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BANKRUPTCY

Bankruptcy means you ask the court to excuse you from your duty to fully repay your creditors. A person or business you owe money to is called a creditor. Bankruptcy allows you to discharge (get rid of) or reorganize most of your debts, but also keep a certain amount of property. Two kinds of bankruptcy apply to individuals and married couples not in business. These are a Chapter 7 (or straight) bankruptcy and a Chapter 13 (debt adjustment) bankruptcy. All bankruptcies are filed with your local United States Bankruptcy Court.

What is the difference between a Chapter 7 and a Chapter 13 bankruptcy?

Under Chapter 7, you may not have to repay any of your debts before they are discharged (forgiven). Under Chapter 13, you must repay your debts – at least in part – before they are discharged. Other differences are talked about later on.

The type of bankruptcy you can file depends on whether your household income is above or below your state's median income. The median is where half the households have more, and half the households have less, than that amount. This amount varies by household size and it changes each year. Your income is determined by the six-month period before you file bankruptcy.

People in households with incomes above the state median usually cannot file a Chapter 7. They must file a Chapter 13. People in households with incomes below the state median may file either a Chapter 7 or a Chapter 13.

What must I do before I file for bankruptcy?

You must get individual or group counseling from an approved consumer credit counseling agency. You must do this within 180 days before you file bankruptcy. In emergency cases, you

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can file bankruptcy before you do credit counseling. However, you must start credit counseling within 30 days after you file bankruptcy. If not, your bankruptcy will be dismissed. A list of approved credit counseling agencies can be found on the Internet at the following website -- http://www.usdoj.gov/ust/eo/bapcpa/ccde/cc_approved.htm. Some agencies offer phone or internet counseling. After you file for bankruptcy, but before you're granted a discharge order in bankruptcy, you will also be required to take a financial management course.

What is a Chapter 7 bankruptcy?

In a Chapter 7 bankruptcy, you must list all your debts, no matter the size or to whom you owe them. You also must list all your property. Virginia law lets you keep a certain amount of property you own free and clear. Property protected from your creditors includes these items:

- Up to \$5,000 worth of household goods.
- Up to \$1,000 worth of clothing.
- Medically prescribed health aids.
- Up to \$10,000 worth of tools and equipment you need for work or school.
- Up to \$6,000 combined "equity" value in motor vehicles. "Equity" means the fair market value minus the amount you still owe on the vehicles.
- Up to \$5,000 worth of additional property plus \$500 for each dependent, if you list it in a Homestead Deed filed with your local Circuit Court. The amount is \$10,000 rather than \$5,000 if the debtor is a householder who is 65 years of age or older. Disabled veterans are entitled to an additional \$10,000 in exemptions.

The rest of your property is sold. The money is used to pay your creditors. They may get only a few cents (or nothing) for a dollar of debt. The court discharges (or forgives) most of your debts and you get a fresh start.

What debts can't be discharged in bankruptcy?

Some debts can't be discharged in either a Chapter 7 or Chapter 13 bankruptcy. These include the following things:

- Fines and court ordered restitution.
- Taxes for which no return was filed, taxes for which a fraudulent return was filed, as well as some other taxes.
- Child support, spousal support (or alimony), and non-support obligations resulting from a divorce or separation.
- Debts due to fraud.
- Debts due to wrongful and harmful acts.

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- Loans from your pension plan.
- Student loans, unless you can show extreme hardship.

You can't discharge credit card charges or other installment contract purchases to a single creditor totaling more than a certain amount for luxury goods or services you bought within 90 days before you filed bankruptcy. You also can't discharge cash advances totaling more than a certain amount you got within 70 days before you filed bankruptcy. These amounts change from time to time.

In a Chapter 7 bankruptcy, what happens to property I'm buying on credit?

If you're buying property on credit, and you are using the property as collateral for the debt, you may have to give it back to the creditor. In a Chapter 7, you may keep property you're buying on credit under certain conditions. If you are current on your payments, you may "reaffirm" the debt by agreeing to keep paying the debt even though you filed bankruptcy. However, if you are behind in your payments, you may have to file a Chapter 13 to keep property you're buying on credit. A final way to keep property is to "redeem" it. This means you pay the creditor what the property is now worth, not what you still owe on it.

In a Chapter 7, what happens to property I can't protect from my creditors?

