

# **UNITED STATES BANKRUPTCY COURT**

District of Arizona



**Choosing Your Chapter** or

**What can bankruptcy do for you?**

**What will it do *to* you?**

**October 2006**

## **IMPORTANT WARNINGS**

Neither the Bankruptcy Court nor the Clerk's office can give you legal advice. This pamphlet is not intended to give you legal advice, and is not a substitute for the legal advice specific to your situation that you should obtain from a qualified attorney. To find an attorney who has been certified as a specialist in bankruptcy, you may go to the State Bar of Arizona website at [www.azbar.org](http://www.azbar.org), click on "Legal Resources" in the top menu bar, then click on "Find a Certified Specialist," and then click on "Bankruptcy."

This pamphlet addresses only the filing of bankruptcy cases by individuals and married couples. It does not address the very different chapters, law and rules that apply to bankruptcy cases filed by corporations, partnerships and LLCs (which, for example, do not get discharges and are not eligible for Chapter 13). If a corporation, partnership or LLC is considering filing bankruptcy, it will absolutely need a lawyer because the law of this Circuit is that such organizations can be represented in court only by a lawyer, not by a nonlawyer individual such as the president of the corporation.

Some individuals may need to file a Chapter 11, perhaps because their debts are too large for them to qualify to file a Chapter 13. This pamphlet does not address Chapter 11 cases, for which an attorney is almost always essential.

Some individuals who are family farmers may be eligible to file Chapter 12. However, individuals who are family farmers must have debts that total not more than \$3,237,000 to qualify for Chapter 12. This pamphlet does not address Chapter 12 cases.

**Overview.** Individuals may have different reasons for filing a bankruptcy case. Often, it is simply to obtain a “Discharge,” which relieves them of some or all of their debts. [Capitalized words in quotes are also explained in the Glossary in the back of this pamphlet.] But sometimes it is as important, or more important, for the individual to use bankruptcy to provide time to cure past defaults. Because of these differing purposes, and others, there are different kinds of bankruptcy cases available.

This pamphlet describes some of the basic differences between the various kinds of bankruptcy cases, known as “Chapters,” to help you decide which kind of filing is most appropriate for you. **But the information provided here is very basic and cannot address all of the issues that may affect you, so it cannot provide you with a definitive answer as to which kind of bankruptcy you should file, if any. For that advice, you should consult a lawyer.**

In all bankruptcy cases, the person filing the case is called the “Debtor.” All bankruptcy cases begin with the filing of a “Petition.” At the same time as the petition is filed, or very shortly after that, the debtor must file extensive “Schedules and Statements of Affairs.” There is a separate pamphlet available that explains how these forms must be filled out. But in *all* cases, it is essential that the debtor fill out these forms and list in them *all* of the debtor’s property and other assets, and all of the debtor’s debts and other liabilities. Failure to list some property or some debt may have very serious consequences, including loss of the discharge or even conviction of a federal crime punishable by up to five years’ imprisonment.

For most individuals, the only real choice is between filing a Chapter 7 or filing a Chapter 13. In both cases a “Trustee” is automatically appointed. Among other things, the Trustee will examine the accuracy of the debtor’s schedules and, if appropriate object to the debtor’s discharge. In all cases it is essential that the debtor cooperate with the Trustee, provide the Trustee with all the information and documents the Trustee requests, and abide by all Bankruptcy Rules and court orders. It is also essential in all cases that the Debtor appear at a “First Meeting of Creditors,” where the Trustee will question the Debtor about the Schedules and Statement of Affairs.

There are many detailed differences between Chapters 7 and 13, but the most important

are as follows:

In a Chapter 7 case, the debtor must turn over to the Trustee all property that is not “Exempt,” and if there is no objection the discharge is entered fairly quickly, within a few months of the filing of the case. The Trustee pays creditors only what has been generated by liquidating (selling) the nonexempt assets.

In a chapter 13 case, the debtor can keep all property including property that is not exempt, but must promptly file a “Plan” that provides for monthly payments to be made to the Trustee from the debtor’s “Disposable Income.” The Trustee pays creditors out of these plan payments. Such plans last from three to five years, and the discharge is granted only when the plan is successfully completed.

Married couples can file a joint chapter 7 or a joint chapter 13. It is often a very difficult decision to make whether it is better for them to file jointly or for only one spouse to file. Advice of a lawyer is essential to making that decision, and this pamphlet does not address it.

**See a Lawyer.** The decision whether to file bankruptcy may be one of the most important decisions you will ever make. Like surgery, it can restore you to health, but it can also have very serious consequences. You would not decide to undergo surgery without consultation and advice from an expert, a doctor who specializes in the type of surgery you are facing. Similarly you should not decide to file bankruptcy simply on the advice of a friend or relative, or based on what you’ve heard about it. You need professional, expert advice, and that means a lawyer, not a document preparer or “paralegal.”

Document preparers and paralegals may be able to help you through the process when the critical decisions have been made, just as a nurse assists with medical procedures, but they cannot provide advice on these most important decisions you have to make. They can only act as typists in helping you fill out the necessary forms. They cannot tell you what information to put into the forms. Most importantly, they cannot tell you whether bankruptcy is appropriate for you or will solve your problems. And they cannot tell you whether Chapter 7 or Chapter 13 is more appropriate for you or if your circumstances even permit you to file for bankruptcy.

