

What Is Bankruptcy?

First and foremost, filing for bankruptcy is taking charge of your financial affairs once they've spun out of control to the point you cannot get through your day without thinking about your situation. You may feel stuck and unable to plan for your future because you owe so much money. Bankruptcy is a way of erasing certain debts that prohibit you from moving forward and pursuing the American dream. Do you know what's involved when your debts become overwhelming?

The decision about whether to file for bankruptcy is a difficult one. Knowing what is involved and how simple the process is can make the decision a little easier. Knowledge in this topic is power—and it's not just for the lawyers! Regardless of your skills, job, or IQ, you can learn everything you need to know, from the basics to the intricacies of bankruptcy, and take charge of your life. In turn, you can open your own door to a fresh start and welcome a new beginning.

You're Not Alone

Personal bankruptcies are at an all-time high following the 1990s when consumers did a lot of, well, consuming. In fact, the economic boom of the 1990s was driven largely by consumer spending, as people tended to save less and spend more on goods and services. Lower interest rates spurred a housing boom and urged people to spend even more and think less about the

Personal bankruptcy filings in 2003 rose 5.3 percent in just a year. Whether debt problems were the result of losing a job, a divorce, an illness, or simply overspending, more than 1.6 million Americans chose bankruptcy as the way to solve their financial problems. Household debts sat at a record high of \$8.9 trillion nationwide. By early April 2004, the American Bankruptcy Institute, which compiles per capita bankruptcy statistics every three months based on figures from the Census Bureau and U.S. Bankruptcy Courts, estimated that for the previous year (ending March 31st) there was one filing for every 72.9 households.

financial consequences. By the early 2000s, the scales were tipping and bankruptcy filings were beginning to add up. Filings have doubled nationwide in the past decade, increasing from 813,000 filings in 1993 to 1,625,200 in 2003, according to federal bankruptcy court records.

That's a lot of household debt, and a lot of bankruptcies. In fact, the statistics translate to a rate of 185 per hour! Like we said above, you're not alone in this transaction.

Knowledge Is Power

We will repeat this truth throughout this book: Knowledge is power! Repeat this statement out loud to yourself and feel the confidence it gives you. Facing a bankruptcy might make you feel crippled, but don't let that happen. Use the information in this book to empower yourself and to make good decisions for your future. Keep this statement in the back of your mind as you move through these chapters. It will fuel you with the energy you need to conquer your fears related to a bankruptcy, to get done what you need to get done, and to move on.

It's Your Constitutional Right

Filing for bankruptcy is a constitutional right of protection against creditors (people to whom you owe money). It allows people to make a fresh start after experiencing financial difficulties so severe that creditors' demands can no longer be reasonably satisfied.

Most people who file for bankruptcy are insolvent, which is defined by the Federal Bankruptcy Code as a financial condition such that what you owe is more than what you have.

Do you qualify for filing for bankruptcy? Are you insolvent? Filing for bankruptcy is a personal choice you have to make. Ask yourself:

- Do I owe more than what I have?
- Do I lack the means to pay off rising debt?

If you said yes to these two questions, then you probably qualify for bankruptcy. From a legal standpoint, you don't even have to be insolvent to qualify for bankruptcy. Relief is available irrespective of the amount of your debts or whether you are solvent or insolvent. The exact qualifications for bankruptcy will be discussed in the next chapter. But if you carry an enormous amount of personal debt in the form of credit cards, medical bills, or fallout of a divorce or job loss and you are unable to pay for basic living expenses, then you likely qualify for relief.

Being insolvent is also referred to as being upside down, which makes sense if you think of being physically upside down and unable to upright yourself without the fresh start that bankruptcy can provide. If you won the lottery today and suddenly came into a ton of money, you wouldn't feel upside down anymore. And you wouldn't be thinking about bankruptcy. You'd be paying your creditors back quickly and promising yourself never to return to the state of being in so much debt.

But chances are, you're not going to hit the jackpot (and we don't suggest you travel to Las Vegas to waste any last resources of money you've got trying to beat the odds). You need to begin to look at yourself and your finances realistically and to take charge of your situation before you lose your mind. We know how mentally draining and troublesome a bankruptcy can be. Imagine getting that clean slate, that ability to start over and rebuild your life for the better. Imagine closing the door to years of financial hardship and struggle, angry creditors, and threatening letters that reduce your quality of life.

You may know that bankruptcy will help you, but you still struggle with the decision to take action. If you are like most individuals, you have spent a lifetime trying to do the right thing. You have sacrificed in order to meet your obligations. Sometimes you have paid creditors when you really could not afford to do so. You may have ignored medical needs or sacrificed the comfort and well-being of your loved ones in order to satisfy a financial obligation. If you pay only the minimum balance on your credit cards, you will never see that huge balance owed move downward. (In chapter 2 we'll give you other options to filing for bankruptcy that might be more suitable for your current needs.)

