



**Q: Is bankruptcy the answer?**

**A:** Bankruptcy is only one method of a resolution to a debtor's financial difficulties. Non bankruptcy alternatives will probably be less expensive and better received by creditors. Nonbankruptcy alternatives do not carry the stigma of a bankruptcy filing. Not all debtors should go through bankruptcy.

**Q: What are nonbankruptcy alternatives?**

**A:** Nonbankruptcy alternatives available to debtors include:

- Negotiating with creditors
- Consolidation loans
- Credit counseling
- Defending an action brought on a debt

Negotiation may involve discussions between the debtor and a creditor whereby the creditor agrees to terms different from those originally agreed to with the debtor. As a result of negotiation, the debtor may receive an extension of time in which to pay the debt, a reduction in the amount of the debt, or a combination of the two. Negotiation might also involve transferring previously pledged collateral, such as a house or a car, to the creditor instead of foreclosure, thereby avoiding a money judgment against the debtor for the amount by which the debt exceeds the value of the collateral.

A Consolidation Loan allows a debtor to obtain one loan large enough to pay off all debts. The monthly payment on the consolidated loan is ordinarily less than the total of the monthly payments on the many small debts. The consolidation loan may allow the debtor to pay the debt over a longer period of time although the interest rate may be higher than the rates of the smaller loans.

Credit Counseling addresses the debtor's spending habits so the causes of the debtor's financial problems can be addressed. Credit Counseling Centers are licensed and bonded. They analyze the debtor's obligations and negotiate with creditors for the repayment of the debtor's bills on a schedule the agency feels the debtor can manage. These agencies do not lend money.

They only distribute the debtor's money to the debtor's creditors. With the passage of amendments to the Bankruptcy Code (title 11 of the U.S. Code or 11 U.S.C.) in 2005, obtaining an educational briefing about the services available from a credit counseling agency within 180 days prior to the filing of a bankruptcy petition became a mandatory requirement in order for an individual to file a petition in bankruptcy.

Defending a state court action requires the debtor to appear and defend if sued on a debt. The debtor may choose this option only if the debtor has defenses to the claim. However, a defendant has the right to make a creditor present evidence to a judge in order to win its case, even if the debtor has no technical defenses to the action. (i.e. the merchandise was defective or the charges are excessive).

**Q: What are the bankruptcy alternatives?**

**A:** If the debtor decides to file for bankruptcy, the debtor must decide:

- If the bankruptcy filing will be as an individual, a partnership, or a corporation.
- If the bankruptcy filing will be under Chapter 7 (liquidation or straight bankruptcy), Chapter 11 (reorganization), Chapter 12 (adjustment of debts of a family farmer with regular annual income) or Chapter 13 (adjustment of debts of an individual with regular income).

Consumer debtors normally file under Chapters 7 or 13 of the Bankruptcy Code. The 2005 amendments to the Bankruptcy Code stiffened the requirements for a consumer to file under Chapter 7, imposing a "means test" which requires careful scrutiny of a debtor's income and precludes Chapter 7 filing by anyone with more than a benchmark level of income, including whether the debtor's current monthly income multiplied by 12 is equal to or greater than the annual median family income in the debtor's home state for the same size family. To determine the median family income for each state, go to [www.usdoj.gov/ust/eo/bapcpa/meanstesting.htm](http://www.usdoj.gov/ust/eo/bapcpa/meanstesting.htm).

**Q: Who can be a debtor under the Bankruptcy Code?**

**A:** A person (which by definition includes an individual, part-



nership and corporation) that resides in the United States or has a residence, a place of business or property in the United States may be a debtor under the Bankruptcy Code.

**Q: Who can file under Chapter 7 of the Bankruptcy Code?**

**A:** An individual, partnership or corporation can file under Chapter 7 (liquidation) unless it is a railroad, an insurance company or a certain type of banking institution.

**Q: Who can file under Chapter 11 of the Bankruptcy Code?**

**A:** Anyone who can file under Chapter 7 can file under Chapter 11 with the exception of a stockbroker or a commodity broker. Although a railroad cannot be a debtor under Chapter 7, it may be a debtor under Chapter 11.

**Q: Who can file under Chapter 12 of the Bankruptcy Code?**

**A:** Only a “family farmer” or a “family fisherman” (as defined by the Bankruptcy Code) with regular annual income may be a debtor under Chapter 12.

