

# PERSONAL BANKRUPTCY: 84 FREQUENTLY ASKED QUESTIONS



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# I. BANKRUPTCY IN GENERAL

## Q. HOW DOES BANKRUPTCY WORK?

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**A. Bankruptcy, depending on the chapter, can either discharge or reorganize your debt.** If you are filing a Chapter 7 bankruptcy, your debts will be discharged. The only debts that normally can't be discharged are student loans, child support/alimony debts, some tax debts and debts related to criminal matters. In Chapter 13, your debts are reorganized by forming a payment plan that will last three to five years. In that period of time, creditors with priority will collect some or all of their debt, with the goal being that you will be out of debt or in a much better financial position at the end of a Chapter 13 case. You will find instant relief by filing a Chapter 7 or 13 as creditors are not allowed to attempt to collect on their debt as soon as the case is filed. As a result, you will not have to worry about receiving harassing calls from your creditors as they attempt to collect a debt while you are in bankruptcy.

## Q. HOW WILL I KNOW WHEN I NEED TO FILE BANKRUPTCY?

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**A. There are three common situations in which people decide to file for bankruptcy.**

1. A creditor has taken action to collect a debt that threatens the individual's livelihood. Some examples include wage garnishments, vehicle repossessions, home foreclosures, or frozen bank accounts.
2. A traumatic event has happened that has dramatically reduced the person's income or increased the person's debts and bankruptcy is the best option to pick up the pieces. Some examples include divorce, long term unemployment, serious medical issues, or death of a family member.
3. The person has become overwhelmed with debt and has no reasonable prospect of improving his or her credit and debt situation other than filing a bankruptcy.

## Q. WHAT COMMON MISTAKES DO DEBTORS MAKE BEFORE FILING FOR BANKRUPTCY?

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**A. Some common mistakes made by debtors before filing bankruptcy include:**

Using their credit cards and cash advances to purchase items in the three months before filing bankruptcy. This will backfire. Although credit card debt is normally dischargeable, this debt may not be.

Selling off an asset for less than market value or transferring assets out of their name to avoid the property going to the bankruptcy estate. All sales and transfers of property must be reported to the court in your bankruptcy petition and the trustee will ask about property transfers at the creditor's meeting as well. The trustee may be able to void these transfers and then sell the property for your creditors' benefit.

Getting married right before filing a bankruptcy. A marriage immediately before bankruptcy can have unintended consequences which might include the debtor not being able to file the same chapter anymore. Your spouse may not be on your debts, but he or she can affect your qualifications for filing Chapter 7, the shortest and simplest form of bankruptcy. It is best to consult an attorney if you plan on getting married right before filing a bankruptcy.

Many debtors wait too long to file bankruptcy. As a result, their situation changes and it affects their ability to file or maybe their ability to protect assets in the same way. Most attorneys who practice bankruptcy will tell you that the procrastinating debtor will end up in a worse situation as a result of procrastination. Bankruptcy is a fluid area of law and a case's facts change at the worst times for the debtor. If you know you need to file a bankruptcy and qualify at that moment, waiting might weaken your case. While some debtors' situations require patience, the majority of cases are stronger when they first meet the requirements of a bankruptcy.

## Q. HOW OFTEN CAN I FILE FOR BANKRUPTCY?

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**A. You can file Chapter 7 every eight years with the time starting at discharge (the end of your case) as opposed to the filing date.** You can file a Chapter 13 four years after receiving a discharge from a Chapter 7. If you previously received a Chapter 13 discharge, you cannot get another Chapter 13 discharge within two years. If you filed a Chapter 13 and want to file a Chapter 7, the wait time is six years from the Chapter 13 discharge.

## Q. DO YOU HAVE TO HAVE A CERTAIN AMOUNT OF DEBT TO FILE?

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**A. In a Chapter 7, you do not need a certain minimum amount of debt to file a bankruptcy.** In a Chapter 13, there are debt ceilings for unsecured and secured debt that you must not exceed.

## Q. HOW LONG DOES A BANKRUPTCY CASE TAKE?

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**A. A Chapter 7 case normally takes three to four months from filing to discharge.** Cases can stay open longer if the bankruptcy estate recovers any assets, but the discharge will still arrive around the same period. The average for the length of a Chapter 13 bankruptcy is three to five years.

## Q. CAN I KEEP USING MY CREDIT CARDS IF I'M PLANNING TO FILE FOR BANKRUPTCY?

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**A. You should not continue to use your credit cards once you make the decision to file a bankruptcy.** The court has implemented a 90-day presumption of abuse on all credit card debt, which means any charges made on your credit card 90 days prior to filing are considered fraudulent by the court and those particular debts may not be discharged.

## Q. I'VE HEARD THAT I HAVE TO TAKE AN APPROVED CREDIT COUNSELING COURSE BEFORE I CAN FILE BANKRUPTCY. HOW DO I FIND ONE? HOW LONG DOES IT LAST? DO I HAVE TO FOLLOW THE COUNSELOR'S RECOMMENDATIONS?

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**A. The requirement of credit counseling and debtor education classes is not difficult to fulfill.** Every person who files bankruptcy is required to take two classes. The first class, to be taken prior to filing, is called Credit Counseling. It focuses on your personal debt situation and gives you tips on how to balance your budget going forward. It is normally an hour long and can be taken online. The second class, which can also be taken online, is called Debtor Education and it is a little more in depth. The class normally lasts two hours and attempts to educate you on debt management

and how to avoid filing bankruptcy in the future. At the end of each course, you will be given a certificate that must be filed with the court to show that you have taken the required classes.

If you retain an attorney, your attorney should be able to assist you in finding an approved class. If you are filing on your own, you should have no trouble searching online for approved classes.

Class materials will not be looked at by attorneys or the court. You are not required to follow any recommendations, but you should be open to any tips and suggestions the counselor or class may have for you.

## Q. CAN CREDITORS OBJECT TO MY FILING FOR BANKRUPTCY?

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**A. Yes, creditors can object to your bankruptcy filing.** Their objections will normally be to oppose their debt being discharged by the bankruptcy court. They would have to prove that your debt is non-dischargeable or that you engaged in a fraudulent act that makes the debt unable to be discharged.

## Q. WILL I LOSE ALL MY PROPERTY IF I GO BANKRUPT?

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**A. All states have bankruptcy exemptions that allow you to protect all or a portion of your property.** If your exemptions do not cover the entire value of the assets you are claiming and you file under Chapter 7, you could lose whatever you could not exempt or you would have to pay the non-exempt value back to the bankruptcy estate. If you file under Chapter 13, you get to keep all your property, but your repayment plan must pay your non-priority unsecured creditors the value of your non-exempt assets (or, in other words, as much as they would have received if you had filed under Chapter 7).

## Q. DO I NEED A LAWYER TO FILE FOR BANKRUPTCY?

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**A. You are not required to retain an attorney to file a bankruptcy.** Many filers file “pro se” or on their own. A percentage of these filers will have issues that they may not be prepared for and they might end up retaining an attorney or wishing that they had. Bankruptcy can be a complicated process that makes it very hard for a non-attorney to navigate through without trouble or confusion. Some cases are simple and an attorney may not be needed to the same degree. As a general rule, you will probably benefit from having an attorney if you are going to file under Chapter 13 or if you have a complicated Chapter 7 case (e.g., you must complete the Means Test or you have significant non-exempt property or one or more of your creditors allege fraud). The best option is to consult with an attorney and see what type of case you have.

