

**THE WHOLE TRUTH**

**ABOUT**

**BANKRUPTCY**

*A Guide to Understanding  
Bankruptcy*

By Glenn W. Roethler, Esq.

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## The WHOLE Truth About Bankruptcy

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## FOREWORD

Hello, my name is Glenn Roethler. I am a bankruptcy lawyer and partner at Greeves, Price & Roethler, PLC, a law firm with over 50 combined years of practice, the vast majority of which is in the field of bankruptcy. I belong to the National Association of Consumer Bankruptcy Attorneys, the Arizona Trial Lawyers Association and have worked on cases from the smallest individual bankruptcy to complex multi-million dollar business bankruptcies. Our firm assists all of those that require assistance with their financial situations. We do not discriminate on the type of client or the size of the case.

To get started, I want to applaud you for taking the first step to correcting your current financial situation. It takes courage to seek assistance when you are down and out. I am well aware of how scary it can be for my clients to come and see me. I will go into more detail later, but I believe that no one actually *WANTS* to file bankruptcy, it is merely a reaction to circumstances that are usually outside of their control.

I also want to take this moment to let you know that this is not a guide designed to teach you how to do a bankruptcy from start to finish. I am sure there are guides that do that, but I am not aware of any that I would recommend. This book is designed to address the bigger questions about bankruptcy that myself, my partners and (probably) every other bankruptcy lawyer see daily and to give you some insight on how bankruptcy lawyers think.

This book is geared toward individuals and people with small businesses, but the elements can also be applied to large businesses.

Finally, please feel free to skip to whichever section you wish to read. The book can be read straight through or you can read it in whichever order you want. It is meant to answer the questions that are troubling you the most.

I hope you find the information inside to be helpful and enlightening. If at any moment you want to speak with a bankruptcy attorney, please set this book aside and call my law firm at (480) 345-8100. If you are in Arizona, one of the extremely qualified attorneys at our firm would be more than happy to speak with you in a free consultation, and if you are not in Arizona, I can provide a referral to a qualified bankruptcy lawyer in your area.

Truly Yours,

Glenn Roethler

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## **WHAT IS BANKRUPTCY?**

Very simply, bankruptcy is the process of discharging debt, so that the people you owe money to (your creditor) can no longer harass or sue you in the future. Bankruptcy allows you to get a fresh financial start or reorganize your debts into a manageable payment. Bankruptcy basically eliminates every unfulfilled contract that you have made since the age of 18. The main things that bankruptcy offers you will be covered later on in this book.

I have to apologize in advance. To go into more depth will require a bit of a history lesson. Please feel free to skip to the next section you prefer to read if you do not want to read about the background of bankruptcy.

Prior to bankruptcy, people went to prison for failing to pay their debts. While in prison, they worked for a very small amount. This amount was then paid back to their creditors. The jails were called debtor's prison.

Needless to say, the debtor's prison system had a huge flaw. It was impossible for people to pay off large debts while in prison, and many often died in debtor's prison. This caused a lot of people to not want to take any financial risks, or to take on any loans. This reluctance to take on debt, to take on risk, prevented a lot of potentially successful businesses from ever existing.

The drafters of the Constitution, the founding fathers, understood that taking financial risks to start new businesses, or to assist people with making large purchases, was necessary for the financial growth of the country. They wanted to encourage this risk taking by allowing for a way out if the business failed or the individuals lost their jobs and were no longer able to make large purchases. Further, they believed that this risk taking and encouragement of economic activity was so important that it should be a constitutionally protected right.

By allowing bankruptcy, the founding fathers put a system in place that allowed people to take risks and, actually, helped to define a financial system that allowed America to flourish economically ever since.

## **AM I A BAD PERSON IF I FILE FOR BANKRUPTCY?**

This is a touchy subject. Many people feel that bankruptcy is a moral decision. I am here to tell you that bankruptcy is *NOT* a moral decision. Bankruptcy is a BUSINESS decision, nothing more and nothing less.

Let us look back at what has happened in recent years. Some of the largest businesses in the world have had to file for bankruptcy. General Motors, Chrysler, Lehman Brothers, Kodak, Basha's – have filed bankruptcy.

Do you think that these businesses thought about whether they would be a “bad” company? I will tell you right now, they did not. All these companies cared about was their survival and, eventually, a return to profitability.

No doubt some of you are thinking that corporations are only self-interested and are, by their very nature, bad. Well, I am going to tell you right now that I have no problem with the profit motive of corporations. That, too, is part of what made the United States so successful over the past centuries. I do have issues with the corruption that has become so rampant in our corporations because of the protections the government has given them, but that is outside the scope of this book.

