



Understanding Bankruptcy

Is Bankruptcy the Right Thing to Do?

Bankruptcy filings do not have the same stigma that they once had. Sometimes, people feel that they will be committing a sin, if they file for bankruptcy relief. There is no reason to feel this way. Most lenders recognize that bankruptcy filings are usually the result of unanticipated events, such as a job loss, a business reversal, divorce, sickness or death. Bankruptcy is often the best solution to debts caused by these situations.

In this depressed economy, our firm has represented numerous individuals, who, prior to losing their job, had excellent credit ratings. Having lost their jobs, these individuals found themselves overwhelmed by debts they could no longer pay.

Filing for bankruptcy can cause negative emotional and psychological reactions. The circumstances that led to the bankruptcy filing can take a significant toll on the person dealing with these issues. We help individuals work through the emotional process that often occurs when someone is contemplating a bankruptcy filing. Sometimes, a person's "self-esteem" is intertwined with his finances.

In many instances, people need to be reassured that there is "life after a bankruptcy filing". If you find yourself unable to obtain new credit, and it is unlikely that you will be unable to get any new credit for many years to come, getting a "fresh start" with a bankruptcy filing may be the way to go. Also, individuals need to understand how to rebuild their credit after a bankruptcy case has been filed.

A person pursuing bankruptcy relief should learn from the experience, acquire new financial skills, and look at their bankruptcy filing, as way to get the "fresh start" they so desperately need.

We can help you work through these issues, and help you determine whether a bankruptcy filing works for you.

We invite you to call us toll-free at (800) 363-3416, or contact us online to arrange for a free consultation.



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Debt Consolidation Programs

We have also represented numerous individuals, who had previously entered into a debt consolidation program. While debt consolidations have the effect of helping individuals “manage” their credit obligations, they prolong the day when these individuals will have the “fresh start” they really need. It is not unusual to hear individuals complain that, having faithfully fulfilled their obligations in a debt consolidation program for several years, they still find themselves unable to obtain new credit and a “fresh start”.

Getting Started

In order to proceed, the debtor’s assets and liabilities must first be analyzed to determine (i) what the debtor will be able to keep; (ii) what debts can be discharged; and (iii) what debts cannot be discharged. Debts, such as personal income taxes incurred during the 3-year period prior to filing, and domestic support obligations, are non-dischargeable in a Chapter 7 case.

In a Chapter 7 business filing, it is also important to separate the obligations that exclusively belong to the corporation or limited liability company from the obligations that are “personal” to the owner of the business entity.

Am I Eligible to File?

Bankruptcy laws are constantly changing! In October, 2005, Congress enacted a new bankruptcy law, entitled the “Bankruptcy Abuse Prevention and Consumer Protection Act (“BAPCPA”). This new law contains many requirements. BAPCPA was intended to make it much more difficult for individuals and businesses to be eligible for bankruptcy relief. As a result, it is harder for individuals and businesses to file for bankruptcy relief. BAPCPA has also made bankruptcy cases far more time-consuming.

Some people have been led to believe that if their income exceeds the applicable “median income” guideline they are ineligible to file for Chapter 7 relief. This is not the case. Debtors must now demonstrate their eligibility by filing a so-called “Means Test”. The “Means Test” compares the debtor’s household gross income with the applicable “median income” guidelines to determine whether a Debtor has the ability to repay a portion of his income towards his credit obligations, instead of being able to “walk away” from all of his dischargeable credit obligations.



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Another BAPCAP requirement is the need for individual debtors to complete a credit counseling course prior to a Chapter 7 or Chapter 13 bankruptcy filing. For more information about the Credit Counseling Course, please refer to our information section entitled, "Credit Counseling Course". Individual debtors are also required to take a financial management course following the bankruptcy filing. The financial management course is needed to obtain a "Discharge Order". Each course must be taken from an approved credit counseling agency.

