

Video Bankruptcy FAQ

Click on the questions to view a video with the answer. What is bankruptcy?

Bankruptcy

refers to federal laws and rules which are designed to help a debtor, whether an individual or a business, who is facing more debt than he, she or it can afford to pay, and to achieve a fresh start. Bankruptcy

permits the debtor to work out a plan to repay some or all of the debt, or to have some of the debt forgiven. Bankruptcy

may provide for some debt forgiveness and typically requires that creditors stop all collection efforts against the debtor while the debtor is working out a plan and/or awaiting a discharge of debts. Bankruptcy

laws require that a debtor make a full disclosure of all assets, liabilities and other financial information, and that the debtor either: (1) surrender non-exempt assets for liquidation and distribution to creditors, or (2) formulate and follow through on a plan of reorganization and debt repayment that provides creditors with at least as much as they would receive if the debtor's assets were liquidated and distributed to creditors.

Do I need an attorney in filing bankruptcy?

What is Chapter 7 Bankruptcy?

Chapter 7

is the liquidation chapter of the Bankruptcy Code. Chapter 7

may be filed by individuals, a corporation, or a partnership. Under Chapter 7

, a trustee is appointed to collect and sell all property that is not fully encumbered by a lien or is not exempt, and to use any sale proceeds to pay creditors. An individual debtor may claim certain property as exempt from sale such as a specific amount of equity in a home or car, household goods and retirement accounts. The individual debtor usually receives a discharge, which means that he or she is relieved of the obligation to pay certain types of debts.

What is Chapter 11 Bankruptcy?

Chapter 11

Bankruptcy is primarily designed to facilitate corporate financial reorganization, to allow businesses to continue to operate while they restructure their debt under a repayment plan. The purpose of Chapter 11

Bankruptcy is to promote otherwise viable businesses to continue to operate in order to generate revenue, protect jobs, and to allow the payment of creditors over time, as opposed to stopping operations and liquidating assets.

What is Chapter 13 Bankruptcy?

Chapter 13

is the debt repayment chapter for individuals who have regular income, whose secured debts do not exceed \$1,081,400.00 and whose unsecured debts do not exceed \$360,475.00. Chapter 13

generally permits individuals to keep their property by repaying creditors out of their future disposable income. The Chapter 13

debtor proposes a repayment plan which must be approved by the bankruptcy court. The debtor pays the amounts set forth in the plan to the Chapter 13

trustee, who distributes the funds to creditors, in return for a small fee. The Chapter 13

debtor receives a discharge of most debts after the debtor completes the payments required under the plan.

What is the automatic stay?

Filing a bankruptcy petition automatically stays (stops) most collection actions against the debtor or the debtor's property. As long as the automatic stay is in effect, creditors generally may not initiate or continue lawsuits, wage garnishments, or even telephone calls demanding payments without the prior approval of the bankruptcy court. There are, however, several exceptions to the automatic stay, the most common being criminal proceedings

, collection of certain alimony and child support

obligations, and governmental actions to protect the public. The automatic stay is temporary and will end when a discharge is granted or denied, when the case is dismissed or closed, or if the bankruptcy court grants a creditor relief from the automatic stay.

What is a discharge?

A bankruptcy discharge is a court order that relieves a debtor from personal liability for specific types of debt. A discharge permanently prohibits creditors from taking any action to collect upon a discharged debt. When a debt has been discharged, the creditor can no longer

seek repayment. Discharge is the primary benefit most debtors seek to obtain from bankruptcy.

Are all debts discharged in bankruptcy?

No. The discharge does not affect a creditor's lien against collateral (e.g., a home mortgage or automobile loan), so it does not prevent a creditor who holds a lien from enforcing that lien. Unless the debtor reaffirms or redeems the debt, the secured creditor can seize the collateral. The discharge, however, prohibits the secured creditor from collecting a balance from a debtor if the collateral is worth less than the claim. A discharge order does not apply to certain kinds of debts. Most of these debts are automatically immune from discharge, without a creditor having to take any action. The most common non-dischargeable debts are: Most tax debts

Alimony and child support

obligations, as well as debts to a spouse or former spouse that arose from a divorce or separation agreement

Student loans

Finally, some debts are immune from discharge only if the creditor timely files a complaint objecting to the discharge of the debt, and the bankruptcy court issues an order to that effect. These include: Debts arising from fraud

or false representations

Debts for embezzlement

, larceny

, or the mishandling of funds that the debtor held as a trustee or fiduciary

Debts for willful and malicious injury

How will filing for bankruptcy affect my credit?

Filing for bankruptcy can remain on a debtor's credit report for ten (10) years under provisions of the Fair Credit Reporting Act and will likely make obtaining credit more difficult or expensive, but not impossible. The decision to grant or deny credit in the future is strictly up to each creditor and will vary, depending on the type of credit requested. There is no law to prevent anyone from extending credit to a debtor immediately after the filing of a bankruptcy ; nor is there any law that requires a creditor or potential lender to extend credit to a debtor.

Who is a bankruptcy trustee?

A bankruptcy trustee is appointed in all Chapter 7 and Chapter 13

cases, and in some Chapter 11

cases. The trustee administers the bankruptcy estate and ensures that creditors get as much money as possible. The trustee also presides at the first meeting of creditors to examine the debtor under oath. In a Chapter 7

case, the trustee can liquidate the debtor's assets by collecting and selling non-exempt, unencumbered, estate property. In a Chapter 13

case, the trustee collects money from the debtor and distributes it to creditors according to the debtor's repayment plan. The trustee can require the debtor to provide information and documents either before, after, or at the Section 341 meeting. Debtors must cooperate with the trustee; failure to cooperate with the trustee is grounds for a denial of the debtor's discharge.

