

THE TRUTH ABOUT BANKRUPTCY



End Your Bill Problems And
Get Back The Good Credit You Deserve

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The author is a federally defined Debt Relief Agency, and helps people file for bankruptcy.

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ABOUT ATTORNEY USMAN

Zeshan Usman, the founder of Usman Law Firm, LLC, has helped hundreds of people fight back against abusive bill collectors and mortgage companies. His clients come from all walks of life...from the single parents struggling to get by and raise their kids to multi-generational families strung out by overwhelming medical bills. Zeshan's clients rely on him to take on even the tough cases and to work tirelessly to achieve the results they deserve.

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Zeshan understands not only the U. S. Bankruptcy Code, but all the other laws that impact consumers – the Fair Credit Reporting Act, the Fair Debt Collection Practices Act, the Truth in Lending Act, Real Estate Settlement Procedures Act, and more. He is effective because he is informed, knowledgeable, and current.

Every year, Zeshan spends countless weeks in conference halls, listening to and learning from the greatest legal minds from around the country. He absorbs the best advice, identifies the strongest tactics and the most convincing arguments, and then adapts them to his clients' needs.

Zeshan is a member of the National Association of Consumer Bankruptcy Attorneys as well as of the National Association of Consumer Advocates.

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TABLE OF CONTENTS

Debt – It’s Everyone’s Problem	8
What’s Your Current Financial Reality?	9
Are You Robbing Peter to Pay Paul?	10
Credit Counseling, Debt Settlement or Doing Nothing Doesn’t Help Everyone	11
Credit Counseling	12
Debt Settlement	13
Bankruptcy: Not As Scary As You May Think.....	14

You Are Not Alone.....	15
Why Does The Government Have Laws The Allow People To File For Bankruptcy?	16
The Morality Of Bankruptcy – As Old as the Bible.....	17
Debunking Myths About Bankruptcy	19
What is Bankruptcy?.....	22
Types of Bankruptcy ... Because Every Situation is Unique.....	23
The Automatic Stay in Bankruptcy.....	24
What the Automatic Stay Covers.....	24
What the Automatic Stay Does Not Cover	25
How Long the Automatic Stay Lasts	26
Difference Between the Automatic Stay in Chapter 7 and Chapter 13.....	26
Role of the Case Trustee.....	27
Chapter 7 Bankruptcy	28
Eligibility for Chapter 7.	29
What You Get To Keep in Chapter 7 Bankruptcy	29
What is Equity?	30
What Happens to Non-Exempt Assets in Chapter 7?.....	31
Debts Not Discharged in Chapter 7 Bankruptcy	32
Speaking of Student Loans in Bankruptcy	34
So What is Undue Hardship When it Comes To Student Loans?	34
How About Discharging Private Student Loans in Bankruptcy?	35
Are You Even Eligible to File for Chapter 7?	36
The Chapter 7 Process, From Start to Finish	36
Meeting of Creditors.....	38
The Chapter 7 Discharge.....	38
Chapter 13 Bankruptcy.....	39
How Chapter 13 Works.....	40
Special Automatic Stay Rules in Chapter 13.....	40
Meeting Of Creditors in Chapter 13	41

How Creditors Get Paid in Chapter 13	41
The Chapter 13 Plan	41
Confirmation Hearing – Getting Your Proposed Plan Approved	42
Making the Plan Work.....	43
The Chapter 13 Discharge	43
The Chapter 13 Hardship Discharge	44
Other Types of Reorganization Bankruptcy	45
How to Choose the Right Bankruptcy Lawyer	47
What to Expect At Your Initial Consultation With a Bankruptcy Lawyer.....	49
What to Bring With You To Your Initial Consultation With a Bankruptcy Lawyer	51
Questions to Ask a Bankruptcy Lawyer Before Making a Hiring Decision.....	53
Let Me Help You	55
Appendix	57
Section 341(A) Meeting of Creditors Required Statements/Questions.....	57
Sample General Questions	60



DEBT – IT'S EVERYONE'S PROBLEM

Millions of people are experiencing debt problems throughout the nation. With the struggling economy, rising mortgage interest rates and job loss, many individuals are having trouble maintaining their minimum monthly credit card or loan payments.

According to CNN Money, the average American in 2008 carried a balance of over \$8,000 in credit card debt. This average figure is up from \$3,000 on average per household from 1990.

This ongoing increase in consumer debt is leading to financial challenges for both individuals and families around the country.

If you are having financial difficulty and have been unable to keep up with your current debt payments, it is time to search for solutions. Before you make any decisions it is important to step back and take a personal financial inventory.

WHAT'S YOUR CURRENT FINANCIAL REALITY?

Begin this process by requesting a copy of your current credit report from any of the following agencies:

- Experian – (888) 397-3742 or AnnualCreditReport.com
- Equifax – (877) 322- 8228 or AnnualCreditReport.com
- Trans Union – (800) 888-4213 or AnnualCreditReport.com

While the reports provided from these agencies will not give you all of the information you need to complete a financial assessment, it will show you who your primary creditors are. Review who you owe money to, the total amount of money owed, and any delinquencies.

If you have not reviewed your credit report recently, this is an important first step to take.

In addition to reviewing your credit report, take time to review your total financial situation. Take an inventory of your current assets, income, liabilities and expenses; this will be useful later when you are determining which next step to take.

ARE YOU ROBBING PETER TO PAY PAUL?

When working to resolve your debt issues, one of the most important steps you can take is determining your current household discretionary income. Discretionary income refers to the amount of money left over at the end of each month, after all household bills have been paid.

To determine your current discretionary income just review your household budget. If you don't have a budget, there is no time better than the present to develop one.

Your budget should include both variable and fixed expenses.

Your variable expenses are those expenses that change on a month to month basis. And, they are often expenses that you have some control over. Common variable expenses include dining out, entertainment, groceries and food, travel, clothing and gifts.

Fixed expenses refer to expenses that do not change from month to month. Common examples of fixed expenses include your rent or mortgage payments, consumer loan or credit card payments, your automobile loan payment, auto insurance and household utilities.

After you have created a complete list of your household income and expenses, subtract your expenses from your total income. This number is your discretionary income. If the number is positive, you have more money coming in than going out. If your number is negative, it means that you are spending more money that you are making on a monthly basis. And, if your number is negative, it suggests that you are going deeper into debt every month.



CREDIT COUNSELING, DEBT SETTLEMENT OR DOING NOTHING DOESN'T HELP EVERYONE

If you are overwhelmed with debt and are unable to continue making payments, you are likely searching for solutions to address the problem. If you are unable to pay your minimum credit card payments, are consistently late with regular monthly bill payments, are receiving regular

collections calls and are unable to resolve your credit issues with creditors on your own you need to evaluate options to address the problem.

As you review all of your available options, consider credit counseling, debt settlement as well as bankruptcy. Be sure to carefully consider each available option and their advantages and disadvantages before making a decision about which action to take.

CREDIT COUNSELING

In the past, credit counseling services were non-profit agencies designed to assist consumers in the lowering of interest rates or creating a debt repayment plan. If your current debt load is unmanageable, you may seek credit counseling services to lower your monthly payments.

Credit counseling services are found in virtually every city, with companies offering this service for a fee. Though there are reputable companies, there are also those that take money without performing any service.

SHOPPER'S TIP

When searching for a credit Counseling service, be sure to watch out for the following:

- Large Upfront Fees
- No Accreditation
- Unrealistic Promises Of Addressing Your Credit Issues

DEBT SETTLEMENT

Debt settlement is another alternative to bankruptcy. Debt settlement companies will negotiate with your creditors. The goal of debt settlement is to lower your overall debt load through lump-sum settlements for less than the balance due to each creditor.

Debt settlement is often unsuccessful due in part to large up-front fees that can run as high as 25–35% of the total forgiven debt. In addition, not all creditors will work with debt settlement companies.

Each of these options offers an opportunity to regain control over your situation, but are not viable options for everyone. It is important to evaluate your financial situation and the potential impact of each decision before deciding to take action.