It is my fervent belief that if those businesses and my clients could pay their debts, they would pay them. They all try to pay them back in full. Sometimes, it just becomes impossible. This could be from a change in the economic environment in the case of a business, or it could be some tragic event in the life of an individual, such as the loss of a job, a medical emergency or a divorce. I won't say that I've never met someone that just simply did not want to pay their debts, but they are an extremely small percentage.

People sometimes ask me if I would ever file for bankruptcy. Fortunately, I have not had to make that decision and I hope I never do, but I certainly know that I would file for bankruptcy if I believed it to be necessary for myself and my family. I often joke (only half joke anyway) that if I could get rid of my student loans with bankruptcy, I would file for bankruptcy tomorrow. It is a financial decision. You simply look at the consequences of the bankruptcy and you look at the benefits and if the math makes sense, then it is a no-brainer.

Surprisingly, several religions make the same calculation, including Christianity, Judaism and Islam. In the old testament (Leviticus 25:39), the Bible states that people are generally expected to pay their debts. However, this is offset by need for compassion and the requirement that debts should be canceled at a regular period. That's right. I said required. In the Bible, this is known as the jubilee year and occurred once every seven years. There was no need to make a moral decision here, as everyone knew when the jubilee year was happening and society believed it to be good for the financial welfare of its citizens. I like to think that the ability to file for bankruptcy in our society is made out of compassion to those facing financial difficulties, too, except that now it can be timed better for the individual to assist in making this tough financial decision.

Finally, as I said above, it is a constitutional right to file bankruptcy. How can exercising a right granted under the Constitution be bad? It was a societal calculation to allow for bankruptcy to exist, and I believe it is one of the reason the United States is such an economic power.

So, does needing a bankruptcy, needing a fresh start and a compassionate fresh state, make you a bad person? I believe with all my heart that the answer is "No."



## **SHOULD I FILE FOR BANKRUPTCY?**

I see clients every day that ask me this question. My answer, like all good lawyers, is “maybe.” Everyone’s financial situation is distinct. In my practice, I have found that it is important to listen to my clients. Listening is the only way I can determine whether or not bankruptcy is a valid option. When clients come to see me, I ask questions regarding total debt, total assets and total gross income (pre-tax). I promise I am not prying or trying to be nosy. This is the information that allows me to come to a conclusion as to whether bankruptcy is helpful. I would say that by the time the free initial consult is completed, the vast majority of clients are comfortable with making the decision to either file or to not file. At the very least, these clients will be educated about their options.

I do not tell my clients that they should file bankruptcy. It is my process to inform them that it is an option they can choose. I inform them of the advantages and disadvantages of filing bankruptcy and let them come to their own conclusions.

Usually, by the time a client seeks my counsel, he or she is well aware that they need help. They are often just unaware of what kind of help they need. After speaking with me, many clients feel that filing for bankruptcy is often their best option. There are also many clients that I determine do not need bankruptcy and I provide them with other avenues of assistance or guidance.

While on the subject, do not allow yourself to be pressured into filing for bankruptcy if you are uncomfortable with any aspect of the process or with your attorney. Speak with your attorney and let him or her know what aspects make you uncomfortable and have the attorney explain it to you until you are completely comfortable with making the decision to file or not to

file.

There are firms out there, some of which you may have already experienced, that make you feel as though you are at a used car dealership with the sales tactics and pressure they put on you. If you find yourself at one of these establishments, you have to ask yourself if you feel comfortable trusting them to do what is best for you. I cannot speak to the quality of the work for all of these firms, as I have not personally experienced it myself, but the reputation of this type of firm is often not the best. Not to say that these firms have bad lawyers, as I know that many very fine lawyers work for these firms; at least for a time.

I, personally, do not believe pressuring a client into filing a bankruptcy provides the best results. I believe it is my job to present the options and let the clients decide if it is right for them.

To get a rough idea on whether you should see a bankruptcy attorney, here are some common indicators:

1. Living paycheck to paycheck.
2. Borrowing from Peter to pay Paul.
3. No matter what you do, your debt does not decrease
4. Constantly receiving threatening phone calls from the banks you owe.
5. Maxed out credit cards.
6. Using retirement money to make payments. Stop this *IMMEDIATELY* and see a lawyer!
7. Your house is drastically underwater

While not being an exhaustive list, this should give you a good idea as to what the reasons you should start to consider bankruptcy as an option.

## **THE DIFFERENT TYPES OF BANKRUPTCY**

As you probably figured out from the title of this section, bankruptcy allows for three options for individuals: Chapter 7 liquidation, Chapter 13 reorganization or Chapter 11 reorganization.

