

The WHOLE Truth About Bankruptcy

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FOREWORD

Hello, my name is Glenn Roethler. I am a bankruptcy lawyer and partner at Greeves, & Roethler, PLC a law firm with over 30 combined years of practicing law, the vast majority of which is in the field of bankruptcy. I belong to the National Association of Consumer Bankruptcy Attorneys, the Arizona Trial Lawyers Association and have experience with working on cases from the smallest individual bankruptcy to complex multi-million dollar business bankruptcies. Our firm assists all of those that require assistance with their financial situations, we do not discriminate on the type of client or the size of the case.

To get started, I want to applaud you for taking the first step to correcting your current financial situation. It takes courage to seek assistance when you are down and out. I am well aware of how scary it can be for my clients to come and see me. I will go into more detail later, but I believe that no one actually *WANTS* to file bankruptcy, it is merely a reaction to circumstances that are usually outside of their control.

I also want to take this moment to let you know that this is not a guide designed to teach you how to do a bankruptcy from start to finish. I am sure there are guides that do that, but I am not aware of any that I would recommend. This book is designed to address the bigger questions about bankruptcy that myself, my partners and (probably) every other bankruptcy lawyer see daily and to give you some insight on how bankruptcy lawyers think.

This book is geared towards individuals and people with small businesses, but the elements can also be applied to large businesses.

Finally, please feel free to skip to whichever section you wish to read. The book can be read straight through or you can read it in whichever order you want. It is meant to answer your questions, if you have questions about some things and not others, that's perfectly fine. This book is meant to answer the questions that are troubling you the most.

I hope you find the information inside to be helpful and enlightening. If at any moment, you want to speak with a bankruptcy attorney, please set this book aside and call my law firm at (480) 422-1850. If you are in Arizona, one of the extremely qualified attorneys at our firm would be more than happy to speak with you in a free consultation, and if you are not in Arizona, I can provide a referral to a qualified bankruptcy lawyer in your area.

Truly Yours,

Glenn Roethler

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What is Bankruptcy?

Very simply, bankruptcy is the process of discharging debt, so that the people you owe money to (your creditor) can no longer harass or sue you in the future. Bankruptcy allows you to get a fresh financial start or reorganize your debts into a manageable payment. Bankruptcy basically eliminates every unfulfilled contract that you have made since the age of 18. The main things that bankruptcy offers you will be covered later on in this book.

I have to apologize in advance, I am going into more depth is going to require a bit of a history lesson. Please feel free to skip to the next section you prefer to read if you do not want to read about the background of bankruptcy.

Prior to bankruptcy, people went to prison for failing to pay their debts. While in prison, they worked for very small amount. This amount was then paid back to their creditors in order to pay back the loans. The jails were called debtor's prison.

Needless to say, the debtor's prison system had a huge flaw. It was impossible for people to pay off large debts while in prison, and many often died in debtor's prison. This caused a lot of people to not want to take any financial risks, or to take on any loans. This reluctance to take on debt, to take on risk, prevented a lot of potentially successful businesses from ever existing.

The drafters of the Constitution, the founding fathers, understood that taking financial risks to start new businesses, or to assist people with making large purchases, was necessary for the financial growth of the country. They wanted to encourage this risk taking by allowing for a way out if the business failed or the individuals lost their jobs and were no longer able to make large purchases. Further, they believed that this risk taking and encouragement of economic activity, was so important that it should be a Constitutionally protected right.

That's right. I just said that bankruptcy is a constitutionally protected right. Just like that

of the freedom of speech, to bear arms, to be free from search and seizure without a warrant.

By allowing bankruptcy, the founding fathers put a system in place that allowed people to take risks and, actually, helped to define a financial system that allowed America to flourish economically ever since.

Am I a Bad Person if I File for Bankruptcy?

This is a touchy subject. Many people feel that bankruptcy is a moral decision. I am here to tell you that bankruptcy is *NOT* a moral decision. Bankruptcy is a BUSINESS decision, nothing more and nothing less.

Let us look back at what has happened in recent years. Some of the largest businesses in the world have had to file for bankruptcy. The following business have one thing in common, General Motors, Chrysler, Lehman Brothers, Kodak, Basha's, all of these companies are household names and all of them have filed bankruptcy.

Do you think that these businesses thought about whether their company would be a "bad" company? I will tell you right now, they did not. All these companies cared about was their survival and, eventually, a return to profitability.

