

Press HOME on your keyboard to return to the FAQ list.

[1. What is bankruptcy?](#)

[2. Do I need to file bankruptcy?](#)



[3. Are there alternatives to bankruptcy?](#)

[4. Will creditors still call?](#)

[5. Do new bankruptcy laws prevent me from filing bankruptcy?](#)

[6. How does bankruptcy affect my business?](#)

[7. How does bankruptcy affect my debt?](#)

[8. Will I lose my home and property?](#)

[9. What about credit cards?](#)

[10. Who will know - is bankruptcy private?](#)

[11. Is bankruptcy guaranteed?](#)

[12. What happens if I don't file for bankruptcy?](#)

[13. Why do i need an attorney?](#)

1. WHAT IS BANKRUPTCY?

Simply put, the United States Federal Bankruptcy Program is a way out of crushing and insurmountable debt. Under the bankruptcy program, individuals are afforded two forms of personal bankruptcy: Chapter 7 and Chapter 13. Businesses may only apply for Chapter 13 relief. Chapter 7 liquidation allows discharge of personal debts and can permit a person to retain certain real and personal property such as houses, cars, and household goods and furnishings. An individual must qualify for a Chapter 7 by way of the "means test", which is a measure of the median income level permitted to file. Chapter 13 is a restructuring of one's debts and requires the development of a payment plan to the court to repay the delinquency or a percentage of the debt to the creditors. Chapter 13 typically applies to individuals who do not qualify for a Chapter 7 due to a higher earned income under the means test and/or do not seek to prevent the loss of

property such as their home or cars as may be required under Chapter 7 liquidation. Individuals and businesses who qualify only for a Chapter 13 are still provided instant relief from the barrage of creditors calls by the "automatic stay" as under the Chapter 7 but it subsequently provides time to prepare for manageable and affordable payments to creditors.

2. DO I NEED TO FILE BANKRUPTCY?

When a consumer is in financial distress from the burdens of mounting debt, it is difficult to determine with clarity whether to file bankruptcy, to not file bankruptcy or wait for a period of time before filing. There are many factors that determine the answer filing or the timing of filing. Some questions that indicate the telltale signs that an individual may need bankruptcy assistance would be:

- Are you using cash advances to make the minimum payments on all your credit cards?
- Are you avoiding the purchase of medication to make the minimum payment on the credit cards and other installment debts?
- Are you considering surrendering or selling a vehicle, but because the loan payoff amount is too high you continue to make monthly payments?
- Are you at risk of a pending foreclosure, bank execution or lawsuits?
- Are you the guarantor of the debt that is past due?
- Did you attempt to make payments in a debt adjustment program only to find you did not have sufficient funds to make the payments or have been told that you did not qualify for an adjustment program?
- Do you have delinquent tax obligations over three years old that could be discharged in bankruptcy?
- Are you under a great deal of stress because you are unable to make payments when due? If so, the psychological need to file bankruptcy may be necessary regardless of the amount of your debt obligations.

3. ARE THERE ALTERNATIVES TO BANKRUPTCY?

The constant barrage of demanding letters and continuous calls from creditors and collection agencies accompanied with mounting debt can make the power of wiping out your debt through bankruptcy appealing to any debtor. However, one must carefully consider the long-term effects on credit and your credit rating and the ability to qualify for large purchases in the future such as a home or car.

If your financial problems are only temporary, you may want to consider asking creditors to accept lower payments, offer a lower interest rate or provide for scheduled payment terms over a longer period of time. If you have been a prompt payer in the past, many creditors may be willing to negotiate, particularly when the possibility of bankruptcy is on the horizon. Creditors are well aware that they will only collect a small portion of what is owed through bankruptcy

and/or may find the prospects of collecting a debt through a court action to be costly and time-consuming. If on the other hand, creditors and their agents become difficult and unwilling to negotiate or compromise and you find the psychological drain and pressure that accompanies an overwhelming debt, bankruptcy may be the answer to wipe your debt clean and make a "fresh start" and begin again. Do not believe the rumors you may have heard that if you file for bankruptcy your credit is ruined forever. Once your debts are discharged in bankruptcy you can now begin again to build your credit anew in a relatively short period of time. It is truly can be a new beginning instead of continuing on the treadmill of debt. Remember, credit card companies are banks and their business is to lend money. If you make timely payment on your future debts and control your spending then your credit can and will only get better.