BANKRUPTCY: NOT AS SCARY AS YOU THINK

When everything else fails, the bill collectors are at the door and you've done all you can ... bankruptcy may be an option.

In order to figure out whether bankruptcy is right for you, you need all the facts – not just

what you hear about on TV or read on the Internet (hey, you probably got this book off the Internet. Well, I'm a lawyer and know what I'm talking about).

YOU ARE NOT ALONE

According to data from the National Bankruptcy Research Center, American consumers filed 1,046,449 bankruptcy cases in the first nine months of 2009 alone. That's a rise of over 36% from last year's numbers alone.

For 2010, personal bankruptcy filings are set to outpace those figures by a long shot.

And those statistics don't reflect only the terrible economic situation – it's been going on for years. The numbers don't lie. In the past decade, over 12 million people have filed for bankruptcy.

That's the same as if every single man, woman and child who currently lives in New York City filed for bankruptcy. Along with every man, woman and child who currently lives in Los Angeles.

Make no mistake ... you are most definitely not alone.

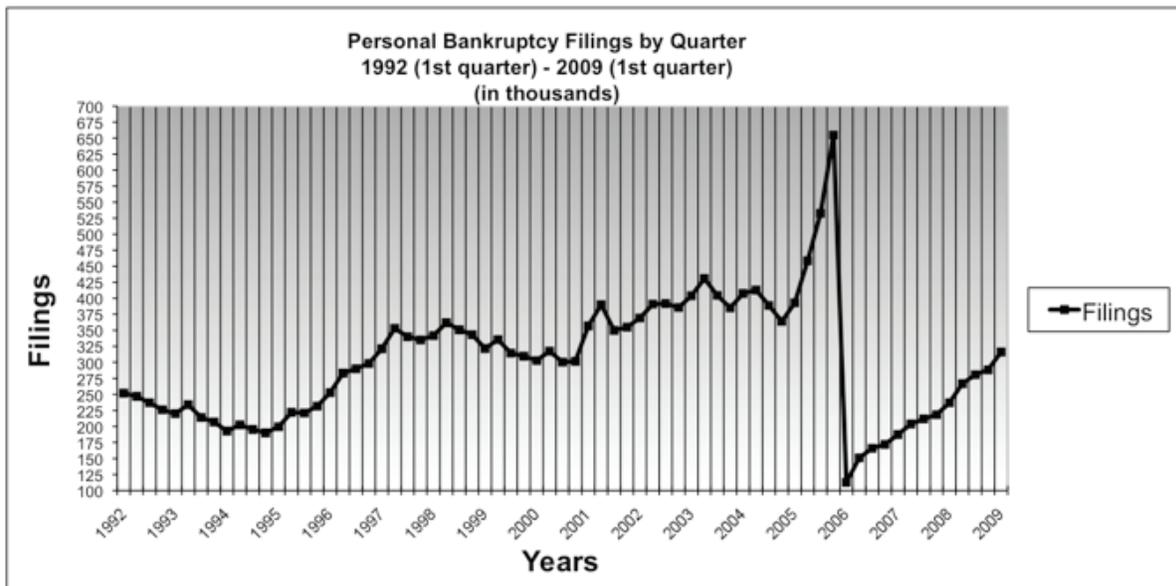
WHY DOES THE GOVERNMENT HAVE LAWS THE ALLOW PEOPLE TO FILE FOR BANKRUPTCY?

The government recognizes that people don't spend money when they're drowning in debt. That's bad for the government because the economy needs people to spend money. When

people spend money, they keep factories and businesses humming. When factories and businesses are busy, they hire more people. When more people get hired, they spend money on cars, houses, and goods and services.

If you're buried so far under your debts that you have no money left over to buy things, the economy grounds to a halt.

The government wants to provide a safety valve in the economy so that people can get back to doing what it wants them to do – spend money and re-enter the stream of commerce.





THE MORALITY OF BANKRUPTCY – AS OLD AS THE BIBLE

There are several examples that can be found within the Bible suggesting that bankruptcy has been in existence since the earliest of times.

Most religious people interpret the Bible as suggesting that individuals have the responsibility

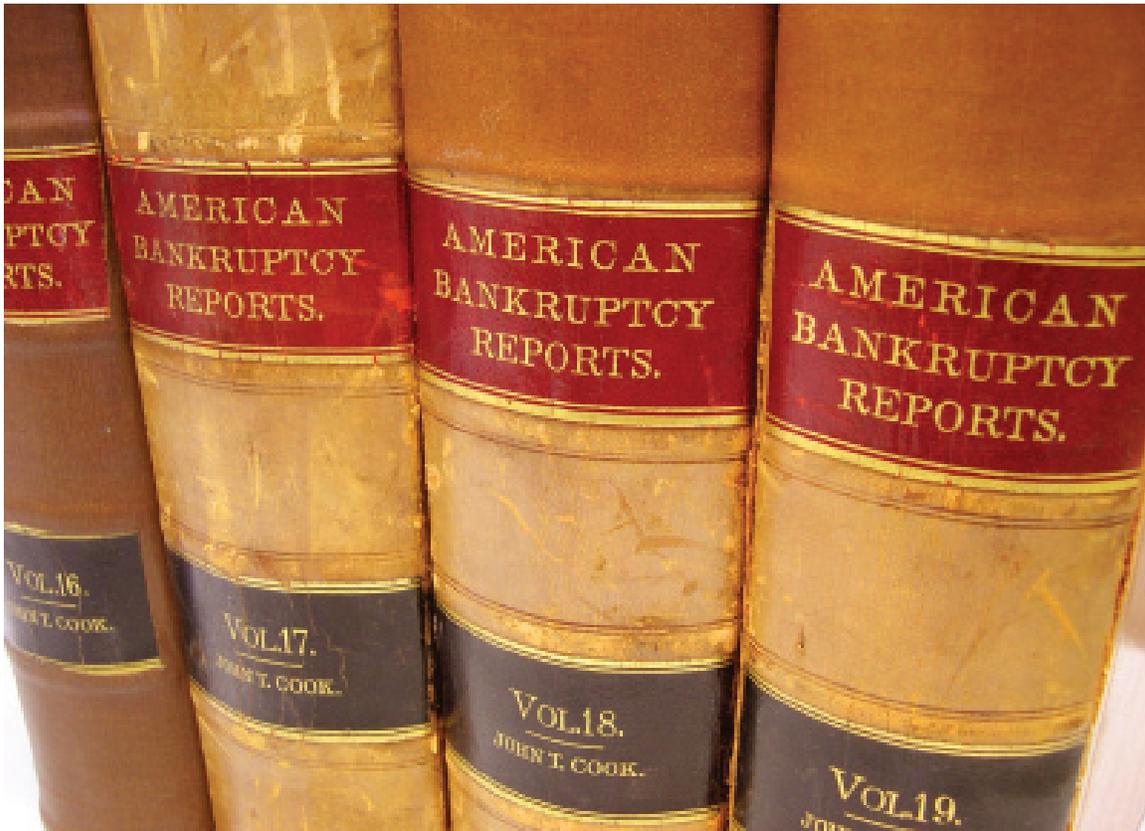
to act as strong financial stewards. It is this strong belief that causes many to accept the myth that filing for bankruptcy is immoral.

However, the Bible is full of stories in support of economic justice and of showing compassion for the poor.

Deuteronomy 15:7-10 states, “if there is a poor man amount your brothers...do not be hardhearted or tightfisted toward your poor brother. Rather be open-handed and freely lend him whatever he needs. Be careful not to harbor this wicked thought: ‘the seventh year, the year for canceling debts, is near,’ so that you show ill toward your needy brother and give him nothing. He may then appeal to the LORD against you, and you will be found guilty of sin. Give generously to him and do so without a grudging heart; then because of this the LORD your God will bless you in all your work and in everything you put your hands to.”

The concept of bankruptcy is explored further in Deuteronomy 15:1-2, “At the end of every seven years you shall grant a release. And this is the manner of the release: every creditor shall release what he has lent to his neighbor, his brother, because the Lord’s release has been proclaimed”.

