



A BASIC GUIDE TO

Personal Bankruptcy

SECOND EDITION





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INTRODUCTION

Under federal law, you (or you and your spouse jointly) are entitled to file a bankruptcy petition to restructure and reduce your debts and to obtain a financial “fresh start.”

Depending on the size, type and number of your debts, and the degree to which your payments are overdue, before considering declaring bankruptcy, you may want to enter a financial counseling program or negotiate with your creditors for more time and/or lower payments. Especially if you have only a few outstanding debts, you may be able to design a payment plan that will be acceptable to your creditors. A credit counselor or attorney can help you do this.

Although it is not necessary to consult a lawyer before preparing and filing a personal bankruptcy, it is certainly advisable to do so. Bankruptcy is a complex area of law involving both federal and state laws, as well as issues in commercial, tax, pension, and family law. Furthermore, personal bankruptcy filings are subject to many procedural requirements that, if not complied with, may result in the dismissal of your case. The details of your personal situation will also be very important in planning your best course of action.

If you are unable to afford a lawyer, you may apply to your county legal services office for reference to an attorney who may take your case *pro bono* (without charge). If you are eligible for this service, the matter will be referred to a lawyer experienced in bankruptcy. To help you make an informed and careful decision regarding your situation, further resources are listed at the end of this pamphlet.

The great majority of personal bankruptcies proceed under either Chapter 7 or Chapter 13 of Title 11 of the United States Bankruptcy Code. Although far less frequently utilized, personal bankruptcies may also be filed under Chapter 11 and Chapter 12 of the code.

Once you have filed for bankruptcy, the court clerk will notify the creditors listed in your petition. You or your attorney can also notify them as soon as your petition is filed.

CHAPTER 7 BANKRUPTCY



A Chapter 7 bankruptcy, or liquidation, may not be helpful to you if you are behind in your major loans to secured creditors – that is, if your loan agreements allow these lenders to foreclose on your house or to repossess your car, furniture, or other property if you have not paid on time. This type of bankruptcy is more suitable where most of your debt is owed to unsecured creditors such as credit card companies, doctors or hospitals, or stores that do not have legal rights to specific property that you own.

A Chapter 7 bankruptcy is usually a faster and easier process of debt resolution than a Chapter 13 bankruptcy. The court may require you to surrender some of your assets to your creditors, but it will not channel your future disposable income toward repaying your debts, as it would in a Chapter 13 proceeding. If you file a Chapter 7 bankruptcy petition, you will not be able to file another Chapter 7 petition for eight years.

In order to qualify for a Chapter 7 filing, you must demonstrate that the filing is in good faith. Good faith is presumed if you pass the so-called “means test.” You will pass this test if your gross household income from all sources, averaged over the six months immediately preceding your filing, was less than the average median income for a similarly sized household in the geographic area in which you reside. If your income is greater than the average median income, good faith will still be presumed if, after deducting reasonable monthly household living expenses, as determined under Internal Revenue Service (IRS) national guidelines, as well as payments to secured (mortgage and car payments) and priority (support and taxes) creditors, there is insufficient income left over to pay any of your remaining debt.

A trustee, who is an officer of the bankruptcy court, may sell some of your assets and divide the proceeds among your creditors. However, under state or federal law, you may be able to protect a specified dollar amount of some types of assets from being sold (for example, jewelry or professional tools), or keep a specified dollar value from the sale price of certain other assets (for example, your house or car). A Chapter 7 petition asks you to identify any such exempt or partially exempt assets. You may wish to consult an attorney to determine all of your exemptions.

Even if this process does not repay your debts in full, the debts will be considered discharged, or void. However, under both Chapter 7 and Chapter 13, there are some debts, like taxes, fines, penalties, alimony, child support, and most student loans, that cannot be discharged.

You might be able to prevent a secured creditor with a lien on some of your personal property (such as a car) from seizing it. You could either

redeem the property, by paying the creditor the actual current value of the property (as opposed to its value under the agreement with the creditor) or, with the creditor's approval, reaffirm the debt by promising the creditor that you will complete payments under the agreement signed when the property was acquired, or under a new agreement agreed to by both you and the creditor. The redemption or reaffirmation of a debt must be completed within a limited time after a case is filed or the property may be taken, without further permission of the court.

If you are not represented by an attorney, any agreement to reaffirm your debt, as described above, must be approved by the bankruptcy court.

CHAPTER 13 BANKRUPTCY



A Chapter 13 bankruptcy, or wage earner plan, will be most helpful to you if you are behind in payments on a house, car or other property that is largely non-exempt and is subject to foreclosure or repossession. It can also be used to pay past due taxes owed to the IRS or the state of New Jersey, without continuing accrual of penalties. Additionally, it is available to individuals who are ineligible to file under Chapter 7 because they do not pass the means test and have some disposable income to pay at least part of their unsecured debt.