## Q. ISN'T A “CREDIT REPAIR” COMPANY A BETTER OPTION THAN BANKRUPTCY?

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**A. Some situations might call for a credit repair or consolidation choice as opposed to a bankruptcy.** If you make too much money to file a Chapter 7 or feel like you could pay off your debt without having to file bankruptcy, there are some good companies out there to help you. However, make sure you do your research before agreeing to a contract with certain companies as many debtors have found themselves worse off than they were prior to retaining a credit repair or management company. If you have awful credit and debt that you can't pay off in a reasonable amount of time, there may not be any better options than the fresh start that a bankruptcy provides.

## II. STOPPING CREDITOR HARASSMENT

### Q. HOW DOES BANKRUPTCY STOP MY CREDITORS FROM HARASSING ME?

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**A. Filing a bankruptcy is the best way to stop creditor harassment.** As soon as your case is filed, creditors are not allowed to contact you for the duration of the bankruptcy unless they receive permission from the court. If you are in the process of filing a bankruptcy and have an attorney, then you can tell any creditors who are contacting you that you are going to file and give them your attorney's information so they can verify that you are indeed going to file bankruptcy soon.

If you are not filing bankruptcy and can no longer stand the harassing phone calls from the creditors, you can write creditors a letter asking them to no longer contact you unless it is through the mail only. They are required, upon receiving written notification, to stop calling immediately.

### Q. HOW WILL MY CREDITORS KNOW THAT I HAVE FILED BANKRUPTCY?

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**A. Your creditors will know that you filed bankruptcy because you are required to list all creditors, along with their contact information, on your bankruptcy petition.** There is a schedule in the petition specifically for listing creditors. If you forgot to list any the petition, you will want to amend your petition and add the missing creditors to ensure they are aware of your filing. All creditors who are listed on a bankruptcy petition receive a notice from the court informing them that the debtor who owes them money has filed bankruptcy.

### Q.: CAN MY CREDITORS CONTINUE TO CONTACT ME AFTER I FILE BANKRUPTCY?

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**A. It depends on the situation.** Some secured creditors, for debts related to home and vehicle loans, will want to know if you intend to continue paying on your loan or if you are going to surrender the collateral instead. If you've retained an attorney, your attorney will be contacted about whether you plan to keep the home or vehicle. The majority of creditors with unsecured loans, such as credit card debt and medical bills, are not allowed to contact you again regarding that specific debt once you file bankruptcy.

### Q. HOW LONG AFTER I FILE BANKRUPTCY WILL MY CREDITORS STOP CALLING ME?

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**A. Your creditors should stop contacting you almost immediately upon filing.** Most of them will receive notice electronically, so a 24 to 48 hour window should be the most given to creditors to update their records and cease the phone calls. If you receive a call or letter from a creditor asking for money, report that to your attorney immediately as it is a violation of the automatic stay imposed by the court upon filing bankruptcy.

## Q. ARE ALL CREDITORS AND DEBTS SUBJECT TO THE AUTOMATIC STAY, OR ARE THERE EXCEPTIONS?

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**A. There are very few exceptions to the automatic stay.** Collection of child support and alimony can continue. The IRS can demand payment of taxes, but can't seize property or income or place a lien on property. Money can still be withheld from a paycheck to repay a loan from an ERISA retirement plan.

## Q. WHAT CAN I DO IF A CREDITOR CONTINUES TO MAKE DEMANDS FOR PAYMENT OF THEIR DEBT EVEN AFTER I HAVE FILED BANKRUPTCY?

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**A. If you have an attorney, notify him or her immediately and your attorney will resolve the situation.** You can try warning the creditors once and making sure they have notice of the bankruptcy filing. If the creditor continues to harass you, you can sue the creditor for violating the automatic stay.

## Q. HOW DOES THE AUTOMATIC STAY STOP FORECLOSURES AND REPOSSESSIONS?

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**A. If you file a bankruptcy prior to the sale date in a foreclosure or before the creditor has repossessed your vehicle when you are behind in payment, the automatic stay keeps you in your home or vehicle for the duration of the bankruptcy or until the creditor files a motion to lift the automatic stay and the court grants the motion.** Unless a motion to lift the automatic stay is filed, you will be able to maintain possession of your property and work on settling with the creditor so you can keep the debt. The foreclosure or repossession situation will freeze immediately upon filing and the only ways a creditor can proceed with the foreclosure or repossession will be to wait until your case closes or file a motion with the bankruptcy court and get it to lift the stay.

## Q. HOW DOES THE AUTOMATIC STAY STOP EVICTIONS?

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**A. The automatic stay will freeze the eviction process and buy you time in your home as long as you file before you are fully evicted by the landlord.** If you have received an eviction notice, but have yet to go to court or a court hasn't ruled on your issue yet, you can still file bankruptcy and buy some time to either settle with the landlord or get your affairs in order so you are able to move. It will only buy you so much time though. The bankruptcy court will hear motions to lift the automatic stay in eviction situations much quicker than in the normal process. Once the automatic stay is lifted, the eviction process can resume. If the landlord has already obtained a judgment of possession or is trying to evict you because of drug use or endangering the property, the automatic stay will not help you.

## Q. HOW LONG DOES THE AUTOMATIC STAY LAST?

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**A. The automatic stay lasts for the entire duration of an open bankruptcy case unless a creditor has filed for a motion to lift the automatic stay and that motion has been granted by the court.**



## Q. WHAT CREDITORS CAN GET THE STAY LIFTED AND HOW DO THEY DO SO?

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**A. Any creditor with a secured debt can file a motion with the bankruptcy court to have the automatic stay lifted.** If you own a home or vehicle and are not making payments, creditors have the right to secure their collateral if they are not being paid. Lifting the automatic stay allows them to do that. Outside of a situation like that, most creditors would not be able to have the stay lifted unless they were collecting on a fraudulent debt or a debt that was unable to be discharged.

Most mortgage companies will file this motion if they are in the process of foreclosing on your home. If you are in the process of eviction, landlords can file a motion and have their issue heard very quickly. The automatic stay is not impenetrable and can be lifted under the right circumstances.

## III. CHAPTER 7 BANKRUPTCY

### Q. WHAT IS CHAPTER 7?

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**A. Chapter 7 bankruptcy is a process that when completed will discharge (eliminate) all of your debts that are eligible for discharge.** It is the most common type of bankruptcy relief. You are telling the Court that you are unable to pay your debts and need assistance from the court. Chapter 7 is normally a quick process and eliminates the vast majority of debts including: credit cards, medical bills, repossessions, foreclosures, utility bills, cash advances and loans.

Most student loans are not dischargeable and some tax debts might not be as well. You also cannot discharge alimony and child support payments. You are required to list any assets you own on your bankruptcy petition. Every state has different bankruptcy exemptions which serve to protect your assets from creditors. On filing your petition and attending the meeting of creditors, your case will close and your debts will be discharged.

### Q. WHAT ARE THE MOST COMMON REASONS FOR FILING CHAPTER 7?

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**A. Some of the most common reasons for filing Chapter 7 include:** loss of income, unemployment, medical debt, divorce, foreclosure, and issues with spending.

