

Bankruptcy FAQs

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What is bankruptcy?

Bankruptcy law allows debtors, who are unable or partially unable to pay outstanding debts, to rid themselves of these debts and obtain a fresh start. As stated by the US Supreme Court, bankruptcy gives "the honest but unfortunate debtor ... a new opportunity in life and a clear field for the future, unhampered by the pressure and discouragement of preexisting debt." (**Local Loan Co. v. Hunt**, 292 U.S. 234, 244 (1934)).

Federal bankruptcy law consists of statutes published in the Bankruptcy Code (11 U.S.C. §§ 101-1330). In addition, state statutory law on bankruptcy also address areas delegated to states or not covered by federal law. Debtors usually file bankruptcy cases in federal bankruptcy court (an adjunct of the federal district courts).

What are the different types of bankruptcy?

The Bankruptcy Code provides for six different types of bankruptcy, each known by the chapter in the Bankruptcy Code in which it is located. Although they differ in form and procedure, they all provide for permanent relief from certain debts. In bankruptcy terms, the debtor's dischargeable debts are discharged. Most debtors file for bankruptcy under Chapters 7, 11, and 13.

- **Chapter 7** provides for liquidation of the debtor's non-exempt assets. Certain assets, such as a home or car, may be exempt from bankruptcy. A court-appointed trustee conducts the sale of debtor's non-exempt assets and distributes the proceeds to creditors. Both individuals and businesses may file for bankruptcy under Chapter 7.
- Chapter 9 provides for the reorganization of municipalities (which includes cities, towns, villages, taxing districts, municipal utilities, and school districts).
- Chapter 11 is usually relied upon by partnerships and corporations. It provides for a supervised reorganization of a business, and allows the debtor to maintain the business while implementing a payment plan confirmed by the court.
- Chapter 12 contains bankruptcy provisions applicable to family farmers and fisherman.
- Chapter 13 provides for bankruptcy of an individual with a regular income, which is used to make a payment plan to pay debts, usually within three to five years.
- Chapter 15 applies to cross-border bankruptcies. It adopts and implements the United Nations' Model Law on Cross Border Insolvency.

What are the main differences between Chapter 7 and Chapter 13 bankruptcy?

The goal of both Chapter 7 and **Chapter 13** bankruptcy is a discharge of debts. The main differences are the eligibility requirements, the length of time the types of bankruptcy take, whether you need to repay your debts, and how much of your property you can keep. In Chapter 7 bankruptcy, you do not need to commit to repaying your debts, whereas in Chapter 13 bankruptcy, you must file a debt repayment plan with the bankruptcy court to repay all or a portion of your debts.

Repaying your debts in Chapter 13 occurs over a 3-5 year period, and you must have income sufficient to make full timely payments. You will not receive a discharge until you complete your plan. Generally, you will not lose your property in a Chapter 13 bankruptcy, as long as you account for repayment of any arrearages as well as payments that come due during the plan.

In contrast, in a Chapter 7 bankruptcy, a trustee can take the property you owe that is not exempt from collection, sell it and distribute the proceeds to your creditors so that they are repaid to the extent possible. Exemptions vary from state to state, but typically you are able to keep some or all of the equity in your home, car, and personal property. Only those who pass a "means test" can file Chapter 7 bankruptcy. Assuming you pass the means test and include all your debts in your paperwork, your debts are likely to be discharged within 4-6 months.

Should I file for bankruptcy?

Since it can adversely affect your credit, bankruptcy should be considered a last resort. Some people want to file for bankruptcy because they become stressed by the creditor harassment that arises out of minor debts. In most cases, creditors and collection agencies will not file a **lawsuit** against you to collect minor debts, since filing a lawsuit is expensive. If you just want to stop this type of harassment, you can use the Fair Debt Collection Practices Act, and in some cases, state law, to get creditors and collection agencies to stop harassing you.

Pressing reasons to file for bankruptcy include multiple wage garnishments, a creditors' threat to repossess property that is important to you, or delaying foreclosure. Filing for bankruptcy triggers an automatic stay, which will stop foreclosure, wage garnishment, lawsuits, and collections efforts. If you need to stop foreclosure on your home or repossession of your car, and you believe you have the income to pay off these debts and keep this property, it may be a sound decision to consult a credit counselor and file for Chapter 13 bankruptcy.

However, it is a good idea to hold off on filing for bankruptcy if you believe you will have substantial expenses in the near future. The law limits how often you file for bankruptcy. A Chapter 7 bankruptcy will only erase the debt you have as of the filing date, and your Chapter 13 bankruptcy debt repayment plan may not take into account the future expenses. You can only discharge those debts included in your bankruptcy paperwork, so if you wait to file, you can include all your debts in the petition and receive the biggest possible discharge.

In general, bankruptcy law is complex and can be confusing for a lay person. It is a good idea to consult a bankruptcy lawyer about your particular circumstances.