Debt relief was not questioned in biblical times, nor did it carry a negative connotation.



DEBUNKING MYTHS ABOUT BANKRUPTCY

Millions of people file bankruptcy each year. Before you formulate your own opinion about bankruptcy, read through the following common myths.

1. **You'll never get credit again.** While the past credit history is taken into account when a consumer is seeking new credit, the recent credit history often counts more than the past. So, a bankruptcy does not always disqualify an individual from being able to secure credit in the future.
2. **You can Pick and Choose Which Debts to Include in a Bankruptcy.** All debts must be listed by the consumer in a bankruptcy case. If a debtor fails to include all information, the bankruptcy case is at risk for dismissal. So, it is crucial to make a comprehensive list of all debts when preparing to file bankruptcy. It is recommended that you review your recent credit report as well so that you don't overlook any creditors when preparing your paperwork.
3. **Late Payments are Just as Bad as Filing for Bankruptcy.** It is true that late payments and a bankruptcy can harm your credit. However, maintaining bad debts on your credit report over time will lower your credit score also. Bankruptcy lets you start clean so you to rebuild your score over time.
4. **Bankruptcy is illegal.** While there have been some changes within the bankruptcy code in the past few years, it is still an option for debtors who do not have alternative options that are viable.
5. **People who have a job can't file for bankruptcy.** This statement is untrue. However, all bankruptcy filers must pass a 'means test' to determine if they are eligible to file for bankruptcy as well as which form, Chapter 7 or Chapter 13, they are eligible to file for.
6. **My Medical Bills Cannot be Discharged** – In most cases, all debts, including medical bills, can be discharged if a debtor's bankruptcy is approved.

7. **If You file Chapter 13, You have to Repay My Debts in Full** - The type of repayment plan that will be offered under a Chapter 13 filing will vary based upon each individual filer. The filer's income, total assets, exempt assets and total debts will be figured into determining what the repayment plan will consist of.
8. **You will Lose Everything You Own if you File Bankruptcy**- In most cases, individuals filing for bankruptcy do not have assets that qualify for liquidation under the code. There are exemptions offered that allow the filers to keep certain assets, such as pensions and in some cases, a primary residence.
9. **You have to Have a Minimum Amount of Debt to File Bankruptcy**- There is not a current required minimum quantity of debt for a person to own in order to qualify for bankruptcy filing. If you are unable to repay your debts and have been unable to resolve issues with your creditors on your own, bankruptcy may be the most viable option.
10. **Your Creditors Will Still Harass Me After I File**- Under bankruptcy law, creditors must cease calling and harassing you once you have filed for bankruptcy. If a creditor does not follow these rules, the debtor may have options to seek punitive damages against the creditor. So, once you have filed for bankruptcy, your creditors should stop bothering you completely.
11. **Everyone Will Know You Filed**- Unless you are a prominent person within a major corporation, chances are that the only people that will know you filed for bankruptcy will be your creditors.
12. **It's Really Complicated to File for Bankruptcy**- While there are certain legal formats and processes to become familiar with, a bankruptcy attorney will walk you through the process, ensuring that you follow the requirements. An attorney will also be able to answer any specific questions about the bankruptcy process for you, making things as simple as possible for you.



WHAT IS BANKRUPTCY?

First, the basics ...

Bankruptcy is a federal court process designed to help consumers and businesses eliminate their debts or repay them under the protection of the bankruptcy court.

Bankruptcy cases are always filed in United States Bankruptcy Court, but cases depend heavily on state and local laws.

TYPES OF BANKRUPTCY ... BECAUSE EVERY SITUATION IS UNIQUE

There are four types of bankruptcy used by people in the United States (I'm going to avoid the cross-border and government bankruptcies). They are:

- **Chapter 7**, also known as straight bankruptcy. This is the fastest, easiest and least expensive kind of bankruptcy.
- **Chapter 11** reorganization, is used primarily by businesses but also by people with substantial debts and assets.
- **Chapter 12**, which is used solely by family farmers as a way to reorganize their finances.
- **Chapter 13** is the personal version of Chapter 11. Individuals with a regular source of income can put together a payment plan in exchange for keeping all of their property. It's used heavily by people who are looking to save a home from foreclosure or a car from repossession.

The most common types of personal bankruptcy for individuals are Chapter 7 and Chapter 13. As much as 65% of all U.S. consumer bankruptcy filings are Chapter 7 cases. Corporations and other business forms file under Chapters 7 or 11.

THE AUTOMATIC STAY IN BANKRUPTCY

Filing for bankruptcy – any kind of bankruptcy whatsoever- immediately triggers an injunction against the continuance of any action by any creditor against you or your property; this is called the automatic stay, and it is a critical element of your bankruptcy case. If you file for Chapter 13 bankruptcy, that injunction extends to anyone else who is obligated to repay your debts.

The automatic stay gives you protection from your creditors during the bankruptcy case. In order for a creditor to continue to take action against you, that creditor must obtain court approval first.

There are, however, limits on how long the automatic stay lasts. For example:

- If you had a prior bankruptcy case pending in the last year which was dismissed then the automatic stay lasts for only the first thirty (30) days after your case is filed unless you or your lawyer gets a court order extending the automatic stay;
- If you had two or more prior bankruptcy cases pending in the last year which was dismissed then the automatic stay does not take effect at all unless you or your lawyer gets a court order extending the automatic stay.

WHAT THE AUTOMATIC STAY COVERS

So long as the automatic stay remains in place, the following actions are prohibited:

- Beginning or continuing law suits

- Collection calls
- Repossessions
- Foreclosure sales
- Income executions (“garnishees”)
- Bank account restraints

As you can tell, the automatic stay gives you a tremendous amount of power when you file for bankruptcy. It stops many types of creditor actions and gives you the ability to feel the effects of a fresh start immediately.

WHAT THE AUTOMATIC STAY DOES NOT COVER

So what actions are not covered by the automatic stay in bankruptcy? The automatic stay does not stop:

- Criminal proceedings;
- Actions for a family support order or the modification of such order;
- Actions to collect support from property that is not property of the estate; and
- Tax audits, demands by a taxing authority for you to file tax returns or assessment of taxes due.

If you’re thinking about filing for bankruptcy and have any of these types of problems, it’s best to talk with your lawyer before the case is filed about how to deal with the issues that will continue. There may be options to help you work with those individual creditors during the course of your bankruptcy case, but you’ll never know unless you’re working with a fully-informed lawyer.

HOW LONG THE AUTOMATIC STAY LASTS

The automatic stay is a powerful remedy that comes into effect as soon as your bankruptcy case is filed, but the stay doesn't last forever. You need to realize that this shield against creditor action is not perfect, and will not work in your favor until the end of the world.

The automatic stay remains in effect until a creditor gets an order from the judge in your bankruptcy case to lift the stay. In addition, remember that there are limitations to when the automatic stay may come into effect for only a limited amount of time – or sometimes, not at all. As we discussed in my previous article, if you had a prior bankruptcy case in the past year and that case was dismissed, then the automatic stay exists for only 30 days (unless you or your lawyer gets a court order extending the automatic stay). And if you had two or more prior bankruptcy cases in the last year that were dismissed then the automatic stay does not take effect at all.

Finally, the automatic stay ends the minute your bankruptcy case ends.

As always, rules have exceptions and limitations. Tread carefully when relying on the automatic stay; if you don't then you may think you're protected when you are not.