As a result of the new bankruptcy laws, debtors need an experienced firm that can help them navigate this complicated bankruptcy process. We have the expertise to insure that our clients will be able to obtain Chapter 7 relief and obtain a bankruptcy discharge.

Chapter 7 Cases

A Chapter 7 case is the most common bankruptcy filing. Chapter 7 relief can be obtained by individuals or businesses. Once a Chapter 7 petition is filed, an "automatic stay" is issued. This "automatic stay" usually puts an immediate end to ALL collection activity.

A Chapter 7 case is intended for individuals, who do not have any assets that can be liquidated by the Court. These assets are referred to as "non-exempt" assets. If, for example, you have a car that is worth \$15,000 and the payoff balance on your auto loan is \$12,000, the "equity" in your car would be \$3,000. Since you are allowed to keep up a car where you have up to \$4,000 in equity, you would be able to eliminate your debts and keep your car.

After a Chapter 7 case is filed, a bankruptcy trustee is appointed. All Chapter 7 debtors must attend a hearing, which is called a "341a Meeting" or a "Trustee Meeting". The bankruptcy trustee is an attorney, who is responsible for the collection of any "non-exempt assets", liquidating the "non-exempt assets", and distributing the proceeds to creditors, who file claims with the Court. If there are not enough "non-exempt assets" to cover what the debtor owes, the creditors may not get their claims fully repaid. If the debtor is an individual, all remaining debts are fully discharged.



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If your outstanding mortgage balance is greater than the value of your home, you have no “equity” in your home. If a foreclosure sale were to occur, where you have no “equity” in your home, you will still be personally responsible for any mortgage loan deficiency. A Chapter 7 case will also allow you to eliminate any personal liability for your outstanding mortgage indebtedness.

There are certain kinds of debts that cannot be discharged. Nondischargeable debts include recent taxes, alimony, child support and damages that resulted from a debtor's malicious behavior. These nondischargeable obligations can be dealt with in a Chapter 13 case.

There are two main types of bankruptcy for which a business can file: a Chapter 7 liquidation and a Chapter 11 reorganization. If the debtor is a business, a Chapter 7 filing will result in the issuance of an “automatic stay”. This means that the business' creditors must stop all collection activity against the business.

A Chapter 7 case is a low-cost way for a business to close its doors in an orderly manner, and put an end to harassing creditor calls and lawsuits. After the case is filed, an attorney is appointed to serve as the bankruptcy trustee. The bankruptcy trustee handles the details of the bankruptcy case and sells any business assets to pay the creditors as much as possible. While Chapter 7 businesses are not eligible to receive “Discharge Orders”, a Chapter 7 filing will cause a business to cease to exist after the bankruptcy filing. This has the same effect as a “Discharge Order”.

Chapter 13 Cases

A Chapter 13 case is usually used to stop foreclosures. A petition filed under Chapter 13 (also known as a “wage earner plan”) immediately stops a foreclosure proceeding and all collection activity. For more information about the foreclosure process, please refer to our section entitled “Foreclosure”. A Chapter 13 filing can also be used by individuals, who do not qualify for Chapter 7 bankruptcy relief, but want to retain their assets. A Chapter 13 debtor is given up to 5 years to repay pre-petition mortgage arrears, pre-petition real estate tax arrears, and non-dischargeable income taxes. If the debtor successfully completes a Chapter 13 plan, the dischargeable debts that are dealt with under the plan are completely discharged.



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There are certain other criteria that a debtor must meet in order to be eligible for Chapter 13 relief. Chapter 13 debtors must have steady income and the ability to repay some of the dischargeable debt. There is also a debt ceiling, as to how much a person can owe and still file for Chapter 13 relief.

After a Chapter 13 case is filed, a bankruptcy trustee is appointed. All Chapter 13 debtors must attend a hearing, which is called a "341a Meeting" or a "Trustee Meeting". The bankruptcy trustee is an attorney, who must determine whether the debtor's proposed Chapter 13 Plan adequately protects all creditors. If the bankruptcy trustee is satisfied, he will recommend that the debtor's proposed Chapter 13 Plan be "confirmed".