**Consider Alternatives.** Before deciding to file bankruptcy you should also consider alternatives. For example, you should contact your creditors to see if they will agree to a

modified payment plan that you can afford. You may also want to see if your creditors will agree to a negotiated settlement of your debts. Debt counselors may be able to help you negotiate payment plans, or possibly reduced interest rates that will help you get out of debt without filing bankruptcy. Unless you are severely disabled or in a combat zone, in order to file a consumer case under either Chapter 7 or Chapter 13, you must have received credit counseling during the previous six months and you must file a certificate that you received such counseling with your petition. There are nonprofit organizations that do so without charging a fee up front, because they get paid by an agreement with the credit card companies. Avoid any debt counselor that charges a large up front fee, or whose fee is paid ahead of your creditors. And beware of anyone advertising “credit repair,” because there is nothing anyone can legally do to improve your credit history except eliminate errors in your record, and you can do that yourself.

**Choice of Chapter.** If you do decide to file bankruptcy, the second most important decision you have to make is which kind of bankruptcy to file, which means which Chapter of the Bankruptcy Code your case is filed under. Like the decision whether to file at all, this decision should also be made with the advice of a lawyer after consultation. Only a lawyer can evaluate your personal situation and select the type of filing that suits your needs. No one else, neither a document preparer nor the Court, is qualified to make that recommendation. Filing under the wrong Chapter could have serious consequences – you could lose your home or car, it could cost you much more than necessary, or you could be substantially delayed in getting a discharge and restoring your credit. The cost of a lawyer’s advice is usually much less than the cost of making the wrong choice without a lawyer. Many lawyers will provide an initial consultation for little or no fee.

This pamphlet cannot make any recommendations on which type of bankruptcy filing is best for you. It can only provide some general facts about what each type of filing can accomplish, what it requires, and what it costs. Because there are so many very detailed aspects of the law, however, it is not wise to make this decision without the advice of a lawyer. And almost all of the information given here applies only generally, because there are many details and exceptions that may mean these general rules do not apply to you. Only an attorney can advise whether these general rules actually apply to your situation.

Although there are other chapters available for different kinds of entities, businesses and farmers, individuals and married couples who file bankruptcy in Arizona usually file only under two chapters, Chapter 7 or Chapter 13. There are a number of issues that need to be considered in choosing which chapter to file under. For example, you should consider:

1. Are you eligible?
2. What happens to the property that you own? What can you keep, and what must you turn over to the Trustee?
3. What happens to your debts? Which debts can be discharged, and which cannot?
4. What would you have pay to the Trustee under a Chapter 13 plan?
5. What will be the effect on your ability to obtain credit?
6. How long will each process last, what can you expect after you have filed and when will the discharge be entered?
7. How much will each process cost in filing fees and attorney fees?

For some individuals, one of these considerations may outweigh all others so that only one kind of filing makes sense. For most people, however, a combination of factors will influence the choice, and weighing them all together will be a difficult process to arrive at a decision. And for some of these considerations, such as the effect on future credit, there simply is no clear answer. Again, this is where the advice of an experienced attorney is most essential.

### **1. Are you eligible?**

For any bankruptcy case, to be eligible to file in Arizona you must have resided here for the greater part of the 180 days (six months) preceding the filing. In general, this means you must be an Arizona resident for 90 days before you can file here.

#### **a. Eligibility to File Chapter 7.**

There is no fixed maximum or minimum amount of debt or income to be eligible to file a Chapter 7. However, there are certain restrictions that must be met in order to receive Chapter 7 relief.

First, although it is not technically a requirement to be eligible to file a Chapter 7 case, you cannot receive a Chapter 7 discharge if you received a previous Chapter 7 discharge in a case that was pending within the previous eight (8) years.

Second, as noted earlier, in order to file for either Chapter 7 or 13, you must also complete bankruptcy credit counseling from an “approved nonprofit budget and credit counseling agency” within 180 days (approximately 6 months) of filing. The credit counseling agency must provide proof that you have received the mandatory counseling in the form of a “credit counseling certificate.” This certificate must be provided to the Court with your petition as failure to file the certificate within five days of filing your petition may result in your case being dismissed. A list of approved nonprofit budget and creditor counselors is available at the United States Trustee’s website, [www.usdoj.gov/ust](http://www.usdoj.gov/ust) or by calling 602-682-4000.

Third, you cannot file under Chapter 7 or any other chapter if within the 180 days prior to filing your bankruptcy petition, a prior bankruptcy petition was dismissed due to your failure to comply with a Court’s order, your failure to appear before the court, or your voluntary dismissal of the case after your creditors sought relief to recover any property on which it held a lien.

Fourth, due to the recent changes in the Bankruptcy Code, the determination as to whether you are qualify for Chapter 7 bankruptcy relief requires that you meet some new requirements that historically were never considered. Largely, the determination as to whether you are allowed to file a Chapter 7 bankruptcy depends on your family income, family size, and family expenses.

An individual with primarily consumer debts must satisfy a “means test” in order to file for Chapter 7. Certain aspects of the means test can be very complex, and most debtors will require the assistance of an attorney in completing this test. Only the most basic aspects of the means test can be described here. If you do not satisfy the means test, your filing will be deemed presumptively abusive and your case may be dismissed.

Generally, there are three parts to the means test.

**Annual Income Less Than State Median Income.** First, you must determine whether your annualized “current monthly income” is more than the Arizona state median monthly income for a family of your size. “Current monthly income” is a technically defined term, but generally it is the average of your last six months’ actual income from all sources. If your current monthly income, multiplied by 12, is below the state’s median income, you satisfy the means test and do not need to satisfy the next two parts. The Arizona median income is determined by the Census Bureau and is available at United States Trustee’s website [www.usdoj.gov/ust](http://www.usdoj.gov/ust) or at 602-682-4000. It will change over time, but as this pamphlet is written the median income for Arizona is as follows:

One person family	\$37,850
Two person family	\$48,630
Three person family	\$51,575
Four person family	\$61,102
For each additional person, add:	\$ 6,300

**Disposable Income Less than \$100 Per Month.** Second, even if your current monthly income exceeds the median income, you may still pass the means test if your current monthly income minus authorized monthly expenses is less than \$100. There are highly technical rules for what are authorized expenses, and the best way to determine whether you meet this test is simply to fill out the means test form.