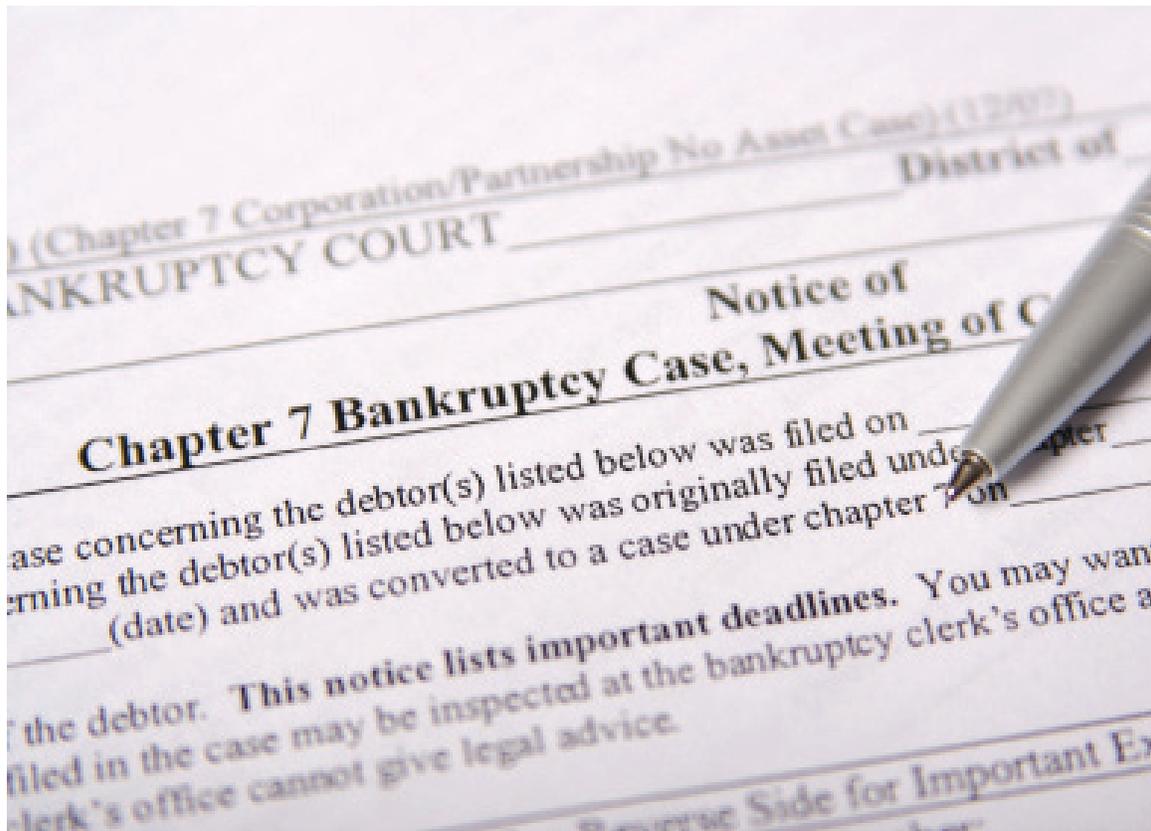
DIFFERENCE BETWEEN THE AUTOMATIC STAY IN CHAPTER 7 AND CHAPTER 13

In Chapter 7, the automatic stay covers only you – the person who files for bankruptcy. In Chapter 13, however, the automatic stay also covers other people who are obligated to repay your debts. That means when you file for Chapter 13 and are using the process to stop a foreclosure, anyone else who is on the mortgage with you will also get the benefit of your bankruptcy filing.

ROLE OF THE CASE TRUSTEE

When a chapter 7 or Chapter 13 case is filed, the U. S. trustee appoints an impartial case trustee to administer the case and, in the case of a Chapter 7 bankruptcy, to sell your nonexempt assets.

If all of your assets are exempt or subject to valid liens, in Chapter 7 the trustee will normally file a “no asset” report with the court, and there will be no distribution to unsecured creditors.



CHAPTER 7 BANKRUPTCY

Chapter 7 bankruptcies can be filed by individuals (called a “consumer” Chapter 7 bankruptcy) or businesses (called a “business” Chapter 7 bankruptcy). A Chapter 7 bankruptcy typically lasts three to six months.

In Chapter 7, you give up certain property to a bankruptcy trustee, who then sell it and distribute the proceeds to your creditors. In exchange, you get a discharge of some debts. Under Chapter 7 not every type of debt is discharge, so read on for more.

Certain assets are protected and cannot be taken from you. For example, Social Security payments, unemployment compensation, and limited values of your equity in a home, car, or truck, household goods and appliances, trade tools, and books are protected. However, these exemptions vary from state to state. Therefore, it is advisable to consult an experienced bankruptcy attorney.

ELIGIBILITY FOR CHAPTER 7

Not everyone can file for Chapter 7 bankruptcy. For example, if your disposable income is sufficient to fund a Chapter 13 repayment plan -- after subtracting certain allowed expenses and monthly payments for certain debts -- you won't be allowed to use Chapter 7 bankruptcy.

WHAT YOU GET TO KEEP IN CHAPTER 7 BANKRUPTCY

People who file for Chapter 7 or Chapter 13 bankruptcy in Wisconsin are allowed to keep certain possessions that are "exempt." Exemptions are statutes that indicate what assets you can keep and protect while eliminating debts in a bankruptcy proceeding.

Some of the more common assets that Wisconsin debtors can protect are:

- Cash and bank accounts
- Automobiles
- Household furniture and personal possessions
- Retirement and pension accounts
- Homes with a total equity of up to \$75,000 (up to \$150,000 for married couples)

A husband and wife who file a joint bankruptcy petition can usually pool their exemptions to double the above amounts.

Each exemption has a dollar amount cap. The amount depends on whether you choose the state or federal exemptions.

WHAT IS EQUITY?

Equity is one of the most important terms when it comes to your bankruptcy case. When determining whether you can keep property in Chapter 7 bankruptcy, your lawyer will often look to the amount of equity. Too much and you could lose it, so you can see why it's so important.

Put simply, equity is merely the difference between the market value of something and the claims held against it. But that presents a whole new set of questions, doesn't it?

Market value is the first part of the bankruptcy equity analysis. This is the amount you could sell that particular piece of property for, given the current condition of the item. In other words, take a look at that pair of shoes you're wearing – how much would you get for them if you took them off your feet and tried to sell them?

That's market value. And for things like clothing and your household goods, the value is pretty small. After all, who's going to give you money for your 8 year old sheet set? If it's the bankruptcy trustee, the answer is pretty much zero.

But market value goes somewhat deeper. If you've got a home worth \$800,000 the market value isn't \$800,000 because that's not how much you'd be left with if you sold it. You'd have

to pay a real estate broker and closing costs. Those costs all go to reduce the market value of the home.

Now let's look at the, "claims held against it," part. We're talking about secured debts here. If you own a car and there's a loan of \$14,000 against it, that's a claim against the car. Simple, right?

It can get tougher, though. You've got a home you own, and there's a \$280,000 mortgage against it. But there's also \$4,500 in unpaid property taxes and \$5,000 in unpaid common charges due to the condominium association. You also have a judgment against you for \$20,000.

These are all claims against your home. Yes, even the judgment. Because in Wisconsin, a judgment attaches to all property – including your home.

So the upshot is that when determining equity, you need to take the market value (sale price less any costs of selling the property) and then take away the total of the claims against the property. When you've got that number, you know your equity for the purposes of the bankruptcy case.

WHAT HAPPENS TO NON-EXEMPT ASSETS IN CHAPTER 7?

The theory of bankruptcy is that non exempt property is liquidated by the trustee in a Chapter 7 to provide a fund to pay claims of creditors.

In the real world, trustees sometimes decide not to sell property that has little value because of the cost of doing so. If that happens then the asset is deemed abandoned back to you.

If a trustee elects to administer an asset that is partially exempt, the trustee may let you buy out the estate's interest over a short time period.

DEBTS NOT DISCHARGED IN CHAPTER 7 BANKRUPTCY

The biggest advantage of filing a Chapter 7 bankruptcy is the possibility of having some or all of your debts discharged. When a debt is discharged, it is cancelled by the Court and you do not have to repay it. However, not all debts are dischargeable.

