



Liquidation Under Chapter 7

Frequently Asked Questions About Chapter 7 Bankruptcies

1. What is chapter 7 bankruptcy and how does it work?

A chapter 7 bankruptcy is a proceeding under federal law in which the debtor seeks relief under chapter 7 of the Bankruptcy Code. Chapter 7 is that part (or chapter) of the Bankruptcy Code that deals with liquidation of assets. The Bankruptcy Code is a federal law that deals with bankruptcy. A person who files a chapter 7 case is called a debtor. In a chapter 7 case, the debtor must turn his nonexempt residential or commercial property, if any exists, over to a trustee, who then converts the property to cash and pays the debtor's creditors. In return, the debtor receives a chapter 7 discharge, if he or she pays the filing fee, is eligible for the discharge, and obeys the orders and rules of the bankruptcy court.

2. What is a chapter 7 discharge?

A chapter 7 discharge is a court order releasing a debtor from all of his dischargeable debts and ordering the creditors not to attempt to collect those debts from the debtor. A debt that is discharged is a debt that the debtor is released from and does not have to pay.

3. How does a person get a chapter 7 discharge?

A chapter 7 discharge is obtained by filing and maintaining a chapter 7 bankruptcy and being eligible for a chapter 7 discharge. However, not all debts are discharged in a chapter 7 bankruptcy. Certain types of debts are by law not dischargeable under chapter 7 and debts of this type will not be discharged even if the debtor receives a chapter 7 discharge.

4. Who is permitted to file and maintain a chapter 7 case?

Any person who resides in, does business in, or has commercial or residential property in the United States is permitted to file a chapter 7 bankruptcy except a person who has intentionally dismissed a prior bankruptcy case within the last 180 days. To be permitted to maintain a chapter 7 bankruptcy case a person must qualify for chapter 7 relief under a process called means testing.

5. What is means testing?

Means testing is a method of determining whether a person is eligible to file a chapter 7 bankruptcy. To be eligible for a chapter 7 bankruptcy, a person – whose current monthly income from all sources multiplied by 12 exceeds the median annual income, as reported by the U.S. Census Bureau, for the person's state and family size – must show that he is not able to pay a minimum of \$109.58 per month for 60 months to his secured creditors from his disposable monthly income. Disposable monthly income is a person's current monthly income from all sources minus the person's permitted current monthly expenses. The chapter 7 case of a person who can pay \$109.58 or more as just described will be dismissed or converted to chapter 13 unless special circumstances exist.

6. How is means testing carried out?

Every person who files a chapter 7 bankruptcy must file a Statement of Current Monthly Income and Means Test Calculation. This document shows the person's current monthly income and allowable current monthly expenses. The person may also be questioned about his income and expenses at the meeting of creditors. A person's current monthly disposable income is calculated from information from these sources. This figure is then used to determine the amount of the monthly payment that the person can afford to make to his secured creditors. If the amount of this monthly payment is above a certain figure (usually \$109.58), the person will almost always be disqualified from maintaining a chapter 7 case and the case will be dismissed or, with the person's consent, converted to chapter 13.

7. How is it decided whether a person is not eligible for chapter 7 under means testing?

The Statement of Current Monthly Income and Means Test Calculation filed by the person will show whether the person is able to make monthly payments to secured creditors in the amount required for ineligibility. If the person can make the payments, the clerk of the bankruptcy court will send a notice to all creditors that a presumption of abuse has arisen. The trustee then has until 10 days after the meeting of creditors to file a statement as to whether a presumption of abuse exists. Then the trustee or any creditor can move to dismiss the homeowners bankruptcy. The judge will ultimately decide whether the case should be dismissed.

8. What is a presumption of abuse and how does it affect the case?

When a chapter 7 case is filed by an ineligible person, under bankruptcy terms that person is said to have abused the chapter 7 laws. When a person can afford to make monthly payments to unsecured creditors in the required amount, a presumption of abuse is said to arise. If a presumption of abuse arises, the case will be dismissed or converted to chapter 13 unless the debtor can prove the existence of special circumstances, such as a serious medical condition.

