

THE NEW YORK BANKRUPTCY LAW AND DEBT RELIEF GUIDE

Debt Reset On Your Terms

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KNOW YOUR OPTIONS: AN INTRODUCTION TO BANKRUPTCY LAW

Despite recent indications of tentative growth (and plenty of optimism in the city of Buffalo), the U.S. economy has been moribund for the better part of a decade, and the regional economy has been in decline for even longer. Close to one million Americans file for bankruptcy every year. In a culture that prides itself on its work ethic, you might think that bankruptcy comes with a social stigma. Actually, while some bankruptcies result from reckless spending, most happen after an individual, a family, or a business faces something unexpected. This could be property damage, a divorce, medical expenses, a sudden economic downturn, the loss of a job, or any similar misfortunes.

Know that bankruptcy isn't the end. You haven't "lost," you aren't going to debtor's prison, and you won't be starting over with absolutely nothing to your name. When you face bankruptcy, *you have options*. Many people don't know this, and take bankruptcy passively, as an inevitability, a penalty. This shouldn't be your approach. If you consult with an experienced bankruptcy attorney, he or she can help you to realize your options and determine which course is best, putting you on the path to financial freedom.

BASIC BANKRUPTCY CONCEPTS

Before you meet with an attorney, learning a little bit about the basic concepts of bankruptcy could put you on the path to peace of mind.

Voluntary vs. Involuntary

Bankruptcy can be voluntary or involuntary. A bankruptcy is voluntary if an individual or company freely chooses to file. A bankruptcy is involuntary if creditors force an individual or business to file. Voluntary bankruptcies

are by far the more common. Involuntary bankruptcies usually occur in conflicts between a business and its creditors.

Liquidation vs. Reorganization

This is the basic difference between Chapter 7 and Chapter 13 bankruptcy (discussed below). In liquidation bankruptcy (Chapter 7), a trustee appointed by the court sells off any of a debtor's assets that are not protected by law and gives the proceeds to the creditors. Fortunately, in most cases all of the debtor's assets are protected. In a reorganization bankruptcy (Chapter 13), the debtor submits a repayment "plan" that allows the debtor to pay some portion of the debts off over a three to five year period. After that time period, the remaining unpaid debts are discharged.

Automatic Stay

The automatic stay is one of the most important benefits of filing for bankruptcy. The automatic stay temporarily stops all collection activities against the debtor, including lawsuits and repossessions, unless these are part of the bankruptcy process. The automatic stay provides the debtor a break to decide exactly how to handle the financial situation. Given this time, the debtor can figure out how to proceed in paying back the debts without worrying about creditors showing up and taking away assets. If creditors violate the automatic stay, they might be liable for damages to you, the debtor.

Trustee

The court will appoint a trustee to administer the bankruptcy process. In a Chapter 7 bankruptcy, for the minority of cases where the debtor has assets that cannot be protected, the trustee will oversee the collection and sale of those assets and will pay creditors with the proceeds. In a Chapter 13 bankruptcy, the trustee reviews the proposed repayment plan, collects the money paid by the debtor, and makes payments to creditors. In certain situations, the trustee will start legal actions to protect the estate and recover money or other assets that ought to go to creditors.

Exemptions

While bankruptcy is largely governed by federal law, New York State laws have a great impact in determining what property a bankruptcy debtor can keep, known as exemptions. New York State's exemption laws are favorable to bankruptcy debtors. While it must be determined on a case-by-case basis, the vast majority of bankruptcy debtors in New York State find that all or nearly all of their property, including a house and vehicle, is protected by exemptions.

Reaffirmation Agreement

A secured creditor – such as a mortgage holder or owner of a car loan – may ask for a reaffirmation agreement. This states that your obligation for certain large debts remains even after bankruptcy. Your ability to keep a car or house might depend upon a reaffirmation agreement.

COMMON BANKRUPTCY QUESTIONS

The first question on your mind might be this: *Should I liquidate, or reorganize?* This is something you ought to discuss with your attorney. The answer to this question depends on your answers to many others. If you're facing a bankruptcy, you should start thinking about these questions now.

>> *How long will it take to complete a bankruptcy?*

If you're in a Chapter 7 bankruptcy, the entire process generally will take about **four months** from the date you file. If you've filed for Chapter 13 bankruptcy, you'll

enter a payment plan that usually lasts **between three and five years**. In either case, once you've satisfied the conditions of your bankruptcy the court will issue you a discharge, finalizing the case.

