

LIQUIDATION UNDER CHAPTER 7

QUESTIONS AND ANSWERS ABOUT CHAPTER 7 BANKRUPTCIES

What is a Chapter 7 bankruptcy case and how does it work”?

A Chapter 7 bankruptcy is a proceeding under federal law in which the debtor seeks relief under Chapter 7 of the Bankruptcy Code. Chapter 7 is that part (or chapter) of the Bankruptcy Code that deals with liquidation. The Bankruptcy Code is a federal law that deals with bankruptcy. A person who files a Chapter 7 case is called a debtor. In a Chapter 7 case, the debtor must turn his or her nonexempt property, if any exists, over to a trustee, who then converts the property to cash and pays the debtor’s creditors. In return, the debtor receives a Chapter 7 discharge, if he or she pays the filing fee, is eligible for the discharge, and obeys the orders and rules of the bankruptcy court.

What is a Chapter 7 discharge?

It is a court order releasing a debtor from all of his or her dischargeable debts and ordering the creditors not to attempt to collect them from the debtor. A debt that is discharged is a debt that the debtor is released from and does not have to pay.

How does a person obtain a Chapter 7 discharge?

A Chapter 7 discharge is obtained by filing and maintaining a Chapter 7 bankruptcy case and being eligible for a new Chapter 7 discharge. However, not all debts are discharged by a Chapter 7 discharge. Certain types of debts are by law not dischargeable under Chapter 7 and debts of this type will not be discharged even if the debtor receives a Chapter 7 discharge.

Who is permitted to file and maintain a Chapter 7 case?

Any person who resides in, does business in, or has property in the United States is permitted to file a Chapter 7 bankruptcy case except a person who has intentionally dismissed a prior bankruptcy case within the last 180 days. To be permitted to maintain a Chapter 7 bankruptcy case a person must qualify for Chapter 7 relief under a process called means testing.

What is means testing?

Means testing is a method of determining a person's eligibility to maintain a Chapter 7 case. Under means testing a person whose current monthly income from all sources multiplied by 12 exceeds the median annual income, as reported by the US Census Bureau, for the person's state and family size, must show that he or she is not able to pay a minimum of \$100 per month for 60 months to his or her unsecured creditors from his or her disposable monthly income in order to be eligible to maintain a Chapter 7 case. Disposable monthly income is a person's current monthly income from all sources less the person's permitted current monthly expenses. The Chapter 7 case of a person whose disposable monthly income is such that he or she is deemed to be able to pay \$100 per month or more to unsecured creditors for 60 months will be dismissed or converted to Chapter 13 unless special circumstances exist.

How is means testing carried out?

Every person who files a Chapter 7 case must file a document called Statement of Current Monthly Income and Means Test Calculation. This document, when completed and filed, shows the person's current monthly income and the current monthly expenses that the person is allowed to claim. The person may also be questioned about his or her income and expenses at the meeting of creditors. From these sources a person's currently monthly disposable income is calculated. This figure is then used to determine the amount of the monthly payment that the person can afford to make to his or her unsecured creditors. If the amount of this monthly payment is above a certain figure (usually \$100), the person will almost always be disqualified from maintaining a Chapter 7 case and the case will be dismissed or, with the person's consent, converted to Chapter 13.

How is it decided whether a person is ineligible for Chapter 7 under means testing?

The Statement of Current Monthly Income and Means Test Calculation filed by the person will initially show either the person is able to make monthly payments to unsecured creditors in the amount required for ineligibility. If so, the clerk of the bankruptcy court will send a notice to all creditors that a presumption of abuse has arisen in the case. The United States trustee then has until 10 days after the meeting of creditors to file a statement as to whether a presumption of abuse exists in the case. Then the United States trustee or any creditor can move to dismiss the case. The bankruptcy judge will ultimately decide whether the case should be dismissed.

What is a presumption of abuse and how does it affect the case?