But there comes a time when, regardless of your sacrifices, there is simply not enough money to meet your obligations. Your creditors are not happy because you cannot pay them the way they expect to be paid. You are not happy because as hard as you try and continue to sacrifice, you are not able to solve your financial problems. If anything, they get worse. Even when you stop using credit cards, their balance totals haunt you with so much interest that you cannot begin to pay down the actual principal amount because all you can afford is the interest payment. Bankruptcy begins to look like the solution to your problems.

Examples of Common Exemptions (Things You Can Keep) in Most States

- House (to protect a certain amount of the equity in your home)
- Household appliances
- Personal clothing and furniture
- Personal automobile
- Business vehicle
- Tools of trade
- Retirement funds

Note that each state will vary, so the above list may not match your particular situation. In this chapter, we give you the overview of what bankruptcy entails, from the law to the actual process of filing for bankruptcy. You'll learn about all the people involved in the process, what you stand to gain when filing for bankruptcy, and what you stand to lose.

Bankruptcy is defined and recognized on the federal level, but filing for bankruptcy requires attention to the details given by your particular state and sometimes your particular district. In this book, we strive to give general information that pertains to all bankruptcy filings no matter the state in which you reside. When necessary, we use examples from specific states and direct you to resources where you can find information about your specific state. The biggest differences among the states are the exemptions involved with a bankruptcy. Exemptions are the rules that allow you to keep some of your assets in your bankruptcy. You are allowed to keep certain necessities of life, such as your personal clothing and car to get to work. These items are exempt from your bankruptcy. In other words, you don't have to worry about losing them. Lists of exemptions by state can be found at www.wethepeopleforms.com. (More on this later.)

MIRANDA'S STORY

I feel like I've followed the rules all my life. I graduated from college with a 3.4 grade point average. I found a job in my field at the local school district. I earn \$30 an hour, more than many of my former classmates. And I pay off all my bills each month. That is, until recently, when a series of unexpected events turned my financial life upside down.

It all started when my baby was born. A medical problem racked up hospital bills that far exceeded my health coverage. Then a bitter divorce left me with \$20,000 in attorney fees. I began to pay what I could each month toward both bills. But that wasn't good enough. The hospital and attorney arranged to garnish (take money out of) my wages, to the tune of \$500 each month!

I borrowed \$8,000 from my family. I turned off my telephone, Internet and cable services. I started charging food and gas on my credit cards. But nothing I did seemed to make up for the fact that nearly one-third of my income was now gone. As the bills mounted, I found myself falling behind on rent and unable to make even the minimum due on my credit cards. With 18% interest rates and penalties for missed payments, my debt doubled and then tripled!

Creditors began calling me at work. (They couldn't reach me at home—my phone was turned off!) My boss wondered what was going on. Then a third creditor notified me of their intention to garnish my wages. I decided I needed to take action, and fast. There was no way I was going to hire another attorney. I couldn't risk another \$20,000 bill. So I researched the possibility of filing for bankruptcy.

I downloaded the appropriate documents off of my local court's Web site. The information required wasn't as hard as I thought: basically, how much I owed; my living expenses; and my assets, like car, computer, furniture, etc. I admit, it took me a little while to get my financial paperwork in order and dig out some documents that were buried in my home office, but it felt good getting my financial papers organized. It was time to get organized and know exactly where my money (or lack of it) was located. And once I filed the papers with the Bankruptcy Court, I felt this great sense of relief. When creditors called, I simply gave them my case number and they were not allowed to call again. The Automatic Stay is wonderful. It stopped the garnishment of my wages the moment I filed.

Within three months, the court had discharged all my debt and I had full use of my income again. I felt this sense of empowerment, that I had taken control of the situation without an expensive attorney. On my own initiative, I had started to rebuild my financial security.

I opened a savings account and began putting away a set amount each month. I took out a better health insurance plan for my baby girl. And I enrolled in graduate school to increase my future earning potential. Bankruptcy has definitely given me a shot at getting my life back together. And I did it on my own!

The Law

The laws of bankruptcy go back hundreds of years to our forefathers, who shared a concern enough to specifically make room for laws regarding bankruptcy in our Constitution. While the laws have changed through the years, the purpose of bankruptcy remains the same: to give people a certain right of protection against creditors. Filing for bankruptcy protection solves financial problems by wiping out debt; in exchange for this, one gets a new beginning. Article I, Section 8, of the United States Constitution authorizes Congress to enact “uniform Laws on the subject of Bankruptcies.” Under this grant of authority, the United States Congress adopted the first national bankruptcy law in 1800. It has been amended somewhat throughout the years and present law is based on the Bankruptcy Act of 1978. Bankruptcy law has been modified to some degree since 1978, but it essentially remains the same.