### Q. WHO CAN QUALIFY FOR CHAPTER 7?

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**A. The majority of people who qualify for Chapter 7 are debtors whose household income is at or below the median income level of their state.** If your income is higher than the median for your state, you will have to go through the Means Test. The Means Test will determine if you can qualify for Chapter 7 or need to file a Chapter 13. The Means Test can be complicated and an attorney's help might be needed in that situation.

Another way to qualify is if more than half of your debt is considered business debt. You can avoid the means test if that situation arises.

## Q. WHAT IS THE MEANS TEST?

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**A. The Means Test was designed by Congress to prevent people who are capable of repaying at least a portion of their debts from filing under Chapter 7.** You or your attorney will complete a form called Statement of Current Monthly Income and Means Test Calculation, which will analyze your income and permitted deductions from your income to determine what can be paid to creditors.

This form examines your average income from all sources for the last six months. If both you and your spouse are filing for bankruptcy, both of your incomes are counted. If only you are filing, your spouse's income will be included subject to some setoffs.

## Q. WHAT DOCUMENTS DO I NEED FOR A CHAPTER 7 BANKRUPTCY?

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**A. If you retain an attorney, your attorney will let you know what is required.** Most courts require proof of income (pay stubs) for the last three months prior to filing. Your tax returns for the last three years are usually required as well. The majority of trustees will also want to see your bank statements for the last three months prior to filing. If you own a car, you are normally required to show your title and proof of insurance. Divorce decrees are normally required if you are recently divorced. You will also need to bring your social security card and driver's license to the creditor's meeting.

## Q. WHAT HAPPENS AFTER I FILE CHAPTER 7 BANKRUPTCY?

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**A. An automatic stay issues, which is a court order forbidding your creditors from contacting you.** This means the collection calls and letters will immediately cease.

This relief comes with a pitfall. If you want to stay current on a particular debt, say a car loan, you will no longer receive a monthly statement reminding you to make the payment. You will need to set up your own reminder system for each debt you want to continue timely paying.

You will get notice of your 341 meeting, which should be scheduled 4 to 6 weeks after you file. Upon completing the process, your debts will be discharged and you will have a fresh start.

## Q. WHAT ARE THE KEY EVENTS IN A CHAPTER 7 BANKRUPTCY?

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**A. Some key events in a Chapter 7 include:** the date of filing, the 341 meeting of creditors and the discharge date. The filing date is important because the bankruptcy process doesn't start until that point and no debts can be discharged that are accrued after that date. The meeting of creditors is the only time you will normally be required to attend a hearing and is where creditors have a chance to confront you (although that is a rare occurrence). The discharge date is important because your creditors cannot object after that date to the discharge of the debt. It is also important because you will receive an order of discharge to keep as a record.

## Q. HOW LONG DOES A CHAPTER 7 BANKRUPTCY TAKE?

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**A. The Chapter 7 process normally takes 3 to 4 months to be completed.** If you are required to make payments to the court, the process can be significantly longer, but your discharge will be entered at the normal time.

## Q. WHAT DOES THE CHAPTER 7 TRUSTEE DO?

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**A. The trustee is an official appointed by the court to oversee the bankruptcy case.** The trustee's job is to represent the interests of the creditors. The trustee runs the 341 Meeting of Creditors. If you have any non-exempt assets, the trustee collects them and sells them for the benefit of your creditors.

## Q. WILL I NEED TO GO TO COURT?

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**A. Usually you will not have to appear in a courtroom before a bankruptcy judge.** However, you will have to attend the 341 Meeting of Creditors, which is typically held in the trustee's offices or a conference room.

## Q. WHAT SHOULD I EXPECT AT THE MEETING OF CREDITORS?

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**A. The 341 Meeting of Creditors is a key event in a Chapter 7 bankruptcy.** You are required to appear at the meeting before the trustee appointed by the court. Your creditors are given notice of the meeting and may attend, although seldom do.

The creditors' meeting typically occurs about a month after you file. The trustee will place you under oath and ask you some questions. The atmosphere is less formal than a trial. The judge is not present and no one will cross-examine you.

Most debtors are only in front of the trustee for five to ten minutes. Typically, the trustee will ask you whether the information you provided in your bankruptcy paperwork is correct and whether anything has changed since your filing. The trustee may ask you if you have listed all your property and provided accurate values for each item. The trustee may ask how you arrived at the values you listed for your assets. The trustee may also ask you to affirm that you have not transferred money or property improperly to a third party to shield it from creditors.

The trustee will also ask questions designed to discover if you are expecting to receive any money or assets that are property of the bankruptcy estate and could be used to pay creditors. Some examples include: life insurance proceeds, inheritances and money awarded in a recent lawsuit. The trustee will also state a claim for any assets that are not exempt. Most Chapter 7 filers do not have any non-exempt assets. Your attorney should prepare you thoroughly for the meeting so you are ready to answer the trustee's questions.

## Q. WHAT PROBLEMS CAN OCCUR AT THE MEETING?

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**A. The vast majority of meetings go smoothly.** When problems do arise, they usually fall into these categories:

1. Transfers of cash or property to family members or friends within two years before filing. Pre-filing transfers for less than the property is worth are often treated as fraudulent. The trustee can seize the property and sell it to pay creditors.
2. Large payments to one creditor near in time to the petition filing. The trustee does not want one creditor favored over another, and so may redistribute large payments made prior to filing. If you borrowed money from family and have made loan payments, the trustee can force the recipient to give up the payments. The money is then distributed to creditors.
3. Loan application values differ. If you or a loan broker pumped up asset values on a loan application, a creditor could ask you some embarrassing and troublesome questions. Blaming the loan broker will not get you past the fact that you signed the application.
4. Challenges from the US Trustee regarding Chapter 7 eligibility. The biggest problem will be if the United States Trustee, not to be confused with the Chapter 7 Trustee, shows up and challenges whether you belong in a Chapter 7 case. While your attorney should be aware of a situation like this prior to the meeting, there are cases where you will have to answer numerous questions and provide a large amount of documentation to ensure that you are in the correct chapter.
5. Creditors show up. A creditor may show up to ask additional questions. While it may be harmless in the long run, it can be stressful at that moment to have to answer questions from someone you owe money to.
6. Unprepared debtor. Another common problem that occurs is a debtor not being prepared for being told that he or she owes money for an asset or that the trustee is going to seize an asset. A good attorney will have you prepared for this type of incident.

## Q. WHAT OTHER PROBLEMS CAN OCCUR IN A CHAPTER 7 BANKRUPTCY?

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**A. Other problems that can arise can include:** adversarial proceedings brought by creditors to recover fraudulent debt, trustees seizing property or cases not closing on time because the debtor has not completed the required debtor education course.

Audits occur in a small percentage of bankruptcies. If you have an expensive home but put a low value on your furnishings, the trustee may send an auditor to your home. A random audit may require you to submit bank statements with explanations of large deposits and withdrawals.

A creditor may challenge your discharge if you went on a spending spree prior to filing. Maybe you took an expensive vacation or bought some price personal items. Creditors can challenge these debts.

Occasionally a purchaser of your debt may try to collect post-bankruptcy. Sometimes a lender will refuse to grant a loan unless you can prove that a prior debt was discharged in bankruptcy. Providing a copy of your discharge letter and petition will usually resolve these issues.

