

How Bankruptcy can help and why it's right for you:

When you fall into significant debt, whether it be missed payments on your mortgage, rent, automobile loans, credit cards, medical bills, judgments or other such debt, it is always helpful to attempt to negotiate with your creditors for an extended grace or forbearance period. Many people fall into this situation as a result of an accident requiring medical treatment, taxes that come due, loss of a job, unexpected expenses for your dependants or a divorce. If you find yourself in this situation, contact your creditors and try to explain your situation. Many creditors will gladly work with you to either reduce or forgive your debt or in the alternative, work with you to set up a feasible payment plan.

If you have already attempted to negotiate with your creditors to either grant you additional time to pay your debt back or settle your debt for a reduced amount and your creditors either failed or refused to respond in a helpful manner to your pleas, then bankruptcy coupled with professional negotiation may be a viable alternative for you. Deciding to file bankruptcy can be a tough decision. There is no magic formula that informs you whether bankruptcy is the best choice for you. An experienced bankruptcy lawyer is a great resource. With the forgoing said, the following report may shed some light on the bankruptcy process, how it can help you and if it is the right legal mechanism for you.

In the most basic terms, bankruptcy is a Federal system of laws and special courts which permit both individual and corporate insolvent debtors or those facing potential insolvency, to place his/her/its financial affairs under the control of the bankruptcy court, in order to gain financial relief.

The major benefits of bankruptcy are not only financial but also provide for a healthier life. You will be able to end the harassing phone calls and letters from your creditors. With your debts being discharged, not only will you be financially free, in addition you are emotionally free from the stress and torment regarding how you will take care of your family.

Who can file for bankruptcy?

In most situations individuals who incur debt as a result of consumer small business and real estate purchases qualify to file for bankruptcy protection pursuant to Title 11 of the United States Code. In order to be eligible to file bankruptcy you must meet the following criteria:

- You must live in the United States, own a business in the United States or own some real property in the United States;
- You must not have filed a bankruptcy case with in the last six (6) months of your current bankruptcy petition;
- You must not have received, during the prior six (6) months, a briefing from an approved nonprofit budget and credit counseling agency
- You must not have received a discharge of a chapter 7 bankruptcy with in the last eight (8) years (if you wish to file for another chapter 7, chapter 13 filers need not concern themselves with this requirement)
- You will need to complete an online or phone credit counseling session, which takes approximately thirty (30) minutes.
- You meet certain income requirements to file either chapter 7 or 13 discussed in greater detail below.

How much debt can be discharged in a bankruptcy:

You can only file for bankruptcy if your debts are primarily consumer debt in nature. The maximum amount of debt that you can owe and still file for personal bankruptcy under chapter 13 is \$336,900 in unsecured debt and \$1,010,650 in secured debt.

If you plan to file for a chapter 7 bankruptcy, (a pure liquidation) then you must either demonstrate your household income is less then your state's median income level, or that you can pass what is called, "the means test".

Median income Chart:

The following table provides median family income data reproduced in a format designed for ease of use in completing Bankruptcy Forms, as of March 26, 2008:

State	1 person	2 member family	2 MEMBER FAMILY	4 MEMBER FAMILY
Massachusetts	\$52,633	\$63,039	\$77,960	\$91,892
New Hampshire	\$51,512	\$63,505	\$72,736	\$89,885
Maine	\$38,090	\$47,699	\$59,883	\$65,310
Vermont	\$42,344	\$53,622	\$61,825	\$69,817
Rhode Island	\$47,080	\$59,763	\$64,933	\$80,416
Connecticut	\$55,410	\$68,879	\$78,973	\$96,493

What is the Means test?

If your household income exceeds your state median income, as indicated in the chart above, you will need to demonstrate that your disposable income (your income after making all of your monthly minimum payments and incurred living expenses, such as food, mortgage/rent, clothing, utilities, etc.) is less than \$166 per month. In the alternative, you will need to prove to a bankruptcy court judge that your situation warrants special consideration.