No doubt some of you are thinking that corporations are only self-interested and are, by their very nature, bad. Well, I am going to tell you right now, that I have no problem with the profit motive of corporations. That too, is part of what made the United States so successful over the past centuries. I do have issues with the corruption that has become so rampant in our corporations because of the protections the government have given them, but that is outside the scope of this book.

It is my fervent belief that if those businesses and my clients could pay their debts, they would pay them. People and businesses both are concerned with paying back their debts. They

all try to pay them back in full. Sometimes, it just becomes impossible. This could be from a change in the economic environment in the case of a business, or it could be some tragic event in the life of an individual such as the loss of a job, a medical emergency or a divorce. I won't say that I've never met someone that just simply did not want to pay their debts, but they are an extremely small percentage.

People sometimes ask me if I would ever file for bankruptcy. Fortunately, I have not had to make that decision and I hope I never do, but I certainly know that I would file for bankruptcy if I believed it to be necessary for myself and my family. I often joke, (only half joke anyway) that if I could get rid of my student loans with bankruptcy, I would file for bankruptcy tomorrow. It is a financial decision, you look at the consequences of the bankruptcy and you look at the benefits and if the math makes sense, then it is a no-brainer.

Surprisingly, several religions make the same calculation, including the Bible and the Koran. In the old testament (Leviticus 25:39), the Bible states that people are generally expected to pay their debts, however, this is offset by need for compassion and the requirement that debts should be canceled at a regular period. That's right. I said required. In the Bible, this is known as the jubilee year and occurred once every seven years. There was no need to make a moral decision here, as everyone knew when the jubilee year was happening and the society believed it as good for the financial welfare of its citizens. I like to think that the ability to file for bankruptcy in our society is made out of compassion to those facing financial difficulties, too, except that now it can be timed better for the individual while making this tough financial decision.

Finally, it is a Constitutional Right to file bankruptcy. How can exercising something that is a Constitutional right be bad? These rights were made to protect your rights as a citizen of

the United States of America and were meant to be used. It was a societal calculation to allow for bankruptcy to exist, and I believe it is one of the reason the United States is such an economic power.

So does needing a bankruptcy, needing a fresh start and a compassionate fresh state, make you a bad person? I believe with all of my heart, that the answer to this question is “No.”

Should I File for Bankruptcy?

I see clients everyday that ask me this question. My answer, like all good lawyers, is maybe. Everyone’s financial situation is individual and distinct. In my practice, I have found that it is important to listen to my clients. That listening is the only way I can determine whether or not bankruptcy is a valid option for them. When clients come to see me, I ask questions regarding total debt, total assets and total gross income (pre-tax). I promise I am not prying or trying to be nosy. This is the information that allows me to come to a conclusion as to whether bankruptcy is helpful. I would say that by the time of the free-consult that is offered, the vast majority of clients are comfortable with making the decision to either file or to not file.

I do not tell my clients that they should file bankruptcy. It is my process to inform my clients that it is an option that they can choose. I inform them of the advantages and disadvantages of filing for their bankruptcy and let my clients come to their own conclusions.

Usually, by the time a client seeks my counsel, my clients are well aware that they need help, they are often just unaware of what kind of help they need. After speaking with me, many clients feel that filing for bankruptcy is often their best option to provide them with the help they need. There are also many clients that I determine do not need bankruptcy and provide them with other avenues of assistance or guidance with dealing with their issues.

While on the subject, do not allow yourself to be pressured into filing for bankruptcy if

you are uncomfortable with any aspect of the bankruptcy process or with your attorney. Speak with your attorney and let them know what aspects make you uncomfortable and have him explain it to you, until you are completely comfortable with making the decision to file, or not to file.

There are firms out there, some of which you may have already had experiences with, that make you feel as though you are at a used car dealership with the sales tactics and the pressure they put on you. If you find yourself at one of these establishments, you have to ask yourself if you feel comfortable trusting them to do what is best for you. I cannot speak to the quality of the work for all of these firms, as I have not personally experienced it myself, but the reputation of these firms are often not the best. Not to say that these firms have bad lawyers, as I know that many very fine lawyers work for these firms, at least for a time.

I, personally, do not believe pressuring a client into filing a bankruptcy results in the best results for the client. As an attorney, I believe it is my job to present the options and let the clients decide if it is right for them.