If you are finding it very difficult to enjoy life because of financial pressures, understand that our forefathers made sure that our Constitution gave Congress the power to enact a law to give you the relief from such financial difficulties. This is how we came to have the Bankruptcy Code.

The Bankruptcy Code, which is codified as Title 11 of the United States Code, is the uniform federal law that governs all bankruptcy cases. This may look cold and confusing, but here’s what the Section 342(b) of that code states:

Prior to the commencement of a case under this title by an individual whose debts are primarily consumer debts, the clerk shall give written notice to such individual that indicates each chapter of this title under which such individual may proceed.

What does this mean? We will explain everything so you don’t need to worry about confusing legal language and terms that make you want to run away. The law basically states that you have a right to declare bankruptcy. And because there are various types of bankruptcies, you have to pick the right type of filing for the kind of debt you have.

Each bankruptcy court is in charge of a geographic area; some states have just one district, larger states have more districts. There are 94 bankruptcy districts across the country. The bankruptcy courts generally have their own clerk’s offices (where you go to file your petition).

Types of Bankruptcy Filings

Every year more than a million and a half people exercise their right to eliminate their debts and start over again. You, too, can exercise this right, eliminate your debts, and start rebuilding your financial affairs.

Remember the ultimate rights outlined in our Constitution: the right to life, liberty, and the pursuit of happiness. Well, if you’re full of fear and trepidation now that you’re experiencing a financial crisis and cannot enjoy life, find liberty, nor pursue happiness, rest assured that there are solutions to your problems.

The procedural aspects of the bankruptcy process are governed by the Federal Rules of Bankruptcy Procedure (often called the Bankruptcy Rules) and local rules of bankruptcy. The Bankruptcy Rules contain a set of official forms for use in bankruptcy cases. The Bankruptcy Code and Bankruptcy Rules (and local rules) set forth the formal legal procedures for dealing with the debt problems of individuals and businesses.

General information on the main Chapters of the Bankruptcy Code and definitions of bankruptcy terminology are available in the form of a Public Information Series, comprised of a series of fact sheets on these topics. Anyone may obtain the Public Information Series by writing to the Administrative Office of the United States Courts, Bankruptcy Judges Division, One Columbus Circle, N.E., Washington, D.C. 20544. The fact sheets have been combined in the publication *Bankruptcy Basics*, which is available at the federal judiciary's Internet web site, www.uscourts.gov.

Bankruptcy filings vary, whether you're an individual or business looking for relief from your debts in the form of debt elimination or restructuring the terms of repaying those debts. Here's a basic breakdown:

- Both individuals and businesses can file under Chapter 7 to eliminate their debts, which is also referred to as total liquidation.
- Individuals can restructure their debts by filing for relief under Chapter 13.
- Businesses can restructure their debts by filing for relief under Chapter 11.
- A family farmer can restructure his debts under Chapter 12.

In the United States in 2003, approximately 1,100,000 individuals were able to wipe out their debts under Chapter 7. Almost half a million were able to restructure their debts under Chapter 13. Approximately 100,000 businesses were able to eliminate their debts under Chapter 7 or restructure and reorganize their debts under Chapter 11. We will revisit these types of bankruptcy in more detail in chapter 3 of this book.

You might wonder why bankruptcy filings have to come under chapters. That's how the law works. United States Codes are laws. They are usually called titles and their subsections are broken down into chapters. Hence, we have the Bankruptcy Code labeled as Title 11 in the U.S. Codes, and under Title 11 are various chapters—or types—of bankruptcies. We know it can get confusing, but you'll get used to hearing these terms.

How Do I File without An Attorney?

Yes, bankruptcy is the legal process, but no, you do not need an attorney to complete the paperwork and file the forms with the court.

You have the right to represent yourself in the bankruptcy court. This is referred to as doing it *pro se*. A large number of people have filed their own bankruptcies and have done so successfully. That is because filing bankruptcy is simply a matter of completing the forms required by the bankruptcy courts. The official bankruptcy forms published by the federal judiciary are accepted in all bankruptcy courts. So you can go to the court and get a packet of all the official forms (you may have to pay a small fee). The easiest way to start is to go to www.wethepeopleforms.com and download (and print) all necessary forms. Instructions on the site will tell you which ones you need. Use this book to understand how to fill them out. If you do not have access to a computer or the Internet, you can visit your local public library, or a store such as Kinko's that offers Internet and printing services. You can also download these same forms at www.uscourts.gov/bankform/. Links from this main site to your local


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I Don't Understand What You Mean By . . .

Insolvency. The state of being unable to pay your debts because you owe more than you have.

