

YOUR BUSINESS AND BANKRUPTCY

Intro

If you are considering filing a bankruptcy and you own your own business, there are three choices under the Bankruptcy Code. The choice of bankruptcy will depend upon the following: Whether your debts are just personal, or just business, or both, and the value of your business.

For the purpose of this discussion, let us assume that you can pass the income test that is required for personal bankruptcy, and that if you filed a Chapter 7, whatever assets you own are valued so that you would not have them taken and sold by a Chapter 7 Bankruptcy Trustee.

There are three choices under the Bankruptcy Code:

1. Chapter 7
 - A. Filed as a personal bankruptcy, it discharges your obligation to pay your personal debts
 - B. Filed by your business, the business needs to shut down and stop operating. There is no discharge of debt for the business; but creditors are prevented from continuing collection activity, including lawsuits. Business assets would be sold and money in bank accounts would be distributed by the Chapter 7 Trustee to the creditors.
2. Chapter 13 - restructures debt - personal only - a corporation cannot file Chapter 13
3. Chapter 11 - continue operating business; create a plan to repay creditors monthly over a period of years - anywhere for 10% to 100% of the debt.

The choice of bankruptcy will depend upon whether debt is personal, business or both and whether the debtor wants to continue to operate the business

Let's use this factual situation:

Commercial Janitorial Company - Incorporated - Debtor is sole owner

Corporate assets -

Business checking \$1,000.00

No other assets except for some older computers and some used office furniture

Work is subcontracted out - corporation owns no equipment

Debt - Credit cards \$20,000.00 corporate only

Line of credit \$30,000.00 corporate only

credit cards \$60,000.00 personal only - [personal credit card debt was incurred to keep the business running]

Debtor is guarantor of the corporate line of credit \$30,000.00

A. Debtor wants to continue to operate business

File personal Chapter 7. Eliminate personal credit cards and the Debtor's obligation under the guarantee for the business line of credit.

The Chapter 7 Trustee that will be appointed in the case won't touch the business; there is no value to it to anyone.

Continuing to operate the business makes sense if the business can afford to its credit cards and line of credit

1) What if the business cannot afford to continue operating and repay the business credit cards and the business line of credit based upon the current required payments on the business debt?

In addition to the personal Chapter 7, the business can **file a Chapter 11**. This is a more complicated version of a personal Chapter 13, where the business debt is restructured so that the business can repay its debts.

Note that Chapter 11 Bankruptcies are very expensive requiring a very large retainer.

2) Debtor wants to continue operate the business **but** the business has \$20,000.00 in the business checking instead of the \$1,000.00

With a personal Chapter 7, the Chapter 7 Trustee would take the \$20,000.00 in the business checking. To avoid that from happening, **Debtor needs to file Chapter 13** to repay some of his personal debt in order to keep the business checking account.

B. Debtor wants to shut down the business

1) **File personal Chapter 7.** Eliminate personal credit cards and the Debtor's obligation under the guarantee for the business line of credit.

2) **Don't spend the money for a business Chapter 7.** Just close down the business. Lawsuits that might be filed against the business won't make a difference; there are no business assets where the creditors can satisfy any court judgments.

3) **File a business Chapter 7.**

a) If there is a court case by a creditor which results in a number of court appearances. The owner of the business cannot represent himself in court and **MUST** hire an attorney. The costs associated with doing so would be more than the attorney fees for a business Chapter 7.

b) If the business has assets of value such as \$20,000.00 in a bank account or equipment that can be sold, it is best to let the Chapter 7 Trustee distribute the business assets.