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## **Bankruptcy**

Bankruptcy means you ask the court to excuse you from your duty to repay your creditors. A person or business you owe money to is called a creditor. Bankruptcy allows you to discharge (get rid of) most of your debts, but also keep a certain amount of property. Two kinds of bankruptcy apply to individuals and married couples not in business. These are a Chapter 7 (or straight) bankruptcy and a Chapter 13 (debt adjustment) bankruptcy. All bankruptcies are filed with your local United States Bankruptcy Court.

### **What is the difference between a Chapter 7 and a Chapter 13 bankruptcy?**

Under Chapter 7, you may not have to repay any of your debts before they are discharged (forgiven). Under Chapter 13, you must repay your debts – at least in part – before they are discharged. Other differences are talked about later on.

The current bankruptcy law took effect on October 17, 2005. Under the new law, the type of bankruptcy you can file depends on whether your household is above or below the state median income. The median is the amount where half the households have more and half the households have less. Your income is determined by the six-month period before you file bankruptcy.

People in households with incomes above the state median cannot file a Chapter 7. They must file a Chapter 13. People in households with incomes below the state median may file either a Chapter 7 or a Chapter 13. The new law is talked about later on.

### **What must I do before I file for bankruptcy?**

Under the new law, you must get individual or group counseling from an approved consumer credit counseling agency. You must do this within 180 days before you file bankruptcy. In emergency cases, you can file bankruptcy before you do credit counseling. However, you must start credit counseling within 30 days after you file bankruptcy. If not, your bankruptcy will be dismissed. A list of approved credit counseling agencies can be found on the Internet at the following website -- [http://www.usdoj.gov/ust/eo/bapcpa/ccde/cc\\_approved.htm](http://www.usdoj.gov/ust/eo/bapcpa/ccde/cc_approved.htm).

### **What is a Chapter 7 bankruptcy?**

In a Chapter 7 bankruptcy, you must list all your debts, no matter the size or to whom you

owe them. You also must list all your property. Virginia law lets you keep a certain amount of property you own free and clear. Property protected from your creditors includes these items.

- Up to \$5,000 worth of household goods.
- Up to \$1,000 worth of clothing.
- Up to \$3,000 worth of a firearm.
- Medically prescribed health aids.
- Up to \$10,000 worth of tools and equipment you need for work or school.
- Up to \$6,000 “equity” value in a motor vehicle. “Equity” means the fair market value minus the amount you still owe on the vehicle.
- The portion of an income tax refund due to the Earned Income Tax Credit (EITC).
- Child support and spousal support, whether paid or unpaid.
- Up to \$5,000 worth of additional property (up to \$10,000 for a married couple, and up to \$10,000 for an individual 65 years of age or older) plus \$500 for each dependent, if you list it in a Homestead Deed filed with your local Circuit Court.
- An additional \$25,000 in real or personal property that serves as your principal residence, which can be claimed every eight years.

The rest of your property is sold. The money is used to pay your creditors. They may get only a few cents (or nothing) for a dollar of debt. The court discharges (or forgives) most of your debts, and you get a fresh start.

### **What debts can't be discharged in bankruptcy?**

Some debts can't be discharged in either a Chapter 7 or Chapter 13 bankruptcy. These include the following things.

- Fines and court ordered restitution.
- Taxes for which no return was filed, taxes for which a fraudulent return was filed, as well as some other taxes.
- Child support, spousal support (or alimony), and non-support obligations resulting from a divorce or separation.
- Debts due to fraud.
- Debts due to wrongful and harmful acts.
- Loans from your pension plan.
- Student loans, unless you can show extreme hardship.

Under the new law, you can't discharge credit card charges to a single creditor totaling more than \$500 for luxury goods or services you bought within 90 days before you filed bankruptcy. You also can't discharge cash advances totaling more than \$750 you got within 70 days before you filed bankruptcy.

### **In a Chapter 7 bankruptcy, what happens to property I'm buying on credit?**

If you're buying property on credit, you may have to give it back to the creditor. In a Chapter 7, you may keep property you're buying on credit under certain conditions. If you are

current on your payments, you may “reaffirm” the debt by agreeing to keep the debt even though you filed bankruptcy. However, if you are behind in your payments, you may have to file a Chapter 13 to keep property you’re buying on credit. A final way to keep property is to redeem it. This means you pay the creditor what the property is now worth, not what you still owe on it.