When a Chapter 7 case is filed by an ineligible person, under bankruptcy terminology that person is said to have abused the Chapter 7 laws. When a person whose current monthly disposable income is such that he or she can afford to make monthly payments to unsecured creditors in that required amount, a presumption of abuse is said to arise in the case. If a presumption of abuse arises in a case, the case will be dismissed or converted to Chapter 13 unless the person filing the case can prove the existence of special circumstances, such as a serious medical condition.

Who is eligible for a Chapter 7 discharge?

Any person who is qualified to file and maintain a Chapter 7 case is eligible for a Chapter 7 discharge except the following:

- (1) A person who has been granted a discharge in a Chapter 7 case that was filed within the last 8 years.
- (2) A person who has been granted a discharge in a Chapter 13 case that was filed within the last 6 years, unless 70 percent or more of the debtor's unsecured claims were paid off in the Chapter 13 case.
- (3) A person who files and obtains court approval of a written waiver of discharge in the Chapter 7 case.
- (4) A person who conceals, transfers or destroys his or her property with the intent to defraud his or her creditors or the trustee in the Chapter 7 case.
- (5) A person who conceals, destroys, or falsifies records of his or her financial condition or business transactions.
- (6) A person who makes false statements or claims in the Chapter 7 case, or who withholds recorded information from the trustee.
- (7) A person who fails to satisfactorily explain any loss or deficiency of his or her assets.
- (8) A person who refused to answer questions or obey orders of the bankruptcy court, either in his or her bankruptcy case or in the bankruptcy case of a relative, business associate, or corporation with which he or she is associated.

- (9) A person who, after filing the case, fails to complete an instructional course on personal financial management.
- (10) A person who has been convicted of bankruptcy fraud or who owes a debt arising from a securities law violation.

What types of debts are not dischargeable in a Chapter 7 case?

Chapter 7 case?

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All debts of any type or amount, including out-of-state debts, are dischargeable in a Chapter 7 case except for the types of debts that are by law nondischargeable in a Chapter 7 case. The following is a list of the most common types of debts that are not dischargeable in a Chapter 7 case:

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- (1) Most tax debts and debts that were incurred to pay nondischargeable federal tax debts.
- (2) Debts for obtaining money, property, services, or credit by means of false pretenses, fraud or a false financial statement, if the creditor files a complaint in the bankruptcy case.
- (3) Debts not listed on the debtor's Chapter 7 forms, unless the creditor knew of the bankruptcy case in time to file a claim.

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- (4) Debts for fraud, embezzlement, or larceny, of the creditor files a complaint in the bankruptcy case.

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- (5) Debts for domestic support obligations, which include debts for alimony, maintenance, or support and certain other divorce-related debts, including property settlement debts.
- (6) Debts for intentional or malicious injury to the person or property of another, if the creditor files a complaint in the bankruptcy case.

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- (7) Debts for certain fines or penalties.
- (8) Debtors for most educational benefits and student loans, unless a court finds that not discharging the debt would impose an undue hardship of the debtor and his or her dependents.

- (9) Debts for personal injury or death caused by the debtor's operation of a motor vehicle, vessel or aircraft while intoxicated.
- (10) Debts that were or could have been listed in a previous bankruptcy case of the debtor in which the debtor did not receive a discharge.

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Who should not file a Chapter 7 case?

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A person who is not eligible for a Chapter 7 discharge should not file a Chapter 7 case. Also, in most instances a person who has substantial debts that are not dischargeable under Chapter 7 should not file a Chapter 7 case. In addition, it is not usually advisable for a person with disposal income sufficient to make the required minimum payments to unsecured creditors to file a Chapter 7 case, because a presumption of abuse will arise and the case will probably be dismissed or converted to Chapter 13.

Is there anything that a person must do before a Chapter 7 case can be filed?

Yes. A person is not permitted to file a Chapter 7 case unless he or she has, during the 180-day period prior to filing, received from an approved nonprofit budget and credit counseling agency an individual or group briefing that outlined the opportunities for available credit counseling and assisted the person in performing a budget analysis. This briefing may be conducted by telephone or on the internet, if desired, and must be paid for by the person. When the Chapter 7 case is filed, a certificate from the agency describing the services provided to the person must be filed with the court. A copy of any debt repayment plan prepared for the person by the agency must also be filed with the court. In emergency situations, the required credit counseling may be conducted after the case is filed.

