



Bankruptcy Basics

Prepared by Rendy Lemke

Filing Bankruptcy?

A bankruptcy filing is initiated by the filing of a petition in the Bankruptcy Court office either in Cheyenne or Casper.

In order to file in this district, a debtor must be a resident of the district for the greater part of 180 days prior to the filing or have Wyoming as the situs for the principal assets in the filing.

Once the bankruptcy is filed, the automatic stay provisions of 11 U.S.C. Section 362 operate in a general fashion to stop the commencement or the continuation of any action or proceeding against the debtor. As a practical matter, this is the first time that a debtor sees any form of relief flowing from a filing, because the automatic stay operates to prohibit actions such as the continuation or completion of any collection action, garnishment, home foreclosure, and the mailing of bills and statements from creditors.

There are six types of bankruptcy filings:

- **Chapter 7 - Liquidation (11 U.S.C. Section 701, et seq.)**
- Chapter 9 - Adjustment of Debts of a municipality (11 U.S.C. Section 901, et seq.)
- Chapter 11 - Reorganization (11 U.S.C. Section 1101, et seq.)
- Chapter 12 - Adjustment of Debts of a Family Farmer or Fisherman with regular annual income (11 U.S.C. Section 1201 et seq.)
- **Chapter 13 - Adjustment of Debts of an Individual with regular income (11 U.S.C. Section 1301 et seq.)**
- Chapter 15 - Cross-Border Cases (11 U.S.C. Section 1501 et seq.)

Most of the filings in this district consist of Chapter 7 filings and Chapter 13 filings. Upon the filing of a voluntary petition, cases are assigned to one of three panel trustees for Chapter 7 proceedings or to a Chapter 13 trustee for Chapter 13 proceedings. The cases are then assigned a meeting date for a creditors' meeting, which is also known as a "341" meeting because it is held pursuant to the provisions of 11 U.S.C. Section 341. Those meetings are conducted by the Chapter 7 trustee in Casper, Cheyenne, Green River, Greybull, Lander, and Sheridan and by the Chapter 13 trustee in Casper and Cheyenne. Debtors must appear at this meeting. This meeting is the opportunity for the trustee to examine the debtor and for creditors to ask questions of the debtor and of the trustee. Certain material, including evidence of pay stubs and tax returns, is required to be submitted to the trustee prior to the creditors' meeting. The creditors' meeting is a critical stage of the process because that is often where the trustee will make a determination whether to administer assets in a Chapter 7 case, which assets of the debtor will

be subject to liquidation, and which of those assets can be properly claimed as exempt. The trustee only has 30 days after the creditors' meeting in which to object to claimed exemptions.

Pre-filing Requirements

Each individual who wants to file bankruptcy must first undergo credit counseling and receive a certificate showing completion of that counseling. That counseling is to occur within 180 days preceding filing. (11 U.S.C. Section 109(h)). Beyond that, however, is the BAPCPA requirement that each individual is subjected to a "means test" by which his income must be assessed and determined to be either above or below median income as defined by the census bureau. Those households which have an income below the median income are generally free to file either a Chapter 7 or 13 bankruptcy without any further assessment of their monthly expenses. Those households which appear to be above the median income are subjected to a "means test" by which monthly expenditures are compared to those approved by the Internal Revenue Service. At the end of that test, if an above-median income household has in excess of \$166.67 per month of excess income, that whole household can be required to file a Chapter 13 or Chapter 11 bankruptcy rather than filing under Chapter 7. (11 U.S.C. Section 707 (b)).

As of May, 2013, the median income, for a household of 1 is \$45,336; HH of 2: \$63,193; HH of 3: 73,688; HH of 4, \$78,733; and add \$7,500 for each individual in excess of 4.

As with anything else, there are exceptions, but the general rule is that if there is excess income, one is subject to the means test. Not only does the means test analyze gross income of the person or persons who wish to file, but any proposed debtor must also disclose the income of all members of the household for inclusion in the definition of "income." Pay stubs and sources of income for the previous six months prior to filing must be produced along with the federal income tax returns of the household. Finally, BAPCPA requires that a filer take a personal financial management course before receiving a discharge in bankruptcy. (11 U.S.C. Section 727 (a)(11)).

BAPCPA prevents the re-filings that have become far too common. Pre-BAPCPA, a debtor could file a Chapter 7 bankruptcy every six years, **but that period has been extended to every eight years. (11 U.S.C. Section 727 (a)(8)).**

Exemptions

The bankruptcy code recognizes that certain assets are exempt from administration. The federal exemptions are contained in 11 U.S.C. Section 522. However, Wyoming is known as an "opt out" state because the Wyoming Legislature opted out of the federal exemptions in W.S. § 1-20-109. Those exemptions from bankruptcy therefore available under Wyoming Statute can generally be found in W.S. § 1-20-101, et seq. and include generally:

CHAPTER 20 - PROPERTY EXEMPT FROM EXECUTION OR ATTACHMENT

1-20-101. Homestead exemption; right and amount.

Every resident of the state is entitled to a homestead not exceeding twenty thousand dollars (\$20,000.00) in value, exempt from execution and attachment arising from any debt, contract or civil obligation entered into or incurred.

1-20-102. Homestead exemption; when operative.

(a) The homestead is only exempt as provided in W.S. 1-20-101 while occupied as such by the owner or the person entitled thereto, or his or her family.

(b) When two (2) or more persons jointly own and occupy the same residence, each shall be entitled to the homestead exemption.