As a rough idea as to whether you should see a bankruptcy attorney, here is a list of common indicators:

1. Living paycheck to paycheck
2. Borrowing from Peter to pay Paul?
3. No matter what you do, your debt does not decrease
4. Constantly receiving threatening phone calls from the banks you owe
5. Maxed out credit cards
6. Using retirement money to make payments (Stop this Immediately and see a lawyer!)
7. Your house is drastically underwater

While not being an exhaustive list, this should probably give you a good idea as to what types of indicators suggest that you should speak with a lawyer regarding bankruptcy.

The Different Types of Bankruptcy

As you probably figured out from the title of this section, bankruptcy allows for three options for individuals. The options are Chapter 7 liquidation, Chapter 13 reorganization or Chapter 11 reorganization.

The most common form of bankruptcy is Chapter 7. Chapter 7 liquidation is also what most people think of when they think of bankruptcy. This is the type of bankruptcy where you may lose some property (this will be covered in more detail later). That property is sold at an auction and that money is used to pay your creditors, as much as your stuff is worth. A lot of property can be protected or converted so that you benefit from the property rather than your creditors. This is one of the ways that a bankruptcy lawyer is useful, and often saves his or her clients thousands of dollars.

Chapter 7 is also the type of bankruptcy where you do not have to pay anything back. For an individual, you have to qualify to be able to file for a Chapter 7 bankruptcy, unless your debts are primarily business debts. When a business files for bankruptcy, all of its assets are sold off and paid out evenly to its creditors.

The next most common form of bankruptcy is Chapter 13. This is because people that do not qualify for Chapter 7 often qualify for Chapter 13. Chapter 13 is actually a debt reorganization. For the vast majority, Chapter 7 is a less expensive endeavor than a Chapter 13.

A debt reorganization means that your debts are combined together and you pay them back in an organized manner. I want to make sure that you understand that when I say you pay them back in an organized fashion, you understand that you do not have to pay ALL of the debt

back. In fact, in the vast majority of cases you only pay an extremely small fraction of the debt. It is our job, as your attorneys, to make sure that you pay the least amount possible to your creditors during the bankruptcy period.

The Chapter 13 reorganization requires that the debtor make a 3-5 year payment of all their disposable income. The disposable income is measured by taking people's monthly income and subtracting what the government, in its infinite wisdom, determines are your expenses with a few exceptions for actual expenses.

Chapter 13 has many advantages over Chapter 7. I often recommend Chapter 13 over a Chapter 7, even if the individual qualifies for a Chapter 7. This happens a lot when there are tax debts, or when someone has assets that we cannot plan for in advance and which the debtor wants to protect. Chapter 13 is a very structured bankruptcy and very statute driven.

A Chapter 11 bankruptcy is a complex and very expensive task. For individuals, it is reserved for those with significant debts that want to do a reorganization. The debt limits of a Chapter 13 is approximately \$1,000,000 for secured debt and \$300,000 for unsecured debts.

The Chapter 11 bankruptcy has many similar features of a Chapter 13, but is much, much more flexible. In reality, you only need to get the creditors to agree on the terms of the bankruptcy. As simple as that sounds, it is really quite difficult, takes a lot of time and often involves many court hearings.

The Bankruptcy Time Line

This is going to be a fairly short section. All of the bankruptcies share some core elements. The time line goes something like this:

1. Pre-bankruptcy planning.

This is where you meet with your attorney and plan for the bankruptcy. This can take up

to 6 months. It can also be less than an hour, depending on the circumstances. Bankruptcy lawyers don't really like filing within the day or even the week of meeting the client. There are too many variables and too many things that can go wrong. Lawyers certainly do it, charge extra for it, and make it work, but clients are often at a disadvantage.

2. Day of Filing

This is the day that really matters in bankruptcy. Everything is tied to the day of filing.

3. Section 341 Hearing aka Meeting of Creditors

The bankruptcy code requires an examination under oath to verify that you are who you say you are and that the documents filed were true and complete to the best of your knowledge. This meeting usually last about 5 minutes and most of my clients ask "That was it?" after it is complete.

4. Discharge

This is the day that your debts are discharged from ever being paid back. It can be revoked and you still have a duty to respond to the trustee until case close.

5. Case close

This is a technical closing of the case and can take weeks from the discharge up to several years. It really has no bearing on the bankruptcy.

