

HELP! I AM DROWNING IN DEBT!

Many tri-state residents and businesses can identify with the title to this article, however, how one gets into this situation is varied. In fact, much like weight gain, debt can slowly creep up on the debtor over time without the debtor realizing it until it just can continue to make timely payments. The economic instability of the last 18 months has only served to accelerate the problem. Decreased revenue, decreased sales, job losses, decreases in pay, divorces, medical expenses, over spending, increased fuel cost, increased insurance premiums, and increased food cost are just some of the many factors that strain family and business budgets to the point that servicing debt becomes difficult and/or impossible. Once an individual or business finds itself in this position what can it do? The good news is there are several options. Unfortunately, the bad news is all these options have pros and cons. Let it first be said that there is no magic formula, program or person who can solve debt problems immediately and not every solution is right for every debtor.

One of the first options people consider when the debt load has gotten too large is bankruptcy. Bankruptcy law and has been around in one form or another for a long time and there are various types of bankruptcy within the law. The type of bankruptcy effects what happens to the creditors and debt while the debtor is in bankruptcy. However, they all have a common goal of attempting to give the debtor a chance at a "new start." Changes in the bankruptcy code over the last few years have dramatically changed the end results for debtors in bankruptcy. In general, under certain types of bankruptcy, the debtor will have much of its debt "discharged" or wiped out; however, after the changes to the law, debt that used to be automatically discharged is not necessarily discharged today. Instead, the decision of whether certain types of debt are discharged is determined on a more case by case basis. Bankruptcy also has a long term effect on the debtor's credit rating and ability to get future loans. The inability to get loans or paying much higher interest rates on credit that is granted, are only a few of the potential downsides to bankruptcy.

Alternatives to bankruptcy include debt consolidations, debt modifications, consumer credit counseling, debt forgiveness, and various hybrids of these types of programs. All of the different programs essentially attempt to do one or a combination of the following: lower the monthly payment, increase the time to repay the debt, forgive or discharge a portion of the debt, modify the interest rate of the debt, establish a budget and plan for getting out of debt, control spending, consolidate multiple debts, and other variations of these provisions. The good news is that under the proper type of program the debtor can get themselves out of debt (albeit with time). The bad news that this industry is poorly regulated and that debtor can end of paying for services that really are of no benefit.

Lately you can't listen to the radio or watch television without being bombarded by advertisements for all types of these get out of debt programs. Every debtor should be aware that not all of these programs are beneficial or do anything at all. The internet is not much help either in determining the value of a program because there are too many websites that appear informational but instead are just disguises to sell a product or service. Everyone should realize that aside from consolidation loans, most of the services provided by these programs can be accomplished by the debtor with some knowledge and time, for substantially less.

Anyone considering signing up for any of these programs is strongly encouraged to seek the advice of an attorney that is familiar with banking, credit and transactional work. An attorney can provide the debtor with the information and knowledge that will allow the debtor to accomplish the same results as many of these programs for a fraction of the cost. The qualified attorney can also advise the debtor about the disadvantages of such actions, like paying income taxes on forgiven debt in a loan modification, just to name one example.

This article is limited by space and cannot discuss all the advantages and disadvantages of the all the programs or the alternatives available to a debtor; however, the uniqueness of each debtor and the importance of determining the appropriate actions to be taken by that debtor cannot be stressed enough. Therefore, you should thoroughly discuss your situation with a qualified attorney.

This article was written by Brian E. Townsend, a partner with Rudolph, Fine, Porter & Johnson, LLP in Evansville, Indiana. For additional information, you may contact Brian E. Townsend at (812) 422-9444 (e-mail: bet@rfpj.com). His practice areas include Banking Law, Business Law, Corporate Law, Mergers and Acquisitions and Tax Law.

This article is intended solely as an information source and its contents should not be construed as legal advice. Readers should not act upon the information presented without professional counsel.