

EFFECT ON MILITARY CAREER

Air Force members are required to meet financial obligations in a timely manner; however, the Air Force maintains a policy of strict neutrality with respect to bankruptcy. Filing for bankruptcy protection is a statutory right of all citizens and does not provide a basis for adverse action. However, misconduct associated with the circumstances leading to bankruptcy may be a proper basis for discipline.

AIRMAN & FAMILY READINESS CENTER (A&FRC)

Almost all Air Force communities in Europe offer financial counseling. An airman or family member should seek help through the A&FRC) as soon as financial problems are identified. Often, the financial counselor can help the debtor restructure obligations, manage the checkbook, and solve related problems. One of the most important functions provided by the A&FRC) is education: Teaching basic financial skills, explaining how to consolidate debts, making the debtor consumer-conscious, and explaining how to improve one's credit rating.

Hours of Operation

Legal Assistance

(Attorney consults by appointment only)

Will Appointments

Please complete Will worksheet BEFORE you make a will appointment! Stop by or call our office for more information.

Italian Legal Assistance

(Attorney consults by appointment only)

Powers of Attorney/Notaries

Mon-Fri 0745 - 1630

You can complete power of attorneys and read more information at <https://aflegalassistance.law.af.mil>

31 FW/JA

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BANKRUPTCY



31ST FW LEGAL OFFICE

Current as of April 2022

BANKRUPTCY

THIS IS A COMPLICATED AND EVOLVING AREA OF THE LAW. PLEASE CONSULT WITH A LEGAL ASSISTANCE ATTORNEY PRIOR TO FILING FOR BANKRUPTCY.

Most military personnel and their families handle their financial affairs responsibly. Those who have problems usually seek timely assistance from financial counselors. Occasionally, however, an individual will be so far in debt that bankruptcy becomes the only solution.

Bankruptcy is governed by federal law and it can be divided into two parts: Chapter 13, the “debt consolidation plan;” and Chapter 7, or “straight bankruptcy” (Chapter 11 applies only to corporations).

CHAPTER 13 (DEBT CONSOLIDATION)

Chapter 13 is the preferred method for debtors who have a sufficiently stable income to make regular payments. Under Chapter 13, all debts are combined and the debtor advises the court how much of the total debt he or she is able to pay. The court may accept repayment percentages as low as ten percent of the total debt, though plans to repay at least seventy percent are recommended. The court then discharges, or legally forgives, that portion which cannot be repaid, and the debtor makes payments on the remainder. These payments must be finished at the end of three to five years, unless an extension is granted.

Advantages of Chapter 13 include: flexibility in creating a debt repayment plan;

the debtor *may* be able to keep both secured and unsecured property; consent from creditors is not required; and one hundred percent repayment is not necessary. Also, secured creditors (those who have a lien on property), have limited remedies. If they do not accept the plan, they are limited to repossessing the secured item. The unpaid balance on the original debt then becomes an unsecured debt. Since the value of most items drops drastically immediately after sale, most secured creditors will prefer to accept the plan in the hope of getting a larger return. Another advantage is that the filing of the petition stops all collection efforts by creditors. Finally, there is no waiting period to file another Chapter 13 petition after completing the initial action.

There are certain drawbacks to filing Chapter 13 bankruptcy. First, certain debts cannot be discharged under either Chapter 13 or Chapter 7, such as: alimony, child support, guaranteed student loans, and tax liabilities. Also, a stateside attorney is essential, but it can be difficult to find an attorney willing to represent a long-distance client. The stateside attorney must be a member of the bar of the state in which the debtor is legally domiciled. In addition, the debtor will have to attend at least one hearing and possibly more. This will use up leave time and may involve considerable travel expenses to include a court fee of about \$235.00, and a miscellaneous administrative fee of \$75. Attorney fees are usually set by the court and are not excessive.

Conversion to Chapter 7 Bankruptcy. If the debtor fails to make scheduled payments or new financial problems occur, the court can change the Chapter 13 debt-consolidation plan to a straight bankruptcy under Chapter 7.

CHAPTER 7 (ASSET LIQUIDATION)

Chapter 7 bankruptcy completely discharges all debts (except those identified above) owed to those identified in the creditor inventory. Identifying all potential creditors is extremely important because the court cannot discharge debts owed to an unlisted creditor. Thus, creditors who are not listed can still sue a debtor whose other debts were discharged under Chapter 7. A common example involves VA loan guarantees. The debtor lists the original mortgagee, usually a bank, but fails to list the VA. When the bank fails to recover its money, it is reimbursed by the VA, who then pursues the debtor.

There are three ways to begin Chapter 7 proceedings. First, the bankruptcy judge in a pending Chapter 13 action may decide to proceed under Chapter 7. The second method involves a voluntary petition from the debtor. The debtor however, must convince the court he or she is under severe financial distress. In a straight bankruptcy, title to all property passes to a court-appointed trustee. Once the discharge is granted, either under Chapter 7 or under Chapter 13 (where less than seventy percent of the debts were paid), the debtor cannot file another Chapter 7 petition for six years.

Finally, creditors can file involuntary petitions under Chapter 7, but the total obligations of the debtor must exceed \$5,000.00 and the creditors must show the debtor is not paying his or her bills when due. Again, it can be extremely difficult to initiate these actions while in Europe.