

Is Bankruptcy the Right Option for Me?

Bankruptcy is a legal procedure in a federal court to relieve a person or a business of certain debts that it is no longer able pay. The primary purposes of the law of bankruptcy are: (1) to give an honest debtor a "fresh start" by relieving the debtor of most debts, and (2) to repay creditors in an orderly manner to the extent that the debtor has the ability to make payments.

Basic Types of Bankruptcy Cases

Chapter 7. Also called "liquidation bankruptcy," Chapter 7 forgives most debts that are not secured by collateral or property, while allowing an individual to keep certain exempt assets. Under a Chapter 7 bankruptcy, a court appointed trustee takes possession of your non-exempt property, arranges for its sale or liquidation, and is responsible for paying as many of your debts as possible with the proceeds. Generally, under Chapter 7, most unsecured debts are dischargeable and do not have to be paid back.

Chapter 11. Chapter 11 bankruptcy is referred to as a reorganization bankruptcy. It is for businesses that want to continue operating a business and repay creditors through a court-approved plan.

Chapter 12. Chapter 12 is designed for family farmers or family fishermen with regular annual income. It enables financially distressed family farmers and fishermen to propose and carry out a plan to repay all or part of their debts.

Chapter 13. Chapter 13 bankruptcy, which is also called "reorganization" or "repayment" bankruptcy, is an option if you have a source of dependable income but are unable to pay your debts. Filing for Chapter 13 bankruptcy allows you to pay your debts in installments over an agreed-upon period. The court must approve your plan to repay all or part of the money you owe (including unsecured debts – this includes credit cards). You generally may keep all of your property as long as you continue to pay the installments. Under Chapter 13, a debtor proposes a 3-5 year repayment plan to the creditors, and the court approves the plan.

Bankruptcy for Most Individuals

Which Bankruptcy is Right for You: Previously, filers could choose the type of bankruptcy that seemed best for them -- and most chose Chapter 7 (liquidation) over Chapter 13 (repayment). However, recent law prohibits some filers with higher incomes from using Chapter 7.



Before deciding to file for bankruptcy, you should consult with an attorney.

Note: If you have accumulated recent credit card debt, this debt might not be dischargeable through a bankruptcy action. Credit card companies are more likely to challenge the discharge of a debt if there was increased or heavy activity on the credit account shortly before you filed for bankruptcy. If you make significant charges to a credit card account with the apparent intention of not paying them back, the court may find that the charges were fraudulent, and refuse to discharge them.

Chapter 7 Bankruptcy: By filing for Chapter 7 bankruptcy, you are technically turning in your assets and debt to the Bankruptcy Court. At this point, you cannot sell or give away any property you own without the court's consent. You must complete credit counseling with an agency approved by the United States Trustee. You will not be able to use Chapter 7 if you already received a bankruptcy discharge in the last six to eight years or if you could feasibly complete a Chapter 13 repayment plan. Bankruptcy forms and information on how to file are available on the U.S. Courts website: www.uscourts.gov/bankruptcycourts.html. The site also contains a link that you can use to find the website for the Bankruptcy Court in your area.

When a debt is discharged through bankruptcy, the debtor is no longer responsible for repaying the debt. It is important to note what debts are dischargeable under Chapter 7.

Dischargeable Debts:

- Personal loans
- Credit cards
- Repossession deficiencies
- Auto accident claims
- Medical bills
- Judgments
- Business debts
- Leases
- Guaranties
- Negligence claims
- Tax penalties over 3 years old
- Income taxes that aren't priority taxes

Not Dischargeable:

- Recent taxes
- Trust fund taxes
- Child or family support
- Criminal fine or restitution
- Accident claims involving intoxication
- Debts not scheduled
- Penalties payable to the government other than tax penalties
- Student loans
- Debts listed in prior bankruptcy where debtor was denied a discharge
- Taxes for years where return unfiled or filed for less than 2 years

Possibly Dischargeable:

- Willful and malicious injuries to others
- Embezzlement or debts incurred by fraud or dishonesty
- Debts arising from breach of fiduciary duty
- Creditor contesting discharge of these debts must take prompt action to contest discharge of their claim

Chapter 13 Bankruptcy: In Chapter 13 bankruptcy, you file for a repayment plan with the Bankruptcy Court to pay back all or a portion of your debts over time. The amount you will have to repay depends on how much you earn, the amount and types of debt you owe, and how much

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property you own. The court will determine if you can afford to meet your payment obligations. You must complete credit counseling with an agency approved by the United States Trustee.

Your repayment plan will describe in detail how (and how much) you will pay towards each of your debts. Your Chapter 13 plan must also include the full payment of certain debts. These debts are called priority debts, because they're considered sufficiently important to jump to the head of the bankruptcy repayment line.

Priority Debts:

- Certain child and spousal support debts
- Restitution orders and criminal fines
- Debts caused by the debtor's drunk driving
- Most student loans
- Recent taxes

Bankruptcy Resources

Federal Trade Commission, *Before You File for Personal Bankruptcy: Information About Credit Counseling and Debtor Education*, www.ftc.gov/bcp/edu/pubs/consumer/credit/cre41.shtm

U.S. Trustee Program, *Bankruptcy Information Sheet*, available at www.usdoj.gov/ust/eo/ust_org/bky-info/index.htm

U.S. Trustee Program, *Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA)*, available at www.usdoj.gov/ust/eo/bapcpa/index.htm

National Consumer Law Center, *Answers to Common Bankruptcy Questions*, available at http://www.nclc.org/images/pdf/older_consumers/bankruptcy_client_brochure.pdf

For credit counseling information:

National Foundation for Credit Counseling, 800-288-CCCS www.nfcc.org

To find your local Bankruptcy Court: U.S. Courts www.uscourts.gov/courtlinks

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