The process from start to finish for a Chapter 7 is approximately 9 months. The process for a chapter 13 is 3-5 years depending on the length of the plan. Chapter 11 can be any length of time and I've heard of 12 year plans.

What can Bankruptcy Do for Me?

At this point, you now have an idea what bankruptcy is and how long it will take, but you are probably wondering what exactly bankruptcy can do for you. The list is quite long and I will

probably not touch on every single thing that bankruptcy can do for you, but I will touch on the major issues.

The first thing, as mentioned above, that bankruptcy does for you is to eliminate your debts. That's the most obvious answer.

So what kind of debts can it eliminate? It can discharge certain tax debts, most judgments obtained against you, credit card debts, mortgages, medical bills, lawyer bills (Not mine though . . .), leases and practically any debt that you have to contract for, bankruptcy will eliminate.

What else can bankruptcy do? It prevents harassment from your creditors. It can prevent the foreclosure of your home, it can prevent the repossession of your vehicle. It can help you pay back-child support. It can help you pay back tax debts that are not dischargeable. It can even get rid of all mortgages on your home that have no equity to support them. Imagine that, getting rid of all of your mortgages, but the first one. Bankruptcy is a very powerful tool used in clever hands.

What can Bankruptcy Not Do?

There are many things that bankruptcy cannot do (such as show you a unicorn and make you meet your favorite celebrity, etc.) However, in the realm of eliminating debt there are very few debts that bankruptcy cannot eliminate. These debts are certain taxes (usually incurred within three years of filing or employment taxes aka 941 taxes), alimony or child support, criminal restitution and other civil and criminal fines imposed by a court, and injuries caused from driving under the influence of some drug.

Will I lose My Stuff?

If you file a Chapter 7 you do face the possibility of losing your stuff. The vast majority

of Chapter 7 cases are what we call “No Asset” cases. This means that there are no assets to take for liquidation for the creditors. Further, a good bankruptcy attorney will minimize how much stuff you lose by disposing it properly prior to filing the bankruptcy.

Each state allows its citizens to protect what those state’s legislatures have determined to be the necessary items for its citizens. This is called the exempt property. So, the stuff you lose really depends on what state you are in and what state you were in two years prior to filing and what their exemptions are. It is very complicated to determine the actual state’s exemption laws that you get to use if you have moved recently.

You also have a chance to buy back the property by purchasing it from the trustee prior to the auction or at the auction itself. So if no one bids on it, you certainly have a chance to get it back for fairly cheap.

In both Chapter 13 and Chapter 11 you decide what you get to keep and what you choose to let go. The incentive for letting things go is that your plan payment will be lower because you have less assets to purchase back over the period of the bankruptcy. Yes, you read that right, if you have non-exempt assets, you have to purchase it back during the bankruptcy process.

That brings me to the question that I often ask my clients. “What is the property actually worth to you?” As a bankruptcy lawyer, I don’t have any sentimental attachment to your property. I am looking at your best monetary interests. So we tend to give advice that people don’t like to hear when it comes to houses and vehicles and other things. That advice is to get rid of it or to let it go. It is not that we are being cold or unfeeling, it is just that fiscally, it makes the most sense.

As a final note on the subject, I believe that most stuff is easily replaced and is truly not worth the angst that affects some people.

DO I REALLY NEED A LAWYER?

So now you know what bankruptcy is, the next step is to decide if you need a lawyer. This is a question that I would be asking myself if I was in a position that required a lawyer. Trust me, I am the consummate do-it-yourselfer. I work on my own motorcycles, my own cars, do my own carpentry work (I paid my way through school working as a carpenter and building houses), fix my broken appliances, do my own home wiring, fix my own computer etc. The list really doesn't ever stop with the things that I prefer to do myself.

To me, it's not even a matter of saving the money, it's a matter of trusting others to do the work I need done properly. I've learned that if you don't trust your mechanic, you really shouldn't let him work on your motorcycle. He's not the one stuck at Bryce Canyon in Utah after camping in the back country because your mechanic didn't tighten down crucial parts properly (true story). Fortunately, it wasn't something that would kill me when it let go and I was able to fix it on the road . . . eventually.