## IV. CHAPTER 13 BANKRUPTCY

### Q. WHAT IS CHAPTER 13 BANKRUPTCY?

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**A. Chapter 13 bankruptcy is a plan that allows the debtor to reorganize his or her debt.** Debtors with regular incomes can develop a plan that pays all or a portion of their debts back to the creditors in a defined time frame, which normally is anywhere from three to five years.

### Q. WHAT ARE THE MOST COMMON REASONS FOR CHOOSING CHAPTER 13 BANKRUPTCY?

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**A. The most common reason for most debtors filing Chapter 13 is that they have too much debt and make too much money to file a Chapter 7.** Chapter 7 has an income requirement; there are no such requirements in a Chapter 13 bankruptcy. Another common reason for filing Chapter 13 is to prevent a foreclosure and save your home. Lastly, many debtors file Chapter 13 to be able to keep assets they can't fully protect (assets that are not exempt and could be liquidated to pay creditors) if they filed a Chapter 7.

### Q. WHO QUALIFIES TO FILE FOR CHAPTER 13?

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**A. Any person can file a Chapter 13 as long as her or she has a source of income to fund a repayment plan and debts that are less than a specified amount which is adjusted periodically for inflation.** As of 2016, your unsecured debts must be less than \$383,175 and your secured debts must be less than \$1,149,525.

You must have filed federal and state income tax returns for the four years preceding your bankruptcy.

You must be an individual; business entities cannot file for Chapter 13 (although they can file under Chapter 7 or Chapter 11).

### Q. WHAT DOCUMENTS DO I NEED TO FILE IN A CHAPTER 13 BANKRUPTCY?

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**A. Most debtors will be required to provide bank statements for the previous three to six months, their last three or four tax returns, proof of income from pay stubs for the previous six months and any titles/deeds for property owned.**

### Q. WHAT HAPPENS AFTER I FILE FOR BANKRUPTCY?

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**A. Upon filing the Chapter 13 petition, your creditors are not allowed to collect from you unless authorized in the bankruptcy payment plan or if they receive permission from the bankruptcy court.** You will have to file a payment plan, which the court will confirm. You will immediately be required to begin making monthly payments to the trustee based on the plan. This payment will be required every month for the duration of the bankruptcy.

## Q. WHAT ARE THE KEY EVENTS IN THE CHAPTER 13 BANKRUPTCY PROCESS?

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**A. Some key events in the Chapter 13 bankruptcy process include:** the 341 meeting of creditors, the confirmation plan hearing and any objections a creditor might make to the plan in question. Outside of those situations (and others that could come up in more specific settings), the most important event is ensuring your monthly payment to the court is made on time every month.

## Q. HOW LONG WILL IT TAKE?

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**A. The Chapter 13 process is normally three to five years.** The length of time depends on your income as debtors with family incomes below the median income for their state normally make payments for three years only, while debtors over the median income make payments for five years. There are unique circumstances that can shorten that timeline, but most cases last three to five years.

## Q. WHAT DOES THE CHAPTER 13 TRUSTEE DO?

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**A. The trustee oversees the Chapter 13 case.** You make your monthly payments under your plan to the trustee who disburses the money to the creditors.

## Q. WILL I NEED TO GO TO COURT?

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**A. You will have to attend the 341 meeting of creditors presided over by the trustee.** You will also have to attend a confirmation hearing at which you ask the bankruptcy court to approve your repayment plan. Outside of that, there are certain situations where a debtor will have to attend court, but they are not common.

## Q. WHAT CAN I EXPECT AT THE 341 MEETING OF CREDITORS?

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**A. The meeting is rather informal and lasts about 15 minutes normally.** You will be under oath and are required to attend. No judge will be present. The trustee will review your paperwork, especially your proposed plan. The trustee will want to make sure your plan meets legal requirements and that you have sufficient income to make the payments. The trustee will also want you to confirm that you have filed tax returns for the preceding four years.

## Q. WHAT PROBLEMS CAN ARISE AT THE CREDITORS' MEETING?

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**A. Normally a creditors' meeting in a Chapter 13 bankruptcy proceeds smoothly.** Sometimes creditors attend and raise objections to your plan, especially secured creditors. You or your attorney (if you have one) may decide to negotiate with creditors over the objections. If you reach a compromise, you will need to modify your plan so that the creditors do not raise objections at the confirmation hearing.

## Q. WHAT ARE THE ADVANTAGES OF A CHAPTER 13 FILING?

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**A. Some advantages of a Chapter 13 are:**

- It allows you time to repay creditors so you ensure you can keep all your assets as long as you fulfill the terms of your repayment plan.
- It allows you time to work out a mortgage modification and catch up on any delinquent mortgage payments so you can save your home.
- If you have multiple mortgages and your home is worth less than your first mortgage, you can use Chapter 13 to convert the additional mortgages to unsecured debts which don't have to be repaid in full.
- Some types of secured claims can be modified. For example, if you owe \$12,000 on a car now worth \$9,000, you can reduce the amount owed \$9,000 and pay it off over the life of the plan so long as the car was purchased more than 2-1/2 years before your bankruptcy filing.
- If you have an unincorporated business, you may continue to operate your business but include the business' debts in your Chapter 13 plan.
- Cosigners are protected by your automatic stay.
- It tolls interest on back taxes owed so you can better afford to make those monthly payments.

## Q. WHAT ARE THE DISADVANTAGES OF A CHAPTER 13 FILING?

**A. The biggest disadvantages to a Chapter 13 are that it takes a long time and it costs significantly more money than a Chapter 7 in most situations.**

In addition:

- You must pay a trustee's commission of roughly 10% of the plan disbursements over the three or five-year life of the plan.
- Attorney's fees are higher for Chapter 13 than for Chapter 7.
- For the duration of your payment plan, the bankruptcy court will review your financial life.
- If your income or assets increase during the plan, creditors can seek increased payments.
- If you fail to make a payment, the trustee and creditors can seek to dismiss your case and thus block your discharge.

## Q. HOW DOES A CHAPTER 13 REPAYMENT PLAN WORK?

**A. The court must approve your repayment plan at a plan confirmation hearing and you must make payments on a regular basis to the trustee.** The funds received by the trustee are then dispersed to the creditors. The plan allows for some creditors to be paid less than what they are owed. Most unsecured creditors fall into this category. Secured debts, such as loans for cars and homes, must be paid on a regular basis at the regular amount unless certain situations apply.

## Q. WHAT DEBTS MUST BE REPAYED IN CHAPTER 13?

**A. Priority claims are unsecured debts that must be repaid first in Chapter 13.** Back taxes incurred in the last three years and child support arrearages owed to a child or ex (not a government agency) are the most common priority debts that must be paid in full.

Your Chapter 13 repayment plan must also provide that you will stay current on your secured debts that will last longer than your plan (e.g., mortgage). During the life of the plan you must also pay off any arrearages you owe.

All other secured debt must be paid in full under the plan. Examples are tax liens and car loans.

Your plan must propose payments to your non-priority, unsecured creditors (credit cards, medical bills, lawsuit judgments, etc.) that are at least equal to the value of your nonexempt property. In other words, your creditors must receive at least as much as they would if you had filed under Chapter 7.

If you are incapable of paying these mandatory debts during your plan, you may have to give up some property. Alternatively, you will need to reduce your living expenses.