**Disposable Income Less than \$166 Per Month.** Third, even if your income minus expenses is more than \$100, you may pass the means test if that amount is less than \$166 per month *and*, when that number is multiplied by 60, the product is less than 25% of the nonpriority unsecured debts that you owe. Again, the best way to determine if you satisfy this part of the test is to fill out the means test form.



Finally, even if you do not pass any of these aspects of the means test, you might still be permitted to file a Chapter 7 case if you can demonstrate special circumstances that support an adjustment to your income or expenses that would satisfy the means test.

**b. Eligibility to File Chapter 13.**

To be eligible to file a Chapter 13 case, you must (1) have received credit counseling and a certificate that you have done so, (2) be an individual or a married couple, not a corporation or partnership, (3) have a regular income, (4) have unsecured debts of less than \$307,675, and (5) have secured debts of less than \$922,975. All five requirements must be satisfied, and you may need a lawyer's advice to determine whether you qualify under any of them other than the first and second.

"Regular" income means a cash flow, from any source, that is sufficiently regular and reliable to fund monthly payments under a three to five-year plan. "Secured" debts are debts for which the creditor can take your property ("collateral") if you fail to pay, such as a home mortgage or car loan. "Unsecured" debts are those for which none of your property is directly responsible. So, for example, your credit card debts and medical debts are generally unsecured debts and they must total less than \$307,675. Your secured home mortgages and car loans must total less than \$922,975 for you to be eligible to file a Chapter 13 case. These dollar limits will be adjusted on April 1, 2007, and on the same date every three years thereafter, so you should check a current version of 11 U.S.C. § 109(e) for the current amounts after April 1, 2007.

For purposes of the debt limitations for Chapter 13 eligibility only, do not count debts that are "contingent." A contingent debt means a debt that requires some other event to occur before you actually owe the debt, such as a guarantee of someone else's debt when that person has defaulted. Second, do not count debts that are "unliquidated," which means the amount due cannot be calculated. For example, liability for a car accident that you caused may be unliquidated until a jury has determined the amount of damages, unless those damages (such as incurred medical expenses) can be easily determined with certainty. But if the amount due can be calculated, it is not unliquidated simply because a lawsuit must be resolved before your liability for the debt is determined. Determination of whether a debt is contingent or unliquidated is often difficult and may require an attorney's advice. Such contingent and

unliquidated debts must still be listed in your schedules, but they do not count toward the eligibility limits.

In addition to satisfying the debt limitations, you must also have received, within the 180 days (approximately 6 months) prior to filing, mandatory credit counseling from an “approved nonprofit budget and credit counseling agency.” The credit counseling agency must provide proof that you have received the mandatory counseling in the form of a “credit counseling certificate.” This certificate must be provided to the Court with your petition or immediately thereafter, as failure to file the certificate within five days of filing your petition will result in your case being automatically dismissed. A list of approved nonprofit budget and creditor counselors is available at the United States Trustee’s website, [www.usdoj.gov/ust](http://www.usdoj.gov/ust) or by calling 602-682-4000.

## **2. What assets can you keep?**

Under both Chapter 7 and 13, the filing of a bankruptcy petition, creates an “estate.” The estate is a temporary legal owner of your property. The Bankruptcy Code defines what assets are property of the estate, and what property is not. Under both chapter 7 and Chapter 13, you can keep assets that Arizona law defines as “**exempt.**” Often this means you can keep your house up to a certain amount and car under either chapter, but for a more detailed list of exempt assets, the value limitations and the requirements for keeping them, see the pamphlet on Arizona Exemptions.

All other assets, or the nonexempt assets, are property of the bankruptcy estate and must be turned over to the Trustee in a Chapter 7 case. The Trustee is an impartial person appointed by the U.S. Trustee for the District of Arizona, to administer your case and liquidate your nonexempt assets. For example, the Trustee sells your nonexempt assets to generate cash to pay to creditors. One asset that debtors often forget about is a tax refund that is received after the case was filed, but that was generated out of income earned before the case was filed. Such refunds must be turned over to the Chapter 7 Trustee, and failure to do so may result in a judgment against you for that amount and denial or revocation of your discharge.

Under Chapter 13, however, debtors can generally keep all of their nonexempt assets, but must make payments under a plan that total at least the value of the nonexempt assets that are

kept. “Value” here means the value in excess of any debt that is secured by the asset (*i.e.*, the amount of the debtor’s “equity” in the asset).

Therefore, if you have an asset that you want to keep and that is not among the exempt assets, you may want to file Chapter 13. This permits you to keep that asset, but you must pay its equity value into the plan. You could instead file a Chapter 7, turn the asset over to the Trustee, and buy it back from the Trustee for fair market value. But this would generally require a cash payment, and the Trustee can sell to anyone who offers more than you do, whereas the Chapter 13 plan essentially allows you to buy back the nonexempt assets by making payments over three to five years.