> Do I need to hire an attorney to file a bankruptcy?

The law doesn't require you to hire an attorney to handle your bankruptcy case, but the practical demands of your situation almost certainly do. If you file on your own and do not fully understand the law, the consequences will be harsh. You may lose property, forfeit your right to obtain a bankruptcy discharge, subject yourself to FBI prosecution for failure to provide necessary information, and set yourself further back from retaking control of your financial affairs.

>> Can I keep my car and house in a bankruptcy?

In New York State, most bankruptcy filers will have no difficulty keeping a house and car due to the exemption laws. Being uprooted from your house and losing your car could only set you back further, and seriously hurt your career or employability. More importantly, they're essential to the safety of you and your family. An experienced bankruptcy attorney can help you take advantage of these exemptions.

>> What debts can I discharge?

When a debt is **discharged**, you are no longer legally obligated to pay it. Most debts are dischargeable via bankruptcy. Commonly, the filing party discharges:

- » Medical debt
- » Credit card balances
- » Personal loans
- » Vehicle deficiency debt

Certain debts are generally not dischargeable. These include:

- » Student loans
- » Recent taxes

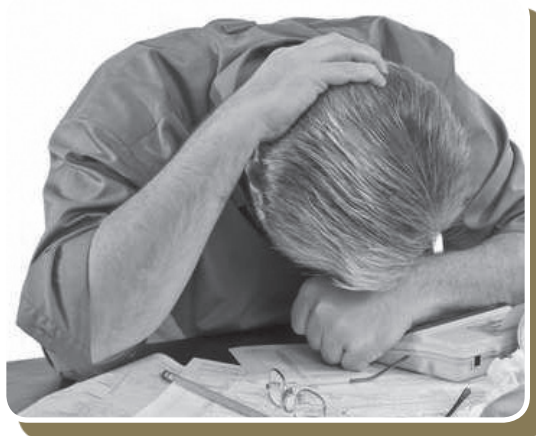
- » Child and spousal support

>> *Does bankruptcy help with judgements?*

A **money judgment** is a court order awarding a plaintiff in a case a sum of money. If you owe money because of a judgment, you may discharge this debt through bankruptcy. A possible exception is if you own real property. If you own a home and you have a judgment against you, that judgment forms a lien against your home – preventing you from selling or transferring the property until the lien is paid. However, in most instances if the lien is against your primary residence you may eliminate it via bankruptcy as well.

>> *Can bankruptcy stop wage garnishments?*

If a creditor has obtained a wage garnishment against you, this is a form of debt you can halt and then discharge through bankruptcy. Because wage garnishments are deductions from your pay, you could be losing money every week or two weeks that you wait to file bankruptcy. Talk to an experienced debt relief attorney right away.



> *What should I not do prior to the bankruptcy process?*

Prior to filing a bankruptcy there are certain actions that could seriously set you back and hurt your financial future. Actions that may seem to be helpful could be costly. You must not:

- » Transfer or give away property.
- » Repay any money you owe to relatives or friends.
- » Continue to incur debt if you have no intention to repay it.

These actions can have serious consequences. Be sure to talk with an attorney who can advise you about the Dos and Don'ts of navigating your bankruptcy proceedings successfully.

>> *Should I file for bankruptcy jointly with my spouse?*

Married couples' biggest concern is usually deciding whether they should file a joint bankruptcy or if one spouse should file individually. The answer depends on the amount and ownership of the couple's debt. Your attorney will gather specific information and determine the best approach for you.

> *Will I have to go before a judge?*

It's common to be nervous when filing a bankruptcy, and one of your anxieties might be about appearing before a judge. In most bankruptcy cases, there is no reason to appear before a judge. Instead, you will meet with a trustee, another lawyer the court assigns to administer the process.

In a Chapter 13 bankruptcy, most filers have to appear before a judge only one time. This isn't a torturous process, though – the judge will put you under oath and then ask you questions about your ability to adhere to the Chapter 13 payment plan.

CHAPTER 7 BANKRUPTCY

A Chapter 7 bankruptcy may be the closest you can get to a "fresh start." Available to both individuals and corporations, Chapter 7 is the most common type of bankruptcy in the U.S.

