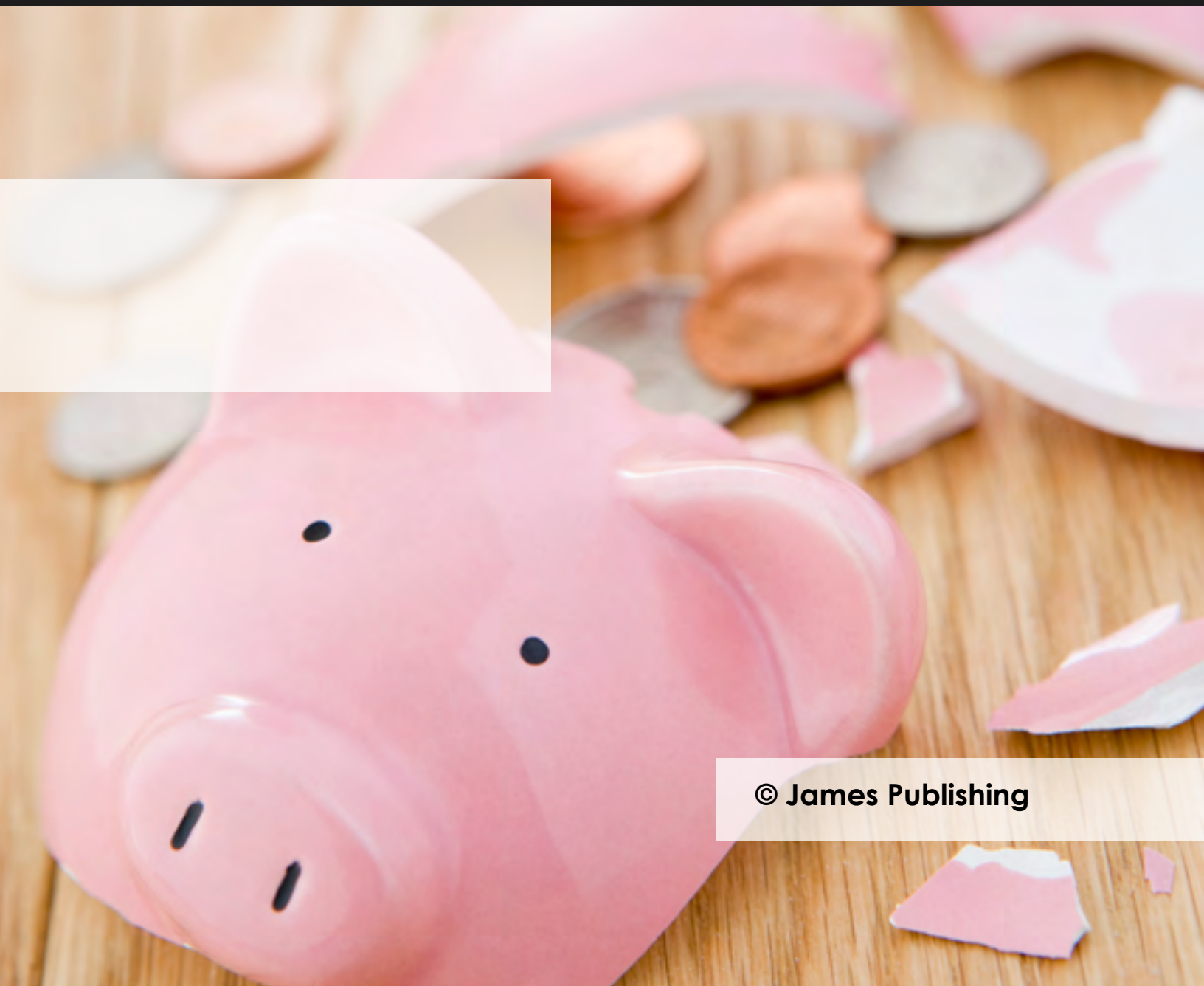


A CLIENT'S GUIDE TO CHAPTER 7 BANKRUPTCY



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I. Is Chapter 7 Right for You?

Once you decide that bankruptcy is the best way to deal with your debt problems, you will have to decide which Chapter of the Bankruptcy Code to file under. Chapter 7 is by far the most common type of bankruptcy filed by individuals. Chapter 13 is the next most common type of individual bankruptcy. Chapter 11 can also be used by individuals, but rarely is because it's very expensive and complex.

For the vast majority of people, the choice is between Chapter 7 and Chapter 13. The two types of bankruptcy are quite different.

