Workin' For a Livin': Commission Based Pay and Bankruptcy

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For those of you that earn a living in a commission based job (Realtors, car sales, insurance sales, etc.), bankruptcy can cause difficulties if not well planned. The treatment of your pay depends upon the chapter of bankruptcy you file, so I will break it down into Chapter 7 bankruptcy and Chapter 13 bankruptcy:

Chapter 7 Bankruptcy

In a chapter 7 bankruptcy we determine your income by taking an average of your pay over the last six months. This means that if you have a very high or very low month in comparison to your normal wages, it may impact your monthly average either up or down. In order to qualify to file a chapter 7 bankrutpcy you must have an income at or below the average income for a family of your size in your area. Thus, the average of your last six months of income will determine whether you qualify for a chapter 7 bankruptcy or not.

In chapter 7 bankruptcy, generally your wages or pay you receive after you bankruptcy is filed is of not much concern to the bankruptcy court or your trustee. However, if you have unpaid commissions, that have been earned, just not paid, that are due to you prior to the filing of your bankruptcy case, the trustee assigned to your case may be able to assert a claim on those commissions and seize them to pay your creditors.

For instance, if you are a realtor and you have done everything that is necessary to sell/buy a property, and are merely waiting for the closing date to arrive, if you receive your commission after the filing of your bankruptcy case the trustee may be able to seize it. If you receive the commission prior to your bankruptcy filing, you will be able to use it for your living expenses. Because of this, it is important to have an open discussion with your attorney as to any commissions that you will be entitled to after your case is filed. This is especially important if you are an insurance agent who receives renewal commissions.

Chapter 13 Bankruptcy

In a chapter 13 bankruptcy we also look for an average of your last six months of wages. In a chapter 13 bankruptcy you will be making a monthly payment to your creditors. The amount of this monthly payment is going to partly be based upon your income minus your monthly expenses. The result of this calculation is your monthly disposable income. Thus, in many cases, if your monthly income is higher, your monthly disposable income is higher, resulting in a greater monthly chapter 13 payment.

Where commission based pay comes into play is that many times those who earn commissions have pay that is highly variable. One month you may make $1,000 and the next month $10,000. So for instance, if during the six months prior to filing bankruptcy you had five months of $1,000 per month in pay, and one month of $10,000, you average monthly pay would be $2,500 — even though you typically only make $1,000 per month. From this example you can see that it may be better to wait to file your chapter 13 bankruptcy case if you have a month with an unusually high commission, as this will raise your monthly average and correspondingly raise your monthly chapter 13 plan payment.