Debt. Something owed, an obligation to pay.

Debtor. The person (such as you) who owes a debt.

Creditor. The person to whom money is owed.

Exemptions. The rules that allow you to keep some of your assets in your bankruptcy. Generally, exempt assets are what you can keep. Nonexempt assets are what you cannot keep. But there is some flexibility here, as we'll see.

Collateral. Assets used as security (a pledge or promise) for the repayment of a loan. Many people use large assets like homes, cars, and home furniture as collateral for loans.

Equity. The money value of your property, such as a home, that does not include the lender's portion of the value. Equity is the difference between the value of the asset and what you owe on the asset. Example: Your home is worth \$250,000. When you bought it for \$230,000, a bank loaned you the money in a mortgage. You've paid \$40,000 against the principal of your loan (this excludes any interest on your loan), so your equity is roughly \$60,000 (\$40,000 plus the increase in the home's value of \$20,000). Another example: Your car has a value of \$4,000 but there is a \$3,500 lien on it (you owe someone money because you've used your car as collateral for a loan) so your car now has an equity value of only \$500. This \$500 would be the amount subject to exemption.

Discharge. To dismiss or release from obligation to pay, such as your debts. When a bankruptcy discharges your debts, you are no longer responsible for paying those debts—ever again. This word can also be used as a noun: A discharge is a release of obligation to pay. Hence, the court discharges your debts, and you receive a discharge.

court's web site will allow you to download any local forms you need. Alternatively, you can walk into a We The People office, fill out all the information on the worksheets we provide, and have us type the forms for you. You don't need an attorney to hold your hand and explain to you how to fill out the forms. If the forms intimidate you, think about setting more time aside to focus on the documents. You can do it, and we are here to ensure that you do it successfully.

People are intimidated by the thought of going to a court and appearing before a judge. Much of the bankruptcy process is administrative, however, and is conducted away from the courthouse. A debtor's involvement with the bankruptcy judge is usually very limited, if at all. If you're filing under Chapter 7, you will not appear in court and you will not see the bankruptcy judge unless an objection is raised in your case (unlikely), or you plan to reaffirm, or keep, a debt such as your car loan. Some judges require that debtors who file for bankruptcy



I Don't Understand What You Mean By . . .

Assets. Your stuff. Specifically, any real property (your house), personal property (your car), or intellectual property (your patent rights to an invention) in which you own an interest (a legal share). Money owed to you and portions of property (such as half of a house you share with your wife) are also examples of assets. The words “property” and “asset” can be used interchangeably.

Automatic Stay Provision (or Order). An automatic and instant relief from your creditors’ attempts to collect from you.

Income. How much you make from all sources, or the amount that appears on your pay stubs.

Expenses. What you spend, or the money that you need to pay for monthly expenses, such as food, rent, etc.

Trustee. The person appointed by the bankruptcy court to take possession of all your nonexempt assets, reduce them to cash, and make distributions to creditors (subject to your right to retain some exempt assets and the rights of secured creditors). Your trustee’s job is to make sure that your documents are complete and to review your list of assets for items that are not protected by law. In no-asset cases, where you don’t have assets worth selling for money to pay creditors, your trustee gets only a flat fee to manage your case. Your trustee is a fair and impartial participant in your bankruptcy. The U.S. Trustee is the bankruptcy arm of the Justice Department.

Liquidate. To sell your assets in an attempt to repay some of your debts. Your trustee will liquidate any nonexempt assets you have once you file. For the majority of Chapter 7 filers, there are no assets worth selling, so the trustee has nothing to liquidate.

without an attorney appear before them to confirm these reaffirmation agreements. (We will explain this process later.)

If you’re filing under Chapter 13 you may only have to appear before the bankruptcy judge at your plan confirmation hearing. Usually, the only formal proceeding at which you must appear is the meeting of creditors, which is usually held at the offices of the United States trustee. Your trustee is the impartial representative in your bankruptcy case who deals with the distribution of your nonexempt assets.

Most Common Type of Bankruptcy Filing

Chapter 7 is the most common type of bankruptcy. It is commonly referred to as a washout or straight bankruptcy. With a Chapter 7, you are able to totally discharge almost all of your debts without having to repay them. You will also be allowed to keep most of your assets, possibly including your home. A husband and wife may file jointly in a bankruptcy and

obtain a discharge of all their marital debts, as well as the debts they each incurred before the marriage. A Chapter 7 bankruptcy allows you to start fresh without having to pay back the majority of your debts.

