

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 petitions the court to get legal protection from creditors and to obtain a fresh financial start. Although a bankruptcy filing is a court proceeding and all documents are signed under oath, in most bankruptcy cases you do not need to go before a judge.

At the moment your bankruptcy is filed, the *automatic stay* goes into effect. The *automatic stay* immediately stops your creditors from attempting to collect debts from you in any way, including phone calls, letters and pending court proceedings. There are some exceptions to the automatic stay including criminal or government proceedings or those related to 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.
- In some cases, “strip off” a second mortgage if the value of your home exceeds the balance on the first mortgage.
- Prevent repossession of a car or other property, or force the creditor to return property even after it has been repossessed.
- Stop debt collection calls, harassment, lawsuits, and similar creditor actions.
- Restore or prevent termination of utility service.
- Challenge the claims of creditors who have committed fraud or who are otherwise trying to collect more than you really owe.
- Actually improve your credit score, as your old debts, defaulted debts, and bad debts are discharged.

What Bankruptcy Cannot Do

- Eliminate child support, alimony, 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, even though the debt is discharged as to the debtor 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. In addition, 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. Under the current law, not everyone is automatically eligible to file for chapter 7. One has to conduct an income-based test called a “Means Test” to determine eligibility for a chapter 7 proceeding. If you are not eligible to file chapter 7, you may file chapter 13.
- 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” or “personal reorganization”. 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.

A Walk Through of a Typical Bankruptcy Case.

Most people filing bankruptcy will file under either chapter 7 or chapter 13. Once you file your case, you will be assigned a *Bankruptcy Trustee* whose job is to review your case and administer any assets and you will receive the date and time for the *Meeting of the Creditors*. The *Bankruptcy Trustee* conducts the *Meeting of the Creditors*. Although the meeting is at the courthouse and you are under oath, the meeting is not in a courtroom and not before a judge. All creditors are invited to the meeting although creditors rarely attend. These meetings typically last under five minutes. During the meeting, you will be asked about your assets and your current 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.

Chapter 7 (Liquidation)

Most people who file bankruptcy, file a chapter 7 case. In a chapter 7 bankruptcy case, you file a petition listing all of your assets and all of your liabilities. Bankruptcy law allows you to protect certain types of property through “exemptions.” Although every case is different, most cases are “no asset” cases meaning that all of your property is exempt or protected from the claims of creditors. If you have property that is not exempt, it may be sold and the proceeds will be distributed to creditors. If you have property that is not exempt and you want to keep the property, you should consider filing a chapter 13 case.

Chapter 13 (Reorganization)

In a chapter 13 case you file the same bankruptcy petition filed for a chapter 7 plus you must file a *Chapter 13 Plan* showing how you will catch up arrearages on secured debt and pay off a percentage of your unsecured debt over the next three to five years.

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. All debtors must fill out a *Means Test* requiring detailed information about income and allowable expenses. If the *Means Test* determines you have income left over at the end of the month to pay creditors, you may not file a chapter 7 case, and must proceed under chapter 13. Of course there are always exceptions to this general rule.

Other reasons you may choose to file a chapter 13 case include:

- Own your home and are in danger of losing it because you are behind on your mortgage;
- Have valuable property that is not exempt, but you can afford to pay creditors from your income over time.
- Have income which is above median as determined by the “means test”.

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 Chapter 13 Plan. The amount you will be required to pay in a Chapter 13 Plan is determined by your available income as well as the calculation of your Means Test Income.

What Does it Cost to File for Bankruptcy?

The court filing fee for a chapter 7 is \$335. The court filing fee for a chapter 13 is \$310. The cost is the same for an individual or a married couple. The court will allow you to pay the chapter 7 filing fee in up to four installments. If you are unable to pay the filing fee in installments, and you 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 legal fees in addition to the court’s filing fees.

What Must I Do Before Filing Bankruptcy?

Every debtor petitioning for bankruptcy must receive two budget and credit counseling sessions from an approved credit-counseling agency. You must take the first course before you file and the second course after you file but before the case closes. Different agencies provide the counseling in-person, by telephone, or over the Internet. To file bankruptcy, you will need to file a certificate with the court from the agency stating that you received the counseling. A list of approved agencies can be found at 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 bankruptcy 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.

Federal exemptions include:

- \$22,975 equity in your home;
- \$3,675 in equity in your car;
- \$575 per item in any household goods up to a total of \$12,250;
- \$1,550 in jewelry;
- \$2,300 in things you need for your job (tools, books, etc.);
- \$1,225 in any property, plus part of the unused exemption in your home, up to \$11,500;
- 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 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. First, property value 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 the equity in your 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 have \$10,000 of equity in your property. Under New Hampshire exemptions, if the equity is under \$100,000, the property is fully protected. In this case, the property is fully protected.

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 secured loan such as a mortgage or an automobile loan. 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 secured property, you can reaffirm 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. In both a chapter 13 and a chapter 7, if you do not want to keep your secured property, you may return it to the lender as full satisfaction of 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:

- Money owed for child support or alimony, fines and some taxes;
- Loans obtained by knowingly giving false information to a creditor, who reasonably relied on it in making you the loan;
- Debts resulting from “willful and malicious” conduct;
- Most student loans, except if the court decides that payment would be an undue hardship;
- If you incur debt shortly before the filing of a bankruptcy, it may be non-dischargeable. (Examples of such debts would include a large cash advance or a luxury purchase made with a credit card, or many large charges to a credit card account);
- Any debt you “reaffirm” will not be dischargeable.

Will Bankruptcy Affect My Credit?

Yes, but not for as long as you may think. Unfortunately, if you are already behind on your bills, your credit may already be bad. Bankruptcy will probably not make things any worse.

A credit reporting agency (Experian, TransUnion and Equifax) can report a bankruptcy filing on your credit report for 10 years. It is important to take the step of updating your debts with all three credit reporting agencies once you have received your bankruptcy discharge as that will make it easier to begin rebuilding your credit. And since bankruptcy wipes out your old debts, you are 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 is possible to file a bankruptcy case without an attorney, it is not a step to be taken lightly. If you do not understand the law or if you fill out the forms incorrectly, you may unnecessarily lose property or jeopardize your discharge. **If you start a bankruptcy case and fail to complete it or if you make material mistakes in completing your petition, it may result in denial of your discharge.**

Can I Update my Credit Report without an Attorney after Bankruptcy?

Yes, all you need to do is send letters to all three major credit reporting bureaus (Experian, TransUnion and Equifax) alerting them of your bankruptcy and discharge. This step is frequently overlooked as it is not typically completed by the bankruptcy attorney. There may be a credit report updating service in your area that will handle this part of the process for you for a fee.

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.