



BANKRUPTCY



Bankruptcy is a legal proceeding which helps people who cannot pay their bills by temporarily or permanently preventing creditors from collecting the debts. Bankruptcy is generally the debt management tool of last resort because the results are long-lasting. Bankruptcy stays on your credit report for 10 years and may impact your ability to obtain credit, life insurance, purchase a home, or even get a job. Thus, the consequences of bankruptcy are significant and require careful consideration.

Q: Where do I file for bankruptcy and are there different types of bankruptcy proceedings?

Petitions for bankruptcy are filed in federal bankruptcy court. There are two common types of bankruptcies under chapters 7 and 13 of the Bankruptcy Code. The current filing fees are \$274 under chapter 7 and \$299 under chapter 13. Attorneys fees are additional and can vary widely depending on the complexity of your case.

Q: What is the difference between chapter 7 and chapter 13 bankruptcies?

Under chapter 7, known as “straight or liquidation bankruptcy,” a trustee is appointed to take over your property and reduce it to cash to pay off creditors. You may be able to keep some personal items, such as household furniture and job-related tools, depending on the law of the state where you live and applicable federal laws. Before filing under chapter 7, you must pass a “means test” to confirm that your income does not exceed a certain amount. The debts, except some that are exempt (discussed below), are discharged.

Under Chapter 13, known as “reorganization bankruptcy,” individual debtors are permitted to repay all or part of their debts under a payment plan over a period of three to five years. Chapter 13 bankruptcy is preferable over chapter 7 because it enables debtors to keep valuable assets such as a house and allows the debtor to repay arrears over time. The bankruptcy court must approve the debtor’s proposed payment plan and budget. The debtor will make payments to a court-appointed trustee who will make the required payments to the creditors in accordance with the plan. Once the debtor completes the payments under the plan, he or she receives a discharge of the debts included in the plan.

Q: How does the bankruptcy process work? Under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, people who plan to file for bankruptcy must first obtain credit counseling from a government-approved organization within 180 days of filing the petition for bankruptcy. A certificate of counseling must be provided to the bankruptcy court. Credit counselors may charge a fee of approximately \$50 but waivers may be requested. A list of approved credit counselors can be found at www.usdoj.gov/ust. In chapter 7 cases, once counseling is received, debtors may file the petition for bankruptcy with the court and provide information such as income, expenses, assets, debts, property owned or given away in the past two years, and property believed to be exempt. The court will appoint a trustee who arranges the creditors’ meeting 20-40 days after the petition is filed. Debtors must be present at the creditors’ meeting to answer questions under oath. The trustee’s job is then to liquidate all assets to maximize pay off to creditors. In chapter 13 cases, a petition and a proposed payment plan are filed. The payment plan details how the debtor will repay each creditor. A trustee is appointed and arranges the creditors’ meeting between 20 to 50 days after the petition is filed. The debtor must be present at the creditors’ meeting to answer questions under oath. A court hearing is then held

to approve the payment plan. If the court approves the plan, you will pay the trustee who will then pay the creditors.

Q: Are there any debts which filing bankruptcy will not wipe away? Some debts are not wiped away by filing for bankruptcy including child support, alimony, some types of taxes, student loans, court judgments, and debts incurred within 180 days of filing bankruptcy.

Q: Will I be able to keep my home and car if I file for bankruptcy? Whether you can keep your home and car depends on the type of bankruptcy you are filing and the status of the indebtedness on the property in question. If the creditor has a “security interest” in your home or car – that is you gave the creditor a mortgage or collateral for the debt, and you fail to make payments, the creditor may be able to foreclose and take and sell the home or car during or after the bankruptcy case. You may be able to keep the property despite the creditor have a security interest, if you and the creditor agree to reaffirm the debt. If foreclosure proceedings have already begun, individuals may be able to stop foreclosure by filing chapter 13 bankruptcy. The automatic stay stops the foreclosure, and then the individual can bring the past-due payments current over a reasonable period of time under the payment plan. However, the home may still be lost if the foreclosure sale is completed before the bankruptcy petition is filed with the court.

Q: Will the creditors stop calling me if I file for bankruptcy? Once you file the petition for bankruptcy with the bankruptcy court, there is an “automatic stay,” which means creditors and other entities, which are listed on your bankruptcy paperwork, are prohibited from taking any collection activity on the debts covered by the petition.

Q: Does filing bankruptcy affect my credit report? Bankruptcy affects your credit negatively. Chapter 7 bankruptcies remain on your credit report for ten years, and chapter 13 bankruptcies remain on your credit report for seven years. However, if you are contemplating bankruptcy, it is likely that your credit is already damaged by failing to pay your debts. Filing for bankruptcy may actually put you in a better position to start improving your already damaged credit.

Q: Will bankruptcy proceedings affect my security clearance? The status of your security clearance may be affected, but it is not automatic. The amount of your unpaid debts, by itself, may jeopardize your clearance even if you do not file for bankruptcy. In fact, not filing for bankruptcy could make you even more of a security risk. Filing for bankruptcy may actually be viewed as a financially responsible way of dealing with your debts. The security section will look at your situation closely to determine what, if any, impact your financial situation will have upon your security clearance.

Q: Do I need an attorney to file bankruptcy? While it is possible to file a bankruptcy case *pro se*, that is, without the assistance of an attorney, it is extremely difficult to do so successfully. Hiring a competent attorney is highly recommended.

This handout is part of a series containing general information on topics that legal assistance attorneys frequently advise on. Information provided is general in nature and does not constitute legal advice. Consult an attorney for specific legal advice for your particular situation.