



Is Bankruptcy the Answer?

Q: Is bankruptcy the answer?

A: Federal bankruptcy laws provide help for individuals and businesses that owe more debt than they can pay. Bankruptcy laws help by providing either a fresh start through the liquidation of assets or by creating a payment plan to repay creditors in an orderly manner. It is only one method of resolution of a debtor's financial difficulties. Nonbankruptcy workouts may be a better alternative and can provide an acceptable resolution for individuals, businesses and their creditors. There also may be circumstances that arise where a potential debtor should not file bankruptcy and risk a denial of discharge while giving up nonexempt property for liquidation and distribution to creditors by the trustee. You can choose the kind of bankruptcy that best meets your needs (provided you meet certain qualifications). *This is general information and is not intended to be legal advice. Consult an attorney for more detailed information.*

Q: What are nonbankruptcy alternatives?

A: Nonbankruptcy alternatives available to debtors include:

- Negotiating with creditors
- Consolidation loans
- Credit counseling
- Defending an action brought on by a debt that is disputed

Negotiation may result in the creditor agreeing to terms different from those originally agreed to with the debtor. Results may include 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. The avoidance of further litigation costs is a benefit to surrendering property securing the debt.

A consolidation loan allows a debtor to obtain one loan large enough to pay off all debts. The consolidation loan may allow the debtor to pay the debt over a longer period of time. The interest rate negotiated can be more advantageous than multiple 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. Since the passage of amendments to the Bankruptcy Code (Title 11 of the U.S. Code or 11 U.S.C. §§101-1330) in 2005, a debtor must obtain an educational briefing about the services available from a credit counseling agency within 180 days prior to the filing of a bank-

ruptcy petition. This is 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, providing evidence of all defenses to the claim. Debtors/defendants have 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 determine eligibility and 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).

The 2005 amendments to the Bankruptcy Code added requirements for consumers in chapters 7 and 13, requiring a "means test." The means test requires careful scrutiny of a debtor's income and 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. Some bankruptcy cases are filed to allow a debtor to reorganize and establish a plan to repay creditors, while other cases involve liquidation of the debtor's nonexempt property. To determine the median family income for each state, go to www.usdoj.gov/ust/eo/bapcpa/meanstesting.htm. Circumstances may be provided to overcome the presumption of abuse in Chapter 7 cases.

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

A: A person (which by definition includes an individual, partnership and corporation) who resides in the United States or has a residence, place of business or property in the United States may be a debtor under the Bankruptcy Code. You can choose the kind of bankruptcy that best meets your needs and determine if you are qualified.

Q: What happens when you file a Chapter 7 bankruptcy?

A: Under all chapters, a debtor files a petition, schedules of assets and liabilities and a statement of financial affairs. In a liquidation or Chapter 7 case, a Chapter 7 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 or failure to obey an order of the bankruptcy court).

Q: What happens when you file a Chapter 13 bankruptcy?

A: Eligibility to file a Chapter 13 bankruptcy requires an individual (or an individual and spouse) with regular income who owes on the date of the filing unsecured debts of less than \$383,175.10 and secured debts of less than \$1,149,525.11. 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 cases, a debtor's nonexempt assets are not sold by a bankruptcy trustee. Instead, the debtor must agree to pay part of their income to creditors and file 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 reasonably 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. Business entities cannot file under this chapter. The eligibility amounts do change periodically, and debtors should confirm the amounts when considering Chapter 13.

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. It is like a Chapter 13.

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. You may continue to operate your business, but your creditors and the court must approve a plan to repay your debts. There is no trustee unless the judge decides one is necessary. If a trustee is appointed, the trustee takes control of your business and property. An individual will receive a discharge after the completion of a plan (usually five years).

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 (two 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 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/bankruptcy-courts/jcusguidelines.html.

- The filing fee for a Chapter 7 case is \$335.
- The filing fee for a Chapter 11 case is \$1,717.
- The filing fee for a Chapter 12 case is \$275.
- The filing fee for a Chapter 13 case is \$310.

The amounts do change; you may call the court clerk of the bankruptcy court for current 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 the debtor has completed credit counseling within the past 180 days.
- Voluntary Petition or Joint Voluntary Petition (if filing with a spouse).
- Clerk's Notice (for an individual consumer debtor).
- Statement of Attorney's Compensation (if represented by an attorney).
- Creditor List (Matrix).
- Schedules of Assets and Liabilities.
- 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 and pay stubs (covering the 60-day period before the debtor filed bankruptcy).
- Debtors must provide the case trustee with a copy of the most recently filed federal tax return and cooperate with all requests for additional information.

Please note the official forms changed effective Dec. 1, 2015. If you are not using the current forms, your case may be dismissed.

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 injunction. However, creditors can seek relief from the stay from the bankruptcy in certain circumstances.

Q: What is a discharge?

A: One of the reasons people file for bankruptcy is to get a "discharge." A discharge is a court order that states you do not have to pay most of your debts. Only an individual debtor is entitled to a discharge. Neither a partnership nor a corporation is entitled to a discharge. No matter what chapter, a debtor is not entitled to a discharge until the debtor completes a personal financial management course. A debtor's right to a discharge under Chapter 7 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 debts 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 for child support or 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 chapters 11 and 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: Individuals can only receive a Chapter 7 discharge once every eight years. Other rules may apply if you previously received a discharge in a Chapter 13 case. A Chapter 7 debtor will not be granted a discharge from dischargeable debts if granted a Chapter 13 discharge in a case filed within eight years before the date of the filing of this Chapter 7 petition unless the payments under the Chapter 13 plan totaled at least:

- 100% of the allowed unsecured claims; or
- 70% 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 needs a fresh start or based upon the

- “means test,” a Chapter 7 would be presumed to be an abuse
- 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 nonexempt 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

Q: What is a reaffirmation agreement?

A: Even if a debt can be discharged, you may have special reasons why you want to promise to repay it. Some creditors hold a secured claim, and you do not have to pay a secured claim if the debt is discharged, but the creditor can still take the property. For example, you may want to work out a plan with the bank that holds the mortgage on your house or the loan company to keep your car. To promise to repay that debt, you must sign and file a reaffirmation agreement with the court. Reaffirmation agreements are governed by special rules:

- Reaffirmation agreements must be voluntary
- The financial obligation must not place too heavy a burden on the debtor or family
- It must be in the debtor’s best interest
- Reaffirmation agreements can be canceled anytime before the court issues a discharge or within 60 days after the agreement is filed with the court, whichever gives the most time to the debtor
- If you are not represented by an attorney, the court must hold a hearing to decide whether to approve the reaffirmation agreement. The agreement will not be legally binding until the court approves it

If you reaffirm a debt and then fail to pay it, you owe the debt the same as though there was no bankruptcy. The debt will not be discharged, and the creditor can take action to recover any property on which it has a lien or mortgage. The creditor can also take legal action to obtain a judgment against you.

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