However, there are certainly aspects of my life that I believe are important to trust others to do. The things that I choose to hire professionals to do are those things that unbelievably complex. One example of this type of thing are my taxes. For those of you who own their own business, you know just how complex taxes can be. I believe that accountants are vital to having the best tax returns, so I hire an accountant to do that. Usually, they more than make up for the cost of their service with their ability to save me from paying taxes beyond what I actually owe.

Bankruptcy law is one of the most complex areas of law, period. There is a reason the leading do-it-yourself bankruptcy book is over 550 pages long and only addresses individual bankruptcy. Additionally, the more involved your case is, the more you need an attorney. The truth is, that staying current on the shifting rules of bankruptcy is a full time job and not one a

self-help book is most likely able to do. There are traps for the uninitiated everywhere in the bankruptcy code. This is particularly true for those in need of bankruptcy that have assets. A good bankruptcy attorney, like the accountant above, usually pays for his or herself with the property savings that you would have otherwise lost for failure to properly plan for bankruptcy.

The truth is, I also believe that some people probably do not need a lawyer. If you have nearly no assets (Nothing worth more than - say approximately \$250 in value, and have not had anything of value for 2 years or more), and no debt beyond simple credit cards and your income qualifies you for a Chapter 7, you probably do not need a lawyer and you will probably skate through the bankruptcy process with a little luck, unscathed. I would be more than happy to be your attorney in this circumstance, if you want to have the peace of mind of having an experienced attorney to guide you through the process, but truthfully, it is probably not necessary.

Please do not go to a document preparer, I have had many, many bad experiences with fixing the problems that they have created by helping people do their documents. The document preparers are not allowed, technically, to give legal advice, however, they still do. A lot of the time that legal advice is absolutely wrong, too (you get what you pay for). Either do the bankruptcy yourself and expect some rough times or hire an experienced attorney.

Even when you hire an attorney, do not expect to have smooth sailing. An example of this is the following story:

I remember one client who forgot she was on her parents' checking account in case something happened to her parents and failed to tell me that she was on the account. This was a terrible incident where they had a significant amount of money in the account. Because she was on the account, she is legally deemed to own the account and all the funds in the account. This

resulted in the trustee seizing the money and us having to fight to get it back (not to mention having to buy the property back from the trustee). This is the type of thing that could have easily been prevented, but the client forgot about it (understandably, as it wasn't her money).

These are the types of things that we try to avoid at all costs, but we cannot help if we don't know. And if you are filing for yourself, you won't know how to prepare yourself for filing without triggering other problems like the one above, because you probably won't even know that a problem exists.

What are the Down-sides of Filing for Bankruptcy?

Surprisingly, filing for bankruptcy has few down sides for a properly prepared and organized debtor. The worst that happens is that your credit score usually goes up, (That is not a misprint, it usually goes up) the day of filing. You also only have the opportunity to file for bankruptcy once every few years, so it is part of our job to let you know if now is a good time, or if waiting for a significant other life event to be completed is a better time (such as completing medical treatment, buying a car, etc)

The credit score going up is an interesting phenomena. To understand why this typically goes up, you have to understand how the credit score works.

Your credit score is based on timely payments, debt-to-income ratio and whether you have maxed out your credit. The closer to the max you are, the more your credit score drops.

Most of my clients are usually a long ways behind on their monthly payments on their debts. This significantly drops your credit score. Most of my clients have a high debt-to-income ratio, again significantly dropping your score. Finally, most of my clients have maxed out their credit cards. All of these things drop your credit score.

In general, the credit score my clients have is somewhere around 500. We know this

from the specialized credit reports that we obtain for our clients. This specialized report also indicates a predicted credit score a year after filing. This score is usually in the mid 600s. Yes, a year after bankruptcy your credit score will be somewhere in the mid-600s. The day of filing that score is somewhere in the range of 550. So the mere filing of bankruptcy caused the credit score to go up.

The reason bankruptcy does this is that when you file for bankruptcy, you no longer have debt. Therefore, your debt-to-income ratio is much better. Again, you no longer have maxed out credit, because you have no more debt. And finally, your late payments are no longer late because you are no longer required to make them. All of these allow you to increase your credit score substantially.

While it is true the bankruptcy will be on your credit report for 10 years, preventing you from having a *PERFECT* credit score, you will be well over a 700 prior to that, which is excellent credit and where I recommend to my clients that getting credit makes sense again with the interest rates that are offered along with the credit. This is approximately 2 years down the road.