The most common form of bankruptcy is Chapter 7 liquidation. It is also what most people think of when they think of bankruptcy. This is the type of bankruptcy where you may lose some property (this will be covered in more detail later). That property is sold at an auction and the money is used to pay your creditors. A lot of property can be protected or converted so that you benefit from the property rather than your creditors. This is one of the ways a bankruptcy lawyer is useful, and often saves his or her clients thousands of dollars.

Chapter 7 is also the type of bankruptcy where you do not have to pay anything back. For an individual, you have to qualify to be able to file for a Chapter 7 bankruptcy, unless your debts are primarily business debts. To qualify for a Chapter 7 requires that your income be less than the median income in your district. The median income is adjusted quarterly to reflect the changing level of income in the area. In Arizona, this number has been dropping each quarter because of the loss of employment. There is another way to qualify, and that is if you have a negative Disposable Monthly Income. This is a fabricated number from the government and is very convoluted to understand. This is another place a lawyer can help significantly, by allowing you to qualify for a Chapter 7. As an aside, when a business files for bankruptcy, all of its assets are sold off and paid out evenly to creditors.

The next most common form of bankruptcy is Chapter 13. People that do not qualify for Chapter 7 often qualify for Chapter 13, which is actually a debt reorganization. For the vast

majority, Chapter 7 is less expensive than a Chapter 13.

A debt reorganization means your debts are combined and you pay them back in an organized manner. I want to make sure you understand that when I say you pay them back in an organized fashion, you do not have to pay ALL of the debt back. In fact, in the vast majority of cases, you only pay an extremely small fraction of the debt. It is our job, as your attorneys, to make sure you pay the least amount possible to your creditors during the bankruptcy period.

The Chapter 13 reorganization requires that the debtor make a 3-5 year payment of all his or her current monthly disposable income (this is separate and distinct from the disposable monthly income mentioned above. Confused yet?). Current monthly disposable income is determined by taking people's monthly income and subtracting what the government, in its infinite wisdom, determines are your expenses, with a few exceptions for actual expenses.

As a quick example of current monthly disposable income, let us take a family of two that makes \$4,000 per month prior to taxes. Rough numbers indicate that this family will be taking home approximately \$3,200 after taxes. This family also has \$200 per month taking out for insurance, leaving \$3,000. This person may have a house payment of \$1,500, leaving \$1,500 available. Adding up additional living expenses, such as food (\$528 allowed), fuel (\$300 allowed), clothing (\$130), telephone (\$100), internet (\$50), cable (\$50), entertainment (\$100), utilities (\$200) this family would have a disposable income of \$42. This would typically not be enough to fund a plan, so we would cut some of the expenses (out of food, or clothing, or both) in order to fund it properly in reality. However, this is how current monthly disposable income is calculated.

Chapter 13 has many advantages over Chapter 7. I often recommend Chapter 13 even if

the individual qualifies for a Chapter 7. This happens a lot when there are tax debts, or when someone has assets that we cannot plan for in advance and which the debtor wants to protect. Chapter 13 is a very structured bankruptcy and very statute driven.

There are some limitations to Chapter 13. The first is that businesses cannot file for Chapter 13. The other is if an individual has more than approximately \$1,000,000 secured debt and/or \$300,000 unsecured debt they are forbidden from filing Chapter 13 and if they want a reorganization must look at Chapter 11.

Chapter 11 is a complex and very expensive task. For individuals, it is reserved for those with significant debts that want to do a reorganization. The Chapter 11 bankruptcy has many similar features of a Chapter 13, but is much, much more flexible. In reality, you only need to get the creditors to agree on the terms of the bankruptcy. As simple as that sounds, it is really quite difficult, takes a lot of time and often involves many court hearings.

## **THE BANKRUPTCY TIME LINE**

This is going to be a fairly short section. All bankruptcies share some core elements. The time line goes something like this:

1. Pre-bankruptcy planning.

This is where you meet with your attorney. This can take up to 6 months. It also can be less than an hour, depending on the circumstances. Bankruptcy lawyers don't really like filing within the day or even the week of meeting the client. There are too many variables and too many things that can go wrong. Lawyers certainly do it, charge extra for it, and make it work, but clients are often at a disadvantage.

2. Day of filing.

This is the day that really matters in bankruptcy. Everything is tied to the day of filing.

3. Section 341 hearing aka meeting of creditors.

The bankruptcy code requires an examination under oath to verify that you are who you say you are and that the documents filed were true and complete to the best of your knowledge.

