

# BANKRUPTCY



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## I. Overview Of Bankruptcy Timeline

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## II. What are the differences between filing for Chapter 7 versus Chapter 13?

**Answer:** Chapter 7 discharges debt without requiring a repayment plan, looking only to the debtor's assets for distributions to creditors. Chapter 13 debt reorganization requires the debtor to complete a 3 to 5 year repayment plan before eligible debts are discharged. The Chapter 13 repayment plan can cure the arrears on a home mortgage to prevent a foreclosure.

**Overview:** This section will include (1) an overview of Chapter 7 Bankruptcy, (2) an overview of Chapter 13 Bankruptcy, and (3) a comparison of the two.



**Relevant Code Sections:** 11 USC 101; 11 U.S.C. § 727(a)(1) (2018) (Ch. 7 Qualified Individuals); 11 U.S.C. § 523(a) (2018) (Exceptions to Ch. 7 Discharge); 11 U.S.C. § 523(c) (2018) (Debts Covered by Ch. 7 Discharge); Fed. R. Bankr. P. 40007(c) (Debts Covered by Ch. 7 Discharge); 11 U.S.C. § 1322(d) (2018) (Ch. 13 Means Test); 11 U.S.C. § 1322(c) (2018) (Ch. 13 Foreclosure Protections); 11 U.S.C. § 1328(a) (2018) (Debts Covered by Ch. 13 Discharge); 11 U.S.C. § 1328(b) (2018) (CH. 13 Hardship Discharge); 11 U.S.C. § 523 (2018) (Exceptions to Hardship Discharge).

### **Legal Discussion:**

*Ch. 7 Bankruptcy:* Chapter 7 bankruptcy, commonly referred to as liquidation, requires the sale and distribution of all non-exempt assets. The exemption laws protecting the debtor's property vary widely, with each state and the federal bankruptcy code containing different exemption provisions. Make sure to check the relevant state's law, which may depend on how long the debtor has resided in the state they are filing in. Some, but not all, states allow the debtor to choose between state law exemptions and the federal bankruptcy exemptions. Exemptions generally protect specific property from liquidation. Examples are listed below and discussed further in Section 4.

If the debtor does accrue additional debt after consulting with a bankruptcy attorney/beginning the bankruptcy process, it could be deemed an attempt to abuse the bankruptcy system and lead to a creditor objection to the discharge of the newly incurred debt. Generally, once a person has made up their mind to file bankruptcy, they should not incur any new unsecured debts and should exercise care if incurring new secured debts prior to filing.

Upon completion, all debts are discharged EXCEPT

- debts for alimony or child support,
- certain taxes,
- student loans, unless excepting the debt from the discharge would cause an undue hardship for the debtor, ,
- debts for willful and malicious injury by the individual to another entity or to the property of another entity,
- debts for death or personal injury caused by the individual's operation of a motor vehicle while the individual was intoxicated.<sup>1</sup>
- Debts for money or property obtained by false pretenses,
- Debts for fraud or defalcation while acting in a fiduciary capacity,

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<sup>1</sup> 11 U.S.C. § 523(a) (2018).



- And debts for willful and malicious injury by the individual to another entity or to the property of another entity.<sup>2</sup>

*Ch. 13 Bankruptcy:* Chapter 13 bankruptcy, also known as debt restructuring, allows individuals to get back on track with their past-due loans. If significant loan payments are due and the individual cannot pay them back on their own, Homeowners who have fallen behind on their mortgage and are unable to cure the arrearage to prevent a foreclosure, may file for Chapter 13 and be afforded the time necessary to catch up on payments. If the individual is unable to complete the repayment plan as approved by the court, the case may be dismissed or converted to a case under Chapter 7.

Chapter 13 debt is paid according to a repayment plan. If the individual's current monthly income as determined by the means test analysis at the time of filing is less than the state median, the repayment plan can be as short as 3 years but in no event longer than five years. If their current monthly income is greater than the state median, the plan must extend to five years.<sup>3</sup>

Chapter 13 does have some noteworthy benefits. Debt reorganization allows individuals to stop foreclosure proceedings.<sup>4</sup> It allows filers to lower the interest rate on car loans, re-characterize wholly unsecured junior mortgages as unsecured (and remove the lien as a result) and reduce the balance paid on a vehicle loan to the vehicle's value. Chapter 13 provides for a hardship discharge after a payment plan has been approved, if (1) the individual is unable to complete plan payments due to circumstances beyond their control, (2) creditors have received at least as much as they would have through liquidation, and (3) modification of the plan is not possible.<sup>5</sup> A Chapter 13 hardship discharge contains the same discharge limitations as a Chapter 7 discharge.<sup>6</sup> A Chapter 13 discharge entered upon completion of plan payments eliminates the liability of certain debts not dischargeable in Chapter 7.<sup>7</sup> For consumers, a notable difference between the Chapter 7 discharge and the Chapter 13 "Super Discharge" is the elimination of debts owed to a spouse or former spouse incurred in connection with a divorce or separation that is not in the nature of support.

*Comparison:* Most pro-bono attorneys recommend Chapter 7 liquidation for low-income individuals with large debt obligations. Chapter 7 allows individuals to walk away with a clean slate after 2-3 months and in many cases allows the filer to retain all of their property using available exemptions. Since low-cost or pro bono legal service providers generally recommend Chapter 7, there are also no- or low-cost resources available to assist with liquidation rather than reorganization. Upsolve in particular helps low-income individuals gather necessary documents, draft forms, and even apply for fee waivers at no additional cost to the user.<sup>8</sup> Liquidation has its downsides. Chapter 7 stays on your credit report for ten years, while Chapter 13 only stays for

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<sup>2</sup> 11 U.S.C. § 523(c) (2018); Fed. R. Bankr. P. 4007(c).

<sup>3</sup> 11 U.S.C. § 1322(d) (2018).

<sup>4</sup> 11 U.S.C. § 1322(c) (2018).

<sup>5</sup> 11 U.S.C. § 1328(b) (2018).

<sup>6</sup> 11 U.S.C. § 1328(b) (2018).

<sup>7</sup> 11 U.S.C. § 523 (2018).

<sup>8</sup> UPSOLVE, [www.upsolve.org](http://www.upsolve.org) (last visited Jul. 19, 2020).



seven (although legally it can stay up to 10 years).<sup>9</sup> If individuals need to file for bankruptcy again, they may do so sooner under Chapter 13 than Chapter 7. See discussion below of filing for bankruptcy multiple times.

### III. Who qualifies for filing for bankruptcy?

**Answer:** All individuals may qualify for Chapter 7 or Chapter 13 bankruptcy. Both Chapters contain limitations such as means-tests, frequency limits, and disqualifying actions.

**Overview:** This section covers (1) Chapter 7 eligibility, (2) Chapter 13 eligibility, (3) the credit counseling requirement, and (4) disqualifying actions.

**Relevant Code Sections:** 11 U.S.C. §§ 101(41), 109(b) (2018) (Debtor May be an Individual, a Partnership, or a Corporation or Other Business Entity); 11 U.S.C. § 707(b) (2018) (Dismissal of a Case for Charitable Cause); 11 U.S.C. §§ 109(g), 362(d) and (e) (2018) (Dismissal of a Case Due to Individual's Actions); 11 U.S.C. §§ 109, 111 (2018) (Credit Counseling Requirement and Exceptions);

#### Legal Discussion:

*Ch. 7 Means Test:* If the individual's "current monthly income" is greater than the state median, the debtor must pass the means test. Under the means test analysis, a presumption of abuse exists if aggregate current monthly income over 5 years, minus statutory exclusions, is more than (1) \$12,580 or (2) 25% of individual's nonpriority unsecured debt, as long as that amount is at least \$7,700.<sup>10</sup> Current monthly income is the average of all income earned over the six months before filing.<sup>11</sup> Not included in the means test are all payments received under the Social Security Act, payments to victims of war crimes, and payments to victims of terrorism.<sup>12</sup>

*Ch. 13 Eligibility:* Any individual is eligible for Chapter 13 relief if their unsecured debts are less than \$419,275 and secured debts are less than \$1,257,850.<sup>13</sup> Secured debts are those debts that attach to specific assets, such as a mortgage attaches to a home. Unsecured debts simply oblige the individual to repay what was loaned (and normally interest on top of that).

