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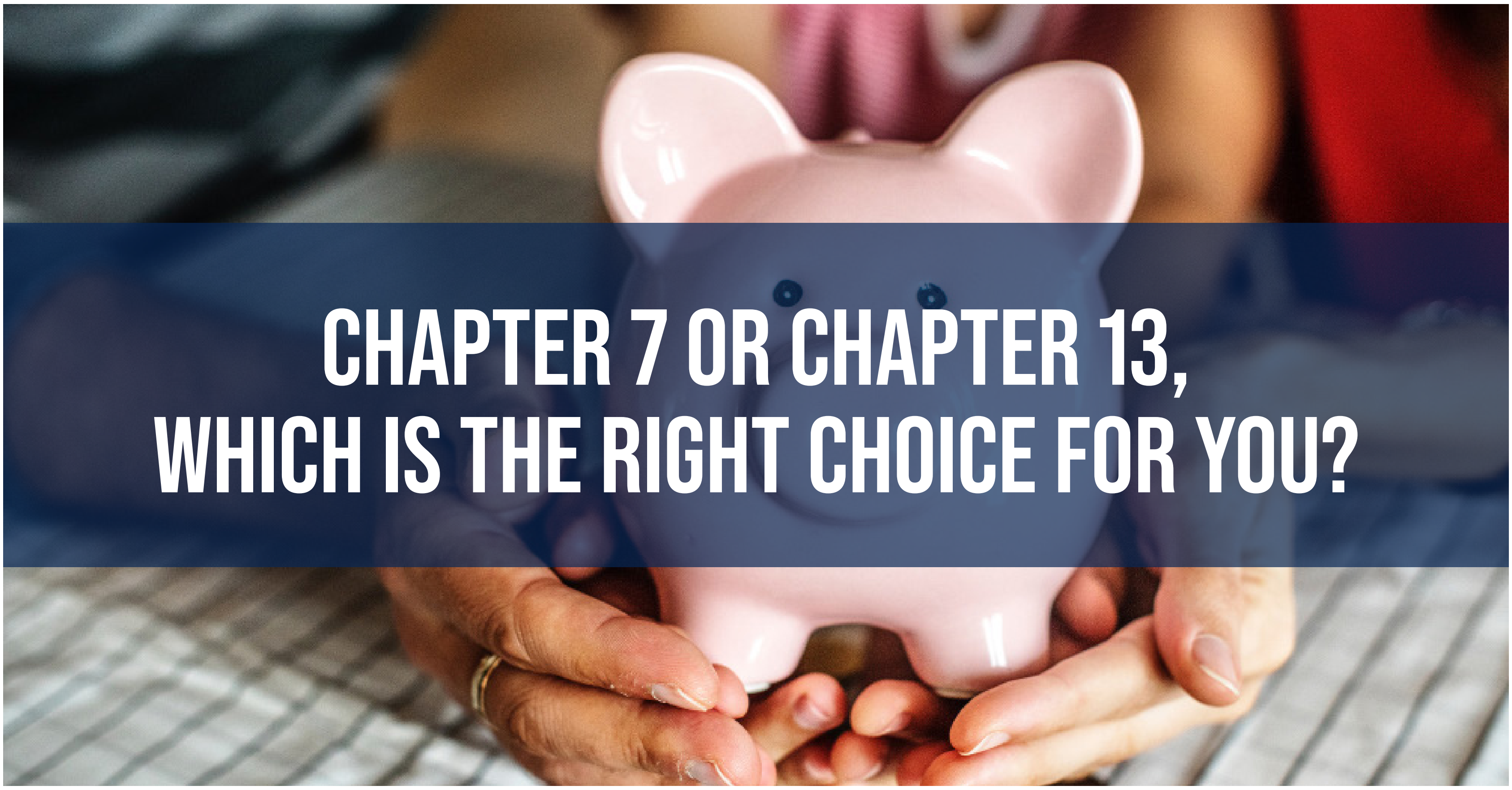

CHAPTER 7 OR CHAPTER 13, WHICH IS THE RIGHT CHOICE FOR YOU?

One of the most common questions asked by people contemplating bankruptcy is, "What type of bankruptcy should I file?" It is the most important question in the bankruptcy process as you want to ensure you are filing in a chapter for which you are eligible and one that will provide you with the most benefit.

Individuals can file in either of two chapters of bankruptcy: Chapter 7 or Chapter 13. Chapter 7 is a quicker process and results in the discharge of your debts while Chapter 13 is a longer process that reorganizes your debts.

ISSUES THAT HELP DETERMINE WHAT CHAPTER IS BEST SUITED FOR YOU:

- How much income do you have?
- What assets do you own?
- Are you in foreclosure?
- Are you behind on your car loan?
- Do you owe back taxes?

IS YOUR INCOME TOO HIGH FOR CHAPTER 7?

Barring certain circumstances, your income is the most important factor in determining whether you can file a Chapter 7 bankruptcy.