This meeting usually lasts about 5 minutes and most of my clients ask, "That was it?"

4. Discharge.

This is the day your debts are discharged from ever being paid back. It can be revoked and you still have a duty to respond to the trustee until case close.

5. Case close.

This is a technical closing of the case and can take weeks from discharge up to several years from discharge. It really has no bearing on the bankruptcy.

The process from start to finish for a Chapter 7 is approximately 9 months. The process

for a chapter 13 is 3-5 years depending on the length of the plan. Chapter 11 can be any length of time and I've heard of 12-year plans.

## **WHAT CAN BANKRUPTCY DO FOR ME?**

At this point, you now have an idea what bankruptcy is and how long it will take, but you are probably wondering what exactly it can do for you. The list is quite long and I will probably not touch on every single thing that it can do for you, but I will touch on the major issues.

The first thing, as mentioned above, that bankruptcy does is eliminate your debts. That's the most obvious answer.

So what kind of debts can it eliminate? It can discharge certain tax debts, most judgments obtained against you, credit card debts, mortgages, medical bills, lawyer bills (not mine though . . .), leases and practically any debt you have to contract.

What else can bankruptcy do? It prevents harassment from your creditors. It can prevent the foreclosure of your home. It can prevent the repossession of your vehicle. It can help you pay back-child support. It can help you pay back tax debts that are not dischargeable. It can even get rid of all mortgages on your home that have no equity to support them. Imagine that, getting rid of all of your mortgages but the first one. Bankruptcy is a very powerful tool used in clever hands.



## **WHAT CAN BANKRUPTCY NOT DO?**

There are many things that bankruptcy cannot do (such as show you a unicorn and make you meet your favorite celebrity, etc.). However, in the realm of eliminating debts there are very few debts that bankruptcy cannot eliminate. These debts are certain taxes (usually incurred within three years of filing or employment taxes, aka 941 taxes), alimony or child support, criminal restitution and other civil and criminal fines imposed by a court, and injuries caused from driving under the influence of some drug.

## **WILL I LOSE MY STUFF?**

If you file a Chapter 7 you do face the possibility of losing your stuff. However, the vast majority of Chapter 7 cases are what we call “No Asset” cases. This means there are no assets to take for liquidation to pay creditors. Further, a good bankruptcy attorney will minimize how much stuff you lose by disposing of it properly prior to filing the bankruptcy.

Each state allows its citizens to protect what the state legislature has determined to be necessary for them. This is called the exempt property. So, the stuff you lose really depends on what state you are in and what state you were in two years prior to filing and what their exemptions are. It is very complicated to determine which state’s exemption laws you get to use if you have moved recently.

You also have a chance to buy back the property by purchasing it from the trustee prior to the auction or at the auction itself. So, if no one bids on it you certainly have a chance to get it back fairly cheaply.

In both Chapter 13 and Chapter 11 you decide what you get to keep and what you choose to let go. The incentive for letting things go is that your plan payment will be lower because you have less assets to purchase back over the period of the bankruptcy. Yes, you read that right. If you have non-exempt assets, you have to purchase them back during the bankruptcy process.

To highlight this better, we will use the Arizona exemption statutes and a vehicle worth \$20,000. Let’s assume this vehicle also has a \$10,000 lien that you are still making payments on. That means there is \$10,000 of equity. In Arizona, a single person gets up to \$5,000 in exempt interest to a vehicle. A married couple gets \$10,000. In the case of a single person filing bankruptcy with this asset, they would have \$5,000 of non-exempt equity in the vehicle. This is

determined by taking the total value of the vehicle (\$20,000) subtracting the lien amount (\$10,000) and again subtracting the exemption amount (\$5,000). The married couple with this asset, would have \$0 of non-exempt equity because of the high exemption statute.

Now to Apply the above example to the various chapters of the bankruptcy code make for different results. In Chapter 7 the single person in this would have to either give up the vehicle for auction, losing everything. The married couple would not have to give up the vehicle at all. In Chapters 13 and 11 the single person would have to pay an addition \$5,000 during the plan period. The married couple would not have to pay any additional money.

That brings me to the question that I often ask my clients. “What is the property actually worth to you?” As a bankruptcy lawyer, I don’t have any sentimental attachment to your property. I am looking at your best monetary interests. So we tend to give advice that people don’t like to hear when it comes to houses and vehicles and other things. That advice is to get rid of it or to let it go. It is not that we are being cold or unfeeling, it is just that fiscally it makes the most sense.

As a final note on the subject, I believe that most stuff is easily replaced and is truly not worth the angst that affect some people.

