

*A decision to file for bankruptcy should be made only after determining that bankruptcy is the best way to deal with your financial problems.*

*This booklet cannot explain every aspect of the bankruptcy process. If you still have questions after reading it, you should speak with an attorney familiar with bankruptcy.*

## **What is Bankruptcy?**

Bankruptcy is a legal proceeding in which a person who cannot pay his or her bills can get a fresh financial start. The right to file a bankruptcy proceeding is provided by federal law (Title 11), and all bankruptcy cases are handled in federal court. Filing bankruptcy immediately stops most of your creditors from seeking to collect debts from you, at least until your debts are sorted out according to the law. Bankruptcy will not stop criminal or government proceedings, nor most domestic relations matters.

## **What Can Bankruptcy Do for Me?**

Bankruptcy may make it possible for you to:

- Eliminate the legal obligation to pay most or all of your debts. This is called a “discharge” of debts. It is designed to give you a fresh financial start.
- Stop or substantially delay foreclosure on your house or mobile home and allow you an opportunity to catch up on missed payments. (Bankruptcy does not, however, automatically eliminate mortgages and other liens on your property without payment.)
- Prevent repossession of a car or other property, or force the creditor to return property even after it has been repossessed.
- Stop debt collection harassment, lawsuits, and similar creditor actions to collect a debt.
- Restore or prevent termination of utility service.
- Allow you to challenge the claims of creditors who have committed fraud or who are otherwise trying to collect more than you really owe.

## **What Bankruptcy Cannot Do**

Bankruptcy cannot, however, cure every financial problem. Nor is it the right step for every individual. In bankruptcy, it is usually *not* possible to:

- Eliminate certain rights of “secured” creditors. A “secured” creditor has taken a mortgage or other lien on property as collateral for the loan. Common examples are car loans and home mortgages. You *can* force secured creditors to take payments over time in the bankruptcy process and bankruptcy *can* eliminate your obligation to pay any additional money if your property is taken. Nevertheless, you generally cannot keep the collateral unless you continue to pay the debt. Note also that you cannot modify the terms of mortgages secured only by residential real estate which serves as a principal residence, and the cure of mortgage arrearages can take place only in Chapter 13.
- Discharge types of debts singled out by the bankruptcy law for special treatment, such as child support, alimony, certain other debts related to divorce, most student loans, court restitution orders, criminal fines, and some taxes.

- Protect cosigners on your debts. When a relative or friend has co-signed a loan, and the consumer discharges the loan in bankruptcy, the cosigner may still have to repay all or part of the loan.
- Discharge debts that arise after bankruptcy has been filed.
- Bankruptcy cannot solve all money problems. If your income is insufficient to pay your mortgage and other regular bills you may need to consider making significant and painful choices, which may well include a bankruptcy filing.
- There are restrictions upon filing another bankruptcy proceeding after receiving a discharge.

## What Different Types of Bankruptcy Cases Should I Consider?

There are four types of bankruptcy cases provided under the law:

- *Chapter 7* is known as “straight” bankruptcy or “liquidation.” It requires a debtor to give up property, which exceeds certain limits called “exemptions,” so the property can be sold to pay creditors.
- *Chapter 11*, known as “reorganization,” is used by businesses and a few individual debtors whose debts are very large.
- *Chapter 12* is reserved for family farmers and fisherman.
- Chapter 13 is called “debt adjustment.” It requires a debtor to file a plan to pay debts (or parts of debts) from current income. Chapter 13 relief is available only to individuals and married couples who have debts within the debt limits.

Most people filing bankruptcy will want to file under either chapter 7 or chapter 13. Either type of case may be filed individually or by a married couple filing jointly.

If your income is above the median income for a family the size of your household in your state, you may have to file a chapter 13 case (the 2008 median family income census data for a family of 4 in NH is approximately \$89,740 for a family of four, \$63,320 for a 2-person household, and \$53,704 for a single person. A higher-income consumer must fill out “means test” forms requiring detailed information about income and expenses. If, under standards in the law, the consumer is found to have a certain amount left over that could be paid to unsecured creditors, the consumer can not file a chapter 7 case, and must proceed under Chapter 13, unless the bankruptcy court decides that there are special extenuating circumstances.

### Chapter 7 (Liquidation)

Chapter 7 is what most people are thinking of when the term “bankruptcy” is used. In a bankruptcy case under chapter 7, you file a petition asking the court to discharge your debts. The petition is a document outlining your financial circumstances, and includes information about debts you owe, property you own, your income and expenses, as well as other information. The basic idea in a chapter 7 bankruptcy is to wipe out (discharge) your debts in exchange for your giving up property, except for “exempt” property, which the law allows you to keep. In most cases, all of your property will be exempt. Property that is not exempt is sold, with the money distributed to creditors.