A common factor of all bankruptcies is the automatic stay provision. This puts any act to collect assets or to recover a claim against you in an immediate hold position. The stay takes place once the petition is filed. It obviously allows you some breathing room from bill collectors. So the moment you file your bankruptcy petition is the moment you don't have to answer to all the people who hound you down for money. Your creditors can no longer call, write, harass, or threaten in any way. It also stops wage garnishment (the taking of your money out of your wages). Once you file your initial papers with the court, you can notify your creditors (especially the problem ones) of your bankruptcy, and they will have to stop taking any actions against you. If your wages are being garnished, you will want to notify your employer immediately so that stops happening. Your trustee will also mail your creditors an official notice of your bankruptcy filing. (Included in your paperwork is a list of all your creditors and their contact information.)

You may claim some of your assets as exempt under governing law. If you have nonexempt assets subject to seizure, the trustee will try to sell any valuable assets and use the proceeds to pay your creditors according to the priorities of the Bankruptcy Code. For details about the role of the trustee and how your assets—if you have any the trustee sees as worth selling—get seized and sold, go to chapter 6 of this book.

Under Chapter 7, an individual or business is discharged of any liability on most—if not all—of their unsecured debts and on unsecured portions of secured debts. A discharge means the debtor (you) no longer has legal obligation to repay the debt.

Three Types of Debt

While there are 34 categories of assets, there are only three types of debt.

- 1. Unsecured Debt:** Debts that cannot be repossessed or foreclosed on, such as credit card debt, personal loans, and medical bills. An unsecured creditor is one who holds no security or collateral for its loan. In other words, your credit card company cannot reclaim the things you've purchased on the card to help pay for the money it is owed. Unsecured debts generally are characterized as those debts for which credit was extended based solely on the creditor's assessment of your future ability to pay.
- 2. Secured Debt:** Debts where the assets securing the debt can be repossessed or foreclosed on, such as your home mortgage, car loan, rented furniture, etc. A secured creditor is one who holds an item of yours as security for the debt. The bank that loaned you the money to buy your house holds a mortgage or trust deed lien on your house as security for the loan; therefore, the mortgage company is a secured creditor.
- 3. Priority Debt:** Debts granted special status by the bankruptcy law, such as debts to a government agency (like the Internal Revenue Service or state income tax board), child support payments, and student loans.

Remember these terms. They become important when you officially file, because each of these three types of debts is handled differently in a bankruptcy proceeding. We will describe these debts throughout this book.

The Process of Filing For Bankruptcy—At a Glance

Most debtors who file bankruptcy, and many of their creditors, know very little about the bankruptcy process. The following are the basic steps you take when completing a bankruptcy proceeding:

- Decide that bankruptcy is right for you (see chapter 2 of this book).
- Decide which type of bankruptcy is right for you (see chapter 3 of this book).
- Gather and record all the information you need to fill out the actual forms (including your petition, schedules, and statement of financial affairs).
- Use the worksheets explained in chapter 2 to help you organize your assets and understand your expenses.
- Download the forms provided at www.wethepeopleforms.com. Print up several copies of the forms on regular, 8½ by 11 inch paper.
- Find out if your local court requires any additional or special forms.
- Follow the instructions in chapter 4 to fill out the official documents for the court.
- Double-check and review your forms, making sure you've dated and signed everything. Make sure they are complete.
- Make at least four copies of your documents in addition to the original for your own records.
- Locate the court where you need to file your forms (see Appendix B).
- Go to this court and file the forms with the clerk.
- Pay the filing fee directly to the court with a money order payable to the U.S. Bankruptcy Court.
- Look at the case number for your bankruptcy filing at the time of your filing. The clerk will note this at the top of your copy of the petition.
- Get the name and phone number of your appointed trustee at the time of your filing.
- Look at the tentative court's date, location, and time of your mandatory creditors' meeting. The court will send you an official notice of this meeting, usually about 35 days after you filed.
- Enjoy the temporary relief that the automatic stay provides, stopping your creditors from attempting to collect from you. (Breathe your first sigh of relief!)
- You must attend your meeting of your creditors with your trustee (not a judge). If you file under Chapter 13, you will have to attend a hearing before a judge to explain your plan.
- Await the court's formal notice in three to four months that discharges all your debts except the debts that are not dischargeable. Many debtors receive their discharge about 90 days after they file.
- Breathe another sigh of relief and begin to rebuild your credit—and a new life!

Before filling out those forms, we have provided a workbook-like exercise in chapter 2 of this book that gets you thinking about what assets you have. These pages will prepare you for

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Petition. A formal written request. A bankruptcy petition is your request to the court to discharge your debts. You will complete all the forms that make up your petition to the bankruptcy court.

Schedules. Lists that you must provide as part of your bankruptcy filing, such as a list of your real estate property (Schedule A), a list of your personal property (Schedule B), a list of your exempt property (Schedule C), and so on.