Under the rules in Chapter 7, you income must be modest enough that you can't afford to repay a meaningful portion of your debts. Bankruptcy law has a two-part test (called the means test) for making this determination. You will be eligible for Chapter 7 under the first part of the test if your average household monthly income for the previous six months is at or below the median income for households the same size as yours in your state. For example, if you are married with two children, you would average the total monthly income for your household from the previous six months and compare that number to your state's median income for a household of four.

If your household income is above your state's median, you may still qualify for a Chapter 7, under the second part of the test. This part allows you to deduct your necessary monthly expenses, such as mortgage loans, car payments, taxes, insurance and child care among others from your income to see how much you have left over to pay your debts.

The means test is complicated, especially if you have to take the second part, but your bankruptcy attorney will help you complete the test correctly. If you pass the means test (i.e., you don't have enough income left over after paying necessary expenses to fund a repayment plan), you are eligible to file Chapter 7. If you do not pass the means test, you will very likely have to file Chapter 13 instead.

Some people choose file Chapter 13 even though they are eligible for Chapter 7. As discussed below, Chapter 13 will allow you to save non-exempt assets and catch up with overdue secured debts and taxes. There is no income requirement in Chapter 13. However, you will be required to make monthly payments on a plan to repay at least some of your debt. You want to be sure that you have enough income to make the monthly payments. If you cannot, you will need to convert your case to Chapter 7 or your case will be dismissed and you will be back at square one.

DO YOU OWN NON-EXEMPT ASSETS YOU'D LIKE TO KEEP?

Assets can be the determining factor in deciding which chapter of bankruptcy is better for you. While you may qualify for Chapter 7, you may have assets that are not fully exempt. You must either surrender non-exempt assets to the trustee or pay the trustee the non-exempt value if you want to keep the assets.

Before filing bankruptcy, be sure you understand the value of the property you own. The court requires you to list your possessions, which can range from furniture and clothing to your house and car. You must assign a value to everything you list so the court knows what your items are worth. For example, you would list the value of your vehicle using average trade in value from a car valuation website.

You then need to look at your exemptions and see what you can protect. Every state has an exemption list. In general, you will use the exemption list of the state where you reside. However, if you have recently moved, you may be required to use the exemptions of the state in which you formerly resided.

You may find that your property cannot be fully exempted because it has too much value. If that is the case, you will have a decision to make. Most trustees require you to buy back any property that is non-exempt if you want to keep it. Otherwise, you will have to surrender it so that it can be sold to pay your creditors. In Chapter 7, you will have to pay back the non-exempt value relatively quickly (no longer than a year; sometimes three months or less). It may be too burdensome for you to come up with the money that quickly. In that case, filing a Chapter 13 might be better for you as you will have a much longer amount of time to pay the non-exempt amount back through your payment plan. A Chapter 13 plan can be three to five years long.

If you have no assets or exemptions protect all your property, Chapter 7 will probably be a better option.

IS YOUR HOME IN FORECLOSURE?

Another big reason to file bankruptcy is to protect your home in foreclosure. If your home is in foreclosure and you simply want to surrender it and make sure you are not responsible for the balance of the debt, then Chapter 7 is the better way to go. However, if you want to keep your home despite being in foreclosure, Chapter 13 is the way to do that. You can get caught up on your mortgage payments over the duration of your repayment plan.

Chapter 13 works better than Chapter 7 in these situations because of the three to five years the repayment plan lasts. Most Chapter 7's are closed within three to four months, so it is harder to work out fair deal there.

IS YOUR CAR IN DANGER OF BEING REPOSSESSED?

If your car is in danger of being repossessed, then you might want to file a bankruptcy before the car is seized. If so, which chapter you file will depend on certain factors. Can you catch up with your payments during the short length of a Chapter 7 bankruptcy or do you need the longer three to five year period Chapter 13 provides? Do you need just a little more time driving your car, or is the car instead a permanent necessity?

Are the terms of your car loan fair, or are you instead paying too much for a car worth much less? In Chapter 13 (but not in Chapter 7) you may be able to do a "cramdown" of your car loan. A cramdown will reduce the balance of the loan to the value of your car. The balance above that amount becomes unsecured debt that is handled through your repayment plan. You will probably have to repay only a small portion of it. You can cram down a car loan only if you bought the car more than 910 days before you filed for Chapter 13 bankruptcy.

DO YOU OWE BACK TAXES?

If you owe back taxes, they may or may not be dischargeable in Chapter 7. The rules are complicated, but your attorney will be able to advise you. If your back taxes are not dischargeable, you may want to consider filing Chapter 13. Filing a Chapter 13 bankruptcy can toll the interest on your back taxes, resulting in lower payments. In addition, Chapter 13 will allow you time to slowly pay back the tax debt.

IN SUMMARY

Chapter 7 is probably advisable if:

- Your debts are primarily unsecured and dischargeable (credit cards, medical bills, personal loans).
- You have little or no non-exempt property.
- You need not cure defaults to retain secured property.
- You do not have disposable income that could fund a Chapter 13 plan.

Chapter 13 is probably better if you:

- Have non-dischargeable debts (alimony, child support, taxes, fines and penalties, student loans).
- Want to retain non-exempt assets.
- Want to cure a mortgage or car loan default or are underwater on a car loan.
- Have high net disposable income.