

Chapter 7 Bankruptcy Information

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Liquidation

Chapter 7 bankruptcy, also known as "liquidation" bankruptcy, is a tool used to cancel your debt. The process may take about three to five months. Chapter 7 bankruptcy is not available to everyone. The new bankruptcy law provides clear criteria that dictates who will be allowed to stay in Chapter 7 and who will be required to use Chapter 13.

Your Income?

Under the new rules, the first step in figuring out whether Chapter 7 bankruptcy is available to you is to measure your "current monthly income" against the median income for a family of your size in your state. Your "current monthly income" is your average income over the last six months before you file. If your income is less than or equal to the median, you can file for Chapter 7 bankruptcy. If your income is higher than the median, you must pass "the means test".

What is the Means Test?

The "means test" is a formula designed to keep filers with higher incomes from filing for Chapter 7 bankruptcy. Only bankruptcy filers with primarily consumer debts, not business debts, need to take the means test. High income filers who fail the means test may use Chapter 13 bankruptcy to repay a portion of their debts, but may not use Chapter 7 bankruptcy to wipe out their debts altogether.

Previous Discharge?

Chapter 7 bankruptcy is unavailable to you if you obtained a discharge of your debts in a Chapter 7 bankruptcy case within the last eight years or a Chapter 13 case within the last six years.

Previous Dismissal?

You cannot file for Chapter 7 bankruptcy if a previous Chapter 7 or Chapter 13 case was dismissed within the past 180 days because:

- You violated a court order;
- The court ruled your filing was fraudulent or was an abuse of the system; or
- You requested the dismissal after a creditor asked for relief from the automatic stay.



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The Automatic Stay!

When Chapter 7 bankruptcy is filed, the automatic stay goes into effect. Generally, the automatic stay is more formally known as an Order for Relief. The automatic stay immediately stops most creditors from trying to collect from you. For a temporary period of time, creditors are unable to garnish your wages, empty your bank account, repossess your car, house, other property, or cut off your welfare benefits or utility services.

Who is the Bankruptcy Trustee?

The Trustee is a court appointed person whose primary duty is to see that your creditors are paid as much as possible of what is owed to them. The more assets the trustee recovers for creditors, the more the trustee is paid. The trustee will examine your petition to make sure it is complete and to look for nonexempt property to sell in order to benefit the creditors. The trustee will also analyze your financial transactions during the previous year to see if any can be undone to free up assets to distribute to your creditors.

The Meeting of Creditors aka The “341” Hearing

A few weeks after you file, you and your creditors will receive a notice for your Meeting of Creditors hearing. The bankruptcy trustee runs the meeting and after swearing you in, may ask you questions about your bankruptcy and your filed petition. This meeting lasts about 5 to 15 minutes and is generally the only hearing you will attend. We will notify you of the required forms of identification necessary for the meeting.

Your Bankruptcy Estate

The estate is all of the legal and equitable interests of the debtor as of the commencement of the case. From the estate, an individual debtor can claim certain property exempt. Property of the estate is usually sold by the trustee and the claims of the creditors paid from the proceeds.

What is an exemption?

Property that is exempt is removed from the bankruptcy estate and is not available to pay the claims of creditors. The debtor selects the property to be exempted from the statutory lists of exemptions available under the law of his state. The debtor gets to keep exempt property for use in making a fresh start after bankruptcy. Exemptions are the lists of types and values of property that is legally beyond the reach of creditors or the bankruptcy trustee. The debtor in bankruptcy keeps the exempt property. State and Federal statutes determine what property may be exempted.



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How Your Secured Debts Are Treated

Property used as collateral to secure a loan, is called a secured debt. Examples of collateral include houses and automobiles. If you're behind on your payments, the creditor can have the automatic stay lifted in order to repossess or foreclose on your property. If you are current on your payments, you may be able to keep your property.

The Chapter 7 Discharge

At the end of your bankruptcy process, all of your debts are wiped out by the court, except for the following:

- Child support;
- Most tax debts;
- Student loans, unless the court rules otherwise; and
- Debts that the court has declared non-dischargeable because the creditor objected.

Dismissal!

Bankruptcy court may dismiss your case if it thinks you have tried to cheat your creditors or concealed assets so you can keep them for yourself.

Furthermore, if you have engaged in any of the following activities during the past year, your bankruptcy case may be dismissed. These activities include:

- Unloading assets onto your friends or relatives to hide them from creditors or court;
- Purchasing luxury items on your credit card when you clearly cannot afford them;
- Concealing property or money from your spouse during a divorce proceeding; or
- Lying about your income or debts on a credit application.

In addition, you must sign your bankruptcy papers under "penalty of perjury" swearing that everything in your documents is true. If you intentionally fail to disclose property or omit material information about your financial affairs and the court discovers your action, your case will be dismissed.

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