

I. The Most Common Questions Asked About Bankruptcy

Filing Bankruptcy (Who, What, When, Where, Why and How)

1. What exactly is straight bankruptcy?

Straight (or ordinary bankruptcy is a proceeding under the federal laws where a person is released from paying his (or her) debts by declaring himself bankrupt and turning all of his nonexempt assets over to the trustee in bankruptcy. Some types of debts, however, are not affected by bankruptcy. These debts are described in paragraph 27.

2. Who can file bankruptcy?

Any person who resides in, does business in, or has property in this country can file straight bankruptcy. It is not legally necessary that your debts be greater than your assets in order to file bankruptcy, although as a practical matter it is seldom wise to do so unless your debts are greater than your assets. Some experts say that your dischargeable debts should exceed your nonexempt assets by at least one thousand dollars before it is wise to file straight bankruptcy.

3. When should I file bankruptcy?

The answer depends on the status of your dischargeable debts and the nature of your nonexempt assets. It is not wise to file bankruptcy if you are likely to incur sizeable new debts in the near future. For example, if you or a member of your family are in bad health and have run up high medical bills, it will be wise to wait until the illness or injury is cured, or until you have obtained adequate insurance coverage, before filing bankruptcy.

Under the bankruptcy law, all nonexempt property that becomes yours by inheritance, life insurance, or divorce within six months after the date you file bankruptcy must be turned over to the trustee in bankruptcy. Therefore, if you anticipate acquiring any property or money during the next six months by inheritance, through a divorce, or as the beneficiary of a life insurance policy or death benefit plan, you should discuss this issue with an attorney.

4. Where is my bankruptcy filed?

In the office of the Clerk of the United States Bankruptcy Court in the district where you live or where you maintain your principal place of business. If you have lived in, or maintained your principal place of business in, your present district for the last 180 days, then your case must be filed in that district. If not, then your case must be filed in the bankruptcy court in the district where you have resided or maintained your principal place of business for the greatest portion of the last 180 days. The bankruptcy court is a part of the federal court system.

5. When will I go to court and what do I do there?

Your first court appearance will be about a month after your case has been filed for what is called “The First Meeting of Creditors.” There you will be put under oath and questioned about your bankruptcy papers and your assets by the trustee in bankruptcy. In all probability, none of your creditors will appear in court. If the husband and wife file a joint petition, usually only the husband will be questioned. If you do not reaffirm any of your discharged debts, this will probably be your only court appearance. If you reaffirm any of your debts or if your discharge is not granted, you may have to attend other hearings later in the case.

6. How much does it cost to file bankruptcy?

The filing fee is \$299.00 regardless of whether you are filing bankruptcy individually or jointly with your spouse. If you are unable to pay the entire filing fee when the case is filed, you will be permitted to pay the filing fee in installments by filing a form called “Application to Pay Filing Fees in Installments.” The filing fee must ultimately be paid, however, or your debts will not be discharged.

7. How often can I file bankruptcy?

A discharge in bankruptcy cannot be granted if you have been granted a discharge in an ordinary bankruptcy case filed in the last seven years or in a Chapter 13 case filed in the last two years, unless 70% or more of your debts were paid off in the Chapter 13 case. You should not file bankruptcy at this time if you cannot meet these time requirements.

8. Can I file bankruptcy if my debts are being administered by financial counselors?

Yes, a financial counselor has no legal status and cannot prevent you from filing bankruptcy.

9. How does filing bankruptcy affect lawsuits and attachments that have already been filed against me?

The filing of a petition in bankruptcy will automatically stop most lawsuits and attachments against you. A few days after your bankruptcy papers are filed, the court will mail a notice to all of your creditors, ordering them to stop all actions against you. If you cannot wait this long, it is permissible for you or your attorney to notify the creditor. If this is done, the creditor should be given the bankruptcy number assigned to your case and advised, in writing, of the day and hour that your case was filed. About the only cases not affected by filing bankruptcy are criminal cases and those for the collection of debts for alimony, maintenance or support from property that is not a part of your bankruptcy estate (i.e., exempt property or property acquired after the date of filing).