If you file for Chapter 7 discharge, in theory the trustee will liquidate all of your assets and give the proceeds to your creditors. However, there are liberal exemptions in New York State which allow most debtors to keep all or most of their property, including your house and your car. This is a great advantage of Chapter 7 bankruptcy. Exemptions include:

- » Primary residence, up to \$82,775 in equity

- » Vehicle equity, subject to limitation
- » Insurance policies
- » Pensions and retirement plans
- » Clothing, furniture and other household goods
- » Cash, subject to limitation

It's important to note, though, that some debts are not dischargeable. Non-dischargeable debts include:

- » Child and spousal support
- » Recent Income taxes
- » Student loans (except in rare cases)
- » Income taxes less than three years old
- » Student loans (except in rare cases)

>> *Am I eligible for Chapter 7 bankruptcy?*

Debtors who have already filed for Chapter 7 cannot file again for eight years. And debtors who have already filed for Chapter 13 bankruptcy cannot file for Chapter 7 until six years have passed (although there is an exception for this).

Most importantly, debtors are subject to a “means test” which determines whether the debtor is making too much money to take advantage of Chapter 7’s ability to wipe away their debt. The only way to be sure if you are eligible for Chapter 7 bankruptcy – and if Chapter 7 bankruptcy is your best option – is to talk to an attorney. Your attorney will review your debts, assets, income, and expenses, and help you come to a decision.

> Is Chapter 7 bankruptcy the right choice for me?

Again, you can only know this after going over the particulars of your case with an experienced bankruptcy attorney who can discuss all of your options. A good bankruptcy attorney will tell you whether bankruptcy is your best option, or if you have other possible options, such as debt settlement, or even doing nothing.

> How do I file for Chapter 7 bankruptcy?

Once a debtor is determined to be eligible for Chapter 7 bankruptcy, the debtor will have to file the necessary documents and submit the proper fees with the bankruptcy court. The court's filing fees are currently \$335. Your attorney will ensure that all the property documents are filed, including the bankruptcy petition, a list of the debtor's assets and debts, a list of the debtor's current income and expenses and a summary of the debtor's financial situation.

> *What is the role of the trustee in a Chapter 7 bankruptcy case?*

- » In Chapter 7 bankruptcy, the court will order a trustee to manage your case. The trustee will review your paperwork for accuracy, then collect any non-exempt assets and use these to repay your creditors. In most cases, the trustee cannot collect any assets, resulting in what are called “no-asset cases”, because the law’s strong protections allow debtors to keep much of their property.
- » If you don’t apply your exemptions correctly, however, the trustee could take your assets. You need competent legal counsel to protect yourself through this process.

> *What is a “Meeting of Creditors”?*

- » After filing your bankruptcy, you’ll attend a meeting of creditors; however, creditors rarely appear and the meeting takes place between you and your assigned trustee. The trustee will put you under oath and ask questions about your assets and bankruptcy papers. This takes on average about five to ten minutes once your case is called and your attorney will attend with you. You need only answer the questions truthfully as your attorney has prepared you beforehand.

CHAPTER 13 BANKRUPTCY

Chapter 13 bankruptcy is the second most common type after Chapter 7. Available to individuals, it allows the filing party to maintain control of nonexempt assets while reorganizing and paying off debt. With this option, debtors create a debt repayment plan that lasts three to five years, after which time all remaining debt is discharged.

Chapter 13 bankruptcy is most common with people facing foreclosure, or people who make too much money to qualify for Chapter 7. Unlike Chapter 7, Chapter 13 bankruptcy requires the debtor to make monthly payments according to the court-ordered schedule, until the debtor has repaid all mortgage arrears and a portion of the other debt, usually between 5 and 100 percent.



>> *Am I eligible for Chapter 13 bankruptcy?*

If an individual's debts are below a certain size (about \$400,000 for unsecured debts and about \$1.2 million for secured debts), the debtor can use the Chapter 13 bankruptcy process. Businesses that are a separate legal entity from an individual, such as a corporation, may not use Chapter 13. However, a sole proprietorship and

some partnerships can use it. Also, a debtor cannot file under Chapter 13 if they already filed for Chapter 13 in the last two years or Chapter 7 within the last four years. Finally, since one of the major features of Chapter 13 bankruptcy is creating a payment plan, the debtor must have a reliable source of income to use Chapter 13.