How Chapter 7 Bankruptcy Works

In a Chapter 7 bankruptcy, you file papers with the court disclosing all your income, assets, debts, and financial activities for the past several years. The bankruptcy trustee sells your non-exempt assets (if you have any), then uses the money to repay your unsecured creditors a portion of the amount that you owe. If you have secured debts (like a car loan, for example), you can let the creditor repossess the property; keep up your payments and keep the property; or “buy” the property from the creditor for its current replacement value.

You get to keep any property that is classified as exempt (items like your clothes, household furnishings, and perhaps a modest car). State laws determine which of your assets are exempt. Many people who file for Chapter 7 bankruptcy are able to keep all of their property because it is all exempt.

Most or all of your unsecured debts will be eliminated. Typically included are medical bills and credit card balances. However, some debts, like child support, student loans, and some tax liabilities cannot be discharged. The typical Chapter 7 bankruptcy is completed in about 5 months.

How Chapter 13 Differs

In a Chapter 13 bankruptcy, you develop a plan to repay at least some percentage of your debts over three to five years. You then make monthly payments to the trustee for the duration of the plan. If you comply with the plan, you get to keep all your property and most your debts are eliminated.

Are You Eligible for Chapter 7? The Means Test

Not everyone can file a Chapter 7 bankruptcy. If over half of your debts are consumer debts, you must pass a “means test” to qualify. Consumer debts are debts incurred primarily for a personal, family, or household purpose. The means test does not apply if more than half of your debts are from your unincorporated business.

You will pass the means test and be eligible for Chapter 7 if (a) your average annual income is equal to or less than the median income for households your size in your state; or (b) you don't have sufficient income (after deductions for living expenses) to repay at least a minimum amount of your debt (as specified in the bankruptcy laws) over five years.

If your income is above the state median, the means test takes your average monthly income over the previous six months and deducts certain allowable expenses set by the IRS, as well as some of your actual expenses and actual payments for certain debts. The result determines how much disposable income you have left each month that could be used to pay your debts. The lower your monthly disposable income, the more likely you are to qualify for Chapter 7 bankruptcy.

If you are not eligible for Chapter 7 bankruptcy, you may still be able to file under Chapter 13 or Chapter 11.

The means test can be challenging to complete without help. Your bankruptcy lawyer can explain the details, tell you what financial records you need to gather, and perform the calculations for you.



Are You Eligible for Chapter 7? Previous Bankruptcy Discharge or Dismissal

You cannot file for Chapter 7 bankruptcy if you had your debts discharged in a Chapter 7 bankruptcy filed within the preceding eight years or a Chapter 13 bankruptcy filed within the preceding six years.

You cannot file for Chapter 7 bankruptcy if your previous bankruptcy case was dismissed within the past 180 days because:

- You asked for the dismissal after a creditor asked the court to lift the automatic stay.
- You violated a court order.
- The court found that your bankruptcy was an abuse of the bankruptcy system or fraudulent.

Choosing Between Chapter 7 and Chapter 13

Most qualifying individuals choose Chapter 7 over Chapter 13 because Chapter 7 is cheaper, faster, and less of a burden. Some people will choose Chapter 13, even if Chapter 7 is available, because it provides certain advantages for their situation. For example, in Chapter 13 you may be able to:

- Catch up with past-due house or car payments and stop foreclosure or repossession;
- Keep non-exempt property that would be sold in a Chapter 7 bankruptcy; or
- Eliminate some debts that cannot be discharged in Chapter 7.

As a general rule, Chapter 7 is probably best if you:

- Have primarily unsecured and dischargeable debts (credit cards, medical bills, personal loans).
- You have little or no non-exempt property.
- You need not cure defaults to retain secured property.
- You do not have sufficient disposable income to fund a Chapter 13 repayment plan.

Chapter 13 is probably best if you:

- Have non-dischargeable debts (alimony, child support, taxes, fines and penalties, student loans).
- Want to keep non-exempt assets.
- Want to cure a mortgage or car loan default.
- Have high disposable income.

A bankruptcy lawyer can review your situation and advise you on the better choice.



II. An Overview of Chapter 7 Proceedings

If you are eligible for and decide to proceed with a Chapter 7 bankruptcy, here is an overview of what you can expect.