My Attorney's Role

10. What is the role of an attorney in a consumer bankruptcy case?

Depending on the terms of your retainer agreement and the scope of services, the bankrupt's attorney will normally perform the following functions in a consumer bankruptcy case:

- a) Analyze the amount and character of the debts owned by the debtor to determine whether bankruptcy is the best remedy for the debtor's financial problems.
- b) Assemble the information and data necessary to prepare the bankruptcy schedules and statements for filing.
- c) Prepare the proper petitions, schedules, and statements for filing with the bankruptcy court.
- d) Assist the bankrupt in preparing his estate for bankruptcy, so that a minimum amount of property will later have to be turned over to the trustee in bankruptcy.
- e) Filing the bankruptcy petitions, schedules, and statements with the court and obtaining the necessary injunctions and restraining orders.
- f) Attending the first meeting of creditors with the bankrupt.
- g) Preparing and filing amended schedules as required by the court.
- h) Attend the discharge hearing and assist the debtor in reaffirming debts and in overcoming obstacles barring his discharge in bankruptcy.

The fees paid to the attorney are required to be disclosed to, and must be approved by, the bankruptcy court, which will allow the attorney to charge only a reasonable fee for representing the bankrupt. It is customary for the attorney to collect all of his fee before the case is filed. There may be an additional fee charged for service performed after the filing of the bankruptcy or the discharge hearing.

Reaffirmation of Debts

11. Can I continue to pay some of my debts after I file bankruptcy?

Yes, but be careful. You can continue to pay as many of your debts as you want after you file bankruptcy. You will not become legally obligated to pay the debts unless you formally reaffirm, however, there are two ways of reaffirming the debts that you wish to honor after bankruptcy. One way is informally, and the other way is formally under an enforceable reaffirmation agreement. Unless a reaffirmation agreement meets the strict requirements of the bankruptcy law it will not be enforceable, which means that either you or the creditor will be free to disregard it at any time. The bankruptcy law requires that the reaffirmation agreement be

made before your discharge in bankruptcy is granted, that you have 60 days after the agreement becomes enforceable in which to rescind (cancel) it. The agreement will only be approved by the bankruptcy judge if your attorney certifies in an agreement filed before the discharge (1) that your agreement represents a fully informed and voluntary agreement (2) that the agreement does not impose a hardship on the debtor or any dependant of the debtor, and (3) that he has fully advised you of the legal effect and consequences of the reaffirmation agreement and any default under the agreement or the bankruptcy judge makes the same determination and informs you at the discharge hearing that you are not legally required to enter into the agreement. Also, if the debt is a consumer debt not secured by real estate, the judge must approve the debt as being in your best interests. Usually creditors will fully secured mortgages on your home or automobile will demand an enforceable reaffirmation agreement: otherwise they will foreclose and you will lose the mortgaged property.

12. Do I have to make my car payments and my mortgage payments during the bankruptcy?

Yes. If you wish to retain the collateral which is subject to a lien (a mortgage, deed of trust, equity line lien or installment sales contract) you must make all the required loan payments to the secured creditor or the affected creditor will seek relief from the bankruptcy court to proceed with repossession (automobiles, furniture, lawn and garden equipment) or foreclosure (mortgages and deed of trusts on real estate). This relief will normally be granted if you are in arrears on your payments and the creditor does not have adequate protection for their lien, consequently you can lose your car or your house if the payments are not made.

Creditors you Intend to Repay

13. Do I have to list creditors such as family members, friends and other persons whom I intend to repay after bankruptcy?

Yes. There are no exceptions to the rule that you must list on your schedules everything you own or have an interest in and everyone who has a claim against you, regardless of whether you intend to repay them.

Filing Joint or Single Bankruptcy

14. Under what conditions should both husband and wife file bankruptcy?

Both husband and wife should file when some of the debts are owned jointly by both the husband and the wife. If both husband and wife owe the debts and only the husband files bankruptcy, the creditors will usually try to force the wife into paying the debts, even if she is unemployed.

15. Can both husband and wife file a joint bankruptcy petition?

Yes. Under the bankruptcy laws a husband and wife may file a joint bankruptcy petition, using

the same set of forms. Only one filing fee is charged for a joint petition, so it costs no more to file a joint petition than to file a single petition.

Contact with the Bankruptcy Court

16. How will the court contact me about orders that I am to follow?

The order will be mailed to you. It is very important, therefore, that you always make sure that the court has your correct address. It is your responsibility to see to it that the court always has your correct address.

