



## Consumer Bankruptcy: Myths and Facts

### What Is a Chapter 7 Bankruptcy?

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Most people who cannot afford to pay their bills file what is called “Chapter 7 Bankruptcy.” This type of bankruptcy will help you to get a fresh start by canceling your debts, and putting an end to collection calls and lawsuits from your current debts. It does not guarantee that you will avoid all financial problems in the future, but filing at the right time can help you get on the road to financial health and control. In this type of bankruptcy, the Court will sell any assets you have to pay off your debts. If you don’t have any assets, you can still “discharge,” meaning eliminate, your legal responsibility to pay for your debts.

### If I File for Bankruptcy, I Won’t Have Anything Left!

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This is not true. There are many assets you can keep, even after your debts have been discharged. For example, you can keep money earned in your pension and retirement accounts. There are also exceptions that allow you to keep certain amounts of cash, jewelry, household items, savings, and other assets.

### Which Debts Will I Still Owe After Filing for Bankruptcy?

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- Most **student loans** cannot be discharged in bankruptcy because you must show that paying off these loans creates an “extreme hardship” which can be difficult to prove. There are other options, however, for discharging your student loans depending on what promises your school made you, whether you should have been admitted to the school, or whether you were unable to complete your education based on a disability or a school closing prior to your graduation. You should check with an attorney to see if you qualify for any of these discharges.
- Most **taxes** cannot be forgiven. Often you can arrange a reasonable payment plan. You should speak with an attorney to find out more about your tax debt.
- **Alimony, Maintenance, Spousal or Child Support** is never discharged in bankruptcy.
- You will not be able to eliminate the obligation to pay **criminal fines** or penalties, or restitution orders. This includes even small fines like traffic tickets. You cannot discharge personal injury lawsuits involving a **drunk driving or drug use** charge.
- If you had a **joint credit card** with someone (this is different than having an authorized user on your account) the joint user may be liable for the debt, even after yours have been discharged.
- Discharge only applies to debts you owed **before** you file for bankruptcy. Debts incurred after your bankruptcy filing will not be eligible for discharge.

## **How Long Does a Bankruptcy Stay on My Credit Report?**

Your bankruptcy may be reported on your credit record for as long as ten years. It can affect your ability to receive affordable credit in the near future. In some states it can even affect your ability to obtain employment or rent a home, since some employers and landlords are allowed to use your credit score to decide whether to do business with you.

## **Is It True that Bankruptcy is Easy and I Do Not Need an Attorney?**

No. You should consult an attorney before deciding whether bankruptcy is right for you. If you file for bankruptcy, an attorney can significantly improve the chances that your debts will be discharged. For example, it is important to list all your property and debts in your bankruptcy papers. If you fail to list any debt, it may not get discharged. In some cases the Judge may feel that you have committed fraud, are hiding assets, or are not disclosing all your income sources. Based on this, the Judge can seek to deny your discharge. In addition, your creditors may dispute the discharging of your debts if they think there is a good reason that the Judge should not forgive the amount owed. This can be difficult to defend without the assistance of a reputable bankruptcy attorney to help you sort through the many complicated factors, requirements and paperwork involved.

## **What If I Need to File for Bankruptcy Again?**

You can only receive a Chapter 7 discharge once every eight years. This is why the timing of a bankruptcy is crucial. If you will not be able to pay your expenses going forward even after all your current debts have been discharged, then bankruptcy might not be your best option. Similarly, if you don't have health insurance and may incur additional health care costs you cannot afford in the near future, you may want to wait until that situation changes before you file for bankruptcy.

## **Will I Lose My Home or My Car?**

Most people do not lose their home or their car. There are "exemptions" that allow you to keep certain property if their value is less than a specified amount. It is important to understand the "equity" in your home, or how much it would be worth after you paid everything you owe on it. An attorney can tell you the specific exemptions that would apply based on this number. Usually, you will be able to keep your car and your home but will need to continue making monthly payments on them even after the bankruptcy filing.

## **If I File for Bankruptcy I Can Never Get Credit Again, Right?**

Wrong. Your credit score is certainly affected when you file for bankruptcy but it does not mean that you will never be able to get a house, car, or a loan again. In fact, you may receive credit offers—albeit at a higher interest rate—before your bankruptcy case is over. With careful planning, you can earn a good credit record again. You may actually be better off filing for bankruptcy rather than constantly defaulting on payments or having judgments listed on your credit report. If discharging your debts will give you the fresh start you need to build a sound financial future, you should not let the temporary decline in your credit score stop you from considering filing for bankruptcy.

**Get the free bankruptcy help you need from the New York Legal Assistance Group  
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