

## Is Bankruptcy the Right Option for Me?

Bankruptcy is a legal procedure in a federal court to relieve a person, or a business, of certain debts that they are no longer able pay. The primary purpose of bankruptcy law is: (1) to give a debtor a "fresh start" by relieving the debtor of most (or all) debts, and (2) to repay creditors in an orderly manner to the extent that the debtor has the ability to make payments.

### Basic Types of Bankruptcy Cases

**Chapter 7** (also called "liquidation bankruptcy") forgives most debts that are not secured (backed up) by collateral or property, while allowing an individual to keep certain assets and property that are exempt not covered by the bankruptcy. Under a Chapter 7 bankruptcy, a court-appointed individual, called a trustee, takes possession of your non-exempt property, arranges for its sale or liquidation. The trustee is responsible for paying as many of your debts as possible with the money you have and what is earned from selling your property. Generally, under Chapter 7, most unsecured debts are dischargeable (forgivable) and do not have to be paid back.

**Chapter 11** is frequently referred to as a "reorganization" bankruptcy. It is for indebted businesses that want to continue operating while repaying creditors through a court-approved plan.

**Chapter 13**, also called "reorganization" or "repayment" bankruptcy, is an option if you have a source of dependable income but are unable to pay your debts. Filing for Chapter 13 bankruptcy allows you to pay your debts in installments over an agreed-upon period of time. The court must approve your plan to repay all, or part, of the money you owe (including unsecured debts – this includes credit cards). You generally may keep all of your property as long as you continue to pay the installments. Under Chapter 13, a debtor proposes a 3 to 5 year repayment plan to creditors, and a court then must approve the plan.

### Bankruptcy for Most Individuals

**Which Bankruptcy is Right for You:** Previously, filers could choose the type of bankruptcy that seemed best for them -- and most chose Chapter 7 (liquidation) over Chapter 13 (repayment). However, recent law prohibits some filers with higher incomes from using Chapter 7 to prevent people from taking advantage of the system. You cannot file Chapter 7 bankruptcy if your current monthly income is more than the average income in your state. To find the median income in your state, visit: <https://www.census.gov/topics/income-poverty/income.html>

Before deciding to file for bankruptcy, you should consult with an attorney.

**Credit Card Debt:** If you have built up recent credit card debt, this debt might not be dischargeable through a bankruptcy action. Credit card companies are more likely to challenge the discharge of a debt if there was increased or heavy activity on the credit account shortly before you filed for bankruptcy. If you make significant charges to a credit card account with the apparent intention of not paying them back, the court may find that the charges were fraudulent, and refuse to discharge them.

**Chapter 7 Bankruptcy:** By filing for Chapter 7 bankruptcy, you are technically turning in your assets and debt to the Bankruptcy Court. At this point, you cannot sell or give away any property involved in the bankruptcy without the court's permission. You must complete credit counseling with an agency approved by the United States Trustee and a debtor education course before your debts can be discharged. You will not be able to use Chapter 7 if you already received a Chapter 7 bankruptcy discharge in the last eight years or if you received a Chapter 12 or 13 discharge in the last six years. Bankruptcy forms and information on how to file are available on the U.S. Courts website: [www.uscourts.gov/services-forms/bankruptcy](http://www.uscourts.gov/services-forms/bankruptcy). The site also contains a link that you can use to find the website for the Bankruptcy Court in your area.

When a debt is discharged through bankruptcy, the debtor is no longer responsible for repaying the debt. It is important to note what types of debts are dischargeable under Chapter 7.

Dischargeable Debts:

- Personal loans
- Credit cards
- Money you still owe for property that was repossessed
- Auto accident claims
- Medical bills
- Judgments
- Business debts
- Leases
- Guaranties
- Negligence claims
- Tax penalties over 3 years old
- Income taxes that aren't priority taxes

Not Dischargeable:

- Recent taxes
- Trust fund taxes
- Child or family support
- Criminal fine or restitution
- Accident claims involving intoxication
- Debts not scheduled
- Penalties payable to the government other than tax penalties
- Student loans
- Debts listed in prior bankruptcy where debtor was denied a discharge
- Taxes for years where return unfiled or filed for less than 2 years

Possibly Dischargeable:

- Willful and malicious injuries to others
- Embezzlement or debts incurred by fraud or dishonesty
- Debts arising from breach of fiduciary duty
- Creditor contesting discharge of these debts must take prompt action to contest discharge of their claim

**Chapter 13 Bankruptcy:** In Chapter 13 bankruptcy, you file for a repayment plan with the Bankruptcy Court to pay back all or a portion of your debts over time. The amount you will have

to repay depends on how much you earn, the amount and types of debt you owe, and how much property you own. The court will determine if you can afford to meet your payment obligations. You must complete credit counseling with an agency approved by the United States Trustee.

