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7 Steps to a Fresh Start after Bankruptcy



What You Need To Know

7 Steps to a Fresh Start After Bankruptcy

When you have more debts than you have assets, bankruptcy is one option to consider in order to give yourself a “fresh start.”

There are actually many types of bankruptcy provided under the law but the most common is Chapter 7, otherwise known as *liquidation*.

When filing under Chapter 7, all your assets, excluding those that are exempt under the law of your state, are dissolved and liquidated. Usually, the person tasked to do this is the court-appointed official, called a *trustee*.

The trustee has many responsibilities, including the following:

- Prepare the documents needed for declaration of bankruptcy
- Review the file and check if there are any fraudulent preferences or reviewable transactions made
- Any available assets should be sold by them
- Chair meetings with creditors
- Serve as counsels for the debtors (Hence, you need not hire a bankruptcy lawyer when filing under Chapter 7)
- Recommend whether the person applying for bankruptcy should be discharged or not

All in all, the most important task of the trustee is selling your properties and using the proceeds to pay your creditors. After doing such, the court will then cancel many of your remaining debts, thus affording you a “fresh start” to life.

Here is a step-by-step guide to filing a bankruptcy under Chapter 7:

Step #1: Decide whether you should file for bankruptcy or not.

Filing for bankruptcy is a personal decision, influenced by many factors, such as the amount of serious debts and your ability to meet the original payments or pay the full amount.

For starters, when you are broke, it is never a nice experience getting harassed by creditors for debts incurred. For another, your decision to file should not be made for the sole purpose of putting a stop to your demanding creditors. This is an important point since secured creditors may apply for “relief from stay,” thus allowing them to continue their efforts to repossess or foreclose even though you already filed for bankruptcy.

And finally, there are certain debts that you will not be able to get rid of even after filing for bankruptcy under Chapter 7. These debts that cannot be discharge include the following:

- Taxes and tax liens
- Student loans
- Domestic support obligations (including child support and alimony)

- Luxury goods over \$500 purchased within 90 days of filing
- Fines or penalties of government agencies
- Cash advances of more than \$750 taken within 70 days of filing
- Fraudulent debts
- Willful or malicious injury to another
- Death or personal injury from the operation of a motor vehicle, aircraft or vessel while intoxicated – i.e., injury due to drunk-driving or driving under the influence
- Condominium or cooperative association fees
- Debts not listed on your schedules (That is why it is important to disclose all dischargeable debts upon filing).

Step #2: Get an attorney.

While the law on Chapter 7 bankruptcy does not require individual consumers to hire an attorney who would represent them in court, it is still advisable to ask for legal help, especially concerning critical decisions involved in bankruptcy.

Here are some helpful hints to aid you in choosing the right legal representation:

- ***Experience is an important consideration.***

An experienced bankruptcy attorney understands the many intricate details involved in bankruptcy proceedings and will be able to assist you in dealing with the finer aspects of bankruptcy law, such as local rules, the Trustees' preferences, the local judge's rulings, and how to work with the local creditor attorneys.

- ***Hire a reputable bankruptcy attorney.***

This does not only mean an attorney who has a record of success but also someone who has earned the respect of his colleagues. Remember that bankruptcy will impact your future in more ways than you can count. Hiring an attorney with a good record of successful filings only makes sense.

- ***Choose an attorney with reasonable fees.***

Money, of course, is an important issue. Perhaps, even more so. Attorney fees run the table from affordable to cost-prohibitive. Be sure to choose an attorney who charges fair and reasonable fees and provides you with a flexible payment plan.

- ***Choose an attorney who is willing to answer questions.***

You may have questions that you want to ask. You want to understand more about the bankruptcy process. There is no better person who can answer these questions than your attorney. That is why his receptiveness to such questions is an important consideration.

Once you have chosen your legal representation, time for you to move on to step 3 of the process.

****NOTE:** *NOLO.com has recently put out an excellent book with a step-by-step guide through Chapter 7 bankruptcy. It is called “**How to File for Chapter 7 Bankruptcy**” by Attorney Stephen R. Elias, Attorney Albin Renauer & Attorney Robin Leonard. While this is no replacement for advice from a legal practitioner, for \$25 it is worth checking out.*

Step #3: Comply with the legal requirements.

File your petition with the bankruptcy court serving in your area. If you are a business debtor, then file with the bankruptcy court in the place where the business was organized or has its principal place of business or principal assets.

In addition to the petition for bankruptcy, you are also required to submit the following:

- Sworn list of creditors
- Schedule of assets and liabilities
- List of exempt property
- Schedule of current income and expenditures
- Statement of financial affairs
- A schedule of executory contracts and unexpired leases.