In general, the following kinds of debt cannot be discharged:

1. **Child Support Obligations:** Under federal law, both back child support and current child support obligations cannot be discharged in bankruptcy. Additionally, filing for Chapter 7 bankruptcy does not stop your ex-spouse from taking you to Family Court to recover child support owed. Under federal law, the bankruptcy trustee must pay off child support debts prior to paying off any of your other creditors. If you find that you are unable to pay your child support even after your other debts are cancelled in bankruptcy, you must ask Family Court to reduce your child support.
2. **Spousal Support Obligations:** Like child support, spousal support that you have been ordered by a Court to pay cannot be discharged in bankruptcy.
3. **Tax Debts:** Most tax debt cannot be discharged in bankruptcy. However, if you meet the following requirements, you may qualify to have some of your tax debts discharged:
 - 1) The due date for filing the tax return in question was at least three years before you filed for bankruptcy;

- 2) The tax return in questions must have been filed at least two years before the date you filed for bankruptcy;
 - 3) The IRS statement that you owe a tax debt must be at least 240 days old. The tax return in question must not have been fraudulent; and
 - 4) You must not have been guilty of tax evasion.
4. **Debts Owed to the Government Other than Tax Debts:** For example, debts to the Social Security Administration, Medicare, or the U . S. Department of Justice cannot be discharged in bankruptcy.
 5. **Criminal Restitution:** If you have been committed of a state or federal crime, you may have been ordered to pay the victim for your crime. The debt may take the form of a fine, replacement of property, or medical bills. Such debts cannot be discharged in bankruptcy.
 6. **Debts Arising Out of Accidents Involving Alcohol:** If you have been convicted of a crime or successfully sued as the result of an accident that resulted from your intoxication, you cannot have debts related to the accident discharged.
 7. **Student Loans:** Student loans are almost never dischargeable in bankruptcy. On rare occasions, your student loan can be discharged if the Court finds that repaying your student loans creates an undue hardship on you or your family. However, such discharges are extremely rare.

SPEAKING OF STUDENT LOANS IN BANKRUPTCY ...

If you owe money to student loans, you don't have many options when it comes to bankruptcy. Student loans cannot be discharged in a Chapter 7 or a Chapter 13 bankruptcy unless you can establish substantial hardship. Changes to the U. S. Bankruptcy Code in 2005 made even private student loans non dischargeable.

Outside of bankruptcy, a defaulted student loan can be rehabilitated, consolidated, stretched out or discharged due to disability. And if the school closed before you finished your studies, the loan may be unenforceable. But inside the bankruptcy court? Unfortunately, not much can be done.

The best you can do with in bankruptcy to help your student debt problem may be to wipe out your other debts, or use Chapter 13 to stabilize the repayment for a 3–5 year period.

SO WHAT IS UNDUE HARDSHIP WHEN IT COMES TO STUDENT LOANS?

Undue hardship typically means that you can't maintain a minimally adequate standard of living and repay the loan. The rule, found in the Brunner case requires a showing that the conditions that make repayment a hardship are unlikely to improve substantially over time.

HOW ABOUT DISCHARGING PRIVATE STUDENT LOANS IN BANKRUPTCY?

Sadly, no dice. The 2005 amendments to the Bankruptcy Code expanded the definition of student loans to include private student loans as well as the federally-guaranteed ones. This means that no student loan is dischargeable in bankruptcy unless the court finds undue hardship exists.

Section 523(a)(8)(B) of the U. S. Bankruptcy Code adopts the IRS definition of a qualified education loan found in 26 U. S. C. 221(d)(1), which says:

The term “qualified education loan” means any indebtedness incurred by the taxpayer solely to pay qualified higher education expenses:

(A) which are incurred on behalf of the taxpayer, the taxpayer’s spouse, or any dependent of the taxpayer as of the time the indebtedness was incurred,

(B) which are paid or incurred within a reasonable period of time before or after the indebtedness is incurred, and

(C) which are attributable to education furnished during a period during which the recipient was an eligible student. Such term includes indebtedness used to refinance indebtedness which qualifies as a qualified education loan. The term “qualified education loan” shall not include any indebtedness owed to a person who is related (within the meaning of section 267(b) or 707(b)(1)) to the taxpayer or to any person by reason of a loan under any qualified employer plan (as defined in section 72(p)(4)) or under any contract referred to in section 72(p)(5).

If you want to try to discharge a student loan debt, you’ll need to bring an adversary proceeding and prove your case. I warn you in advance, though; proving undue hardship in

Wisconsin is no easy task. Though it's never a great idea to file your own bankruptcy case, doing so with the intention of getting your student loan debts wiped out is filled with even more difficulties.

ARE YOU EVEN ELIGIBLE TO FILE FOR CHAPTER 7?

An individual, a partnership, or a corporation or other business entity may not qualify to file for Chapter 7:

- a. if during the preceding 180 days a prior bankruptcy petition was dismissed due to the debtor's willful failure to appear before the court or comply with orders of the court, or
- b. the debtor voluntarily dismissed the previous case after creditors sought relief from the bankruptcy court to recover property upon which they hold liens.

In addition, no individual may be a debtor under chapter 7 or any chapter of the Bankruptcy Code unless he or she has, within 180 days before filing, received credit counseling from an approved credit counseling agency.

THE CHAPTER 7 PROCESS, FROM START TO FINISH ...

A chapter 7 case begins with the filing a petition with the bankruptcy court serving the area where you live. In addition to the petition, you must also file various schedules and sworn statements.

A husband and wife may file a joint petition or individual petitions. Even if filing jointly, a husband and wife are subject to all the document filing requirements of individual debtors.

The Official Forms may be downloaded free of charge from the internet at <http://www.uscourts.gov/bkforms/index.html>.

The Chapter 7 filing fee is \$299 including a \$245 case filing fee, a \$39 miscellaneous administrative fee, and a \$15 trustee surcharge. The fees must be paid to the clerk of the court upon filing unless the court specifically allows you to pay in installments.

In order to complete the Official Bankruptcy Forms that make up the petition, statement of financial affairs, and schedules, you must provide the following information:

1. A list of all creditors and the amount and nature of their claims;
2. The source, amount, and frequency of the debtor's income;
3. A list of all of the debtor's property; and
4. A detailed list of the debtor's monthly living expenses, i. e. , food, clothing, shelter, utilities, taxes, transportation, medicine, etc.

Married individuals must gather this information for their spouse regardless of whether they are filing a joint petition, separate individual petitions, or even if only one spouse is filing. In a situation where only one spouse files, the income and expenses of the non-filing spouse is required so that the court, the trustee and creditors can evaluate the household's financial position.

MEETING OF CREDITORS

Between 21 and 40 days after the petition is filed, the case trustee will hold a meeting of creditors. During this meeting, the trustee puts the debtor under oath, and both the trustee and creditors may ask questions. You must attend the meeting and answer questions regarding your financial affairs and property. If a husband and wife have filed a joint petition, they both must attend the creditors' meeting and answer questions.

It is important to cooperate with the trustee and to provide any financial records or documents that the trustee requests.

THE CHAPTER 7 DISCHARGE

A discharge releases you from personal liability for most debts and prevents creditors from taking any collection actions against you. Because a chapter 7 discharge is subject to many exceptions, though, debtors should consult competent legal counsel before filing to discuss the scope of the discharge. Generally, individual debtors receive a discharge in more than 99 percent of chapter 7 cases. In most cases, unless a party in interest 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 – generally, 60 to 90 days after the date first set for the meeting of creditors.



CHAPTER 13 BANKRUPTCY

Chapter 13 bankruptcy is also known as “wage earner” bankruptcy because, in order to file for Chapter 13, you must have a reliable source of income that you can use to repay some portion of your debt.

Repayment. When you file for Chapter 13 bankruptcy, you must propose a repayment plan that details how you are going to pay back your debts over the next three to five years. The minimum

amount you'll have to repay depends on how much you earn, how much you owe, and how much your unsecured creditors would have received if you'd filed for Chapter 7 bankruptcy.

Debt limits. Your debts must be within limits set by the federal government: Currently, you may not have more than \$1,010, 650 in secured debt and \$336,900 in unsecured debt.