17. What should I do when I receive orders from the bankruptcy court?

You should contact your attorney who will contact the trustee in bankruptcy. He will make arrangements with you as to how and when you should do the things required by the court order.

18. What should I do if I move or change my address?

Most courts have pre-printed change-of-address forms. At the time of the First Meeting of Creditors you should take a few of them with you when you leave the meeting. If, before your case is closed, you should move, simply fill out the form and send it to the bankruptcy court. If your court has no such forms, you must still notify the court, in writing, of any change in your address. If you fail to do so and the court's orders do not reach you, your discharge in bankruptcy may not be granted.

Your trustee and your property

19. What is a trustee in bankruptcy?

The trustee in bankruptcy is an officer of the court, appointed to gather your nonexempt property, turn it into cash, and pay this money out to the proper creditors. The law gives the trustee in bankruptcy the power and the means to perform his duties, the principal one of which is to collect, on behalf of your creditors, all of your nonexempt property.

20. What are my responsibilities to the trustee in bankruptcy?

The law requires the bankrupt to cooperate with the trustee in bankruptcy in the execution of his/her duties. If you refuse to cooperate with the trustee, your discharge in bankruptcy may not be granted.

21. What happens to the property that I turn over to the trustee?

It is converted into cash, which is then distributed to those of your creditors who file claims against your bankruptcy estate. The expenses of administering your estate will also be paid from these funds.

22. What will happen if there is no money or property to turn over to the trustee in bankruptcy in my case?

If you have no money or property of a value over the exemptions allowed by law, your case will be considered a no-asset case. Soon after the First Meeting of Creditors the court will decide whether or not your case is a no-asset case. If your case is a no-asset case, your discharge hearing will be held a short time later, unless a creditor files an objection to your discharge or unless you need more time in which to reaffirm debts. Your case will probably be closed shortly after the discharge hearing.

23. What happens if my case is not a no-asset case?

If your case is one involving assets, the trustee in bankruptcy will immediately begin to collect all of your property to which he is entitled by law. Your creditors may file claims any time within Ninety (90) days after the First Meeting of Creditors. The trustee will examine these claims and object to those that he deems to be improper. All claims not objected to by the trustee, you, or a creditor will be approved by the court.

24. Is there a way that I can minimize the amount of nonexempt assets that I will have to turn over to the trustee in bankruptcy?

You will only be required to turn over to the trustee in bankruptcy the nonexempt assets that you possess on the day and hour that you file your petition in bankruptcy. Most of your nonexempt assets will be liquid in nature and will tend to vary from day to day. It will pay you, therefore, to engage in some negative estate planning to minimize the value of your assets on the day and hour that you file bankruptcy. The nonexempt liquid assets that the trustee in bankruptcy usually looks for are the following.

- a) cash
- b) bank deposits
- c) prepaid rent
- d) Landlord and utility deposits
- e) Accrued and unpaid earnings and vacation pay

- f) Tax refunds
- g) Sporting goods

You should plan so that the value of these assets is as low as possible on the day and hour that you file bankruptcy. By doing this you will not be cheating or violating any laws. You will simply be using the law to your advantage, much the same as the rich investor who sells some stock at a loss near the end of the year so as to take advantage of the income tax laws.

a) CASH: If possible, you should pay your last dollar of cash to the clerk of the court for your bankruptcy filing fee. Then you will have no cash whatsoever to either report or turn over to the trustee. During the last few days before you file bankruptcy, you should use your extra cash to buy groceries and other exempt household supplies; buy enough to last you until your next pay day, because you won't have any cash until then.

b) BANK DEPOSITS: Be sure that the balance is as low as possible and that all of the checks that you have written have cleared the bank. If, for example, you have written a check to someone for fifty dollars and it has not cleared the bank by the time you file bankruptcy, the fifty dollars that is in the bank to cover that check will be deemed an asset of your bankruptcy estate, even if the check later clears the bank and is paid, and you may later have to turn that fifty dollars over to the trustee in bankruptcy.