Statement of Financial Affairs. Information about you, such as how much you earned this year to date, how much you earned last year and the year before, and who helped you prepare your petition. This statement is a series of questions you must answer in writing concerning sources of income, transfers of property, lawsuits by creditors, and so on. There is an official form you must use, and we discuss it in detail in chapter 4.

filling out and completing the official forms. The forms should be typed and neatly prepared. If you'd prefer someone else to do the actual creation of your official forms for you, you can contact a We The People office and our services can help you out.

We can also assist you with specific forms and requirements you must meet locally. You can always seek this information from your local bankruptcy court clerk, another bankruptcy petition preparer (nonattorney), or an attorney. The information and the people you need to help you are readily available. The bankruptcy court web sites have become sophisticated enough to meet most other needs you may have in addition to the information we provide in this book and on our web site at www.wethepeopleforms.com.

Filing Fees

You can expect the following fees when filing for bankruptcy:

- Chapter 7: \$209
- Chapter 13: \$194
- Chapter 11: \$839

These fees are subject to change, so contact your local court to confirm these fees. Once you file your forms with the court and obtain a notice of your creditors' meeting, all collection efforts, including lawsuits, foreclosures, repossessions, wage garnishments (creditors taking money directly out of your income to pay for your debts), bill collector telephone calls, collection letters, and similar actions by your creditors are stopped automatically. The automatic stay is effective even when a creditor is not listed on your petition.

To stop any collection actions by your creditors, you simply provide them with your filing information: the name of the bankruptcy court, the Chapter under which you are filing, the filing date, and the case number. Your creditors must comply or the bankruptcy court can charge them with violating the automatic stay order.

As a general rule, excluding cases that are dismissed or converted (to other Chapters), individual debtors receive a discharge in more than 99 percent of Chapter 7 cases. In most cases, unless a complaint has been filed objecting to the discharge or the debtor has filed a written waiver, the discharge will be granted to a Chapter 7 debtor relatively early in the case, that is, 60 to 90 days after the date first set for the meeting of creditors.

How Long Will This Take Me?

It might take you a few days to sort through your personal information and gather the right information for filling out the official forms. Customers who visit our offices generally pick up questionnaires and spend about 20 to 30 minutes filling them out over the kitchen table. Take your time and be careful and thorough. If you're filling out the documents on your own, assuming this is the first time you've ever had to fill out such forms, you might need more time for the sake of being precise and detailed. It's important that you don't rush through this initial phase and make careless mistakes on your paperwork that will slow the process down later.

Once the court receives the documents, it is likely that a creditors' meeting will be scheduled in the next one to two months, after which you await the final notice from the court

of your bankruptcy's completion. Be forewarned that once secured creditors receive notice of your bankruptcy, some will file a motion for relief from stay, which is their way of asking the court to lift the automatic stay so they can take back secured assets, such as your home or car. Courts usually grant this permission, but you can negotiate to some degree with your secured creditors and keep the asset in the end (we will explore your options later). Without extraordinary motions, hearings or proceedings, the Notice of Discharge is entered approximately 90 days after the date of filing. So the entire process (for a Chapter 7) takes about four to five months from the day you first file with the court. Chapter 13 cases typically take more time, because you need the court to approve of your plan, plus three to five years before your plan is completed (more on Chapter 13 later).

The Cast of Characters

As complex as a bankruptcy proceeding might appear to be, you can count the number of people involved in the process on your hands, unless your situation gets complicated with lawyers and creditors that emerge to challenge your filing. For most who are simply filing a personal bankruptcy under Chapter 7, the process is easy and the number of people with whom you deal is small. We already defined the following characters (see Figure 1.1 and Figure 1.2).

What You Can Gain

Peace of mind! The purpose of discharging you of certain debts in a bankruptcy is to give you a fresh start in life. Nobody is perfect. The Bankruptcy Code originated from the need to release people from incurable debts that prevent them from living and pursuing their goals. The Code also stems from the belief that there should be no stigma or shame involved in needing to seek relief in bankruptcy.

If you've been struggling financially for a long time, you might feel isolated, on an island with no raft to take you back to civilization (or drowning while trying to find your way back to the mainland's shore). Filing for bankruptcy can give you that raft, and then you can begin to paddle back to civilization on that raft. But understand that you're not alone in

