

Answers to the 20 Most Often Asked Questions About Filing Consumer Bankruptcy

If you are considering filing bankruptcy you
should read this report



The Lilly Law Group, PC

"Quality Legal Services at a Fair Price"

****Warning:** The materials in this document are not intended to be legal advice but informational only. Each person's situation is unique. Therefore, should you have any legal questions or matters you should seek the advice of your own attorney. Also, laws, rules and case law can and do change.**

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1 Do I qualify for Bankruptcy?

This is probably the most asked question when someone is considering filing bankruptcy, especially under Chapter 7. Since Congress made major changes to the U.S. Bankruptcy Law in 2005, this issue has become one of the most litigated questions under those changes to the bankruptcy law.

Anyone considering filing a consumer bankruptcy needs to be aware of the two major tests to be applied in determining whether someone qualifies for filing bankruptcy.

1. Does the debtor's household income exceed the median income for their size household in their state? This is called the **Median Income Test**. If the debtor's income is equal to or less than the median income as determined by the U.S. Census Bureau, applicable to their size household, then it is presumed they qualify for filing a Chapter 7 type bankruptcy.



2. If the debtor's household income does exceed the applicable median income, then they need to see if they pass the **Means Test**. The Means Test is a test that averages the debtor's income for the previous 6 months prior to filing bankruptcy and then makes various deductions from that monthly average. If the resulting number is then equal to or less than the median income for that debtor's household size, then they are presumed to qualify for filing a Chapter 7 type bankruptcy.

Both of these tests can be very complicated to compute and should be done by an experienced bankruptcy attorney. Also there are other issues that can come into play with both of these tests and affect the ability of a debtor to qualify for filing bankruptcy under other Chapters of the bankruptcy law.

Therefore, anyone contemplating filing bankruptcy and does so without the advice and assistance of counsel does so at their peril.

2 What is chapter 7 bankruptcy?

A Chapter 7 bankruptcy is the type of bankruptcy that most people think of as "bankruptcy". Chapter 7 is a liquidation type bankruptcy where debtors literally get rid of, "discharge" certain types of debts. Not all debts are dischargeable!

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Because a Chapter 7 bankruptcy is also a liquidation bankruptcy, it is possible for debtors to be required to give up some of their assets, if they are not otherwise protected. Those assets that a debtor has to give up are liquidated, sold by the Chapter 7 Trustee. The Trustee then pays the proceeds from the assets to the debtors' creditors on a pro rata basis.



Not all assets of debtors who file for a Chapter 7 bankruptcy are available to the Chapter 7 Trustee for liquidation. Those assets are known as *exempt* assets and are protected from the Trustee.

Debtors who are contemplating filing a Chapter 7 type bankruptcy should consult with an attorney to determine which of their assets are exempt and can be kept as well as which debts can be discharged.

3 How often can you file bankruptcy?

The answer to this question depends on the Chapter under which someone wants to file bankruptcy. Most individual consumers either file a Chapter 7 liquidation type bankruptcy or a Chapter 13 repayment type bankruptcy.

If someone has filed bankruptcy and successfully received a discharge under Chapter 7, then that individual is not eligible for another Chapter 7 discharge for 8 years from the filing of their previous Chapter 7 bankruptcy case.

If someone has filed bankruptcy and successfully received a discharge under Chapter 13, then that individual is not eligible for another Chapter 13 discharge for 2 years from the filing of their previous bankruptcy case.

Sometimes someone may need to file another bankruptcy before these times are up. In those cases they need to make sure they have thoroughly consulted with their attorney to make sure such a filing is in their best interests and will allow the debtor to accomplish their objectives.

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4

Can I keep my credit cards if file bankruptcy?

Most people who file bankruptcy and have credit cards are unsure whether or not they can keep one or more credit cards if they file for bankruptcy. The answer to that question is, it depends. Not exactly the answer most debtors want to hear, but true. The credit card companies get to decide whether or not someone can keep their credit card, even if the person filing bankruptcy does NOT owe any money on that credit card. Sometimes a credit card company will allow a debtor to keep a credit card because the reason for the bankruptcy filing is unusual and the debtor has previously been a good customer.