**Importantly**, you cannot “keep” any assets by transferring them to a friend or relative before filing bankruptcy. The Trustee may recover, for the benefit of your creditors, any asset that you transferred *either* with an intent to prevent your creditors from obtaining it, *or* for which you did not receive reasonably equivalent value in return, while you were insolvent (when your debts were more than the value of your assets). And if the Trustee does recover such a transferred asset, it will be liquidated and sold for the benefit of your creditors even if you could have claimed it as exempt if you had not transferred it. In short, you generally lose your right to claim an exemption by transferring an exempt asset before filing bankruptcy. In addition, you may lose your right to a discharge by making such a transfer, regardless of whether the asset was exempt or not exempt.

The Trustee can also recover certain payments you made on pre-existing, unsecured debts. Such payments may be avoidable preferences, and the Trustee can sue the person you paid to recover them, for the benefit of your creditors. This applies to certain payments made on unsecured debts while you were insolvent and made within ninety (90) days (three months) before the filing of bankruptcy, or made within one (1) year before filing if the person you paid was an “insider,” such as a relative of yours. These transfers are known as “preferences” and “fraudulent transfers.” Preference law is extremely detailed and complex and you should consult an attorney if you have a concern about any such payment. A Chapter 13 Trustee may not actually file a lawsuit to recover such a payment, but you may be required to make payments into a plan that equals the value of such payments, plus the value of your other nonexempt assets.

### 3. What debts must you pay?

Once you file a petition under either chapter 7 or 13 it automatically stays or stops most collection actions against you. There are limitations to this “Automatic Stay,” however, which you should be aware of prior to filing. For example, you are not protected by the automatic stay from most domestic relations proceedings and judgments, such as divorces, paternity, child support, visitation, spousal maintenance and alimony. You are not protected by the automatic stay from most criminal proceedings.

If you have filed for bankruptcy within the past year and that previous case was dismissed, the automatic stay may protect you only for 30 days after the new case is filed. The automatic stay may be continued after the 30-day period if you are able to show good cause for such stay. Also, if two or more bankruptcy cases were dismissed during the prior year, the automatic stay **does not go into effect at all** unless the court orders it after a hearing and a determination that the your filing was made in good faith. There is an assumption that you have filed your bankruptcy case in bad faith unless you can prove otherwise.

If you file for bankruptcy in order to stop an eviction from a residence you rent or lease, the landlord will be able to continue with that eviction if the landlord obtained a judgment before you filed your bankruptcy case. In addition, if you are filing to save your home from foreclosure, you must **do so before the mortgage company completes the foreclosure sale** under Arizona law, or you may lose your home.

#### a. Secured Debts.

Under both Chapter 7 and 13, you must pay debts that are secured by property if you want to keep the property. Most commonly, this means ***you must keep making your regular monthly payments on your home mortgage*** if you want to keep your home. You also must maintain insurance on your home and car, and provide your lender proof that the lender is named as an additional loss payee on the insurance policy.

Sometimes secured creditors refuse your attempts to pay them, perhaps feeling that accepting payments might violate the automatic stay against creditor attempts to collect their debt. If this happens **do not spend the money set aside for such payments**. Retain the money until the Trustee or Court can address the situation. You could well then be directed to make a lump sum payment to that creditor, using those funds.

Chapter 13 can be used to cure defaults on secured debts, including defaults on home mortgages and motor vehicles. But the amount of the home mortgage debt and the amount of each month's home mortgage payment cannot be modified in either Chapter 7 or 13. So, if you are some months behind on your mortgage payments, you could file Chapter 13 and catch up on the payments by making a regular monthly payment each month **plus** an additional amount that will, over the term of the Chapter 13 plan, total the amount of the payments you have missed, plus interest. Chapter 7 does not provide this opportunity to cure defaults.

**b. Nondischargeable Debts.**

Under both Chapter 7 and 13, most unsecured debts can be discharged in the bankruptcy case, but there are some debts that you cannot escape, called "Nondischargeable Debts." For example, both chapters will generally permit you to discharge credit card obligations, medical debts and other unsecured loans, but neither Chapter will excuse you from paying spousal maintenance, child support, taxes incurred within 3 or 4 years before filing, or most student loans. Also debts owed to a single creditor totaling more than \$500 for luxury goods incurred within 90 days of filing or cash advances of \$750 within 70 days are presumed to be non-dischargeable. The Glossary at the back of this pamphlet gives a more complete listing of the kinds of debt that may be nondischargeable. There are very detailed and sometimes complex requirements about which debts can be discharged and which cannot, for which you should consult a lawyer. If a creditor challenges your right to a discharge or asserts that the particular debt is not dischargeable, you will almost certainly need a lawyer to represent you in Court in order to obtain the discharge.

Even though most tax liabilities that arose less than 3 or 4 years ago are not dischargeable in either Chapter 7 or Chapter 13, they still may provide a reason for some people to choose

Chapter 13 rather than Chapter 7. Such tax liabilities will have to be fully paid by the Chapter 13 plan, which lasts for a minimum of three years and a maximum of five. But during that time interest will stop accruing on the tax liability if the taxing authority has not asserted a lien against your property before you filed bankruptcy and the Court has determined that you lack the requisite “disposable income” to pay such interest. Consequently it may cost you less to repay the nondischargeable tax liability through a Chapter 13 plan than it would cost you to repay it over time if you filed a Chapter 7 case or filed no bankruptcy at all. If you have tax debt that arose within the last four years, you should consult an attorney to determine if bankruptcy under either Chapter 7 or Chapter 13 is a viable option.

You may also want to consider Chapter 13 if you have incurred a debt for willful or malicious injury that caused personal injury or death to another person. Such a debt is nondischargeable in a Chapter 7 case. But if no court has awarded a judgment for restitution or damages before you file a Chapter 13 case, such a debt may be dischargeable in a Chapter 13. If damages or restitution have already been awarded, however, the debt for these damages is nondischargeable even in a Chapter 13 case.