9. Who is eligible for a chapter 7 discharge?

Any person who is qualified to file and maintain a chapter 7 bankruptcy is eligible for a chapter 7 discharge except the following:

- A person who has been granted a discharge in a chapter 7 case that was filed within the last 8 years.
- A person who has been granted a discharge in a chapter 13 case that was filed within the last 6 years, unless 70 percent or more of the debtor's unsecured claims were paid off in the chapter 13 case.
- A person who files and obtains court approval of a written waiver of discharge in the chapter 7 case.
- A person who conceals, transfers, or destroys his property with the intent to defraud his creditors or the trustee in the chapter 7 case.
- A person who conceals, destroys, or falsifies records of his financial condition or business transactions.
- A person who makes false statements or claims in the chapter 7 case, or who withholds recorded information from the trustee.
- A person who fails to satisfactorily explain any loss or deficiency of his assets.
- A person who refuses to answer questions or obey orders of the bankruptcy court, either in his bankruptcy case or in the bankruptcy case of a relative, business associate, or corporation with which he is associated.
- A person who, after filing the case, fails to complete an instructional course on personal financial management.
- A person who has been convicted of bankruptcy fraud or who owes a debt arising from a securities law violation.

10. What types of debts are not dischargeable in a chapter 7 case?

The following is a list of the most common types of debts that are not dischargeable in a chapter 7 case:

- Most tax debts and debts that were incurred to pay nondischargeable federal tax debts.
- Debts for obtaining money, property, services, or credit by false pretenses, fraud, or a false financial statement, if the creditor files a complaint in the bankruptcy case.
- Debts not listed on the debtor's chapter 7 forms, unless the creditor knew of the bankruptcy case in time to file a claim.
- Debts for fraud, embezzlement, or larceny, if the creditor files a complaint in the bankruptcy case.
- Debts for domestic support obligations, which include debts for alimony, maintenance, or support, and certain other divorce-related debts, including property settlement debts.

- Debts for intentional or malicious injury to the person or property of another, if the creditor files a complaint in the bankruptcy case.
- Debts for certain fines or penalties.
- Debts for most educational benefits and student loans, unless a court finds that not discharging the debt would impose an undue hardship on the debtor and his dependents.
- Debts for personal injury or death caused by the debtor's operation of a motor vehicle, vessel or aircraft while intoxicated.
- Debts that were or could have been listed in a previous bankruptcy case of the debtor in which the debtor did not receive a discharge.

11. Who should not file a chapter 7 case?

A person who is not eligible for a chapter 7 discharge should not file a chapter 7 case. Also, in most instances, a person who has substantial debts that are not dischargeable under chapter 7 should not file a chapter 7 case. In addition, it is usually not advisable for a person with enough disposable income to file a chapter 7 case because a presumption of abuse will arise and the case will probably be dismissed or converted to chapter 13.

12. Is there anything that a person must do before a chapter 7 case can be filed?

Yes. Before a person can file a chapter 7 bankruptcy – and within 180 days before filing – he must receive from an approved nonprofit budget and credit counseling agency an individual or group briefing that outlined available credit counseling services and assisted the debtor in performing a budget analysis. This briefing may be conducted by telephone or on the internet and must be paid for by the debtor. When the chapter 7 case is filed, a certificate from the agency describing the services provided to the person must be filed with the court. A copy of any debt repayment plan prepared by the agency must also be filed with the court. In emergency situations, the required home owner credit counseling may be conducted after the case is filed.

13. How much is the filing fee in a chapter 7 case and when must it be paid?

The filing fee is \$299.00 for either a single or a joint case. The filing fee is due when the case is filed. However, if the person filing can show that his income is less than 150 percent of the official poverty line and that he is unable to pay the filing fee, the court can waive payment of the filing fee. If the person filing is unable to pay the entire filing fee when the case is filed, it may be paid in up to four installments, with the final installment due within 120 days. The period for payment may later be extended to 180 days by the court if there is a valid reason for doing so. Unless payment is waived by the court, the entire filing fee must ultimately be paid or the case will be dismissed and no debts will be discharged.

