



Summary of Bankruptcy Q and A

The following Questions about Bankruptcy with their respective answers are the ones that people have asked over and over again in the course of many years of credit counseling by this Ministry. Remember though that **the answers to those questions as presented below have been compiled from public sources and are not intended to substitute for the advice of an attorney. It would be unlawful for a counseling ministry to give legal advice and we are careful not to.**

Also, you'll note that some of the questions in this section were handled in the previous section. This redundancy occurs because they're presented in different contexts and were derived from different sources. It was felt that this redundancy would be helpful to the reader who wants the most thorough possible review of this important subject.

What is a Chapter 7 bankruptcy?

Chapter 7 bankruptcy is a liquidation proceeding. The debtor turns over all non-exempt property to the bankruptcy trustee, who then converts it to cash for distribution to the creditors. Within 4 to 5 months after filing a Chapter 7 bankruptcy, the debtor receives a discharge (i.e., a "wiping out") of all dischargeable debts.

Who can file a Chapter 7 bankruptcy?

The debtor must reside or have a domicile, a place of business, or property in the United States or a municipality. The debtor must not have been granted a Chapter 7 discharge within the last 8 years. In addition, the debtor must not have had a bankruptcy filing dismissed for cause within the last 180 days. A bankruptcy must be filed in the county of residency.



What is a Chapter 13 bankruptcy?

Chapter 13 is a reorganization of debt. The debtor pays back creditors through a monthly "plan" payment handled by the bankruptcy trustee. Generally, the duration of the plan ranges from 3 to 5 years.

Who can file a Chapter 13 bankruptcy?

The same filing requirements apply to Chapter 13 debtors as to Chapter 7 debtors, with some differences.

What are the most common reasons for filing a Chapter 7 bankruptcy?

The most common reasons for consumer bankruptcy are: unemployment; large medical expense; seriously over-extended credit; marital problems and other large unexpected expenses.

What are the most common reasons for filing a Chapter 13 bankruptcy?

Generally, a person files for a Chapter 13 bankruptcy to keep real property for which payment is in default (i.e., stop foreclosure proceeding). Under a Chapter 13 plan, the debtor will have to bring all back payments current over a period of time but that could be several years.

Another reason for filing Chapter 13 is when a person needs protection from creditors but is unable to qualify for Chapter 7 under the 2005 Bankruptcy Law.

Is it true that I can wipe out all of my bills?

The underlying policy of bankruptcy law is that the honest debtor who is in debt beyond his/her ability to repay the debt should be given a fresh start through the discharge of debts in a bankruptcy proceeding. Not all debts are dischargeable. For example, the following debts are generally not dischargeable: taxes; spousal and child support; student loans; criminal fines and penalties; debts arising out of willful or malicious misconduct; liability for injury or death from driving while intoxicated; non dischargeable debts from a prior bankruptcy. Those debts, which are secured,



may be discharged but the creditor will probably take the necessary legal steps to take back the property.

Who notifies the creditors and bill collectors of my bankruptcy filing?

After your bankruptcy is filed, the court mails a notice to all the creditors listed in your schedules. This usually takes a couple of weeks. If this is not soon enough, then you should have your representative inform the creditors immediately. You can also do this just by providing a creditor with your Bankruptcy Case Number.

Does filing bankruptcy stop bill collectors from calling or contacting me?

Yes. One of the major benefits of filing for protection under Chapters 7 and 13 is that most creditors' actions are stayed. This means that debt collection efforts and foreclosure must be halted until further order of the bankruptcy court.

How long after the bankruptcy is filed will the creditors stop calling?

Once a creditor or bill collector becomes aware that the debtor has filed for bankruptcy protection, he/she must stop all efforts to collect the debt. This is called an "automatic stay". If a creditor continues to use collection tactics after notification of the bankruptcy proceeding, he/she may be liable for court sanctions and attorneys' fees.

Can I keep my home after bankruptcy?

Under a Chapter 7 proceeding, you may be able to keep your home through a reaffirmation agreement so long as you are current in your mortgage payments. If you have no equity in your home, the Court will let you keep it without further discussion. But the exemptions under bankruptcy law are partially governed by state law. Therefore, you will need to consult an attorney to define exactly how much protection for your home you are entitled to under the Law as administered in your state.



Even if you do owe back payments and even if your home is not protected under Chapter 7 in your state, you may still be able to keep it through a Chapter 13 monthly plan where you would pay all back payments over a period of time (normally three years).

What happens to my personal property, real property and other assets?