*Credit Counseling:* All individuals must receive credit counseling from an approved credit counseling agency within 180 days prior to filing, regardless of the form of bankruptcy they may

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<sup>9</sup> Bill Fay, *How Will Filing Bankruptcy Impact My Credit Score?*, DEBT.ORG, <https://www.debt.org/bankruptcy/how-will-filing-bankruptcy-impact-my-credit-score/> (last visited Jul. 19, 2020).

<sup>10</sup> 11 U.S.C. § 707(b)(1) (2018).

<sup>11</sup> Jonathan Petts, *What are the Chapter 7 Bankruptcy Income Limits*, UPSOLVE (June 22, 2020), <https://upsolve.org/learn/chapter-7-bankruptcy-income-limits/>.

<sup>12</sup> Cara O'Neill, "Current Monthly Income" for the Bankruptcy Means Test, <https://www.nolo.com/legal-encyclopedia/current-monthly-income-the-bankruptcy-means-test.html> (last visited Jul. 19, 2020).

<sup>13</sup> 11 U.S.C. § 109(e) (2018) and *Revision of Certain Dollar Amounts in the Bankruptcy Code Prescribed Under Section 104(a) of the Code*, THE FEDERAL REGISTER, <https://www.federalregister.gov/documents/2019/02/12/2019-01903/revision-of-certain-dollar-amounts-in-the-bankruptcy-code-prescribed-under-section-104a-of-the-code> (last visited Oct. 13, 2020). Limits are adjusted every 3 years.



seek.<sup>14</sup> There are exceptions in cases of emergency, but these exceptions are rare and hard to meet.

*Disqualifying Actions:* If during the 180 days before filing the individual (1) had a prior bankruptcy petition dismissed for willful failure to appear before the court or comply with orders of the court or (2) voluntarily dismissed a prior filing after creditors sought to recover property upon which they held liens the individual is barred from filing a new bankruptcy claim. This ban applies to Chapters 7 and 13.<sup>15</sup>

#### **IV. What types of debts cannot be discharged or reorganized under Chapter 7 and 13?**

**Answer:** Individuals can generally discharge most of their debts. The Bankruptcy Code excepts certain debts from the discharge.

**Overview:** This section proceeds as follows. First, this section provides a list of the relevant Code sections that the attorney should review and consider for completeness. Second, this section discusses (i) the debts an individual cannot discharge or reorganize in a bankruptcy proceeding, (ii) specific discharge rules for Chapter 7, and (iii) specific discharge rules for Chapter 13.

**Relevant Code Sections:** 11 U.S.C. § 507(a)(8) (2018) (Priorities), 11 U.S.C. § 521 (2018) (Individual's Duties), 11 U.S.C. § 523 (2018) (Exceptions to Discharge), 11 U.S.C. § 727 (2018) (Discharge), 11 U.S.C. § 1328 (2018) (Discharge)

#### **Legal Discussion:**

*Exceptions to Discharge.* Section 523 outlines 19 kinds of debts that an individual cannot discharge under Chapter 7 or 13, respectively. Some debts can only be discharged in Chapter 13 cases. Provided here is a summary of such exceptions that may be pertinent to the individual's Chapter 7 or 13 case:

- Taxes for the taxable year ending on or before the date of the filing of the petition,<sup>16</sup>
- A debt intentionally not listed or scheduled as required at filing,<sup>17</sup>
- Domestic support,<sup>18</sup>
- Certain educational payments for the individual and the individual's dependents, such as a student loan,<sup>19</sup>

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<sup>14</sup> 11 U.S.C. §§ 109, 111 (2018).

<sup>15</sup> 11 U.S.C. §§ 109(g), 362(d) and (e) (2018).

<sup>16</sup> 11 U.S.C. §§ 507(a)(8), 523(a)(1) (2018).

<sup>17</sup> 11 U.S.C. §§ 521(a)(1), 523(a)(3) (2018).

<sup>18</sup> 11 U.S.C. § 523(a)(5) (2018).

<sup>19</sup> 11 U.S.C. § 521(a)(8) (2018).



- A debt waived in a prior bankruptcy proceeding,<sup>20</sup>
- Obligations flowing from divorce or separation,<sup>21</sup>
- Post-petition fees or assessments due and payable for interests in a condominium, cooperative corporation, or lot in a homeowner's association (a potential issue for homeowners who are surrendering real property where the foreclosure process takes months to complete after the case is filed),<sup>22</sup>
- Damages or fines for a court order, settlement agreement, or administrative order,<sup>23</sup> and
- Certain voluntary and involuntary liens (for example, a mortgage on a house or a lien on a car). The personal liability is discharged, but the lien survives.<sup>24</sup>

*Chapter 7 Discharge.* Section 727 outlines the individual's obligations to obtain a discharge under Chapter 7. Generally speaking, the individual must not engage in fraudulent activity to thwart the bankruptcy proceeding and their creditors' activity. Specifically, the individual cannot transfer, remove, destroy, mutilate, or conceal assets.<sup>25</sup> Further, the individual cannot make false oaths or statements, present a false claim, withhold information, or refuse to obey court orders.<sup>26</sup> Finally, the individual must complete the Section 111 instructional course on personal financial management after the bankruptcy case has been commenced.<sup>27</sup>

*Chapter 13 Discharge.* Section 1328 governs the discharge in a Chapter 13 case upon completion of all plan payments (see subsection (a)) or due to a hardship (see subsection (b)).<sup>28</sup> In addition to making all payments under the plan as confirmed by the court, the individual must pay their domestic support obligations and file required tax returns.<sup>29, 30</sup> They must not engage in any

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<sup>20</sup> 11 U.S.C. § 523(a)(10) (2018).

<sup>21</sup> 11 U.S.C. § 523(a)(15) (2018).

<sup>22</sup> 11 U.S.C. § 523(a)(16) (2018).

<sup>23</sup> 11 U.S.C. § 523(a)(19) (2018).

<sup>24</sup> See *Does a bankruptcy case remove liens (such as mortgages) from my property?*, AM. BANKR. INST., <http://bankruptcyresources.org/faq-page#t6n528> (last accessed July 1, 2020). However, see 11 U.S.C. § 522 (2018), which exempts certain property from bankruptcy (for example, tools of the trade, household goods, federal benefits, and professionally proscribed health aids).

<sup>25</sup> 11 U.S.C. § 727(a)(2) (2018).

<sup>26</sup> See 11 U.S.C. §§ 727(a)(4)-(6) (2018).

<sup>27</sup> 11 U.S.C. § 727(a)(11) (2018).

<sup>28</sup> 11 U.S.C. § 1328(a)-(b) (2018).

<sup>29</sup> 11 U.S.C. § 1328(a) (2018).

<sup>30</sup> 11 U.S.C. § 1328(b) (2018).





fraudulent activity towards a party of interest.<sup>31</sup> Finally, they must complete the Section 111 personal financial management course.<sup>32</sup>

## V. What property is exempt from bankruptcy?

**Answer:** Certain kinds of property are protected from creditors and the bankruptcy trustee. There are two classes of exemptions: federal and state. State law determines whether the individual may use the federal bankruptcy exemptions. There are [31 “opt-out” states](#) which do not permit filers to use the federal bankruptcy exemptions. Individuals who have lived in an opt out state for at last 2 years at the time of filing must use the exemptions available under state law and any available federal nonbankruptcy exemptions. The individual filing for bankruptcy should discuss with their attorney which options are best suited for their case.

**Overview:** This section discusses the property exempt from any bankruptcy case. This section proceeds as follows. First, this section provides a list of the relevant Code sections that the attorney should review and consider for completeness. Second, this section (i) outlines federal exemptions available to the individual and (ii) provides additional resources to learn more about the individual’s state exemptions.

**Relevant Code Provisions:** 11 U.S.C. § 522 (2018) (Exemptions)

### Legal Discussion:

*Generally.* Bankruptcy exemptions protect a debtor’s property. Exempt assets are not subject to liquidation in a Chapter 7 bankruptcy case. To properly claim an exemption, the asset must be listed on the individual’s Schedule A/B and the exemption on Schedule C.<sup>33</sup> Most exemptions have a dollar limit; property with value over and above the available exemptions is partially nonexempt and subject to liquidation by the Chapter 7 trustee.

*Federal Bankruptcy Exemptions.* Provided below is a non-exhaustive list of exempt property:

- The individual’s house,<sup>34</sup>
- Retirement funds,<sup>35</sup>
- Professionally prescribed health aids,<sup>36</sup>

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<sup>31</sup> 11 U.S.C. § 1328(e) (2018).