Many of my clients are shocked to discover that the day after filing for bankruptcy they are inundated with credit offers from companies. This is because the credit companies know that the client cannot file bankruptcy for a period of time. These companies offer these cards with huge interest rates, so I advise my clients to avoid them like the plague.

The true downside of bankruptcy is that it affects when you can purchase a home, at the time of the writing, if you have a foreclosure, including in a bankruptcy, you cannot get a FHA home loan for five years. This has been moving drastically as we go through the real estate bubble crisis, so you will need to check on this.

Another downside is that you cannot file again for 8 years(from chapter 7 to chapter 7), 4 years (Chapter 7 to Chapter 13), or 2 years (Chapter 13 to Chapter 13). Those of you who have been paying attention will notice that you can be in a Chapter 13 forever. This is often the case for clients that have extremely bad circumstances. This usually involves tax debts or a lawsuit that cannot go away because it is non-dischargeable.

The truth is, the downside for those that are unprepared can be many. Things such as having your property taken and sold out from underneath you, having property that you transferred to family members within the last two years, taken back by the trustee and sold, and not being able to get out of the bankruptcy court for whatever reason you may have (Chapter 7). There are so many down sides of filing for bankruptcy unprepared and unaware, that I do not even know where to begin. As I said above, you can file for yourself, if you have nothing and have not had anything for a long period of time and with some luck, you won't have any issues. However, if you have anything above and beyond that, you need to be properly prepared.

A good bankruptcy attorney can prepare you so that you can go through the process with little to no surprises. That is our job. To provide you with the information you need to make an informed decision and to make sure you are not surprised. Although, truthfully, bankruptcy laws change so quickly, that surprises for some are inevitable. It's an unfortunate truth, but that is how it is.

The Dark Side of Bankruptcy

This area will be a bankruptcy attorney going on a rant and explaining why so many of the laws are against debtors and why bankruptcy is now so expensive. It truly is not necessary to read for enlightenment, but explains why filing for bankruptcy is so hard after the changes to the bankruptcy code made in 2005. Please feel free to skip it, although, I hope you won't and that

you will read this and maybe contact your congress people and vent your anger to them, over what was allowed to happen in 2005, which now may directly effect you.

Again, some history is necessary in order to explain fully. There have been a fair amount of bankruptcy reformations over the past century. The most important and dramatic being in 1978 which drastically altered the landscape for debtors and was, in truth, very friendly to debtors making the bankruptcy process quick and cheap.

In most of the new amendments made to the 1978 code, the banks and financial institutions (the creditors) have excluded more debts from being discharged in bankruptcy. As usual (my cynicism may now be showing), the creditors influenced (legally, I'm sure) senators and congressman that each of these debts should be excluded from bankruptcy because the discharging of the debt was bad for the economy.

One of the major debts excluded from discharge was the student loan debt. This means that you cannot get rid of your student loans at all. I truly believe that this exclusion from discharge has led to the rapid increase in the cost of tuition for our universities. The inability to file bankruptcy on these debts has led to another bubble, like we saw with the real estate market and has essentially created a class of indentured servants paying off their student loans for the rest of their lives.

Then came the laughably named Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, (aka "The Act" or "BAPCPA"). This Act was actually written by the very same banks and financial institutions that created the financial crisis of 2008. There was very little debate on the writing or the passage of the Act, and quite honestly, is one of the most poorly written pieces of legislation I have ever had the misfortune of dealing with.

BAPCPA makes filing for bankruptcy much more difficult. In fact, many of the

supporters of the bill were quite open about making it harder for individuals to file bankruptcy and proud that they accomplished it. BAPCPA requires a means test, to determine if an individual should be able to file for Chapter 7. This is a very difficult test to understand, and without software is nearly incomprehensible. Trust me I know, I once did a bankruptcy without using any of the software that we use on a daily basis, just to see what the difference was. I learned that it was about a 20 hour time difference in completing the schedules.

It also requires counseling courses prior to filing and completing bankruptcy. In my opinion, this is a completely useless endeavor and has created another place for people to profit off of those in need.

The goals of the Act were to make it more expensive to file bankruptcy. They accomplished this through requiring a significant amount of more paperwork. They made attorneys far more liable for making sure the clients were not hiding assets. This made it more expensive for attorneys to look into the background of our clients as part of our due diligence research. It also requires those that file for Chapter 13 to pay an additional amount compared to the Bankruptcy Code prior to 2005.

