

THIRD EDITION

A BASIC
GUIDE TO

PERSONAL BANKRUPTCY



A New Jersey State Bar Foundation publication

The New Jersey State Bar Foundation acknowledges the invaluable contribution of attorney Walter A. Effross and the late Hon. William H. Gindin, former chief judge of the U.S. Bankruptcy Court for the District of New Jersey in Trenton, in writing the first edition of this pamphlet. The Foundation would also like to acknowledge bankruptcy attorneys Melinda D. Middlebrooks and David Edelberg for their review and revision of this third edition.

*This pamphlet is made possible by funding
from the IOLTA Fund of the Bar of New Jersey.
It is issued as a public education service
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which should only be given by your attorney.*

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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 amount and the nature of your debts and the degree to which your payments are overdue, you may want to explore other options including consulting with a credible financial counseling program or negotiate with your creditors for more time and/or lower payments before considering declaring bankruptcy. You may be able to design a payment plan that will be acceptable to your creditors, especially if you have only a few outstanding debts. A legitimate credit counseling service 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 and may, in some cases, also involve commercial, tax, pension, and family law. Furthermore, 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 (the “Bankruptcy Code”). An individual bankruptcy may also be filed under Chapter 11 and Chapter 12 of the Bankruptcy Code.

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

CHAPTER 7 BANKRUPTCY

A Chapter 7 bankruptcy, or liquidation, may be suitable when the majority of your debts are 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. If you are behind in payments to 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 for not paying on time, a Chapter 13 reorganization may be more appropriate.

A Chapter 7 bankruptcy is usually a faster and easier process of debt resolution than a Chapter 13 bankruptcy. A Chapter 7 trustee may seek to have non-exempt assets liquidated to pay creditors but a Chapter 7 case does not require you to devote 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.

You must demonstrate that your bankruptcy filing is made in good faith. Good faith is presumed if you pass the “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 adjusted by the number of persons residing in your household. 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 Chapter 7 trustee, who is appointed by the Office of the U.S. Trustee, may seek Bankruptcy Court approval to 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). These protected assets are called “exemptions.” A Chapter 7 Petition requires you to identify exempt and/or partially exempt assets. It is advisable to consult an attorney to determine all of your exemptions and understand what property you are likely to be able to retain.

A Chapter 7 Discharge Order eliminates most debts even though creditors may have received little or no distribution. However, under both Chapter 7 and Chapter 13, there are some debts, including certain taxes, fines, penalties, alimony, maintenance, child support, and most student loans, which cannot be discharged. Rent arrears are treated differently in a Chapter 7 than a Chapter 13. You may avoid eviction if within 30 days after the date of your Chapter 7 bankruptcy filing you deposit the overdue rent with the Bankruptcy Court clerk. Then you can formally assume the lease, continue to make monthly payments, and remain in possession of an apartment. In a Chapter 13 Bankruptcy, the rental arrears can be paid through your Chapter 13 Plan.

CHAPTER 13 BANKRUPTCY

A Chapter 13 bankruptcy, also known as a 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, your Chapter 13 Plan will require payments be made to the Chapter 13 trustee for a period between 36 and sixty 60 months. The first Chapter 13 Plan payment begins the month after your case is filed. These payments will be held by the Chapter 13 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. A Chapter 13 plan generally allows a homeowner 60 months to cure mortgage arrears. 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.

To qualify for Chapter 13 relief, you must have “regular income” which can include salary, commissions, rents, pension funds, alimony, child support, Social Security benefits, unemployment or worker’s compensation or public benefits. The Bankruptcy Code currently provides that a Chapter 13 debtor must owe noncontingent, liquidated debts totaling less than \$2,750,000.00 as of the date of the filing of the petition.

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 option would be to convert the Chapter 13 proceeding to a Chapter 7 liquidation.

CHAPTERS 11 AND 12

Individuals may also be eligible for relief under Chapter 11 or Chapter 12 of the Bankruptcy Code. Although commonly used in connection with business reorganizations, Chapter 11 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 COUNSELING AND FINANCIAL MANAGEMENT COURSE REQUIREMENTS

Before you file your case, you must take a Credit Counseling Course with an approved consumer credit counseling service and obtain a certificate confirming that you have completed the course. The Credit Counseling Course may be taken by phone, online, or in person (where

available). A list of approved credit counseling agencies can be found on the Bankruptcy Court's website.

To finish your bankruptcy case and receive your Discharge Order, you are required to complete a Financial Management Course offered by an approved counseling service. Again, the course may be completed by phone, online or in person (where available). These courses typically charge in the range of \$15 to \$25; and can usually be completed in approximately one hour.

THE AUTOMATIC STAY

Under most circumstances, the moment your bankruptcy petition is filed, you are immediately protected by the “automatic stay.” The automatic stay is an injunction that prohibits your creditors from taking or continuing legal action against you—including garnishment of wages, foreclosure or repossession of property, or eviction—without the permission of the Bankruptcy Court.

The automatic stay does not, however, apply to criminal proceedings against you or to actions enforcing domestic support obligations such as alimony, maintenance or support. In addition, the automatic stay does not apply to prevent an eviction if a judgment of possession has been entered before the bankruptcy case was filed. However, the automatic stay may apply for 30 days or longer if certain conditions are met, including the immediate posting with the clerk of the Bankruptcy Court of any rent that will become due during the 30 days after your case is filed. The automatic stay prevents a secured creditor with a lien or mortgage on your personal property (such as a car or a house) from seizing it without Bankruptcy Court relief.