Eliminating a Second Mortgage

Where there is no equity in your home, and you have a second mortgage loan, you may be able to completely eliminate your second mortgage obligation.

Foreclosure

A foreclosure sale occurs at the conclusion of a foreclosure proceeding. A foreclosure proceeding usually takes 12-14 months or more. A Chapter 13 case is usually used to stop foreclosures. A petition filed under Chapter 13 (also known as a "wage earner plan") immediately stops a foreclosure proceeding and all collection activity.

If your outstanding mortgage balance is greater than the value of your home, you have no equity in your home. If a foreclosure sale were to occur where you have no equity in your home, you may still be personally responsible for any deficiency. A Chapter 7 case will allow you to eliminate any personal liability for your outstanding mortgage indebtedness.

Chapter 13 cases enable debtors to repay their pre-petition mortgage arrears and pre-petition real estate tax arrears over a 5-year period. It can also be used to repay other non-dischargeable obligations over a 5-year period. In many cases, a Chapter 13 case may also enable a debtor to repay dischargeable credit obligations at a significantly reduced rate.



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As previously stated, a Chapter 13 case will enable you to pay back your pre-petition mortgage arrears and pre-petition real estate tax arrears over a 5-year period. It should be recognized that a 5-year payback is usually far more generous than the payback period that lenders typically offer borrowers in a "forbearance" arrangement.

Loan Modifications

There are many homeowners, who are lulled into a false sense of security. They believe that their lender will ultimately modify their loan. Instead, there are many homeowners, who wind up facing an imminent foreclosure sale. When this happens, many individuals retain our firm to help them save their home.

A petition filed under Chapter 13 (also known as a "wage earner plan") immediately stops a foreclosure proceeding, and is the best way to go, if a debtor is able to start making his regular mortgage payments and is able to repay his pre-petition mortgage arrears and pre-petition real estate tax arrears over a 5-year period.

If a debtor is able to make timely payments in a Chapter 13 case, he may be able to refinance his existing mortgage loan at a lower interest rate in about 18 months following the Chapter 13 filing.

Chapter 11 Reorganizations

A Chapter 11 case is intended to help individuals with significant debts and businesses reorganize. When a business files a Chapter 11 case, it allows for the business to continue operating as a "debtor in possession" and for its owners to remain in control.

Once a Chapter 11 petition is filed, an "automatic stay" is issued. This "automatic stay" usually puts an immediate end to ALL collection activity.

In a Chapter 11 case, a bankruptcy trustee is not automatically appointed. After a Chapter 11 case is filed, the "debtor in possession" must file a proposed plan of reorganization. The plan explains how the "debtor in possession" intends to reorganize. It can also free the business from having to pay some or all of its obligations.



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During the duration of the Chapter 11 case, the “debtor in possession” makes payments to creditors, and creditors are given the opportunity to comment on the proposed plan or propose a plan of their own. If a plan is confirmed, the “debtor in possession” will be able to reorganize in accordance with the plan. If no plan is approved, the case will either be converted to a Chapter 7 liquidation case or dismissed.

Sometimes, a struggling individual or business will file a Chapter 11 case, simply to obtain some “breathing room”. As is often the case, these individuals or businesses don’t have the ability to successfully reorganize. In these instances, a Chapter 11 case may result in an adverse outcome. For this reason, it is essential that these individuals or businesses consult with an experienced bankruptcy attorney before filing a Chapter 11 case. Sometimes, it's best for a business to close its operations in a manner that will suit the personal needs of its owners. This may involve the closing of the debtor's business voluntarily or by way of a Chapter 7 filing.

For these reasons, it is essential for any struggling individual or business to consult with an experienced attorney.

To arrange for a free initial consultation, call us toll-free at (800) 363-3416, or contact us online.