<sup>32</sup> 11 U.S.C. § 1328(g)(1) (2018).

<sup>33</sup> Official U.S. Courts form linked here: [https://www.uscourts.gov/sites/default/files/form\\_b106ab.pdf](https://www.uscourts.gov/sites/default/files/form_b106ab.pdf) & [https://www.uscourts.gov/sites/default/files/form\\_b\\_106c.pdf](https://www.uscourts.gov/sites/default/files/form_b_106c.pdf).

<sup>34</sup> 11 U.S.C. § 522(p)(1)(A) (2018).

<sup>35</sup> 11 U.S.C. § 522(b)(3)(C) (2018).

<sup>36</sup> 11 U.S.C. § 522(d)(9) (2018).



- Federal benefits, such as social security, a veterans' benefit, disability,<sup>37</sup>
- Alimony, support, or separate maintenance,<sup>38</sup>
- Payment on a life insurance contract that insured the life of an individual of whom the individual was a dependent,<sup>39</sup> and
- Certain household goods, such as clothing, furniture, educational materials, medical equipment, and personal effects.<sup>40</sup>
- Section 522 governs exemptions. The attorney should review your state's exemption scheme and determine how to best protect the individual's assets.

State Exemptions. For additional information on state exemptions, please consult with your attorney, Upsolve (if filing for Chapter 7), and the list linked here: <https://upsolve.org/legal-definitions/exemptions/>. What are the practical considerations to be taken before an attorney advises a client to file for bankruptcy (or a client takes the informed decision to file for bankruptcy)?

**VI. What are the practical considerations to be taken before an attorney advises a client to file for bankruptcy (or a client makes the informed decision to file for bankruptcy)?**

**Answer:** There are any number of considerations to be taken before filing for bankruptcy. This is a non-exhaustive list of some of the more common considerations.

**Overview:** This section will cover a number of considerations. Namely, Past filings, significant assets or debts, exemptions from garnishment and discharge, as well as judgment-proof status.

**Relevant Code Sections:** 11 U.S.C. § 522(b) (2018) (Exempt Property); 11 U.S.C. § 524(c) (2018) (Reaffirmed Debt); 11 U.S.C. § 523(a) (2018) (Exempt Debt); 11 U.S.C. § 523(c) (Non-exempt Debt) (2018); 11 U.S.C. § 302(a) (2018) (Married Couples Filing Jointly); 11 U.S.C. § 1328(a) (2018) (Exceptions to Chapter 13 Discharge); 11 U.S.C. § 1301(a) (2018) (Ch. 13 Protections for Co-signors).

**Legal Discussion:**

*Has the individual filed for Chapter 7 in the past?* If the individual previously filed for Chapter 7, and received a discharge, but now seeks to file for Chapter 7 again, the individual must let eight years pass from the first case's filing date.

*Does the individual hold a mortgage?* The individual's primary residence is generally exempt from liquidation under each state's homestead exemption, but only up to a certain amount. Also, if the

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<sup>37</sup> 11 U.S.C. §§ 522(d)(10)(A)-(C) (2018).

<sup>38</sup> 11 U.S.C. § 522(d)(10)(D) (2018).

<sup>39</sup> 11 U.S.C. § 522(d)(11)(C) (2018).

<sup>40</sup> 11 U.S.C. § 522(f)(4)(A) (2018).



individual fails to pay their mortgage, creditors can seek relief from the automatic stay in order to start foreclosure proceedings.

*Does the individual own a significant asset that they are not willing/able to part with?* If the individual owns significant nonexempt assets they are not willing to part with, filing a Chapter 13 bankruptcy can preserve these assets. As part of the Chapter 13 repayment plan, the individual will have to pay an equivalent value to unsecured creditors.

*Does the individual own a car that is not fully paid off? Are they willing and able to reaffirm such debt?* Individuals willing to and capable of repaying some of their debts may reaffirm those debts and in exchange may retain the property subject to those liens. Unless the debtor's attorney certifies that the reaffirmation agreement is not an undue hardship for the debtor, even though the debtor's expenses exceed their income, the bankruptcy court has to approve it. If approved, the debtor continues to be personally liable on the car loan.<sup>41</sup>

*How much, if any, of individual's debts cannot be discharged in Chapter 7 or Chapter 13?* As stated in Section 1 above, some debts are excepted from discharge in both types of bankruptcy while other debts can only be discharged in Chapter 13. Debts that cannot be discharged in either chapter can be paid off as part of the Chapter 13 repayment plan.<sup>42</sup>

*Is the individual judgment proof?* There are four ways that a creditor can recover from an individual that has failed to pay. The creditor may ask a court to (1) garnish the individual's wages, (2) freeze their bank account, (3) attach a judgment lien to their real estate, and/or (4) seize their assets. Therefore, if all of the individual's income is from Social Security, unemployment, or child support, the individual may be judgment proof. The same can be said if they don't own their home. The fourth prong, what assets can be seized, varies state-to-state. For a full discussion of state exemptions, see <https://www.nolo.com/legal-encyclopedia/bankruptcy-exemptions-state>. For further discussion of judgment proof status, see <https://upsolve.org/learn/mean-judgment-proof/>.

*What are the individual's sources of income?* Creditors CANNOT garnish Social Security benefits, Supplemental Security Income benefits, public assistance, unemployment, VA benefits, child support, or federal employee and civil service retirement benefits.

*Is the individual married?* Married couples may but are not required to file jointly. There are pros and cons to each approach, depending on the individual circumstances. In community property states, the non-filing spouse's community property is protected by the community discharge.<sup>43</sup>

*Has anyone co-signed the individual's debts?* Chapter 7 bankruptcy does not protect a non-filing co-signer. Only the debtor's obligation is discharged; the co-signer remains liable pursuant to the terms of the contract. Chapter 13 bankruptcy provides a co-debtor stay for consumer debts.<sup>44</sup> A

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<sup>41</sup> 11 U.S.C. § 524(c) (2018).

<sup>42</sup> 11 U.S.C. § 523(a) (2018).

<sup>43</sup> 11 U.S.C. § 523(a)(3) (2018).

<sup>44</sup> 11 U.S.C. § 1301(a) (2018).



Chapter 13 debtor may propose special treatment / payment in full of a debt co-signed by a non-debtor.<sup>45</sup>

## VII. What is an automatic stay and what assets does it apply to?

**Answer:** An automatic stay is a function of statutory law, not the court. As soon as an individual files their petition, with a few exceptions, all collection actions must stop. The burden to do so is on the creditor.

**Overview:** This section will lay out (1) what an automatic stay is, (2) exceptions to automatic stays, and (3) protections for co-signors.

**Relevant Code Sections:** 11 U.S.C. § 362 (2018) (Automatic Stays); 11 U.S.C. § 108(c) (2018) (Statute of Limitations Exception); 11 U.S.C. § 1301(a) (2018) (Protections for Co-signors); 11 U.S.C. § 101(8) (2018) (Limitation of Co-signor Protections to Consumer Debts).

### Legal Discussion:

*Automatic Stay:* An automatic stay pauses all pending collection actions and additional actions from being filed while bankruptcy proceedings are under way.<sup>46</sup> If for any reason a bankruptcy case is dismissed, creditors may resume or file any new suits for debt plus accrued interest. In addition, the Code tolls the statute of limitations on collection actions.<sup>47</sup>

*Exceptions:* Certain civil actions and all criminal actions and proceedings are allowed to continue despite an automatic stay. The civil proceedings covered include (i) for the establishment of paternity, (ii) for the establishment of domestic support obligations, (iii) for the dissolution of marriage except as to the division of property, (iv) regarding domestic violence, and (v) for the return of certain tax-related debts.<sup>48</sup> In addition, if a debtor has filed a bankruptcy case that was dismissed within the last year, the automatic stay will expire after 30 days unless the court grants a motion (after notice and a hearing) that the stay is extended. In the event of multiple prior filings, the debtor may not get the automatic stay protection at all.<sup>49</sup>

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<sup>45</sup> 11 U.S.C. § 1322(b) (2018).

<sup>46</sup> 11 U.S.C. § 362 (2018).

<sup>47</sup> 11 U.S.C. § 108(c) (2018); Section 108 Toll or Trap, AM. BANKR. INST. (June 2001), <https://www.abi.org/abi-journal/section-108-toll-or-trap>.