1-20-103. Homestead exemption; right of family survivors.

When any person dies seized of a homestead leaving as survivor a widow, husband or minor children, the survivor is entitled to the homestead. If there is no such survivor, the homestead is liable for the debts of the deceased.

1-20-104. Homestead exemption; composition.

The homestead may consist of a house on a lot or lots or other lands of any number of acres, or a house trailer or other movable home on a lot or lots, whether or not the house trailer or other movable home is equipped with wheels or resting upon immovable support.

1-20-105. Wearing apparel.

The necessary wearing apparel of every person not exceeding two thousand dollars (\$2,000.00) in value, determined in the manner provided in W.S. 1-20-106 is exempt from levy or sale upon execution, writ of attachment or any process issuing out of any court in this state. Necessary wearing apparel shall not include jewelry of any type other than wedding rings.

1-20-106. Exemption of other personal property; personalty used in livelihood; appraisalment.

(a) The following property, when owned by any person, is exempt from levy or sale upon execution, writ of attachment or any process issuing out of any court in this state and shall

continue to be exempt while the person or the family of the person is moving from one (1) place of residence to another in this state:

(i) The family bible, pictures and school books;

(ii) A lot in any cemetery or burial ground;

(iii) Furniture, bedding, provisions and other household articles of any kind or character as the debtor may select, not exceeding in all the value of four thousand dollars (\$4,000.00). When two (2) or more persons occupy the same residence, each shall be entitled to a separate exemption;

(iv) The value in a motor vehicle not exceeding five thousand dollars (\$5,000.00).

(b) The tools, team, implements or stock in trade of any person, used and kept for the purpose of carrying on his trade or business, not exceeding in value four thousand dollars (\$4,000.00), or the library, instruments and implements of any professional person, not exceeding in value four thousand dollars (\$4,000.00), are exempt from levy or sale upon execution, writ of attachment or any process out of any court in this state.

(c) The value of the property selected by any debtor shall be ascertained by the appraisement of three (3) disinterested appraisers, to be selected and summoned by the officer claiming to levy upon, attach or sell the property. The appraisers shall be sworn by the officer to make a true appraisement of the value of the property.

1-20-107. Exemptions when head of family dies.

Whenever the head of a family dies, deserts, or ceases to reside with the family, the family is entitled to all the benefits and privileges conferred upon the head of a family residing with the same, and the family, or any member thereof, may select the property claimed as exempt. Where the exempt property is the sole and separate property of the wife, it is, to the same extent and for all purposes, exempt for the debts of the wife.

1-20-108. Exception; residency required.

(a) No property claimed as exempt under W.S. 1-20-101 through 1-20-106 is exempt from attachment or sale upon execution for the purchase money of the property.

(b) Any person claiming these exemptions shall be a bona fide resident of this state.

1-20-109. Exemptions from estates in bankruptcy.

In accordance with 11 U.S.C. 522(b)(1), the exemptions from property of the estate in bankruptcy provided in 11 U.S.C. 522(d) are not authorized in cases where Wyoming law is applicable on the date of the filing of the petition and the debtor's domicile has been located in Wyoming for the one hundred eighty (180) days immediately preceding the date of the filing of the petition or for a longer portion of the one hundred eighty (180) day period than in any other place.

1-20-110. Exemption for retirement funds and accounts.

(a) The following are exempt from execution, attachment, garnishment or any other process issued by any court:

(i) Any person's interest in a retirement plan, pension or annuity, whether by way of a gratuity or otherwise, granted, paid or payable:

(A) By any private corporation or employer to an employee or a retired employee under a plan or contract which provides that the pension or annuity shall not be assignable; or

(B) To any city, town or county employee or retired employee who is not covered by the state retirement system, under a plan or contract which provides that the pension or annuity shall not be assignable.

(ii) Any retirement or annuity fund of any person, to the extent of payments made to the fund while solvent, but not exceeding the amount actually excluded or deducted as retirement funding for federal income tax purposes, and the appreciation thereon, the income therefrom and the benefits or annuity payable thereunder;

(iii) Any retirement or annuity fund of any person, including individual retirement accounts (IRAs) Roth individual retirement accounts (Roth IRAs) and simplified employee pension individual retirement accounts (SEP IRAs), to the extent payments are made to the fund while solvent, provided the earnings on the fund are protected from federal income tax or subject to deferral of federal income tax, or are not subject to federal income tax upon withdrawal, and the appreciation thereon, the income therefrom and the benefits or annuity payable thereunder; and

(iv) All property in this state of the judgment debtor where the judgment is in favor of any state or any political subdivision of any state for failure to pay that state's or political subdivision's income tax on benefits received from a pension or

other retirement plan. This paragraph shall apply only to judgments obtained after the judgment debtor has established residency in Wyoming and has been domiciled in Wyoming for at least one hundred eighty (180) days.

1-20-111. Exemption for contributions to a medical savings account.

Contributions by an individual to a qualified medical savings account are exempt from execution, attachment, garnishment or any other process issued by any court, except for judgments against an individual or other dependents for medical expenses, to the extent the contributions are allowable as a deduction under the Internal Revenue Code of 1986.

Further Information for Pro Se clients:

The Wyoming Office of the US Trustee's website is www.wyb.uscourts.gov. Information for pro se filers can be found here: <http://www.wyb.uscourts.gov/filing-without-attorney>

And required forms for filing can be found here: <http://www.wyb.uscourts.gov/forms>