Documents you need to file with your bankruptcy

In order to get passed the first hurdle in filing for bankruptcy, you will need to meet with a U.S. trustee, at a meeting of the creditors, or what is commonly called, a “341 meetings”. At this meeting, any of your creditors who wish to object to your bankruptcy filing, can appear and attempt to persuade the bankruptcy trustee to dismiss your case. It should be noted though that very rarely do creditors outside of the IRS or your state’s department of revenue appear. In addition, at that meeting, the trustee can dismiss your case if you have failed to provide certain documents. Those documents are:

1. Proof of your income over the past two months
2. Proof of the value of your home (if you own it)
3. Copy of your homestead document (if you own your home)
4. Copy of home insurance binder (if you own the home)
5. Copy of your last two years of tax returns
6. Copy of your drivers license or some other picture ID
7. Copy of any life insurance policy (if it has a cash value)

Types of debt:

Prior to determining if you can file for bankruptcy or even if you should, it is important to learn the difference in the various types of debt you may have incurred. When looking at the debt you owe, it is important to distinguish between the various types of debt, which are classified by the type of person or company to whom you owe money. There are three (3) general types of creditors (those who you owe money), secured creditors, unsecured creditors, and creditors holding priority unsecured claims.

Secured debt

Secured debt is any debt in which the borrower pledges some asset (such as a house or boat) as collateral in exchange for a loan, which then becomes a secured debt owed to the creditor who gives the loan. The debt is thus secured against the collateral. If you fail to pay back the loan, the creditor may take possession of the asset used as collateral and may sell it to satisfy the debt by regaining the amount originally lent to the borrower. For example, a mortgage on your home is considered secured debt, as a result of the bank's security interest in the home. If you do not pay the debt, then the bank can secure (or take possession) of the collateral, the house and sell it at a foreclosure sale.

Unsecured debt

Unsecured debt refers to any debt or obligation to pay back a loan, which is not secured by collateral. Some of the most common forms of unsecured debt include: credit cards, Personal loans from friends and family, unsecured bank loans, medical bills, judgments to pay money obtained against you in court, and rent.

Priority claims

There is another form of unsecured debt called priority claims. This debt is also not secured by collateral, but payment for this debt takes priority over general unsecured debt. In addition, if you own a home, or other valuable personal property, a priority creditor can obtain a lien against your property and even take possession and sell that property to obtain payment. The most common types of priority debt include, student loans, child support and taxes.

What is a Chapter 7 Bankruptcy?

Under the bankruptcy code, a chapter 7 bankruptcy is what most people think of when they consider bankruptcy. In the traditional sense, it is a true liquidation of your assets, where all of your unsecured debt will be wiped out. You will have the ability to receive a discharge from certain debts. The biggest disadvantage to a chapter 7, is that the bankruptcy trustee may take away any assets you have that is not protected as an “exempt” asset pursuant to the bankruptcy code. The trustee will then sell those assets in order to help satisfy your unsecured creditors. One major aspect to keep in mind is that most people, who qualify to file a chapter 7, typically do not have many if any items that are not protected from the trustee.

Filing a chapter 7 bankruptcy is usually a good idea if you have an income that is less than the "median family income"; If you are facing overwhelming obligations and want to get a "fresh start" without debt; If you have little or no nonexempt assets; and if you do not own a home, or own a home and are current with your monthly mortgage payments.

What many debtors do not realize is that they may not be able to file a chapter 7 bankruptcy. As a result of the 2005 amendments to the bankruptcy code, very strict income requirements have been imposed on debtors who which to file. As discussed in the previous section, a debtor’s income level must either be below their state’s median income for their family size, or they must pass the means test.

What is discharged and what you need to pay

Under Federal law, specific items can not be seized by the trustee to be included in the bankruptcy estate. These items are considered exempt property. This property is protected from all unsecured creditor claims. However, it is not protected from claims by the IRS, default on your mortgage or child support claims.