## **DO I REALLY NEED A LAWYER?**

This is a question I would be asking myself if I was in a position that I believed required a bankruptcy. Trust me, I am the consummate do-it-yourselfer. I work on my own motorcycles, my own cars, do my own carpentry work (I paid my way through school working as a carpenter and building houses), fix my broken appliances, do my own home wiring, fix my own computer, taught myself to play guitar, etc. The list really doesn't ever stop with the things that I prefer to do myself.

To me, it's not even a matter of saving the money, it's a matter of trusting others to do the work I need done properly. I've learned that if you don't trust your mechanic, you really shouldn't let him work on your motorcycle. He's not the one stuck at Bryce Canyon in Utah after camping in the back country because your mechanic didn't tighten down crucial parts properly (true story). Fortunately, it wasn't something that would kill me if I happened to be riding when the parts came undone and I was able to fix it on the road . . . eventually.

However, there are certainly aspects of my life that I believe are important to trust others to do. The things I choose to hire professionals for are those things that are unbelievably complex. One example is my taxes. For those of you who own their own business, you know just how complex taxes can be. I believe accountants are vital to having the best tax returns, so I hire an accountant. Usually, they more than make up for the cost of their service with their ability to save me from paying taxes beyond what I actually owe.

Bankruptcy law is one of the most complex areas of law, period. There is a reason the leading do-it-yourself bankruptcy book is over 550 pages long and only addresses individual bankruptcy. Additionally, the more involved your case is, the more you need an attorney. The

truth is, staying current on the shifting rules of bankruptcy is a full-time job and not one a self-help book is most likely to be able to do. There are traps for the uninitiated everywhere in the bankruptcy code. This is particularly true for those who have assets. A good bankruptcy attorney, like the accountant above, usually pays for himself or herself with the property savings that you would have otherwise lost for failure to properly plan for bankruptcy.

The truth is, I also believe that some people probably do not need a lawyer. If you have nearly no assets (nothing worth more than, say, approximately \$250 in value, and have not had anything of value for 2 years or more), and no debt beyond simple credit cards and your income qualifies you for a Chapter 7, you probably do not need a lawyer. It is possible that you will skate through the bankruptcy process, with a little luck, unscathed. I would be more than happy to be your attorney in this circumstance, if you want to have the peace of mind of having an experienced attorney to guide you through the process, it is probably not necessary.

Please do not go to a document preparer. I have had many, many bad experiences with fixing the problems that they have created by helping people do their documents. The document preparers are not allowed, technically, to give legal advice. However, they still do. A lot of the time that legal advice is absolutely wrong. You get what you pay for. Either do the bankruptcy yourself and expect some rough times or hire an experienced attorney.

Even when you hire an attorney, do not expect to have smooth sailing. An example of this is the following story:

I remember one client who forgot she was on her parents' checking account in case something happened to her parents. She failed to tell me that she was on this account. Her parents had a significant amount of money in the account. Because she was an owner on the

account, she was legally deemed to own all the funds in the account. This resulted in the trustee seizing the money and us having to fight to get it back (not to mention having to buy the property back from the trustee). This is the type of thing that could have easily been prevented had she not forgotten about it.

These are the types of things that we try to avoid at all costs, but we cannot help if we don't know. And if you are filing for yourself, you won't know how to prepare yourself without triggering other problems like the one above.

## **WHAT ARE THE DOWNSIDES OF FILING FOR BANKRUPTCY?**

Surprisingly, filing for bankruptcy has few downsides for a properly prepared and organized debtor. The worst that happens is that your credit score usually goes up (that is not a misprint, it usually goes up) the day of filing. You also only have the opportunity to file for bankruptcy once every few years, so it is part of our job to let you know if now is a good time, or if waiting for a significant other life event to be completed is a better time (such as completing medical treatment, buying a car, etc).

The credit score going up is an interesting phenomenon. To understand why this typically goes up, you have to understand how the credit score works.

Your score is based on timely payments, debt-to-income ratio and whether you have maxed out your credit. The closer to the max you are, the more your credit score drops.

Most of my clients are usually a long way behind on their monthly payments on debts. This significantly drops a credit score. Most of my clients have a high debt-to-income ratio, again significantly dropping their score. Finally, most of my clients have maxed out their credit cards.

In general, the credit score my clients have is somewhere around 500. We know this from the specialized credit reports that we obtain. This specialized report also indicates a predicted credit score a year after filing. This score is usually in the mid-to-upper 600s. Yes, a year after bankruptcy your credit score will be somewhere in the mid-to-upper 600s. The day of filing that score is somewhere in the range of 550. So the mere filing of bankruptcy caused the credit score to go up.