**Q: Who can file under Chapter 13 of the Bankruptcy Code?**

**A:** Only an individual (or an individual and spouse) with regular income who owes on the date of the filing of the bankruptcy petition unsecured debts of less than \$360,475 and secured debts of less than \$1,081,400 may be a debtor under Chapter 13. Business entities, such as a partnership, corporation or limited liability company, cannot file under Chapter 13.

**Q: How does a Chapter 7 bankruptcy differ from a Chapter 13 bankruptcy?**

**A:** Under Chapter 7, a debtor files schedules of assets and liabilities, and a statement of financial affairs. A trustee is appointed to administer assets that are neither exempt from creditors nor collateral for a debt. In the few cases in which there are such assets, the trustee sells the property and distributes the money to creditors under the priorities established under the Bankruptcy Code. The types of debt that are entitled to priority are: child support, support alimony, certain taxes and employment benefits. A debtor receives a discharge approximately 90 days after filing bankruptcy if the debtor has not done something to forfeit the right to a discharge (i.e. failed to disclose all assets).

Under Chapter 13 a debtor files a plan in addition to the documents filed in a case under Chapter 7. Unlike Chapter 7, in Chapter 13 a debtor’s non-exempt assets are not sold by a bankruptcy trustee. Instead, the debtor files a plan showing how the debtor’s debts will be paid, usually from future earnings,

over the three or five year term of the plan. Whether a debtor must file a three or five year plan depends upon the means test calculation. The debtor’s disposable income (current monthly income less amounts reasonable necessary for the maintenance or support of the debtor and dependents of the debtor) is paid monthly (usually by a debtor’s employer under a wage deduction order) to a Chapter 13 trustee who acts as a disbursing agent and pays the money to creditors under a Chapter 13 plan once the plan is confirmed by the court. Once all payments under a Chapter 13 plan have been paid, the debtor receives a discharge of those dischargeable debts not paid under the plan.

**Q: What property may an individual debtor claim as exempt?**

**A:** Every state allows a debtor to claim property as exempt from creditors as long as that property has not been pledged as collateral. The purpose of exemptions is to allow every person to retain certain basic necessities free from creditors. What property may be claimed as exempt differs from state to state. An individual debtor may claim as exempt property that is exempt under Oklahoma law if the debtor’s residence has been in Oklahoma for the entire 730 day period (2 years) prior to filing bankruptcy. If the debtor has not lived in Oklahoma continuously for that period, the applicable law is determined by the state where the debtor’s residence was located for the 180-day period preceding the 730-day period or where the debtor’s residence was located for a longer portion of that 180-day period than any other place. If the applicable state law requires that the debtor be a resident of that state to be entitled to that state’s exemptions, then the federal exemptions apply under Section 522(d) of the Bankruptcy Code.

Property that may be claimed as exempt under Oklahoma law includes:

- A homestead, regardless of value, not exceeding one acre, if located in a city, town or village, or 160 acres, regardless of value, if located outside a city, town or village. The homestead must be the debtor’s principal residence and may be limited to \$5,000 in value if located within a city, town or village and is partially used for business purposes
- A mobile home that is the debtor’s principal residence
- A claim for personal bodily injury, death, or workers’ compensation claim up to \$50,000 in amount
- All household and kitchen furniture held primarily for the personal, family or household use
- The debtor’s interest, not to exceed \$7,500 in value in one motor vehicle (joint debtors may claim one vehicle up to \$15,000 in value)
- Tools of the trade up to \$10,000 in value



- Personal wearing apparel up to \$4,000 in value
- Certain retirement or pension plans (i.e. ERISA qualified plan or an IRA)
- Wedding and anniversary rings up to \$3,000 in value
- Guns not exceeding \$2,000 in value
- Federal earned income tax credit
- Cash value of a life insurance policy

**Q: What filing fees must be paid to the bankruptcy court to file?**

**A:** Unless the debtor qualifies to file a case in forma pauperis, a debtor must generally pay a filing fee to the bankruptcy court clerk at the time of filing their bankruptcy case. The guidelines for filing in forma pauperis may be found at [www.uscourts.gov/bankruptcycourts/jcusguidelines.html](http://www.uscourts.gov/bankruptcycourts/jcusguidelines.html).

- The filing fee for a Chapter 7 case is \$306
- The filing fee for a Chapter 11 case is \$1,046
- The filing fee for a Chapter 12 is \$246
- The filing fee for a Chapter 13 is \$281

The amount may have changed and you may want to call the court clerk of the district you are in for current filing fee amounts.