**c. Possibly Dischargeable Debts.**

Under either chapter, you may be able to discharge student loan debt, but only if you can prove to the Court that it would be an undue hardship on you if the debt were not discharged. There are detailed and complex rules about the kind of proof you must present to the Court, and the manner in which it is presented, in order to obtain the discharge of a debt of this kind. You will almost certainly need a lawyer to represent you in Court if you seek to discharge a student loan debt. The dischargeability of student loan debts is the same in Chapter 7 and Chapter 13, so the existence of such debts does not really provide a reason to choose one chapter over the other.

Debts arising from the property settlement aspects of a divorce or separation decree may be discharged in a Chapter 13, but cannot be discharged in a Chapter 7, so such debts may provide a reason to file Chapter 13 rather than Chapter 7. You will almost certainly need a lawyer to represent you in Court if you seek to discharge a property settlement agreement in a Chapter 13.

#### **4. What must you pay to the Court or Trustee?**

In Chapter 7, you need only pay the filing fee, administrative fee and trustee surcharge to the Court, and turn over to the Trustee all of your nonexempt assets. Note that this obligation to turn over nonexempt assets generally includes the obligation to turn over to the trustee any tax refunds you receive after the case is filed, if the refunds are the result of taxes that were withheld from your wages earned before the case was filed.

In Chapter 13, you will need to pay a filing and administrative fee plus file a plan that provides for monthly payments to the Trustee for a minimum of three years, and sometimes as long as five years. You must begin making these plan payments within 30 days of the filing of the bankruptcy case. The monthly plan payments are generally the amount of your monthly “disposable income,” which usually means the amount of your take-home pay minus your necessary living expenses for yourself and your dependents. In addition to making your plan payments, you must also pay directly to the lessor of personal property the amount of the lease that become due after your bankruptcy filing pending confirmation of your plan by the Court. The Chapter 13 Trustees have guidelines for appropriate living expenses by family size and may challenge your claimed expenses if they exceed these amounts. Over the term of the plan, these plan payments must also total the value of all nonexempt assets that you keep. They must also total the amount of all secured claims that are being paid through the plan, plus the amount of all priority claims, which generally includes all tax obligations incurred within three or four years before the filing of the bankruptcy case and all overdue spousal maintenance and child support obligations. You will almost always need to consult a lawyer to calculate the amount of your disposable income, to calculate what must be paid each month on secured and priority claims, to determine the amount that you must pay each month into a Chapter 13 plan, and to determine the length of the plan, which may vary from three to five years. The success rate for Chapter 13 debtors who file without a lawyer is very low.

For many debtors this means they will pay much more under a Chapter 13 plan than they would pay to a trustee in a Chapter 7 case, especially if they have little value in nonexempt assets. But such people may choose to pay that greater amount so that they can use Chapter 13 to cure defaults in order to keep their home or car, so that they can pay past tax obligations over

time without additional accrued interest, because they have significant nonexempt assets that they want to keep, or because they do not satisfy the “means test” to file a Chapter 7 case.

## **5. What is the effect on your credit?**

The Fair Credit Reporting Act permits credit agencies to reflect a bankruptcy on your credit report for ten years after the date of filing. Credit reports must also reflect which Chapter you filed under. Some people feel that a Chapter 13 filing reflects better on your credit report than a Chapter 7 filing, because it indicates an effort to repay some of your debts over time. Others feel that the chapter you filed under makes no difference, and that the more significant effect on your credit is whether you have already received your discharge. A discharge under Chapter 7 is usually granted within about 4 months after the filing, but the discharge under Chapter 13 is not granted until you complete all payments due under your plan, which is a minimum of three years and may be as long as five years.

Government agencies may not discriminate against you because you have filed a bankruptcy case, but lenders may take your bankruptcy filing into account in deciding whether to grant you credit at all, or in determining what interest rate you will have to pay to borrow money. Most people believe the filing of a bankruptcy case will mean that you must pay significantly higher interest rates to obtain a credit card, a car loan or a home loan for many years after the case is over.

## **6. How long will each case last? What can I expect after filing?**

### **a. Chapter 7.**

Your involvement in a Chapter 7 case will often conclude in a few months, when a discharge is granted. This does not mean that your cases will be dismissed; however, it only means that your involvement in the case will conclude. This is because the Trustee may require additional time to sell your assets, including your house if it has equity value above all the lien claims and your homestead exemption. If the Chapter 7 trustee does sell your house, you will receive the amount of your homestead from the proceeds of sale. Your involvement may be extended, however, if a creditor objects to your discharge, or if the Trustee needs to take action to recover assets that could be used to pay your creditors.



Upon filing your petition and the additional required documentation, including but not limited to the Schedules and the Statement of Financial Affairs, the United States Trustee will appoint a chapter 7 Trustee to administer your case. The Trustee may hire an attorney to assist in the administration of your case. Within 20 to 40 days of filing, the Trustee will hold a Meeting of Creditors. Prior to the meeting, you will probably receive a detailed letter from the trustee requesting that you bring information and documents to the meeting of creditors. You must cooperate with the trustee and respond to the trustee's requests. You are required to attend this meeting. During this meeting, you will be required, under oath, to address any questions from both the Trustee and any creditors. If you are filing jointly with your spouse, both of you must attend the Meeting of Creditors. Within 10 days after the Meeting of Creditors, the Trustee will report to the Court whether you qualify for a Chapter 7 under the means test, or whether your case should be presumed an abuse. Before and after the Meeting of Creditors, the Trustee, or his or her counsel, may request additional information from you relating to your financial affairs. It is important that you cooperate in this process and provide the Trustee with the requested information in a timely manner.

