

This material is provided to answer general questions about the law in New York State. The information and forms were created to assist readers with general issues and not specific situations, and, as such, does not replace the legal advice or representation of an attorney. Because of this and because of unanticipated changes in the law, the Rural Law Center of New York (RLC) makes no claim that this information will achieve the results you desire. Also, the RLC disclaims any responsibility for actions taken based on this material. If you are seeking advice about a specific legal issue, you should contact an attorney licensed to practice in New York State.

## **Rural Law Center of New York, Inc.**

# **SHOULD I FILE FOR BANKRUPTCY?**

If you are thinking about filing for bankruptcy, there are several things you will want to consider first.

### **What is Bankruptcy?**

When a person is unable to pay his or her bills, there is a legal process which will allow that person to get a fresh financial start. When you file for bankruptcy, your creditors must immediately stop trying to collect debts from you until they have been resolved by the federal court.

There are two types of consumer bankruptcies: Chapter 7 which is getting rid of debts (called liquidation) and Chapter 13 which is a repayment of debts (debt adjustment).

In a Chapter 7 bankruptcy, a person is able to eliminate most of his or her debts in exchange for giving up any "non-exempt" property, if any. Most people who file for Chapter 7 do not have non-exempt property and so they do not lose any property because the property they do have is protected ("exempt") under the law.

In a Chapter 13 bankruptcy, a person does not give up any property, but instead repays his or her debts by living on a strict budget and making agreed-upon payments to the bankruptcy trustee. This budget and the payments are closely monitored by the bankruptcy trustee. Chapter 13 bankruptcy takes 3 to 5 years. If a person fails to make the required payments, the debts remain unless they file a Chapter 7 bankruptcy.

## **I'm Ready to File Bankruptcy. What Must I Do First?**

The first step to filing bankruptcy is determining if you are eligible to file and if so, which Chapter you are eligible to file under. This is called a "means test." Basically, this test takes into consideration the amount of income you have and the bills you have to pay. If your annual income is less than New York State's median for your household size, then you can file Chapter 7 or Chapter 13. If your annual income is higher than the median, then you will need to complete a worksheet to determine your eligibility. You can find the median for your household size at <http://www.legalconsumer.com/bankruptcy/means-test/state.php?st=NY>.

## **I'm Eligible to File Chapter 7. What Do I Do Next?**

Before you can file bankruptcy, you must first take a credit counseling course and obtain a certificate that shows that you took the course. This course must be through an approved credit counselor. You can find an approved credit counselor by following the appropriate links at <http://www.legalconsumer.com/bankruptcy/means-test/state.php?st=NY>. There may be a fee for this counseling and you should try to find one that will charge you based on your income.

## **Okay, I Finished the Counseling Course. Can I File Now?**

It is not easy to file bankruptcy on your own, and for this reason we suggest that you consult with an attorney before attempting to do this on your own. There are many forms that must be completed in a bankruptcy proceeding and it is very easy to have your case dismissed because of one error.

However, if you must proceed on your own, you may want to try to get a step-by-step book which will guide you through the process. In the alternative, you may be able to find someone willing to assist you in completing the forms without offering you any legal advice.

Once you have properly completed the forms, you can file your papers with the U.S. District Court. If you cannot pay the filing fees, you can complete an application to have the fees waived.

After the forms have been filed and all of your creditors have been notified, a date will be set for you to meet with the Trustee. This is called a creditors' meeting. The trustee will talk to you about the forms you have filed with the court. He or she will also ask you questions about the

information you have provided. Your creditors will be given the opportunity to ask questions and/or object to your claims of exemption as well.

### **I Went to My Creditors' Meeting. Am I Finished?**

As long as there have been no objections filed and there were no problems with the information you provided, the Trustee will more than likely discharge your debts. However, before that can happen, there is one more thing you must do. The law requires that you complete a debt management course. You can find a list of approved providers by again following the appropriate links at <http://www.legalconsumer.com/bankruptcy/means-test/state.php?st=NY>.

Once you have provided the court with proof that you have taken the mandatory debt management course, the Trustee will send you the discharge of debts.

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For more information see:

Chapter 7 Bankruptcy (Debt Discharge)

<http://bankruptcy.findlaw.com/bankruptcy/bankruptcy-chapter-7/>

### **I Own My Home. Can I File Bankruptcy and Not Lose It?**

If you own your home and/or a car, you may want to consider filing Chapter 13 (reorganization). In this type of bankruptcy, you file a repayment plan with the bankruptcy trustee. Once the trustee has approved your plan, you will pay all of your disposable income to the trustee who will then distribute the money to your creditors. Chapter 13 can prevent you from losing your home due to foreclosure.

### **Okay, I Want to File Chapter 13. What Must I Do?**

Before you can file bankruptcy, you must first take a credit counseling course and obtain a certificate that shows that you took the course. This course must be through an approved credit counselor. You can find an approved credit counselor by following the appropriate links at <http://www.legalconsumer.com/bankruptcy/means-test/state.php?st=NY>. There may be a fee for this counseling and you should try to find one that will charge you based on your income. You will receive a certificate once you have completed this course. The certificate must be filed with the court along with your bankruptcy petition as proof that you completed the credit counseling course. Also, if you have prepared a debt management plan during this session, that should be filed as well.

## **I Finished the Credit Counseling Course. What's Next?**

Chapter 13 bankruptcy is a very complex proceeding. In addition to filing the Petition, you will need to file a proposed repayment plan. There are many forms to complete with very specific information. For this reason, we suggest that you speak with an attorney who is experienced in this field of law. However, if you wish to proceed on your own, you can download the forms at <http://www.uscourts.gov/bkforms/index.html>.

After you have filed your Petition, the trustee will schedule a creditors' meeting. You must attend this meeting. Your creditors will come to the meeting and are given the opportunity at that time to ask you questions and, if necessary, object to your proposed repayment plan. The trustee will also ask you questions about the information you have provided in your Petition.

Please note that within 30 days after filing the Petition, you must start making payments to the trustee according to the repayment plan you have filed. Your plan will not have been approved by the bankruptcy judge yet, but you will still have to start making those payments.

After the creditors' meeting, the bankruptcy judge will hold a confirmation hearing at which time it will be determined whether the plan is realistically possible. The creditors will be permitted time to object to confirmation of the plan. Once the plan has been confirmed, the trustee will start distributing the funds to your creditors.

Chapter 13 bankruptcy discharge is complicated and again, we suggest that you speak with a bankruptcy attorney so that you understand your options.

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For more information on Chapter 13, go to:

Chapter 13: <http://www.uscourts.gov/bankruptcycourts/bankruptcybasics/chapter13.html>

For more information regarding bankruptcy in general, see:

Consumer Bankruptcy Handout:  
<http://www.nclc.org/issues/bankruptcy/content/BrochureRevised2006.pdf>