

BANKRUPTCY

CHAPTER 7

(aka “Discharge” or “Liquidation”)

ANSWERS

TO THE MOST COMMONLY
ASKED QUESTIONS

Compliments of:

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1. What is chapter 7 and how does it work?

Chapter 7 is that part of the federal bankruptcy law that permits you to discharge certain debts by filing a case in the bankruptcy court, turning all of your non-exempt property over to a trustee (while retaining certain items of exempt property), and obeying the orders and rules of the court. A person who files under chapter 7 is called a debtor.

2. Who may file under chapter 7?

Any person who resides in, who does business in, or who has property in the United States may file under chapter 7, except a person who has been involved in another bankruptcy case that was dismissed within the last 180 days on certain grounds. Additionally, before filing, a person must have consulted an approved credit counseling agency and received advice from them regarding his or her financial situation.

3. Why do I have to get credit counseling if I already know I want to file chapter 7?

While chapter 7 is a powerful tool to use when you have debt problems, it is not always the only option available to you. Congress wants to make sure you have explored all of the possible options you may have. Therefore, Congress requires that within the 180 day period before filing a bankruptcy, you must have requested and completed a briefing session (with very limited exceptions) from an approved credit counseling agency whose duty is to outline the opportunities for credit counseling and assist you in performing a budget analysis.

4. What is the “Means Test” and why is it so important?

The “Means Test” is a mathematical formula designed to identify people filing under chapter 7 who can afford to repay their debts. If your household income is below average, the “Means Test” will not prevent you from receiving a discharge under chapter 7. However, if your household income is above average and the “Means Test” indicates you can pay more than \$150 / month towards your general unsecured debt (after taking into consideration payments for your home, car and other essential living expenses), your case may be presumed abusive. Abusive cases are subject to dismissal by the Court unless one can show that special circumstances exist which overcome the presumption of abuse established by the “Means Test.” If the “Means Test” reveals that you have a presumptively abusive case which cannot be overcome by a showing of special circumstances, filing a chapter 13 is the next option to consider.

5. How much does it cost to file Bankruptcy?

The chapter 7 filing fee is \$338.00 (effective December 1, 2020) regardless of whether you are filing bankruptcy individually or jointly with your spouse. The attorney's fees vary with regard to the complexity of the case.

6. What is a chapter 7 discharge?

It is a court order releasing you from all of your dischargeable debts and ordering creditors not to attempt to collect them from you. A debt that is dischargeable is one that you are released from and do not have to pay. Some debts, however, are not released by a chapter 7 discharge, and some persons are not eligible for a chapter 7 discharge.

7. What must I do to obtain a chapter 7 discharge?

While there are certain reasons the court can deny a discharge, almost all of those reasons are related to dishonest conduct (such as incurring debt through misrepresentation or without the intent to repay). In order to receive a discharge, a person must be truthful, honest, and cooperative with the court and the trustee (the person assigned to administer the case). You can not have received a previous

chapter 7 discharge in a case filed within eight (8) years of the present one. Lastly, you must complete an instructional course concerning personal financial management offered by an approved provider within a short period of time after filing your case. Your attorney can direct you to an approved provider.

8. What debts are not released by a chapter 7?

All debts of any kind or amount, including debts incurred in other states, are generally released by a chapter 7 discharge. However, as with any law, there are certain exceptions such as those listed below:

- (1) debts for certain taxes, including taxes that became due within the last three years;
- (2) if the creditor files a complaint and if the court so rules, debts for obtaining money, property, services, or credit by means of false pretenses, fraud, or a false financial statement (included here are certain debts for luxury goods or services and for certain cash advances made within 70 - 90 days before the case is filed);
- (3) debts not listed on your chapter 7 papers, unless the creditor knew of the case in time to file a claim;
- (4) if the creditor files a complaint and if the court so rules, debts for embezzlement, or larceny;
- (5) debts for domestic support obligations (alimony, maintenance, or support);
- (6) if the creditor files a complaint and if the court so rules, debts for intentional or malicious injury to the person or property of another;
- (7) debts for certain fines or penalties payable to a governmental unit;
- (8) debts for student loans or educational assistance, unless not discharging the debt would impose an undue hardship on you and your dependents;
- (9) debts arising from a judgment or court decree entered against you for damages resulting from the operation of a motor vehicle, vessel, or aircraft while legally intoxicated;
- (10) debts that were or could have been listed in a previous bankruptcy case of yours in which you were denied a discharge;
- (11) debts arising from any act of fraud while acting in a fiduciary capacity committed with respect to depository institutions or credit unions;
- (12) debts for malicious or reckless failure to fulfill any commitment by the debtor to a Federal depository institution's regulatory agency to maintain capital of an insured depository institution;
- (13) debts for any payment of an order of restitution issued under the United States Code;
- (14) debts incurred to pay a tax to the United States, or other governmental unit, that would be non-dischargeable pursuant to number (1) above; or
- (15) any other additional debts falling under the descriptions contained in 11 U.S.C. §523(a)(15) - (a)(18).