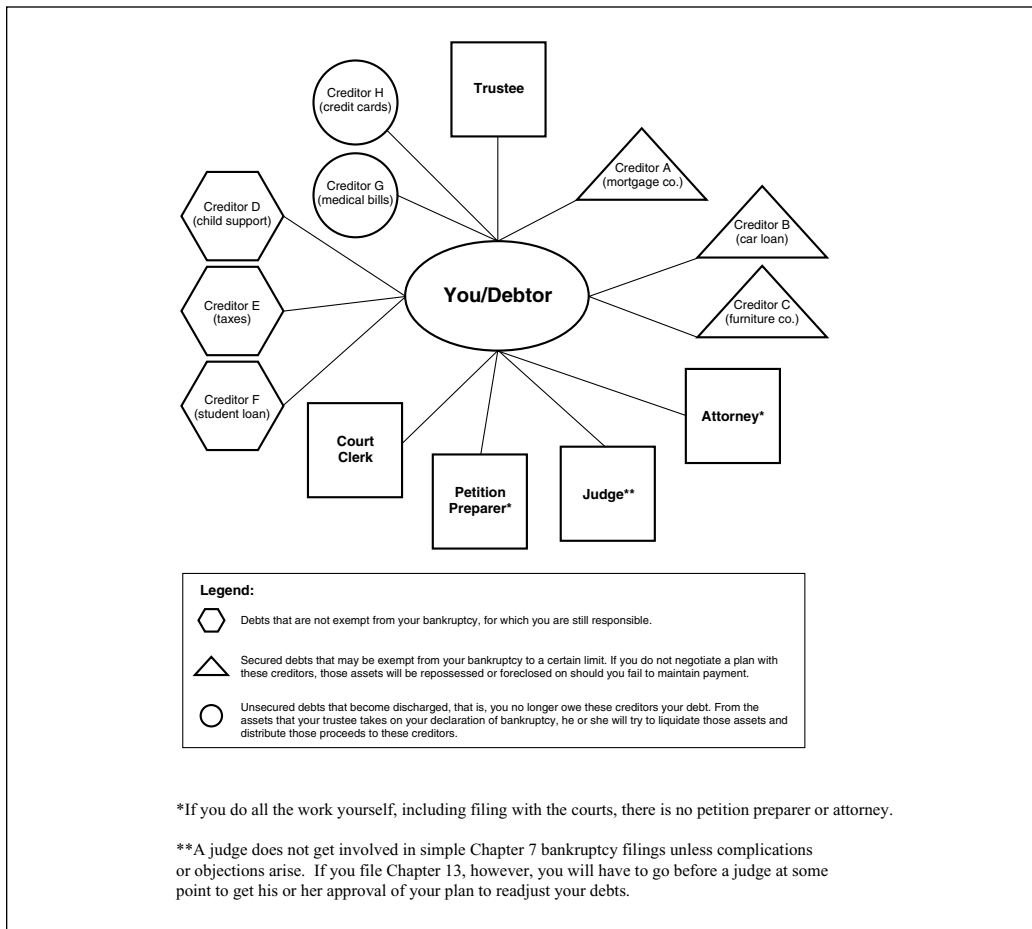


Figure 1.1

this journey. More than a million and a half people every year seek relief in bankruptcy. That's a lot of people.

People seek relief in bankruptcy for a variety of reasons. Here are some sample scenarios.

1. Joe finally got a job—after nearly a year of unemployment. During that time, his bills added up and he began using his credit cards to pay for rent, food, and basic living expenses. His new job didn't pay him enough to put a dent in his debt, and he worried about being able to keep up with the creditors once they started calling. He didn't want to put his family of five through the pain of crawling out of a deep hole that he couldn't see himself ever getting out of.
2. Mary started a small business a few years ago with a friend, who later left when the business started to go downhill. Within two years of her partner's departure, the business went belly-up and Mary had lost everything, including personal savings, personal loans from friends and family, and all that she had to keep herself above water. She sold her car and tried to pawn her jewelry before thinking about bankruptcy, but nothing was going to help wash away her \$95,000 of unsecured debt.

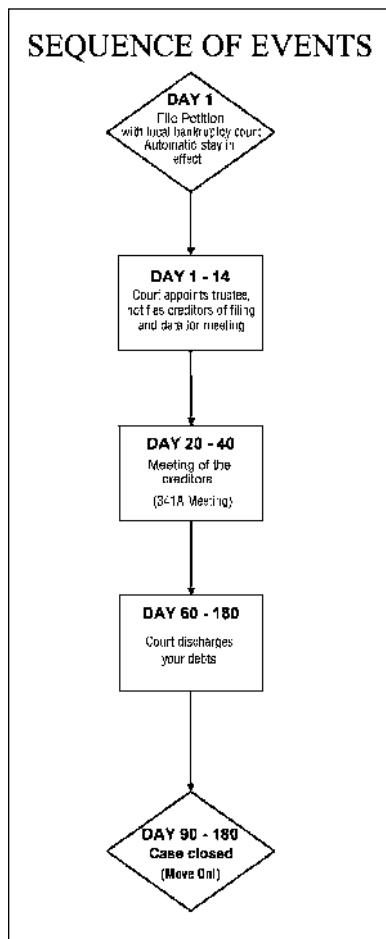


Figure 1.2

3. After a car accident, Ellen was out of work for nearly six months. The medical bills stacked high, and she didn't have adequate health insurance to help pay. When she went back to work, everything she made seemed to go to medical bills and taking care of her two daughters as a single mom. There was little left to pay regular bills.