The reason bankruptcy does this is that when you file, you no longer have debt. Therefore, your debt-to-income ratio is much better. Also, you no longer have maxed out credit because you

have no more debt. And finally, your late payments are no longer late because you are no longer required to make them. All of these allow you to increase your credit score substantially.

While it is true the bankruptcy will be on your credit report for ten years, preventing you from having a *PERFECT* credit score, you will be well over 700 much sooner than ten years. A 700 or above is excellent credit and where I recommend to my clients that getting credit makes sense again with the interest rates that are offered along with the credit. This is approximately two years down the road.

Many of my clients are shocked to discover that the day after filing for bankruptcy they are inundated with credit offers. This is because the credit companies know that the client cannot file bankruptcy for a period of time. These companies offer these cards with huge interest rates, so I advise my clients to avoid them like the plague.

The true downside of bankruptcy is that it affects when you can purchase a home. At the time of the writing, if you have a foreclosure, including in a bankruptcy, you cannot get an FHA home loan for five years. This has been moving drastically as we go through the real estate bubble crisis, so you will need to check on this.

Another downside is that you cannot file again for 8 years (from chapter 7 to chapter 7), 4 years (Chapter 7 to Chapter 13), or 2 years (Chapter 13 to Chapter 13). Those of you who have been paying attention will notice that you can be in a Chapter 13 forever. This is often the case for clients that have extremely bad circumstances. This usually involves tax debts or a lawsuit that cannot go away because it is non-dischargeable.

The truth is, the downside for those that are unprepared can be many. Things such as having your property taken and sold out from underneath you, having property that you transferred



to family members within the last two years taken back by the trustee and sold, and not being able to get out of the bankruptcy court for whatever reason you may have (Chapter 7). There are so many downsides of filing for bankruptcy unprepared and unaware that I do not even know where to begin. As I said above, you can file for yourself, if you have nothing and have not had anything for a long period of time and, with some luck, you won't have any issues. However, if you have anything, you need to be properly prepared.

A good bankruptcy attorney can provide you with the information you need to make an informed decision and to make sure you are not surprised. Unfortunately, bankruptcy laws change so quickly, that surprises for some are inevitable. It's an unfortunate truth.

## **THE DARK SIDE OF BANKRUPTCY**

This area is where a bankruptcy attorney goes on a rant and explains why so many of the laws are against debtors and why bankruptcy is now so expensive. It is not necessary to read this section except for enlightenment. This section explains why filing for bankruptcy is so hard since the changes were made to the bankruptcy code in 2005. Please feel free to skip it, although I hope you will read this and maybe contact your congresspersons and vent your anger to them. Again, some history is necessary in order to explain. There have been a fair amount of bankruptcy reformations over the past century. The most important and dramatic being in 1978, which drastically altered the landscape and was, in truth, very friendly to debtors making the process quick and cheap.

In most of the new amendments made since the 1978 code, the banks and financial institutions (the creditors) have excluded more debts from being discharged in bankruptcy. As usual (my cynicism may be showing), the creditors influenced (legally, I'm sure) senators and congresspersons that these debts should be excluded from bankruptcy because discharging the debt was bad for the economy.

One of the major debts excluded was the student loan debt. This means you cannot get rid of your student loans at all. I truly believe this exclusion has led to the rapid increase in the cost of college tuition. The inability to file bankruptcy on these debts has led to another bubble like we saw with the real estate market and has essentially created a class of indentured servants paying off their student loans for the rest of their lives.

Then came the laughably named Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (aka "The Act" or "BAPCPA"). This Act was actually written by the very same

banks and financial institutions that created the financial crisis of 2008. There was very little debate on the writing or passage of the Act, and, quite honestly, is one of the most poorly written pieces of legislation I have ever had the misfortune of dealing with.

BAPCPA makes filing for bankruptcy much more difficult. In fact, many of the supporters of the bill were quite open about making it harder for individuals to file bankruptcy and proud that they accomplished it. BAPCPA requires a means test to determine if an individual should be able to file for Chapter 7. This is a very difficult test to understand, and without software is nearly incomprehensible. Trust me, I know. I once did a bankruptcy without using any of the software we use on a daily basis, just to see what the difference was. I learned it was about a 20-hour time difference in completing the schedules.

The Act also requires counseling courses prior to filing and completing bankruptcy. In my opinion, this is a completely useless endeavor and has created another place for people to profit off those in need.

The stated goals of the Act were to make it more expensive and more difficult to file bankruptcy. This was accomplished through requiring significantly more paperwork. Another provision made attorneys far more liable for making sure clients were not hiding assets. This made it more expensive for attorneys to look into the background of clients as part of our due diligence research. It also requires those that file for Chapter 13 to pay an additional amount compared to the Bankruptcy Code prior to 2005.