4. WILL CREDITORS STILL CALL?

The constant and repetitive calls from creditors seeking payment, threatening wage garnishment, car repossession will stop once you are in bankruptcy. Once a bankruptcy petition is filed, the "automatic stay" goes into effect and creditors are prohibited from calling you. The "automatic stay" is what it sounds like: all creditors to whom you owe money are prohibited from calling you writing you or contacting you in any manner in reference to the uncollected debt. Any attempts by the creditor or their agents to contact you subsequent to the filing of the bankruptcy petition is a direct violation and contempt of the bankruptcy court that will result in severe penalties to the creditor. Agents of creditors such as collection agencies are subject to strict guidelines and attempting to collect a debt on behalf of the creditor is strictly prohibited.

5. DO NEW BANKRUPTCY LAWS STOP ME FROM FILING?

Many consumers believe that with the changes in bankruptcy code they have lost the right to file a bankruptcy petition and discharge their debts. The truth is the changes in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 does make it more difficult and more expensive to file a bankruptcy case, but for most people below the median income there is little change. Rumors that bankruptcy is no longer available or that creditors can pursue the debt after a period of years bankruptcy is false. These rumors or misleading information tends to stem from those with limited legal knowledge or non-legal sources that disseminate false information concerning a consumer's bankruptcy rights. Only an Attorney can provide you with correct and professional legal advice as it pertains to your specific circumstances. Always remember, your Attorney is the first and last line of defense in protecting you legal rights and interests.

6. WHAT ABOUT MY BUSINESS?

If you have an existing business that is failing and experiencing collection pressures or termination of credit vital to carry on your day to day business, you can discharge this business debt in either a personal bankruptcy or reorganize your business debts under a Chapter 11

bankruptcy. The ability to discharge existing and even older debt will depend on the type of entity the business was.

7. HOW DOES BANKRUPTCY AFFECT MY DEBT?

There are two forms of debt as it pertains to bankruptcy: secured and unsecured debt. Secured debts are those protected or guaranteed by some form of collateral, usually another property such as a car or home that would be forfeited if you should default on your promise to pay the secured debt. Conversely, an unsecured debt is one where there exists no collateral or lien to secure or protect the creditors from the debt you owe if you should default. Unsecured debts are the most common debts and are typically things like credit cards and charges that retailers may extend. Most unsecured debts are dischargeable in bankruptcy and even judgments that may have been obtained by unsecured debtors may be discharged. Debts that are dischargeable depend on the type of bankruptcy filed; however, **the following unsecured debts are not dischargeable in Chapter 7 & Chapter 13:**

- Claims for Alimony or child support.
- Student Loans, unless repayment would cause undue hardship to the debtor and his/her dependents.
- Criminal fines and restitution obligations.
- Home mortgages that extend beyond the term of the Chapter 13 plan.
- Debts incurred in anticipation of bankruptcy or within 90 days of filing of the any activity that indicates a fraud related to the recent debt.
- Debts incurred to pay non-dischargeable debts such as taxes and school loans.
- Debts incurred to pay non-dischargeable debts such as taxes, school loans.
- Court Fees
- Debts incurred from driving while intoxicated.
- Debts not discharged in a prior bankruptcy due to fraud or misrepresentation.

Additional Debts that may not qualify for Discharge

Some debts may not be dischargeable if the creditor objects during the bankruptcy process and submits evidence to the court that the debts you are seeking to discharge in bankruptcy fit the following categories:

- Debts from Fraud
- Purchase of Luxury goods 60 days prior to filing
- Cash advances obtained within 60 days after filing
- Debts from malicious and willful acts
- Debts from Divorce settlement or decree.