Other times the credit card company will allow a debtor to keep a credit card if the debtor agrees to enter into what is known as a *Reaffirmation Agreement* with the credit card company. Such an agreement treats the reaffirmed debt as a new debt so that it survives the bankruptcy discharge.

Anyone thinking about filing bankruptcy and wanting to pursue this last avenue should most certainly discuss this situation with their bankruptcy attorney. A *Reaffirmation Agreement* requires approval of the bankruptcy judge overseeing that case because it has far reaching consequences and required under the law.

5

Which is better, Chapter 7 or Chapter 13?

There is no right or wrong answer to this question. The right type of bankruptcy is determined on a case by case basis. No two cases are the same, just like no two people are the same.

As discussed above, the Chapter 7 type bankruptcy is a liquidation type bankruptcy where the debtor is NOT repaying creditors, unless there are unprotected assets that can be used to pay the creditors or non-dischargeable debts.

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The Chapter 13 type bankruptcy is a repayment type bankruptcy. The debtor in a Chapter 13 bankruptcy is repaying their creditors at least some, if not all that they owe their creditors according to a Chapter 13 Plan. That Plan generally runs between 36 and 60 months long. The debts are repaid according to a priority set out in the Bankruptcy Code. Each month the debtor makes a Plan Payment to the Chapter 13 Trustee, who in turn makes payments to the creditors who are provided for in the Chapter 13 Plan.

There are many issues that can come into play when analyzing which type of bankruptcy is best for a debtor. Are there assets that a debtor wants to keep that they would lose if they filed a Chapter 7 bankruptcy? If so, then possibly a Chapter 13 bankruptcy would be the right type of bankruptcy.

Does the debtor need to make up for missed payments on a secured debt, like a house mortgage in order to keep the underlying collateral, the house? If so then a Chapter 13 might be the right type of bankruptcy.

Does the debtor have certain types of debts that cannot be discharged in Chapter 7 that can be discharged or repaid in a Chapter 13 under beneficial terms?

Does the debtor just need a Fresh Start due to an overwhelming amount of bills and the only way to achieve that relief is through a Chapter 7 discharge?

What type of bankruptcy does the debtor qualify for under the bankruptcy **Median Income Test** and the **Means Test**?

Has the debtor filed a bankruptcy before and if so when and what type? Was a discharge granted in the previous case?

These and many other issues need to be analyzed by a debtor's bankruptcy attorney to help determine which type of bankruptcy will work for a debtor.

6 Can my employer fire me for filing bankruptcy?

No! The law as set out in the Bankruptcy Code prohibits a debtor from being fired just because they filed bankruptcy.

If an employer does fire an employee because that employee filed for bankruptcy, the employee can then file a motion in the U.S. Bankruptcy Court where their case is pending to get their job back and request damages from the employer.



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Sometimes employers try to get around this part of the bankruptcy law by coming up with some other reason for firing an employee that has filed for bankruptcy. Therefore, if someone suspects they have been fired just because of their bankruptcy, they need to discuss this issue promptly with their attorney.

7 Can I lose my 401k account if I file bankruptcy?

For most debtors, the answer is NO. Generally, most retirement plans are fully exempt from attachment by the bankruptcy trustee and cannot be used by the trustee to repay your debts.

If you have any concerns about this issue, please discuss it with your attorney to make sure you understand any risks that your retirement plan may have as far as it not being exempt.

8 Can bankruptcy stop foreclosure?

In most circumstances the answer is, YES. The instant the debtor files for bankruptcy, an injunction is issued against all the debtor's creditors to stop them from trying to enforce their rights against the debtor. This injunction is known as the **Automatic Stay** and it normally last for the entire time the debtor is in bankruptcy. However, the bankruptcy must be filed BEFORE the foreclosure!