9. Under what conditions should a husband and wife both file under chapter 7?

Both husband and wife should file if some of the debts to be discharged are owed by both spouses. In a community property state, such as Texas, debts incurred during the marriage may be the joint responsibility of each spouse (depending on the nature of the debt incurred) even if only one spouse's name is on the debt. If both spouses are liable for some of the debts and if only one spouse files under chapter 7, the creditors often try to coerce the non-filing spouse into paying the debts, even if he or she has no income or assets.

10. How does filing under chapter 7 affect lawsuits that have already been filed against me?

If you have never filed bankruptcy before, the filing of a chapter 7 case automatically stays or stops most lawsuits that have been filed against you (there are some exceptions). 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 debtor. If you cannot wait this long, it is permissible for you or your attorney to notify one or more of the creditors of the filing of the case. The most common actions not affected by the filing of a chapter 7 case are criminal proceedings, paternity actions, and collection of domestic support obligations (child support) through wage withholding.

11. How does filing under chapter 7 affect my credit rating?

Your credit rating is a record of all your past credit performances. The fact that you filed a chapter 7 will be reflected on your credit report and will remain there for ten years in contrast to most other information remaining on your credit report for seven years. However, some financial institutions openly solicit business from persons who have recently filed under chapter 7, in part, because of the decreased debt load you have after filing. If there are compelling reasons for filing under chapter 7 that are not within your control (such as an illness or injury), some credit rating agencies may take that into account in rating your credit after filing.

12. Will I lose all of my property if I file under chapter 7?

Under State and Federal Laws certain property is declared to be exempt and cannot be taken by a person's creditors, except those creditors with valid mortgages or liens when the payments are not being made. You can generally keep exempt property provided you are current on any payment due a lender for a valid lien. All nonexempt property must be turned over to the trustee for liquidation. The Texas and Federal exemptions are as follows:

THE STATE OF TEXAS:

- (a) Homestead, subject to purchase money or improvement liens thereon, consisting of a lot or lots not exceeding ten (10) acres if located in town, or 100 acres if home is rural (200 acres for family); and
- (b) Personal property having a value not in excess of \$50,000.00 for single person or \$100,000.00 for a family comprising of the following items:
 - (1) Household furnishings;
 - (2) Provisions for consumption;
 - (3) Farming or ranching vehicles and implements;
 - (4) Tools of your trade or profession;
 - (5) Clothing;
 - (6) Jewelry not to exceed 25% of the values listed above;
 - (7) Two firearms;
 - (8) Sporting equipment;
 - (9) One passenger car or light truck for each family member that is a licensed driver;
 - (10) Household pets and a limited number of farm animals;
 - (11) Present value of life insurance to the extent that a member of the family of the insured claiming this exemption is a beneficiary of the policy;
 - (12) Current wages;
 - (13) Professionally prescribed health aids;
 - (14) Alimony, maintenance or support received or to be received; and
 - (15) Other very specific types of property.

FEDERAL (PER PERSON):

- (1) \$27,900.00 in value in real or personal property used as a residence;
- (2) Up to \$4,450.00 in any one motor vehicle;
- (3) Up to \$700.00 in value in any particular item of household furnishings, or wearing apparel, up to a total of \$14,875.00;
- (4) Up to \$1,875.00 in jewelry held for personal use;
- (5) Up to \$2,800.00 in tools of trade;
- (6) Any unmatured life insurance contract on the Debtor other than credit life;
- (7) Professionally prescribed health aids;
- (8) The right to receive certain support and disability payments;
- (9) The right to receive certain payments as a result of personal injury or wrongful death proceedings; and
- (10) Any property selected by Debtor in an amount not exceeding \$1,475.00 plus any unused amount of the \$27,900 listed in (1) above, up to \$13,950.00. This can include income tax refunds.

13. *Where is a chapter 7 case filed?*

In the office of the clerk of the bankruptcy court in the district where you have lived, maintained your principal place of business, or had the greatest part of your assets for the greatest portion of the 180 days before filing. The bankruptcy court is a federal court and is a unit of the United States District Court.

14. *Are the names of persons who file under chapter 7 published?*

When a chapter 7 case is filed, it becomes a public record which any one has access to. Credit reporting agencies will reflect in their reports that you have filed a chapter 7. Also, some newspapers will list all filings made in any court on a regular basis. Therefore, it is likely that your name will be published at least once in the local paper.

15. *Do I lose any of my legal rights by filing under chapter 7?*

No. Filing under chapter 7 is not a criminal proceeding, and you do not lose any of your civil or constitutional rights by filing.

16. *May employers or government agencies discriminate against me for filing under chapter 7?*

It is illegal for either private or governmental employers to discriminate against a person as to employment solely because that person has filed under chapter 7. It is also illegal for local, state, or federal governmental units to discriminate against a person as to the granting of licenses (including a driver's license), permits, and similar grants because that person has filed under chapter 7.

17. *When will I go to court in a chapter 7 case and what do I do there?*

Generally, you will only have to appear in court once. It 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 few, if any, of your creditors will appear.