How does the filing of a Chapter 7 case by a person affect collection and other legal proceedings that

have been filed against that person in other courts?

The filing of a Chapter 7 case by a person automatically suspends virtually all collection and other legal proceedings against that person. A few days after a Chapter 7 case is filed, the court will mail a notice to all creditors ordering them to refrain from any further action against the person. This court-ordered suspension of creditor activity against the person filing is called the automatic stay. If necessary, notice of the automatic stay may be served on a creditor earlier by the person or the person's attorney. Any creditor who intentionally violates the automatic stay may be held in contempt of court and may be liable in damages to the person filing. Criminal proceeds and actions to collect domestic support obligations from exempt property or property acquired by the person after the Chapter 7 was filed are not affected by the automatic stay. The automatic stay also does not protect cosigners and guarantors of the person filing, and a creditor may continue to collect debts from those persons after the case is filed. Persons who have had a prior bankruptcy case dismissed within the past year may be denied the protection of the automatic stay.

Will a person lose all of his or her property if he or she files a Chapter 7 case?

Usually not. Certain property is exempt and may not be taken by creditors unless it is encumbered by a valid mortgage or lien. A person is usually allowed to retain his or her unencumbered exempt property in a Chapter 7 case. A person may also be allowed to retain certain encumbered exempt property. Encumbered property is property against which a creditor has a valid lien, mortgage or other security interest.

What is exempt property?

Exempt property is property that is protected by law from the claims of creditors. However, if exempt property has been pledged to secure a debt or is otherwise encumbered by a valid lien or mortgage, the lien or mortgage holder may claim the exempt property by foreclosing upon or otherwise enforcing the creditor's lien or mortgage. In bankruptcy cases property may be exempt under either state or federal law. Exempt property typically includes all or a portion of a person's unpaid wages, home equity, household furniture, and personal effects. Your attorney can inform you as to the property that is exempt in your case.

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When must a person appear in court in a Chapter 7 case and what happens there?

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Chapter 7 case and what happens there?

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The first court appearance is for a hearing called the “meeting of creditors” which is usually held about a month after the case is filed. The person filing the case must bring photo identification, his or her social security card, his or her most recent pay stub and all of his or her bank investment account statements to this hearing. At this hearing the person is put under oath and questioned about his or her debts, assets, income and expenses by the hearing officer or trustee. In most Chapter 7 consumer cases no creditors appear in court; but any creditor that does appear is usually allowed to question the person. For most persons this will be the only court appearance, but if the bankruptcy court decides not to grant the person a discharge or if the person wishes to reaffirm a debt, there may be another hearing about three months later which the person will have to attend.

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What are the responsibilities to the trustee of the person filing the case?

The law requires the person filing to cooperate with the trustee in the administration of a Chapter 7 case, including the collection by the trustee of the person's nonexempt property. If the person does not cooperate with the trustee, the Chapter 7 case may be dismissed and the person's debts will not be discharge. At least 7 days before the meeting of creditors the person filing must give the trustee and any requesting creditors copies of his or her most recent Federal income tax returns.

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What happens to property that is turned over to the trustee?

It is usually converted to cash, which is used to pay the fees and expenses of the trustee, to pay the claims of priority creditors, and, if there is any left, to pay the claims of unsecured creditors.

What if a person has no nonexempt property for the trustee to collect?

If, from the bankruptcy forms filed, it appears that the person filing has no nonexempt property, a notice will be sent to the creditors advising them that there appears to be no assets from which to pay creditors, that it is unnecessary for them to file claims, and that if assets are later discovered they will then be given an opportunity to file claims. This type of case is referred to as a no-asset case. Most if assets are later discovered they will then be given an opportunity to file claims. This type of case is referred to as a no-asset case. Most Chapter 7 cases that are filed by consumers are no-asset cases.

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What encumbered property may a person retain in a Chapter 7 case?