<sup>48</sup> 11 U.S.C. § 362(b).

<sup>49</sup> Cara O'Neill, *Losing the Automatic Stay for Repeat Bankruptcy Filings*, NOLO, <https://www.nolo.com/legal-encyclopedia/losing-the-automatic-stay-repeat-bankruptcy-filings.html> (last visited Jul. 19, 2020).



*Protections for Co-signors:* Under Chapter 13, collection actions are also stayed against those that co-signed with the individual seeking bankruptcy.<sup>50</sup> This is limited to co-signed consumer debt.<sup>51</sup> The same protections do not extend to co-signors under Chapter 7.<sup>52</sup>

## VIII. What are the negative consequences of filing bankruptcy?

**Answer:** There are numerous negative consequences to filing bankruptcy. Aside from the emotional toll that the proceedings, the liquidation, and/or the repayment plan may take on the individual, their credit score will take a serious hit. They will not be able to take on additional debt that is at an acceptable interest rate first because of the proceedings and then likely because of their low credit rating. There are filing fees, attorney's fees, and credit counseling fees. Chapter 13 repayment plans typically involved wage-orders and have no guarantee of success.

**Overview:** This section will cover the basic consequences of bankruptcy. This includes (1) impact on an individual's credit score, (2) lock on any new debts, (3) filing fees, (4) credit counseling fees, (5) wage orders, and (6) risks associated with the Chapter 13 repayment plan. While we have attempted to list the most common consequences, the list is by no means exhaustive.

**Relevant Code Sections:** 28 U.S.C. § 1930(a) (2018) (Filing Fees); 11 U.S.C. §§ 1307(c) and (e) (2018) (Conversion of a Ch. 13 Proceeding to a Ch. 7 Proceeding); 11 U.S.C. §§ 1308, 521 (Ch. 13 Payment Plan Failure).

### Legal Discussion:

*Credit Score:* Chapter 7 liquidation causes an individual's credit score to decrease. They get a clean slate from their prior debt, but they must also start building new credit from the beginning. Chapter 13 reorganization is not as bad, but still negatively impacts credit scores. Chapter 7 stays on your credit score for ten years, while Chapter 13 only stays for seven.<sup>53</sup> If an individual is able to get credit, it will generally come with very high interest rates.

*Lock on New Debt:* Once the individual *begins to consider bankruptcy*, they cannot take on new debt without risking the trustee or a creditor challenging the discharge. Courts may consider such spending to be in bad faith and may use it to deny a Chapter 7 or a Chapter 13 petition for cause. Individuals are only allowed to take on new debt once the proceedings have been completed. However, debtors can file a motion to incur new debt if they are in Chapter 13 proceedings. For example, pay-day loans cannot be taken on three months before filing for bankruptcy, or during the proceeding. Individuals filing for bankruptcy cannot transfer money to family members or

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<sup>50</sup> 11 U.S.C. § 1301(a) (2018).

<sup>51</sup> 11 U.S.C. § 101(8) (2018).

<sup>52</sup> See *What is a Co-Debtor and How Does My Bankruptcy Affect Them?*, UPSOLVE (Nov. 18, 2019), <https://upsolve.org/learn/bankruptcy-effect-on-co-debtor/#chapter-7-automatic-stay-versus-chapter-13-automatic-stay>.

<sup>53</sup> Bill Fay, *How Will Filing Bankruptcy Impact My Credit Score?*, DEBT.ORG, <https://www.debt.org/bankruptcy/how-will-filing-bankruptcy-impact-my-credit-score/> (last visited Jul. 19, 2020).



friends. The court will consider this taking on of new debt or transfer of assets to be a voidable preference or fraud.

*Filing Fees:* Individuals must pay \$335 for Chapter 7 or \$310 for Chapter 13 in filing fees, and low-income individuals may pay the fees in installments. These amounts may increase over the years. For Chapter 7 debtors only, anyone earning less than 150% of the federal poverty guidelines is eligible to apply for a fee waiver. Once that eligibility threshold is met, it's up to the judge to decide whether a fee waiver is appropriate. The judge will consider the filers' income, expenses, and assets in making this decision.<sup>54</sup>

*Credit Counseling Fees:* Generally, the cost for online credit counselling is \$25, which, upon request, may be waived for low-income individuals.

*Wage Orders:* Chapter 13 repayment plans are commonly paid through wage orders where a portion of the individual's income is paid directly to the creditor rather than received in a paycheck.

*Risks of Ch. 13 Repayment Plan:* In the event that the individual fails to make payments under the plan, the Trustee may file a motion to dismiss or convert.<sup>55</sup> The court may also dismiss or convert the individual's case if the individual fails to pay domestic support obligations or make required tax filings.<sup>56</sup>

## IX. Where is a bankruptcy filed?

**Answer:** At your local federal bankruptcy court. Individuals can easily locate their local bankruptcy court at <https://www.uscourts.gov/federal-court-finder/search>.

**Relevant Code Sections:** Fed. R. Bankr. P. 7004 (Nationwide Service of Process).

What documentation is required to file for bankruptcy, and what other information should be gathered in advance of filing?

**Answer:** Many personal administrative documents, such as tax returns and forms of identification, are required to file for bankruptcy. The individual filing for bankruptcy should allot for ample lead in time (roughly 1-2 months) to gather the documents required to file for bankruptcy.

*Chapter 7.* If the individual plans to file for Chapter 7, they have the option to prepare all the required documents through [www.upsolve.org](http://www.upsolve.org). Upsolve provides free document preparation services for individuals with incomes at, or below, their state's median income level. Upsolve's site asks individual's interested in filing for Chapter 7 a series of questions to auto-generate the forms discussed in this section.

*Chapter 13.* If, however, the individual plans to file for Chapter 13, their attorney must work with them to complete the requisite documents, listed below.

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<sup>54</sup> 28 U.S.C. § 1930(a) (2018); Fed. R. Bankr. P. 1006(b); Bankruptcy Court Miscellaneous Fee Schedule, Item 8.

<sup>55</sup> 11 U.S.C. § 1307(c) (2018).

<sup>56</sup> 11 U.S.C. §§ 1307(c) and (e), 1308, 521 (2018).





**Overview.** This section references and describes the documents and forms an individual must prepare to file for bankruptcy, which the individual—and their attorney—should complete well in advance of the intended filing date. For married couples, the couple may file documentation jointly.<sup>57</sup> This section proceeds as follows. First, this section provides a list of the relevant Code sections that the attorney should review and consider for completeness. Second, this section (i) lists the boilerplate documents an individual must prepare and file regardless of whether the individual intends to file for Chapter 7 or 13, (ii) outlines additional documents the individual must prepare and file for Chapter 13, and (iii) notes other miscellaneous documents that may be pertinent to the individual’s case.

**Relevant Code Sections:** 11 U.S.C. § 101 (2018) (General Provisions), 11 U.S.C. § 109 (2018) (Who May be an Individual), 11 U.S.C. § 111 (2018) (Nonprofit budget and credit counseling agencies; financial management instructional courses), 11 U.S.C. § 342 (2018) (Notice), 11 U.S.C. § 521 (2018) (Individual’s Duties), 11 U.S.C. § 1321 (2018) (Filing of plan), 11 U.S.C. § 1322 (2018) (Contents of plan), 11 U.S.C. § 1323 (2018) (Modification of plan before confirmation), 11 U.S.C. § 1325 (2018) (Confirmation of plan)

### Legal Discussion:

*Standard Documents.* Section 521 of the Code sets forth the required documents an individual must prepare and file for either a Chapter 7 or 13 proceeding. The United States Courts website provides template documents that the individual can fill out to submit to the court.<sup>58</sup> Additionally, legal aid providers may have access to document assembly software capable of efficiently generating the necessary documentation, and the Upsolve.org platform guides users through development of Chapter 7 documents using a TurboTax-like web application. The individual must prepare and file the following documents with the bankruptcy court:

Certificate from the approved nonprofit budget and credit counseling agency that provided the individual services, for both pre bankruptcy and post-bankruptcy courses.<sup>59</sup>

- Voluntary Petition
- Application to Waive Filing Fee (if the applicant qualifies)
- Statement of Financial Affairs (SOFA)
- Schedule A/B – Property
- Schedule C – Property You Claim as Exempt

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<sup>57</sup> The couple may file a joint petition or individual petitions and is subject to all the document filing requirements of individual debtors. See 11 U.S.C. § 302(a); *Chapter 7 – Bankruptcy Basics*, U.S. COURTS, <https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/Chapter-7-bankruptcy-basics> (last accessed June 30, 2020).