Of course, if you are a huge corporation though, it makes things much easier for you to file bankruptcy, that's fair right?. This truly is an Act designed to make it hard for individuals to file bankruptcy but easy for multi-national corporations to file for bankruptcy and truthfully, makes me angry.

The Role of Judges and Trustees

The trustee is the person assigned to administer the estate in your case. What this means is that the trustee sees to it that the case proceeds along in a timely fashion. The estate in your case is a fictional entity that is created to hold all of your property. It is also the trustee's duty to

protect the estate from you and from individual creditors for the benefit of *ALL* of the creditors. Think about that. The trustee is not your friend, and is not on your side of the bankruptcy. They are a tool used by creditors to make sure that the most value is obtained for the creditors when you file the case. It is your duty to comply with the trustee's requests, but no more and no less.

You will probably never see the judge in your bankruptcy case. Judges are actually in charge of your case, but in reality, in most cases, they do not get involved. Judges are to be impartial on the process and are to decide on disagreements between parties.

Truthfully, the only time that a judge gets involved in your case is when the trustee or a creditor and you or your lawyer have a disagreement about some point of law, generally because the trustee wants more of your property and/or money. Judges decide these issues based on the law at hand, and often have to make up for the terrible drafting of BAPCPA as outlined above.

Fortunately, judges in bankruptcy court are among the best judges I have had the pleasure to work with. This does not mean that I agree with them on all the issues, or even most of the issues. It means that their decisions are well reasoned and very scholarly.

How much does a Bankruptcy Cost?

As always, the answer to this question is it depends. It depends on the area of practice and the law firm. I will tell you right now that my firm is not the cheapest firm around. I believe that you pay for the quality of your representation. We have a huge wealth of knowledge between our attorneys and provide quality representation. We also have families to feed and mortgages to pay as well.

However, we do believe that it is our duty to our community to provide everyone with quality representation and, keeping that in mind, we are no where near the most expensive either.

With that said, you are probably asking "Where are the hard numbers?" The price of

your bankruptcy is very dependent on your facts. Not all bankruptcies are created equal and our fees change accordingly. If you want an accurate quote of our fees for your bankruptcy, please set up a free consult where we will provide you with a written quote that is accurate in about 90% of the cases that we see. The reason it is not more accurate is because of the surprises that often happened as I wrote about above.

We understand that it is difficult for a lot of our clients to pay our fees immediately and offer very affordable payment plans. Another thing to consider is that if you do decide to file a bankruptcy, you will stop making many monthly payments (those that your attorney recommend that you stop making) that you would otherwise be making, allowing you to come up with the payment for our services.

Back to the hard numbers – We have done bankruptcies for as little as \$500 all the way to \$100,000. Of course, those are the far end of the spectrum with most of our cases falling between \$800 and \$1200 for an individual Chapter 7 and \$4000 to \$6000 for a Chapter 13. I hope this hasn't caused a seizure.

Unfortunately, when filing a Chapter 7 we do need to be paid prior to the filing, or our fee would be included in the bankruptcy, and we would be ethically bound to not attempt to collect the remainder from you due to a conflict of interest.

Chapter 13 tends to be a little more expensive in total because of the additional work needed. The good news is that we are able to claim some of our fees from the plan payments as well, and, often, Chapter 13 tends to be cheaper out-of-pocket to actually file than a Chapter 7.

Chapter 11 is where the fees are very high and range between \$15,000 to \$100,000 depending on what is required with the average being somewhere around \$20,000-30,000. Chapter 11's, as indicated above are fairly few and far between.

How to Choose a Good Lawyer

This one is easy, if you are going to use a lawyer to assist you with your bankruptcy, it should clearly be me (or at the very least one of my partners at my firm). Nothing quite like a shameless self-plug.

Despite my own professional bias, and in all seriousness, the one thing that makes a lawyer, any type of lawyer, good is that he or she cares about his or her work product and his or her client. That's it. If they care, they will take the time to learn about the case and do their best for you. If you can find a lawyer that you think is smart, and that you believe cares about your case, they will likely do a good job of representing you.

