

WHAT IS A BANKRUPTCY?

A bankruptcy is a court proceeding in which you request the court to excuse you from your duty to repay your creditors. Bankruptcy allows you to discharge most of your debt, and to keep some of your property. A special court called the United States Bankruptcy Court has been established to hear all bankruptcy cases. Two types of bankruptcy apply to individuals and married couples who are not in business: Chapter 7 and Chapter 13

WHAT IS THE DIFFERENCE BETWEEN A CHAPTER 7 AND CHAPTER 13?

Under a Chapter 7, you must list all of your debts, and all of your property. Virginia law lets you keep some of your property, which may be exempt, but not property that cannot be exempted. Property that cannot be kept is turned over to the trustee who will use this money to pay creditors. The court then discharges (forgives) most of your debts.

In a Chapter 13, you must also list all of your debts and your property, but you may be able to keep your property, including a home. You must come up with a plan to pay your creditors back in three to five years. Creditors being paid through a Chapter 13 must receive at least as much as they would receive in a Chapter 7. You must have a steady source of income to pay these debts.

WHAT IS THE NEW BANKRUPTCY LAW?

The new bankruptcy law took effect in 2005. Under this law, the type of bankruptcy that you can file depends upon whether your household is above or below the state median income. People in households with incomes above the median sometimes cannot file a Chapter 7; they must file a Chapter 13. People in households with incomes below the median may file a chapter 7 or a Chapter 13. Your income is determined by the six-month period before you file bankruptcy.

WHAT DO I HAVE TO DO TO FILE?

Under the new law, you generally must get credit counseling from an approved agency within 180 days **before** you file for bankruptcy. In order to receive your discharge under Chapter 7, you must also take a debt education class **after** your case is filed.

WHAT PROPERTY CAN I KEEP IN VIRGINIA?

Virginia law lets you keep some property that you own free and clear. This property is protected from your creditors:

- Up to \$5,000 in household goods
- Up to \$1,000 in clothing
- Up to \$6,000 in equity in a motor vehicle
- Up to \$10,000 of tools and equipment used in your work or school
- Medically prescribed health aids
- Up to \$5,000 of other property (\$10,000 for a married couple) plus \$500 per

dependent, if you list it in a Homestead Deed filed with the Circuit Court Land Records office.

ARE ALL MY DEBTS DISCHARGED?

No. Some debts cannot be discharged in either a Chapter 7 or a Chapter 13. These include taxes for which no return was filed, taxed for which a fraudulent return was filed, possibly some other taxes, child and spousal support obligations, student loans, unless you can show extreme hardship, debts due to fraud or wrongful and harmful acts, and loans from your pension plan.

Also, under the new law, you cannot discharge credit card charges to a single creditor for more than \$600 in luxury goods that you purchased within the 90 days before you filed for bankruptcy. You also can't discharge cash advances of more than \$875 that you received within 70 days of filing bankruptcy.

WHAT HAPPENS IN CHAPTER 7 TO PROPERTY I AM BUYING ON CREDIT?

In a chapter 7, you may have to give back the property to the creditor. A creditor may have the right to repossess this property, but may also let you keep the property if you are current in your payments, by "reaffirming" the debt in bankruptcy. Reaffirmation agreements must be in writing and must be approved by the court to be enforceable. If the creditor has repossessed the property, another way to keep it is to "redeem" it.

This means that you will have to tell the creditor what the property is worth, not what you owe on it.

WILL I HAVE TO GO TO COURT?

Yes, at least once and sometimes twice. At the “first meeting of creditors” you will be asked questions about your income and property. You must go to this hearing. At the later court date, the “discharge hearing,” you will get an explanation about the discharge. Some courts don’t require you to go to this hearing. If anything about your bankruptcy is contested, you may have to go to other court hearings. A bankruptcy usually takes between three and four months.

HOW OFTEN CAN I FILE BANKRUPTCY?

If you get a Chapter 7 discharge, you must wait eight years before you can file another Chapter 7, and four years before you can file a Chapter 13. If you get a Chapter 13 discharge, you must wait six years to file a Chapter 7, and two years before you can file another Chapter 13.

HOW WILL A BANKRUPTCY AFFECT MY CREDIT?

While a debt or judgment can appear on your credit report for seven years, a bankruptcy can appear for ten years. If you need to file bankruptcy, however, you probably have bad credit anyway, and bankruptcy may allow you to be better able to pay current bills.

You cannot be discriminated against for filing bankruptcy. Private employers cannot terminate or refuse to hire you just because you filed bankruptcy. You may still vote and own property, and public utilities cannot cut off or refuse services for filing bankruptcy. Your credit applications must be treated the same as other applications for credit.

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