If you had a bankruptcy case pending and dismissed within the prior 12 months prior to the current case, the automatic stay will not remain in effect unless you request and the Bankruptcy Court approves your request that the automatic stay continue. This request must be made within the 30 days following the filing of the new bankruptcy case.

Additionally, in a Chapter 7 case, the automatic stay may terminate with creditors who extend loans for the purchase of personal property (e.g., 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 alimony, maintenance and support obligations, if any.
- Proof or evidence of any and all income received by you or your spouse over the six months immediately preceding the filing, 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. Fisher U.S. Court House,
402 East State Street, Trenton, NJ 08608
609-858-9333

Newark Office

Martin Luther King, Jr. Federal Building
50 Walnut Street, 3rd Floor, Newark, NJ 07102
973-776-3449

Camden Office

U.S. Post Office and Courthouse
401 Market Street, Camden, NJ 08101
856-361-2300

New Jersey Bankruptcy Court Pro Bono Program

(For information, contact your local Legal Services Office)

Central Jersey Legal Services

Serves Mercer, Middlesex and Union counties.
317 George Street, Suite 201, New Brunswick, NJ 08901
732-249-7600 | centraljerseylegalservices.org

Mercer County Office

198 West State Street, Trenton, NJ 08608
609-695-6249

Middlesex County Office

313 State Street, Suite 308, Perth Amboy, NJ 08861
732-324-1613

Union County Office

60 Prince Street, Elizabeth, NJ 07208
908-354-4340

Essex-Newark Legal Services

Serves Essex County only.
5 Commerce Street, 2nd Floor, Newark, NJ 07102
973-624-4500 | enls@lsnj.org | essexnewarklegalservices.org

Legal Services of Northwest Jersey

Serves Hunterdon, Morris, Somerset, Sussex and Warren counties.

lsnwj.org

Hunterdon County Office

82 Park Avenue, Flemington, NJ 08822

908-782-7979 | Email: lsnwj-hunterdon@lsnj.org

Morris County Office

30 Schuyler Place, Morristown, NJ 07960

973-285-6911 | Email: lsnwj-morris@lsnj.org

Somerset County Office

90 E. Main Street, Somerville, NJ 08876

908-231-0840 | Email: lsnwj-somerset@lsnj.org

Sussex County Office

18 Church Street, Newton, NJ 07860

973-383-7400 | Email: lsnwj-sussex@lsnj.org

Warren County Office

91 Front Street, Belvidere, NJ 07823

908-475-2010 | Email: lsnwj-warren@lsnj.org

Northeast New Jersey Legal Services

Serves Bergen, Hudson and Passaic counties.

northeastnjlegalservices.org

Bergen County Office

190 Moore Street, Suite 100, Hackensack, NJ 07601

201-487-2166

Hudson County Office

574 Summit Avenue, 2nd Floor, Jersey City, NJ 07306

201-792-6363

Passaic County Office

100 Hamilton Plaza, Suite 200, Box 3, Paterson, NJ 07505

973-523-2900

Legal Aid Society of Monmouth County, Inc.

Serves Monmouth County only.

2405 Route 66, Ocean, NJ 07712

732-556-8268 | monmouthlegalaid.com

South Jersey Legal Services

Serves Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Monmouth, Ocean and Salem counties

745 Market Street, Camden, NJ 08102

856-964-2010 | 800-496-4570

Apply online: <https://sjlslaw.org/contact-us/>
sjlslaw.org

Atlantic County Office

1300 Atlantic Avenue, Atlantic City, NJ 08401

609-348-4200

Burlington County Office

107 High Street, Mount Holly, NJ 08060

609-261-1088

Camden County Office

745 Market Street, Camden, NJ 08102

856-964-2010

Cape May County Office

1261 Route 9 South, Cape May Court House, NJ 08210

609-465-3001

Cumberland/Salem County Office

415 W. Landis Avenue-2nd Floor, Vineland, NJ 08360

856- 691-0494

Gloucester County Office

47 Newton Avenue, Woodbury, NJ 08096

856-848-5360

Monmouth County Office

303 West Main Street, Fourth Floor, Freehold, NJ 07728

732-414-6750

Ocean County Office

215 Main Street, Toms River, NJ 08753

732-608-7794

About 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 believes that informed citizens are better citizens and is committed to providing free legal education programming for educators and the public. Programs provided by the Foundation include mock trial competitions for students in grades 3 to 12 and training sessions for educators on the topics of anti-bullying, anti-bias, conflict resolution, peer mediation, social emotional character development, and much more.

Publications geared for the public include *Domestic Violence: The Law and You (Fifth Edition)*, *Law Points for Senior Citizens (4th Edition)*, *Consumer's Guide to New Jersey Law, Avoiding Notario Fraud in New Jersey*, *Your Guide to Municipal Court (2nd Edition)* and *Disability Law: A Legal Primer (7th Edition)*. School-based publications available through the Bar Foundation include *The Bill of Rights Up Close*, *Beyond the Bill of Rights*, as well as our subscription-based publications—*The Legal Eagle*, a legal newspaper for kids, and *Respect*, a diversity and inclusion newsletter. Some publications are available in Spanish, and all are available in alternative formats for the visually impaired. Visit publications.njsbf.org to order or download.

For more information on programs and publications, visit the New Jersey State Bar Foundation online at njsbf.org. Please follow the Bar Foundation on social media and invite your friends to like and follow us as well. @NJStateBarFdn can be found on Facebook and Instagram. The New Jersey State Bar Foundation can also be found on LinkedIn and YouTube.



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