The **Automatic Stay** *instantly* stops the foreclosure on the debtor's house and will normally be in force as long as the debtor is in bankruptcy.

The mortgage company can ask for permission from the Bankruptcy Judge to go forward with a foreclosure while the debtor is in bankruptcy in spite of the **Automatic Stay**. The mortgage company's lawyer will have to file a Motion for Relief from the Automatic Stay with the Bankruptcy Court in order to pursue a foreclosure while the Automatic Stay is in effect.



The mortgage company will have to prove several facts to the Bankruptcy Judge in order to convince the judge the **Automatic Stay** should be lifted as to that specific debt. A debtor should consult with their bankruptcy counsel to determine

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how they should proceed in the event such a motion is filed in their bankruptcy case, as such a motion can have serious consequences!

9 When filing for bankruptcy what can I keep?

When someone files for bankruptcy, they are entitled to keep certain assets and/or a certain dollar amount of assets pursuant to the law(s) that pertain to that specific debtor. This is known as “exempting” or protecting the debtors’ assets from the creditors and the bankruptcy Trustee.



The bankruptcy attorney can only exempt a debtor's assets according to the **Exemption Laws** that are available to that debtor. The exemption laws that apply to a debtor are determined by how long a debtor has lived in the state where the debtor lives at the time they file their bankruptcy and whether or not that state has its own exemption laws or allows a debtor to use the Federal Bankruptcy Exemption Laws.

For example if a debtor has lived in the Commonwealth of Virginia for at least 2 years prior to the filing of their bankruptcy, then they would be able to use the Virginia exemptions to protect and keep their assets, as Virginia does not allow debtors to use the Federal Bankruptcy Exemption Laws.

Some examples of what a debtor could protect and keep if using the Virginia Exemption Laws:

1. Wedding and engagement ring of any value
2. \$10,000.00 worth of tools of the debtor's trade or business
3. \$1,000.00 of clothing
4. \$5,000.00 of household furnishings
5. \$6,000.00 of the equity of a motor vehicle

A debtor is well advised to discuss with their bankruptcy lawyer what can and cannot be protected when they file bankruptcy so they are not surprised if the Trustee for their case wants to take and sell some of their assets for the benefit of their creditors.

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10 Can a married couple file bankruptcy separately?

Yes, a married couple can choose to file separate bankruptcies if they want. However, it is possible that the United States Trustee may make a motion to administer the two individual cases together if they are pending at the same time.

On the other hand if each spouse files a separate bankruptcy at different times so that both cases are NOT open at the same time, then there is nothing for the United States Trustee to request the Bankruptcy Judge to do. The two cases will not be open at the same time.

A married couple considering separate bankruptcies need to be aware that there will be two court filing fees, one for each case, as well as two attorney's fees to be paid since there will be two cases being prepared and filed.

11 Are secured loans dischargeable in bankruptcy?

Generally speaking secured loans are dischargeable in bankruptcy. An example of a secured loan would be an automobile loan where a debtor finances the purchase of the vehicle and gives the lender a lien on the car.

In a Chapter 7 type bankruptcy for instance, if the debtor no longer wanted to pay for that car, then the secured creditor could repossess that car which is collateral for the loan. The debtor would discharge, wipe out, their liability for that loan in the Chapter 7 bankruptcy.



If the debtor wanted to keep the vehicle, then the debtor would have to continue making payments on the loan. Sometimes lenders will require the debtor to reaffirm the automobile loan in order to keep the vehicle and to continue making payments. Once the Reaffirmation Agreement is approved by the Bankruptcy Judge, then that specific debt is no longer discharged!

Any debtor desiring to keep the collateral for a secured debt should consult with their bankruptcy attorney to make sure they understand the pros and cons of keeping the collateral and continuing to make the payments on that loan.

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12 Can I file for bankruptcy if I haven't filed taxes?