14. Where should a chapter 7 case be filed?

A chapter 7 case is filed in the office of the clerk of the bankruptcy court in the district where the debtor has lived or maintained a principal place of business for the greater portion of the last 180 days. The bankruptcy court is a federal court and is a unit of the United States district court.

15. May a husband and wife file jointly under chapter 7?

Yes. A husband and wife may file a joint case under chapter 7. If a joint chapter 7 case is filed, only one set of bankruptcy forms is needed and only one filing fee is charged. However, both husband and wife must receive the required financial credit counseling before the case is filed and both must complete the required financial management course after the case is filed.

16. Under what circumstances should a joint chapter 7 case be filed?

A husband and wife should file a joint chapter 7 case if both of them are liable for one or more significant dischargeable debts. If both spouses are liable for a substantial personal debt and only one spouse files under chapter 7, the creditor may later try to collect the debt from the nonfiling spouse, even if he or she has no income or assets. In community property states it may not be necessary for both spouses to file if all substantial dischargeable debts are community debts. The community property states are Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, and Washington.

17. When is the best time to file a chapter 7 case?

The answer depends on the status of the person's dischargeable debts, the nature and status of the person's nonexempt assets, and the actions taken or threatened to be taken by creditors. The following rules should be followed:

- Don't file the case until all anticipated debts have been incurred, because only debts that have been incurred when the case is filed are dischargeable and it will be another eight years before the person is again eligible for a chapter 7 discharge. For example, a person who has incurred substantial medical expenses should not file a chapter 7 case until the illness or injury has been either cured or covered by insurance, as it will do little good to discharge, say, \$100,000 of medical debts now and then incur another \$100,000 in medical debts after the case has been filed.
- Don't file the case until the person filing has received all nonexempt assets to which he may be entitled. If the person is entitled to receive an income tax refund or a similar nonexempt asset in the near future, the case should not be filed until after the refund or asset has been received and disposed of. Otherwise, the refund or asset will have to be turned over to the trustee.
- Don't file the case if the person filing expects to acquire nonexempt property through inheritance, life insurance or divorce in the next 180 days, because the property may have to be turned over to the trustee.
- If an aggressive creditor has threatened to attach or garnishee a person's assets or income, the case should be filed immediately to take advantage of the automatic stay that accompanies the filing of a chapter 7 case (see Question 18, below). If a creditor has threatened to attach or garnishee the person's wages or if a foreclosure action has been filed against his home, it may be necessary to file the case immediately in order to protect the person's interest in the property.

18. How does the filing of a chapter 7 case affect collection and other legal proceedings that have been filed against that person in other courts?

The filing of a chapter 7 case automatically suspends virtually all financial collection and other legal proceedings pending against that person. A few days after a chapter 7 case is filed, the court will mail a notice to all creditors ordering them to refrain from any further collection action against the person. This court-ordered suspension of collection activity against the person filing is called the automatic stay. If necessary, notice of the automatic stay may be served on a creditor either by the person or the person's attorney. Any creditor who intentionally violates the automatic stay may be held in contempt of court and may be liable in damages to the person filing. The automatic stay does not affect criminal proceedings and actions to collect domestic support obligations from exempt property or property acquired by the person after the chapter 7 case was filed. The automatic stay also does not protect cosigners and guarantors of the person filing, and a creditor may continue to collect debts from those persons after the case is filed. Persons who have had a prior bankruptcy case dismissed within the past year may be denied the protection of the automatic stay.

19. How does filing a chapter 7 case affect a person's credit rating?

It will usually worsen it, if that is possible. However, some financial institutions openly solicit business from persons who have recently filed under chapter 7, apparently because it will be at least 8 years before they can file another chapter 7 case. If there are compelling reasons for filing a chapter 7 case that are not within the person's control (such as an illness or an injury), some credit rating agencies may take that into account in rating the person's credit after filing.

20. Are the names of persons who file chapter 7 cases published?

When a chapter 7 case is filed, it becomes a public record and the names of the persons filing may be published by some credit-reporting agencies. However, newspapers do not usually report or publish the names of homeowner consumers who file chapter 7 cases.