Step 1: You Complete Credit Counseling

Before you can file for bankruptcy, you must complete a credit counseling session provided by an agency approved by the U.S. Trustee Program. The counseling must be completed at least one day but no more than 180 days before you file. You can receive the counseling by phone, in person, or online. It usually takes an hour or two. When you finish, you will receive a certificate of completion that will need to be filed with the bankruptcy court.

The goal of the pre-filing counseling course is to explore all available solutions to your financial problems and to discuss alternatives to filing for bankruptcy. Even if the counselor suggests alternatives to bankruptcy, you do not need to follow the recommendations.

Step 2: You Complete and File Your Petition and Other Papers

These papers include your means test calculations showing you are eligible for Chapter 7 and schedules listing all your property, your creditors, and your current income and expenses. If you are represented, your lawyer will prepare the papers. After you review and sign them, your lawyer files them with the bankruptcy court. You must pay a filing fee.

Step 3: The Automatic Stay Issues

On receipt of your papers, the court clerk prepares an “order for relief” and sends it to all your creditors. The order tells your creditors that they must stop all attempts to collect the debt from you. As a general rule, the stay remains in effect until your bankruptcy case is concluded, but the court can lift it under certain circumstances.

Step 4: The Trustee Is Appointed

A trustee will be appointed to represent the interests of your creditors. The trustee's job is to take possession of any nonexempt property you may own, sell the property, and distribute the proceeds among your creditors. The trustee is paid a commission on the sale of your nonexempt property. The bankruptcy trustee also runs the meeting of creditors.

Step 5: You Attend the Meeting of Creditors

Around five or six weeks after you file for bankruptcy, you will need to attend the meeting of creditors. Most meetings last only ten to fifteen minutes and are held in the trustee's hearing room. The trustee will put you under oath and ask you some questions about your finances. Typically the trustee will want you to confirm that all the information in your bankruptcy papers is accurate. Although your creditors will be notified of the hearing and have the right to attend, they rarely do.

Step 6: Creditors File Claims and the Trustee Liquidates Your Non-Exempt Assets

If you have any non-exempt property, your unsecured creditors must file a proof of claim specifying what they are owed. Otherwise, they won't be paid anything. The trustee reviews the claims and objects to any that appear improper. The court rules on the objections. The trustee seizes and sells your non-exempt property and distributes the proceeds to your creditors. This step is often skipped because most people who file for Chapter 7 have no non-exempt property.

Step 7: You Complete a Financial Management Course


You must complete a financial management course approved by the U.S. Trustee before the court will grant you a discharge. After finishing the course, you file a certificate of completion with the court. The form must be filed within 45 days after the meeting of creditors.

Like the pre-filing counseling requirement, the pre-discharge education course must be taken with an approved organization. The course will address a variety of issues including how to use credit responsibly and how to develop a manageable budget. The course will last from one to two hours, and the fee for the course may be slightly higher than the fee for the pre-filing course.

Step 8: Your Debts Are Discharged

After the trustee has liquidated all of your nonexempt assets, if any, and distributed the proceeds to your creditors, the trustee will file a final report with the court, and you will be discharged from all dischargeable debts.



A hand holding a red marker is shown checking off a list of three items on a white document. The items are represented by black square boxes, each with a red checkmark. The hand is positioned at the top right of the frame, and the document is on the left. The background is white.

III. Filing for Chapter 7 Bankruptcy

Checklist of Documents to Gather

The first step in filing for bankruptcy is preparing your bankruptcy petition and the schedules and other materials that must be filed with the petition. You will need to gather a number of documents so your lawyer can prepare your bankruptcy filing.

Start gathering these documents now even if you haven't made a final decision to file. The more organized you are, the more quickly your lawyer can prepare your papers if you decide to proceed.

Here's a checklist that will help. It's a good idea to make copies of all documents just in case any get lost.



Income

- Pay stubs for yourself and your spouse, even if your spouse may not be filing with you, for the preceding six months.
- Records of other sources of income your household received in the preceding 6 months, such as gifts, sales of property, rent, and support.
- Your tax returns for the preceding three years.
- Your most recent bank statements.

Debts

- Your most recent bills from every creditor.
- Any divorce decree or court order requiring you to pay child or spousal support.
- Any judgments entered against you or pending suits.
- All correspondence between you and your creditors or collection agencies.



- Any other documents showing debts you owe others, such as promissory notes.
- Any documents showing money owed to you.

Property

- Real estate deeds.
- All your insurance policies, including home and auto.
- Vehicle titles.
- Your lease or mortgage.
- A list of all assets in your possession.
- You may also want to begin saving receipts for items you purchase.