## Q. CAN CREDITORS OBJECT TO MY REPAYMENT PLAN? WHAT ARE THE MOST COMMON OBJECTIONS?

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**A. Yes, creditors can object to your repayment plan.** The most common objections include:

- Your plan was not proposed in good faith.
- Your plan is not feasible.
- Your plan does not commit all your projected disposable income to paying creditors.
- You do not pay your creditors as much as they would receive in a Chapter 7 liquidation.
- Your plan does not properly treat creditors' claims according to their priority.

Secured creditors might also make minor objections to your plan: your proposed interest rate is too low, the schedule takes too long to pay your arrearage, or, if you are proposing a cram down (a reduction in debt to the value of the property securing it), that the value you assigned the collateral is wrong.

If they object, there will be a hearing where the judge will make the final decision on whether the objection should be sustained or overruled.

## Q. WHAT IS CONSIDERED A REASONABLE EXPENSE DURING THE LIFE OF A REPAYMENT PLAN?

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**A. In determining how much income you have each month to devote to your repayment plan, you are allowed reasonable expenses.** Generally, reasonable expenses include any normal expenses made during daily life that a debtor needs. This can range from grocery bills and pet food costs to car payments and health insurance.

In general luxury items or services are not considered reasonable. For example, gardening services may be considered a luxury and thus not allowed. Loan payments for a luxury car will be reduced to the level of a standard car. Voluntary contributions to a retirement plan are generally not allowed unless you are approaching retirement age.

## Q. WHAT HAPPENS IF I FALL BEHIND IN MAKING MY PLAN PAYMENTS?

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**A. Your case can be dismissed if you fall behind in payments or your case could be converted to a Chapter 7.** The dismissal can happen very fast so it is best to keep up with the payments.



## V. CHOOSING THE BEST CHAPTER FOR YOUR SITUATION

### Q. WHAT ARE THE MAIN DIFFERENCES BETWEEN CHAPTER 7 AND CHAPTER 13?

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**A. There are many differences between Chapter 7 and Chapter 13 bankruptcies.** The biggest difference is that a Chapter 7 acts as a complete discharge of the debtor's debts while Chapter 13 reorganizes the debtor's debts. A large percentage of filers in Chapter 7 don't have to pay any money to the court outside of their court costs and legal fees. Every filer in a Chapter 13 will be required to pay something to the court.

Another big difference between the two chapters is the duration of the case. The vast majority of Chapter 7 bankruptcies are open for three to four months. If a debtor has to pay to keep an asset or surrenders an asset to the court, the case might be open for eighteen months to two years. The standard length of time in a Chapter 13 bankruptcy is three to five years. A payment is made to the court every month of that timeline, unlike in a Chapter 7 asset case where the payment will only be 12 months at most.

A Chapter 13 case is significantly more costly than a Chapter 7. If the debtor retains counsel, the fees paid will be for the duration of the bankruptcy, which will be much higher than a standard Chapter 7. The debtor will have to make monthly payments that cover court fees, attorney fees, a trustee fee and an amount paid to creditors. However, it is much easier to keep property in a Chapter 13 case. Chapter 7 debtors who have assets worth more than their available exemptions will either have to pay for their assets in a short term payment plan or surrender them. Chapter 13 debtors will be able to pay for assets over the duration of the case, making it significantly easier to afford. In addition, homeowners who are trying to save their homes and prevent foreclosure have a much higher success rate in Chapter 13 bankruptcies than they do in Chapter 7 bankruptcies.

Some other notable differences between the two chapters include:

- Chapter 13 cases have more issues in dispute that might involve contested hearings related to debt repayment.
- Chapter 13 keeps debtors from being in full control of their finances until their case is closed.
- Chapter 13 cases are dismissed more frequently than in Chapter 7.
- Interest rates on certain debts are tolled in Chapter 13.
- Chapter 13 offers more alternatives to debtors with bad car loan terms.

### Q. WHO ARE THE BEST CANDIDATES FOR CHAPTER 7?

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**A. There are numerous people who make great candidates for Chapter 7.** The most common candidates have income at or below the median income for the state they are filing in, so that they automatically qualify for Chapter 7. People who have been laid off or out of work for a while are also great candidates as they will have an easier time qualifying. Debtors who are going through a divorce or have recently been divorced make good candidates due to the change in income that normally occurs after a divorce. People who have been through costly medical issues or lost income due to an injury are normally good fits for Chapter 7. Other good candidates include:

- Debtors who have had cars repossessed.

- Debtors in foreclosure or already foreclosed on.
- Debtors currently being sued by creditors or who already have been found liable for the debt by the court.
- Debtors who may not have lost their jobs but have lost income due to a pay cut or taking a different job.
- People in need of financial fresh starts.

## Q. WHO ARE THE BEST CANDIDATES FOR CHAPTER 13?

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**A. The best candidates for a Chapter 13 are people who can afford to be in a Chapter 13.** If they do not qualify for a Chapter 7, then Chapter 13 is their only choice. Homeowners who want to save their homes are always in a better position to do so by filing a Chapter 13. If a debtor owes recent taxes or other taxes not dischargeable by bankruptcy, Chapter 13 will provide a more affordable and less stressful path to settle those debts. Another debtor who is better off in a Chapter 13 is one who will lose assets in a Chapter 7. A Chapter 13 will allow the debtor to pay them off during the timeline of their case, which will be much more affordable than if they attempted to do so in a Chapter 7 bankruptcy.

## Q. CAN I CHANGE FROM ONE CHAPTER OF BANKRUPTCY TO ANOTHER? WHY MIGHT I WANT TO DO SO?

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**A. Yes, many people convert their cases from Chapter 13 to Chapter 7.** Normally, a person might choose this option if he or she can no longer afford the Chapter 13 monthly payment. If that occurs and the person is able to qualify for a Chapter 7, then this will be the best option. These situations can occur for different reasons, but the main one is normally suffering a loss of income during the timeline of the Chapter 13 bankruptcy. Once it becomes impossible to make the payment, the debtor will be better off converting to Chapter 7 and ensuring that the initial filing was not for nothing. Some debtors may have initially filed a Chapter 13 to save their property and something occurs to change their minds later on. If that happens and they qualify for a Chapter 7, it is smarter to convert than stay in a Chapter 13.

A conversion from Chapter 7 to Chapter 13 is usually forced by the court. The most common reason this occurs is that the court finds the debtor does not qualify for Chapter 7 because he or she has too much income. If the debtor was not truthful on his or her petition or attempted to abuse the system, the case could be converted in these situations as well. Occasionally, a debtor converts from Chapter 7 to 13 because the debtor did not realize how much he or she would have to pay to retain non-exempt assets in Chapter 7. If the trustee doesn't object, the conversion should be possible.

## VI. BANKRUPTCY AND YOUR DEBTS

### Q. WHICH DEBTS ARE DISCHARGED BY BANKRUPTCY?

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**A. The most common debts discharged by bankruptcy are unsecured debts, such as:**

- Credit card debts;
- Cash advances;
- Medical bills;
- Legal judgments;
- Collection accounts; and
- Personal loans not secured by any property.

Secured debts are also dischargeable. Some examples of secured debts are home loans, home equity loans, vehicle loans, and loans extended by retailers so that property, such as electronics, appliances, and furniture, can be purchased in installments. With secured debt, the debt will be discharged but the creditor can take possession of the secured property. To keep the property you will need to keep up with the payments and probably sign a reaffirmation agreement. Or, in Chapter 7, you may be able to redeem the property (buy it back) from the trustee for its replacement value.