> *How does the Chapter 13 process differ from Chapter 7 bankruptcy?*

Every Chapter 13 bankruptcy proceeds through certain stages.

Filing

The Chapter 13 bankruptcy process begins with the filing of a petition. The debtor must also submit the required fees, which usually amounts to a few hundred dollars, along with other important documents, such as lists of assets, debts, income, and expenses.

Appointment of Trustee

After the petition is filed, the court will appoint a trustee to administer the Chapter 13 bankruptcy. Instead of attempting to collect and sell assets (as in a Chapter 7 bankruptcy), here the trustee's primary job will be to collect monthly payments from the debtor and distribute them to the creditors. The filing of the petition also starts the automatic stay, which will stop all debt collection attempts outside the trustee's actions. The automatic stay is very useful because it can stop harassing phone calls, debt collection lawsuits, and wage garnishments.

Chapter 13 Plan

At the time of filing the Chapter 13 bankruptcy petition, the debtor will submit a Chapter 13 Plan. This plan will show how the debtor intends to pay back debts over the next three to five years. After that period is up, as long as the debtor has complied with the plan, whatever debts are left over will be discharged, like in a Chapter 7 bankruptcy. During the time the plan is in place, the debtor must use all disposable income to pay back the debts.

Creditor Meeting

About three to seven weeks after the Chapter 13 bankruptcy petition has been filed, the trustee will hold a creditor meeting. During that meeting, the debtor will be put under oath and asked questions by the trustee and creditors about the debtor's financial situation and the debtor's proposed plan.

Confirmation

Usually on the date of the creditor meeting, though sometimes at a later date, the Bankruptcy Court will ensure the plan complies with all legal requirements and if it does, approve the plan at a confirmation hearing. After the plan is approved, the debtor will continue making payments in accordance with the plan for the next three to five years (the debtor will have to start making payments under the proposed plan even before it's approved).

Discharge

Once the plan has been fully completed (and other requirements met), whatever debts remain are fully discharged and wiped clean, subject to some exceptions.

>> *What are the advantages of Chapter 13?*

Compared to Chapter 7 bankruptcy, Chapter 13 has several advantages. One of the biggest advantages for the average individual is stopping a mortgage foreclosure. While the Chapter 13 bankruptcy process is ongoing, the debtor has a chance to become current with all payments. However, the debtor must make timely regular mortgage payments directly to the mortgage holder, in addition to the Chapter 13 plan payment to the trustee, to be able to keep the property.

The list of debts that can be discharged under Chapter 13 is longer than in Chapter 7, which might be an advantage for some. Also, a Chapter 13 bankruptcy will be on your credit history for only seven years (instead of 10, like a Chapter 7 bankruptcy).

For those who have significant property that cannot be protected in a Chapter 7 bankruptcy, Chapter 13 allows them to keep that property while making the monthly plan payments.

>> *What are the disadvantages of Chapter 13?*

If you don't have a reliable and steady income, you probably won't be eligible for Chapter 13 bankruptcy. Even if you were eligible, you risk being unable to

comply fully with your payment plan. If you're eligible for Chapter 7 bankruptcy and your assets are mostly or entirely protected, Chapter 13 may not be the best decision for you. Lastly, Chapter 13 bankruptcy can take a long time, up to five years. Compare that to a Chapter 7 bankruptcy, which can usually be completed in several months.

STARTING OVER

The point of filing for bankruptcy, no matter the type, is to give yourself another chance at financial success without the weight of old debts you can't afford to pay.

After your bankruptcy you'll need to **reestablish credit**. You should be thinking about this, however, even before you file.

Reestablishing credit may seem like a long and daunting process. It won't happen overnight, but it doesn't have to be difficult.

You need some type of credit to be reported to the major credit bureaus. You should start by opening a **secured credit card**. This means that you will put a certain amount of money in a bank, and the bank will issue you a line of credit for that amount, usually \$300-500.

You may also receive offers for **unsecured credit cards** – usually around \$500 – with high interest rates. You can open a credit card like this and avoid the interest rates by paying your monthly balances in full. As long as you continue paying on time, you will steadily build your credit.

A **car loan** is another good option – again, so long as you pay on time.