These people sought relief in bankruptcy and it changed their lives for the better.

What You Can Lose

Bankruptcy should be considered a financial protection of last resort. When you're desperately in the red and cannot pay your bills to the point that your quality of life is severely diminished, the pros of filing for bankruptcy far outweigh the cons. But you should be aware of what you stand to lose during a bankruptcy.

First, you will lose assets that are not exempt from your bankruptcy. In some jurisdictions, this includes a house with a substantial amount of equity. However, a large majority of bankruptcies filed under Chapter 7 are no-asset filings. In other words, you don't lose any properties. This is because the trustee may only take your nonexempt properties. Because the majority of your properties are exempt (and in some jurisdictions you can protect your home and personal automobile) the trustee cannot take them. The types and quantity of exempt properties are different from state to state. Some states' exemptions rules make it easier to keep a home than other states. More on this later.

Second, you will lose secured assets that you cannot continue to make payments on. For example, even though a portion of your automobile could be considered an exempt item, you financed the car and it remains security for the bank that loaned you the money to buy it. Let's say you still owe \$18,000 on the car before the title to it is yours. If you cannot continue making payments on what you owe, the finance company has a right to file a motion with the

A reaffirmation agreement is a written agreement between a debtor and a creditor in which the debtor promises to pay a debt that is dischargeable. Such agreements are commonly used where the debt is secured by a lien on personal property, which a debtor owns (for example, where the creditor has a lien on the debtor's car to secure payment of a car loan). So you can reaffirm property that can be taken away by either the trustee or a secured creditor if you promise to continue making the proper payments.

court for relief from the automatic stay so that it can repossess that car. Secured creditors usually win these types of motions. The same holds true if you're behind on mortgage payments.

Third, you will lose points on your credit rating. A bankruptcy stays on your credit report for 10 years. But as soon as your bankruptcy case is closed, you can begin the process of rebuilding your credit. Although it may not be wise to jump into using credit again, you'll find creditors willing to extend credit to you quickly. Creditors look for steady employment and a history (since the bankruptcy) of paying for purchases on credit. Many creditors totally disregard a bankruptcy after five years. In Chapter 8 we'll talk about life after bankruptcy and give you tips for rebuilding your credit and using money wisely so you never have to consider bankruptcy again.

Finally, and most importantly, you lose your dischargeable debts in bankruptcy. A Chapter 7 bankruptcy eliminates most of your debt by wiping out the following bills:

- Credit cards
- Medical bills
- Most personal judgments
- Personal loans
- Loans you have personally guaranteed or cosigned

With a bankruptcy filing, you lose all that stress and the burdens related to barely keeping your head above water. You lose the feeling of being out of control, cornered, thrown down a hole with no way out, or left out to sea with no life jacket.

And you lose your fear and trepidation of living and making the most out of your life.

Conclusion

Consider what the Supreme Court said about the purpose of bankruptcy in its 1934 ruling in *Local Loan v. Hunt*:

[I]t gives to the honest but unfortunate debtor . . . a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt.

Giving debtors a financial fresh start from burdensome debts is the fundamental goal of the federal bankruptcy laws enacted by Congress. They are there for your protection. If you are an honest person unable to get out of serious debt and you've made every good faith effort to repay your debts, bankruptcy might be right for you. Bankruptcy represents the most devastating debt solution for the debtor's credit while providing the most complete elimination of the debt. A Chapter 7 personal bankruptcy can wipe out all of a person's debts, allow that person to keep all of his or her possessions, and give him or her a fresh start again. Exactly who can qualify to have his or her debts discharged in a no-asset case where he or she

No matter why you opt to file for bankruptcy, what kind of debt you carry or where it came from, all bankruptcy filings assume that you are an honest person who chooses to use a bankruptcy in good faith. In other words, you won't use bankruptcy to run away from civil or criminal lawsuits and debts you can pay, and once you've filed, you won't hide assets or shelter assets that should be used to repay your debts.

retains everything varies by state. In Chapter 13 bankruptcy cases debtors reorganize their finances by paying a portion of what they owe as settlement in full of their debts.

This chapter gave you an overview of bankruptcy and opened the door to exploring more about the topic and how you can proceed in a bankruptcy filing.

In the next chapter, we'll discuss some of the alternatives to bankruptcy that you should consider before filing for bankruptcy. Generally, any initial step should include negotiating an agreement with your creditors or those you owe in a liability case, but sometimes that's not possible and bankruptcy becomes the only way. We'll look at all the alternatives so that you can ultimately decide which road to take.