### **In a Chapter 7, what happens to property I can’t protect from my creditors?**

In a Chapter 7, property you can’t protect from your creditors is sold and the money is used to pay your creditors. If property you own free and clear is worth more than you can protect from your creditors, a Chapter 7 can be the worst possible thing you can do. If you have property you can’t protect from your creditors, you may want to think about a Chapter 13.

### **What is a Chapter 13 bankruptcy?**

A Chapter 13 bankruptcy requires you to have a steady source of income. In Chapter 13, you make payments to an attorney called a Bankruptcy Trustee. Usually, you do this for three to five years. The Trustee uses the money to pay your creditors. In a Chapter 13, you also list all your debts and property. Virginia law lets you keep a certain amount of property you own free and clear. This is the same property protected from your creditors in a Chapter 7 bankruptcy.

### **In a Chapter 13 bankruptcy, what happens to property I’m buying on credit?**

In a Chapter 13 bankruptcy, you may not have to give back, reaffirm, or redeem property you’re buying on credit. Instead, you may be able to keep property you’re buying on credit even if you’re behind on payments. To keep the house where you live, you must make current payments. You get three to five years to catch up missed payments.

Keeping other property you’re buying on credit depends on what you are buying and when you bought it. To keep a motor vehicle you bought within 910 days ( 2½ years ) before you filed bankruptcy, you must pay the debt in full within three to five years. To keep a motor vehicle you bought more than 910 days ago, you get three to five years to pay the debt, or to pay what the vehicle is worth, whichever is less.

To keep other property you bought within one year before you filed bankruptcy, you must pay the debt in full within three to five years. To keep other property you bought more than one year ago, you get three to five years to pay the debt, or to pay what the property is worth, whichever is less.

### **In a Chapter 13, what happens to property I can’t protect from my creditors?**

In a Chapter 13 bankruptcy, your creditors must receive at least as much as they would get in a Chapter 7 bankruptcy. In a Chapter 7, property you can’t protect from your creditors would be sold and the money would be used to pay your creditors. In a Chapter 13, you may be able to keep this property. You do this by paying your creditors at least as much as they would have received in a Chapter 7 bankruptcy. You get three to five years to do this.

### **What is the filing fee for a bankruptcy?**

As of December 1, 2020, the filing fees are \$338 for a Chapter 7 bankruptcy and \$313 for a Chapter 13 bankruptcy. Under the new law, the court may allow you to pay this over several months if you can't pay all at once. However, if you don't pay the filing fee on time as required by the court, your bankruptcy will be dismissed. If you are very poor, the court may allow you to file a bankruptcy for free under the new law.

In addition, you probably will need to file a Homestead Deed in connection with the bankruptcy. Your local Circuit Court charges \$26 to \$31 to record this. This must be paid at the time you file the bankruptcy.

### **What happens to debt collection after I file for bankruptcy?**

Once you file for bankruptcy, most – but not all – debt collection must stop. This is called the “automatic stay.” Filing for bankruptcy stops repossessions, utility cutoffs, debt collection lawsuits, garnishments, levies, attachments, foreclosures, evictions where a judgment of possession has not been entered, and most other actions to collect debts. However, under the new law, filing for bankruptcy does not stop an eviction where a judgment of possession has been entered, or an eviction based on illegal drug use or danger to property.

Under the new law, if a prior bankruptcy was filed and dismissed within the prior year, the automatic stay lasts only 30 days. For the automatic stay to last longer, you must show the court that you filed your second bankruptcy in good faith.

Under the new law, there is no automatic stay if two prior bankruptcies were filed and dismissed within the prior year. To get the automatic stay, you must show the court that you filed your third bankruptcy in good faith.

In any bankruptcy, a creditor may ask the court to end the automatic stay and get permission to resume debt collection.

### **What papers do I have to file with my bankruptcy?**

The bankruptcy petition requires you to list all of your current income, any increase in income expected in the next 12 months, all of your expenses, all of your property, all of your debts, and all of your creditors. You must list the name and address of each creditor, the name and address of the attorney (if any) for each creditor, the name and address of each debt collection agency, and the name and address of the attorney (if any) for each debt collection agency. You also must file the following papers with your bankruptcy.

- Deeds on your house or other real estate.
- Mortgages (Deeds of Trust) on your house or other real estate.
- Tax assessed values of real property worth more than \$3,000.
- Evidence of value on vehicles worth more than \$3,000 (*e.g.*, Kelley blue book value, NADA guidebook, tax tickets, appraisals, *etc.*).