Though many assets may qualify for exemption status, the following are the most commonly claimed exceptions in Massachusetts:

- Your primary house is protected up to \$500,000 in equity.
- Certain equity in your motor vehicle.
- Money from alimony or child support
- Certain Jewelry
- Furniture up to \$3,000 (computed as the value if sold at a yard sale)
- Clothing
- An annuity, pension, profit sharing or other retirement plan
- Social Security Payments
- Certain life insurance policies
- Workers' compensation benefits
- Disability benefits.

What is a Chapter 13 bankruptcy?

In many non-lawyer's eyes, a chapter 13 bankruptcy is not a "real bankruptcy" in the truest sense of the general public's perception and understanding of the bankruptcy concept. Under chapter 13, in the bankruptcy code, this section provides an opportunity to pay off your secured debts in arrears coupled with a small percent of your unsecured debt interest free over a period of three (3) to five (5) years. In essence, you will have the opportunity for a financial Reorganization. The two biggest differences between a chapter 13 bankruptcy and a chapter 7 is (1) a planned payment that you propose with your petition to the court and (2) Your assets are generally protected from the trustee.

For example, if you owe \$5,000 in arrears on your mortgage, and \$50,000 in credit card debt. You may suggest a planned payment of your secured debt, coupled with 20% of your credit card debt for a total payment of \$15,000, interest free over five years.

You may however only need to make your planned payment for a fraction of the time you plan on, based on whether or not your creditors file what is called, "proof of claim". This is a court form that your creditors must fill out when they are provided notice by the bankruptcy court that they indeed do hold such a claim against you. If your creditor fails to file such a claim, then, you will not need to satisfy that debt as part of your planned payment. As such, if only 30% of your creditors file, then you will only need to pay your plan until their 30% is covered.

Perhaps the biggest benefit of a chapter 13 bankruptcy is the ability to immediately stop a home foreclosure dead in its tracks. Even if a bank has a court order to foreclose, and a sale date of your home is set for tomorrow, if you file a chapter 13 petition today, the sale will be put off for the foreseeable future, assuming of course that you can pay off the missing payments, interest free over a period of 60 months, pursuant to your chapter 13 plan and stay current on your mortgage moving forward.

Do I qualify to file for chapter 13?

Generally, it is much easier to qualify for a chapter 13 than a chapter 7. There is no maximum income level or "means test" to file a chapter 13 petition. The biggest issue to overcome in filing a chapter 13, is demonstrating your ability to pay your planned payment by your using your projected income.

The requirements are fairly straightforward to file a chapter 13. You must either be a citizen of the United States, own property or a business in the United States; The maximum amount of debt that you can owe is \$336,900 in unsecured debt and \$1,010,650 in secured debt.; You must not have been a debtor in a bankruptcy case at any time during the past six (6) months; and conducted a pre-petition credit counseling session.

What is discharged and what you need to pay?

If you are successful in making all of your proposed planned payments over a period of either three (3) or five (5) years, then all of your pre-petition debts (debts you incurred prior to filing for bankruptcy) will be discharged.

Benefits of bankruptcy:

As stated previously, the major benefits of bankruptcy are not only financial but also provide for a healthier lifestyle. The following list details several of the key benefits you may realize through a bankruptcy filing:

Automatic Stay

The legal mechanism that is used to stop the collections and foreclosure is called the automatic stay. Once you file your bankruptcy petition, all interest and collection attempts on any debt, regardless of the type must be stopped. The duration of the period depends on the type of bankruptcy. In a chapter 7, the automatic stay is in place for approximately 90 days, while in a chapter 13; it is in place for three (3) to (5) years.

Although the automatic stay is in place, once you or your attorney files your bankruptcy petition, your creditors can file a motion for to lift or remove the automatic stay. However, the creditor will need to prove to a bankruptcy judge that the stay will create a undue burden on them, and in most cases, creditors do not file this motion, with the exception of Mortgage companies, in a chapter 7 case, if you are behind on payments.

Stop foreclosure

As indicated previously, perhaps the most significant benefit to filing a chapter 13 bankruptcy is the ability to stop a home foreclosure, or repossession of your car dead in its tracks. The automatic stay will take affect and your property will be saved for the duration of your bankruptcy.