Secured debts. If you have secured debts, Chapter 13 gives you an option to make up missed payments to avoid repossession or foreclosure. You can include these past due amounts in your repayment plan and make them up over time.

HOW CHAPTER 13 WORKS

A chapter 13 case begins by filing nearly the exact same set of forms as in a Chapter 7 bankruptcy, though the filing fee is \$274 rather than \$299 in the case of a Chapter 7 case.

The key difference between a Chapter 7 and a Chapter 13 in terms of documents to be filed, however, is that in a Chapter 13 you must file a Chapter 13 Plan as well as a slightly different form for the means test.

SPECIAL AUTOMATIC STAY RULES IN CHAPTER 13

As in Chapter 7, filing the petition under chapter 13 stops most collection actions against you or the your property. Chapter 13 also contains a special automatic stay provision that protects co-debtors. Unless the bankruptcy court authorizes otherwise, a creditor may not seek to collect a “consumer debt” from any individual who is liable along with the debtor.

MEETING OF CREDITORS IN CHAPTER 13

Between 21 and 50 days after you file your Chapter 13 petition, the Chapter 13 Trustee will hold a meeting of creditors. This is exactly the same process as under Chapter 7, so please refer back to that section to learn more.

HOW CREDITORS GET PAID IN CHAPTER 13

In a chapter 13 case, creditors must file their claims with the court within 90 days after the first date set for the meeting of creditors. If a creditor does not file a claim in your Chapter 13 then that creditor will receive none of the money you put into your Plan. If the debt is otherwise dischargeable then it will simply be wiped out when your Chapter 13 case is finished.

THE CHAPTER 13 PLAN

Under Chapter 13 you must file a repayment plan with the petition or within 14 days after the petition is filed. The Plan is subject to court approval and must provide for payments of fixed amounts to the trustee on a monthly basis. The trustee then distributes the funds to creditors according to the terms of the plan.

Your Plan doesn't need to pay all unsecured claims in full so long as it meets certain legal requirements. The Plan must pay to creditors:

- all of your projected “disposable income” over an “applicable commitment period”,
- at least as much as they would receive if you had filed under Chapter 7 and had assets sold.

Which must be “Disposable income” is income (other than child support payments received by the debtor) less amounts reasonably necessary for the maintenance or support of the debtor or dependents and less charitable contributions up to 15% of the debtor’s gross income.

The “applicable commitment period” depends on the debtor’s current monthly income. The applicable commitment period must be three years if current monthly income is less than the state median for a family of the same size – and five years if the current monthly income is greater than a family of the same size.

Within 30 days after filing the bankruptcy case, even if the plan has not yet been approved by the court, the debtor must start making plan payments to the trustee.

CONFIRMATION HEARING – GETTING YOUR PROPOSED PLAN APPROVED

No later than 45 days after the meeting of creditors, the bankruptcy judge must hold a confirmation hearing and decide whether the plan meets the standards for confirmation set forth in the Bankruptcy Code.

Your creditors may object to confirmation. If that happens, your lawyer will work with you to modify your proposed Plan to make it acceptable. But if the creditors can’t be pleased then it will be up to you and your lawyer to decide if there is good legal basis for the judge to decide.

Once the Plan is confirmed, the Chapter 13 trustee will start to distribute funds received.

MAKING THE PLAN WORK

Once the court confirms the plan, it's up to you to make the plan succeed. You must make regular payments to the trustee, which will require an adjustment to living on a fixed budget for a prolonged period.

In addition, it's important to remember that you are not allowed to take on any new debt without consulting the trustee and without court approval.

If you don't make the payments due under the Plan, the court may dismiss the case or convert it to a Chapter 7 case. The court may also dismiss or convert your case if you don't pay any post-filing domestic support obligations (i. e. , child support, alimony), or fail to make required tax filings during the case.

Occasionally, a change in circumstances may leave you unable to make plan payments. If that happens, no worries – your Plan may be modified either before or after confirmation.

THE CHAPTER 13 DISCHARGE

The discharge in a chapter 13 case is somewhat broader than in a chapter 7 case. You are entitled to a discharge upon completion of all payments under the chapter 13 plan so long as you:

- (1) certify that all domestic support obligations that came due prior to making such certification have been paid;
- (2) have not received a discharge in a prior case filed within a certain time frame (two years for prior chapter 13 cases and four years for prior chapter 7, 11 and 12 cases);
and

- (3) have completed an approved course in financial management.

Debts not discharged in chapter 13 include certain long term obligations (such as a home mortgage), debts for alimony or child support, certain taxes, debts for most government funded or guaranteed educational loans or benefit overpayments, debts arising from death or personal injury caused by driving while intoxicated or under the influence of drugs, and debts for restitution or a criminal fine included in a sentence on the debtor's conviction of a crime.

To the extent that they are not fully paid under the chapter 13 plan, you will still be responsible for these debts after the bankruptcy case is over

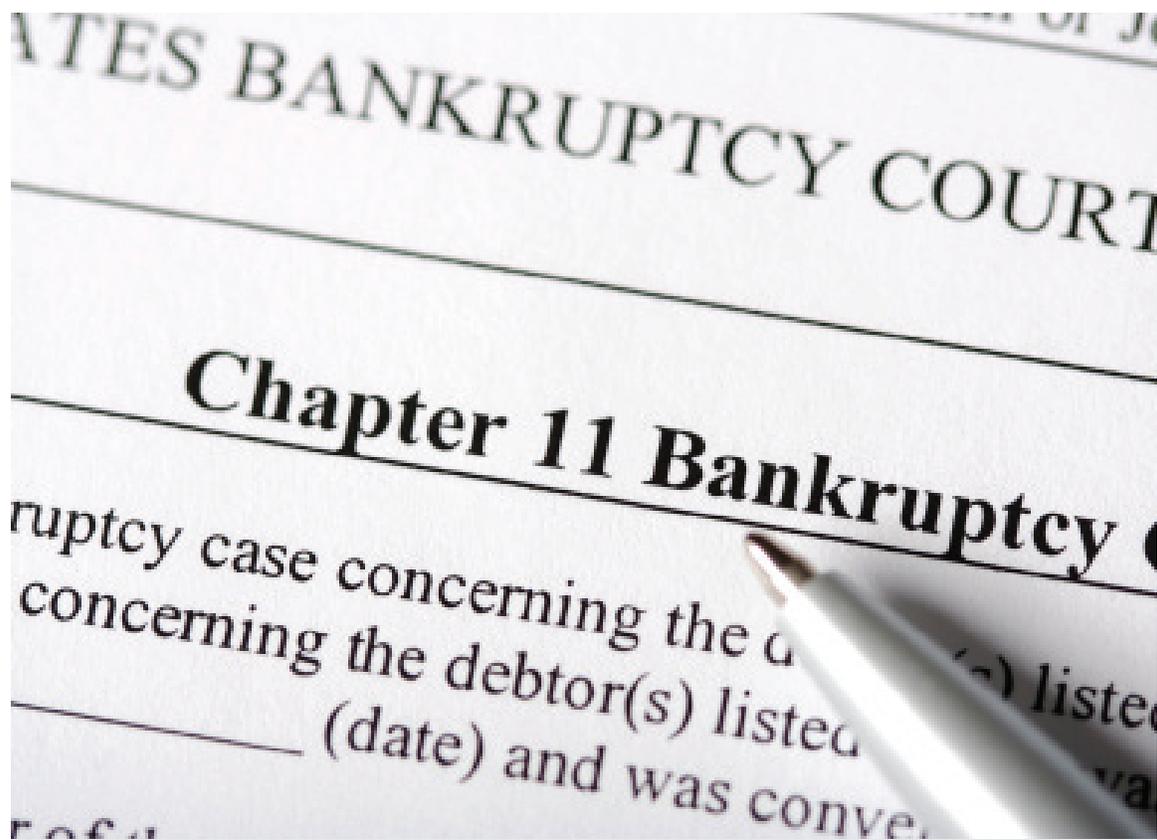
THE CHAPTER 13 HARDSHIP DISCHARGE

After confirmation of a plan, circumstances may arise that prevent you from completing the plan. In such situations, you may ask the court to grant a "hardship discharge."