<sup>58</sup> *Bankruptcy Forms*, U.S. COURTS, <https://www.uscourts.gov/forms/bankruptcy-forms> (last visited June 30, 2020).

<sup>59</sup> See 11 U.S.C. § 109(h), 521(b)(1) (2018); see also 11 U.S.C. § 111 (2018) (detailing a description of such services).



- Schedule D – Creditors who have claims Secured by Property
- Schedule E/F – Creditors Who Have Unsecured Claims
- Schedule G – Executory Contracts and Unexpired Leases
- Schedule H – Codebtors
- Schedule I – Income
- Schedule J – Expenses
- Means Test
- Statement of Attorney Compensation
- Bankruptcy Matrix
- Notice Required by 11 U.S.C. § 342(b) for Individuals Filing for Bankruptcy
- Certificate<sup>60</sup> of (i) an attorney whose name is indicated on the petition as the attorney for the individual, or (ii) a bankruptcy petition preparer signing the petition indicating the former or the latter delivered to the individual the Notice required by Section 342(b),<sup>61</sup>
- Evidence of payment received within 60 days before the date of filing the petition,<sup>62</sup>
- Copy of Federal income tax return for the most recent tax year ending immediately before the commencement of the case, for which a federal income tax return was filed.<sup>63</sup>
- *Documents for Chapter 13.* In addition to the documents listed above, if the individual chooses to file for Chapter 13, the individual must file a copy of their debt repayment plan

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<sup>60</sup> Such certificate is only required if the individual filing for bankruptcy has primarily consumer debts. *See* 11 U.S.C. § 521(a)(B)(iii)(I)-(ii) (2018). A consumer debt is that incurred by an individual primarily for a personal, family, or household purpose. 11 U.S.C. § 101(a) (2018).

<sup>61</sup> Such notice conveys the general purpose, benefits, and costs of filing for Chapter 7 or 13; the types of services available for credit counseling; that it is illegal to knowingly and fraudulently conceal assets or make a false oath/statement in connection with the case; and that all information supplied by the individual during the case is subject to the Attorney General's review.

<sup>62</sup> *See* 11 U.S.C. § 521(a)(1)(B)(iv) (2018).

<sup>63</sup> *See* 11 U.S.C. § 521(e)(2)(A)(i) (2018), which requires the individual file such tax return no later than 7 days before the date first set for the first meeting of the creditors. Additionally, the individual must submit such return to any creditor that timely requests such copy. *See* 11 U.S.C. § 521(e)(2)(A)(ii) (2018). This requirement is important because if the individual fails to comply by not providing the returns to the trustee or the requesting creditors, the court must dismiss the case. The exception to that rule is if the debtor demonstrates that the failure to so comply is due to circumstances beyond their control. *See* 11 U.S.C. § 521(e)(2)(B) (2018).





and accompanying summary.<sup>64</sup> The individual must submit the repayment plan within 14 days of filing the bankruptcy petition.<sup>65</sup> Attorneys preparing a plan must review Section 1322 (outlining the contents of the plan) Section 1323 (discussing how to modify the plan before the court confirms it), and Section 1325 (listing the prerequisites for the court to confirm a plan). Depending on the district, the court may require the use of a local Chapter 13 plan form or the national model plan form. In summary, the plan's main requirements<sup>66</sup> are as follows:

- Creditors must receive at least what they could have received in a Chapter 7 liquidation case, which means creditors must receive payments equal to the value of the individual's non-exempt assets (after cost of sale and Chapter 7 administrative expenses).
- The plan must provide that the individual contributes all disposable income—the income beyond that which is necessary to support the individual and their family—to the plan. In many cases the disposable income test formula determines that amount, which essentially requires the individual averages their income over the past six months, and then deduct a series of allowed expenses, to see what is left to pay creditors.<sup>67</sup>
- *Miscellaneous Documents and Obligations.* The court, trustee may request additional documents from the individual filing for bankruptcy. Such additional documentation includes, but is not limited to, the following:
  - Tax returns for the 3 years prior to filing for bankruptcy,<sup>68</sup>
  - Sworn statements,<sup>69</sup>
  - Forms of identification,<sup>70</sup> and
  - If the individual's schedule of assets and liabilities includes debts which are secured by property of the estate, the client must file (either within 30 days after

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<sup>64</sup> Official U.S. Courts form linked here: [https://www.uscourts.gov/sites/default/files/b\\_113\\_1217\\_0.pdf](https://www.uscourts.gov/sites/default/files/b_113_1217_0.pdf); see 11 U.S.C. §§ 1321-1322 (2018). Additionally, under 11 U.S.C. § 521(b)(2) (2018), the individual must file the repayment plan developed during the credit counseling services required under 11 U.S.C. § 109(h) (2018).

<sup>65</sup> *Chapter 13 – Bankruptcy Basics*, U.S. COURTS, <https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/Chapter-13-bankruptcy-basics> (last accessed June 30, 2020).

<sup>66</sup> See *Are there additional documents and other requirements in a Chapter 13 case?*, AM. BANKR. INST., <http://bankruptcyresources.org/faq-page#t5n521> (last accessed June 30, 2020). Attorneys preparing a Chapter 13 plan must refer to 11 U.S.C. §§ 1322-1325 (2018) for completeness.

<sup>67</sup> Official U.S. Courts form linked here: [https://www.uscourts.gov/sites/default/files/form\\_b\\_122c-2.pdf](https://www.uscourts.gov/sites/default/files/form_b_122c-2.pdf).

<sup>68</sup> See 11 U.S.C. § 521(f) (2018). It is highly recommended that the client has these tax returns on hand; if the court requests such documents, and the client fails to timely submit them, the court may dismiss the case.

<sup>69</sup> See 11 U.S.C. § 521(g) (2018).

<sup>70</sup> See 11 U.S.C. § 521(h) (2018).



filing the petition or before the date of the meeting of creditors, whichever is earlier or if the court has reason to give some extension) with the clerk a statement noting whether the client intends to surrender such property, or retain it by either reaffirming the debt or redeeming the property.<sup>71</sup>

## X. How much does it cost to file for bankruptcy?

**Answer:** It costs \$335 to file for Chapter 7. It costs \$310 to file for Chapter 13. Individuals earning less than 150% of the federal poverty guidelines are eligible to apply for a waiver of the filing fee.

**Overview:** This section outlines the mandatory fees associated with filing for bankruptcy.<sup>72</sup> This section proceeds as follows. First, this section provides a list of the relevant Code sections and Bankruptcy Rules of Procedure that the attorney should review and consider for completeness. Second, this section (i) lists the fees associated with filing for Chapter 7, and (ii) lists the fees associated with filing for Chapter 13

**Relevant Code Sections.** 11 U.S.C. § 707 (2018) (Dismissal of a case or conversion to a case under Chapter 11 or 13), 11 U.S.C. § 1307(c)(2) (2018), 28 U.S.C. § 1930 (2018), Fed. R. Bankr. P. 1006.

### Legal Discussion.

*Chapter 7 Fees.* The court will charge an individual \$335 for filing a Chapter 7 bankruptcy.<sup>73</sup> The individual must pay the fees to the clerk upon filing for Chapter 7.<sup>74</sup> If a married couple files for Chapter 7, the court will require only one filing fee. .<sup>75</sup>

If the Debtor cannot pay the filing fee in full, the Debtor can file an application to pay the filing fee in installments.<sup>76</sup> The individual must pay the final installment no later than 120 days after filing

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<sup>71</sup> Official U.S. Courts form linked here: [https://www.uscourts.gov/sites/default/files/form\\_b106d.pdf](https://www.uscourts.gov/sites/default/files/form_b106d.pdf); see 11 U.S.C. § 521(a)(2) (2018).

<sup>72</sup> This section assumes no legal services fees are associated with filing for Chapter 7 or 13 because the individual prepared the requisite documents using UpSolve (if applying for Chapter 7), received free legal services from LSC, or otherwise acts pro se.

<sup>73</sup> *Chapter 7 – Bankruptcy Basics*, U.S. COURTS, <https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/Chapter-7-bankruptcy-basics> (last accessed June 30, 2020).

