

Is Debt Relief Available After Bankruptcy Reform?

That question is on many minds. The short answer is yes—bankruptcy or debt relief is still available. The "Bankruptcy Abuse Prevention and Consumer Protection Act of 2005" became effective on October 17, 2005. Many consumers filed before the deadline in order to avoid the difficulties of filing under the new Reform Act.

Media messages on the new act focused on the responsibilities and challenges under the new law and led many to believe that after October 17, 2005, you could not obtain debt relief through bankruptcy. While debtors and debtors' attorney have significant challenges under the Reform Act, the truth of the matter is that over 90% of consumers continue to qualify to file under Chapter 7 for a total liquidation of debt.

The Current State of Consumer Financial Affairs

As consumers saving strategies continue to decline, household consumer debt continues to rise. Consumers currently spend a near-record 18.1% of their after-tax income to pay debts. Foreclosures and auto repossessions continue to increase while late fees on credit card delinquencies make up 30% to 40% of card issuer profits. Even more distressing is the fact that the largest growing sectors of indebted consumers are persons over the age of 65.

Regardless of your income level, a lack of proper financial management and application of budgeting principles, even minor income disruptions can put your finances into major distress. Continual financial and personal lifestyle adjustments are key to maintaining sound financial balance. While studies show that for most consumers reducing debt is a higher priority than losing weight or exercising, the American Bankruptcy Institute reported that consumer bankruptcies peaked last year with a record 1.6 million cases filed.

Alternatives to Bankruptcy

If you should file bankruptcy is a personal decision. It should be made with full knowledge of potential alternatives. If you have access to resources that would enable you to pay off your debts, you should pursue the route. Just like lawsuits, judgments and foreclosures, bankruptcies are noted on your credit report. When financial resources are available, but limited, working with a reputable consumer credit counseling agency may be a viable alternative in some circumstances. Finally, if you have equity in your home, securing an affordable second mortgage with reasonable interest rates can help you avoid seeking the protection under the bankruptcy Reform Act.

No matter which alternative you choose, pay attention to the hidden fees and costs associated with debt management programs, high interest rates for second mortgages, and mortgage programs that allow you to borrow in excess of the fair market value of your home. All these are indicators that you cannot afford the specific alternative and could place yourself in a worse financial predicament. If you are uncertain, consult with an experienced debt relief attorney to help you consider your personal circumstances. In most cases, an initial consultation is provided at no costs or a very small fee.

Should I explore filing Bankruptcy?

The purpose of a Chapter 7 bankruptcy is to provide debtors with a fresh start by canceling or liquidating debts. Based on the Reform Act's "means testing" some debtors are presumed able to repay a portion of their debts when their median income for their family size exceeds certain levels. In this case, Chapter 13 bankruptcy is designed to permit you to "catch up" your past due payments that accumulated before the filing of your petition by repaying them over a 36 to 60 month period. At the same time, the debtor is restarted in their current obligations

going forward and must remain current on those obligations to enjoy the continued protection of the bankruptcy automatic stay against foreclosure and repossession of secured collateral such as a home or a car.

You should explore the possibility of filing bankruptcy if you find yourself in one or more of these circumstances apply to you:

- Your wages are being garnished
- Your home is in foreclosure
- Your car has been repossessed
- You have high medical bills not covered by insurance
- You have lawsuits pending against you
- Your total debt (excluding car and mortgage payments) is more than you can pay back in five years
- You have few assets no savings
- Your yearly income falls below the IRS median income guidelines for your family size.

What about those harassing collections calls?

The Fair Debt Collections Act sets parameters regarding debt collection. If you believe you have been contacted by a debt collector that has violated the law, you have the right to sue the collector in a state or federal court for any money damages you have suffered. In addition, an amount up to \$1,000 per violation, court costs, and attorney's fees can also be claimed.

Debt collectors cannot call you before 8 am or after 9 pm. Continued contact after you have informed the creditor in writing that you do not wish to be contacted or that you dispute the validity of the debt is a violation of the Act. No further contact can be made until written documentation of the debt has been sent to you.

It is also illegal for a collector to contact other persons such as family members, friends, roommates or employees for the purpose of collecting money owed by a debtor. Any attempts to harass, threaten, or abuse debtors during the collection process. Collectors may not curse you or use obscene language, threaten you with physical harm or that tell you that you will be arrested for failing to pay. The surest way to stop collection calls is to secure attorney representation to take the calls on your behalf. Once you are represented by an attorney, the debt collector is not allowed to contact you directly.

Getting ready to file under the new Bankruptcy Reform Act

One of the many hurdles that debtors face in clearing the way to file for debt relief under the Bankruptcy Code includes receiving credit counseling within 180 days prior to filing from an approved agency. In addition, prior to receiving your discharge papers, all debtors must take a Financial Management Course. Both courses cost approximately \$50-\$100 each and can be taken online, via teleconference or in group sessions. A list of approved Credit Counseling agencies can be found on the Bankruptcy Court website at www.mab.uscourts.gov.

Be prepared to take the following information with you for your initial consultation with your attorney. This information is needed so that your attorney can provide the necessary documentation to the Bankruptcy Court.

- Complete and up to date addresses for each collection agency or creditor
- A copy of any lawsuit or pleading that has been filed against you
- Most recent pay stubs for yourself and your spouse, even if they are not filing
- Deeds, mortgages and property appraisals for real estate owned by you
- Title documents for cars, motorcycles, etc.
- Copies of life insurance policies, knowledge of cash surrender values
- Income Tax returns for the past two years

If you are seriously considering filing bankruptcy under the new Reform Act, timing is everything. Some debts are non-dischargeable if made within specific time limits prior to filing. For example, cash advances and luxury purchases made within 90 days and over \$500 are presumed to be non dischargeable until after the 90 day look back period. Be sure to discuss such purchases with your attorney during your initial consultation. There are opportunities to minimize the impact of some Reform changes, but your attorney must be made fully aware of your complete financial picture and is obligated to certify this to the court.

Which Chapter of the Bankruptcy Code should I file under?

There are four chapters of the Bankruptcy Code that provide debt relief. The chapter that is best for you depends on your specific financial circumstances. The four chapters are: Chapter 7, liquidation, available for individuals and businesses; Chapter 13 repayment for individuals only; Chapter 11 for business reorganization and some individuals with significant debt obligations; and Chapter 12, reorganization for the family farmer. Whether an individual debtor will be eligible for file under the Chapter 7 Liquidation Chapter is determined by Bankruptcy Reform's "means testing." Means testing is used to determine which debtors have sufficient income to repay some of their debts will be forced to file under Chapter 13 instead.

This article is not intended to be legal advice, but is informational. To obtain an opinion regarding your specific financial circumstances, you should consult with an experienced debt relief agency. Denise Brown Law Offices is a debt relief agency. Contact us at 502-587-0331 or [email us](#).