Do I have to go to Court?

Section 341 of the Bankruptcy Code requires that a trustee convene and preside over a meeting of a debtor's creditors. This meeting of creditors is held in every bankruptcy

case. The debtor must attend the meeting; in many cases it is the only meeting that the debtor must attend. The meeting of creditors permits the trustee to review the debtor's bankruptcy schedules with the debtor face-to-face. The debtor is required to answer questions under penalty of perjury concerning the debtor's conduct, assets, liabilities, financial condition, and any matter that may affect administration of the bankruptcy estate. It is imperative that the debtor attends the meeting of creditors or the trustee may request that the bankruptcy court dismiss the bankruptcy

case.

Can I keep my property after bankruptcy?

The Bankruptcy Code allows an individual debtor to exempt real, personal, or intangible property from the property of a bankruptcy estate. Typically, exempt assets include (among other things) the value of a vehicle up to a certain dollar amount, the equity in a home up to a certain amount, money in a bank account up to a certain amount, and funds held in a retirement account. If no one objects to the exemptions claimed by the debtor, those assets will not be a part of the bankruptcy estate and will not be liquidated and used to pay unsecured creditors. If, however, the value of that property is greater than the allowed exemption and/or the balance of a claim secured to that property, then a Chapter 7

trustee may liquidate that property to pay creditors. In that circumstance, an individual must decide whether they are willing to surrender that property or file a Chapter 13

bankruptcy by which they could pay an amount equal to the unprotected value of the property through plan payments. By doing this, the property would be protected from liquidation.

What are the bankruptcy counseling requirements?

In order to be eligible to file for bankruptcy

, individual debtors must have received credit counseling within 180 days prior to filing a bankruptcy petition. Specifically, the law requires a debtor to receive, from an approved agency, a briefing to outline the opportunities available for credit counseling and creation of a financial management plan. This may be done in an individual or group session, and may be completed in person, on the phone, or even via the internet. Furthermore, individual Chapter 7 and Chapter 13

debtors are required to complete a financial management course in order to receive a bankruptcy discharge. The financial management course will be conducted by an approved, non-profit company and will provide the debtor with instructions on how to manage his or her finances going forward. This requirement is separate from, and in addition to, the pre-bankruptcy credit counseling requirement. A list of court approved credit counselors and financial management course providers is available from the attorneys at Tully Rinckey PLLC.

What does it mean if a case is dismissed?

A dismissal order ends the bankruptcy case before a discharge order enters. When the court dismisses the case, the automatic stay ends and creditors may start to collect debts again. An order of dismissal does not free the debtor from any debt. The most common reason for dismissing a case is because the debtor has failed to do something that he or she is required to do (such as appear for the meeting of creditors or timely file all required documents). Unless the debtor appeals the order or seeks reconsideration of the order of dismissal within ten (10) days, the clerk will automatically close the case.

Who can file a bankruptcy petition?

A bankruptcy case is commenced by the filing of a bankruptcy petition. An individual, a partnership or a corporation (including a qualifying business trust) may file a petition. A joint petition is the filing of a single bankruptcy petition by an individual and the individual's spouse. Only people who are married on the date they file the bankruptcy case may file a joint petition. Although married debtors may file a joint petition, they are not required to do so.

Do I have to include all of my creditors and how do I find their information?

The Bankruptcy Rules require a debtor to file with the bankruptcy petition schedules containing the information of each claimant that holds a liability against the debtor. A claim means any party who has a right to payment from you. You must include anyone to whom you owe money, even relatives, family and friends. The intentional failure to include all of your creditors can result in the dismissal of your bankruptcy case for filing a fraudulent bankruptcy petition. In order to ensure that you properly include all of your creditors, you should first thoroughly search all of your financial records. You may also want to consider contacting one of the three national credit reporting agencies to obtain a copy of your credit report. The agencies and their contact information are: Equifax (877) 322-8228 or www.equifax.com

; Experian (888) 397-3742 or www.experian.com

; or, Trans Union (800) 888-4213 or www.transunion.com

. It is important that you obtain a credit report that includes your creditors' addresses, so that you can give them proper notice of your bankruptcy filing.

What happens if a creditor continues to try and collect after I filed for bankruptcy?

If the automatic stay applies to a debtor's case and a creditor continues collection actions against the debtor (which includes collection calls), that creditor is violating the automatic stay. A debtor may request from the court an injunction or monetary sanctions against the creditor.

 Tully Rinckey PLLC's bankruptcy lawyers can represent debtors and creditors throughout Central New York, including Syracuse, Cicero, North Syracuse, Manlius, Liverpool, East Syracuse, Cazenovia, Baldwinsville, and DeWitt. Call today to schedule an initial consultation with one of our bankruptcy attorneys at 315-492-4700 or e-mail info@1888law4life.com

. [Click here](#)

to view a video about our consultation process.

Our office is minutes away from Destiny USA, formerly the Carousel Mall, and several courthouses. Located in Franklin Square, near exits for I-81 and I-690, our office is easy to get to and offers plenty of nearby parking.

If your legal matter is urgent, call 518-727-3593 to speak to an attorney 24 hours a day, seven days a week. The firm is responsive to the needs of current and prospective clients. We will respond to phone calls within normal business hours and e-mails within hours on the same business day. The quickest way to get a hold of us is by calling. During normal business hours, we have a client relations team that can put potential clients in touch with the attorney whom they need. If you call or e-mail us after hours, you should expect to hear from our office by the next business day.