

ALEXANDER HILTON & ASSOCIATES
6440 Avondale Drive, Suite 201
Oklahoma City, OK 73116
T 405-418-2116 F 405-260-9711
bklawokc@gmail.com

BANKRUPTCY BASICS

Thank you for contacting our law firm for Bankruptcy information.

We understand what you have been through. We know how difficult the decision to file Bankruptcy is. Bankruptcy is the oldest, most thoroughly established, widely recognized, *most effective legal method* of throwing off of your creditors - forever. Bankruptcy is a constitutional right. It can be a valuable learning experience through which you gain critical financial decisionmaking skills. It can help you to decide how you want to live, who you want to give your hard earned money to, and the importance of managing your financial affairs thoughtfully and prudently.

Our law firm focus is Bankruptcy *only*. We are defined as a *Debt Relief Agency*. We represent people who cannot repay their creditors even though they want to.

When you file a successful Bankruptcy, the U.S. Bankruptcy Court issues a Federal Court Order called the "Discharge Order". This order "discharges" you personally of any legal obligation to repay your debts. The order, which is mailed to your listed creditors, prohibits them from ever contacting you or anyone you know again. It legally prohibits them from ever again making any attempt whatsoever to collect money from you. These protections last for the rest of your life.

Bankruptcy law is Federal Law, found in Title 11, United States Code, "The Bankruptcy Code". Bankruptcy cases are filed in United States Courts, not in state courts. Federal Court Authority supercedes State Court authority. Bankruptcy Laws are powerful Laws. They cancel your debt obligations and any lawsuits or judgments arising from unpaid debt obligations.

Bankruptcy law *protects everyday Americans* from creditors who they cannot repay. Bankruptcy Laws prevent economic enslavement by predatory lenders, protect your inalienable God-Given rights to be left alone, to keep and enjoy the fruits of your own labor and to pursue happiness without harassment.

Bankruptcy Protections AUTOMATIC STAY

The moment a Bankruptcy case is filed, the Bankruptcy court issues an order known as the "Automatic Stay" Order. The order is mailed by the court to all of your listed creditors, warning them that they must immediately cease and desist from all collections activities whatsoever, including lawsuits, garnishments, foreclosures, repossessions, judgments, phone calls and harassment, etc..

Creditors *may not*: contact you or anyone you know by mail or phone, sue you, continue any lawsuit against you, invoice or bill you, garnish your wages or take any collection actions

whatsoever. When the court issues the order of Discharge, your debts and any Lawsuits against you are no longer enforceable against you. If any creditor fails to abide by the Automatic Stay, penalties are severe. Penalties include: Fines for contempt of a Federal Court Order, *Punitive Damage Awards (to make a public example of a creditor for engaging in reprehensible collection behavior)*, plus Court Costs and Attorneys Fees. THEREFORE, IF, AFTER RECEIVING NOTICE OF YOUR BANKRUPTCY, A CREDITOR EVER CONTACTS YOU, YOU CAN SUE THEM FOR THE DAMAGES MENTIONED ABOVE.

As long-time Bankruptcy Attorneys, we understand predatory lending practices, the rampant lack of ethics in collection practices and how these experiences have affected you and your loved ones psychologically, emotionally, spiritually and, unfortunately, *physically too*.

Bankruptcy is a difficult decision for anyone. However, it is often the very best alternative if you cannot realistically repay your debts without creating financial hardship for yourself and/or your dependents. Over one million Americans file each year with an average family size of 3.5 people. Chapter 7 can be filed every 8 years. All totalled, Approximately 40,000,000 Americans and their family members come under the protection of the United States Bankruptcy Courts during any 8 year period. *You are not alone*.

THE 2 TYPES OF CONSUMER BANKRUPTCY:

I

Chapter 7

**Straight Bankruptcy – Discharge in 90 days - non exempt assets can be liquidated.
Creditors generally get nothing - Who qualifies?**

Chapter 7 is a straight discharge of indebtedness in 90 days. Debtors generally keep all of their property such as homes and cars because there are bankruptcy “exemptions” which protect these. However, land which is not your home can be liquidated UNLESS the land or rental property has a mortgage on it, such that there is little or no equity in it, then it has no liquidation value and you would keep it also. Also, you can keep 1 car (2 cars for married couples).