Generally, such a discharge is available only if:

- (1) your failure to complete plan payments is due to circumstances beyond your control and through no fault of your own;
- (2) creditors have received at least as much as they would have received in a chapter 7 liquidation case; and
- (3) modification of the plan is not possible.

The hardship discharge is more limited than the discharge described above and does not apply to any debts that are nondischargeable in a chapter 7 case.



OTHER TYPES OF REORGANIZATION BANKRUPTCY

In addition to Chapter 13 bankruptcy, there are two other types of reorganization bankruptcy: Chapter 11 and Chapter 12.

Chapter 11 bankruptcy. Chapter 11 is typically used by financially struggling businesses to reorganize their affairs. It is also available to individuals, but because Chapter 11 bankruptcy

is expensive and time-consuming, it is generally used only by those whose debts exceed the Chapter 13 bankruptcy limits (rare) or who own substantial nonexempt assets (such as several pieces of real estate). If you are considering Chapter 11 bankruptcy, you'll need to talk to a lawyer.

Chapter 12 bankruptcy. Chapter 12 is almost identical to Chapter 13 bankruptcy. But to be eligible for Chapter 12 bankruptcy, at least 80% of your debts must arise from the operation of a family farm. Chapter 12 bankruptcy has higher debt ceilings to accommodate the large debts that may come with operating a farm, and it offers the debtor more power to eliminate certain types of liens. Very few people use Chapter 12 bankruptcy; if you want to join their ranks, you should consult with a lawyer.



HOW TO CHOOSE THE RIGHT BANKRUPTCY LAWYER

Tough times call for tough attorneys and when you're facing bankruptcy you need the toughest – but the best attorney around.

What are the key things you need to look for (or ask for) when you're searching out a bankruptcy attorney, including an attorney who can handle chapter 11 or chapter 13 issues

relating to indebtedness or insolvency?

There are some key things you need to do. Here are nine.

1. Ask around. The best thing you can do is check out others who have used attorneys in a similar situation. Remember, no matter how much Attorney A may be well-regarded, unless he or she is experienced in bankruptcy law issues you don't need them.
2. Experience. They must have experience. You don't want to be some newbie lawyer's guinea pig.
3. Check out the local court and see which attorneys are actually handling the bankruptcy work there. You can watch them in action, get a feel for who you think would do a good job for you.
4. Is the lawyer active in the National Association of Consumer Bankruptcy Attorneys? The National Association of Consumer Bankruptcy Attorneys is the largest nationwide organization of bankruptcy lawyers who represent consumers in Chapter 7 and Chapter 13 proceedings. Members take their job seriously, and routinely spend hundreds of hours each year working together to gain the highest level of understanding of the bankruptcy laws. They are well-informed and have a network of colleagues nationwide at the ready to help out in difficult cases.
5. How about other continuing education? Lawyers who are serious about providing the best possible representation will also be members of the National Association of Consumer Advocates. Some of the top bankruptcy lawyers in the country are also graduates of the prestigious Max Gardner Bankruptcy Boot Camp.
6. Do they share knowledge in a way you can understand? Blogging and online publishing is more important now than ever before, as professionals share information and educate

the public about issues that concern them. Bankruptcy lawyers who participate in the Bankruptcy Law Network or who maintain their own blogs are proving that they are knowledgeable enough to help others understand this field of law.

7. Know who will be handling your work. You also need to ask which lawyer will be handling your file. The attorney you interview may not necessarily be the one who will handle your bankruptcy issue so ask who will be doing it.
8. Ask about fees. You have enough money trouble without knowing what the fees will be for the job so ask the lawyers and get the best estimate you can as to how much they cost.
9. Don't make a fee-based decision. Don't go for the cheapest lawyer. Although money is clearly important you also want to make sure you're getting a bankruptcy attorney who can do the best job for you and that's not at all necessarily the cheapest. You want an attorney who has experience and can give you a time frame, a fee estimate and some darn good advice during a rough time.

Remember when you're hunting out an attorney for bankruptcy matters you should also go to the bar association and use their free advice on matters like fees, good attorneys and other advice that can help you make a very important selection just that little bit easier.

WHAT TO EXPECT AT YOUR INITIAL CONSULTATION WITH A BANKRUPTCY LAWYER

Being in debt is stressful enough without having to bare your soul to a stranger. Yet that's exactly what you need to do in order to make your initial bankruptcy consultation productive. Different lawyers do things in their own way, but in general there's a pattern to the first meeting.

If you're meeting with a bankruptcy lawyer who believes in providing information to his or her clients rather than merely grinding through consultations, you can be relatively sure that the initial bankruptcy consultation will follow these steps:

Filling Out Forms: Your lawyer will have you fill out some basic information about who you are, where you live and other identifiers. This is important so that lawyer can verify your eligibility to file for bankruptcy, as well as where your case can be filed.

You'll also usually have a short questionnaire (in my office we use a 6-page document with primarily Yes/No checkboxes) to give the lawyer a good idea of your debts and property. This will help guide the conversation with the lawyer.

Getting Organized: Some law firms will have you meet with a paralegal or case processor, others will have you go directly to the lawyer. If you're meeting a paralegal or case processor then you will most likely be handing over documents so they can be organized for you to meet with the lawyer.

Meeting With The Lawyer: The paralegal or case processor is not legally allowed to give you advice – that's why they have lawyers running these places. If your initial bankruptcy consultation does not involve meeting personally with the lawyer, you should immediately run in the other direction and never look back.

Reviewing Your Situation And Examining Options: This is when the lawyer rips apart your problem and figures out what your best – and worst – options are to make things better. It's your chance to ask questions and request clarification of the answers. Take as much time as you need – it's your life, so you need to be comfortable.

Making The Commitment To Ending Your Bill Problems: Now's the moment of truth – do you want to get out of debt, or are you going to keep going down the black hole? Do you

want to get control over your life, or do you want to keep running from the phone calls and collection letters?

If you want to end the bill problems, and assuming bankruptcy is an option for you, then you'll need to go through the retainer agreement with your lawyer. Make sure you understand the fee structure and what he or she will and will not do for you before you sign – this is your life and you need to protect it.

Ask questions, read every line, and take nothing for granted. Once you've hired your lawyer and committed to a life free of overdue bills, you can rest easy in the knowledge that you've done the right thing for yourself and your future.

WHAT TO BRING WITH YOU TO YOUR INITIAL CONSULTATION WITH A BANKRUPTCY LAWYER

Meeting with a bankruptcy lawyer is absolutely the best way to find out if filing for bankruptcy is right for you. As a Wisconsin lawyer I can tell you only what to expect in Wisconsin, not in other states. Why? Because every state has different local customs when it comes to filing for bankruptcy.

Surprised? Don't be – though bankruptcy is a federal set of laws, most states have their own laws that supplement the federal code.

One of the keys to a successful initial consultation is being prepared for what the lawyer will ask about, and the documents you will need. You're not going to get all the answers unless you come completely prepared for the first meeting. You have to bring everything with you.

What to bring with you

At the very least, you should come prepared with all of the following documents when you meet your lawyer the first time:

1. all bills and collection letters for credit cards, personal loans, store cards, student loans, tax bills, etc. whether they are up-to-date or not
2. pay stubs for all employers you've had over the past seven months
3. federal and state income tax returns for the past three years with all W-2 and/or 1099 forms
4. IF YOU ARE CURRENTLY MARRIED AND LIVING TOGETHER, EVEN IF YOUR SPOUSE IS NOT INVOLVED IN YOUR BILL PROBLEMS . . . pay stubs for all employers your spouse has had over the past seven months
5. IF YOU HAVE A CAR, TRUCK, VAN, BOAT OR MOTORCYCLE IN YOUR NAME. . . statement from all car lenders showing the balance due to pay every car note
6. IF YOU OWN A HOUSE, CO-OP OR CONDOMINIUM IN YOUR NAME . . . most recent mortgage and/or second mortgage and/or home equity loan statement showing the balance due to the pay the mortgage and/or loan off in full

Your lawyer may need to see more documents and will definitely need more information from you in order to determine whether you qualify for Chapter 7 or Chapter 13 bankruptcy in Wisconsin. The rules as they are applied in Wisconsin may differ significantly from those in other states, so this partial list will give your lawyer a good jumping-off point to be able to help you.