Proof of Identity

- Your driver's license.
- Your Social Security card or other proof of your Social Security number.

The Bankruptcy Petition

Your bankruptcy petition provides the court with basic information, such as your name and address; the type of bankruptcy you are filing; how many creditors you have; how much you owe; how much your property is worth; and whether you have any non-exempt assets.

In addition to the petition, you must file a list of all your creditors and their mailing addresses (the creditor matrix) and a form showing your complete Social Security number.



Schedules A Through C: Your Assets

On Schedule A, you list all real property you own, its current value, and the amount of the mortgage still owed. On Schedule B, you list all personal property, such as cash, investments, household furnishings, and vehicles, and each item's value. On Schedule C, you list all property you claim as exempt.

Schedules D Through G: Your Debts and Creditors

In Schedule D, you list all creditors that hold secured claims and the amount you owe them. These are creditors who have liens on property you used as collateral for the debt. On Schedule E, you list creditors having unsecured priority claims and the amount you owe. Priority claims are



claims that will be paid first from any non-exempt assets you may have. The most common of these are domestic support obligations (alimony and child support) and taxes. On Schedule F, you list all other unsecured creditors and the amount of their claims against you. It's important to be thorough and list all your debts. Failure to list a debt could mean it is not discharged.

If you are involved in a partially unperformed contract (an executory contract), you must list this contract and any unexpired leases in Schedule G.

Schedules H Through J: Your Personal and Financial Information

Schedule H asks you to provide information about co-debtors including both individuals and corporations that are also liable for any debts included in your schedules.

Your current income and expenditures must be listed in Schedules I and J.

Statements of Financial Affairs and Current Monthly Income

The Statement of Financial Affairs requires you to answer questions about financial transactions such as payments to creditors and other transfers of property that occurred in the year or two before filing. Sometimes the trustee can void these transactions and get the money or property back to distribute among your creditors.

The Statement of Current Monthly Income shows your average monthly gross income for the previous six months. If it is above the median income for same sized family in your state, you must complete the means test calculations to establish your eligibility for Chapter 7 bankruptcy.



IV. The Automatic Stay

How It Protects You

The automatic stay stops collection efforts by virtually all of your creditors. Immediately after you file your bankruptcy petition, the clerk of the bankruptcy court will send a notice to all your creditors that the stay is in effect.

A creditor that violates the automatic stay after receiving notice of your bankruptcy filing can face harsh penalties. You may be able to recover actual and punitive damages and attorneys' fees from the creditor.



Activities Prohibited by the Stay

Once a creditor receives notice of the stay, the creditor cannot:

- Contact you seeking payment.
- Ask you to furnish security (collateral) for an unsecured debt.
- Bring a lawsuit against you.
- Pursue a pending suit against you.
- Attempt to enforce a judgment against you.
- Continue with any debt enforcement efforts that are already begun, such as wage garnishments and sales of your property.
- Perfect a lien against property in your bankruptcy estate (i.e., property you owned when you filed for bankruptcy).
- Repossess or foreclose on property in your bankruptcy estate.

Your monthly bills for your home mortgage and car loan will stop. If you plan to continue to pay them to avoid foreclosure or repossession, you'll have to make a note of the payment amount, due date, and the creditor's address so that you can send in the payment on your own.

The automatic stay does not stop all collection efforts against you. For example, alimony and child support can still be collected. The stay won't stop an eviction if the landlord obtained a judgment of possession before you filed for bankruptcy or you are using illegal drugs or otherwise endangering the property. The IRS can continue with some auditing and tax assessment activities, but it can't put a lien against your property or seize it.



When the Stay Ends

The automatic stay remains in effect until your case is concluded. Once you receive a discharge from the bankruptcy court, the stay ends, but your creditors cannot collect any discharged debts.

However, if you had a previous bankruptcy case dismissed within one year before you filed again, the automatic stay will terminate in 30 days unless the court finds that you are refiling in good faith. The case will be deemed to be filed in bad faith if you had more than one case under Chapters 7, 11, or 13 dismissed within the previous year for failure to provide the court with essential documentation and there has been no change in your financial condition. If you filed two or more cases in the previous one-year period, the stay will not go into effect. This rule prevents you from repeatedly filing for bankruptcy just to keep your creditors at bay.



The automatic stay stops efforts by secured creditors to repossess or foreclose on your property, but they may go forward with the repossession or foreclosure once the stay terminates or is lifted if you have not reaffirmed the debt, or redeemed, or surrendered the asset.