- Evidence of value on personal property worth more than \$3,000.
- For secured debts, a statement from the creditor of the current balance or payoff.
- For secured debts, all security agreements and financing statements.
- Titles or DMV certificates for all motor vehicles or mobile homes.
- If you and your spouse own real estate held as “tenants by the entirety,” evidence for each unsecured debt of the parties obligated on each unsecured claim.
- Summary Plan Descriptions for retirement or 401(k) plans.
- Federal income tax returns for the prior three years.
- Proof of cash value of life insurance policies.
- Recorded Homestead Deeds.
- Any complaint or claim you have filed as a debtor seeking money.
- Your pay stubs or proof of income for the 60 days before you file bankruptcy.
- Any Final Decree of Divorce or Property Settlement Agreement within the past year.
- Financial reports of any closely held business of yours.
- Your three most recent monthly bank statements on all accounts you have.
- Statement of income and expenses for non-filing spouse.

If you don't file these papers on time as required by the court, your bankruptcy will be dismissed.

### **What happens if I make a mistake in my bankruptcy papers?**

Under the new law, both you and your bankruptcy attorney have to make a reasonable investigation to be sure that everything in your bankruptcy papers is correct. If you or your attorney don't do this, either or both of you may be ordered to pay costs and attorneys' fees to your creditors.

However, no fees and costs can be assessed against an attorney who represents a debtor with household income below the state median. Fees and costs also cannot be assessed against an attorney who represents a debtor in a Chapter 13 bankruptcy.

### **Do I have to go to court?**

Yes, at least once and sometimes twice. At the “first meeting of creditors,” you are asked questions about your income and property. You must go to this hearing. At the later court date, the “discharge hearing,” you get an explanation about discharge. Some courts don't require you to go to this hearing. If anything about your bankruptcy is contested, you may have to go to other court hearings. A bankruptcy usually takes between three and four months.

### **Can I be discriminated against (or treated differently) because of a bankruptcy?**

No. You don't give up any legal rights by filing bankruptcy. You still may vote. You still may own property. No government agency can discriminate against you, or treat you differently, due to your bankruptcy. Private employers can't fire you, or refuse to hire you, due to your bankruptcy. A public utility, such as an electric company, can't cut off or refuse service because you filed for bankruptcy. Your credit applications must be treated the same as others.

### **How will bankruptcy affect my credit?**

Although a bill, debt, or judgment can appear on your credit report for seven years, a bankruptcy can appear for ten years. However, if you need to file bankruptcy, you probably have a bad credit report anyway. Because bankruptcy wipes out many of your debts, you should be better able to pay current bills. This may make you a better risk to a creditor.

### **Can I file bankruptcy without an attorney?**

You may be able to do this, but it is not recommended. Bankruptcy is difficult. You may lose income, property, or other rights if you don't know the law.

### **How often can I file a bankruptcy?**

Under the new law, there are longer waiting periods to file another bankruptcy.

- If you get a Chapter 7 discharge, you must wait eight years before you file another Chapter 7.
- If you get a Chapter 7 discharge, you must wait four years before you file a Chapter 13.
- If you get a Chapter 13 discharge, you must wait six years before you file a Chapter 7.
- If you get a Chapter 13 discharge, you must wait two years before you file another Chapter 13.

### **If I can file bankruptcy now, why should I wait?**

Your right to file a bankruptcy is very important. You should not waste it. You should think about filing a bankruptcy only when you have income or property you are about to lose, and a bankruptcy will help you save that income or property.

The problem with filing a bankruptcy too soon is that you can't file again for many years. If you file too soon and within the next several years something else happens to give you large debts, you wouldn't be able to file bankruptcy again until the waiting period had passed. In the meantime, you might lose some of your income or property to your creditors. This is why you should wait to file bankruptcy until it is really necessary or really will be helpful to you.

### **What are the alternatives to bankruptcy?**

You may want to think about counseling and assistance from a nonprofit consumer credit counseling agency. They may be helpful if they can work out a plan with all your creditors that covers all of your creditors, reduces all of your debts, and pays off all of your debts within four years. The plan also should set a payment to repay your debts that you can afford and still pay all your other ongoing expenses. If you have no income or property that could be taken by a creditor with a judgment, you are "judgment proof" and may not need to do anything to protect yourself.