18. *What happens after the meeting of creditors?*

After the meeting of creditors, the trustee may contact you regarding the collection or existence of non-exempt property, and the court may issue orders to you. These orders will be sent by mail and may require you to turn certain property over to the trustee, or provide the trustee with certain information. You should contact your attorney if there is any question with regard to any of these matters.

19. What is a trustee in a chapter 7 case, and what does he or she do?

The trustee is an officer of the court, usually an attorney, appointed by the bankruptcy court to administer your case. The law gives the trustee in bankruptcy the power and the means to perform his or her duties, the principal one of which is to collect, on behalf of your creditors, any non-exempt property. A trustee is appointed in a chapter 7 case, even if you have no property for the trustee to collect.

20. What are my responsibilities to the trustee?

The law requires you to cooperate with the trustee in the administration of a chapter 7 case, including the collection by the trustee of your non-exempt property. If you refuse to cooperate with the trustee, then your case may be dismissed and your debts may not be discharged.

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

It is usually converted into cash, which is later used to pay the administrative expenses of the trustee and to pay the claims of creditors. The trustee is permitted to pay himself a fee, which is based on a percentage of the amount collected from you.

22. What happens if I have no non-exempt property for the trustee to collect?

If you have no money or property having value over the exemptions allowed by law, your case will be considered a "no-asset" case. If your case is a no-asset case, your discharge will be granted a short time later, unless a creditor files an objection to your discharge. Your case will probably be closed shortly after your discharge is granted.

23. What if I wish to repay one or more of my discharged debts after filing under chapter 7 (and What is a Reaffirmation Agreement)?

You may repay as many of your discharged debts as you wish after filing under chapter 7. By repaying one creditor, you do not become legally obligated to repay any other creditor. The only debts that you are legally obligated to repay after filing under chapter 7 are those which you have elected to reaffirm. A Reaffirmation Agreement is a binding agreement entered into between you and a creditor which effectively removes that debt from your discharge. A Reaffirmation Agreement must meet certain requirements of the law in order to be valid. Among other things the Reaffirmation Agreement must be made prior to the date the discharge is granted and must contain the statement that it may be rescinded at any time prior to the discharge or within sixty (60) days after it is filed with the court.

24. What should I do if a creditor attempts to collect a debt that was discharged in my chapter 7?

When a discharge is granted, the court enters an order prohibiting your creditors from attempting to collect from you any debt that was discharged in the case. If a creditor violates this court order he may be held in contempt of court. If a creditor attempts to collect a discharged debt, you should give the creditor a copy of the order of discharge and inform him that the debt has been discharged under chapter 7. If the creditor persists, you should contact your attorney. If the creditor files lawsuit against you, it is important to not ignore the matter, because even though any judgment entered against you on a discharged debt can later be voided, voiding the judgment may require the services of an attorney, which could be costly to you.

25. Does a chapter 7 discharge affect the liability of other parties who may be liable to a creditor on a discharged debt?

A chapter 7 discharge releases only the debtor. The liability of any other party on a debt (such as a non-filing spouse or other co-signers) is not affected by a chapter 7 discharge.

26. What is the role of the attorney for a consumer debtor in a chapter 7 case?

The debtor's attorney performs the following functions in a chapter 7 case of a typical consumer:

- (1) Analyze the amount and nature of the debts owed by the debtor and determine the best remedy for the debtor's financial problems;
- (2) Advise the debtor of the relief available under both chapter 7 and chapter 13 of the bankruptcy laws, and of the advisability of proceeding under each chapter;
- (3) Assemble the information and data necessary to prepare the chapter 7 forms for filing;
- (4) Prepare the petitions, schedules, statements and other chapter 7 forms for filing with the bankruptcy court;
- (5) File the chapter 7 petition, schedules, statements, and other forms with the bankruptcy court, and, if necessary, notify certain creditors of the commencement of the case;
- (6) If necessary, assist the debtor in redeeming certain personal property and in setting aside certain mortgages or liens against exempt property;
- (7) Attend the meeting of creditors with the debtor;
- (8) If necessary, prepare and file amended schedules and certain statements and other documents with the bankruptcy court in order to protect the rights of the debtor; and
- (9) If necessary, attend the discharge and reaffirmation hearing with the debtor and assist the debtor in reaffirming certain debts and in overcoming obstacles to the granting of his chapter 7 discharge.

The fee paid, or agreed to be paid, to an attorney representing a debtor in a chapter 7 case must be disclosed to the bankruptcy court and must be approved by the court. The court will allow the attorney to charge only a reasonable fee for representing the debtor. It is customary for the debtor's attorney to collect the entire fee before the case is filed.

THE INFORMATION CONTAINED HEREIN IS GENERAL IN NATURE AND DOES NOT CONSTITUTE LEGAL ADVICE. THE ANSWERS TO MANY OF THESE QUESTIONS MAY BE DIFFERENT DEPENDING ON WHAT DISTRICT YOUR CASE IS FILED IN. YOU SHOULD CONSULT WITH AN ATTORNEY IN REFERENCE TO YOUR SPECIFIC SITUATION. THE AUTHOR HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, AND MAKES NO REPRESENTATIONS REGARDING THE INFORMATION CONTAINED HEREIN. (Revised 04/2022).