8. WILL I LOSE MY HOME & PROPERTY?

The biggest concern of most consumers filing for bankruptcy is the possibility of losing their primary residence. Although the loss of a home is possible when filing a Chapter 7, it is not automatic. Typically, if a debtor is behind on mortgage payments the Chapter 7 will only provide a temporary stay keeping the bank from instituting foreclosure proceedings. If foreclosure is instituted then the home will be sold and the proceeds used to pay the creditors. Remember, a 'Fresh Start' is the main purpose of the bankruptcy program and it is not designed to leave you penny less and without the means to live. You will be permitted to keep certain exempt property and the ability to keep your home depends on the equity remaining in your home. You are permitted to keep a percentage of equity in your home, usually \$75,000 to \$150,000 depending on the jurisdiction. However, In a Chapter 13 when the debtor is behind on mortgage payments the loss of the home can be avoided if the debtor's wages can satisfy the payment plan to pay back missed payments and interests along with the other debts over a three to five year period. Additionally, you are permitted to exempt various household goods, personal items, 100% of IRA's, 401Ks and other retirement accounts and other items that may or may not apply depending on your particular circumstances. A consumer filing bankruptcy is not always required to liquidate their property. Some homeowners continue to pay the mortgage and only seek to discharge other unsecured debts. A consumer may also seek to redeem property that is lost in bankruptcy by paying only what the item is worth, for example an automobile, rather than what it owed on it. A car that you owe \$12,000.00 on we can work to obtain a court order that permit you to pay \$6,000.00 to keep the car.

Some common property that a debtor usually has to give up would include:

- Family Heirlooms
- Cash, Bank Accounts, Stocks, Bonds and other investment
- A second vehicle
- A second home
- Expensive musical instruments, unless the debtor is a professional musician
- Valuable Stamp & Coin Collections and other valuables;

Exempt property the debtor can keep would include:

- Motor Vehicle to a maximum value
- Reasonably Necessary clothing
- Pensions
- A portion of the equity in a home
- Jewelry, up to a certain value
- Reasonably necessary household goods and furnishings
- Tools of trade or profession, up to a certain value
- A portion of unpaid but earned wages

- Damages awarded by a personal injury
- Public Benefits, including public assistance, Social Security and unemployment benefits, accumulated in a bank account.

9. WHAT ABOUT CREDIT CARDS?

In the past twenty plus years credit cards have taken on a shape of their own and have transformed into a new found revenue stream for the companies issuing these cards in a downturned economy. Historically, these companies, many whom are mainly banks or banking institutions, extended credit cards to anyone and everyone regardless of their credit rating or history and gamble on consumers whom can least afford credit card charges because they know it is a matter of time before the average consumers, of limited means of income, will fall behind on payments. These companies entice consumers with slick advertising that lures the consumer into a false sense of belief of ease, convenience and savings that comes with purchasing items with a credit card. Attractive low interest rates are initially offered, only to subject the unwary consumer to unannounced and sudden increase in interest rates that soar sometimes as high as six times the originally offered interest rate. Once you fall behind on payments they pepper your cards with all sorts of fees and charges, penalties and other surcharges in addition to the maximum interest rate buried in the fine print that can easily total higher than the minimum monthly payment. In a short time you are stuck in a revolving door syndrome where the initial principal debt is never paid down. To make matters worse, when a consumer accepts the terms of the credit card they are consenting to an increase in your credit card interest rate at the credit card company's discretion based on their evaluation of your default risk at any given time. The average consumer is unaware that the odds are stacked against them from the beginning in a game that the credit card companies know they will eventually win. All it takes is a few unexpected charges on a credit card for semi-large purchases such as appliances, furniture and roof or furnace repair coupled with a sudden economic down turn like a loss of a job or sudden illness and your inability to pay that card becomes a boom in profits for these companies. Fortunately, for most consumers who are buried in this form of debt, credit cards are unsecured debts and are the form of debt that can be easily and completely discharged in bankruptcy.