Subject to limited exceptions, you will be required to complete an instructional course in personal financial management in order to receive your discharge. You must complete and file a certificate that you have completed the course on an official form issued by the Court: the *Debtor's Certification of Instructional Course Concerning Personal Financial Management*. This form along with the actual course completion certificate that you received from the course provider must be filed within 45 days of the Meeting of Creditors. Failure to file this form may result in an automatic closing of your case without the issuance of your discharge. You would then have to pay an additional \$220 to have the case re-opened to obtain your discharge. A list of the organizations approved by the United States Trustee's Office to provide this required financial management course can be found at the Trustee's website at [www.usdoj.gov/ust](http://www.usdoj.gov/ust) or by calling 602-682-4000. If you complete this course and file the required form, in most cases, within 60 to 90 days after the Meeting of Creditors the Court will automatically issue a discharge. In some cases, however, creditors or other parties in interest may object to a debtor's discharge, which may extend the time. The Bankruptcy Code provides a number of grounds for

a party to object to a Chapter 7 discharge. If you have concerns or questions regarding an objection to a chapter 7 discharge you should consult an attorney.

Once you receive a discharge, your creditors may no longer attempt to initiate or pursue legal collections actions against you. However, they may take back any property (collateral) which secures their debt. For example, the creditor with a lien on your car may decide to take the car back if you are not current on your payments after the discharge, or if its loan documents permit it to do so, it may take back the car because you filed for bankruptcy. The creditor may not, however, try to collect from you any deficiency on the debt. A deficiency is the amount left on the debt after a creditor liquidates (sells) the car and applies the money obtained from the sale to the debt. You may voluntarily repay any debt even after you receive a discharge, but you should not enter into any agreements to pay the debts listed on your bankruptcy schedules after you receive a discharge. Such reaffirmation agreements must be entered before your discharge and must be approved by the bankruptcy court

A discharge may be revoked on the request of the Trustee, a creditor or the United States Trustee if the Court determines that your discharge was obtained through fraud, if you obtained property that should be property of the estate and you fail to turn the property over to the Trustee, or if you materially misrepresented or failed to provided accurate information to the Trustee or in your Schedules, which is determined in an audit of your case.

**b. Chapter 13.**

A Chapter 13 plan, unlike a Chapter 7 case, must last for a minimum of three years, and with cause may be extended up to five years. Usually debtors do not file plans longer than three years unless they need more time to make full payment on secured or priority debts, such as certain tax obligations or spousal maintenance or child support.

Unless granted an extension, chapter 13 debtors must file a Chapter 13 plan with the petition or within 15 days of filing the petition. The plan must be submitted for court approval and must provide for payments of fixed amounts to the Trustee on a regular basis. Between 20 and 50 days after filing the petition, the Trustee will hold the Meeting of Creditors. Within 30 days of filing, even if the plan has not been officially confirmed, a debtor must begin paying the Trustee pursuant to the terms of the plan. No later then 45 days after the Meeting of Creditors,

the Court must hold a confirmation hearing and decide whether the proposed plan is feasible and meets the legal standards established under the Bankruptcy Code. All creditors will receive 25 days notice of the confirmation hearing, providing them an opportunity to object. Once the plan is confirmed, the debtor is required to make the required payments under the plan. The discharge in a Chapter 13 case is not granted until you have completed all payments under the plan.

Because each debtor's case and circumstances vary, it is impossible to predict exactly how long each case will last, or what each debtor should expect. Therefore, if you have any additional questions regarding the expected length of the process or what to expect after filing, contact an attorney. As noted earlier, debtors without an attorney rarely successfully complete their chapter 13 plan and obtain their discharge.

#### **7. How much will each cost in filing fees and attorney fees?**

The filing fee for a Chapter 7 is \$299. The filing fee for a Chapter 13 is \$274. Attorney's fees are not set by law or by the Court, but are subject to the market, the nature and amount of service provided, and the agreement of the parties. Some attorneys offer flat fees, while others charge by the hour.


Attorney fees for a chapter 7 filing have generally been lower than for a Chapter 13 filing. Due to recent changes in the bankruptcy law, however, this may no longer be true due to the increased legal requirements of filing Chapter 7s and Chapter 13s. Additionally, attorney fees for filing a Chapter 7 case are generally required to be paid in full before the filing, whereas many lawyers will agree to have their fees for a Chapter 13 case to be paid over time under the Chapter 13 plan. As a result, the total amount you must pay a lawyer before your chapter 13 case is filed is often very close to the amount you would have to pay to file a chapter 7 case.

Regardless of which chapter you file under, you should clearly understand whether your fee agreement includes your attorney's appearance with you at the first meeting of creditors, a defense if a party seeks to dismiss your case for abuse, a defense if a secured creditor moves for relief from the automatic stay so that it can foreclose, or representation if a creditor opposes your discharge or the discharge of that creditor's debt. Many attorneys' fee agreements provide that such defenses (other than appearance at the first meeting of creditors) are additional and subject to another agreement for additional fees, possibly on an hourly basis even if there is a flat fee for

the basic representation. You should discuss with your attorney the likelihood of the need for such additional representation and what it might cost.

### **Glossary of Terms**

**Bankruptcy Code.** Almost all bankruptcy law is federal, and is found in Title 11 of the United States Code, which is known as the Bankruptcy Code. This means that bankruptcy law is generally the same throughout the United States. About the only aspect of bankruptcy law that is found in state law are the “exemptions,” which in Arizona are found in Arizona Revised Statutes (“A.R.S.”) § 33-1101 through § 33-1153.