Yes, a debtor can file bankruptcy if they have not filed their tax returns. However, depending on the type of bankruptcy filed and the local Trustee who gets assigned to the debtor's case, the debtor may be required to promptly file any unfiled tax returns. This is particularly true with a Chapter 13 type bankruptcy.

When a debtor files a Chapter 13 type case, they must have all income tax returns they were required to file for the previous 4 years, filed at least 1 day prior to the *First Meeting of Creditors*. The trustee may extend that time up to 120 days following the *First Meeting of Creditors* for late filed returns or to the extension date for current returns where a proper extension was filed.



If a debtor is filing a Chapter 7 type bankruptcy, then they only have to provide to the Trustee the most recently filed income tax return, even if that return is more than 4 years old. However, a Chapter 7 Trustee may require a debtor to file all the required tax returns that have not been filed since the last return that was filed.

If you are contemplating filing a bankruptcy and have unfiled income tax returns, it would be in your best interests to discuss this situation with your bankruptcy attorney, to make sure you are meeting all the requirements of the Bankruptcy Code.

13 Can individuals file Chapter 11 Bankruptcy?

Yes, individual debtors can file a Chapter 11 type bankruptcy. Admittedly, most people think that a Chapter 11 bankruptcy is only for businesses, but it is not.

A lot of times an individual will file a Chapter 11 bankruptcy, when they do not qualify for a Chapter 13 bankruptcy and need to save their house from foreclosure and/or repay some if not all of their debts. However, a consumer Chapter 11 bankruptcy is a lot more complicated and a lot more expensive than a Chapter 13 bankruptcy. There are monthly reports to file and quarterly fees to pay.

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Anyone who is contemplating filing a personal Chapter 11 bankruptcy should consult with an experienced bankruptcy attorney who has filed Chapter 11 bankruptcy cases previously.

14 How long does it take to file bankruptcy?

It depends on the type of bankruptcy a person files and if there are any complications during the case.

Normally, a Chapter 7 type bankruptcy will take approximately 3 to 4 months from start to finish. Of course this assumes there are no problems with the case.



On the other hand, a Chapter 13 type bankruptcy will take approximately 3 to 5 years. The length of the case will generally be controlled by the length of the Chapter 13 plan. Again this assumes there are no problems with the case.

15 Can I file bankruptcy without an attorney?

Yes, an individual is not prohibited from filing their own bankruptcy case. When someone files their own case they are known by the Latin term "pro se". Thus someone who files their own case would be known in court as a pro se debtor.

One thing the pro se debtor needs to understand is that even if they are not an attorney or not represented by an attorney, they are still held to the same standards of practice as an attorney. A pro se debtor must abide by the Federal Bankruptcy Rules of Procedure and any local bankruptcy court rules as well as the Bankruptcy Code. Therefore, if a pro se debtor misses a filing deadline or fails to do certain tasks that an attorney would normally do, they are still treated the same as if an attorney had made that same mistake.

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16 Can I file bankruptcy online?

No. Only approved bankruptcy attorneys are allowed to file bankruptcies online, and are in fact required to file their cases and related documents over the internet on the bankruptcy court's website. An approved bankruptcy attorney is also required to pay filing fees with a credit card. The advantage of being able to file online is that the courthouse is open for filing 24 hours a day, 7 days a week.



Unlike an approved bankruptcy attorney, the pro se debtor must file their bankruptcy documents in person at the bankruptcy court or by mail and not over the internet. Since a pro se debtor is not allowed to file their case over the internet and they must pay filing fees in cash, check or money order at the bankruptcy courthouse.

17 Can you get a credit card after filing bankruptcy?

It depends on the credit card provider as well as how much of a risk you are deemed to be by the credit card company. Ironically, after someone has successfully completed a Chapter 7 Bankruptcy and received their discharge, they may not be that much of a risk. A debtor who has received a Chapter 7 discharge cannot get another Chapter 7 discharge for 8 years and has just gotten rid of their debts.