A Chapter 13 bankruptcy is a more complicated and longer process than a Chapter 7 bankruptcy. While you may be able to keep more of your assets, you will have to live on a court-supervised budget for the next several years.

In order to qualify for Chapter 13 relief, you must have "regular income" from a salary, commission, rents, pension, alimony, child support, Social Security, unemployment or worker's compensation or public benefits. You must also owe no more than \$307,765 to unsecured creditors and \$922,975 to secured creditors. Unlike a case under Chapter 7, a Chapter 13 case can be filed at any time. However, a Chapter 13 discharge will be denied if you have received a Chapter 7 discharge within four years before your Chapter 13 case is completed, or if you received a prior Chapter 13 discharge within two years of the completion of your present case.

In a Chapter 13 proceeding, you propose a payment plan for a period of three to five years under which you agree to make monthly payments to a Chapter 13 trustee, beginning with the month after your case is filed. These payments will be held by the trustee and disbursed to your creditors in accordance with the terms of your bankruptcy court-

approved plan. The amount you will be required to pay and the length of time over which your payments will need to be made will be determined by your means test results. If you have disposable income under the means test, you will need to pay the amount of that income for a period of 60 months. If you do not have any disposable income under the means test, you may limit your plan payments to the amount which your actual budget shows you can afford to pay and limit the length of your plan to 36 months. Under any circumstances, the payments you will be required to make must be sufficient to satisfy all past due payments owed to secured creditors whose collateral you wish to keep (i.e., mortgage arrears on home or other real property, car loan payments, etc.), past due payments to landlords or other lease agreements you intend to assume, priority obligations due for past due support or tax obligations and administrative costs and expenses for administering your case. The plan can outline reasons why different types of claims should be repaid differently. **Once all payments have been made, most of your debts (except for those described previously that cannot be discharged under either Chapter 7 or Chapter 13) will be discharged.**

Even the most realistic plan may fail if your circumstances change. If you are unable to meet the payment schedule outlined in your plan, the bankruptcy court may allow you to modify it. Another possible alternative would be to convert the Chapter 13 proceeding to a Chapter 7 liquidation.

CHAPTERS 11 AND 12



You may also be eligible for relief under Chapter 11 or Chapter 12 of the bankruptcy code. Chapter 11, although commonly used in connection with business reorganizations, is available in some cases for individual debtors with large amounts of debt and in specialized circumstances. Chapter 12 is similar to Chapter 13 but is reserved for “family farmers” with regular income from a farming operation. You may wish to consult with a lawyer about your eligibility for these proceedings.

CREDIT BRIEFING AND DEBTOR EDUCATION REQUIREMENTS



*Before you file your case, you **must** first review your financial circumstances with an approved consumer credit counseling service and obtain a certificate confirming that they have completed their review. This review can generally be completed by phone, over the Internet, or in person, where available. A list of the approved consumer credit counseling services is available through the Office of the U.S. Trustee.*

In order for you to complete your case and receive your discharge, you will also need to complete a financial management educational course offered by an approved counseling service. Again, the course may be completed by phone, over the Internet, or in person, where available.

THE AUTOMATIC STAY



Under most circumstances, the moment your petition is filed, you are immediately protected by the “automatic stay,” an injunction that prohibits your creditors from taking legal action against you—including garnishment of wages, foreclosure or repossession of property, or eviction—without the permission of the court. The automatic stay does not, however, apply to criminal proceedings against you or to actions enforcing domestic support obligations. In addition, the automatic stay does not apply to prevent an eviction if a judgment of possession has been entered before the case was filed, except that the stay may apply for 30 days or longer if certain conditions are met, including the immediate posting with the clerk of the court of any rent that will become due during the 30 days after your case is filed.

The automatic stay will go into effect at the time your case is filed if you have not had more than one bankruptcy case pending and dismissed within the previous 12 months. If you have had a bankruptcy case pending within the last 12 months that was dismissed, the automatic stay will terminate 30 days after your case is filed unless the court allows the stay to be extended. If you have had more than one case pending and dismissed within the last 12 months, there is no automatic stay or protection from your creditors unless the court allows a stay to be put into place. In order for the court to extend or impose the stay, you will need to make an application for this relief within 30 days after your case is filed.

Additionally, in a Chapter 7 case, the automatic stay may terminate with creditors who extend loans for the purchase of personal property (i.e. cars, appliances etc.) unless you agree to purchase the property for its present value or agree to continue to make payments under your original purchase agreement, within a limited time after your case is filed.

ORGANIZING YOUR INFORMATION



In evaluating your options, you will need to prepare and review with your advisors the information outlined below, which is requested for both Chapter 7 and Chapter 13 bankruptcy petitions.