Is there a certain amount of debt to qualify for bankruptcy?

There is no minimum amount of debt to qualify for bankruptcy. However, certain debt limits apply to Chapter 13 bankruptcy. The maximum amount changes periodically, but is \$1,395,875 in secured debt (such as a mortgage) and \$465,275 in unsecured debt as of April 2022. It is also important to keep in mind that there are limits on how many times you can discharge your debts in bankruptcy. If your debt amount is relatively low, it may be a good idea to consider **alternatives** to bankruptcy now so that filing for bankruptcy remains an option for you in the future.

Do I have to be a certain age to file for bankruptcy?

There is no age limit for people who file for **bankruptcy**, though in some states debtors may have to be at least 18 years old.

Do you need a lawyer to file for bankruptcy or can you file on your own?

It is certainly possible for an individual to file for bankruptcy without a **lawyer** (or "pro se"). However, the rules and procedures governing the bankruptcy discharge process are extremely complex, and it can therefore be very beneficial to hire an attorney with experience in bankruptcy law.

Debtors who decide to proceed without a lawyer are responsible for knowing how the relevant bankruptcy laws and local court procedures apply to them. You must also fulfill any credit counseling obligations before filing your case. Your case can be subject to dismissal for failure to comply with these or other requirements. Chapter 13 cases in particular are likely to involve complexities that necessitate the involvement of an attorney, whereas it may be more feasible to file a relatively simple Chapter 7 case involving few or no assets on your own.

What is the process for filing for bankruptcy?

The process of filing for bankruptcy is different depending on whether you are filing for Chapter 7 or Chapter 13 bankruptcy. The first step is determining which type of bankruptcy you are eligible to file. You are only eligible for Chapter 7 if you pass the **means test**. You can only file Chapter 13 bankruptcy if you have the income necessary to make monthly payments to the trustee.

Once you have determined which type of bankruptcy to file, filing a bankruptcy petition starts your case and triggers an automatic stay of all collection efforts by creditors. Both types of bankruptcy require you to collect information about all your debts at the outset.

Before filing for Chapter 13 bankruptcy, you will also need to receive credit counseling from an agency that has been approved by the United States Trustee's office. The agency will charge a fee for services, but there is a fee waiver or reduction for those that need it. You will also need to create a debt repayment plan, which your counselor can help you design.

In both types of bankruptcy, creditors will have the opportunity to object to the discharges of the debts they are owed. You will need to attend a 341 hearing, which is a meeting of creditors run by your bankruptcy trustee, and you will need to answer the trustee's questions about your financial situation. In Chapter 13 bankruptcy, you will also need to make monthly payments to the trustee over 3-5 years, and give the trustee annual income and expense statements. At the conclusion of this process, you will receive a discharge.

Does bankruptcy eliminate all of my debts?

Possibly. Most consumer debt can be eliminated through a bankruptcy discharge. If you forget to include a debt in the paperwork, however, it will not be discharged. Moreover, creditors have the opportunity to object to the discharge of any debt. There are 19 categories of debts that are considered **"non-dischargeable,"** including many tax debts, child support, alimony, fines or penalties owed to the government, personal injury debts arising out of drunk driving accidents, criminal restitution, debts based on tax-advantaged retirement plans, and condo fee debts.

Some debts considered non-dischargeable can nevertheless be discharged if a creditor does not challenge your effort to get them discharged. These include credit card purchases worth more than \$650 for luxury goods owed to a single creditor and incurred 90 days before filing, debts incurred due to willful and malicious personal or property injuries, and fraudulently obtained debts. Student loans are only discharged if you are able to convince the court that repaying the debt is an undue hardship for you.

Who will know if I file for bankruptcy?

When you file for bankruptcy, your case becomes a matter of public record. This means that anyone can access court records online or call the bankruptcy court to obtain details regarding your case. Your bankruptcy case will also involve a **Meeting of Creditors** that is open to the public, though it is unusual for anyone who is not involved in the case to attend. It may be possible to seal portions of your case, but this only occurs in rare instances.

Aside from court records, you may be listed in a local newspaper in relation to any public notices that are relevant to your case. Additionally, lenders you approach to apply for credit, and possibly employers, will learn of your bankruptcy filing if they review your credit history. However, a bankruptcy generally only stays on your credit report for 7 to 10 years, depending on whether you have filed Chapter 7 or Chapter 13 bankruptcy.

Realistically, neither friends nor employers are likely to find out about your bankruptcy filing unless you disclose it to them, or unless they look for it specifically.

How will bankruptcy affect my business?

The type of bankruptcy you file and the form of your business determines the impact of bankruptcy on your business. Only individuals can file Chapter 13, so it can be used to reorganize the personal and business debts of a sole proprietor, but it will not affect a corporation, partnership, or limited liability company. A business will file under Chapter 7 or **Chapter 11**.

