Federal statutory laws. While there are chapter of the United States Bankruptcy Code Federal bankruptcy court under a particular What Is Bankruptcy? below.

relying on any of the information discussed attorney before taking any of the actions or relying on any of the information discussed below.

What Is Bankruptcy?
Bankruptcy is the process of filing a case in Federal bankruptcy court under a particular chapter of the United States Bankruptcy Code (the “Bankruptcy Code”), a complicated set of Federal statutory laws. While there are fifteen separate chapters under the Bankruptcy Code, the most common chapters under which debtors will commence a bankruptcy case are Chapter 7, Chapter 13 and Chapter 11.

Chapter 7: Chapter 7 under the Bankruptcy Code provides for liquidation (sale) of a debtor’s property and payment of the proceeds from the sale to the debtor’s creditors in a certain or- der established by law. When an individual or a business files under Chapter 7, a Chapter 7 Trustee is appointed by the bankruptcy court. The Chapter 7 Trustee’s duties include collecting the assets of the estate (the property of the debtor), selling those assets, and distributing the proceeds from the sale to the creditors in order of priority. An individual debtor in Chapter 7 (NOT a business debtor) may protect certain assets (or the value of such assets) from being sold. Assuming that there are no objections to discharge, an individual in a Chapter 7 case will receive a discharge of all of the personal liability of the individual debtor as to any debts that existed at or prior to the bankruptcy filing. A discharge is not available to a business in Chapter 7.

Chapter 13: Bankruptcy under Chapter 13 of the Bankruptcy Code is available to individuals, not to corporations or partnerships, with regular income and with secured and unsecured debt that does not exceed certain amounts. As opposed to Chapter 7, a debtor’s property is not sold in Chapter 13 but remains in the individual debtor’s possession after filing. Under Chapter 13, the debtor proposes a plan (the “Chapter 13 Plan”) for paying his or her creditors, which must be approved or “confirmed” by the Bankruptcy Court. Under the Chapter 13 Plan, the debtor must pay a portion of his or her future earnings, such portion to be determined based upon the debtor’s disposable income (i.e. income above basic living expenses), to the Chapter 13 Trustee in the form of monthly Chapter 13 Plan payments. The Chapter 13 Trustee distributes these payments to the debtor’s creditors in a certain order established by law. Generally, the Chapter 13 Plan will last from three to five years. After a Chapter 13 debtor completes the payments under the Chapter 13 Plan, the debtor will receive a discharge of all personal liability on all debts owed as of the bankruptcy filing. Individuals that file for Chapter 13 protection, as opposed to Chapter 7, often do so to avoid losing property that they pledged as collateral for a loan.

Chapter 11: Chapter 11 bankruptcy is most of- ten utilized by businesses seeking to reorganize in bankruptcy. However, individuals may also and, in certain instances where they fail to qualify for the debt threshold for filing under Chapter 13, may be required to, file for bankruptcy under Chapter 11. A debtor in Chapter 11 is authorized to continue to operate its business in the ordi- nary course of business as a “debtor in posses- sion,” or to the extent that a Chapter 11 Trustee is appointed, the trustee is authorized to operate the business of the debtor. Within a certain pe- riod of time, 120 days for most normal business debtors (unless this time period is extended by the Court), the Chapter 11 debtor has the exclusive right to file a Disclosure Statement and Chapter 11 Plan of reorganization. The Chapter 11 Plan typically divides the creditors of the debtor into classes and sets forth how the Debtor proposes to treat each class of creditors, as well as the debtor’s business plan for reorganization. The Disclosure Statement usually accompanies the Plan and provides additional background information as to the debtor’s Chapter 11 Plan and the treatment of creditors, so as to provide the creditors with adequate information in order to decide whether to vote to accept or reject the debtor’s Chapter 11 Plan. The Disclosure Statement and Chapter 11 Plan are sent to all of the creditors of the debtor. The creditors with claims that will be affected by the Plan have the opportu- nity to vote to accept or reject the Chapter 11 Plan. To the extent that the Plan meets certain re- quirements for confirmation under the Bankrupt- cy Code, and has been accepted by at least one class of creditors whose claims are being affected by the Plan, then the Court will confirm the Plan and it will become effective to all creditors of the debtor when the Chapter 11 debtor emerges from bankruptcy. Generally, the provisions of the Plan Continued on other side...
provide that all claims existing prior to the debtor filing for bankruptcy are discharged as against the reorganized Chapter 11 debtor once it emerges from bankruptcy.

When A Company Might Consider Bankruptcy
A business that is unable to pay all of its bills and is facing mounting pressure from collection agencies or from banks or other entities seeking to repossess property, may want to consider filing for bankruptcy protection. One of the primary benefits of filing bankruptcy, under either Chapter 7, 11 or 13 (as an individual), is that all collection actions against the debtor are automatically stayed (have to stop) when the case is filed. This “automatic stay” allows the debtor some breathing space to pursue a debt and business restructuring. A bankruptcy filing may allow a company to shed certain unwanted contracts and leases and restructure some of its debts by paying less or extending the time for payment of such debt. A bankruptcy filing may also allow a company to pursue a sale of its business or a substantial portion of its assets that it could not otherwise pursue outside of bankruptcy.

However, it should be noted that a bankruptcy filing by a company that is a corporation will not discharge the individual debts of a person who owns the company. Therefore, if an individual has used personal assets as collateral to secure a debt owed by a corporation, the filing of the bankruptcy by the corporation will not affect the individual’s obligations under that guaranty. For the personal obligations of an individual to be addressed, that individual would be required to file his or her own bankruptcy. Special considerations apply for limited liability companies and their owners. An attorney should always be consulted when a business is considering filing for bankruptcy.

Common Bankruptcy Myths
People often misunderstand bankruptcy and mistakenly view it negatively, but a bankruptcy filing is sometimes a necessary tool to restructure a company’s debts and businesses.

A bankruptcy filing by a company does not mean that it has stopped operating and shut down. Nor does it mean that all of the company’s vendors will immediately stop dealing with it. In fact, a company that files for Chapter 11 bankruptcy is specifically authorized to continue to operate its business as a “debtor in possession.” While the Chapter 11 debtor cannot pay any pre-bankruptcy amounts owed to vendors, it is authorized, and generally compelled, to pay all vendors for services and/or products provided after the bankruptcy filing. Such vendors providing services after the bankruptcy filing have a higher priority claim for any unpaid services and product. For this reason, many vendors will continue to deal with a company after it files for Chapter 11 bankruptcy. In fact, many corporate debtors emerge from chapter 11 bankruptcy stronger than they were before the bankruptcy filing.

Quick Tips
Remember these things when making decisions about your business:

1. **Being in bankruptcy doesn’t mean you’re out of business.** Despite its negative connotations, bankruptcy isn’t necessarily a bad thing. Talk to a bankruptcy attorney to see whether seeking bankruptcy protection is a viable option for your circumstances.

2. **Filing for bankruptcy gives you breathing room.** Depending on the type of filing, bankruptcy protection can provide an opportunity to reorganize, streamline and restructure your debt.

3. **The three essential parts of the Bankruptcy Code are Chapters 7, 11 and 13.** One of these chapters is most likely to fit the circumstances of individuals and small businesses considering bankruptcy. Filing under Chapter 11 or 13 may enable a debtor to maintain possession and operation of his or her business.