well as his income.

While many people are reluctant to file because of concerns about their credit scores, bankruptcy is often the first step towards solving serious financial problems and beginning to rebuild credit.

In both a Chapter 7 and a Chapter 13, it is generally possible to keep homes and retirement accounts. However, to keep a home, vehicle or other asset that is acting as collateral for a debt obligation, it is necessary for the debt to be repaid. An individual who is behind on his mortgage, for example, may keep his home only if he is able to get current and if he reaffirms the mortgage debt. Neither a Chapter 7 nor a Chapter 13 can be used to discharge certain types of debt that are not eligible to be bankrupted. This includes student loan debt, some types of tax debt, and unpaid child support obligations.

Business Bankruptcy



Businesses may also file for protection under the bankruptcy code. If the business is a sole proprietorship or partnership and is not organized as a distinct legal entity, the business bankruptcy will be the equivalent of a personal bankruptcy. This means that the debtors' individual assets will be at stake and the debtors' individual credit will be affected by the bankruptcy filing.

If the business has been incorporated and is a separate and distinct legal entity from its owners, then the business can file for bankruptcy without affecting the finances of the owners unless the owners have made personal guarantees.

Businesses may file for Chapter 7 bankruptcy if they wish to liquidate operations. The assets of the business will be sold off and used to repay creditors, just as with consumer bankruptcy.

If a business wishes to continue operations after the bankruptcy filing, then it may file under Chapter 11 of the bankruptcy code. Chapter 11 requires the creation of a plan to repay creditors. The plan may be a multi-year plan, and contracts and agreements may be restructured or voided as a part of the bankruptcy filing. Chapter 11 is a more complicated form of bankruptcy that



tends to be more costly than other chapters. It is essential to have an attorney experienced with this type of bankruptcy filing.

Many of the world's largest businesses have filed for bankruptcy to restructure debts and have gone on to continue operating successful businesses.

Choosing Bankruptcy

The bankruptcy code exists to provide relief for debtors. While many people are reluctant to file because of concerns about their credit scores, bankruptcy is often the first step towards solving serious financial problems and beginning to rebuild credit. Bankruptcy is a preferred solution to continuing to repay debts that are too large to pay, and is a better solution than taking a home equity loan or cashing in retirement accounts to pay debts.

Individuals and businesses experiencing financial challenges should speak with a qualified and experienced attorney for assistance.

About the Author

Ronald D. Weiss, Esq.



Ronald D. Weiss, Esq., is an attorney who since 1987 has specialized in bankruptcy solutions, foreclosure solutions, and modification and negotiation solutions for individuals and businesses in the greater Long Island and New York areas undergoing financial hardship.

Mr. Weiss is a member of the American Bankruptcy Institute, the National Association of Consumer Bankruptcy Attorneys, the Suffolk County Bar Association and the Nassau County Bar Association, and is admitted to practice in the State of New York, the State of Connecticut, and the federal courts for the Eastern and Southern Districts of New York. Mr. Weiss is a 1988 graduate of New York University School of Law where he was a recipient of the Galgay Fellowship in Bankruptcy and Reorganization Law and has published several law journal articles. Mr. Weiss' past experience includes having been a law clerk to the Honorable Prudence B. Abram, a United States Bankruptcy Judge in the Southern District of New York, and having practiced corporate bankruptcy law at several large Manhattan law firms, including Moses & Singer, LLP, and Walter, Conston, Alexander & Green, P.C. Mr. Weiss later worked for Fischhoff, Gelberg & Director in Garden City, NY where he had practiced consumer and business bankruptcy before starting the Law Office of Ronald D. Weiss, P.C.

Mr. Weiss started the Law Office of Ronald D. Weiss, P.C. in 1993, which has been located in Melville, New York since its inception.

Please call us at (631) 479-2455, or e-mail us at weiss@ny-bankruptcy.com for a free consultation to discuss your legal options in greater detail.

Ronald D. Weiss, P.C.

734 Walt Whitman Rd. Suite 203
Melville, Suffolk, NY 11747
www.ny-bankruptcy.com