Consumer Bankruptcy 101

By Ian M. Falcone, Esq.

* This article was written prior to the effective date of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (October 17, 2005). While certain details may have changed as a result of the new act, the general information contained in this article remains substantially accurate.

The decision to file for personal bankruptcy protection is, at best, difficult. Individuals often experience feelings of failure and sometimes wrongdoing. People make mistakes or have bad circumstances thrust upon them. Regardless, they are not required to suffer forever.

The Bankruptcy Code is designed to help people restructure or eliminate their debt. The two major consumer chapters are Chapter 7 and Chapter 13.

Chapter 7 is sometimes called a "straight bankruptcy" or "liquidation". Theoretically, an individual gives up everything he owns in exchange for getting rid of all of his debt. Neither of these statements is completely accurate. The law provides for "exemptions" or protections in differing amounts for different categories of property. These amounts vary substantially from state to state. However, in Georgia, it is fair to say that most Chapter 7 debtors have little to no equity in the items they own.

Unfortunately, not all types of debts are dischargeable. Debts for alimony, support, or maintenance, debts for certain types of taxes, and debts incurred by fraud, may not be discharged in bankruptcy.

In Georgia, the ideal Chapter 7 debtor has little to no equity in the items he owns, does not have excessive earnings and owes predominantly unsecured debt, such as credit cards. Under the right circumstances, the debtor can keep his basic property, get rid of the majority of his debt and get a fresh start. When the circumstances are not right, a debtor should consider filing for relief under Chapter 13.

Chapter 13 is properly known as a "reorganization of an individual with regular income." It is sometimes referred to as a "wage earner's plan" or "reorganization". Under this Chapter, a certain amount of repayment is required. In order to qualify, a Chapter 13 debtor's take home pay must be greater than his regular household expenses. The amount creditors receive is based on several factors, including the debtor's income, debtor's expenses and value of debtor's property after exemptions. Unsecured creditors will receive anywhere from 1% to 100% of the money owed to them over a 3 to 5 year period.

Chapter 13 debtors typically have more secured debts than a Chapter 7 debtor and are often delinquent in their mortgage or car payments. If successful, a Chapter 13 debtor may be eligible for a discharge of certain debts which might not have been discharged in a Chapter 7 case.

Chapter 7 bankruptcies will stay on a debtor's credit report for 10 years and a Chapter 13 stays for 7 years. Of course, most credit information remains on a report for 7 years.

Today, the stigma of filing for bankruptcy protection has substantially reduced. Debtors come from all walks of life. They are neighbors, teachers, police officers, firefighters, and even doctors. They are usually good people who need a second chance. Under the right circumstances, the Bankruptcy Code provides them with that chance.

If you are experiencing serious financial difficulty, you should consult with an attorney to discuss your bankruptcy and non-bankruptcy options.

For more information on filing small business or personal bankruptcy, or bankruptcy options, in the state of Georgia please call Ian Falcone at The Falcone Law Firm in Marietta, Georgia at (770) 426-9359 or visit ***http://www.falconefirm.com***