21. Are employers notified of chapter 7 cases?

Employers are not usually notified when a chapter 7 case is filed. However, the trustee in a chapter 7 case often contacts an employer seeking information as to the status of the person's wages or salary at the time the case was filed or to verify a person's current monthly income. If there are compelling reasons for not telling an employer in a particular case, the trustee should be so informed and he may be willing to make other arrangements to obtain the necessary information.

22. Does a person lose any legal or civil rights by filing a chapter 7 case?

No. Filing a chapter 7 case is not a criminal proceeding, and a person does not lose any civil or constitutional rights by filing.

23. May employers or governmental agencies discriminate against persons who file chapter 7 cases?

No. It is illegal for either private or governmental employers to discriminate against a person as to employment because that person has filed a chapter 7 case. It is also illegal for local, state, or federal governmental agencies to discriminate against a person as to the granting of licenses (including a driver's license), permits, student loans, and similar grants because that person has filed a chapter 7 case.

24. Will a person lose all of his property if he files a chapter 7 case?

Usually not. Certain property is exempt and may not be taken by creditors unless it is encumbered by a valid mortgage or house lien. A person is usually allowed to keep his unencumbered exempt property in a chapter 7 case. A person may also be allowed to keep certain encumbered exempt property (see Question 34, below). Encumbered property is property against which a creditor has a valid lien, home and commercial mortgage or other security interest.

25. What is exempt property?

Exempt property is property that is protected by law from the claims of creditors. However, if exempt property has been pledged to secure a debt or is otherwise encumbered by a valid lien or mortgage, the lien or mortgage holder may claim the exempt property by foreclosing upon or otherwise enforcing the creditor's lien or mortgage. In personal bankruptcy cases property may be exempt under either state or federal law. Exempt property typically includes all or a portion of a person's unpaid wages, home equity, household furniture, and personal effects. Your bankruptcy attorney can tell you what property is exempt in your case.

26. When must a person appear in court in a chapter 7 case and what happens there?

The first court appearance is for a hearing called the "meeting of creditors," which is usually held about a month after the case is filed. The person filing the case must bring photo identification, his social security card, his most recent pay stub and all of his bank and investment account statements to this hearing. At this hearing the person is put under oath and questioned about his debts, assets, income and expenses by the hearing officer or trustee. In most chapter 7 consumer cases no creditors appear in court; but any creditor that does appear is usually allowed to question the person. For most persons this will be the only court appearance, but if the bankruptcy court decides not to grant the person a discharge or if the person wishes to reaffirm a debt, there may be another hearing about three months later which the person will have to attend.

27. What happens after the meeting of creditors?

After the meeting of creditors, the trustee may contact the person filing regarding his property and the court may issue certain orders to the person. These orders are sent by mail and may require the person to turn certain property over to the trustee, or provide the trustee with certain information. If the person fails to comply with these orders, the case may be dismissed, in which case his debts will not be discharged. The person must also attend and complete an instructional course on personal financial management and file a statement with the court showing completion of the course.

28. What is a trustee in a chapter 7 case, and what does he do?

The trustee is a person appointed by the United States trustee to examine the person who filed the bankruptcy case, collect the person's nonexempt property, and pay the expenses of the estate and the claims of creditors. In addition, the trustee has certain administrative duties in a chapter 7 case and is responsible for seeing it that the person filing performs the required duties. A trustee is appointed in a chapter 7 case, even if the person filing has no nonexempt property.

29. What are the responsibilities to the trustee of the person filing the case?

The law requires the person filing for bankruptcy to cooperate with the trustee in the administration of a chapter 7 case, including the collection by the trustee of the person's nonexempt property. If the person does not cooperate with the

trustee, the chapter 7 case may be dismissed and the person's debts will not be discharged. At least 7 days before the meeting of creditors the person filing must give the trustee and any requesting creditors copies of his most recent Federal income tax returns.

30. What happens to property that is turned over to the trustee?

It is usually converted to cash, which is used to pay the fees and expenses of the trustee, to pay the claims of priority creditors, and, if there is any left, to pay the claims of unsecured creditors.