Credit Counseling & Financial Management

Introduction

In October, 2005, Congress enacted a new bankruptcy law, entitled the "Bankruptcy Abuse Prevention and Consumer Protection Act ("BAPCPA"). One of BAPCPA's requirements is the need for individual debtors to complete a credit counseling course prior to the filing of a Chapter 7 or Chapter 13 case. Individual debtors are also required to take a financial management course following the bankruptcy filing. The financial management course is needed for the debtor to obtain a "Discharge Order". Each course must be taken from an approved credit counseling agency.

Briefings

The new law specifically states that a debtor has to receive an "individual or group briefing" from a nonprofit budget and credit counseling agency within 180 days prior to the bankruptcy filing. The briefing can be by telephone or by using the Internet. The law states that the briefing must outline all of the opportunities for available credit counseling, and help the debtor perform a related budget analysis. If the counseling results in the development of a debt management plan, it has to be filed with the bankruptcy court.

A similar briefing is also needed to complete the post-petition Financial Management Course.

Credit Counseling Exceptions

There are a few situations in which the counseling requirement is waived. One exception occurs when the debtor is incapacitated by mental illness or deficiency, is physically impaired such that he or she is unable to participate with reasonable effort, or is on active military duty in a combat zone. A debtor may also be excused by the court if there are "exigent circumstances" and the debtor requested counseling that an agency was unable to provide within 5 days of the filing date. Another situation when counseling may not be required is when a proper legal official has determined that no approved credit counseling agency is available.



Credit Counseling & Financial Management

Property Exemptions

One of the major concerns voiced by people considering bankruptcy is "what assets will I be allowed to keep?" Therefore, before a bankruptcy case is filed, it is important to know which assets you will be able to keep.

Effective January 22, 2011, New York enacted sweeping changes to the exemptions that debtors will be able to claim in a bankruptcy case. As a result, it is expected that more people will decide to file for bankruptcy relief.

The recent changes continue to allow New York State residents to "opt out", and to choose the federal exemptions instead. The decision to "opt out" and choose the federal exemptions, instead of the New York exemptions, is one that should be made with the help of an experienced attorney.

New York Exemptions

- **Homestead Exemption:** A Debtor can now claim an exemption for up to \$150,000 of equity on his or her primary residence. This means that if a husband and wife file for bankruptcy relief, and jointly own a home, they can claim an exemption for up to \$300,000.00 of equity on primary residence.
- **Cash:** A Debtor can now claim an exemption for cash, not to exceed \$5,000, to the extent that the debtor does not claim the entire \$10,000 exemption which is now allowed for household goods or wearing apparel.
- **Household Goods & Wearing Apparel:** A Debtor can now claim an exemption for household goods and wearing apparel, not to exceed \$10,000 in value.
- **Jewelry & Art:** A Debtor can now claim an exemption for a wedding ring, a watch, jewelry and art, not to exceed \$1,000 in value.
- **Automobiles:** A Debtor can now claim an exemption for up to \$4,000 of equity per vehicle.



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- **Tools of the Trade:** A Debtor can now claim an exemption for necessary working tools and implements applicable to a trade or to a profession, not to exceed \$3,000 in value.
- **Additional Exemption for Debtors Not Claiming a Homestead Exemption:** A Debtor, who does not claim a homestead exemption, can now claim an additional exemption for cash, a bank account or personal property, not to exceed \$1,000 in value. As a result, a Debtor may be able to exempt up to \$6,000 in cash, a bank account or possible tax refund.
- **Personal Injury Proceeds:** A Debtor can claim an exemption for the proceeds of a personal injury claim, not to exceed \$7,500.
- **Pension and Retirement Benefits:** A Debtor can claim an exemption for qualified pensions and retirement benefits.
- **Governmental Benefits:** A Debtor can claim all social security benefits, unemployment compensation, veteran's benefits, disability, illness or unemployment benefits.