In addition to submitting the above documents, you will also be required to surrender all your properties to the trustee, including a copy of the tax return or transcripts of the most recent tax year as well as tax returns filed during the case

(including tax returns for prior years that had not been filed when the case began). (11 U.S.C. 521)

If you are an individual debtor with primarily consumer debts, there are additional filing requirements, such as:

- Certificate of credit counseling
- Copy of any debt repayment plan developed through credit counseling
- Evidence of payment from employers, if any, received 60 days before filing
- Statement of monthly net income and any anticipated increase in income or expenses after filing
- Record of any interest the debtor has in federal or state qualified education or tuition accounts

Your attorney should be able to advise you on how to deal with these required legal forms. All Official Forms may be purchased at legal stationery stores or downloaded from the Internet at USCourts.gov/bkforms/index.html. They are not available from the court.

Step #4: Pay the necessary fees.

As with any other court cases, there are certain fees required, such as:

- Case filing fee (around \$245)
- Miscellaneous administrative fee (\$39)
- Trustee surcharge (\$15)

Upon filing, you are normally asked to pay these fees to the clerk of court. However, you may ask the court's permission to pay in installments. (28 U.S.C. 1930(a); Fed. R. Bankr. P. 1006(b); Bankruptcy Court Miscellaneous Fee Schedule, Item 8).

Note that the number of installments is limited only to four. In addition to that, you are also required to make the final installment no later than 120 days after filing the petition (Fed. R. Bankr. P. 1006). The court may, however, extend the time of any installment, provided that cause is shown and that the last installment is paid not later than 180 days after filing the petition (*Id.*).

Payment of these fees is an absolute must. If you fail to do so, it may result in the dismissal of your case (11 U.S.C. 707(a)). But there is an exception to this stringent rule. For instance, if the debtor's income is less than 150% of the poverty level (as defined in the Bankruptcy Code), and the debtor is unable to pay the Chapter 7 fees even in installments, the court may waive the requirement that the fees be paid. (28 U.S.C. 1930(f)).

Step #5: Notice to the creditors and meeting.

After filing your petition for bankruptcy under Chapter 7, paying the necessary fees, and complying with the legal requirements, an "automatic stay" is granted to you by operation of law. This stay will effectively stop most collection actions against you and your properties (11 U.S.C. 362). This means that as long as the stay is in effect, creditors cannot initiate or continue lawsuits, wage garnishments, or even telephone calls demanding payments.

But note that there are certain types of actions listed under 11 U.S.C. 362(b) that are not stayed when you file the petition. In some situations even, the stay is only for a short period of time. So this should serve as warning.

After the bankruptcy case has been filed, the bankruptcy clerk will give notice to all creditors whose names and addresses you provided. Then, the case trustee will hold a meeting of creditors between 20 and 40 days after you filed your petition. This meeting is otherwise known as the 343 meeting, after the codal provision 11 U.S.C. 343 that provides for such.

In a 343, the debtor will be put under oath and both the trustee and the creditors will ask questions regarding your financial affairs and property. Your attendance is a must. Within 10 days of the creditors' meeting, the trustee will then report to the court whether the case should be presumed to be an abuse under the means test described in 11 U.S.C. 704(b).

Step #6: Cooperate with the trustee.

The case trustee has a very important role in a bankruptcy case. His primary responsibility is to liquidate your nonexempt assets in a manner that maximizes the return to your unsecured creditors. He does this by selling your property, if it is free and clear of liens and as long as it is not exempt, or if it worth more than any security interest or lien attached to the property and any exemption that the debtor holds in the property.

In addition to having the authority to sell your nonexempt property, he also has the power to recovery money or property. This is called the trustee's "avoiding powers," which necessarily includes the power to:

- Set aside preferential transfers made to creditors made within 90 days before the petition

- Undo security interests and other prepetition transfers of property that were not properly perfected under nonbankruptcy law at the time of the petition
- Pursue nonbankruptcy claims such as fraudulent conveyance and bulk transfer remedies available under state law

In view of the broadness of a trustee's power, it is important therefore that you cooperate with the trustee. Provide any financial records or documents that the trustee requests and answer questions, which the trustee is required to ask at the meeting of creditors under the Bankruptcy Code.

This is to ensure that you are aware of the potential consequences of seeking a discharge in bankruptcy such as the effect on your credit history, the ability to file a petition under a different chapter, the effect of receiving a discharge, and the effect of reaffirming a debt.

Step #7: After the discharge...

If all goes well with your bankruptcy case under Chapter 7 – that is, no one files a complaint objecting to the discharge or a motion to extend the time to object – the bankruptcy court will issue a discharge order relatively early in the case, about 60 to 90 days after the date first set for the meeting of creditors (Fed. R. Bankr. P. 4004(c)).

A discharge order is an order issued by the bankruptcy court, releasing you from personal liability for most debts and preventing your creditors from taking any collection actions against you. As previously mentioned, there are certain types of debts that will never be discharged (see Step #1). As a rule, excluding cases that are dismissed or converted, individual debtors receive a discharge in more than 99 percent of Chapter 7 cases.

For someone filing under Chapter 7, a discharge of almost all of your debts is the ultimate goal. With the release of all your debts and creditors stopped from pursuing any further collection actions against you, the opportunity for a fresh start is apparent.

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