31. What if a person has no nonexempt property for the trustee to collect?

If, from the bankruptcy forms filed, it appears that the person filing has no nonexempt property, a notice will be sent to the creditors advising them that there appears to be no assets from which to pay creditors, that it is not necessary for them to file claims, and that if assets are later discovered they will then be given an opportunity to file claims. This type of case is referred to as a no-asset case. Most chapter 7 cases that are filed by consumers are no-asset cases.

32. How are secured creditors dealt with in a chapter 7 case?

Secured creditors are creditors with valid mortgages or liens against property of the person filing. Commercial or residential property that is encumbered by a valid mortgage or lien is called secured property. A secured creditor is usually permitted to repossess or foreclose on its secured property, unless the value of the secured property greatly exceeds the amount owed to the creditor. The claim of a secured creditor is called a secured claim and secured claims are collected from or enforced against encumbered property. Secured claims are not paid by the trustee. A secured creditor must prove the validity of its mortgage or lien and must usually obtain a court order before repossessing or foreclosing on encumbered property. Encumbered property should not be turned over to a secured creditor until a court order to do so has been obtained, unless the property is encumbered only to finance its purchase. The debtor may be permitted to retain certain types of encumbered personal property (see Question 34, below).

33. How are unsecured creditors dealt with in a chapter 7 case?

An unsecured creditor is a creditor without a valid lien or mortgage against commercial or residential property of the person filing. If the person filing has nonexempt assets, unsecured creditors may file claims with the court within 90 days after the first date set for the meeting of creditors. The trustee will examine these claims and file objections to those deemed improper. When the trustee has collected all of the person's nonexempt property and converted it to cash, and when the court has ruled on the trustee's objections to improper claims, the trustee will distribute the funds in the form of dividends to the unsecured creditors according to the priorities set forth in the Bankruptcy Code. The trustee pays debts in the following order of priority: Domestic support obligations, administrative expenses, claims for wages, salaries, and contributions to employee benefit plans, claims for the refund of certain deposits and tax claims. If there are funds remaining after the payment of these priority claims, they are distributed pro rata to the remaining unsecured creditors. In chapter 7 cases filed by consumers, unsecured creditors usually get nothing.

34. What encumbered property may a person keep in a chapter 7 case?

A person may retain (or redeem) certain encumbered personal and household property, such as household furniture, appliances and goods, wearing apparel, and tools of trade, without payment to the secured creditor, if the property is exempt and if the mortgage or lien against the property was not incurred to finance the purchase of the property. A person may also retain without payment to the secured creditor any encumbered property that is both exempt and subject only to a judgment lien that is not divorce-related. Finally, a person may retain certain encumbered exempt personal, family, or household property by paying to the secured creditor an amount equal to the replacement value of the property, regardless of how much is owed to the creditor.

35. How may a person minimize the amount of money or property that must be turned over to the trustee in a chapter 7 case?

In a chapter 7 case the person filing is required to turn over to the trustee only the nonexempt money or property that he possessed at the time the case was filed. Many nonexempt assets are liquid in nature and tend to vary in size or amount from day to day. It is wise, therefore, to engage in some estate planning so as to minimize the value or amount of these liquid assets on the day and hour that the chapter 7 case is filed. The most common nonexempt liquid assets, and the

assets that the trustee will be most likely to look for, include cash, bank accounts, prepaid rent, landlord and utility deposits, accrued earnings and benefits, tax refunds, and sporting goods.

It is usually advantageous to take steps to insure that the value of each of these assets is as low as possible on the day and hour that the chapter 7 case is filed. By doing this the person will not be cheating or acting illegally; he will simply be using the law to his advantage, much the same as a person who takes advantage of the tax laws by selling property at the appropriate time. Check with your bankruptcy lawyer for more details.

Cash. Your best bet is to have no cash on hand when you file your chapter 7 bankruptcy. Further, if you have received cash or a paycheck or closed a bank account shortly before filing your case, you should use those funds before filing your bankruptcy. You must use those funds for valid purposes and keep receipts so you can prove the funds were properly used.

Money that you gain control of shortly before filing your chapter 7 bankruptcy may be used for (1) food, (2) groceries, (3) the chapter 7 filing fee, (4) the attorney's fee in the chapter 7 case, and (5) the payment to creditors whose claims you intend to reaffirm and continue paying after filing bankruptcy. Do not make gifts or loans to friends or relatives, however, because the trustee may later seize these payments.