Once the bankruptcy is filed, all of the property of the debtor at the time of filing and certain other property to be received in the future become the property of the bankruptcy estate. This means that the bankruptcy trustee will take control of this property for purposes of satisfying the creditors. HOWEVER, there is certain property which is either excluded or exempt and the debtor will be able to keep it. Property or asset exemption is determined based upon a statutory scheme. Also, you're allowed exemption on certain pension and retirement plans, annuities and un-matured life insurance.

Do I have to disclose all of my assets?

Yes. If you knowingly and fraudulently conceal an asset from the court you have committed a felony and can be fined up to \$5,000, imprisoned for up to five years, or both. In addition, the court can deny you your discharge, or dismiss or convert your bankruptcy proceeding.

Can I keep my credit cards after bankruptcy?

A debtor has the right to keep any debt he/she desires. Sometimes, a debtor may want to keep a credit card after bankruptcy. In such case, the debtor reaffirms the debt. This means that the debtor takes the debt out of bankruptcy. The debtor may keep and continue to use the credit card under the original terms of the agreement with the creditor; however, the debtor is personally responsible for the payment of the debt incurred prior to bankruptcy.



I am married. Does my spouse also have to file bankruptcy?

No. In some cases where only one spouse has debts, or where the other spouse has debts that are not dischargeable, then it might be advisable to have only one spouse file. However, in some cases where real property is involved, or where the spouse is a co-debtor on most of the other spouse's dischargeable debts, then the question of joint bankruptcy is a little trickier, and questions should be referred to an attorney.

Will my employer find out about my bankruptcy?

Unless your employer is a creditor, generally your employer will not be notified of your filing. However, you should know that an employer is an authorized user of credit reports and some of them cyclical reviews of their employees' credit reports in which they would find the bankruptcy.

Will bankruptcy stop a wage garnishment?

Yes. However, the debtor cannot recover that amount already garnished by the creditor before the debtor filed for bankruptcy.

Will I lose my job?

No. Bankruptcy laws prohibit discrimination based upon a debtor filing for bankruptcy protection.

Will bankruptcy stop an eviction?

Perhaps it will. However, it will only delay the inevitable if you don't make an arrangement to bring your rent to a current status. The landlord is entitled to possession of his property and at best you will be able to remain in the property until you have received your discharge from bankruptcy or the landlord obtains an order from the bankruptcy court to go forward with the eviction. If the only reason



you file for bankruptcy is to stop an eviction, this might be considered an abuse of Chapter 7. If the bankruptcy court finds that this is true, the court can immediately dismiss the bankruptcy and impose other legal and monetary sanctions against you.

Will bankruptcy stop a judgment?

Yes. Most civil judgments are stopped by bankruptcy.

I am a co-signer for a debt. How does bankruptcy affect my obligation?

If the debt is yours and a dischargeable debt, then you will not have to pay it. However, the other co-signer then becomes primarily responsible for the debt.

Will bankruptcy remove a lien?

Under some circumstances once the bankruptcy proceedings have started, a special motion can be filed to remove certain liens. It will take a bankruptcy court order to remove them. This is a complicated area of the bankruptcy law and an attorney should be consulted. However, generally, you may NOT remove already existing tax liens.

What if I forget to list a creditor on my bankruptcy papers?

You are permitted to file an amendment to your schedules up to a certain time before discharge. If the amendment is timely filed, then the omitted creditor is added to the bankruptcy. However, if you fail to list a creditor, you may not be able to use the bankruptcy laws to protect you against that creditor. Accordingly, it is in your best interest to list every creditor, whether or not you dispute his/her claim against you.

If I need to file bankruptcy again, how long do I have to wait?

You must wait 8 years to file again or if your bankruptcy was dismissed (withdrawn) you must usually wait 180 days.



What types of personal property may I keep?

This issue is regulated by state law and you should consult an attorney to obtain clarification for your situation.

Is there anything I should not do if I am contemplating filing for bankruptcy?

There are several areas related to this question. You should consult your attorney. In particular, there are three items worth mentioning. First, under bankruptcy law, certain purchases of luxurious items over \$1,000 within 60 days of filing for bankruptcy are presumed to be non-dischargeable. Also, under bankruptcy law, cash advances aggregating \$1,000 within 60 days of the bankruptcy filing are presumed to be non-dischargeable. Last, debts involving materially false financial statements are non-dischargeable under certain circumstances.

Will I have to go to court?