In a Chapter 7, property you can't protect from your creditors is sold and the money is used to pay your creditors. If property you own free and clear is worth more than you can protect from your creditors, a Chapter 7 is probably not advisable. If you have property you can't protect from your creditors, you may want to think about a Chapter 13.

What is a Chapter 13 bankruptcy?

A Chapter 13 bankruptcy is a payment plan approved by the Bankruptcy Court where you pay your debts in full or in part. It requires you to have a steady source of income sufficient to pay necessary living expenses in addition to paying debts under your Chapter 13 plan. In Chapter 13, you make payments to an attorney called a Bankruptcy Trustee. Usually, you do this for three to five years. The Trustee uses the money to pay your creditors. In a Chapter 13, you also list all your debts and property. Virginia law lets you keep a certain amount of property you own free and clear. This is the same property that would be protected from your creditors in a Chapter 7 bankruptcy.

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In a Chapter 13 bankruptcy, what happens to property I'm buying on credit?

In a Chapter 13 bankruptcy, you may not have to give back, reaffirm, or redeem property you're buying on credit. Instead, you may be able to keep property you're buying on credit even if you're behind on payments. To keep the house where you live, you must make current payments. You get three to five years to catch up missed payments.

Keeping other property you're buying on credit depends on what you are buying and when you bought it. To keep a motor vehicle you bought within 910 days (2½ years) before you filed bankruptcy, you must pay the debt in full within three to five years. To keep a motor vehicle you bought more than 910 days ago, you get three to five years to pay the debt, or to pay what the vehicle is worth, whichever is less.

To keep other property you bought within one year before you filed bankruptcy, you must pay the debt in full within three to five years. To keep other property you bought more than one year ago, you get three to five years to pay the debt, or to pay what the property is worth, whichever is less.

In a Chapter 13, what happens to property I can't protect from my creditors?

In a Chapter 13 bankruptcy, your creditors must receive at least as much as they would get in a Chapter 7 bankruptcy. In a Chapter 7, property you can't protect from your creditors would be sold and the money would be used to pay your creditors. In a Chapter 13, you may be able to keep this property. You do this by paying your creditors at least as much as they would have received in a Chapter 7 bankruptcy. You get three to five years to do this.

What is the filing fee for a bankruptcy?

The filing fees are \$335 for a Chapter 7 bankruptcy and \$310 for a Chapter 13 bankruptcy. (Effective December 1, 2014.) The court may allow you to pay this over several months if you can't pay all at once. However, if you don't pay the filing fee on time as required by the court, your bankruptcy will be dismissed. If you are very poor, the court may allow you to file a bankruptcy for free.

In addition, you probably will need to file a Homestead Deed in connection with the bankruptcy. Your local Circuit Court charges \$21 to record this. This must be paid at the time you file the bankruptcy.

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What happens to debt collection after I file for bankruptcy?

Once you file for bankruptcy, most – but not all – debt collection must stop. This is called the “automatic stay.” Filing for bankruptcy stops repossessions, utility cutoffs, debt collection lawsuits, garnishments, levies, attachments, foreclosures, and most other actions to collect debts.

If you are behind on your rent, your landlord is not allowed to start an eviction action against you after you file bankruptcy. However, if the landlord had already gotten a court judgment for eviction before you filed bankruptcy, then the landlord can proceed with having you removed from the premises; filing bankruptcy will not stop that. Also, filing for bankruptcy does not stop an eviction where the landlord certifies that it’s based on illegal drug use or danger to the property.

If a prior bankruptcy was filed and dismissed within the prior year, the automatic stay lasts only 30 days. For the automatic stay to last longer, you must show the court that you filed your second bankruptcy in good faith.

There is no automatic stay if two or more prior bankruptcies were filed and dismissed within the prior year. To get the automatic stay, you must show the court that you filed your third bankruptcy in good faith.

In any bankruptcy, a creditor may ask the court to end the automatic stay and get permission to resume debt collection.

What papers do I have to file with my bankruptcy?

You must include schedules with your bankruptcy petition that list all of your current income, any increase in income expected in the next 12 months, expenses, property, debts, names and addresses of creditors, and various other details.

You must list the name and address of each creditor, the name and address of the attorney (if any) for each creditor, the name and address of each debt collection agency, and the name and address of the attorney (if any) for each debt collection agency. If you do not list all of your creditors, you run the risk that your debt to unlisted creditors will not be discharged.