Bank Accounts. You should close all bank accounts before filing a chapter 7 bankruptcy. If a bank account is not closed, the account balance should be as close to zero as the bank allows and all outstanding checks must clear the account before the bankruptcy is filed. Here's why: If you have written a check to someone for, say, \$50 – and if the check has not cleared when the case is filed – the \$50 in the account to cover the outstanding check will be deemed an asset and will have to be paid to the trustee.

Prepaid Rent. If you pay your rent on the first day of the month – and if you file your chapter 7 case on the tenth day of the month – the portion of the rent covering the last 20 days of the month, if not exempt, will be deemed an asset and you will later have to pay it to the trustee. If possible, you should make arrangements with the landlord to pay rent only through the filing date and to pay the balance of the rent from money you acquire after the case is filed. If this is not possible, the case should be filed near the end of the rent period.

Landlord and Utility Deposits. Unless these deposits are exempt, you should try to get a refund of all landlord and utility deposits before filing your chapter 7 bankruptcy. Otherwise, you will have to pay the deposits, or the amount of the deposit, to the trustee.

Accrued Earnings and Benefits. In most states, and under federal law, only a certain percentage (usually 75%) of your earnings are exempt. Therefore, the trustee may be allowed to take the nonexempt portion (usually 25 percent) of any accrued and unpaid wages, salary, commissions, vacation pay, sick leave pay, and other accrued, nonexempt employee benefits. This means the best time to file a chapter 7 bankruptcy is the morning after payday. Review this with your bankruptcy lawyer.

Even then, if the pay period does not end on payday, the person may have accrued earnings unless special arrangements are made with the employer. If your annual leave, vacation pay and other nonexempt employee benefits are convertible to cash, you should collect them before filing your chapter 7 bankruptcy.

Tax Refunds. If you expect a tax refund, you should file your chapter 7 case after you receive and properly spend your refund. The best strategy is to either file the chapter 7 case early in the tax year (but after the refund from the previous year has been received and spent) or make arrangements to insure that there will be no tax refund for that year.

Sporting Goods. You should dispose of all nonexempt sporting goods prior to filing your bankruptcy, especially if they are uniquely valuable. These include guns, fishing gear, skis, cameras, and similar items. Otherwise, you'll have to turn over the items – or their value in cash – to the trustee.

36. May a utility company refuse to provide service to a person if the company's utility bill is discharged under chapter 7?

If, within 20 days after a chapter 7 case is filed, the person filing furnishes a utility company with a deposit or other security to insure the payment of future utility services, it is illegal for a utility company to refuse to provide utility service to

the person, or to otherwise discriminate against the person, if its bill for past utility services is discharged in the person's chapter 7 case.

37. What should a person do if he moves before the chapter 7 case is completed?

The person should immediately notify the bankruptcy court in writing of the new address. Because most communications between the person filing and the bankruptcy court are by mail, it is important that the bankruptcy court always have the person's current address. Otherwise, the person may fail to receive important notices and the chapter 7 case may be dismissed. Many bankruptcy courts have change-of-address forms for persons to use when they move, and one of these forms should be obtained if a move is planned.

38. How is a person notified when his discharge has been granted?

The person is usually notified by mail. Most courts send a form called "Discharge of Debtor" to the person filing and to all creditors. This form is a copy of the court order discharging the person from his dischargeable debts, and it serves as notice that the discharge has been granted and that creditors are forbidden from attempting to collect discharged debts. It is usually mailed about four months after a chapter 7 case is filed.

39. What if a person wishes to repay a dischargeable debt?

A person may repay as many dischargeable debts as desired after filing a chapter 7 case. By repaying one debt, a person does not become legally obligated to repay any other debts. The only dischargeable debt that a person is legally obligated to repay is one for which the person and the creditor have signed what is called a "reaffirmation agreement." If the person was not represented by an attorney in negotiating the reaffirmation agreement with the creditor, the reaffirmation agreement must be approved by the court to be valid. If the person was represented by an attorney in negotiating the reaffirmation agreement, the attorney must file the agreement and other required documents with the court in order for the agreement to be valid. If a dischargeable debt is not covered by a reaffirmation agreement, the person filing is not legally obligated to repay the debt, even if the person has made a payment on the debt since filing the chapter 7 case, has agreed in writing to repay the debt, or has waived the discharge of the debt in a waiver that was not approved by the bankruptcy court.