Yes. About 30 to 40 days after you file for bankruptcy, you will have to attend a hearing presided over by the bankruptcy trustee. This hearing is called the First Meeting of Creditors. At this hearing the trustee will ask you questions under oath regarding the content and accuracy of your bankruptcy papers. After the trustee is finished the creditors will be permitted to question you. If you have an attorney, your attorney will be there to represent you and will help prepare you for the hearing. Sometimes, after your hearing is over, various creditors will approach you to discuss the status of secured property or your desire to retain a credit card. Your attorney will negotiate with them, with your knowledge and approval. After this hearing, you will normally not need to return to court. However, if a creditor files a motion or an adversary action, you will probably have to return to court. This is the exception and only your attorney can determine if this likely to happen.

Can a professional credit repair service help me after bankruptcy?



There are many companies with varying levels of expertise and honesty that offer “credit repair” service. Credit repair is a legal process and can only be executed in strict compliance with a law called the Fair Credit Reporting Act. This law calls for credit bureaus to properly verify credit report information that is disputed by consumers. Since bankruptcies are a matter of Public Record, they can be easily verified and so a bankruptcy can only be removed from credit reports if it has been incorrectly reported or is in non-compliance with the strict application of the Fair Credit Reporting Act. However, if reported accurately and in compliance with the law, bankruptcies cannot normally and legally be removed from the Public Record section of credit reports.

Nevertheless, there may be instances in which individual creditors report the bankruptcy information while also reporting information that is outdated. This could provide justification to demand that the entire reporting be removed which would also include the bankruptcy reporting. But **beware** the few credit repair clinics around that “guarantee” anything or that offer to open a new file for you at the credit bureaus. Many of these offers require **illegal** actions and can get consumers in a lot of trouble.

In truth, the greatest benefit from post-bankruptcy credit repair will probably be the removal of derogatory history outside of the bankruptcy. For instance, there may be late payment history or collection reporting that occurred prior to the bankruptcy that if removed, can increase the credit score. This process coupled with diligent money management that results in remaining bills being paid on time should allow you to be credit worthy again in a relatively short period of time. In post-bankruptcy credit restoration, paying whatever bills remain such as home mortgages or car loans is the most important thing of all.

How soon can I acquire a mortgage after filing bankruptcy?



It depends on the type of bankruptcy. Most mortgage companies will not approve you for a mortgage until your debts have been “discharged.” In a Chapter 7 bankruptcy, this generally occurs three or four months after the last court hearing (for most cases there will be only one hearing). However, since a Chapter 13 bankruptcy entails a three to five-year re-scheduling of debts before the case is discharged, it takes a considerably longer time to regain “mortgage worthiness” than with a Chapter 7.

During the first year following the discharge of a bankruptcy, a prospective borrower can only look to “hard money” lenders for a new loan. The interest rate, equity requirements and loan costs will be relatively HIGH. What used to be called the sub-prime or non-conforming lender no longer exists.

After that the borrower will need to wait 3 years from the date of bankruptcy discharge to obtain an FHA, VA, Fannie Mae or Freddie Mac mortgage. In all of these cases the underwriting requirements will be looking for on-time payment history during the previous 12 to 24 months depending on the Lender. If there are any late payments during that critical period of analysis it will be extremely difficult to obtain any of these types of mortgages and you’ll be back to hard money lenders only.

After bankruptcy, how do I re-establish my credit?

There are several ways to get credit after bankruptcy. First, one of your existing creditors may continue to grant you credit based on a reaffirmation agreement made during the bankruptcy proceeding. Second, there are several banks that offer secured credit cards. This means that the credit limit is based on the amount of collateral the cardholder is able to put up to secure the account.

Finally, it is also possible to be approved for unsecured credit cards because some creditors are more likely to extend credit after you file for bankruptcy than before. With all dischargeable debts wiped away, prospective creditors will view you as now having more disposable income available to pay any new debts. In addition,



creditors know that debtors can't file for bankruptcy protection for another six to eight years, thereby shielding creditors from the bankruptcy laws during that time period. Nevertheless, if true rehabilitation for the problems that caused the bankruptcy has not occurred, it's a risky proposition to acquire new unsecured credit cards where new indebtedness can be easily run up.

Since you've had to go through the pain of bankruptcy, why not really start over and find out how wonderful it is to live on a cash basis without credit.

Please keep in mind that the answers to the foregoing questions in this publication have been compiled from public sources and are not intended to substitute for the advice of an attorney. It would be unlawful for a counseling ministry to give legal advice and we are careful not to. Please consult with your attorney and other professionals before taking action.