Other debts that can be discharged range from most fees related to services (attorney fees, installation fees, etc.) to fees related to landlord/tenant debt and bills related to utilities.

### Q. WHICH DEBTS ARE NOT DISCHARGED IN BANKRUPTCY?

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**A. These debts cannot be discharged in bankruptcy:**

- Child support and alimony are not discharged. Other debts related to divorce cases are very often not able to be discharged due to court orders.
- Taxes that were due less than three years before you filed for bankruptcy. In addition, any tax debts related to fraud or withholding information cannot be discharged. Credit card debt used to pay tax debt is non-dischargeable as well in Chapter 7.
- Debts that arise due to criminal activity cannot be discharged. Government fines penalties cannot be discharged.
- Personal injury debts that arose from a DUI case cannot be discharged.
- Debts that are not listed in your bankruptcy papers may not be discharged in most situations and debts that the creditor objects to being discharged (usually because of fraud) will also not be discharged if the court agrees.
- HOA fees and similar type fees accrued after filing Chapter 7 cannot be discharged in a Chapter 7 bankruptcy.
- Student loans are not dischargeable, outside of extremely unique situations.

### Q. ARE SOME DEBTS DISCHARGEABLE IN CH 13 THAT ARE NOT DISCHARGEABLE IN CH 7?

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**A. The most common debts that can be discharged in a Chapter 13 bankruptcy, but not in a Chapter 7 bankruptcy are marital debts that arose out of a divorce or marital settlement agreement.** While you can't discharge

credit card debt used to pay tax debt in a Chapter 7, you can discharge the same type of a debt in Chapter 13. HOA fees and similar type of fees can be discharged despite accruing after the filing date in a Chapter 13. Debts that were unable to be discharged in a previous filing can also be discharged in a Chapter 13.

## Q. WHAT ARE PRIORITY DEBTS?

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**A. In a Chapter 7 case, priority debts are debts that must be paid first if you have non-exempt assets that the trustee can liquidate to produce money to pay your creditors.** In a Chapter 13 case, priority debts must be paid in full through your repayment plan. Some examples are tax debts that accrued less than three years before filing; child support and alimony; and wages and commissions owed by employers.

## Q. DO I HAVE TO FILE FOR BANKRUPTCY ON ALL MY DEBTS AND CREDIT ACCOUNTS OR CAN I KEEP SOME OPEN?

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**A. While certain debts can be kept post-bankruptcy filing, most credit accounts will close.** Mortgages, vehicle loans and installment payments for items such as furniture, electronics and appliances can usually be kept by reaffirming the agreements with the bankruptcy court. A reaffirmation agreement means that the debtor and creditor will continue with the debt post bankruptcy as if the bankruptcy never occurred. The majority of credit accounts, however, will be closed as soon as the case is filed. Creditors are automatically notified of the bankruptcy filing and have a strict policy that requires they close the accounts.

## Q. WHAT IS A REAFFIRMATION AGREEMENT?

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**A. A reaffirmation agreement is a document that keeps certain debts (normally secured debt like home and car loans) active post bankruptcy.** The creditor will send the agreement to your attorney if you retained one. This agreement, if signed by both parties and filed with the court prior to the case closing, would bind you to the debt and allow you keep your home or vehicle as well as build credit back up. Most creditors do not require these agreements be signed, but there are some (credit unions are a great example) who do require they be signed if you want to keep the collateral.

## Q. CAN I MAKE PAYMENTS ON A DISCHARGED DEBT IF I HAVEN'T SIGNED A REAFFIRMATION AGREEMENT?

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**A. Yes, despite not reaffirming the debt, you can still pay on a discharged debt and, in most situations, you will be able to keep the property associated with the debt as long as you stay current.** If the debt was not secured, it would not be wise for you to pay on the debt and the creditor should not accept payment.

*With secured debt, the debt will be discharged but the creditor can take possession of the secured property.*

## Q. UNDER WHAT CIRCUMSTANCES CAN I DISCHARGE MY STUDENT LOANS IN BANKRUPTCY?

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A: Student loans are very difficult to discharge in bankruptcy. You must show that the payment of the student debt “will impose an undue hardship on you and your dependents.” Typically, this test requires you to show that you cannot maintain even a “minimal” standard of living if you have to pay your loans and this situation is likely to continue for a significant part of your repayment term. Outside of these extremely unique circumstances, you will be unable to discharge student loans in bankruptcy.

## Q. CAN I ELIMINATE BACK INCOME TAXES BY FILING BANKRUPTCY?

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**A. Yes, some back income taxes can be eliminated in a bankruptcy proceeding.** Certain requirements must be met:

You must have filed a tax return for the taxes in question at least two years before you filed for bankruptcy.

- The return must have been due at least three years before you filed.
- No fraud or intentional wrongdoing can be associated with the tax debt.
- The IRS or state tax authority cannot have assessed the taxes in the last 240 days from the date you filed for bankruptcy.

If the taxes are discharged, the taxing authority cannot go after your wages or bank account. But if it placed a lien on your real estate, the lien will remain and will need to be paid off when the property is sold.

## VII. BANKRUPTCY AND YOUR PROPERTY AND INCOME

### Q. WHAT PROPERTY WILL I LOSE AND WHAT WILL I GET TO KEEP IF I FILE FOR BANKRUPTCY?

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**A. In Chapter 7, the bankruptcy trustee will sell your non-exempt property to pay your creditors.** You get to keep all your exempt property. Most people who go through Chapter 7 have no non-exempt property and get to keep everything they own.

All states have exemption laws that allow you to keep a significant amount of property. Federal law also provides exemptions. In some states you can choose either the state or the federal exemptions. In others, you may use only the state exemptions.

The specific type and value of property that is exempt varies from state to state. As a general rule, you will be able to keep such necessities as clothing, furniture, appliances, and other household goods. Most pensions and retirement accounts are also exempt.

The two assets people are most worried about losing are cars and homes. To keep a car or home you must keep up with the loan or mortgage payments. And your equity in the property must not exceed the applicable exemption.

Exemption amounts for cars and homes differ from state to state. Typically, you can keep a car of modest value. Some states exempt only a few thousand dollars of equity in a home, while others exempt tens of thousands. A few states have virtually unlimited homestead exemptions, while several have no homestead exemption.

If you have non-exempt property that you hope to keep, Chapter 13 may be a better choice. Chapter 13 allows you keep all your property as long as you complete your repayment plan.

### Q. CAN BANKRUPTCY HELP ME IF I AM BEHIND ON MY MORTGAGE OR MY HOME IS IN FORECLOSURE?

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**A. The vast majority of people in foreclosure should at least consider bankruptcy as an option.** Both Chapter 7 and Chapter 13 offer advantages depending on individual circumstances. Some people are in homes that are upside down and have no equity. If you are in that situation, you might not want to save your home. However, you may want to stay in the home as long as possible.

Filing a Chapter 7 bankruptcy may be the best option as immediately upon filing, the bankruptcy creates a freeze (called an automatic stay) which stops creditors from continuing their foreclosure efforts. Many debtors wait until their house's sale date to file their bankruptcy, which can substantially extend their time in the house.

If you have already lost your home to foreclosure Chapter 7 can provide the closure you need to get the foreclosure off your credit and any deficiency debt discharged as well.