40. How long does a chapter 7 case last?

A successful chapter 7 case begins with the filing of the bankruptcy forms and ends with the closing of the case by the court. If there are no nonexempt assets for the trustee to collect, the case will most likely be closed shortly after the person filing receives his discharge, which is usually about four months after the case is filed. If there are nonexempt assets for the trustee to collect, the length of the case will depend on how long it takes the trustee to collect the assets and perform his other duties in the case. Most chapter 7 consumer cases with assets last about six months, but some last considerably longer.

41. What should a person do if a creditor later attempts to collect a debt that was discharged in his chapter 7 case?

When a chapter 7 discharge is granted, the court enters an order prohibiting creditors from later attempting to collect any discharged debt from the person filing. Any creditor who violates this court order may be held in contempt of court and may be liable to the person for damages. If a creditor later tries to collect a discharged debt from the person, the person should give the creditor a copy of his chapter 7 discharge and tell the creditor in writing that the debt was discharged in the chapter 7 case. If the creditor persists, the person should contact an attorney. If a creditor files a lawsuit on a discharged debt, it is important to tell the court in which the lawsuit is filed that the debt was discharged in bankruptcy. The lawsuit should not be ignored because even though a judgment entered on a discharged debt can later be voided, voiding the judgment may require the services of an attorney, which could be costly.

42. How does a chapter 7 discharge affect the liability of cosigners and other parties who may be liable to a creditor on a discharged debt?

A chapter 7 discharge releases only the person or persons who filed the chapter 7 case. The liability of any other party on a debt is not affected by a chapter 7 discharge. Therefore, a person who has cosigned or guaranteed a debt for the person filing is still liable for the debt even if the person filing receives a chapter 7 discharge of that debt. The only

exception to this rule is in community property states where the spouse of the person filing is released from certain community debts by the chapter 7 discharge.

43. What is the role of the attorney for the person filing a chapter 7 case?

The bankruptcy attorney for the person filing performs the following functions in a typical chapter 7 consumer case:

- Analyzing the amount and nature of the debts owed by the person filing and determine the best remedy for the person's financial problems.
- Advising the person filing of the relief available under chapter 7 and the other chapters of the Bankruptcy Code, and of the advisability of proceeding under each chapter.
- Assisting the person in getting the required prebankruptcy budget and credit counseling briefing.
- Assembling the information and data necessary to prepare the chapter 7 forms for filing.
- Preparing the petitions, schedules, statements and other chapter 7 forms for filing with the bankruptcy court.
- Assisting the person filing in arranging his assets so the person keeps as many of the assets as possible after the chapter 7 case.
- Filing the chapter 7 petitions, schedules, statements and other forms with the bankruptcy court, and, if necessary, notifying certain creditors of the chapter 7 filing.
- If necessary, assisting the person filing in reaffirming certain debts, redeeming personal property, setting aside mortgages or liens against exempt property, and otherwise carrying out the matters set forth in the statement of intention.
- Attending the meeting of creditors with the person and appearing with the person at any other hearings that may be held in the case.
- Assisting the debtor in attending and completing the required instructional course on personal financial management.
- If necessary, preparing and filing amended schedules, statements, and other documents with the bankruptcy court to protect the person's rights.
- If necessary, helping the person overcome obstacles that may arise to the granting of a chapter 7 discharge.

The fee paid, or agreed to be paid, to an attorney representing the person filing the chapter 7 bankruptcy must be disclosed to and approved by the bankruptcy court. The court will allow the attorney to charge and collect only a reasonable fee. Most bankruptcy attorneys collect most or all of their fee before the case is filed.

You're Invited to Call or E-mail.

"If you have questions about bankruptcy, foreclosure, credit card debt, loan modifications,

tax liens or other financial problems, please send your e-mail today to

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