c) ACCRUED AND UNPAID EARNINGS AND VACATION PAY: The trustee in bankruptcy will be allowed to take the nonexempt portion of any earned and unpaid earnings and vacation pay that is owing to you on the day and hour that you file bankruptcy. The best time, therefore, to file bankruptcy is on the morning after payday. Be certain, however, that your pay period ends on payday, otherwise the trustee will still get a portion of your nonexempt earnings. Try to collect your accrued vacation pay or annual leave (if it is convertible to cash) before filing bankruptcy. It is wise to spend your last paycheck before bankruptcy for groceries, utility bills, and on exempt items such as your house, clothes, or life insurance. It is permissible to make payments to any secured creditors whose bills you plan to continue paying after bankruptcy and to your attorney for handling your bankruptcy. Don't use the money to pay off loans from friends and relatives, as the trustee will later be allowed to recover these payments if they occur within ninety (90) days (friends) or one (1) year as to family members.

d) TAX REFUNDS: If it is early in the year and you're expecting an income tax refund, you should wait and file bankruptcy after you receive the refund. Otherwise, unless it is covered by exemptions, it will go to the trustee in bankruptcy. If you file bankruptcy late in the year, you will owe the trustee a good portion of any refund that you later receive for that year. It will pay you, therefore, to minimize your refund for that year. If you and your spouse file a joint income tax return and only you file bankruptcy, the trustee will still probably get all of the refund, especially if most of the taxes came from your wages or salary.

Once you list a federal or state income tax refund on your schedule of assets which you expect to receive after the filing of your bankruptcy case, you are obligated under applicable Local Bankruptcy Rules to notify the Trustee in Bankruptcy within five (5) days of your receipt of the refund. This notice should be in the form of a letter addressed to the Trustee advising him of the

amount of the refund and the date upon which you have received it.

25. Will the Trustee or my creditors examine my financial transactions prior to the filing of my bankruptcy case?

Yes. Transfers of real estate or other assets of significant value within the (3) years before your bankruptcy and all transfers within (1) year will be of particular interest to your trustee and your creditors. State and federal law make certain transfers (sale, gift, no consideration transfers, lien acquisition) subject to scrutiny and possibly avoidance (reversal) if they are fraudulent conveyances. In addition the Trustee will look at any old debts you have paid within the last year to family members or related companies (insiders) or payment which you have made to non-insider creditors within the last ninety (90) days prior to filing. It is important to carefully review your financial transactions over the last year before filing for these types of transactions and to disclose them to your attorney before filing.

26. Will the Trustee examine my credit card activity prior to the bankruptcy?

Yes. It is important for you to be aware that credit card, line of credit and installment loan activity, which occurs after your initial conference with me, will be scrutinized by the Trustee in Bankruptcy and creditors who are affected by this activity.

Accordingly, you should know the following:

A. It is inadvisable to use any credit card to obtain cash advances or credit after your meeting with me if you intend to discharge the credit card obligation in bankruptcy.

B. The Trustee in Bankruptcy and affected creditors will examine your credit card activity during the sixty (60) day period immediately preceding the filing of your bankruptcy (even if it precedes your meeting with me) to determine whether any charges were made for what the Bankruptcy Code refers to as "luxury items". These are generally items such as color televisions, VCRs, furniture, etc. If any purchases of luxury items were made during this forty-five (45) period, it is possible that you will be required to reaffirm these obligations. Cash Advances over \$1,000 within the Sixty (60) days prior to the bankruptcy filing will also be examined and these debts will be presumed to be non-dischargeable.

C. Some credit card issuers, such as Hecht Company, Sears and Luskins, require that credit card purchases be accompanied by a security agreement. If you have executed such a security agreement, you may be required to return the goods pursuant to the security agreement, reaffirm the debt or redeem the property for its current market value.

What is a First Meeting of Creditors?

27. What is a First Meeting of Creditors?

The First Meeting of Creditors is a hearing held in the bankruptcy court to start the

administration of your case. During the hearing, you will be called upon to testify under oath and will be asked questions about your assets, your debts, and any other matters that may affect the settlement and administration of your bankruptcy estate.

28. What happens after the First Meeting of Creditors?

After the First Meeting of Creditors, the court will issue orders to you. These orders will be sent through the mail and may require that you turn money or property over to the trustee in bankruptcy, or they may require that you provide certain information to the trustee in bankruptcy.

What is a Discharge in Bankruptcy?

29. What is a Discharge in Bankruptcy?

It is the court order stating that you do not have to pay your dischargeable debts. A debt that is discharged in bankruptcy is one that you do not have to pay.