However, if you have more cars, you may be able to “exempt” the additional cars and keep them too. You are allowed a \$7500 equity exemption on vehicle (single filer) and 2 \$7500 vehicle exemptions for married couples filing with 2 cars. [a total \$15,000 equity expemptions] for married couples.

For example, lets say you and your wife own 4 cars. The first 2 are worth \$10,000 each. The 3rd car is worth \$7500 and the 4th car is worth \$3500. However, both of the \$10,000 cars (cars 1 and 2) have loans against them *and* the lenders have filed liens. You owe \$9800 on car 1 and you owe \$12,000 on car 2. After paying off the loan, there is only \$200 of equity left in Car 1 and \$0 equity in car 2. Therefore, you don't need the exemptions on cars 1 and 2. You could place the exemptions cars 3 and 4 and keep all 4 cars!

a) **“Means Test”** Do you qualify for Chapter 7?

Those persons automatically qualify for Chapter 7 whose annual income is at or below the State median income level for their household size (calculated as average monthly gross income average for the 6 months immediately prior to filing).

However, although your income is above that amount, even substantially above state median, you may still qualify for a Chapter 7 straight discharge. A *skilled* Bankruptcy attorney can rebut the presumption of disqualification by showing the court that hardship exists, that necessary pay deductions and expenses reduce disposable income, therefore qualifying someone who ordinarily might not qualify).

b) Person must wait 8 years *from the filing date* of a previous Chapter 7 Bankruptcy case in which a discharge was granted by the court before re-filing.

Chapter 13 Debt Adjustment

For persons with income.

Court protections: (automatic stay against all collections) applies for as long as the case is open.

Debts are paid off gradually over 3-5 years at a reduced amount [some debts can be reduced to 0%]. The percentage to be repaid is based upon several factors: a) annual income; b) "*disposable monthly income after expenses and*, c) whether you choose to keep or to relinquish assets (house & vehicles). Once your payments are completed, the court discharges remaining debts entirely. 1. ONLY an experienced Chapter 13 Bankruptcy Attorney can adequately advise you on Chapter 13 law and procedure.

1. There is no waiting period to file a Chapter 13 case like there is in Chapter 7 cases.
- 2.

Chapter 7

Cancels Debt repayment obligations legally, permanently and any Lawsuits arising therefrom.

Cancels Judgments (no matter how old or how large)

Cancels Garnishments

Cancels Creditor Calls, bills & collection Letters *Immediately and permanently*.

Allows you to keep your car(s) if you want to

Allows you to keep your house if you want to (and other land depending on equity value).

Allows you to keep 100% of your qualified retirement savings (401K, IRA, Etc.)

Debts which are Excepted from Discharge:

- 1) Loans for educational purposes;
- 2) Child Support and alimony;
- 3) Criminal Fines;
- 4) Restitution for damages caused to others while intoxicated;
- 5) Income taxes owed for which assessment dates were less than 3 years before the bankruptcy filing

date. [Taxes are dischargeable if they were assessed more than 3 years before Bankruptcy filing date].

EXEMPTIONS: In the vast majority of Chapter 7 cases, people filing date Bankruptcy keep their home, car(s), retirement savings, wedding jewelry, household goods, etc. These are EXEMPT from liquidation.

However, certain other property which you own may not be exempt. For example, if your name is on the title or deed to boats, ski-doo's, RV's, motorcycles, real estate other than your home, a portion of tax refunds received *while* you are in bankruptcy, these may be taken from you by the court trustee and auctioned to repay creditors fairly for their losses.

CHAPTER 13

Cancels Lawsuits Immediately

Cancels Foreclosures Immediately

Cancels Auto Repossession Orders Immediately

Cancels Judgments (no matter how old or how large)

Cancels Garnishments Immediately

Cancels Creditor Calls & Demand Letters Immediately

Allows you to keep your cars even if you are way behind on payments

Allows you to keep your house even if you are way behind on payments

Allows you to keep more than 2 cars

Allows you to keep land and investment properties

Allows you to keep 100% of your qualified retirement savings (401K, Etc.)

Allows you to repay taxes, student loans, back child support over time.

Under Chapter 13 a debtor files a "Chapter 13 **plan**". The plan shows how the debts will be paid over 3-5 years from future earnings. Whether a debtor must file a three or five year plan depends upon the means test calculation. The debtor's disposable income (current monthly income less amounts reasonably necessary for the maintenance or support of the debtor and dependents of the debtor) is paid monthly to a Chapter 13 trustee who acts as a disbursing agent and pays the money to creditors under a Chapter 13 plan once the plan is confirmed by the court. The trustee pays your mortgage, car payments and all your debts at a reduced rate [except utilities, gas, groceries, etc]. Once all payments under a Chapter 13 plan have been paid, the debtor receives a discharge of all unpaid balances. Any secured assets paid off during the plan are owned free and clear and no debt remains.

