

BANKRUPTCY

The Bankruptcy Code is a federal law to help people who cannot pay their debts. Most individual debtors who file for bankruptcy choose one of two “chapters.”

In Chapter 7, a trustee will be appointed to review the case and to sell a debtor’s non-exempt property, if any, for the benefit of creditors. The Code and North Carolina state law allow the debtor to keep or "exempt" some property from the reach of many creditors. The exemptions address property such as household goods, professional tools, a car, and homes. However, they may not cover the full value of that property. Chapter 7 does not discharge all debt, meaning that some continue to be legally binding after bankruptcy. Examples include certain tax debts, student loans, alimony and child support, and debt owed to a person resulting from a drunk driving accident. In addition, if a person has a car loan or a home mortgage, she must continue to pay those debts if she wants to keep the car and home. Creditors sometimes ask debtors to promise to pay other debts after bankruptcy, but debtors are not required to agree to do so.

In Chapter 13, an individual debtor with a regular and stable income can pay part or all of her debts in a repayment plan that should last no more than five years. A chapter 13 debtor should be prepared to start making payments very soon after filing the bankruptcy petition. A trustee will be appointed to review and oversee the repayment plan, but unlike in chapter 7, the trustee will not collect the debtor’s non-exempt property because the debtor will be making payments from her income. The plan must comply with the requirements of the Code or the bankruptcy judge will not approve it. A debtor usually must finish her repayment plan in order to get a discharge of debt. Individuals who attempt to repay debts in chapter 13 may convert to chapter 7 at any time, such as if they lose their jobs and are unable to make the payments, or, in some situations, they can ask the judge to discharge their debts without converting the case. However, an individual must request these things because the case otherwise will be dismissed without a discharge.

- ***Procedure***

Bankruptcy may be initiated either voluntarily or involuntarily. If a debtor seeks relief from the court by filing a petition, the case is voluntary. If creditors of the debtor file the petition, the proceeding is involuntary. Most cases are voluntary.

To initiate the case, a person must file a form called a “petition” and pay a filing fee (married couples may file a case jointly). A debtor may request to pay the fee in installments. In addition, a chapter 7 debtor may ask the court to waive the fee if she has a very low income and is unable to pay the fee in installments.

The filing of a petition with the bankruptcy court automatically stops creditors from trying to collect their debts or going forward with lawsuits. However, the debtor will be required to file many forms listing detailed financial information within a short time after filing the petition or her case may be dismissed without a discharge. Because some of these forms are complicated and a debtor may need advice on deciding which chapter to file or whether to file at all, many people who file for bankruptcy get the help of an attorney. In Chapter 13, the attorney’s fee usually is paid as part of the repayment plan.

Absent exigent circumstances, an individual debtor is not eligible for bankruptcy unless she provides proof that she received a briefing from a certified nonprofit credit counselor before filing the petition. In addition, if the required financial forms show that a chapter 7 debtor can make significant repayment of her debts, the trustee or creditors may try to get her case dismissed or converted to a chapter 13 repayment plan. To get a discharge of debt, individual debtors in chapter 7 or chapter 13 must complete a financial management course while they are in bankruptcy.

- ***Effect on Credit***

Bankruptcy remains part of a person’s credit history for 10 years. If a woman did not file bankruptcy jointly with her husband and she applies for a separate unsecured loan, a creditor may not consider her husband’s bankruptcy in the application process for the loan.

- ***Financial Obligations of an Ex-spouse***

A woman could be a creditor in the bankruptcy case of her ex-husband if he owes her child support or other financial obligations arising out of a divorce or separation. When the ex-husband enters bankruptcy, he may list his ex-wife as a creditor to whom he owes a financial obligation. The ex-wife should receive notice of the bankruptcy and of her opportunity to participate in the case. The ex-husband will not be allowed to discharge debts owed for child support, alimony, or, if he has filed a chapter 7, property settlements owed to an ex-wife.