**Q: What documents must be filed in a Chapter 7 case?**

**A:** The debtor must file with or submit to the bankruptcy court clerk's office the following documents, redacted where necessary:

- Certificate from an approved credit counseling agency certifying that the debtor has completed credit counseling within the past 180 days
- Voluntary Petition or Joint Voluntary Petition (if filing with spouse)
- Clerk's Notice (for an individual consumer debtor)
- Statement of Attorney's Compensation (if represented by an attorney)
- Creditor List (Matrix)
- Schedules A through J
- Statement of Financial Affairs
- Form B21 (statement of Social Security Number – though this is not filed in the public record of the case)
- Form 22A (means test calculation for individuals whose debts are primarily consumer debts)
- Pay Advice Cover Sheet & pay stubs (covering the 60-day period before the debtor filed bankruptcy)

**Q: What documents must be filed in a Chapter 13 case?**

**A:** In a Chapter 13 case the debtor must file the same documents as in a Chapter 7 case (except for the Clerk's Notice), Form 22C (rather than Form 22A) and a Chapter 13 plan.

**Q: What is the Automatic Stay?**

**A:** The automatic stay is an injunction that automatically goes into effect when a bankruptcy petition is filed. The automatic stay enjoins creditors from taking certain actions to collect debt that was incurred prior to the bankruptcy petition. In Chapters 12 and 13, a co-debtor stay also goes into effect to protect third parties who are liable with an individual debtor on a consumer debt. The automatic stay terminates when a bankruptcy case is closed but is replaced by the discharge in bankruptcy. However, creditors can seek relief from the stay in certain circumstances from the bankruptcy court.

**Q: Will the debtor receive a discharge?**

**A:** Only an individual debtor is entitled to a discharge under Chapters 7 and 13. Neither a partnership nor a corporation is entitled to a discharge under Chapter 7 or Chapter 13. A debtor is not entitled to a discharge under Chapters 7 and 13 until the debtor completes a personal financial management course. A debtor's right to a discharge may be forfeited if the debtor makes a false oath, withholds information or property from the trustee, fails to satisfactorily explain the loss of assets, or fails to obey an order of the court. Even though a debtor may be entitled to a discharge generally, certain debt may not be discharged, including:

- Taxes incurred within three years before filing bankruptcy
- Debt incurred by fraud
- Debt that is not scheduled in the bankruptcy (unless the creditor otherwise learned of the bankruptcy) in time to enable the creditor to file a proof of claim
- Debt incurred through the willful and malicious conduct of the debtor
- Debt incurred while the debtor was acting in a fiduciary capacity, by embezzlement, or by larceny
- Debt owed to a former spouse under a divorce decree (regardless of whether the debt is support or property division), except in a case under Chapter 13, a property division obligation may be discharged
- A fine, penalty or forfeiture owed to a government unit
- Student loans (unless the debt imposes an undue hardship on the debtor or a dependent of the debtor—a standard that is very difficult to meet)



- Liabilities incurred while operating a motor vehicle, vessel or aircraft while intoxicated
- Restitution obligation issued under Title 18 of the U.S. Code

In a case under Chapter 13 a debtor does not receive a discharge until the plan payments have been completed unless the debtor is entitled to a hardship discharge.

**Q: How often can a debtor receive a discharge?**

**A:** A Chapter 7 debtor will not be granted a discharge from dischargeable debts if granted a Chapter 13 discharge in a case filed within six years before the date of the filing of this Chapter 7 petition unless the payments under the Chapter 13 plan totaled at least:

- 100 percent of the allowed unsecured claims; or
- 70 percent of the allowed unsecured claims and the Chapter 13 plan was proposed by the debtor in good faith and was the debtor's best effort.

A Chapter 13 debtor may not receive a discharge if the debtor received a discharge in a case filed under Chapters 7, 11 or 12 within four years prior to the filing of the petition in the current case or within two years of filing the current petition if the debtor received a discharge in a Chapter 13 case.

**Q: What factors should be considered when selecting between filing Chapter 7 and Chapter 13 bankruptcy?**

**A:** The factors include:

- Whether the debtor is eligible under each chapter
- Whether the debtor could discharge debt under Chapter 13 that may not be discharged under Chapter 7
- Whether the debtor has sufficient disposable income to fund a Chapter 13 plan
- Whether the debtor desires to keep non-exempt property that would be forfeited to a trustee in a Chapter 7 bankruptcy
- Whether the debtor owes debt that is entitled to priority and could be paid over the term of the plan (i.e. taxes, child support and support alimony)
- Whether the court would require a debtor to file Chapter 13 anyway based upon the means test.

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