Lifting the Stay

The bankruptcy court may lift the automatic stay for a particular creditor before your case is concluded if the creditor gives the bankruptcy court good cause. In a Chapter 7 case, secured creditors often ask the court to lift the stay when:

- The creditor holds a mortgage and the debtor has missed mortgage payments and appears unable to catch up.
- The property securing the debt is valuable, but uninsured and the creditor fears the property could be lost.
- The property securing the debt is depreciating rapidly, and the creditor believes the debtor will not turn over the property or redeem it or reaffirm the debt.



V. The Meeting of Creditors

Everyone who files for bankruptcy has to attend a meeting of creditors (also called the section 341 meeting after the applicable section of the Bankruptcy Code). If you skip it, the court could dismiss your case without discharging your debts.



Time and Place

After your lawyer files your bankruptcy papers with the court, the bankruptcy clerk will send you a notice of the date, time, and place for the meeting. Generally, the meeting is scheduled for about six weeks after you file for bankruptcy. The meeting is usually held around a table in a conference room.

What to Bring

You must bring proof of your Social Security number and a government issued photo ID. The meeting will need to be rescheduled if you forget these items. Your trustee may ask that you bring additional documents to the meeting such as pay stubs, bank statements, property deeds, mortgage documents, and car titles. Your lawyer will tell you if you need to bring any of these items.

Who Will Be There

In most cases, the only people at your meeting will be you, your spouse who must attend if he or she filed with you, your lawyer, and the bankruptcy trustee. The bankruptcy trustee runs the meeting. Your creditors will be notified about the meeting and are entitled to attend and ask you questions, but they rarely do.

Purpose of the Meeting

The meeting of the creditors gives your bankruptcy trustee and any of your creditors that wish to appear the chance to ask you questions about your property and debts. The trustee wants to know whether you have any non-exempt assets that can be sold to pay your debts.

What Will Happen at the Meeting?

The trustee will place you under oath and ask you questions. Typically, the trustee will want to know whether the information about your income, assets, and debts in your bankruptcy petition and schedules is accurate.

The bankruptcy trustee may ask you some additional questions, such as how you determined the values of your assets, and whether you are expecting to receive additional money from an inheritance or lawsuit anytime soon that might be available for creditors. The trustee may also ask you if you have made any payments to creditors or transferred money or property to others before your bankruptcy. The trustee may be able to void these transfers and get the money or property back for your creditors.

The questioning by the trustee is typically brief lasting between ten and fifteen minutes. After your bankruptcy trustee is finished asking you questions, your creditors will have an opportunity to ask questions. The trustee will then conclude the meeting. The meeting could be continued to a

future date if the trustee has asked you to submit additional documents or amend your bankruptcy papers.

Possible Problems

Most meetings go off without a hitch. When problems do arise, they usually fall into these categories:

1

You transferred something of value to family members within two years of filing. If you borrowed money from family and have paid some or all of it back before filing, the trustee can force your relative to give up the payments. The money is then distributed to creditors.

2

You made large payments to one creditor shortly before filing. The trustee does not want one creditor favored over another, and so may redistribute large payments you made prior to filing.

3

Property values on loan applications differ from those on your bankruptcy paperwork. If you or a loan broker pumped up asset values on a loan application, a creditor could ask you some embarrassing questions. Blaming the loan broker will not get you past the fact that you signed the application.

4

Your paperwork raises a red flag. Audits occur in a small percentage of bankruptcies when the paperwork raises red flags. For example, if you have an expensive home but put a low value on your furnishings, the trustee may send an auditor to your home. A random audit may require you to submit bank statements with explanations of large deposits and withdrawals.

5

You went on a pre-filing spending spree. A creditor may challenge your discharge if you went on a spending spree shortly before filing. Maybe you took an expensive vacation or bought some pricey personal items. Creditors can challenge these debts. Bankruptcy law doesn't entitle you to charge luxuries that you never intended to pay for because you know you are going to file for bankruptcy.