**Bankruptcy Rules.** The details of what must be filed in a bankruptcy case, and the deadlines for filing, are generally found in the Rules of Bankruptcy Procedure, known generally as the Bankruptcy Rules. In addition to these rules there are also deadlines and other requirements established by the Arizona Local Rules and by General Orders issued by the Arizona Bankruptcy Court. These may be found on the Court’s website located at [www.azb.uscourts.gov](http://www.azb.uscourts.gov) 



**Chapter.** The Bankruptcy Code has different Chapters for different kinds of cases and debtors. For example, chapter 7 governs liquidation bankruptcy cases, whereas chapter 13 governs individual cases where there is a three to five-year plan to repay a portion of the debts.

**Code.** In bankruptcy cases, the “Code” usually refers to the “Bankruptcy Code,” although there are other federal codes such as the Internal Revenue Code.

**Collateral.** Property pledged as security for a debt. In the event you default on a loan or other obligation, the property pledged as collateral may be sold, with the proceeds used to pay off the debt.

**Contingent Debts.** Debts that are not yet due because some other event must occur before you must pay the debt. The most common contingent debt is a guarantee of someone else’s debt, which is contingent until the other person defaults. Contingent debts are not counted in determining whether you are under the debt limits to be eligible to file a chapter 13 case, but otherwise must be scheduled and dealt with in a bankruptcy case like any other debt.

**Credit Counseling.** With limited exceptions, people who plan to file for bankruptcy protection must get credit counseling from an organization approved by the United States Trustee Program in the Department of Justice within six months before they file. The list of approved

 organizations is available at the bankruptcy court clerk's office or online at  [http://www.usdoj.gov/ust/eo/bapcpa/ccde/cc\\_approved.htm](http://www.usdoj.gov/ust/eo/bapcpa/ccde/cc_approved.htm) or <http://www.usdoj.gov/ust/> . A pre-bankruptcy counseling session should include an evaluation of your personal financial situation, a discussion of alternatives to bankruptcy and a personal budget plan. A typical counseling session should last about an hour and can take place in person, on the phone, or online. Generally a fee will be charged for this counseling, unless you are unable to pay a fee and request a fee waiver from the counseling organization before the session begins. Once you have completed the counseling, you must obtain a certificate from the counseling organization. This certificate must be filed with the bankruptcy court.

**Creditor.** A person or company to whom you owe money. For example, a credit card company is a frequent creditor in bankruptcy cases.

**Current Monthly Income.** The average monthly income from all sources that the debtor receives, whether taxable or not, derived during the six months period ending on the last day of the calendar month immediately preceding the date of the filing of the bankruptcy petition. In a joint case it includes the spouse's income. It also includes any amount paid by any other person or entity on a regular basis for the household expenses of the debtor or debtor's dependents. Benefits received under the Social Security Act and certain other limited payments are excluded

**Debtor.** A person who owes money, or a person who has filed a bankruptcy case.

**Discharge.** A discharge is a court order stating that you have been relieved of your obligation to pay your dischargeable debts. In a chapter 7 case the discharge is granted after passage of the deadline for creditors to object to the discharge, which is generally 60 days after the date first scheduled for your first meeting of creditors. In a chapter 13 case, the discharge is granted only after you complete all payments called for by your plan. Once a discharge is granted, creditors are generally forbidden from attempting to collect any unsecured debt: they may not make demands for you to pay nor may they file suit.

**Dischargeable debts.** Debts that may be discharged under a particular Chapter of the Bankruptcy Code. All debts are dischargeable unless a specific provision of the Bankruptcy Code defines them as nondischargeable. Some debts are automatically nondischargeable, such as those for child support and spousal maintenance. Some debts, particularly tax debts, are

dischargeable only if they were incurred three or four years before the filing of your bankruptcy case. Some debts are nondischargeable unless the debtor files an adversary proceeding against the creditor and proves to the Court that it would be an undue hardship not to discharge the debt, such as student loan debts. In all cases the discharge of the debt only relieves the debtor of personal liability for the debt; it does not eliminate any mortgage or security interest in the debtor's property that the debtor granted to a lender.

**Disposable Income.** This basically means what is left from your take-home pay after paying for the basic necessities of life such a home mortgage payment or rent, car payment, utilities, food, insurance and care for your dependents. It is the amount that could be paid to creditors each month to reduce your outstanding debts.

**Exigent Circumstances.** An event or combination of circumstances arising from a sudden or unexpected happening or an unforeseen occurrence or condition calling for immediate action or remedy. A debtor or other party in a bankruptcy case or related action may describe such a circumstance as the basis or cause in petitioning the Court for a remedy.

**Exempt assets and exemptions.** Property that, under the Bankruptcy Code and Arizona law, you may keep and do not have to turn over to a Trustee under any Chapter. See the separate pamphlet on exemptions for a listing of these assets and the dollar limits of the exemptions. Such assets are also protected from judgment liens, and such liens often can be eliminated in a bankruptcy case. But if you have voluntarily granted a lien, security interest or mortgage against such an otherwise exempt asset, you must pay the lender the amount of the debt or else the lender can foreclose against the property.

