



## *Bankruptcy Frequently Asked Questions*

- **Why should I file for bankruptcy?**

A fundamental goal of bankruptcy law is to give debtors a financial “fresh start”. This goal is accomplished through the bankruptcy discharge which releases debtors from personal liability from specific debts and prohibits creditors from taking further action to collect those debts.

- **What are the common reasons for filing bankruptcy?**

Job Loss or Substantial Change in Income

Medical Expenses

Divorce or Legal Separation

Small Business Failure

Loss of a Loved One or Family Member

- **What is a Chapter 7 bankruptcy?**

Chapter 7 is often referred to as a liquidation or straight bankruptcy. It involves a court-approved procedure whereby a court-appointed trustee liquidates or sells non-exempt property, pays creditors, and oversees your right to retain certain exempt property. It will be very important that we evaluate the effect of the North Carolina exemptions on your property. Due to these exemptions, most Chapter 7 cases are classified as “no asset” cases and no actual sale or liquidation occurs. Chapter 7 is relatively fast, effective, and does not require payments over time. Chapter 7 debtors usually receive a discharge within 4-6 months. The typical Chapter 7 debtor will emerge debt free except for a mortgage, car payment, and certain types of debts that survive bankruptcy such as student loans, taxes, and alimony/child support.



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- **What is a Chapter 13 bankruptcy?**

Chapter 13 involves the repayment of debts in accordance with a court-approved repayment plan. Chapter 13 debtors typically retain possession of property while making payments. Chapter 13 debtor will not receive a discharge until the repayment plan is completed. The typical Chapter 13 repayment plan takes 36-60 months to complete (i.e., 3-5 years). Although a longer route to discharge, Chapter 13 may be preferred because it allows you to get caught-up on certain debts, cram-down certain secured loans, and typically does not involve the sale of your property.

- **What is Chapter 11 bankruptcy?**

Chapter 11 is ordinarily used by businesses and commercial enterprises that desire to continue operating a business and repay creditors through a court-approved plan of reorganization. The Chapter 11 debtor usually files the reorganization plan within 120 days after the case is filed. The Chapter 11 debtor must provide creditors with periodic statements of its reorganization progress. The bankruptcy court ultimately approves or disapprove of the reorganization plan. The typical Chapter 11 debtor can emerge with a reduced debt load and reorganized business. Due to the additional time and costs associated with a Chapter 11 filing, it is recommended that individual debtors consider Chapter 7 and Chapter 13 prior to filing a Chapter 11 bankruptcy.

- **Where is the bankruptcy court?**

The Eastern District of North Carolina has two bankruptcy courts located in Raleigh and Wilson. However, hearings and creditor meetings may be held in Raleigh, Wilson, Fayetteville, Wilmington, New Bern, Kinston, Greenville, and Elizabeth City.



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- **How often must I go to court?**

Much of the bankruptcy process is administrative and conducted away from the courthouse. Each person that files for bankruptcy must attend a 341 Meeting of Creditors shortly after the case is filed.

- **What is the Automatic Stay?**

When you file for bankruptcy the court automatically issues an order preventing most creditors from taking action to collect a debt against you or your property. For example, if a foreclosure sale or repossession is in the works, the automatic stay stops the creditor's actions dead in its tracks.

- **What is a "discharge"?**

A bankruptcy discharge releases the debtor from personal liability for certain debts. In other words, the debtor is no longer legally required to pay any debts that are discharged. The discharge order is a permanent order prohibiting creditors from taking further collection action for discharged debts, including telephone calls, letters, and legal proceedings.

- **When does discharge occur?**

The timing of the discharge varies depending on the chapter the case is filed under. A typical Chapter 7 debtor may receive a discharge in approximately 4-6 months. However, a Chapter 13 debtor will not receive a discharge until after the repayment plan is completed (typically 3-5 years).



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- *Can someone object to the discharge?*

Yes, an objection to discharge may be filed by the trustee or a creditor.

- *Can the discharge be revoked?*

The court may revoke a discharge under certain circumstances including fraud or misstatement of information. The discharge may also be revoked if false information is discovered during an audit of the case. Thus, it is imperative that you provide accurate information when the case is filed.

- *Which debts are non-dischargeable?*

Section 523(a) of the Bankruptcy Code specifically excepts various categories of debts from discharge. The most common types of nondischargeable debts include: tax claims; debts not listed by the debtor on the petition or schedules the debtor files with the court; debts for spousal support, child support, or alimony; debts for willful or malicious injuries to persons or property; debts to governmental fines and penalties; debts for government funded student loans, debts for personal injury caused by the debtor's operation of a motor vehicle while intoxicated; debts owed for certain tax-advantaged retirement plans; and debts for certain condo or cooperative housing fees.

Chapter 13 debtors have a broader definition of discharged debts than Chapter 7 debtors and include: debts for willful or malicious injury to property; debts incurred to pay non-dischargeable tax obligations; and debts arising from property settlements in a divorce or separation proceeding.



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- *Can a creditor collect on a discharged debt?*

If a creditor attempts collection of a discharged debt, the debtor can file a motion with the court reporting the action and asking that the case be reopened to address the matter. A creditor may be sanctioned by the court by the court for violating the discharge order.

- *Can an employer terminate me because I filed for bankruptcy?*

The law expressly prohibits discriminatory treatment by both governmental units and private employers because a person filed for bankruptcy, was insolvent before or during the case, and has not paid a discharged debt.

- *What will happen to my credit after bankruptcy?*

Filing for bankruptcy will remain on your credit report for 7 years after your discharge in a Chapter 13 and 10 years after your discharge in a Chapter 7 case. The impact of the filing will depend on your credit before filing. If you have many accounts that are past due the bankruptcy filing will help remove many of these negative marks. However, if you had a good credit rating before filing the impact of bankruptcy filing may be negative.