Eliminate unsecured debt

Regardless of which chapter of bankruptcy you file, you will be able to discharge all of your unsecured debt by either paying nothing or very little of that debt back. This is particularly helpful if you have large credit card bills, medical bills or court ordered judgments.

Pay back secured debt (in arrears) over 5 years interest free

If you have missed payments on loans secured by collateral, not only can you save the property through a bankruptcy filing, but also you will be able to pay back the missed

payments without incurring any interest over a long period of time (in most cases over 60 months).

In Conjunction with Negotiation

In addition to filing for bankruptcy to gain relief from debt, there are also specific types of negotiation you can conduct with your creditors or motion a bankruptcy court to approve, that will help reduce your chapter 13 planned payment. The three most common examples of the forgoing is a cram down, short sale refinance, or a debt reaffirmation.

Cram down

The legal theory of a cram down, allows you to only pay for the value of the property or asset. This is particularly useful if you owe a secured creditor more money on a secured item than it is actually worth. More specifically, you can pay the actual value (or fair market value) of the property in full rather than the amount you owe.

Short Sale Refinance

If your mortgage balance exceeds your home's value, you may want to consider a cram down. However, many bankruptcy courts will not allow you to "cram down" your home. As a result, you can attempt to negotiate with the bank that owns your mortgage and refinance only the fair market value of your property. You would then negotiate to have the remaining balance forgiven by the bank. The former downside to this practice was that you would then need to declare the amount forgiven as taxable income. Recently, congress passed a law, which limits your tax liability on these types of transactions.

Reaffirm Debts to save your account

If you would like to keep a certain credit account open, or simply don't want an account to be discharged, you can reaffirm the debt. This is accomplished by forming an agreement with your creditor after you file your bankruptcy petition to repay all or a part of the debt subsequent to the conclusion of your bankruptcy. This is typically done with loans on cars, TV's, and other items you may want to keep.

ACTIONS TO AVOID:

Fraudulent Transfers

Prior to filing your bankruptcy, if you transfer any property to another person for less money than the asset is worth for the purpose of hiding the asset from the bankruptcy court, your bankruptcy petition will be denied, and you may face possible criminal charges. This type of transfer typically takes place where you may sell your car, boat, home etc to a relative for \$1 with the understanding they will sell it back to you after your bankruptcy.

Purchasing luxury items

For 90 days prior to filing for a bankruptcy, you cannot purchase items that would be considered luxury items. These items are generally classified as non-essential goods or services in excess of \$600.00. In addition, you should not put more than \$600 on your credit card for the 90-day period prior to filing for bankruptcy.

Preferential payments

The bankruptcy court pays special attention to debts that you have paid back with in 90 days of filing your petition, which would require you to not pay other creditors as a result. The reason is that the bankruptcy court treats all creditors the same. Because a preference gives an advantage to one creditor over the other, the bankruptcy trustee can demand the creditor pay back the money to the bankruptcy estate, and then divide the funds to all your creditors equally.

Withhold information about assets or legal claims

Each year millions of Americans file for chapter 7 or 13 bankruptcy protection in order to eliminate unsecured debt, including large credit card balances, personal loans and court ordered awards or secured debt in order to stop a foreclosure on their home or car. What these debtors don't realize, is that not only do they need to put the bankruptcy trustee on notice of their possessions, bank accounts, taxes and liability to creditors, but these debtors are also required to include notice of any potential law suits, including likely suits in the near future in their schedules and statements. One such example of a contingent suit that many debtors may bring is for a violation of their employee rights.

For example, if a plaintiff fails to list any contingent claims of value, the claim can be dismissed. A Federal court recently held in Cannon-Stokes v. Potter, an employee is prohibited from omitting a discrimination claim from her bankruptcy petition and then trying to bring it after having her debts discharged. The courts reasoning was that if debtors with possible employment claims might be encouraged to "scam" their creditors by keeping those claims hidden.