<sup>74</sup> *Chapter 7 – Bankruptcy Basics*, U.S. COURTS, <https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/Chapter-7-bankruptcy-basics> (last accessed June 30, 2020).

<sup>75</sup> See 11 U.S.C. § 707(a) (2018); see also *Chapter 7 – Bankruptcy Basics*, U.S. COURTS, <https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/Chapter-7-bankruptcy-basics> (last accessed June 30, 2020).

<sup>76</sup> See 28 U.S.C. § 1930(a) (2018); Fed. R. Bankr. P. 1006(b); Bankruptcy Court Miscellaneous Fee Schedule, Item 8; see also *Chapter 7 – Bankruptcy Basics*, U.S. COURTS, <https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/Chapter-7-bankruptcy-basics> (last accessed June 30, 2020).



the petition.<sup>77</sup> The Court may extend the time to pay any installment for cause shown, so long as the individual pays the last installment within 180 days of filing the petition.<sup>78</sup> Second, if the individual's income is less than 150% of the poverty level,<sup>79</sup> and the individual cannot pay the Chapter 7 fees even in installments, the debtor can file an application to waive the filing fee.<sup>80</sup>

**Chapter 13 Fees.** The court will charge an individual \$310 filing for a Chapter 13.<sup>81</sup> The individual must pay the fees to the clerk upon filing for Chapter 13.<sup>82</sup> If a married couple files for Chapter 13, the court will require only one filing fee,

However, the court may allow an exception to ease the burden of the filing fees. The court may permit the individual to pay in four installments.<sup>83</sup> The individual must pay the final installment no later than 120 days after filing the petition.<sup>84</sup> The court may extend the time to pay any installment for cause shown, so long as the individual pays the last installment within 180 days of filing the petition.<sup>85</sup>

## XI. Who is a trustee, and what is their role?

**Answer.** The trustee is an independent party who acts in both Chapter 7 and 13 bankruptcy proceedings as the representative of the bankruptcy estate.

**Overview.** This section discusses who is a bankruptcy trustee and their role in a bankruptcy proceeding. This section proceeds as follows. First, this section provides a list of the relevant

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<sup>77</sup> See Fed. R. Bankr. P. 1006; see also *Chapter 7 – Bankruptcy Basics*, U.S. COURTS, <https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/Chapter-7-bankruptcy-basics> (last accessed June 30, 2020). Official U.S. Courts form linked here: [https://www.uscourts.gov/sites/default/files/form\\_b103a.pdf](https://www.uscourts.gov/sites/default/files/form_b103a.pdf).

<sup>78</sup> See Fed. R. Bankr. P. 1006; see also *Chapter 7 – Bankruptcy Basics*, U.S. COURTS, <https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/Chapter-7-bankruptcy-basics> (last accessed June 30, 2020).

<sup>79</sup> For the poverty levels, see *IFP Poverty Guidelines 2019*, U.S. COURTS, <https://www.uscourts.gov/sites/default/files/poverty-guidelines.pdf> (last accessed Jul. 19, 2020).

<sup>80</sup> See 28 U.S.C. § 1930(f) (2018); Bankruptcy Court Miscellaneous Fee Schedule, Item 8; see also *Chapter 7 – Bankruptcy Basics*, U.S. COURTS, <https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/Chapter-7-bankruptcy-basics> (last accessed June 30, 2020). Official U.S. Courts form linked here: [https://www.uscourts.gov/sites/default/files/form\\_b103b.pdf](https://www.uscourts.gov/sites/default/files/form_b103b.pdf).

<sup>81</sup> See *Chapter 13 – Bankruptcy Basics*, U.S. COURTS, <https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/Chapter-13-bankruptcy-basics> (last accessed June 30, 2020).

<sup>82</sup> *Id.*

<sup>83</sup> See 28 U.S.C. § 1930(a) (2018); Fed. R. Bankr. P. 1006(b); Bankruptcy Court Miscellaneous Fee Schedule, Item 8; see also *Chapter 13 – Bankruptcy Basics*, U.S. COURTS, <https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/Chapter-13-bankruptcy-basics> (last accessed June 30, 2020).

<sup>84</sup> See Fed. R. Bankr. P. 1006; see also *Chapter 13 – Bankruptcy Basics*, U.S. COURTS, <https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/Chapter-13-bankruptcy-basics> (last accessed June 30, 2020).

<sup>85</sup> *Id.*



code provisions an attorney should consult for completeness. Second, this section (i) provides a definition of the trustee, (ii) discusses the trustee’s obligations.

**Relevant Code Sections:** 11 U.S.C. § 321 (2018) (Eligibility to serve as trustee), 11 U.S.C. § 322 (2018) (Qualification of trustee), 11 U.S.C. § 323 (2018) (Role and capacity of trustee), 11 U.S.C. § 324 (2018) (Removal of trustee or examiner).

### **Legal Discussion:**

*Definition:* The trustee is an independent party who acts as the representative of the bankruptcy estate.<sup>86</sup> The trustee has statutory powers to facilitate the bankruptcy proceeding, regardless of whether the individual files under Chapter 7 or 13.<sup>87</sup> The United States Trustees Program, a division of the Department of Justice oversees the bankruptcy trustees in all but two states. Each bankruptcy district has a U.S. Trustee, an official appointed by the U.S. Attorney General, to oversee the case trustees. In Alabama and North Carolina, a “Bankruptcy Administrator” fulfills the role of the U.S. Trustee.<sup>88</sup>

*Obligations:* The trustee’s primary purpose is to administer the bankruptcy proceeding. Specifically, the trustee is responsible for (i) reviewing the individual’s petition and schedules, and (ii) bringing actions against creditors or the individual to recover property of the bankruptcy estate.<sup>89</sup> If the individual files for Chapter 7, the trustee is responsible for liquidating property of the estate and making distributions to creditors.<sup>90</sup> If the individual files for Chapter 13, the trustee is responsible for overseeing the individual’s plan, receiving payments from individuals, and disbursing plan payments to creditors.<sup>91</sup> Further, regardless of whether the individual files for Chapter 7 or 13, the trustee monitors the bankruptcy parties’ conduct, oversees administrative aspects of the proceeding, and ensures the parties act in compliance with the applicable bankruptcy laws and procedures.<sup>92</sup> In Alabama and North Carolina, the trustee is called the “Bankruptcy Administrator.”<sup>93</sup> In all other states, the trustee is simply called the Trustee.<sup>94</sup>

## **XII. Can creditors make any demands of the individual after the individual files for bankruptcy?**

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<sup>86</sup> *Glossary of Legal Terms*, U.S. COURTS, <https://www.uscourts.gov/glossary> (last accessed June 30, 2020).

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Trustees and Administrators*, U.S. COURTS, <https://www.uscourts.gov/services-forms/bankruptcy/trustees-and-administrators> (last accessed June 30, 2020).

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*



**Answer:** The automatic stay protects the individual from their creditors' attempts to collect. If a creditor knowingly violates the automatic stay, the court may sanction the creditor.

**Overview:** This section proceeds as follows. First, this section provides a list of the relevant Code sections that the attorney should review and consider for completeness. Second, this section (i) discusses limitations on creditors after the automatic stay takes effect, and (ii) discusses limitations on the individual's conduct just before, and then after the automatic stay takes effect.

**Relevant Code Sections:** 11 U.S.C. § 341 (2018) (Meetings of creditors and equity security holders), 11 U.S.C. § 362 (2018) (Automatic Stay), 11 U.S.C. § 524 (2018) (Effect of discharge), 11 U.S.C. § 547 (2018) (Preferences).

### Legal Discussion:

*Limitations on Creditors.* Generally, after the automatic stay takes effect in either a Chapter 7 or 13 proceeding, creditors must stop contacting the individual.<sup>95</sup> Further, the automatic stay protects the individual from a creditor's attempt(s) to repossess, sell, or foreclose on property. If a creditor does so, such creditor must return the property to the individual.<sup>96</sup>

However, the automatic stay is temporary as to all creditors.<sup>97</sup> Further, if the filer wishes to keep property securing a debt (such as a car or house), the filer must continue to make all post-petition payments as they come due under the terms of the loan. In the Chapter 7 context, this generally means making the regular monthly payments. In addition, the Chapter 7 debtor has to follow through on their stated intention to reaffirm the loan or redeem the collateral, or the automatic stay will end 45 days after the date set for the first meeting of creditors. In a Chapter 13, the debtor is required to make adequate protection payments to creditors secured by personal property if the secured debt is being paid through the trustee. The amount of the adequate protection payment is determined by the plan. If the individual files for Chapter 13, and does not make timely payments on their mortgage under the plan, the creditor can foreclose on the individual's home after the case ends.<sup>98</sup> In sum, if the individual mainly has secured debts, and can do so, they may be better off filing for Chapter 13 instead of Chapter 7; Chapter 13 allows the individual to pay off the past-due secured debt over time, forestalling foreclosure that is more likely to occur under Chapter 7.<sup>99</sup>

*Limitations on the Individual.* Individuals should not respond to creditors' requests to pay overdue debts just before, and then after, the automatic stay takes effect. However, this could be a

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<sup>95</sup> *What should I do if a creditor demands payment of a debt after I file my case?*, AM. BANKR. INST., <http://bankruptcyresources.org/faq-page#t5n525> (last accessed July 1, 2020).

