The Law Center for Civil & Criminal Justice
1600 5th Avenue N.
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205-424-8876

Bankruptcy and You.

FAQs

Q. HOW DIFFICULT WILL IT BE TO FILE CHAPTER 7?

A. For the vast majority of people Chapter 7 is still available with very little extra effort!

Means Test Calculator (Will tell if you are eligible to file Chapter 7)

Q. Will my creditors stop harassing me?

A. Yes, they will! By law, all actions against a debtor must cease once the bankruptcy documents are filed. Creditors cannot initiate or continue any lawsuits, wage garnishees, or even telephone calls demanding payments. Secured creditors such as banks holding, for example, a lien on a car, will get the stay lifted if you cannot make payments.

Q. Will my spouse be affected?

A. Your wife or husband will not be affected by your bankruptcy if they are not responsible (did not sign an agreement or contract) for any of your debt. If they have a supplemental credit card they are probably responsible for that debt. However, in community property states, either spouse can contract for a debt without the other spouse's signature on anything, and still obligate the marital community. There are a few exceptions to that rule, such as the purchase or sale of real estate; those few exceptions do require both spouses' signatures on contracts. But the day to day debts, such as credit cards, do NOT require both spouses to have signed.

Community property states are: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington and Wisconsin. Your lawyer will be able to guide you in this regard.

Q. Who will know?

A. Bankruptcy filings are public records. However, under normal circumstances, no one will know you went bankrupt. The Credit Bureaus will record your bankruptcy and it will remain on your credit record for 10 years.

Q. What are the most common reasons for a Chapter 7 Bankruptcy?

A. The most common reasons for filing bankruptcy are:

- Unemployment
- Large medical expenses
- Seriously overextended credit
- Marital problems
- Other large unexpected expenses.

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A Harvard Study reported that half of US bankruptcies were caused by medical Bills (MSNBC). The study was published online in February of 2005 by Health Affairs. The Harvard study concluded that illness and medical bills caused half (50.4 percent) of the 1,458,000 personal bankruptcies in 2001. The study estimates that medical bankruptcies affect about 2 million Americans annually — counting debtors and their dependents, including about 700,000 children.

Q. Can I keep my credit cards?
A. Whether a debtor keeps credit cards after filing bankruptcy is up to the credit card company. If you are discharging a credit card they will cancel the card unless you reaffirm the debt. Even if you have a zero balance the credit card company might cancel the card.

Q. When will I be discharged from bankruptcy?
A. The debtor is discharged 3 - 5 months after bankruptcy is filed. More than 99% of the bankrupts are discharged.

One of the major purposes of bankruptcy legislation is to afford the opportunity to a person hopelessly burdened with debt to erase his or her debt and thereby get a fresh financial start. A bankrupt's debt is erased when he or she is discharged.
The debtor is discharged 3 - 5 months after bankruptcy is filed. At that time all debts (with some exceptions) are written off.

Q. If I use a credit counselor won't I get a better credit rating than if I go bankrupt?
A. No, you will not. It will cost you less money and you will rebuild your credit rating faster if you file Chapter 7 or Chapter 13. Be cautious if you are considering using a credit counselor. Also read about the problems of unscrupulous companies in the credit counseling industry and the action the IRS has taken against "non-profit" credit counseling groups following widespread abuse.

Be Cautious! Using a Credit Counselor will likely cost you more money and take you longer to rebuild your credit rating.

Q. Will I ever get credit again?
A. Yes! A number of banks now offer "secured" credit cards where a debtor puts up a certain amount of money (as little as $200) in an account at the bank to guarantee payment. Usually the credit limit is equal to the security given and is increased as the debtor proves his or her

ability to pay the debt. Two years after a bankruptcy discharge, debtors are eligible for mortgage loans on terms as good as those of others, with the same financial profiles, who have not filed bankruptcy. The size of your down payment and the stability of your income will be much more important than the fact you filed bankruptcy in the past. The fact you filed bankruptcy stays on your credit report for 10 years. It becomes less significant the further in the past the bankruptcy is. The truth is that you are probably a better credit risk after bankruptcy than before.

Q. Can my boss fire me for filing bankruptcy?
A. No. U.S.C. Sec. 525, prohibits any employer from discriminating against you because you filed bankruptcy.