Some debtors want to keep their homes, but they are significantly behind in their mortgage payments. If this is your situation, you might be best served by filing a Chapter 13. A Chapter 13 reorganizes your debt and like a Chapter 7, creditors are stopped from collecting immediately upon filing. You then must come up with a repayment plan to catch

up on the late payments, as well as make your current mortgage payments in a timely manner. In addition, the bankruptcy court offers a Bankruptcy Mediation Modification Program, which has a high success rate and allows a much more streamlined modification process than the one that you attempt outside of bankruptcy. Chapter 13 is known as the chapter of bankruptcy where people save their homes and it can be very effective.

## Q. CAN BANKRUPTCY HELP IF I AM BEHIND ON MY CAR PAYMENTS OR IF MY CAR HAS ALREADY BEEN REPOSSESSED?

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**A. Vehicle repossessions are a common reason for filing bankruptcy.** Many people fall behind in their car payments and lose their car as a result. To make matters worse, the creditor auctions the repossessed vehicle off for a significantly lower price than the actual value of the vehicle and then pursues a deficiency judgment against the debtor for the remaining balance owed after auction. People who could not afford their car payments to begin with now face owing money on a car they don't even own anymore.

Chapter 7 bankruptcy can eliminate that debt and help you recover. If bankruptcy is not filed in this situation, your creditors can get a judgment against you and will start trying to collect on it by garnishing your wages or seizing your bank accounts. Seeking bankruptcy prior to the lawsuit process will be much easier for you than the stress that will ensue upon being served.

Chapter 13 is also an option for the debtor who is behind with car payments. However, you'll want to consult with an attorney prior to making that choice strictly based on a vehicle as chapter 13 bankruptcy lasts for awhile. The filing will freeze the creditors before they are able to seize the car and you could propose a repayment plan that if accepted by the court and not objected to by the creditor, could save the vehicle and be a good solution for all parties involved. Chapter 13 can also, in certain situations, lower the balance owed or interest rate on the vehicle.

## Q. CAN BANKRUPTCY HELP ME IF MY WAGES HAVE BEEN GARNISHED?

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**A. Many debtors who owe money are sued by their creditors.** These creditors then get judgments that they will attempt to collect on. The primary way creditors collect is by garnishing the wages of the debtor. The creditor can garnish your wages through the court and your employer will be ordered to withhold a certain percentage of your paycheck and pay that money to your creditors. This process will continue until the debt is paid off or you leave that specific place of employment.

Having your wages garnished can be a backbreaking experience as any slight change in income can make it difficult or impossible to meet your monthly obligations. In this situation, the best option might be to file a bankruptcy. If you file a Chapter 7 bankruptcy, the wage garnishing will stop immediately and, at the conclusion of the bankruptcy, the debt should be discharged.

While wage garnishing will also cease in a Chapter 13 bankruptcy, some of the debt might have to be paid as part of the debtor's repayment plan. There are not many options outside of bankruptcy that can stop a wage garnishment. Most people having their wages garnished are not in a position to settle debts owed. As a result, it would be smart to consider bankruptcy in these situations so no more monthly income is wasted on an old debt.

## VIII. MARRIAGE, DIVORCE, AND BANKRUPTCY

### Q. IF I FILE FOR BANKRUPTCY, DOES MY SPOUSE HAVE TO FILE AS WELL?

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**A. No, you are not required to file bankruptcy if your spouse files bankruptcy.** However, it could be in your best interest to do so. If you share multiple debts with your spouse or have debt issues of your own, it might be better to file with your spouse than to file later on your own.

### Q. CAN MY SPOUSE AND I FILE FOR BANKRUPTCY TOGETHER WITH A JOINT PETITION?

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**A. Yes, a joint petition is the recommended way to do things.** It is usually a cost-effective strategy for spouses to file jointly. However, there are some circumstances in which both spouses do not need to file or individual cases may be a better option.

### Q. WHAT ARE SOME SITUATIONS IN WHICH FILING A JOINT BANKRUPTCY WITH MY SPOUSE WOULD BE BENEFICIAL?

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**A. Some reasons to file jointly with your spouse include:**

If most of your debts are joint, filing together will eliminate these debts. If just one of you files, the other spouse will still be liable on joint debts and on his or her separate debts.

Every state uses its own bankruptcy exemptions or federal exemptions, which allow you to keep certain types of property up to certain values when you file under Chapter 7. In some states, when you file jointly, these exemptions are doubled so you have twice the amount of exemptions to protect your assets. This can be beneficial to certain couples so they don't lose assets or owe money in their bankruptcy.

If any debts are joint, exemptions that protect the non-filing spouse's shared assets with the filing spouse may not be permitted and the spouse will be better off filing in those cases.

### Q. WHAT ARE SOME SITUATIONS IN WHICH FILING A JOINT BANKRUPTCY WITH MY SPOUSE MIGHT NOT BE A GOOD IDEA?

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**A. Some reasons not to file jointly with your spouse include:**

- You are solely legally responsible for most of the debts. You can file alone to eliminate your debts and your spouse will preserve the option to file bankruptcy later should the need arise.
- Your spouse owns a significant amount of nonexempt separate property. If you file alone, your spouse's separate property is not available to creditors in your Chapter 7 bankruptcy.



- You live in a state that excludes property held in tenancy by the entirety from the bankruptcy when only one spouse files. If you and your spouse own your home as tenants by the entirety, you may be able to keep it if only one spouse files. If you file jointly under Chapter 7 and the homestead exemption doesn't cover your equity, you might lose your home.
- You live in a community property state and your state's law provides that community debts are discharged even when only one spouse files. As long as you remain married, creditors of the discharged debts cannot get at community property. However, the separate debts of your non-filing spouse will not be discharged.

## Q. IF MY SPOUSE FILES FOR BANKRUPTCY AND I DON'T, HOW WILL MY SPOUSE'S BANKRUPTCY AFFECT ME AND MY CREDIT?

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**A. Unless debt is shared between spouses and negative history has stained that specific debt, then the credit of the non-filing spouse should not be affected.** Bankruptcy affects married couples in a different way. Some spouses need the other spouse to gain credit for certain items, such as a house or car, and the filing spouse's bankruptcy history could affect the loan early on after discharge. If the non-filing spouse has no income or poor credit, the filing spouse's bankruptcy history will hurt the non-filing spouse's chances of getting a loan. It may mean some non-filing spouses will have to get credit on their own while the filing spouse's credit gets some time to be repaired.

## Q. DOES MY SPOUSE'S INCOME AFFECT MY ABILITY TO FILE FOR BANKRUPTCY EVEN IF MY SPOUSE DOES NOT ALSO FILE?

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**A. Yes, this is one of the main causes of people having to file a Chapter 13.** Many people are under the assumption that if their spouse isn't filing, then they don't have to include their spouse's income or shared assets when they file. This is a false assumption that can have severe consequences if not addressed right away. Although a spouse may not be filing, the non-filing spouse's income is a part of the household and must be included in the household income gross that is calculated to see if the debtor qualifies for Chapter 7. It is important to remember that some of the non-filing spouse's expenses can also be included in the means test qualification. However, if you and your spouse are separated and living apart, then the income of your non-filing spouse does not have to be included. That is the only time the income of a spouse does not have to be included in the petition.

## Q. CAN MY SPOUSE AND I FILE FOR BANKRUPTCY TOGETHER IF WE ARE IN THE PROCESS OF GETTING A DIVORCE? CAN WE USE THE SAME LAWYER?