Your repayment plan will describe in detail how (and how much) you will pay towards each of your debts. Your Chapter 13 plan must also include the full payment of certain debts. These debts are called priority debts, because they are considered important enough to be paid in full before other debts.

**Priority Debts:**

- Certain child and spousal support debts
- Restitution orders and criminal fines
- Debts caused by the debtor's drunk driving
- Most student loans
- Recent taxes

**Bankruptcy Fees**

Unfortunately, filing for bankruptcy is not free. The amount that it may cost to file for bankruptcy may vary quite a bit from person to person, depending on what type of bankruptcy you file, what kind of assets/debts you have, whether you hire an attorney to help you, and where you live.

The only costs that are the same for everyone are the administrative costs, like the application fee. For example, the cost to file for Chapter 7 bankruptcy is \$335, while the cost to file for Chapter 13 bankruptcy is \$310. If your income is very low, you may be able to get the filing fee waived by the bankruptcy court. There may be additional fees that you need to pay out of pocket, including for credit counseling, any mandatory debtor education courses, and attorney fees, if you hire one. Keep in mind that most bankruptcy attorneys provide free consultations, so it is always a good idea to shop around to find someone you trust.

To learn more about the costs of filing for bankruptcy, please visit:

<https://www.debt.org/bankruptcy/cost/>

**Bankruptcy Resources**

**Federal Trade Commission**, *Before You File for Personal Bankruptcy: Information About Credit Counseling and Debtor Education*, [www.ftc.gov/bcp/edu/pubs/consumer/credit/cre41.shtm](http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre41.shtm)  
(Contact information and an overview about the credit counseling and debtor education requirement that must be fulfilled by anyone filing for personal bankruptcy.)

**U.S. Trustee Program**, *Bankruptcy Information Sheet*, available at:

[www.usdoj.gov/ust/eo/ust\\_org/bky-info/index.htm](http://www.usdoj.gov/ust/eo/ust_org/bky-info/index.htm)

(Bankruptcy information sheet that contains general information about what occurs in a bankruptcy case.)

**National Consumer Law Center**, *Answers to Common Bankruptcy Questions*, available at: [www.nclc.org/images/pdf/older\\_consumers/cib\\_common\\_bankruptcy\\_ques.pdf](http://www.nclc.org/images/pdf/older_consumers/cib_common_bankruptcy_ques.pdf)  
(Bankruptcy pamphlet providing general information.)

**National Foundation for Credit Counseling**, 800-288-CCCS [www.nfcc.org](http://www.nfcc.org)  
(National Foundation for Credit Counseling certified counselors that assist with financial reviews, counseling sessions, and plans to help solve your financial situation at low or no cost.)

**U.S. Courts**, [www.uscourts.gov/courtlinks](http://www.uscourts.gov/courtlinks)  
(Find a federal court by location or court name, including appellate, district, bankruptcy, probation and pretrial office, or federal defender organization.)

**Student Loan Borrower Assistance**, [www.studentloanborrowerassistance.org/](http://www.studentloanborrowerassistance.org/)  
(Information about student loan rights and responsibilities for borrowers and advocates; including information on repayment, loan cancellation, default and delinquency, bankruptcy and collections.)

**UpSolve**, <https://upsolve.org/>  
(Legal aid nonprofit organization that helps low-income Americans in financial distress file for Chapter 7 bankruptcy for free.)

**LawHelp.org**, [www.lawhelp.org/](http://www.lawhelp.org/)  
(State by state guides to legal resources and information for problems related to bankruptcy.)

**Bankruptcy Resources**, <http://bankruptcyresources.org/>  
(Answers to bankruptcy questions, comprehensive lists of websites with useful bankruptcy information, and contact information for free and low-cost legal assistance.)

**American Bar Association**, [www.americanbar.org/groups/legal\\_services/flh-home/flh-free-legal-help/](http://www.americanbar.org/groups/legal_services/flh-home/flh-free-legal-help/)  
(Resources to locate attorneys willing to take on bankruptcy cases for free, and a virtual legal advice clinic)

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