If you want to keep property like a home or a car and are behind on the payments on a mortgage or car loan, a chapter 7 case probably will not be the right choice for you. That is because chapter 7 bankruptcy does not eliminate the right of mortgage holders or car loan creditors to take your property to cover your debt.

## Chapter 13 (Reorganization)

In a chapter 13 case you file a “plan” showing how you will pay off some of your past-due and current debts over three to five years. The most important thing about a chapter 13 case is that it will allow you to keep valuable property—especially your home and car—which might otherwise be lost, if you can make the payments which the bankruptcy law requires to be made to your creditors. In most cases, these payments will be at least as much as your regular monthly payments on your mortgage or car loan, with some extra payment to get caught up on the amount you have fallen behind. These extra payments are made monthly to a Bankruptcy Trustee as part of a “plan” which allows you to pay all or part of your bills over a period of up to 5 years.

You should consider filing a chapter 13 plan if you

1. Own your home and are in danger of losing it because you are behind on your mortgage;
2. Are behind on debt payments, but can catch up if given some time;
3. Have valuable property that is not exempt, but you can afford to pay creditors from your income over time.
4. Have income which is above median.

You will need to have enough income in chapter 13 to pay for your necessities and to keep up with the required payments as they come due, as well as to make payments under the plan

### What Does it Cost to File for Bankruptcy?

It costs \$299 to file for bankruptcy under chapter 7 and \$274 to file for bankruptcy under chapter 13, whether for one person or a married couple. The court will allow you to pay this filing fee in up to four installments. If you are unable to pay the filing fee in installments, and meet certain financial requirements, you may request that the court waive the filing fee. If you hire an attorney, you will have to pay the attorney’s fees you agree to.

### What Must I Do Before Filing Bankruptcy?

You must receive budget and credit counseling from an approved credit-counseling agency within 180 days before your bankruptcy case is filed. The agency will review possible options available to you in credit counseling and assist you in reviewing your budget. Different agencies provide the counseling in-person, by telephone, or over the Internet. If you decide to file bankruptcy, you will need to file a certificate from the agency stating that you received the counseling, with the court. A list of approved agencies can be found at [www.usdoj.gov/ust](http://www.usdoj.gov/ust). Using any service other than an approved agency will not be allowed in the bankruptcy process.

It is usually a good idea for you to meet with an attorney before you receive the required credit counseling. Unlike a credit counselor, who cannot give legal advice, an attorney can provide counseling on whether bankruptcy is the best option. If bankruptcy is not the right answer for you, a good attorney will offer a range of other suggestions.

### What Property Can I Keep?

In a chapter 7 case, you can keep all property which the law says is “exempt” from the claims of creditors. You can choose between state law exemptions or federal law exemptions. In some cases, the federal exemptions are better.

Federal exemptions include:

- \$18,450 equity in your home;
- \$2,950 in equity in your car;
- \$475 per item in any household goods up to a total of \$9850;
- \$1,850 in things you need for your job (tools, books, etc.);
- \$975 in any property, plus part of the unused exemption in your home, up to \$9,250;
- Your right to receive certain benefits such as social security, unemployment compensation, veteran’s benefits, public assistance, and pensions—regardless of the amount.

You must have lived in New Hampshire for the last two years to use the New Hampshire exemption laws. New Hampshire exemptions include:

- \$100,000.00 in equity in your home
- \$4,000 equity in you car
- Up to \$3,500 in household furnishings
- \$5,000 in things you need for your job (i.e. tools, books, etc.)
- \$1,000 in any property plus up to \$7,000 of unused other exemptions
- \$500 in jewelry
- Most retirement plans, social security, unemployment and other public assistance benefits
- New Hampshire law also protects up to 6 sheep, one hog, one pig, and either a horse a cow or a yoke of oxen.

*The exemption amounts are doubled when a married couple files together.*

In determining whether property is exempt, you must keep a few things in mind. The value of property is not the amount you paid for it, but what it is worth today. Especially for furniture and cars, this may be a lot less than what you paid or what it would cost to buy a replacement.

Further, you only need to look at your equity in property. This means that you count your exemptions against the full value minus any money that you owe on mortgages or liens. For example, if you own a \$50,000 house with a \$40,000 mortgage, you count your exemptions against the \$10,000, which is your equity if you sell it.