Of course, if you are a huge corporation though, the Act makes things much easier for you to file bankruptcy. That's fair right?. This truly is an Act designed to make it hard for individuals to file bankruptcy but easy for multi-national corporations to file. This makes me angry.

## **THE ROLE OF JUDGES AND TRUSTEES**

OK, I'm going to take a deep breath and settle down a little bit now and return to informing you about the process rather than ranting about things. The trustee is the person assigned to administer the estate in your case. He or she sees to it that the case proceeds in a timely fashion. The estate in your case is a fictional entity that is created to hold all of your property. It is also the trustee's duty to protect the estate from you and from individual creditors for the benefit of *ALL* creditors. Think about that. The trustee is not your friend, and is not on your side of the bankruptcy. He or she is a tool used by creditors to make sure that the most value is obtained for them. It is your duty to comply with the trustee's requests, but no more and no less.

You will probably never see the judge in your bankruptcy case. Judges are in charge, but in most cases, they do not get involved. Judges are to be impartial on the process and are to decide on disagreements between parties.

Truthfully, the only time a judge gets involved is when the trustee or a creditor and you or your lawyer have a disagreement about some point of law, generally because the trustee and/or creditor wants more of your property and/or money. Judges decide these issues based on the law at hand, and often have to make up for the terrible drafting of BAPCPA as mentioned above.

Fortunately, judges in bankruptcy court are among the best judges I have had the pleasure to work with. This does not mean I agree with them on all the issues, or even most of the issues. It means their decisions are well reasoned and very scholarly.

## **HOW MUCH DOES A BANKRUPTCY COST?**

As always, the answer to this question is it depends. It depends on the location of practice and the law firm. I will tell you right now that my firm is not the cheapest one around, nor are we near the most expensive. I believe you pay for the quality of your representation, but that this is balanced by our duty to the community to provide those in need with quality representation. We have a huge wealth of knowledge between our attorneys and provide quality representation. We also have families to feed and mortgages to pay.

With that said, you are probably asking, “Where are the hard numbers?” The price of your bankruptcy is very dependent on your facts. Not all bankruptcies are created equal and our fees change accordingly. If you want an accurate quote of our fees, please set up a free consult where we will provide you with a written quote that is accurate in about 90% of the cases we see. The reason it is not more accurate is because of the surprises that often happen as I wrote about above.

We understand it is difficult for a lot of our clients to pay our fees immediately, and we offer very flexible payment plans. Another thing to consider is that if you decide to file a bankruptcy, you will stop making many monthly payments (those that your attorney recommend that you stop making). This will allow you to come up with the payment for our services.

Back to the hard numbers – We have done bankruptcies for as little as \$1,000 total cost (including filing fees, etc.) all the way to \$100,000. Of course, that is the far end of the spectrum with most of our cases falling between \$1,500 and \$3,500 total cost for an individual Chapter 7 and \$4,000 to \$6,000 total cost for a Chapter 13. I hope this hasn’t caused a seizure.

Unfortunately, when filing a Chapter 7 we do need to be paid prior to the filing, or our fee would be included in the bankruptcy and we would be ethically bound to not attempt to collect the

remainder from you due to a conflict of interest.

Chapter 13 tends to be a little more expensive because of the additional work needed. The good news is that we are able to claim some of our fees from the plan payments as well, and often Chapter 13 tends to be cheaper out-of-pocket to file than a Chapter 7.

Chapter 11 is where the fees are very high and range between \$15,000 to \$100,000 with the average being somewhere around \$20,000-30,000. Chapter 11's, as indicated above, are fairly few and far between.

I DO WANT TO MENTION SOMETHING QUICKLY ABOUT LAWSUITS AND GARNISHMENTS. IT IS USUALLY BEST TO FILE FOR BANKRUPTCY PRIOR TO A GARNISHMENT BECAUSE THE GARNISHMENT OF YOUR WAGES IS UP TO 25% OF THE GROSS AMOUNT. IT IS VERY DIFFICULT TO SURVIVE ON A LOSS OF THIS MUCH INCOME, MUCH LESS TO PAY FOR SOMETHING AS EXPENSIVE AS A BANKRUPTCY.

## **HOW TO CHOOSE A GOOD LAWYER**

This one is easy, it should clearly be me (or at the very least one of my partners at my firm). Nothing quite like a shameless self-plug.