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**A. Many spouses file bankruptcy prior to their divorce.** The most common reason is that they save money by filing together (most firms charge less for a joint bankruptcy than they do for two separate cases). It might also simplify their divorce proceedings by eliminating any arguments stemming from debt accrued during the marriage. Both parties can use the same lawyer whether they decide to file together or not.

## Q. IF WE ARE THINKING ABOUT A DIVORCE, IS IT BETTER TO FILE FOR BANKRUPTCY BEFORE WE GET DIVORCED OR WAIT UNTIL AFTER THE DIVORCE IS FINAL?

**A. Every situation is different and the circumstances must be evaluated to determine if it is better to file divorce prior to or after bankruptcy.** Certain issues that help determine when it is better to file include the following:

- Child support & alimony can increase household income for a party, which might make it more difficult to file a Chapter 7 after being divorced. In those situations, filing before the new income is established can save the debtor thousands of dollars.
- If both parties are hotly contesting the marital debt, it might be best to wait until after the divorce to determine what each party will be responsible for.
- Divorce may create some debts that are not dischargeable: child support and alimony are the obvious debts, but judge-ordered debt payment to the former spouse for marital debt or attorney fees might not be dischargeable, at least in a Chapter 7.

Outside of these types of situations or any situation where a lump sum payment is received by one of the parties (such as a portion of an ex's retirement account), the timeline between divorce and bankruptcy does not matter. The debts owned by each party will always be their debts unless they are discharged.

## Q. IF OUR DIVORCE DECREE MADE MY SPOUSE RESPONSIBLE FOR SOME OF OUR DEBTS, CAN MY SPOUSE DISCHARGE THOSE DEBTS IN BANKRUPTCY? CAN THE CREDITOR THEN COME AFTER ME? AND IF I PAY THE DEBTS WILL I BE UNABLE TO GET REIMBURSEMENT FROM MY SPOUSE?

**A. While your spouse will be able to discharge the debt in bankruptcy as it relates to the creditor that was owed money, you can still sue him or her for violating the divorce decree.** Creditors can come after any party who signed an agreement to borrow money from them. As a result, the creditor can still come after you, even if your ex was ordered to pay that specific debt. If you (the spouse who was supposed to be relieved of the debt by the divorce) pay the debt, you can sue your former spouse to reimburse you for any payments made on the debt he or she was obligated to pay.

## Q. I AM ENGAGED. SHOULD I FILE FOR BANKRUPTCY BEFORE I GET MARRIED? WILL MY SPOUSE BE RESPONSIBLE FOR MY DEBTS (OR VICE VERSA) IF I GET MARRIED?

**A. Normally, it is a better option to file bankruptcy individually in situations where a marriage is pending.** The reason for this is that the new spouse's income does not have to be included in your means test until you are married. That makes it significantly easier to qualify for Chapter 7 and lowers your disposable income in a Chapter 13. In addition, bringing in another party could increase the assets you have to include. The only debts either party will be responsible for are the debts that both parties have signed an agreement stating they would be responsible for. Your new spouse will not be held liable for any debts that were accrued solely by you or vice versa.

## IX. SHORT AND LONG-TERM CONSEQUENCE OF BANKRUPTCY

### Q. IF I FILE FOR BANKRUPTCY, WILL OTHER PEOPLE, LIKE MY EMPLOYER, LANDLORD, FRIENDS AND NEIGHBORS FIND OUT?

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**A. Probably not, unless you tell them or they are listed in your bankruptcy papers as creditors.** Bankruptcy filings are public records. Anybody who wants to investigate you will be able to find the records by making a trip to the courthouse or looking them up on the court's website. But most people will have no reason to do so.

All your creditors will receive a notice that you have filed for bankruptcy. Your landlord will be included if you have a lease or owe back rent. If you have a month to month tenancy and are current, your landlord need not know about your bankruptcy.

If you file under Chapter 7, it's very unlikely your employer will find out unless your wages have been garnished. In this case, your employer will be notified because your bankruptcy filing will stop the garnishment. If you file under Chapter 13, your employer will probably learn of your bankruptcy because the bankruptcy court will probably order that the monthly payments on your plan be deducted from your paycheck and sent to the court.

### Q. CAN I LOSE MY JOB IF I FILE BANKRUPTCY?

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**A. It is not common to lose your job due to filing bankruptcy.** Most employers will probably not even be aware of the filing. As a general rule, both private and government employers are prohibited by law from discriminating against a person who files for bankruptcy. However, some jobs require a certain security clearance. While most of these jobs will not terminate your employment, there are some security clearance level positions that could terminate you for filing a bankruptcy. If you are employed at a company or in government and need certain security clearances, it is best to investigate whether a bankruptcy will affect your employment. Outside of those situations and certain financial positions, your job should not be in jeopardy due to filing bankruptcy.

### Q. CAN MY LANDLORD EVICT ME IF I FILE FOR BANKRUPTCY?

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**A. Your landlord cannot evict you just because you have filed for bankruptcy.** Landlords, like employers, are prohibited by law from discriminating against tenants who file bankruptcy. If you have a lease, your obligations under it will be eliminated by your bankruptcy and your tenancy will become month to month.

After your bankruptcy, the landlord may ask you to sign a new lease, but you aren't obligated to sign it. So long as you are current on your rent, continue to pay your rent on time, and are otherwise a good tenant, your bankruptcy should not cause problems with your landlord.

## Q. WHAT STEPS CAN I TAKE TO REPAIR MY CREDIT AFTER BANKRUPTCY?

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**A. The best step you can take post-bankruptcy is to manage your finances better going forward.** One of the most important aspects of your fresh start is repairing your credit rating. Every situation is different and some situations make it easier for a credit rating to be repaired.

If you own a home or vehicle, or both, you might be able to reaffirm the debt in your bankruptcy. Reaffirming a debt means you intend to continue paying on the debt and will treat the debt as if it was never involved in a bankruptcy. You can reaffirm a debt by signing a reaffirmation agreement with the creditor and having it filed with the bankruptcy court. The agreement serves as proof and permission that the creditor is still able to collect the debt from you. In return, you can keep your car or home and continue making monthly payments which will build up your credit over time.

Outside of debts that are reaffirmed, most of the improvements in your credit rating will come in small steps. As soon as your bankruptcy is over and your debts have been discharged, expect to receive many credit card offers. It will be up to you to determine if a credit card is more of a temptation and risk than a reasonable decision to build up your credit score. If the card is used correctly and responsibly, it will help build up your credit over time. Don't use the card unless you can afford the purchase and pay the balance off in full and on time every month. If you use the card when you don't have the money to pay for something, there is a good chance you will be filing bankruptcy again when you are eligible to do so.

Keep in mind that having a plan for rebuilding credit step-by-step is better than signing up for every new line of credit that might be offered. And review the offers carefully. Because banks will likely view you as a poor credit risk, expect the terms to include a higher interest rate and even an annual fee.

Another option is to get a secured credit card that you have to put money in the account to use, which takes the risk of mismanagement out of the equation. A secured credit card is the safest way for you to build credit and stay out of trouble with creditors, but it also will require patience.

In the end, your income and debt will always be the most important factors in determining whether you can get credit. Creditors will want to know that you make enough money to afford the items you need credit for and they will also want to see that you don't have a lot of outstanding debt.