**Financial Management Course.** With limited exceptions, an individual debtor, after filing for bankruptcy, in order to obtain a discharge in a chapter 7 or 13 case must complete an instructional course concerning personal financial management. The course must be provided by an organization approved by the United States Trustee Program in the Department of Justice. The list of approved course providers is available at the bankruptcy court clerk's office or online at [http://www.usdoj.gov/ust/eo/bapcpa/ccde/de\\_approved.htm](http://www.usdoj.gov/ust/eo/bapcpa/ccde/de_approved.htm). The course should include information on developing a budget, managing money, and using credit wisely. The course may be provided in person, on the phone or online. This course may last as long as two hours. Generally a fee will be charged for the course, unless you are unable to pay a fee and request a

waiver before taking the course. Once you have completed the course, you must obtain a certificate from the course provider and file it with the bankruptcy court.

**First Meeting of Creditors.** A meeting that all debtors must attend, where they take an oath and answer questions posed by the Trustee or U.S. Trustee about their property, debts and financial affairs. The first meeting of creditors is scheduled by the U.S. Trustee, and the debtor and all creditors will be given notice of the date, time and place of the meeting. An unexcused failure of the debtor to attend usually results in dismissal of the bankruptcy case. The first meeting of creditors is also often called the “341 meeting,” due to the provision of the Bankruptcy Code that requires it.

**Judgment liens.** Claims that a creditor may have against specific property that you own arising from a lawsuit and judgment against you plus some action to make the judgment enforceable against your property, either by recording the lien with the County Recorder to make it effective against real property that you own such as your house, or by having a sheriff levy against personal property such as a motor vehicle. Judgment liens may be avoided in a bankruptcy case if they are against property that is “exempt.” Voluntary liens that you have granted, such as security interests and mortgages, are not judgment liens and may not be avoided simply because they are against exempt property.

**Means Test.** In a chapter 7 case, each debtor must complete a form that focuses principally on the debtor’s current monthly income in order for the Court to determine whether chapter 7 relief is warranted. A debtor’s filing of a chapter 7 case will be considered an abuse if the debtor’s current monthly income, after certain deductions are made, when multiplied by 60 (the maximum number of months permitted in a chapter 13 plan) is not less than the lesser of either \$10,000 or 25% of the debtor’s nonpriority unsecured claims or \$6000, whichever is greater. If the Court determines that the debtor’s filing of a chapter 7 case is an abuse, the debtor will not be allowed a discharge and the debtor’s case will be dismissed unless the debtor consents to a conversion to a chapter 13 case.

**Nondischargeable Debts.** See “Dischargeable Debts.”

**Plan.** In a chapter 13 case, the debtor must file a plan that specifies how secured and priority debts will be paid, how much disposable income the debtor will pay to the Trustee each month, how long the plan will last (from a minimum of three to a maximum of five years), and shows

how the plan will pay at least as much to creditors as they would receive in a chapter 7 case. The Plan must be filed within 15 days of the filing of the petition unless an extension is granted, and failure to do so usually results in dismissal of the case. The debtor must begin making payments called for by the plan within 30 days of the filing of the plan.

**Priority Claims.** Certain unsecured claims in a bankruptcy case are defined by the Code to be priority claims. These include attorneys' fees incurred after the filing, spousal maintenance and child support obligations incurred at any time, and tax claims incurred within three or four years before the filing. In both chapter 7 and chapter 13, priority claims are paid first, before any payment may be made on nonpriority unsecured claims. In a chapter 13 case, the plan must provide for the full payment of all priority claims.

**Reaffirmation of Debts.** A debtor may reaffirm a debt, which means the debtor remains liable for the debt even after the debtor's other debts have been discharged. Such reaffirmation agreements must be made before the discharge is entered, and must allow the debtor to rescind them within 60 days. If the debtor is not represented by an attorney, the agreement is not enforceable unless approved by the Court, and to approve it the Court must find that the agreement is in the debtor's best interest and does not impose an undue hardship.

**Schedules and Statements of Affairs.** The debtor must file extensive schedules, which must list all of the debtor's property and debts, and statements of affairs, which answer many questions about the debtor's financial affairs. See the separate pamphlet on what these require. They must be filed within 15 days of the filing of the petition. Failure to file them on time usually results in dismissal of the bankruptcy case.

**Secured debts.** Debts for which the creditor can look to some specific property you own to collect if you do not pay the debt. Car loans and home mortgages are the most common kinds of secured debts, while credit card debts and medical debts are generally unsecured. A debt can also be a secured debt if the creditor has obtained a "judgment lien" against some of your property.

**Trustee.** In both chapter 7 and chapter 13 cases, a Trustee is appointed by the Court to supervise your bankruptcy case. In a chapter 7, the Trustee collects your nonexempt assets, sells them and distributes the money to creditors. In a chapter 13, the Trustee reviews your plan, makes recommendations for changes, objects to the Court if it does not meet all of the legal



requirements, and receives your plan payments and turns them over to creditors as provided by the plan. In both Chapters it is important that you cooperate with and provide full and complete information to the Trustee, or else he may object to your discharge.

**United States Trustee.** An office of the executive branch of the federal government that oversees bankruptcy cases appoints Trustees and oversees the performance of Trustees. It is the United States Trustee who may object to your chapter 7 filing if you could make substantial payments on your debts under a chapter 13 plan. The United States Trustee is not the Trustee in your individual case.

**Unliquidated debts.** Debts for which the amount of the liability cannot be determined before a trial has determined the amount of damages. But if the amount can be calculated, the debt is not unliquidated simply because a trial is necessary before your liability is determined. Unliquidated debts are not counted in determining whether you are under the debt limits to be eligible to file a chapter 13 case, but otherwise must be scheduled and dealt with in a bankruptcy case like any other debt.

**Unsecured debts.** Debts that you owe and for which the creditor cannot foreclose or repossess any of your property if you fail to pay. Most credit card debts and medical debts are common unsecured debts, unless the creditor has obtained a “judgment lien.”