Now, a good lawyer with experience in that particular area of law will represent you efficiently and thoroughly. There will be much fewer mistakes that you will have to pay for because the lawyer already knows the pitfalls as he or she has seen a lot of them already. Inexperienced lawyers are often cheaper, but the mistakes they make may cause you to pay more in the long run. Unfortunately, the only way inexperienced lawyers become experienced lawyers is by making those mistakes, and that is often at the expense of the client. So even though an inexperienced lawyer may be good, and may be cheaper, it is usually best to go with a lawyer, or a firm of lawyers, that have significant experience in the field as they will save you a lot of grief in the future.

When it comes to bankruptcy, a good bankruptcy lawyer will know all of the options. This means that they will understand that not all cases are a Chapter 7. Some lawyers try to take a square peg and fit it into a round whole when it comes to bankruptcy. This makes things frustrating for the client and the lawyer as the bankruptcy does not do everything that it should do. So even if a lawyer does not do Chapter 13 or Chapter 11 bankruptcy, they should have a

good idea of what the differences are and what each can do for you, so they can refer you to a lawyer that is capable of assisting you.

In addition to all of the different types of bankruptcy, there are many times a choice of whether to be aggressive in the pursuit of an issue or whether to let sleeping dogs lie. It is my practice to outline the options, try to identify the total cost to the client of pursuing that option, and letting my clients decide the course of action. In truth, most of the time, the clients choose to let the sleeping dog lie as it is the less risky action. Inexperienced bankruptcy attorneys often waive the red flag in front of the trustee causing unnecessary angst for the client.

The last point I want to make on this subject is that, as in the story about my motorcycle mechanic in the section “Do I really Need a Lawyer,” I think trust in the attorney-client relationship is vital. It can be any area of law, but if you do not trust your lawyer, you can have the best lawyer in the world, and they will not be able to provide the best service to you. Any lawyer-client relationship is based on trust, and if you feel you cannot trust your bankruptcy lawyer, particularly with things as personal as your private finances, then you should find a different attorney to assist you with your bankruptcy. Full disclosure is the key, because only then can your bankruptcy attorney help you plan accordingly.

Closing Remarks

Facing the reality of bankruptcy is a scary idea. I believe the best way to combat this fear is through educating my clients. By educating my clients, I also believe that they are far more capable of making an informed decision and to have realistic expectations. I hope this eBook has accomplished these goals to some extent for you. It is also my hope that you will find someone that can guide you through this process as painlessly as possible, and I believe I have given you the tools to find that individual, be it yourself or a lawyer.

I also want to invite you to suggest additional topics that I may be able to cover on my blog and in later versions of this eBook. Any feedback would be genuinely appreciated and can be sent to contact@gprlaw.net.

About the Author

Glenn Roethler grew up on a small farm in rural Washington State. He enjoyed a reckless childhood spending most of it riding motorcycles, shooting guns, fishing, driving tractors, bucking hay and racing go-karts. In high school, Glenn was an alternate on the all-state football team as a defensive end, the number one position golfer for his golf team, and a member of the track team, where he lagged dutifully behind the much faster athletes.

Glenn attended the University of Washington where he majored in Law, Society and Justice and made the Dean's list on multiple quarters. During this time, Glenn developed his love for the law and politics, and for a few more less reputable activities – like martial arts. Glenn also worked the summers as a carpenter and laborer for several construction firms, managing to pay for his Undergraduate education, and where he learned about a few more less reputable activities – like a healthy disrespect for authority.

Glenn then spent six months in Europe traveling around like a bum with a large backpack and a couple books telling him where to go. He learned to speak conversational German in a language school while living in Berlin and enjoyed visiting every art and history museum that had a free day on whichever particular day it happened to be. Glenn managed, barely, to avoid being kicked out of Europe for arguing politics with too many locals, and left of his own free will to go to law school.

Glenn attended Arizona State University College of Law, which eventually changed its name to Sandra Day O'Connor College of Law, which Glenn believes is just too long to say. Once more, Glenn picked up bad habits like talking about Torts and Contracts. The school also reinforced his bad habit of arguing about anything and everything. Apparently, law schools believe this to be a good trait in a lawyer.

Combining his lack of respect for authority and his willingness to argue anything and everything, Glenn chose to open a law firm, after working for a short stint as in-house counsel to a title company. He found a partner, who was, amazingly, able to tolerate him and began the firm that eventually became Greeves & Roethler, PLC. You can find Glenn there, probably arguing about something or going on a rant about someone trying to tell him what to do.