Sometimes a person who has completed their bankruptcy may have to start with a secured credit card at first. A credit card company requires a debtor to put a certain amount of money into a savings account and then issues a credit card with a credit limit equal to or sometimes a couple of times more than the amount deposited in the savings account. Once a debtor has proven they can use the secured credit card responsibly, they can request that the secured credit card be converted to an unsecured one. That also becomes a good credit reference for the next credit application!



Other times a debtor may be able to keep a regular credit card by reaffirming the debt they owed at the time they filed their bankruptcy. That way as the debtor pays down the credit card, that part of line of credit becomes available for future purchases. This too would be a good credit reference once paid.

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18 Can an attorney be named as a creditor in a Chapter 7 Bankruptcy?

Yes, if the debtor owes an attorney money. Not only can the debt to the attorney be listed but that debt should be listed. A debtor is required to list all debts in their bankruptcy.

There are special considerations depending on the type of bankruptcy filed for the debtor's bankruptcy attorney if the debtor owes that attorney fees for that bankruptcy case. Therefore, the debtor needs to discuss that situation with their bankruptcy attorney.

19 What information do I need to take to my bankruptcy attorney?

A debtor needs to provide lots of information to their bankruptcy attorney, both documents as well as answers to questions.

The debtor will need to provide:

1. the name, address, account number and amount owed for EVERY debt they have,
2. an itemized list of their assets and put a fair market value on them,
3. copies of their pay stubs or other proof of their income for the previous 6 months,
4. copies of the last 4 years of income tax returns.



The debtor will provide answers to questions such as:

1. identify the charities that the debtor paid \$100 or more to during the last 12 months,
2. list of all assets the debtor has in their possession or control that belongs to someone other than the debtor,
3. all financial accounts that have been closed within the last 12 months including the balances at the time the accounts were closed,
4. what assets they have put into trust during the last 10 years.

This is just some of the information that the debtor will need to provide their bankruptcy attorney in preparation for filing bankruptcy.

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20 How can I find a good bankruptcy attorney?

1. You can consult with an experienced bankruptcy attorney at the law firm who provided you with this free report, **The Lilly Law Group, PC**. The attorneys at The Lilly Law Group, PC have helped over a 1000 clients successfully navigate the complex waters of Bankruptcy. At The Lilly Law Group, PC clients work directly with their attorney and not with a staff member, unlike many other firms.
2. You can get a referral from someone who has already filed bankruptcy asking for the name of the attorney they used.
3. Get a referral from the State Bar Lawyer Referral Service and then make an appointment with that attorney.

About Our Firm:

- Who is **The Lilly Law Group, PC**?

It is a law firm whose attorneys have over 50 years of combined experience providing quality legal services at a fair price.

The firm is conveniently located in the heart of Fairfax City, Virginia:

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- Bar Memberships:

The attorneys at The Lilly Law Group, PC are licensed to practice law in Virginia and the District of Columbia. Member of the National Association of Consumer Bankruptcy Attorneys and the Northern Virginia Bankruptcy Bar Association.

- Some of the firm's background and experience:

The attorneys at The Lilly Law Group, PC have handled over 1000 bankruptcy cases combined in the Eastern and Western Bankruptcy Districts of Virginia, as well as the District of Columbia. The firm's attorneys have filed both personal and business bankruptcies and filed Chapter 7, Chapter 11 and Chapter 13 Bankruptcy cases successfully.

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- Most common problem faced by clients:

Need to stop a foreclosure on a home.

- A thank you from a satisfied client:

***"I wanted to thank you for all your hard work and taking on my case. I know it was all in a days work for you but for a little guy like me, it was a nightmare. During my low point it was nice to know I had you by my side looking after my best interest and that I was not alone. You were worth every penny! 😊 I can now close this chapter in my life and go from there. Again, Thank You!
Tony"***

- **Special offer:**

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\$300.00 Value

