

CONSUMER BANKRUPTCY FAQs

What is consumer bankruptcy?

Bankruptcy is a legal court process that allows people to legally eliminate most if not all of their debts.

Will I lose my home, retirement savings and other assets if I file for bankruptcy?

Not necessarily. An individual filing bankruptcy is entitled to keep a substantial amount of assets. The list of assets that an individual may keep (referred to as “exemptions”) includes:

- * Up to \$20,200 in equity in your home
- * Up to \$3,225 in equity in your car
- * \$475 per item of any household goods up to a total of \$9,850
- * Up to \$1,850 in tools books, tools or other items necessary for your job
- * \$925 in personal property, plus any unused portions of the home exemption up to \$10,100
- * Social Security benefits, unemployment compensation, veteran’s benefits, workers compensation and public assistance benefits regardless of the amount
- * Up to \$18,450 in proceeds from a claim for personal injury
- * Pensions, 401(k)s, IRAs, and 529 plans
- * Certain other assets
- ** The dollar amount of the exemptions listed above are doubled when a married couple files together

Are there different types of bankruptcy?

Yes, for consumer or individual debtors there are two types of bankruptcy.

A Chapter 7 bankruptcy allows debtors to discharge most or all of their debts without repayment. This is a liquidation, the Trustee looks to see if the debtor has any assets, other than the debtor’s exemptions. If so, the Trustee is required to sell these assets to satisfy some or all of that debtor’s creditors.

A Chapter 13 bankruptcy allows debtors to repay some of their debts over a period of time (either 3 or 5 years). A Chapter 13 bankruptcy requires the Court to approve the debtor's payment plan and requires that the debtor make all monthly plan payments in order to receive a discharge. A Chapter 13 bankruptcy is like a personal re-organization.

Who should file a Chapter 7?

Good candidates for a Chapter 7 have mostly unsecured debt and the value of their home and other assets is no more than the amount of their exemptions. Good candidates for a Chapter 7 generally have incomes at or below the state average for their family size.

Who should file a Chapter 13?

A person will file a Chapter 13 if the family income is above the state average, the person has sizeable equity in an asset, or if the person is behind on car or mortgage payments for a car or home they want to keep. In a Chapter 13, the person must have regular income that he or she can pay into a plan over a period of time (either 3 or 5 years) to repay debts.

How much debt do I need to file?

There is no minimum amount of debt needed to file bankruptcy. However, bankruptcy is not the right choice for everyone in every situation. If you aren't sure or have questions, contact our office to schedule a complimentary consultation.

What debts cannot be eliminated?

Generally, taxes, that are less than three years past due, student loans, child support, alimony and certain other debts are not discharged in a bankruptcy.

I'm married and my spouse has little debt, do we both need to file?

No, even if you are married, you can file alone. If you choose to file, you will need to list your spouse as a co-debtor of any joint debts and provide information regarding your spouse's income. However, your spouse's debts will not be discharged and your spouse and his or her credit will not be affected by your bankruptcy.

Do I have to list all my credit cards or can I keep some?

You must fully disclose your assets and liabilities on your bankruptcy petition. As such, you must list all open credit accounts.

I want to file bankruptcy, when do I have to stop using my credit cards?

You should stop using credit cards as soon as you realize that you cannot pay back the

amounts that are owed. Use of credit at a time when you know you will be filing bankruptcy may result in the court denying the discharge that will eliminate the debt.

If I file, what will happen to my credit score?

We are not experts on credit scores. A bankruptcy stays on your credit report for 10 years. However, bankruptcy may help to improve your credit score over time as you have eliminated the amount of debt you owe.

I filed bankruptcy before, can I file again?

Yes. After filing a Chapter 7, you are eligible to file a Chapter 13, four (4) years after receiving your Chapter 7 discharge and you can file another Chapter 7, eight (8) years after receiving your prior Chapter 7 discharge.

After filing a Chapter 13, you can file a Chapter 7 six (6) years after receiving your Chapter 13 discharge.

After filing either a Chapter 7 or Chapter 13, you can file another bankruptcy at any time, if you did not receive a discharge.

I know I want to file bankruptcy, where do I start?

While the law does not require you to hire a lawyer, the bankruptcy process is complicated. You can start by contacting our office to discuss your options and see if bankruptcy is right for you. We offer complimentary consultations Monday through Friday during normal business hours. Evening appointments are available.

Are there alternatives to bankruptcy?

Depending upon your particular circumstances, we may be able to help you resolve your debt problems without the assistance of the bankruptcy process.

What is credit counseling and why do I have to go?

Credit counseling is a mandatory requirement under the bankruptcy code. It is designed to help debtors to more fully understand bankruptcy and the consequences of filing. Each debtor must complete a certified credit counseling course and receive a credit counseling certificate no more than six months prior to filing your bankruptcy petition.

What is the automatic stay?

The automatic stay is a protection offered by filing bankruptcy. The automatic stay stops creditors from further collection efforts and will put any pending foreclosure or repossession actions on hold.

What does the Trustee do?

In a Chapter 7, the Trustee has two roles. First, the Trustee administers the case and determines whether the debtor has any assets that can be sold to satisfy creditors. Second, the Trustee acts to

In a Chapter 13, the Trustee administers the case, reviews your proposed payment plan, receives plan payments and pays creditors from the payments received.

What is a discharge?

A discharge is the official bankruptcy court order that eliminates your eligible debts.

When do I receive my discharge?

You receive your discharge upon the completion of your bankruptcy and by completing all necessary requirements, including successful payment of all plan payments in a Chapter 13 and the completion of the debtor education course.