Despite my own professional bias, and in all seriousness, the one thing that makes a lawyer, good is that he or she cares about his or her work product and his or her client. That's it. If they care, they will take the time to learn about the case and do their best for you. If you can find a lawyer that you think is smart and that you believe cares about your case, he or she will likely do a good job of representing you.

Now, a good lawyer with experience in a particular area of law will represent you efficiently and thoroughly. There will be much fewer mistakes that you will have to pay for because the lawyer already knows the pitfalls. Inexperienced lawyers are often cheaper, but the mistakes they make may cause you to pay more in the long run. Unfortunately, the only way inexperienced lawyers become experienced lawyers is by making those mistakes, and that is often at the expense of the client. So even though an inexperienced lawyer may be good, and may be cheaper, it is usually best to go with a lawyer, or a firm of lawyers, that have significant experience in the field. They will save you a lot of grief in the future.

When it comes to bankruptcy, a good bankruptcy lawyer will know all of the options. This means they will understand that not all cases are a Chapter 7. Some lawyers try to take a square peg and fit it into a round whole when it comes to bankruptcy. This makes things frustrating for the client and the lawyer as the bankruptcy does not do everything it should or could do. So even if a lawyer does not do Chapter 13 or Chapter 11 bankruptcy, they should have a good idea of what the differences are and what each can do for you so they can refer you to a lawyer that is

more capable.

In addition to the types of bankruptcy, there are many times a choice of whether to be aggressive in the pursuit of an issue or whether to let sleeping dogs lie is important. It is my practice to outline the options, try to identify the total cost, and letting my clients decide the course of action. In truth, most of the time the clients choose to let the sleeping dog lie as it is the less risky action. Inexperienced bankruptcy attorneys often waive the red flag in front of the client's trustee causing unnecessary angst for the client.

The last point I want to make is that, as in the story about my motorcycle mechanic in the section "Do I Really Need A Lawyer," I think trust in the attorney-client relationship is vital. If you do not trust your lawyer, you can have the best lawyer in the world, and they will not be able to provide the best service to you. If you feel you cannot trust your bankruptcy lawyer, particularly with things as personal as your private finances, then you should find a different attorney. Full disclosure is the key, because only then can your bankruptcy attorney help you plan accordingly.



## **CLOSING REMARKS**

Facing the reality of bankruptcy is a scary idea. I believe the best way to combat this fear is through educating my clients. By doing that, I believe they are far more capable of making an informed decision and having realistic expectations. I hope this eBook has accomplished these goals to some extent for you. It is also my hope that you will find someone that can guide you through this process as painlessly as possible, and I believe I have given you the tools to find that individual, be it yourself or a lawyer.

I also want to invite you to suggest additional topics that I may be able to cover on my blog and in later versions of this eBook. Any feedback would be genuinely appreciated and can be sent to [contact@gprlaw.net](mailto:contact@gprlaw.net).

## **About the Author**

Glenn Roethler grew up on a small farm in rural Washington State. He enjoyed a reckless childhood, spending most of it riding motorcycles, shooting guns, fishing, driving tractors, bucking hay and racing go-karts. In high school, Glenn was an alternate on the all-state football team as a defensive end, the number one position golfer for his team, and a member of the track team, where he lagged dutifully behind the much faster athletes.

Glenn attended the University of Washington where he majored in Law, Society and Justice and made the dean's list on multiple quarters. During this time, Glenn developed his love for the law and politics, and for a few more less reputable activities – like martial arts. Glenn also worked the summers as a carpenter and laborer for several construction firms, managing to pay for his undergraduate education, and where he learned about a few more less reputable activities – like a healthy disrespect for authority.

Glenn then spent six months in Europe traveling around like a bum with a large backpack and a couple books telling him where to go. He learned to speak conversational German in a language school while living in Berlin and enjoyed visiting every art and history museum that had a free day Glenn managed, barely, to avoid being kicked out of Europe for arguing politics with too many locals, and left of his own free will to go to law school.

Glenn attended Arizona State University College of Law, which eventually changed its name to Sandra Day O'Connor College of Law at Arizona State University, which Glenn believes is just too long to say. Once more, Glenn picked up bad habits like talking about Torts and Contracts. The school also reinforced his bad habit of arguing about anything and everything. Apparently, law schools believe this to be a good trait in a lawyer.

Combining his lack of respect for authority and his willingness to argue anything and everything, Glenn chose to open a law firm after working for a short stint as in-house counsel to a title company. He found a couple of other individuals who were, amazingly, able to tolerate him and began the firm that eventually became Greeves, Price & Roethler, PLC. You can find Glenn there, probably arguing about something or going on a rant about someone trying to tell him what to do.