30. How will I receive my discharge in bankruptcy?

Usually by mail. There will be a court hearing, which you may have to attend, if you are reaffirming any of your debts, where the court will explain the reasons for denying your discharge, if it is not granted.

31. What debts are not discharged in bankruptcy?

If your discharge in bankruptcy is granted, all of your debts will be discharged with limited exceptions. The principal exceptions are:

- a) Taxes due within the last three years or not assessed because of fraud.
- b) If the bankruptcy court so rules, debts for obtaining money, property, services, or an extension, renewal, or refinancing of credit by means of false pretenses, fraud, or a false financial statement used with intent to deceive.
- c) Debts not listed on your bankruptcy papers, unless the creditor had knowledge of the case in time to file a claim and you are an asset case.
- d) If the bankruptcy court so rules, debts for fraud, embezzlement or larceny.
- e) Debts for alimony, maintenance or support, unless the debts have been assigned to someone other than the federal government.
- f) If the bankruptcy court so rules, debts for intentional injury.
- g) Debts for certain fines and penalties payable to governmental units.

- h) Debts for student loans, unless not discharging the debt would impose an undue hardship.
- i) Debts that were or could have been listed in a prior bankruptcy case in which you either waived your discharge or your discharge was denied.
- j) Debts resulting from a conviction or award of damages relating to a drunk driving offense.

32. Are my out-of-state debts discharged in bankruptcy?

Yes. Bankruptcy is a federal proceeding and the bankruptcy court has the jurisdiction and power to discharge debts contracted anywhere in the country, whether in or out of your state.

33. What should I do if I am sued after bankruptcy on a debt that was discharged?

The important thing is that you must do something; if you ignore the lawsuit and do nothing a default judgment will be entered against you and your discharge in bankruptcy may have been waived or lost as against that debt. If you are sued after bankruptcy on a discharged debt you must first of all respond to the suit papers and file an answer in the court where you have been sued, stating that the debt has been discharged in bankruptcy. In most instances the case will be dismissed when the judge learns that the debt has been discharged. If the case is not dismissed, you can apply to the bankruptcy court for an injunction ordering the creditor to discontinue the suit against you. In summary, a discharge in bankruptcy is a valid legal defense against any debt that has been properly discharged, but it is a defense that you must raise.

How will my life be affected by filing?

34. How does filing bankruptcy affect my credit rating?

Depending on your previous credit rating, it will usually worsen it. However, some financial institutions openly solicit business from recent bankrupts, apparently because they know that the debtor cannot file bankruptcy again for at least six years. If there are compelling reasons for filing bankruptcy that were not within your control, such as an injury or illness, most credit-granting institutions will take that into consideration in rating your credit after bankruptcy.

35. Will news of my bankruptcy be published?

When your bankruptcy papers are filed, they become public records and the fact that you have filed may be published by some credit-reporting agencies. However, newspapers do not usually report or publish consumer bankruptcies such as yours.

36. Do I lose any of my rights, such as the right to vote, by filing bankruptcy?

No. Bankruptcy is a civil, and not a criminal, proceeding, and you do not forfeit any of your civil or constitutional rights by filing. Also, neither a utility nor a governmental unit may discriminate against you because you have filed bankruptcy.

37. Must my employer know that I am filing bankruptcy?

The trustee in bankruptcy may, but **does not** usually send a form to your employer seeking information about the status of your wages or salary on the day that you filed bankruptcy. Therefore, your employer may know of your bankruptcy. However, if there are compelling reasons for not informing him, the trustee might be willing to make other arrangements for seeking his information in your case. You should bring this matter up at the First Meeting of Creditors if it is important to you.

38. Will I lose all of my property if I file bankruptcy?

You will only have to turn your nonexempt property over to the trustee in bankruptcy. Under the laws of the state where you live, and under the federal laws, certain properties are declared to be exempt, and out of the reach of your general creditors. It is these exempt properties that you will get to keep after your bankruptcy.

39. Can my utility company refuse to serve me if I discharge their bill?

If, within 20 days after you file bankruptcy, you furnish your utility company with a deposit or other security to insure the payment of future services, the utility may not discontinue your service or otherwise refuse to serve you, or discriminate against you, for discharging their bill.

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