QUESTIONS TO ASK A BANKRUPTCY LAWYER BEFORE MAKING A HIRING DECISION

So the stress of dealing with overwhelming debt has finally gotten to you, and you've decided that bankruptcy might be the best solution for regaining your financial footing. If bankruptcy seems like the logical course of action, you'll need to contact a bankruptcy attorney to take your case.

Before choosing an attorney to represent you, though, you'll need to write down a list of questions for to ask prospective lawyers. These questions will help you determine if your bankruptcy lawyer is the right one for you. If you hire an experienced attorney, the bankruptcy process will typically be quite painless; conversely, a bad lawyer can turn the experience into a complete nightmare.

When interviewing bankruptcy attorneys, here are some essential questions you should ask:

Is bankruptcy the right solution for my financial situation? If you are dealing with a competent bankruptcy lawyer, he or she will discuss your options with you. If there is another solution that will better meet your needs, your lawyer should tell you. If a bankruptcy attorney rushes you into paying a retainer without telling you about other solutions, keep looking.

How can I benefit from filing bankruptcy? A prospective attorney should be able to explain the benefits of bankruptcy in simple, everyday terms. He or she should also be able to tell you about the implications of different types of bankruptcy, such as Chapter 7 and Chapter 13.

How many bankruptcy cases have you successfully handled? If your lawyer has taken on only a handful of cases in his or her career then you need to know that – likewise, if your lawyer claims to have helped thousands of people in a career spanning many decades that's useful information to have as well. A lawyer who exclusively handles bankruptcy cases will often

have better knowledge of current laws than one who takes on cases in a variety of fields.

Will you attend my court appearances with me? If a paralegal will attend court hearings in your attorney's place, you'll want to choose a different lawyer. If your bankruptcy lawyer works for a large firm, an associate attorney may attend instead of your attorney as long as the associate is familiar with your case, this shouldn't be a problem. Nonetheless, make sure you get a chance to meet the associate before the court date, so you can review the specifics of your financial situation.

What do your attorney fees cover? In most cases, the fees you pay will cover all of the services you'll need to obtain a Final Decree and discharge. If your attorney charges extra fees for special services, make sure you know about them before you sign a Fee Agreement.

As in anything, the important thing is to be comfortable and fully informed when choosing a professional to represent your interests. Bankruptcy is an important step towards re-building your financial footing, and you should be able to rely on your choice of lawyer.



LET ME HELP YOU

I have been where you are and understand what you are going through.

I have dedicated my career as an attorney to helping people get out of debt.

Let me put my legal and finance background to work and give you real honest SOLUTIONS.

Call 608-829-1112 or email Z@UsmanLaw.com to schedule a free, no-obligation office consultation

Remember this consumer guide is meant to give you a foundation of knowledge with regard to your rights so you can make an informed decision about the best course of action for you. However, each individual's situation is unique, and so there is no such thing as 'one size fits all' when it comes to financial advice.

Madison Office

525 Junction Road, Suite 8520N
Madison, WI 53717

Monona Office

6320 Monona Drive, Suite 302
Monona, WI 53716

608-829-1112



APPENDIX

SECTION 341(A) MEETING OF CREDITORS REQUIRED STATEMENTS/QUESTIONS

1. State your name and current address for the record.
2. Please provide your picture ID and Social Security number card for review.

- a. If the documents are in agreement with the 341(a) meeting notice, a suggested statement for the record is:

I have viewed the original State of Wisconsin drivers license (or other type of original photo ID) and original Social Security card (or other original document used for proof) and they match the name and Social Security number on the 341(a) meeting notice.

- b. If the documents are not in agreement with the 341(a) meeting notice, a suggested statement for the record is:

I have viewed the original Social Security card (or other original document used for proof) and the number does not match the number on the 341(a) meeting notice. I have instructed the debtor (or debtor's counsel) to submit to the court an amended verified statement by [date], with notice of the correct number to all creditors, the United States Trustee, and the trustee; and to file with the court a redacted copy of the notice, showing only the last four digits of the Social Security number, and a certificate of service.

- c. When the documents do not match the petition, the trustee shall attempt to ascertain why and shall report the matter to the United States Trustee.
 - d. If the debtor did not bring proof of identity and Social Security number, the trustee shall determine why.
3. Did you sign the petition, schedules, statements, and related documents and is the signature your own? Did you read the petition, schedules, statements, and related documents before you signed them? UsmanLaw.com (608) 829-1112.8

4. Are you personally familiar with the information contained in the petition, schedules, statements and related documents? To the best of your knowledge, is the information contained in the petition, schedules, statements, and related documents true and correct? Are there any errors or omissions to bring to my attention at this time?
5. Are all of your assets identified on the schedules? Have you listed all of your creditors on the schedules?
6. Have you previously filed bankruptcy? (If so, the trustee must obtain the case number and the discharge information to determine the debtor(s) discharge eligibility.)
7. What is the address of your current employer?
8. Is the copy of the tax return you provided a true copy of the most recent tax return you filed?
9. Do you have a domestic support obligation? To whom? Please provide the claimant's address and telephone number, but do not state it on the record. Are you current on your post-petition domestic support obligations?
10. Have you filed all required tax returns for the past four years?

SAMPLE GENERAL QUESTIONS

1. Do you own or have any interest whatsoever in any real estate? If owned: When did you purchase the property? How much did the property cost? What are the mortgages encumbering it? What do you estimate the present value of the property to be? Is that the whole value or your share? How did you arrive at that value? If renting: Have you ever owned the property in which you live and/or is its owner in any way related to you?
2. Have you made any transfers of any property or given any property away within the last one year period (or such longer period as applicable under state law)? If yes: What did you transfer? To whom was it transferred? What did you receive in exchange? What did you do with the funds?
3. Does anyone hold property belonging to you? If yes: Who holds the property and what is it? What is its value?
4. Do you have a claim against anyone or any business? If there are large medical debts, are the medical bills from injury? Are you the plaintiff in any lawsuit? What is the status of each case and who is representing you?
5. Are you entitled to life insurance proceeds or an inheritance as a result of someone's death?

If yes: Please explain the details. If you become a beneficiary of anyone's estate within six months of the date your bankruptcy petition was filed, the trustee must be advised within ten days through your counsel of the nature and extent of the property you will receive. UsmanLaw.com (608) 829-1112.

6. Does anyone owe you money? If yes: Is the money collectible? Why haven't you collected it? Who owes the money and where are they?
7. Have you made any large payments, over \$600, to anyone in the past year?
8. Were federal income tax returns filed on a timely basis? When was the last return filed? Do you have copies of the federal income tax returns? At the time of the filing of your petition, were you entitled to a tax refund from the federal or state government? If yes: Inquire as to amounts.
9. Do you have a bank account, either checking or savings? If yes: In what banks and what were the balances as of the date you filed your petition?
10. When you filed your petition, did you have:
 - a. any cash on hand?
 - b. any U.S. savings bonds?
 - c. any other stocks or bonds?
 - d. any certificates of deposit?
 - e. a safe deposit box in your name or in anyone else's name?
11. Do you own an automobile? If yes: What is the year, make, and value? Do you owe any money on it? Is it insured?

12. Are you the owner of any cash value life insurance policies? If yes: State the name of the company, face amount of the policy, cash surrender value, if any, and the beneficiaries.
13. Do you have any winning lottery tickets?
14. Do you anticipate that you might realize any property, cash or otherwise, as a result of a divorce or separation proceeding?
15. Have you been engaged in any business during the last six years? If yes: Where and when? What happened to the assets of the business?