Federal Exemptions

Some of the Federal Exemptions include:

- **Homestead Exemption:** An individual Debtor can claim an exemption for up to \$20,200 of equity on his or her primary residence.
- **Household Goods & Furnishings, & Wearing Apparel:** A Debtor can claim an exemption in household goods, wearing apparel and household furnishings, not to exceed \$10,779 in value.
- **Pension and Retirement Benefits:** A Debtor can claim an exemption for qualified pensions and retirement benefits.
- **Personal Injury Proceeds:** A Debtor can claim an exemption for the proceeds of a personal injury claim, not to exceed \$20,200.



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- **Governmental Benefits:** A Debtor can claim all social security benefits, unemployment compensation, veteran's benefits, disability, illness or unemployment benefits.
- **“Wild Card” Exemption:**
 - (a) A Debtor may use up to \$1,075 on any property, plus up to \$10,825 of any unused amount of the homestead exemption.
 - (b) Therefore, if your home has nominal equity or you do not own a home, you can use a total of \$11,900 as a “wild card” exemption on any property.

Please note that this list is not all-inclusive, and that all property exemptions are subject to exceptions. To learn more about the various bankruptcy exemptions, please call us toll free at (800) 363-3416, or contact us online.



Bankruptcy FAQs

How can I stop my creditors from calling?

If you are eligible to file for bankruptcy relief, and enter into a retainer agreement with our firm, you will then be able to notify your creditors that you have retained us as your bankruptcy counsel, and provide them with our telephone number. In most instances, your creditors will then call our office to confirm that you have retained our firm, and stay in touch with us until your case is filed. A small deposit is all that is needed to initially retain our firm. If a creditor continues to call you after being notified that you are filing for bankruptcy, the creditor is in violation of the Fair Debt Collection Practices Act (15 U.S.C. Section 1692 et seq.)

When can I stop making my credit card payments and other loan payments?

After your bankruptcy case has been filed, you can stop making your credit card and other loan payments, except for mortgage and auto loan payments for homes and cars you want to keep, and non-dischargeable student loan or domestic support payments. You should also stop any post-dated checks or automatic payment plans you may have previously set up.

If I am filing for bankruptcy, how do I handle an existing debt consolidation program?

Once you decide to file for bankruptcy, you can immediately discontinue any existing debt consolidation program. If you have set up an automatic payment plan under the debt consolidation program, you need to immediately discontinue the payment arrangement. You also need to stop payment on any checks you have issued. If need be, you may need to close your bank account.

When can I use my bank accounts?

After your bankruptcy case has been filed, you can use your existing bank accounts or open a new bank account without any fear.



Bankruptcy FAQs

**How long will my bankruptcy filing remain on my credit report?
How long will it take for me to get credit once again?
When will I be able to obtain a new mortgage loan?**

The answer to all three of these questions is this: A bankruptcy filing will remain on your credit report for 7-10 years. However, soon after you file, you will begin getting credit card offers. It will also not be long before you will be able to qualify for an auto loan or mortgage loan at a reasonable rate of interest.

How long does the entire bankruptcy process take?

If there is an emergency, such as an imminent foreclosure sale, or a garnishment or bank levy, your case can be filed in one day!

After a Chapter 7 case has been filed, the case usually lasts 4-5 months. During this period, you will be able to use your existing bank accounts, open new accounts, and start getting your life back on track. A Chapter 13 case lasts until all plan payments have been made. It can take up to 5 years until all plan payments have been made.

At the conclusion of a Chapter 7 case, the bankruptcy court issues a Discharge Order to a debtor, who has completed a Financial Management Course. A Discharge Order confirms the cancellation of a debtor's dischargeable obligations.

At the conclusion of a Chapter 13 case, a Discharge Order will be issued to a Debtor, who has completed his plan payments and a Financial Management course.

How much does a bankruptcy filing cost?

For individuals, we usually require a retainer deposit of at least \$250. The balance of the fees and costs depends upon whether you are filing a Chapter 7 or Chapter 13 case. It also depends upon whether you own a home that you wish to keep, the extent of your debts, and your monthly income in relation to the median income for your family. Once the fee is agreed upon, we will then set up a payment plan that works for you.