<sup>96</sup> *Id.*

<sup>97</sup> *How does the automatic stay stop foreclosures, repossessions or other collection efforts from taking place?*, AM. BANKR. INST., <http://bankruptcyresources.org/faq-page#t6n529>.

<sup>98</sup> See *Chapter 13 – Bankruptcy Basics*, U.S. COURTS, <https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/Chapter-13-bankruptcy-basics> (last accessed June 30, 2020).

<sup>99</sup> *How does the automatic stay stop foreclosures, repossessions or other collection efforts from taking place?*, AM. BANKR. INST., [HTTP://BANKRUPTCYRESOURCES.ORG/FAQ-PAGE#T6N529](http://BANKRUPTCYRESOURCES.ORG/FAQ-PAGE#T6N529).



strategic decision. Individuals should consult with their attorney. Under Section 547, the court can void the individual's voluntary repayment of certain debts as a preference.

### **XIII. After the individual files for bankruptcy, what is the general timeline of their case?**

**Answer:** A Chapter 7 case is generally quick and concludes after the individual receives a discharge notice in the mail (around 60 days after the meeting of creditors). A Chapter 13 case is longer than a Chapter 7 case and concludes after the individual completes their payments under the plan (the plan can last for up to 5 years).

**Introduction.** This section outlines the general timeline of a bankruptcy proceeding. This section proceeds as follows. First, this section outlines a list of the relevant Code sections that the attorney should review and consider for completeness. Second, this section (i) outlines the timeline for a Chapter 7 case, (ii) outlines the timeline for a Chapter 13 case, and (iii) discusses conversion of a Chapter 13 bankruptcy case to Chapter 7, and vice versa.

**Relevant Code Sections:** 11 U.S.C. § 341 (2018) (Meeting of creditors), 11 U.S.C. § 343 (2018) (Examination of the individual), 11 U.S.C. § 362 (2018) (Automatic Stay), 11 U.S.C. § 704(b) (2018) (Duties of trustee), 11 U.S.C. § 706(a) (2018) (Conversion), 11 U.S.C. § 707(b)(1) (2018) (Dismissal of case or conversion to a case under Chapter 11 or 13), 11 U.S.C. § 727 (2018) (Discharge), 11 U.S.C. § 1307 (2018) (Conversion or dismissal), 11 U.S.C. § 1324 (2018) (Confirmation hearing), 11 U.S.C. § 1325 (2018) (Confirmation of plan), 11 U.S.C. § 1326 (2018) (Payments), 11 U.S.C. § 1327 (2018) (Effect of confirmation), 11 U.S.C. § 1328 (2018) (Discharge), 11 U.S.C. § 1329 (2018) (Modification of plan after confirmation), Fed. R. Bankr. P. 2003(a)

#### **Legal Discussion.**

*Chapter 7 Case.* After the individual files bankruptcy petition, they will receive the protection of the automatic stay.<sup>100</sup> The individual has 14 days after filing the petition to file to all of the other required documents. Between 21 and 40 days after the individual files the petition, the trustee will hold a meeting of creditors, known as a "341 meeting,"<sup>101</sup> after the relevant section of the Bankruptcy Code. For married couples that file a Joint Petition, each spouse must attend the meeting.<sup>102</sup> The individual should bring a form of government issued identification and their Social Security card.<sup>103</sup> At the meeting, the trustee will place the individual under oath, and question the

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<sup>100</sup> See 11 U.S.C. § 362 (2018).

<sup>101</sup> See 11 U.S.C. § 341 (2018); see also *Chapter 7 – Bankruptcy Basics*, U.S. COURTS, <https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/Chapter-7-bankruptcy-basics> (last accessed June 30, 2020). The court must hold the 341 meeting no later than 60 days after the individual files for bankruptcy. Fed. R. Bankr. P. 2003(a).

<sup>102</sup> *What will happen in my Chapter 7 case after I file all these documents?*, AM. BANKR. INST., <http://bankruptcyresources.org/faq-page#t5n520> (last accessed July 2, 2020).

<sup>103</sup> See 11 U.S.C. § 343 (2018); see also *What will happen in my Chapter 7 case after I file all these documents?*, AM. BANKR. INST., <http://bankruptcyresources.org/faq-page#t5n520> (last accessed July 2, 2020).





individual about their bankruptcy documents.<sup>104</sup> As discussed in Section 9 above, the trustee may request additional documents from the individual, and the individual should provide those within several days.<sup>105</sup> Generally, the 341 meeting will be brief, running about five minutes.<sup>106</sup> All creditors are permitted to attend, though very few do.<sup>107, 108</sup>

Assuming the debtor completes the post-bankruptcy debtor education course and files the certificate of completion with the court, , the individual will receive a discharge notice in the mail about 60 days after the 341 meeting.<sup>109</sup> The discharge notice is proof that most of the individual's debts are discharged. A discharge releases the individual from personal liability for most debts and stops creditors from attempting to collect from the individual on such debts.<sup>110</sup> Generally, individuals receive a discharge in more than 99% of Chapter 7 cases.<sup>111</sup>

The case concludes when the bankruptcy court enters an order closing the case. In no-asset cases, this occurs shortly after entry of the discharge order. In cases where the trustee is administering assets, the case will remain open until the trustee as completed their duties. The debtor continues to be obligated to cooperate with the trustee in the administration of the case, including, but not limited to submitting a copy of the debtor's tax return for the year their bankruptcy case was filed in to the trustee.

*Chapter 13 Case.* After the individual files the bankruptcy petition, they will receive the protection of the automatic stay.<sup>112</sup> Within 30 days of filing the petition, the individual must start making payments under their plan.<sup>113</sup> Between 21 and 40 days after the individual files the petition, the trustee will hold a meeting of creditors, known as the "341 meeting,"<sup>114</sup> after the relevant section of the Bankruptcy Code. For married couples that file a Joint Petition, each spouse must attend

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<sup>104</sup> *What will happen in my Chapter 7 case after I file all these documents?*, AM. BANKR. INST., <http://bankruptcyresources.org/faq-page#t5n520> (last accessed July 2, 2020).

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> See 11 U.S.C. §§ 704(b), 707(b)(1) (2018); see also *Chapter 7 – Bankruptcy Basics*, U.S. COURTS, <https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/Chapter-7-bankruptcy-basics> (last accessed June 30, 2020).

<sup>109</sup> See generally 11 U.S.C. § 727 (2018); see also *What will happen in my Chapter 7 case after I file all these documents?*, AM. BANKR. INST., <http://bankruptcyresources.org/faq-page#t5n520> (last accessed July 2, 2020).

<sup>110</sup> See *Chapter 7 – Bankruptcy Basics*, U.S. COURTS, <https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/Chapter-7-bankruptcy-basics> (last accessed June 30, 2020).

<sup>111</sup> *Id.*

<sup>112</sup> See 11 U.S.C. § 362 (2018).

<sup>113</sup> 11 U.S.C. § 1326 (2018); see *Are there additional documents and other requirements in a Chapter 13 case? What is required in the Chapter 13 plan?*, AM. BANKR. INST., <http://bankruptcyresources.org/faq-page#t5n521> (last accessed July 2, 2020).