Will your credit score suffer? NO. Most clients' credit scores are very low when they reach us. Scores usually *improve* within the 15 months of filing by paying bills on time. You can contact www.720.com if you want to have your credit repaired after bankruptcy. Will you be able to acquire credit afterward? YES. You are a more attractive lending candidate without debt than you are with multiple unpaid debts, bankruptcy or no bankruptcy. You will learn techniques to help you shop for credit.

HISTORICAL BASIS OF BANKRUPTCY LAWS

THE HOLY BIBLE : Book of Deuteronomy; Chapter 15
CONSTITUTION OF THE UNITED STATES OF AMERICA
TITLE 11, UNITED STATES CODE

1.

Bankruptcy & Debt Forgiveness Laws were originally established by God through Moses. These original laws are found in the Old Testament Book of Deuteronomy, Chapter 15, called "The 7 year release". Believe it or not, certain aspects of Bankruptcy Code today *still use the same language!*

The central idea of Bankruptcy Law is GIVING GENEROUSLY, that enslavement God's children is fundamentally immoral. It is wrong to criminalize our brothers and sisters who have fallen on hard times *through no fault of their own*. We presume that if they had the money they would pay. If they don't have money and can't get it honestly, they can't pay. Therefore, God says Forgive them, take your losses and move on. Creditors get tax write-offs on their losses. It is only through the grace of God that any man has food and shelter. From dust we came and to dust we shall return each and everyone. In 1781 these ideas were enumerated in the United States Constitution to protect colonists from the laws of British Government. The Federal Court System was created and given Jurisdiction "Over All Bankruptcy Cases".

Thomas Jefferson filed Bankruptcy when his plantation in Virginia failed.

Abraham Lincoln filed bankruptcy twice.

(So did the King of England!)

If you have reached the point where repayment of debt is unrealistic or impossible without causing undue financial burden on yourself or your dependents, Bankruptcy is the correct, legal and moral decision to make. It provides finality to your creditors. It allows you to be free and to start over financially. It restores you from a state of slavery to creditors. It restores your inalienable rights to liberty and the pursuit of happiness, which include the rights to be left alone and to enjoy the fruits of your own labor.

WHICH CHAPTER IS RIGHT FOR YOU?

To file a Chapter 7, the filer must qualify under the "means test". Which precludes Chapter 7 filing by anyone whose monthly income multiplied by 12 is equal to or greater than the annual median family income in the debtor's home state for the same size family. To determine the median family income for each state, go to www.usdoj.gov/ust/eo/bapcpa/meanstesting.htm.

Who can be a debtor under the Bankruptcy Code?

A person (which by definition includes an individual, partnership and

corporation) that resides in the United States or has a residence, a place of business or property in the United States may be a debtor under the Bankruptcy Code.

Who can file under Chapter 7 of the Bankruptcy Code?

An individual, partnership or corporation can file under Chapter 7 (liquidation) unless it is a railroad, an insurance company or a certain type of banking institution.

Who can file under Chapter 13 of the Bankruptcy Code?

Only an individual (or an individual and spouse) with regular income who owes on the date of the filing of the bankruptcy petition unsecured debts of less than \$360,475 and secured debts of less than \$1,081,400.¹³ A partnership, corporation or limited liability company cannot file under Chapter 13.

How does a Chapter 7 bankruptcy differ from a Chapter 13 bankruptcy?

Under Chapter 7, a debtor files schedules of assets and liabilities, and a statement of financial affairs. A trustee is appointed to administer assets that are neither exempt from creditors nor collateral for a debt. **Usually, there are no assets available which are not exempt.** In the few cases in which there are such assets,

(extra autos, investments, real estate) the trustee can sell the property and distribute the money to creditors under the priorities established under the Bankruptcy Code. The Debtor has the right to buy the property back at auction (usually and steeply discounted price). A debtor receives a discharge approximately 90 days after filing bankruptcy if the debtor has not done something to forfeit the right to a discharge (i.e. failed to disclose all assets).

What property may an individual debtor claim as exempt?

