

Is Bankruptcy Right for Me?

The economic turmoil of the past several years has caused great financial stress for millions of Americans. Job loss, unanticipated medical bills and declining home values have brought many previously solvent people to the brink of financial disaster. Fortunately, there is help.

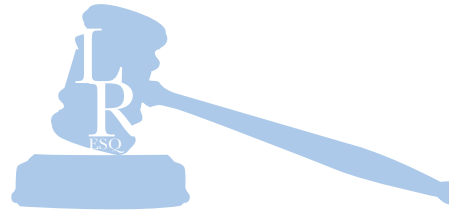
Perhaps the most powerful help available to people finding it hard to pay their bills and also avoid lawsuits, collection calls, collection letters, seizures of personal property, freezing of one's bank accounts and foreclosure of their home is federal bankruptcy protection.

Unfortunately, while powerful, the law is also complicated. Major changes made in recent years have made the law even more complex. This guidebook seeks to explain the process of how the law works, while providing some detail as to how the two major chapters of the law (Chapter 7 and Chapter 13) can work for individuals.

If you are considering bankruptcy, be sure to contact an attorney who is experienced in this area of the law.



Lauren P. Raysor ATTORNEY AT LAW



Contact us today for a free consultation.

11 Penn Plaza, Suite 500
New York, NY 10001

p 212.946.2605

c 646.244.9811

f 212.304.3495

www.laurenraysor.com

lauren@laurenraysor.com



Is Bankruptcy Right for Me?

Attorney Advertising. Prior results do not guarantee a similar outcome. We are a Debt Relief Agency. We help people file for bankruptcy relief.

This guidebook is for informational purposes. Since individual situations and legal issues vary, it is important to contact an attorney to discuss your specific legal situation.

Bankruptcy – How It Works

There are two basic reliefs available: Chapter 7 (which means a total liquidation or cancellation of debt) and Chapter 13 (which means a restructuring of your finances and obligations under strict court supervision). This Federal law actually freezes State court lawsuits, stops all calls and letters from all creditors, and interrupts foreclosures. At the same time, however, all your personal and business finances are opened in court, available to your creditors, who may or may not fight this protection. It means filing your own Petition in Federal Bankruptcy court.

After your Petition is filed, creditors have the option to challenge the Petition and usually argue that you used credit irresponsibly, and just don't want to pay back your debts. They want all or most of their money. It is then a matter of settling these debts, at terms approved by both the Bankruptcy Trustee (who actually handles most of the Court work) and eventually the Judge. You usually have to attend Bankruptcy Court ordered counseling classes. The actual court dates are at the local Bankruptcy Court, and while some privacy is attempted, the discussions are in open court. You should also know that a bankruptcy, if successfully sought, remains on your credit record for seven years.



Should I Seek Chapter 7 Relief?

Not everyone is right for a Chapter 7 filing. Besides the form known as a Petition, which goes in the front of the whole package, you must also file: (1) schedules of assets and liabilities; (2) a schedule of current income and expenditures; (3) a statement of financial affairs; and (4) a schedule of contracts you can enforce or which can be enforced against you and any unexpired leases. Debtors must also provide the bankruptcy trustee (who stands in the place of the Bankruptcy Judge for most of the case) with a copy of the tax return or transcripts for the most recent tax years. Individual debtors with primarily consumer debts have additional document filing requirements. Here you must file: a "certificate of credit counseling" (which must be obtained from a certified, court-approved credit counseling service after you have completed this outside course on credit) and a copy of any "debt repayment" plan developed through this certificate plan counseling; evidence of payment from employers, if any, received 60 days before filing; a statement of monthly net income and any anticipated increase in your income or your expenses after filing; and a record of any interest the debtor has in federal or state-qualified education or tuition accounts. A husband and wife may file a joint Petition or individual Petitions.

Filing a Petition under Chapter 7 "automatically stays" (stops) most collection actions against the debtor or the debtor's property. But filing the Petition does not stay certain types of actions, and the stay may be effective only for a short time in some situations. As long as the stay is in effect, creditors generally may not initiate or continue lawsuits, issue wage garnishments, or even make telephone calls demanding payments.

Between 20 and 40 days after the Petition is filed, the case trustee (who is appointed by the Court and who also represents the interests of the creditors, or people to whom you own money) must hold a "meeting of creditors." During this meeting, the trustee puts the debtor under oath, and both the trustee and creditors may ask questions. Within 10 days of the creditors' meeting, the trustee will report to the court whether the case should be presumed to be an abuse under the "means test" (meaning you have enough monthly income to pay your debts) or allowed to proceed to "discharge." The Court will either grant a "discharge" of all debts or set up further proceedings.

Should I Seek Chapter 13 Relief?

In addition, individual debtors who have regular income may seek an adjustment (lowering, delaying, or partially relieving) of debts under Chapter 13. A particular advantage of Chapter 13 is that it provides individual debtors with an opportunity to save their homes from foreclosure by allowing them to "catch up" past due payments through a payment plan. Moreover, the Court may dismiss a Chapter 7 case filed by an individual whose debts are primarily consumer rather than business debts if the Court finds that the granting of relief would be an abuse of Chapter 7. (This usually converts a Chapter 7 case into a Chapter 13 case). Abuse is a presumption, which can be argued against by your attorneys.

In Chapter 13, the Court and the debtor (through the debtor's attorney) reach a wide settlement for all debts. Luckily, the debtor also gains the "automatic stay," so you and your attorneys can tell creditors to stop their calls and letters. This also means that foreclosures are "stayed," as are seizures of money and property. Debtors should also be aware that out-of-court agreements with creditors or debt counseling services may provide an alternative to a bankruptcy filing.