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A person may retain (or redeem) certain encumbered personal and household property, such as household furniture, appliances and goods, wearing apparel, and tools of trade, without payment to the secured creditor, if the property is exempt and if the mortgage or lien against the property was not incurred to finance the purchase of the property. A person may also retain without payment to the secured creditor any encumbered property that is both exempt and subject only to a judgment lien that is not divorce-related. Finally, a person may retain certain encumbered exempt personal, family, or household property by paying to secured creditor an amount equal to the replacement value of the property, regardless of how much is owed to the creditor.

What should a person do if he or she moves before the Chapter 7 case is completed?

The person should immediately notify the bankruptcy court in writing of the new address. Because most communications between the person filing and the bankruptcy court are by mail, it is important that the bankruptcy court always have the person's current address. Otherwise, the person may fail to receive important notices and the Chapter 7 case may be dismissed. Many courts have change-of-address forms for persons to use when they move, and one of these forms should be obtained if a move is planned.

How is a person notified when his or her discharge has been granted?

The person is usually notified by mail. Most courts send a form called "Discharge of Debtor" to the person filing and to all creditors. This form is a copy of the court order discharging the person from his or her dischargeable debts, and it serves as notice that the discharge has been granted and that creditors are forbidden from attempting to collect discharged debts. It is usually mailed about four months after a Chapter 7 case was filed.

What if a person wishes to repay a dischargeable debt?

A person may repay as many dischargeable debts as desired after filing a Chapter 7 case. By repaying one debt, a person does not become legally obligated to repay any other debts. The only dischargeable debt that a person is legally obligated to repay is one for which the person and the creditor have signed what is called a "reaffirmation agreement." If the person was represented by an attorney in negotiating the reaffirmation agreement with the creditor, the reaffirmation agreement must be approved by the court to be valid. If the person was represented by an attorney in negotiating the reaffirmation agreement, the attorney must file the agreement and other required documents with the court in order for the agreement to be valid. If a dischargeable debt is not covered by a reaffirmation agreement, the person filing is not legally obligated to repay the debt, even if the person has made a payment on the debt since filing the Chapter 7 case, has agreed in writing to repay the debt, or has waived the discharge of the debt in a waiver that was not approved by the bankruptcy court.

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How does a Chapter 7 case last?

Chapter 7 case last?

7 case last?

A successful Chapter 7 case begins with the filing of the bankruptcy forms and ends with the closing of the case by the court. If there are nonexempt assets for the trustee to collect, the case will most likely be closed shortly after the person filing receives his or her discharge, which is usually about four months after the case is filed. If there are nonexempt assets for the trustee to collect, the length of the case will depend on how long it takes the trustee to collect the assets and perform his or her other duties in the case. Most Chapter 7 consumer cases with assets last about six months, but some last considerably longer.

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What should a person do if a creditor later attempts to collect a debt that was discharged in his or her

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When a Chapter 7 discharge is granted, the court enters an order prohibiting creditors from later attempting to collect any discharge debt from the person filing. Any creditors who violates the court order may be held in contempt of court and may be liable to the person for damages. If a creditor later attempts to collect a discharged debt from the person, the person should give the creditor a copy of his or her Chapter 7 discharge and inform the creditor in writing that the debt was discharged in the Chapter 7 discharge is granted, the court enters an order prohibiting creditors from later attempting to collect any discharge debt from the person filing. Any creditors who violates the court order may be held in contempt of court and may be liable to the person for damages. If a creditor later attempts to collect a discharged debt from the person, the person should give the creditor a copy of his or her Chapter 7 discharge is granted, the court enters an order prohibiting creditors from later attempting to collect any discharge debt from the person filing. Any creditors who violates the court order may be held in contempt of court and may be liable to the person for damages. If a creditor later attempts to collect a discharged debt from the person, the person should give the creditor a copy of his or her Chapter 7 discharge and inform the creditor in writing that the debt was discharged in the Chapter 7 case. If the creditor persists, the person should contact an attorney. If a creditor files a lawsuit on discharged debt, it is important to inform the court in which the lawsuit is filed that the debt was discharged in bankruptcy. The lawsuit should not be ignored because even though a judgment entered on a discharged debt can later be voided, voiding the judgment may require the services of an attorney, which could be costly.

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