Every state allows a debtor to claim property as exempt from creditors. The purpose of exemptions is to allow every person to retain certain basic necessities free from creditors, (usually, your house, cars, and personal property). What property may be claimed as exempt differs from state to state. If the applicable state law requires that the debtor be a resident of that state to be entitled to that state's exemptions, then the federal exemptions apply under Section 522(d) of the Bankruptcy Code. Exemption analysis and property protection is best left to an experienced Bankruptcy Attorney.

What filing fees must be paid to the bankruptcy court to file?

The debtor must pay a filing fee to the bankruptcy court clerk at the time of filing their bankruptcy case. Most Debtors pay their attorneys and their attorneys pay the fees to the court when filing their client's cases.

The filing fee for a Chapter 7 case is \$335

The filing fee for a Chapter 13 is \$310
[as of November 2017]

What is the Automatic Stay? **[11 USC 362]**

The automatic stay is an injunction that automatically goes into effect when a bankruptcy petition is filed. The automatic stay enjoins creditors from taking certain actions to collect debt that was incurred prior to the bankruptcy petition. In Chapters 12 and 13, a co-debtor stay also goes into effect to protect third parties who are liable with an individual debtor on a consumer debt. The automatic stay terminates when a bankruptcy case is closed but is replaced by the discharge in bankruptcy. However, creditors can seek relief from the stay in certain circumstances from the bankruptcy court.

What Debts Can BE Discharged?

A debtor's right to a discharge may be forfeited if the debtor makes a false oath, withholds information or property from the trustee, fails to satisfactorily explain the loss of assets, or fails to obey an order of the court. Even though a debtor may be entitled to a discharge generally, certain debt **may not** be discharged, including:

- **STUDENT LOANS**

Taxes incurred within three years before filing bankruptcy

Debt incurred by fraud

Debt that is not scheduled in the bankruptcy (unless the creditor otherwise learned of the bankruptcy) in time to enable the creditor to file a proof of claim

Debt incurred through the willful and malicious conduct of the debtor

Debt incurred while the debtor was acting in a fiduciary capacity, by embezzlement, or by larceny

Debt owed to a former spouse under a divorce decree (regardless of whether the debt is support or property division), except in a case under Chapter 13, a property division obligation may be discharged

A fine, penalty or forfeiture owed to a government unit

Liabilities incurred while operating a motor vehicle, vessel or aircraft while intoxicated

Restitution obligation issued under Title 18 of the U.S. Code

How often can a debtor receive a discharge?

A Chapter 7 debtor will not be granted a discharge from dischargeable debts if the debtor received a Chapter 7 discharge in a case filed within eight years before the date of the filing of the current Chapter 7 petition.

A Chapter 7 debtor will not be granted a discharge from dischargeable debts if granted a Chapter 13 discharge in a case filed within six years before the date of the filing of this Chapter 7 petition unless the payments under the Chapter 13 plan totaled at least:

1. 100 percent of the allowed unsecured claims; or
2. 70 percent of the allowed unsecured claims and the Chapter 13 plan was proposed by the debtor in good faith and was the debtor's best effort.

A Chapter 13 debtor may not receive a discharge if the debtor received a discharge in a case filed under Chapters 7, 11 or 12 within four years prior to the filing of the petition in the current case or within two years of filing the current petition if the debtor received a discharge in a Chapter 13 case.

After receiving a discharge in a Chapter 7 case, A Debtor may file a Chapter 13 without a waiting period. However, that debtor must have at least a 4- year repayment plan in the Chapter 13 case because he may not receive a Chapter 13 discharge until at least 4 years after the Chapter 7 Discharge date.

What factors should be considered when selecting between filing Chapter 7 and Chapter 13 bankruptcy?

The factors include:

Whether the debtor is eligible under each chapter

Whether the debtor could discharge debt under Chapter 7 that may not be discharged under Chapter 13, or visa versa.

Whether the debtor has sufficient disposable income to fund a Chapter 13 plan.

Whether the debtor desires to keep non-exempt property through a Chapter 13 repayment plan that would otherwise be forfeited to a trustee in a Chapter 7 bankruptcy

Whether the debtor owes debt on assets he wants to keep and could be paid over the term of the plan (i.e. mortgage arrears, back car payments,) or those he must eventually pay anyway or suffer unavoidable levy or garnishment , such as: taxes, child support and alimony)

Whether the court would require a debtor to file Chapter 13 anyway based upon income being over the means test for his household size.