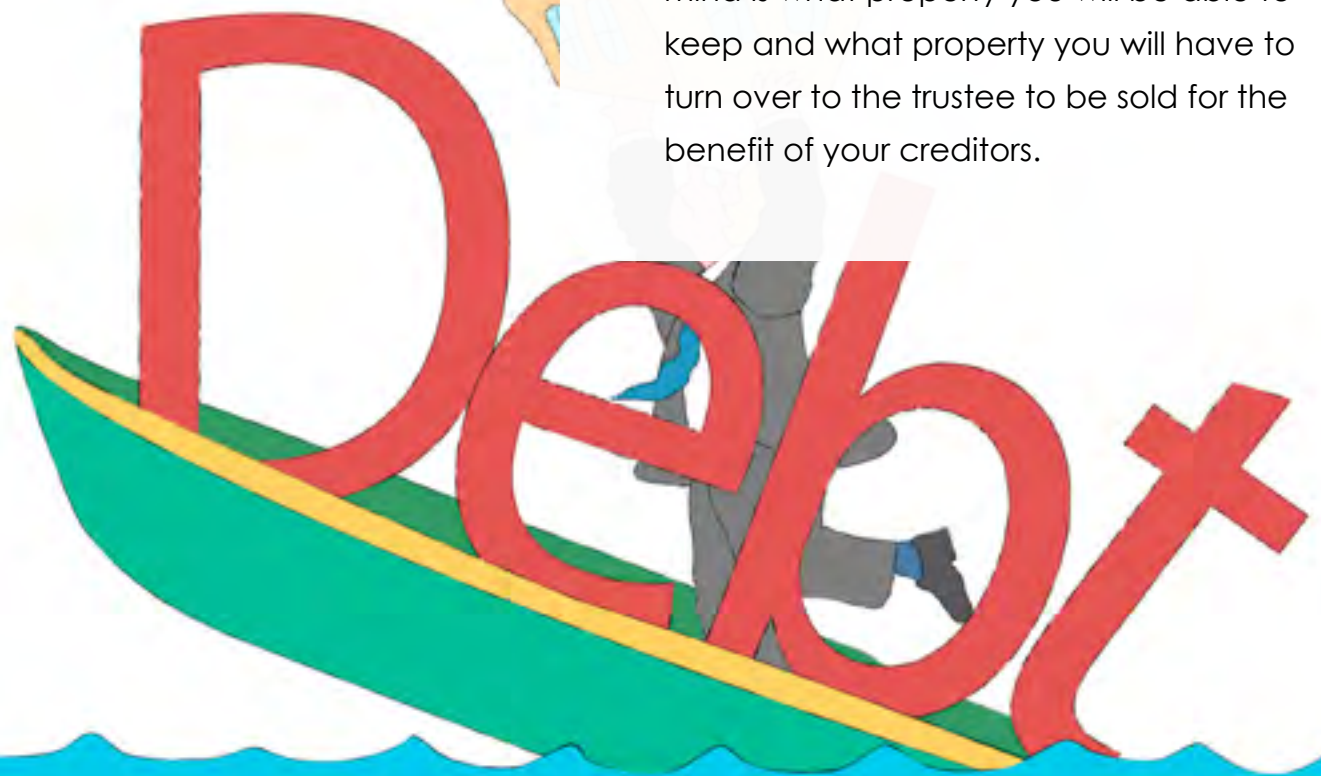




VI. What Happens to Your Property

How Exemptions Work

Probably one of the big questions on your mind is what property you will be able to keep and what property you will have to turn over to the trustee to be sold for the benefit of your creditors.



The property you are entitled to keep (called “exempt” property) is determined by state law, which can vary considerably from state to state. Most states allow you to keep up to a specified value of property in various categories such as a home, vehicles, household goods, clothing, tools used in your profession, insurance policies, and retirement benefits. In some places, certain categories of property are exempt no matter what the value. The types of property that tend to be non-exempt include:

- Real estate, other than a home.
- Luxury vehicles.
- Valuable collectibles and art.
- Antiques.
- Expensive jewelry and designer clothing.
- Cash and investments.
- Business assets other than tools of your trade.

Some states allow debtors to choose between two sets of exemptions: state exemptions and exemptions in the Bankruptcy Code. As a general rule, you use the exemptions of the state where you live. If you haven't been living there for at least two years, you may need to use the exemptions of the state where you formerly resided.

Many people who qualify for Chapter 7 bankruptcy have no non-exempt assets and are able to keep all of their property.

If you have a lot of non-exempt property, you will probably want to consider filing under Chapter 13, which allows you to keep all your property but requires you to pay back some of your debt.

When You Own Exempt Property That Is Security for a Debt

You may own exempt property that is securing a debt. Cars, jewelry, and furniture bought on credit are common examples. Your bankruptcy will discharge your liability for the debt, but not the lien that the creditor has on the property. So if you do not keep up the payments, the creditor can repossess it.