Filing a Chapter 7 bankruptcy can wipe out your sole proprietorship's debts because it is not a separate legal entity from you. The business assets will be listed in the bankruptcy because they are your personal assets as well. A bankruptcy trustee will use the assets of a sole proprietorship to pay creditors back to the greatest possible extent. However, if you file a Chapter 7 bankruptcy there will be no impact to your business if it is organized as a partnership, corporation, or limited liability.

Chapter 11 bankruptcy is a business reorganization bankruptcy that allows your business to continue operating while reorganizing the debts according to a debt repayment plan. It is complicated, expensive, and appropriate for business owners who are trying to rebuild their businesses and plan for the future. There are expedited proceedings available for small business debtors who are trying to restructure the business, but you only have 300 days to propose a plan to repay creditors.

Will bankruptcy stop foreclosures or repossessions?

It is not uncommon for people to file for bankruptcy to stop **foreclosures** or repossessions. Filing for bankruptcy triggers an automatic stay, which requires creditors to stop their collection efforts, including efforts to foreclose on or repossess property. Whether the bankruptcy fully stops foreclosure or repossession, or merely delays these events, depends on the type of bankruptcy you file.

Filing for Chapter 7 bankruptcy allows you to stall a foreclosure sale for 3-4 months. It can buy you time to negotiate with a lender to change the loan period or loan terms of the mortgage. However, a lender may move to lift the stay. Filing for Chapter 13 can not only stop the sale, but also allow you to propose a debt repayment plan that will cover arrearages as well as mortgage payments that come due during bankruptcy. As long as the plan is approved and you make timely payments on this plan over the 3-5 years of bankruptcy, you can avoid foreclosure altogether. Moreover, you may be able to strip any junior mortgages that are not secured from your home.

While a Chapter 7 automatic stay stops a lender from repossessing your car, the lender can and probably will ask the court to lift the stay, unless you show that you are going to catch up on car payments or cure a default. The lender will need to show the court that its interests are inadequately protected because you have failed to make timely payments on the loan or you are in default. In most cases, if you cannot afford to catch up on car payments or cure your default, the court will lift the stay and will not stop a lender from repossessing your vehicle.

However, you should be able to stop a repossession altogether if you adequately address arrearages and upcoming car loan payments in your Chapter 13 debt repayment plan. To keep your vehicle, you will also need to make adequate protection payments from the date your file for bankruptcy until the date the judge approves the plan.

Can I wipe out medical bills by filing for bankruptcy?

Medical debt is one of the primary causes of bankruptcy for individuals. Medical bills usually represent a form of unsecured debt, and they can be discharged through bankruptcy.

In terms of how your debts are prioritized in repayment, the trustee handling your bankruptcy case is will pay off secured debts (such as mortgages, car, or other debts secured by property) with any available assets first. Medical debt, like credit card debt, is not likely to be tied to any collateral, meaning that medical creditors in many cases are left without payment after secured debts and higher priority unsecured debts (like child support and taxes) are paid off. Whether you file for Chapter 7 or Chapter 13 bankruptcy can often impact the extent to which any unsecured debts are satisfied.

Is student loan debt dischargeable in bankruptcy?

Student loans are considered non-dischargeable, unless you can prove to the court that repaying the loans would be an undue hardship. You must file a Complaint to Determine Dischargeability with the bankruptcy court, which will initiate a separate adversary proceeding.

Different courts use different undue hardship tests, but most courts only grant a student loan discharge if you suffer a serious disability that prevents you from working, you have dependents, or you are elderly. Under one test, known as the Brunner test, you can only obtain a discharge if: (1) repaying student loans would result in you and your dependents living in impoverished circumstances, unable to maintain a basic standard of living; (2) your situation will continue over most of the student loan repayment period; and (3) you tried in good faith to repay the loan. Another hardship test looks at the totality of the circumstances. While it is difficult to pass these tests, it is not impossible.

If you cannot pass the undue hardship test used by your court, you will owe student loans after a Chapter 7 bankruptcy is over. However, you may be able to pay a reduced student loan payment during the course of your debt repayment plan. Regular payments will resume after you have completed your Chapter 13 plan.

Will filing for bankruptcy stop collections calls and creditor harassment?

Filing for Chapter 7 or Chapter 13 bankruptcy initiates an automatic stay, which mandates that most creditors cease all collection activities. Once the stay is in place, creditors and collection agencies must stop contacting you by phone and mail, and cannot file or maintain lawsuits against you to recover most outstanding debts. They are also prohibited from filing liens against you or **garnishing your wages**.

The automatic stay can also temporarily stop foreclosure proceedings, utility shut-offs, and evictions. However, the stay will likely not apply to certain proceedings, such as legal actions to collect child support or alimony, and certain IRS matters. In some cases, creditors may also ask the court to lift the stay.