### **What Will Happen to My Home and Car if I File Bankruptcy?**

Although bankruptcy protects the equity in property, you must stay current or propose a plan to get current on any house or automobile loan if you want to keep the property. If you file chapter 13, you can take up to five years to catch up on your mortgage or car loan.

In a chapter 7 case, if you want to keep your car, you can either reaffirm or redeem the loan. If you reaffirm the loan, you make an affirmative statement that you will continue to

make the monthly payment until the debt is paid in full. If you redeem the loan, you must pay the lender the full value of the collateral in one lump sum payment. If you do not want to keep your car, you may surrender it to the bank as full payment on the debt.

### **Can I Own Anything After Bankruptcy?**

Yes! Many people believe they cannot own anything for a period of time after filing for bankruptcy. This is not true. You can keep your exempt property and anything you obtain after the bankruptcy is filed. However, if you receive an inheritance, a property settlement, or life insurance benefits within 180 days after filing for bankruptcy, that money or property may have to be paid to your creditors if the property or money is not exempt.

### **Will Bankruptcy Wipe Out all My Debts?**

Yes, with some exceptions. Bankruptcy will not normally wipe out:

1. money owed for child support or alimony, fines and some taxes;
2. debts not listed on your bankruptcy petition;
3. loans you got by knowingly giving false information to a creditor, who reasonably relied on it in making you the loan;
4. debts resulting from “willful and malicious” harm;
5. most student loans, except if the court decides that payment would be an undue hardship;
6. mortgages and other liens which are not paid in the bankruptcy case (but bankruptcy will wipe out your obligation to pay any additional money if the property is sold by the creditor);
7. some debts incurred within 6 months of a bankruptcy may be non-dischargeable. (Examples of such debts would include a large cash advance or a luxury purchase made with a credit card, or a large volume of large charges to a credit card account);
8. any debt you “reaffirm” will not be dischargeable.

### **Will I Have to Go to Court?**

In most bankruptcy cases, you only have to go to a proceeding called the “meeting of creditors” to meet with the bankruptcy trustee and any creditor who chooses to come. Most of the time, this meeting will be a short and simple procedure where you are asked a few questions about your bankruptcy forms and your financial situation.

Occasionally, if complications arise, or if you choose to dispute a debt, you may have to appear before a judge at a hearing. If you need to go to court, you will receive notice of the court date and time from the court and/or from your attorney.

### **What Else Must I Do to Complete My Case?**

After your case is filed, you must complete an approved course in personal finance. This course will take approximately two hours to complete. Your attorney can give you a list of organizations that provide approved courses, or you can check the website for the United States Trustee program office at [www.usdoj.gov/ust](http://www.usdoj.gov/ust). In a chapter 7 case, you should sign up for the course soon after your case is filed. If you file a chapter 13 case, you should ask your attorney when you should take the course.

## Will Bankruptcy Affect My Credit?

There is no clear answer to this question. Unfortunately, if you are behind on your bills, your credit may already be bad. Bankruptcy will probably not make things any worse.

The fact that you've file a bankruptcy can appear on your credit record for ten years. But because bankruptcy wipes out your old debts, you are (believe it or not) likely to be in a better position to pay your current bills, and you may be able to get new credit.

## What Else Should I know?

*Utility services*—Public utilities, such as the electric company, cannot refuse or cut off service because you have filed for bankruptcy. However, the utility can require a deposit for future service and you do have to pay bills that arise after the bankruptcy is filed. The deposit can be up to two months of normal billing; it may be cheaper to pay the utility bill.

*Discrimination*—An employer or government agency cannot discriminate against you because you have filed for bankruptcy.

*Driver's license*—If you lost your license solely because you couldn't pay court-ordered damages caused in an accident, bankruptcy will allow you to get your license back.

*Co-signers*—If someone has co-signed a loan with you and you file for bankruptcy, the co-signer may have to pay your debt. If you file a chapter 13, you may be able to protect co-signers, depending upon the terms of your chapter 13 plan.

## Can I File Bankruptcy Without an Attorney?

Although it may be possible for some people to file a bankruptcy case without an attorney, it is not a step to be taken lightly. The process is difficult and you may lose property or other rights if you do not know the law. It takes patience and careful preparation. **If you start a bankruptcy case and fail to complete it; or if you make a mistake, which results in denial of your discharge; or you make other errors; you may be barred from filing again for many years.**

**REMEMBER: The law often changes. Each case is different. This pamphlet is meant to give you general information and not to give you specific legal advice.**

Portions of this booklet were adapted from the  
National Consumer Law Center's website at  
[www.nclc.org](http://www.nclc.org)

*Revised January 2009*