- Your assets, including: cash on hand; bank accounts; interest in land, buildings, corporations, or partnerships; automobiles, trucks, trailers, motorcycles, boats, and airplanes; household or office goods and furnishings and electronic, photographic, or hobby equipment; books; collectibles; firearms; furs and jewelry; insurance policies; annuities, pension, or retirement accounts; stocks and bonds; patents, copyrights, licenses and franchises; farm equipment; and amounts due to you from employers, customers, alimony, tax refunds, inheritances you are expecting to receive, monies you are owed or may be owed for loans given by you or for personal injury or property damage claims.
- Your liabilities, including: liens and mortgages on any of your property; debts to individuals, stores, hospitals, corporations, partnerships and governmental entities (including the IRS) and past due support obligations, if any.
- Proof or evidence of any and all income received by you or your spouse over the last six months, including gross wages, tips and bonuses, rental income, interest or dividends, pension or retirement income, unemployment income, as well as regular contributions to household expenses by third parties.
- A list of your household current monthly expenses, including expenses for rent or mortgage, utilities, real estate taxes and insurance if not included in your mortgage payment; home maintenance; food, household, clothing, laundry and dry cleaning, medical and dental expenses not covered by insurance; transportation, recreation and charitable contributions; installment payments for the purchase of a car or other property; automobile lease payments; support obligations; day care and other child care expenses; retirement contributions or retirement loan repayments; and business or professional expenses, if self-employed.

RESOURCES

United States Bankruptcy Courts for the District of New Jersey

www.njb.uscourts.gov

Trenton Office

Clarkson S. Fischer U.S. Court House
402 East State Street
Trenton, NJ 08608
609-989-2128, -2129

Newark Office

M.L. King, Jr. Federal Building & Court House
50 Walnut Street
3rd Floor
Newark, NJ 07102
973-645-4764

Camden Office

Mitchell H. Cohen U.S. Court House
400 Cooper Street
4th Floor
Camden, NJ 08101
856-757-5485
New Jersey Bankruptcy Court ***Pro Bono*** Program
(For information, contact your local Legal Services Office.)

Central Jersey Legal Services

317 George Street
Suite 201

New Brunswick, NJ 08901

Covers the following counties and also has offices in Perth Amboy, Trenton and Elizabeth:

Mercer County—609-695-6249

Middlesex County—732-249-7600

Union County—908-354-4340

Essex-Newark Legal Services

5 Commerce Street
2nd Floor

Newark, NJ 07102

Essex County only—973-622-1513 or 973-624-4500

Legal Services of Northwest Jersey

34 West Main Street

Suite 301

Somerville, NJ 08876

*Covers the following counties and also has offices in Flemington, Morristown, Belvidere and Newton:**Hunterdon County—908-782-7979**Morris County—973-285-6911**Somerset County—908-231-0840**Sussex County—973-383-7400**Warren County—908-475-2010***Northeast New Jersey Legal Services**

574 Summit Avenue

3rd Floor

Jersey City, NJ 07306-2797

*Covers the following counties and also has offices in Hackensack and Paterson:**Bergen County—201-487-2166**Hudson County—201-792-6363**Passaic County—973-523-2900***Ocean-Monmouth Legal Services**

303 West Main Street

3rd Floor

Freehold, NJ 07728

*Covers the following counties and also has offices in Toms River and Long Branch:**Monmouth County—732-866-0020**Ocean County—732-341-2727***South Jersey Legal Services**

745 Market Street

Camden, NJ 08102

*Covers the following counties and also has offices in Mount Holly, Bridgeton, Woodbury, Atlantic City, Cape May Court House and Cherry Hill:**Atlantic County—609-348-4200**Burlington County—609-261-1088**Camden County—856-964-2010**Cape May County—609-465-3001**Cumberland & Salem Counties—856-451-0003**Gloucester County—856-848-5360*

ABOUT THE NEW JERSEY STATE BAR FOUNDATION



The New Jersey State Bar Foundation, founded in 1958, is the educational and philanthropic arm of the New Jersey State Bar Association. The Foundation is committed to providing free legal education programming for the public. Programs include seminars on such topics as wills, divorce, real estate, taxes, retirement planning, disability law and health issues; programs for children and teachers, including mock trial programs for students in grades K to 12; training sessions for teachers on the topic of conflict resolution, peer mediation and teasing and bullying prevention; plus publications including *Law Points for Senior Citizens (second edition)*, *Consumer's Guide to New Jersey Law*, *Legal Consequences of Substance Abuse*, *AIDS and the Law in New Jersey (second edition)*, *Disability Law: A Legal Primer (fifth edition)*, *Domestic Violence: The Law and You (second edition)*, *Students' Rights Handbook (third edition)*, cosponsored with the ACLU–NJ, and *Residential Construction and Renovation: A Legal Guide for New Jersey Homeowners (second edition)*. Some publications are available in Spanish and all are available in alternative formats for the visually impaired. For more information or copies of program materials, visit the New Jersey State Bar Foundation online at www.njsbf.org or call 1-800 FREE LAW.



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