You also must file certain other papers with information about your assets, debts, and financial affairs, as required by your local bankruptcy court. If you don’t file these papers on time as required by the court, your bankruptcy will be dismissed.

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What happens if I make a mistake in my bankruptcy papers?

Both you and your bankruptcy attorney have to make a reasonable investigation to be sure that everything in your bankruptcy papers is correct. If you or your attorney don't do this, either or both of you may be ordered to pay costs and attorneys' fees to your creditors.

However, if you made a mistake in the papers you filed, it is possible to file amended forms with the Court.

Do I have to go to court?

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

Can I be discriminated against (or treated differently) because of a bankruptcy?

No. You don't give up any legal rights by filing bankruptcy. You still may vote. You still may own property. No government agency can discriminate against you, or treat you differently, due to your bankruptcy. Private employers can't fire you, or refuse to hire you, due to your bankruptcy. A public utility, such as an electric company, can't cut off or refuse service because you filed for bankruptcy. Your credit applications must be treated the same as other applications for credit.

How will bankruptcy affect my credit?

Although a bill, debt, or judgment can appear on your credit report for seven years, a bankruptcy can appear for ten years. Because bankruptcy wipes out many of your debts, you should be better able to pay current bills. This may make you a better risk to a creditor.

After you receive your discharge in bankruptcy, you should send a letter to the three major credit reporting agencies, along with a copy of the discharge order, so that your credit report shows you are no longer obligated to pay the debts that they may have listed for you. Follow up on your request in about six to nine months, by asking for a free copy of your credit report, which you are

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entitled to receive once per year. If your credit report does not show the bankruptcy discharge by that time, then you should send a further letter to the credit reporting agencies to dispute their records. If you need further assistance with this, you should call legal aid or another lawyer.

Here's the online site where you can get more information about the three credit reporting agencies, and how to dispute their records: <http://www.consumer.ftc.gov/articles/0151-disputing-errors-credit-reports>

Can I file bankruptcy without an attorney?

You may be able to do this, but it is not recommended. Bankruptcy is difficult. You may lose income, property, or other rights if you don't know the law. To find an attorney who does bankruptcies, call Virginia Lawyer Referral Service at 1-800-552-7977. There is a \$35 fee for a 30 minute consultation with the attorney.

How often can I file a bankruptcy?

If you have filed for bankruptcy in the past, there is a waiting period before you can file another bankruptcy.

- If you get a Chapter 7 discharge, you must wait eight years from the date of filing the first Chapter 7 before you can get another Chapter 7 discharge.
- If you get a Chapter 7 discharge, you must wait four years from the date of filing that Chapter 7 before you can get a discharge under a Chapter 13.
- If you get a Chapter 13 discharge, you must wait six years from the date of filing that Chapter 13 before you can get a Chapter 7 discharge.
 - This waiting period does not apply if:
 - You actually paid 70% to 100% of the unsecured debts under the Chapter 13 plan, and
 - The court finds your plan was propose in good faith, and
 - Your attempt to make payments under the plan was your "best effort."
- If you get a Chapter 13 discharge, you must wait two years from the date of filing the first Chapter 13 before you can get another discharge under Chapter 13.

If I can file bankruptcy now, why should I wait?

Your right to file a bankruptcy is very important. You should not waste it. You should think about filing a bankruptcy only when you have income or property you are about to lose, and a bankruptcy will help you save that income or property.

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The problem with filing a bankruptcy too soon is that you can't file again for many years. If you file too soon and within the next several years something else happens to give you large debts, you wouldn't be able to file bankruptcy again until the waiting period has passed. In the meantime, you might lose some of your income or property to your creditors. This is why you should wait to file bankruptcy until it is really necessary or really will be helpful to you.

What are the alternatives to bankruptcy?

You may want to think about counseling and assistance from a nonprofit consumer credit counseling agency. They may be helpful if they can work out a plan with all your creditors that covers all of your creditors, reduces all of your debts, and pays off all of your debts within four years. The plan also should set a payment to repay your debts that you can afford and still pay all your other ongoing expenses. Under Virginia law, an agency may not charge more than \$75.00 for a set-up fee and a monthly fee of 15% of the amount paid out, or \$60.00, whichever is less.

If you have no income or property that could be taken by a creditor with a judgment, then you are "judgment proof." In this case, you may not need to do anything to protect yourself.

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Free Legal information by Web and Phone: www.vlas.org and 1-866-LegAid (534-5243)

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