

DEPARTMENT OF THE ARMY  
HEADQUARTERS CARLISLE BARRACKS  
CARLISLE, PENNSYLVANIA 17013

September 30, 2002

REPLY TO THE ATTENTION OF  
Legal Assistance Office

SUBJECT: **Bankruptcy**

1. Bankruptcy defined. Bankruptcy is a statutory procedure by which a person is relieved of most debts and undergoes a judicially supervised reorganization or liquidation for the benefit of the creditors involved.
2. Types of bankruptcy. There are two different types of bankruptcy: **liquidation** and **rehabilitation**.
  - a. **Liquidation** proceedings, organized as **Chapter 7**, represent the vast majority of bankruptcy proceedings. In a Chapter 7 proceeding, a trustee is appointed to collect and convert to cash (sell) all of the debtor's non-exempt property. The trustee then distributes the proceeds of the sale to the creditors. Chapter 7 bankruptcy may not necessarily discharge all of a debtor's debts and will result in an inability to file Chapter 7 for the next six years.
  - b. **Rehabilitation** proceedings, organized for individuals as **Chapter 13**, allow a greater number of debts to be discharged. In Chapter 13 proceedings, creditors look to **future earnings** of the debtor, not property, to satisfy claims. The debtor is allowed to retain personal assets and must make payments to the court for three years. The debtor may also be able to pay off debts by paying the fair market value of the property (which is often much less than the outstanding balance of the loan). Unlike those filing for Chapter 7 bankruptcy, debtors filing for Chapter 13 are also not barred from subsequent bankruptcy actions for six years.
3. Effect of bankruptcy on debt collectors. Once a debt has been discharged in bankruptcy, a debt collector is

prohibited from further contacting the debtor about the debt.

4. Evaluating bankruptcy as a possible remedy for financial problems.
  - a. Make an appointment through Army Community Services (ACS) for Financial Planning/Debt Liquidation counseling.
  - b. Bring leave and earnings statements, letters from debt collectors, check book, and a list of all monthly debts to the counseling session.
  - c. After reviewing financial situation with ACS, review the following questions. If the answer to any of these questions is "yes," then other debt management solutions should be considered first:
    - i. Is it possible to obtain a debt consolidation loan?
    - ii. Are you likely to find yourself in a similar situation shortly after filing for bankruptcy because of an inability to meet basic living expenses?
    - iii. Is your present or future credit status a significant interest?
    - iv. Can an agreement for repayment be worked out directly with the creditors?
  
5. Attorney's fees and court costs. Hiring a **bankruptcy preparer** instead of an attorney can save a large portion of the fees that would otherwise be paid to an attorney. A bankruptcy preparer, however, is not a licensed attorney and is unable to provide legal advice. He just fills out and files the necessary forms. Usually, the first appointment with a bankruptcy attorney is either free or at a minimal cost. After the initial interview, most bankruptcy attorneys require payment in full prior to filing the bankruptcy action. Fees for a simple bankruptcy action can cost in excess of \$1000. However, a bankruptcy lawyer is required not to overcharge a client and may be forced by a bankruptcy court to refund a portion of his fee if it is deemed excessive. The attorney may advise you to obtain the money for attorney's fees and court costs (about \$200) by delaying payment on

particular debt obligations which the attorney identifies or may establish an installment plan.