Q. How much am I allowed to keep?
A. You are allowed to keep certain assets, depending on the state in which you reside. See Bankruptcy Exemptions by state

Q. What don't I keep?
A. When filing bankruptcy a person will be able to keep all of their property that is not in excess of the personal bankruptcy exemptions allowed in their state. Bankruptcy Exemptions

Q. I was bankrupt before. When can I file again?
A. A person can file Chapter 7 again if it has been more than 8 years since he or she filed the previous Chapter 7 bankruptcy. If the debtor received a discharge under Chapter 13 more than two years ago, they can file again.

Q. What are the key or major events in the bankruptcy process and when will the bankruptcy be over?
A. View this video: http://www.bankruptcyaction.com/Chapter7BankruptcyTimeline.html

Q. What is Chapter 13 and when can it be used?
A. Individuals may file chapter 13 bankruptcy petitions if they:

- Reside, have a domicile, a place of business, or property in the United States, or a municipality
- Have a source of regular income; and on the date the petition is filed owe less than $290,525 in unsecured debts and less than $871,550 in secured debts. Note: The

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amounts given here are 2001 amounts. They are regularly adjusted to keep up with the cost of living.

- Corporations and partnerships may not file a chapter 13 bankruptcy petition. If you filed a prior bankruptcy petition and the prior proceeding was dismissed within the last 180 days, you may not be able to file a second petition and should check 11 U.S.C. sec. 109(g).

Q. What debts are erased by a bankruptcy?
A. Most unsecured debt is erased in a bankruptcy except for:
- Child support and alimony;
- Debts for personal injury or death caused by your drunk driving;
- Student Loans.
- Income tax debt.

Note on Private Student Loans: On June 7 2007, US Senator Dick Durbin introduced a Bill to make private student loans dischargeable in bankruptcy, as they were before 2005. The 2005 changes to the U.S. Bankruptcy Code made the treatment of private student loans equivalent to the treatment of government-guaranteed student loans, which were not dischargeable. This bill would reverse the 2005 amendment, so that private student loans again would be fully dischargeable in bankruptcy.

More Detailed information about debt that might survive bankruptcy
The following debts are not erased in both Chapter 7 and Chapter 13. If you file for Chapter 7, these will remain when your case is over. If you file for Chapter 13, these debts will have to be paid in full during your plan. If they are not, the balance will remain at the end of your case:

Debts you forget to list in your bankruptcy papers, unless the creditor learns of your bankruptcy case;

Child support and alimony; Debts for personal injury or death caused by your intoxicated driving; Student loans from government organizations, unless it would be an undue hardship for you to repay; Fines and penalties imposed for violating the law, such as traffic tickets and criminal restitution, and

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Recent income tax debts and all other tax debts.

This is a complicated area of the bankruptcy law and an attorney should be consulted. You can discharge (wipe out) debts for federal income taxes in Chapter 7 bankruptcy only if all of these five conditions are met:

The IRS has not recorded a tax lien against your property. (If all other conditions are met, the taxes may be discharged, but even after your bankruptcy, the lien remains against all property you own, effectively giving the IRS a way to collect.) You didn't file a fraudulent return or try to evade paying taxes. The liability is for a tax return (not a Substitute or Return) actually filed at least two years before you file for bankruptcy. The tax return was due at least three years ago.

The taxes were assessed (you received a notice of assessment of federal taxes from the IRS) at least 240 days (eight months) before you file for bankruptcy. (11 U.S.C. §§ 523(a)(1) and (7).)

In addition, the following debts may be declared non-dischargeable by a bankruptcy judge in Chapter 7 if the creditor challenges your request to discharge them. These debts may be discharged in Chapter 13. You can include them in your plan, and at the end of your case, the balance is wiped out:

Debts you incurred on the basis of fraud, such as lying on a credit application; Credit purchases of $1,225 or more for luxury goods or services made within 60 days of filing; Loans or cash advances of $1,225 or more taken within 60 days of filing;

Debts from willful or malicious injury to another person or another person's property; Debts from embezzlement, larceny or breach of trust, and

Debts you owe under a divorce decree or settlement unless after bankruptcy you would still not be able to afford to pay them or the benefit you'd receive by the discharge outweighs any detriment to your ex-spouse (who would have to pay them if you discharge them in bankruptcy).

Q. What does it cost?

A.