<sup>114</sup> *Id.*



the meeting.<sup>115</sup> The individual should bring a form of identification and their Social Security card.<sup>116</sup> At the meeting, the trustee will place the individual under oath, and question the individual about their bankruptcy documents and their income.<sup>117</sup> As discussed in Section 9 above, the trustee may request additional documents from the individual, and the individual should provide those within several days.<sup>118</sup> The 341 meeting may be lengthy, given the additional paperwork of the proposed plan.<sup>119</sup>

After the 341 meeting, the court will hold a confirmation hearing of the proposed plan.<sup>120</sup> The court must hold the confirmation hearing between 20 – 45 days after the 341 meeting.<sup>121</sup> The court will confirm the plan if it complies with Section 1325, which lists the requirements for plan approval.<sup>122</sup> Once the court confirms the plan, it binds all the creditors listed within.<sup>123</sup> The plan is binding even if a creditor has objected to, accepted, or rejected the plan.<sup>124</sup> After the court confirms the plan, but before completion of payments under the plan, the individual, trustee, or an unsecured creditor can request to modify or dismiss the plan if the debtor falls behind.<sup>125</sup> The individual can request to modify the plan to reduce or increase the amount of payments provided for within the plan.<sup>126</sup> Such modification of the plan can only occur after a court notice and a hearing.<sup>127</sup>

The Chapter 13 plan lasts until the earlier of (1) when the individual pays their debts in full, or (2) at the end of a three- or five-year period.<sup>128</sup> A three-year period is appropriate if the individual's

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<sup>115</sup> *Chapter 13 – Bankruptcy Basics*, U.S. COURTS, <https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/Chapter-13-bankruptcy-basics> (last accessed June 30, 2020).

<sup>116</sup> *Id.*

<sup>117</sup> *Are there additional documents and other requirements in a Chapter 13 case? What is required in the Chapter 13 plan?*, AM. BANKR. INST., <http://bankruptcyresources.org/faq-page#t5n521> (last accessed July 2, 2020); *Chapter 13 – Bankruptcy Basics*, U.S. COURTS, <https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/Chapter-13-bankruptcy-basics> (last accessed June 30, 2020).

<sup>118</sup> *Are there additional documents and other requirements in a Chapter 13 case? What is required in the Chapter 13 plan?*, AM. BANKR. INST., <http://bankruptcyresources.org/faq-page#t5n521> (last accessed July 2, 2020).

<sup>119</sup> *Id.*

<sup>120</sup> 11 U.S.C. § 1324(a) (2018).

<sup>121</sup> 11 U.S.C. § 1324(b) (2018).

<sup>122</sup> *See generally* 11 U.S.C. § 1325 (2018); *see also Are there additional documents and other requirements in a Chapter 13 case? What is required in the Chapter 13 plan?*, AM. BANKR. INST., <http://bankruptcyresources.org/faq-page#t5n521> (last accessed July 2, 2020).

<sup>123</sup> 11 U.S.C. § 1327 (2018).

<sup>124</sup> *Id.*

<sup>125</sup> 11 U.S.C. § 1329 (2018).

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *See* 11 U.S.C. § 1328 (2018); *Are there additional documents and other requirements in a Chapter 13 case? What is required in the Chapter 13 plan?*, AM. BANKR. INST., <http://bankruptcyresources.org/faq-page#t5n521> (last accessed July 2, 2020).





income is below their state's median level.<sup>129</sup> A five-year period is required if the individual's income is not below their state's median level.<sup>130</sup>

After the individual (i) completes payments under the plan, (ii) pays all domestic support obligations (if applicable), and (iii) completes their financial counseling, they will receive a discharge.<sup>131</sup> At that time, the bankruptcy case concludes, and the court will send a closing order to the individual.<sup>132</sup>

*Conversion of Case.* Under Sections 706 and 1307, the individual may convert a Chapter 7 case to Chapter 13, and a Chapter 13 case to Chapter 7, respectively. The purpose of these conversion rules is to accord the individual complete relief.<sup>133</sup> To convert a Chapter 7 case to Chapter 13, the individual must not have previously converted the case to Chapter 7 from another Chapter.<sup>134</sup> The purpose of this condition is to prevent repeat conversions from one Chapter to another. Further, under 11 U.S.C. § 1307 (2018), the court can convert a Chapter 13 case to a Chapter 7 case for cause, or the individual can voluntarily convert the case to Chapter 7. Cause includes failure to timely file a plan or to commence making timely payments under the plan.<sup>135</sup>

#### XIV. Can individuals file for multiple bankruptcies?

**Answer.** Individuals may file for bankruptcy multiple times. However, individuals generally must wait several years between cases before they are eligible to receive a bankruptcy discharge in a new case.

**Overview.** This section proceeds as follows. First, provides a list of the relevant Code sections and Bankruptcy Rules of Procedure that the attorney should review and consider for completeness. Second, this section discusses the limitations on filing for bankruptcy again (i) if the individual previously filed for Chapter 7, and (ii) if the individual previously filed for Chapter 13.

**Relevant Code Sections:** [ 11 U.S.C. § 727(a)(8)-(9); 11 U.S.C. § 1328(f)]

#### Legal Discussion.

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<sup>129</sup> *Are there additional documents and other requirements in a Chapter 13 case? What is required in the Chapter 13 plan?*, AM. BANKR. INST., <http://bankruptcyresources.org/faq-page#t5n521> (last accessed July 2, 2020).

<sup>130</sup> *Id.*

<sup>131</sup> *Chapter 13 – Bankruptcy Basics*, U.S. COURTS, <https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/Chapter-13-bankruptcy-basics> (last accessed June 30, 2020)..

<sup>132</sup> *See How do I know when my bankruptcy case is completed and I am no longer in bankruptcy?*, AM. BANKR. INST., <http://bankruptcyresources.org/faq-page#t7n536> (last accessed July 2, 2020).

<sup>133</sup> *Chapter 7 – Bankruptcy Basics*, U.S. COURTS, <https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/Chapter-7-bankruptcy-basics> (last accessed June 30, 2020).

<sup>134</sup> 11 U.S.C. § 706(a) (2018); *see Chapter 7 – Bankruptcy Basics*, U.S. COURTS, <https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/Chapter-7-bankruptcy-basics> (last accessed June 30, 2020).

<sup>135</sup> *See* 11 U.S.C. § 1307(c)(1)-(11) (2018).



*Prior Chapter 7 Case.* If the individual previously filed for Chapter 7, and received a discharge, but now seeks to file for Chapter 7 again, the individual must let eight years pass from the first case's filing date.<sup>136</sup> If the individual previously filed for Chapter 7, and received a discharge, but now seeks to file for Chapter 13, the individual must let four years pass from the first case's filing date.<sup>137</sup>

*Prior Chapter 13 Case.* If the individual previously filed for Chapter 13, and received a discharge, but now seeks to file for Chapter 13 again, the individual must let two years pass from the first case's filing date.<sup>138</sup> If the individual previously filed for Chapter 13, and received a discharge, but now seeks to file for Chapter 7, the individual must let six years pass from the first case's filing date, unless the prior Chapter 13 case resulted in payment of 100% of all allowed unsecured claims or 70% of such claims where the plan was proposed in good faith and was the debtor's best effort.<sup>139</sup>

## **XV. How does a disaster affect small businesses and individuals' finances?**

**Overview** This section provides additional resources for individuals and their attorneys to learn about bankruptcy statistics and financial issues after a disaster.

For discussions of natural disasters' effects on bankruptcy:

<https://www.abi.org/abi-journal/bankruptcy-and-natural-disasters>;

[https://heinonline.org/HOL/Page?handle=hein.journals/nevlj6&div=7&g\\_sent=1&casa\\_to\\_ken=&collection=journals](https://heinonline.org/HOL/Page?handle=hein.journals/nevlj6&div=7&g_sent=1&casa_to_ken=&collection=journals).

For a discussion of COVID-19 and bankruptcy:

<https://www.nytimes.com/2020/06/18/business/corporate-bankruptcy-coronavirus.html>.

For discussions of natural disasters' effects on personal finances:

<https://www.nclc.org/issues/weathering-financial-storm-after-disaster.html>;

[https://www.urban.org/sites/default/files/publication/100079/insult\\_to\\_injury\\_natural\\_disasters\\_2.pdf](https://www.urban.org/sites/default/files/publication/100079/insult_to_injury_natural_disasters_2.pdf).

For a discussion of race and bankruptcy:

<https://features.propublica.org/bankruptcy-inequality/bankruptcy-failing-black-americans-debt-Chapter-13/>.

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<sup>136</sup> *How often can you file for bankruptcy?*, UPSOLVE, <https://upsolve.org/learn/how-often-can-you-file-bankruptcy/>, (June 18, 2020).

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