In general, you have three options with regard to exempt property that is security for a debt.

1. If you cannot keep up the payments, you can surrender the property to the creditor. Since your personal liability on the loan will be discharged in your bankruptcy, if you owe more on the loan than the property is worth, the creditor cannot try to collect the rest of the debt from you.
2. You can redeem property purchased for personal or household use by paying the lender the property's current retail value. Most items will have a lower retail value than the remaining balance on the loan, making the redemption a good deal. The difficulty is that you will have to come up with the money for the redemption.
3. You can reaffirm the debt. A reaffirmation agreement is a new contract between you and the creditor. You assume the debt and become personally liable for it after your bankruptcy is complete. The downside is that, if you get behind in the payments, the creditor can repossess the property and, if the property is worth less than your debt, pursue you for the difference.

The decision of whether to sign a reaffirmation agreement is tricky. You'll want to discuss it with your lawyer.

Sometimes the lender will offer better terms than the original loan that make the reaffirmation agreement attractive. Alternatively, some lenders

will agree to accept payments and allow you to keep the property without a reaffirmation agreement so that you will have no personal liability on the loan.

If the property is worth less than the cost of repossessing it (often the case with computers, appliances, and furniture), it may not make sense to reaffirm the debt. The creditor is unlikely to follow through with repossession.

Credit card companies sometimes offer to let you keep a credit card if you reaffirm the debt. This is rarely a good idea, especially since the lender will likely allow you only a low credit limit.

Keeping Your Home and Car

The two items of property that people are most concerned about in bankruptcy are homes and cars. To keep your home or car, you must satisfy two conditions:

1. You must not have any significant equity in your home or car that is not exempt. Your equity is the amount you would be left with if you sold your home or car after paying off the mortgage or car loan and the costs of the sale.
2. You must be current on your mortgage or loan payments and you must continue to make your payments during and after your bankruptcy.

If you have no significant non-exempt equity, the trustee won't want to sell your house or car because the sale will net nothing for your creditors or the trustee. However, if you are behind on your payments, the lender may foreclose on your home or repossess your car once the automatic stay is no longer in effect.



If you are underwater on a second mortgage, you may be able to keep your home even if you are behind on the payments. The lender has no incentive to foreclose because the lender won't get anything from the sale. It will all go to the first mortgage holder. To keep the home, you will still have to stay current on your first mortgage.

If the Trustee Seizes Your Non-Exempt Property

Your bankruptcy trustee has the authority under the Bankruptcy Code to seize your non-exempt property, sell it at an auction, and distribute the proceeds among your unsecured creditors.

If the nonexempt (or partially exempt) property is security for a debt, the bankruptcy trustee will repay the secured creditor the remaining balance on the loan. Next, the trustee will give you the amount you are entitled to as an exemption, if any. The trustee will be paid a commission on the sale.

The amount that remains will be given to your unsecured creditors, who may receive only a fraction of the amount they are owed.

Buying Your Property Back From the Trustee

Before selling the property, the trustee may offer you a chance to buy the property back for whatever price you can agree on. The trustee may agree to a reduced price to save him or her time and money that would be expended on an auction. For example, if you own a car with a value of \$10,000 and \$3,000 is exempt, the trustee may offer to let you purchase the car for the amount the trustee would end up with after paying the costs of the sale and paying you your exempt amount. Thus, you might be able to buy the car back for less than \$7,000.



A man in a dark suit and purple tie is shown from the chest up, with his arms raised in a celebratory gesture. He has a wide, joyful expression with his mouth open. In the background, a desk is visible with several crumpled white papers. The overall scene suggests a moment of triumph or relief.

VII. Discharge of Debts

If everything goes smoothly in a Chapter 7 case, you can expect to receive a notice of discharge a few months after the meeting of the creditors. The bankruptcy court will send a notice in the mail to all the creditors listed in your bankruptcy petition notifying them of your bankruptcy discharge.

A discharge means that the creditor can no longer enforce the debt. A discharge prevents the creditor from contacting you or initiating collection efforts on the discharged debt.

A. Debts That Are Discharged

Credit Card Balances

Credit card debt is probably why most people file for bankruptcy. The bad economy and high rates of unemployment mean that many people are unable to make even their minimum monthly payment. Virtually all credit card debt can be discharged in bankruptcy. The exceptions are credit card debt incurred recently for luxury items and credit card debt incurred as a result of fraud.



