

AN ALTERNATIVE TO BANKRUPTCY

by

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Those who are concerned about the strength and stability of the American family are forced to face some alarming statistics. The latest available Federal Reserve figures state that outstanding installment credit as of February 29, 1964 was 53-1/2 billion dollars. In February of 1964 installment credit increased more than at any time in 4-1/2 years. Installment credit advanced 579 million dollars in February, 1964, compared to an advance of 428 million in January, 1964.

As installment credit increases, there is a correlative increase in garnishments. Today, in Milwaukee, there is an average of 40 garnishments of wage earners per day, seven days a week. There were 47,000 worthless checks issued in one year in Minneapolis - almost 1000 a week, many of them by individuals under pressure to make payments on installment contracts. Family court counsellors agree that the roots of divorce often lie in financial difficulties.

In 1963 there were 155,493 bankruptcies filed in Federal Court; almost 90% of these were wage earners. During a 10-year period bankruptcies have increased approximately 300% in the United States.

Too often bankruptcy fails to serve a useful social purpose. While some debts may be removed, the largest debts of the bankrupt are often formidable balances on automobiles, freezers, TV's, and similar purchases.

The bankrupt's attachment to these items is so strong that he will not or cannot separate himself from them. Consequently, after bankruptcy the first order of business is to renew the contracts. This immediately places the bankrupt in a morass of debt that gives little relief to the wage earner who thought he was going to be free. After bankruptcy, many finance companies and debt merchants look with fond eyes and new interest on the bankrupt. If he has a job, he is a better risk than ever, as he cannot go bankrupt for another six years. The bankrupt who thought he would have a hard time buying on credit is overjoyed to find that he is not a rejected risk, and launches into a new career of credit adventure.

This is not to say that bankruptcy has no reason for being and can serve no useful purpose. A considered examination of each case will often lead to a conclusion that bankruptcy may be the wisest course to follow.

Since 1939, the hard-pressed debtor was given an alternative to bankruptcy by Congress. This procedure is called the Chapter XIII Wage Earner Plan. Under this plan, a wage earner, regardless of earnings, can petition the federal court to amortize his debts. The debtor must be insolvent or unable to pay his debts as they mature. The wage earner is called a debtor rather than a bankrupt. The original filing fees are \$15.00 rather than \$50.00 as required with a bankruptcy petition. While the attorney fees are similar in both cases, in a bankruptcy the attorney's fee of \$200.00 is often an unattainable sum required in advance, while in Chapter XIII the attorney's fee can be taken out as the plan progresses, and is sometimes less than \$200.00. Incidentally, the attorney can be more certain of his fee under Chapter XIII, because the attorney is paid as are other creditors, from regular payments made by the debtor.

Generally, in Chapter XIII proceedings a budget should be carefully worked out for the debtor's family. Assuming the income exceeds the family needs, the difference is turned over to a court appointed trustee for distribution to creditors at regularly established intervals. The creditors are notified of the court hearing and given an opportunity to vote on acceptance of a plan. The plan states the amount the debtor can pay regularly and the method of payment to secured and unsecured creditors. A majority in number of unsecured creditors representing a majority in amount of unsecured creditors whose claims have been proved and allowed, must approve of a plan before the court can accept it. Creditors, in most cases, are eager to accept a practical plan, and if difficulty is encountered, direct contact with the creditor will often get an acceptance. The court accepts the plan if it complies with the requirements of the law. A plan must be feasible, which our court has interpreted, to mean that over a 3-year period the creditors will be paid in full, or will be paid the percentage of the debt that the plan proposes. Once the plan is in operation, the court has jurisdiction to increase or decrease the payments as conditions warrant. The court also has the power to reject any executory contract such as leases or installment contracts.

The debtor is restrained from credit purchases while the plan is pending. Of great significance is the fact that when filing the petition in federal court the debtor may secure a restraining order directed to all creditors advising them that all of the income and property of the debtor is under court jurisdiction and no creditor may sue, repossess, or in any manner interfere with the financial affairs of a debtor. This means that while a wage earner is under the plan, he is free to work without the harassing threat of garnishment or court action.

The cost of operation of a plan, in addition to attorney fees which must be approved by the court, is approximately 10% of the funds disbursed.

In 1963, 24,329 Chapter XIII cases were filed in this country, and approximately 8-1/2 million dollars was paid out to creditors under Chapter XIII. During a 10-year period 46,915 Chapter XIII cases paid creditors in full, representing 55% of the Chapter XIII cases filed in that period.

Chapter XIII preserves the self-respect of the debtor, who recognizes that he is facing his creditors. In contrast, one who goes through bankruptcy often suffers a psychological impact which arises out of a feeling of running away from obligations.

Another important aspect of Chapter XIII is in relation to prior bankruptcies. One who has gone bankrupt, no matter how difficult his financial position becomes, cannot proceed again in bankruptcy for another six years. In most jurisdictions, a debtor in serious trouble can file a Chapter XIII petition prior to the expiration of six years.

A Chapter XIII proceeding has the additional advantage over bankruptcy in that if the plan is worked out with adequate financial counseling, debtors can learn to manage money. With sustained counseling, the relationships within a family can become a solid social unit in a community.

The history of the origin of Chapter XIII, as reflected in Congressional debate at the law's inception, leaves little doubt that the purpose of the law is debtor rehabilitation. With the wise use of this law, our courts are in a position to strengthen the credit climate in the community and give direction and purpose to disturbed families.