10. WHO WILL KNOW? IS BANKRUPTCY PRIVATE?

Bankruptcy is a public filing, but unless friends, family and even employers are part of the bankruptcy they will not receive notice that you have filed. Remember, as explained in our WILL CREDITORS STILL CALL section, creditors are not permitted to contact third parties about your debt. This means they cannot contact your friend, neighbors, family or employers in any way related to your debt and this would apply to your filing of bankruptcy. In fact any contact with the consumer directly or indirectly after you file is a direct violation of the bankruptcy 'stay' as well as the Federal Fair Debt Collection Practices Act (FDCPA) as discussed in our Additional Prohibited Creditor and Collection Agency Activities section. In addition, your employer, whether it be a government agency or a private company may not fire you or treat you in a discriminatory manner due to your right to seek protection under bankruptcy. When it comes to hiring, an

employer and/or government agency may not take creditworthiness into account as a factor. However, even though a government agency is prohibited from discriminating against you for seeking debt protection under bankruptcy, a private employer is not. Just remember that if bankruptcy is in fact the correct path for you, do not let the fear of embarrassment or the possibility of others talk or discrimination prevent you from delay that may inevitably cause further stress and loss. Ultimately, if someone wants to find out about your filing they can though a public record or internet search, so do what is right for you.

11. IS BANKRUPTCY GUARANTEED?

The purpose of the U.S. Bankruptcy System is to provide relief to consumers from overwhelming or crushing debt. It is not a tool to escape from one's responsibilities from purchases or other forms of debts you simply would otherwise choose not to pay. However, this does not mean that you cannot seek relief as a United States Citizen if you follow the guidelines. Whether it means qualifying under the 'Means Test' for a Chapter 7 or qualifying for payment plans to creditors under a Chapter 13, you have the right to file for bankruptcy.

12. WHAT HAPPENS IF I DON'T FILE BANKRUPTCY?

If you are in serious debt and behind on payments delaying bankruptcy or even delaying the option of investigating bankruptcy may just compound the problem or delay the inevitable. For example, falling behind on payments that can create an environment where a bank will foreclose on your house before you can take protective action through bankruptcy that could have prevented a foreclosure. On the other hand, a bankruptcy may not be necessary if you are judgment proof. Judgment proof means you have no assets that the creditors could take to satisfy your debt, such as a house or car. For example, if you are disabled and your only form of income is through disability insurance or Social Security, you have little money and you are renting an apartment, you may be 'judgment proof' and bankruptcy may not be necessary.

Remember, that if you choose to do nothing, ultimately, a creditor that does not receive payments from you can and will sue to collect their money. If you do have assets, after a period of time a creditors will go to court, seek a judgment against you proceed to seize your assets or garnish your wages to satisfy the judgment. However, if your creditors have not yet sued you they cannot attach your assets or garnish your wages to extinguish your debt. You cannot be jailed for non-payment and you cannot be forced to pay money that you do not have. The best way to assess your situation is do a simple self-assessment of your income and expenses. If you can afford find a way to pay your bills and continue to support yourself and family then you may need to consider other options. However, if you find that the money is just not there to do so then you may find bankruptcy is the best and only avenue to a fresh start.

13. WHY DO I NEED AN ATTORNEY?

Ultimately, this determines on your situation. If your bankruptcy is not complex and you find a comfort level in representing yourself with the bankruptcy court trustee then you may proceed on your own, or pro se as the judicial system calls it. Many do not know how complex their case may be or what nuances can make a case simple or complex and prefer to have legal representation throughout the whole process. There is a monetary cost for filing bankruptcy, but it is minimal compared to the ongoing cost of your existing debt, increasing interest and emotional stress. At the Law Offices of Dominick Rendina we are ready to assist you in determining the option that best meets your needs and satisfies your comfort level and provide you with a new path to move on with your life.