Medical Bills

Medical bills are a common reason for filing for bankruptcy. An accident or illness can easily lead to insurmountable medical bills for the uninsured or underinsured. Fortunately, bankruptcy allows you to discharge this debt. Dischargeable medical bills can be for any form of medical treatment including hospital bills, doctor's bills, rehabilitation services, and emergency services.



Lawsuit Judgments

If you lose a civil lawsuit, the court issues a judgment ordering you to pay money to the winner. If you don't pay voluntarily, the other party may enforce the judgment against you in a number of different ways: seizing a bank account, garnishing your pay, or placing a lien



on your home. Most lawsuit judgments for money can be discharged in bankruptcy. There are, however, a few circumstances in which a judgment may not be discharged, such as judgments arising from a DUI or a willful and malicious act.

Personal Loans and Promissory Notes

Personal loans are dischargeable in bankruptcy. It doesn't matter from whom you borrowed the money. Nor does it matter whether you signed a written promise to pay it back (a promissory note) or whether your repayment promise was oral. The only exception is for fraud.



Leases and Contractual Obligations

With few exceptions, bankruptcy will relieve you of contractual obligations, including a lease of real property (like an apartment) or personal property (like a car). You will not need to complete your obligations under the contract and the other party will not be able to sue you for damages for breaching the contract or lease. However, you have the option of keeping the lease or contract in effect by assuming it.



B. Debts That Cannot Be Discharged

Not all debts are eligible for a bankruptcy discharge. If you have primarily non-dischargeable debt, you may want to consider Chapter 13 bankruptcy which can provide you with an opportunity to catch up with arrearages over the course of your repayment plan.

The debts that cannot be discharged in Chapter 7 bankruptcy are outlined below.

Domestic Support Obligations

Domestic support obligations are child support and alimony established by:

- A separation agreement, settlement agreement, or divorce decree.
- A court support order.
- A child support enforcement agency determination.

Other Divorce and Separation Related Debts

Debts you owe to your spouse, former spouse, or child cannot be discharged in Chapter 7 if they were incurred:

- During a separation or divorce; or
- As a result of a divorce decree, court order, or separation agreement.

However, these debts can be discharged in Chapter 13 bankruptcy.

Fines and Restitution Obligations

Fines imposed on you for violating the law cannot be discharged in bankruptcy, nor can obligations to pay restitution to the victim.

Intoxication Related Claims for Personal Injury or Death

Debts incurred for personal injuries as a result of operating a motor vehicle or vessel while intoxicated cannot be discharged in bankruptcy. However, debts for property damage are dischargeable.

Student Loans

Student loans are not dischargeable in a bankruptcy case unless you can show the court that you qualify for a hardship discharge, which is difficult. A hardship discharge requires you to fulfill three requirements:



1. You must be able to show the court that if you were forced to repay the student loans, you would be unable to afford a very minimal standard of living.
2. You must provide evidence that your current financial state will continue for a significant amount of time.
3. You must show the court that you made a good faith effort to repay the loans. A good faith effort is proven if you repaid the loans for at least five years before filing for bankruptcy.

Tax Debts

Recent tax debts and fraudulent tax debts are not dischargeable in Chapter 7 bankruptcy. In addition, any debts that you incur to pay a tax debt are not dischargeable (but they can be discharged in Chapter 13). This rule is intended to prevent you from effectively discharging your tax debt by converting it to a new debt and then discharging that debt.



You may be able to discharge your income taxes if you meet five criteria:

1. The due date for filing the tax return must have been at least three years before your file for bankruptcy.
2. The tax return must have been filed at least two years before you file for bankruptcy.
3. The tax assessment must be at least 240 days old.
4. The return must not be fraudulent.
5. You must not be guilty of tax evasion.

Debts Not Dischargeable if Creditor Objects

Certain debts are not dischargeable if the creditor objects during your bankruptcy and proves to the court that the debt fits into one of these categories:

- Fraudulently incurred debts (e.g., you knowingly wrote a bad check, lied on a credit application, charged luxury items with the intention of filing for bankruptcy so you would never have to pay for them).
- Debts arising from your willful and malicious acts (e.g., vandalism, assault, arson, etc.) including both injury to a person or to property
- Debts from embezzlement, larceny, or breach of fiduciary duty.
- Debts not listed in your bankruptcy papers unless (1) the creditor knew or should have known about your bankruptcy even without notice from the court or (2) all of your property is exempt so that the debtor wouldn't have received any payment.

I hope this information has been helpful. If I can provide legal assistance, please contact me at: