

LAW OFFICES OF
ALLEN A. KOLBER, ESQ.

134 ROUTE 59, SUITE A
SUFFERN,, NEW YORK 10901
TELEPHONE: (845) 918-1277
FACSIMILE: (845) 369-1618
e-mail: aKolber@Kolberlegal.com

DOCUMENTS TO BRING TO PRELIMINARY BANKRUPTCY CONSULTATION

1. Photo Identification and Social Security Card
2. Any new or old credit card statements or bills from creditors.
3. All correspondence from collection agencies and attorneys regarding outstanding debts.
4. Pay stubs from each job that you and your spouse have received for the last 6 months.
5. If you are the owner of a business, the most recent tax returns and 6 months bank statements for the business.
6. One bill for each rent or utility you pay.
7. Homeowner's/renter's insurance policy with a rider listing belongings insured
8. Your federal and state tax returns for the last 2 years (including W2's, 1099's, etc.).
9. If you own a car or other vehicle, title and any lease and loan documents.
10. If you own a house or other real estate, any mortgage document that lists the name and address of the lender, along with the total amount that you owe, as well as any appraisal showing the value of the property.
11. Bank statements for the last 4 months for each bank account that you have (savings, checking, CD's).
12. Most recent statement from IRA and/or pension funds.
13. Copies of any documents showing receipt of public assistance.
14. Copies of any documents indicating student loans.
15. Copies of any lawsuits, judgments, letters from a Marshall or Sheriff, and letters from attorneys.
16. If you are currently going through a divorce, or are recently divorced, a copy of any Divorce or Separation Agreements, or documents providing for domestic support or child support obligations).

Directions to Office

134 Route 59-Suite A
Suffern, NY 10901
Phone (845)918-1277
Fax (845)369-1618

DIRECTIONS:

From North/West:

Take I87 South/NYS Thruway South

Take exit 14B for Airmont Road toward Montebello/Airmont

Turn right onto North Airmont Road

Turn right at the 2nd light onto Route 59

#134 Route 59 is 2/10 mile up the hill on the right hand side immediately following Stage St.

From South/East:

Take I87 North/NYS Thruway West

Take exit 14B for Airmont Road toward Montebello/Airmont

Turn left at light onto North Airmont Road

Turn right at third light onto Route 59

#134 Route 59 is 2/10 mile up the hill on the right hand side immediately following Stage St.

Email

- Allen A. Kolber: akolber@kolberlegal.com
- Sylvia Berkowitz: kolber.paralegal@gmail.com
- Brooque Robinson: kolber.paralegal@gmail.com

BANKRUPTCY IS NOT A FOUR LETTER WORD

I usually try to write articles that are substantive and informative, but this week I need to rage against the machine a little bit.

I am a bankruptcy attorney. My business card and the sign in my office prominently display the fact that I am a corporate and consumer bankruptcy attorney.

All of my corporate clients understand exactly what they need from me and what I can do for them. A businessperson will tell me, "My business is successful. I want to remain successful. Therefore, I need to reduce the amount of business loans that I owe my banks. I need to re-negotiate with my creditors, have them lower their invoices so that I can stay in business and trade with them in the future. I need to re-negotiate the mortgage on my commercial building now that interest rates have dropped and real estate values have plummeted."

However, when an individual or family comes to see me about bankruptcy protection, they feel that they have failed, that they are not only financially bankrupt, but morally bankrupt. They feel that they have hit rock bottom.

Sometimes I have to fight with them to convince them that filing for bankruptcy protection is the first responsible financial decision they have made in a long time. They are exercising their Constitutional right, reaffirmed by Congress each year, to utilize the Bankruptcy Code and the Tax Code to eliminate debt and restructure their financial situation.

A client has never told me that she feels like a deadbeat for not paying a higher tax rate or taking each tax exemption offered by the Internal Revenue Code. Why should she feel guilty about using those same laws to eliminate her debt or mortgage?

Alternatively, many of my individual and family clients believe that they must be "bankrupt" in order to file a bankruptcy case; that they must be in danger of losing everything, their cars, their furniture or their home. To these individuals, filing bankruptcy means declaring to the world that they have lost everything.

...if GM and Trump can do it, why can't I?

In 2012, nearly 1.1 million families filed for bankruptcy protection. That is nearly 80 times greater than the number of individuals who filed for bankruptcy during the Great Depression. In the past 25 years, personal bankruptcy filings have climbed nearly 350%.

The American middle class is waking up to the fact that they, too, are entitled to Bankruptcy Protection, just as General Motors, Ford and Chrysler (Congress injected \$25 billion to restructure their debt) and Donald Trump (corporations bearing his name have filed for bankruptcy protection 4 times and Trump is still valued at approximately \$2.7 billion). Forbes Magazine quoted Trump as saying that "great entrepreneurs" have used bankruptcy to restructure debt, free up capital, and improve their businesses. "Basically I have used the laws of the country to my advantage . . . just as many, many others on top of the business world have."

Other millionaires who have filed for Bankruptcy protection? Henry Heinz (*ketchup magnate*), Milton Hershey (*chocolate magnate*), Henry Ford, Charles Goodyear (*rubber magnate*), PT Barnum, Michael Jackson, Mike Tyson....and Walt Disney.

...our clients are middle class

Most of my bankruptcy clients are middle class families with both spouses working, they own a home or condo, one or both spouses has a college or Masters Degree, they have paid for their children's college educations, or are currently paying their children's student loans due to the fact that their children cannot find jobs after graduating college.

A recent poll describes the typical bankruptcy filer in America as follows:

- a middle class head of household with children and a full-time job.
- better educated than the general population.
- almost all bankruptcy filers suffered a catastrophic personal event such as loss of employment, divorce or serious medical issues.
- homeowners who were defrauded into obtaining first and second subprime mortgages.
- seniors on a limited income with extraordinary medical expenses.
- unemployed or underemployed college graduates with student debt reaching \$100,000.

By now we all understand why the American middle class has been hit so hard by the recent financial crunch.

Housing and mortgage debt (first and second mortgages) is at an all time high. Rising health care costs, heating fuel and gasoline costs further eat into the middle class budget. A college education costs more than \$100,000. Most of my middle class clients are already living on the edge and are barely making ends meet, or are supplementing their income with credit cards or loans against their 401(k)'s.

A recent poll found that America is now saving at a negative rate (individuals living off of their savings or, worse, borrowing against their 401(k) or pension plan).

A middle class family that is hit by loss of a job, divorce or illness tips straight into the abyss of debt.

...but isn't it immoral to file Bankruptcy?

There are no moral or ethical issues in filing a Bankruptcy case, just as there were no moral or ethical issues contained in the contract you entered into with your credit card company or mortgage lender.

Both Federal & State laws allow credit card companies and mortgage lenders to adjust their interest rates, charge you late fees, over the limit fees and other penalties. If you are late in making a payment, US law allows your creditor to use a collection agency to collect its money, or sue you in court. If the creditor obtains a judgment against you, the law allows the creditor to freeze your bank account, garnish your wages, repossess your car or sell your home in foreclosure.

The Federal government also enacted the U.S. Bankruptcy Code, which allows all eligible debtors (GM, Trump or you) to eliminate or restructure their debt, stop lawsuits, wage garnishments, bank restraints, foreclosures or repossessions.

The same U.S. Bankruptcy Code will protect up to \$1 million of your retirement funds, \$300,000 equity in your home, two cars and \$10,000 in the bank. In fact, Congress has always referred to the Bankruptcy Code as “The Fresh Start” policy.

It is a shame that an American middle class family feels that it must ride out the financial crisis by itself while the largest corporations and wealthiest individuals in America utilize the government laws to their advantage.

Even the European Union and Japan are enacting broad bankruptcy laws in order to generate more business and entrepreneurship. The new bankruptcy laws allow businesses to take more risks, and receive government protection if those risks fail.

It is time that we begin to understand that filing for bankruptcy protection is not dishonorable. Sometimes circumstances in life and business lead to serious financial situations. The Government, understanding that individuals need help to get back on the path of financial stability, has created “The Fresh Start”. They understand that often bankruptcy is the best, and in many cases, the only way that people will be able to get back on their feet.

As always, please feel free to contact me for a free consultation regarding your specific financial circumstances.

For more Bankruptcy facts and articles, please see my website at www.allenkolber.com. I have been practicing Bankruptcy law, business law and litigation for over 25 years.

The Law Offices of Allen A. Kolber, Esq. is a full service law firm that provides quality representation in the following areas:

- **Bankruptcy Law and Litigation**
- **Foreclosure Defense**
- **Loan Modifications/Short Sales**
- **Debtor/Creditor Law**
- **Business and Corporate Law and Litigation**

Chapter 7 Bankruptcy FAQs

What is a Chapter 7 Bankruptcy?

A Chapter 7 Bankruptcy will grant you a discharge of most of your debt, including credit card debt, personal debt, medical bills, foreclosures and automobile repossessions. Generally, student loans and tax debt are not eliminated.

Under a Chapter 7 Bankruptcy, you are allowed to keep certain assets, such as bank accounts, automobiles, pension plans, IRA's, and your house.

Even though your family income must be less than the average family income in the county in which you live, the average family income is changed approximately every three months by the U.S. government. For example, the average income of a family of 3 living in Rockland County in 2017 is \$75,870, for a family of 4 it is \$92,000 and up.

As soon as you file a Chapter 7 Bankruptcy, the Bankruptcy Court imposes an injunction on all of your creditors called the "Automatic Stay". The Automatic Stay prohibits creditors from any collection activities, including lawsuits, wage garnishments, collection calls, collection letters, bank restraints, foreclosures or repossessions.

Which of my debts will not be eliminated?

"Non-dischargeable" debt under the Bankruptcy laws includes recent income taxes, student loans, alimony, child support, restitution or compensation ordered by a Criminal Court, civil judgments for injuries due to intentional torts or driving while intoxicated, and any debts incurred by fraud.

Will filing Bankruptcy stop a foreclosure?

Yes. On the day that you file your Bankruptcy Petition, all foreclosure proceedings are immediately stopped. In fact, if you file a Bankruptcy case even one hour prior to the foreclosure sale, the foreclosure will be deemed null and void.

As soon as you file a Bankruptcy Petition, the Bankruptcy Court imposes an injunction on all of your creditors called the "Automatic Stay". The Automatic Stay prohibits your mortgage lender from any collection activities, including foreclosure. In the average Bankruptcy case, your bank may only proceed with a foreclosure action after making a Motion to the Bankruptcy Court and proving to the Court that you have not complied with the requirements of the Bankruptcy Code as it relates to your mortgage and home.

Can I keep my bank account?

Yes. In New York State, a Debtor is allowed to retain up to \$11,000 in cash or in a bank account. The Bankruptcy Court will not close your bank account.

If you have more than \$11,000 for each individual filing Bankruptcy, then a Chapter 7 Bankruptcy Trustee would be allowed to take the remainder of the cash in order to pay your creditors.

Can I keep my pensions, IRA's and retirement accounts?

Under the Bankruptcy law, IRA's, pension or profit sharing plans, or other retirement plans protected as IRA's or 401k's are exempt from your Bankruptcy case. Therefore, you can keep unlimited funds in these protected accounts, even though you are filing a Chapter 7 Bankruptcy.

What are Exempt Assets?

Exempt assets are certain assets that cannot be taken by creditors or included in the bankruptcy case. These “exempt assets” are defined under the Bankruptcy Code by either federal statute or New York State law. Some exempt assets are exempt up to a certain value, and some exempt assets can be of unlimited value.

Homestead Exemption:

The Homestead Exemption protects the equity in your home, which is the unsecured portion in your home. Therefore, the value of your home, less the mortgage due on the home, equals the equity in your home. In New York State, each spouse is entitled to \$165,000 of equity in his/her home from New York City up to Rockland County. For Orange County up to Albany County, the Homestead Exemption is \$150,000 for each spouse.

For example, if your home is worth \$600,000, and the payoff on your mortgage is \$300,000, then you have \$300,000 equity in your home. Under the current bankruptcy statutes, you and your spouse would be entitled to keep the \$330,000 in equity in your home and still discharge all of your remaining debt.

Automobile exemption:

\$4,200 worth of equity in one vehicle may be exempted from the bankruptcy case. Therefore, if you own a car that is valued less than \$4,200, the car is exempt and will not be included in the bankruptcy case.

Household Goods and Furnishings and Clothing:

Each debtor is entitled to keep up to \$10,000 in value for household goods, furniture and clothing. Additionally, wedding rings and televisions are exempt.

Life Insurance Policies and Annuities:

Most life insurance benefits and annuities are exempt in a bankruptcy case. Exceptions to this exemption law may include whole life insurance policies that act as investment vehicles.

Alimony Support and Maintenance Payments:

These payments are totally exempt in a bankruptcy case. However, lump sum distributions from a former spouse or a spouse’s pension plan, if not designated as support and maintenance, may be non-exempt in a bankruptcy case.

401(k) Plans, IRA’s and pension plans:

You may fully exempt your 401(k) Plans, IRA’s and pension plans, even up to \$1 million.

Personal Injury Claims:

Interestingly enough, payments for pain and suffering and personal injury are only exempt up to \$7,500. However, any payments in the personal injury action for loss of future earnings, or loss of past earnings, are exempt if they were necessary for the support of the debtor.

Worker's Compensation or Disability Benefits:

These payments have an unlimited exemption since they fall under the category of payment for loss of past and future earnings.

Cash exemption:

A debtor can exempt up to \$11,000 in cash for each spouse filing a bankruptcy case. This would include checking and savings accounts, and expected tax refunds. Nonetheless, if a debtor is claiming a Homestead Exemption, then no cash exemption exists.

Federal Wild Card Exemption:

Federal statutes also allow for similar exemptions. However, the Federal Homestead Exemption is limited to \$11,000 per spouse. The other exemptions can be quite a sum higher than the New York State exemption values. Therefore, it is important for your attorney to determine whether you should utilize the New York State exemptions or Federal statute exemptions.

Will the Bankruptcy Court garnish my wages?

No. Neither the Bankruptcy Court nor creditors have a right to garnish your wages while you are under the protection of the Bankruptcy Court.

May I keep my house under a Chapter 7 Bankruptcy?

Yes. For instance, if your home is currently valued less than the full amount of your mortgage (or first mortgage and second mortgage combined), which means that your house has no value as an "asset" to you, and you meet all other requirements of the Chapter 7 Bankruptcy Court, then you may be able to keep your house and discharge all your remaining debt.

Under the new Bankruptcy laws, a family living in New York may also keep up to \$300,000 equity in their home. Equity is the value of your home after you pay off your mortgage. Therefore, if your home is worth \$600,000 and your mortgage is \$300,000. Then you have "equity" in your home valued at \$300,000, and with both spouses on the deed, you may keep your home and its equity, and still file a Chapter 7 Bankruptcy and discharge all your credit cards, medical bills, personal loans, etc.

Will the Bankruptcy Court take my car?

Each Debtor in New York is allowed to keep \$4,000 worth of car. In a Chapter 7 case, if your car is worth more than \$4,000, the Trustee may require you to make cash payments to the Trustee for the difference between the value of your car and the \$4,000 exemption, in order to pay your creditors. Alternatively, you have the right to surrender your car to the Trustee, who will sell the car, pay you the first \$4,000, and use the remaining proceeds to pay your creditors.

If your car is secured by a car loan, or is under a lease, then in most cases the Bankruptcy Court will not touch your car.

Will the IRS be notified of my Bankruptcy case?

Yes. However, even the IRS must stop its collection actions once a Bankruptcy Petition is filed. Also, since most tax debt is non-dischargeable, the IRS will continue its collection efforts after the Chapter 7 Bankruptcy case is closed.

Will a Bankruptcy affect the taxes that I pay?

No. In most Chapter 7 cases, your tax debt is not discharged, and the IRS cannot penalize you for filing a Bankruptcy case.

In fact, when you negotiate a credit card debt, or obtain a debt reduction in a credit card case, the IRS will treat that portion of your savings as income for tax purposes.

In a Bankruptcy case, the IRS cannot tax you on all the credit card debt, medical bills and personal loans that you have discharged in Bankruptcy.

Will the Bankruptcy Trustee come to my house?

In a normal Bankruptcy case, no one will come to your house to examine your personal belongings. However, if your Bankruptcy Trustee has a reasonable suspicion that you have hidden or transferred assets, or have undervalued your possessions, the Trustee may have the right to send an appraiser to your home. Once again, this is a rare and exceptional occurrence, and will only happen if the Bankruptcy Trustee has reasonable grounds to believe that you are attempting to defraud your creditors, or hide your assets.

Will my employer be notified of my Bankruptcy?

No. The Bankruptcy Court only notifies those creditors that you list on your Bankruptcy Petition, for the purpose of giving those creditors adequate notice that their debt will be discharged in Bankruptcy. If your employer is not a creditor (you do not owe your employer money), then your employer is not notified of the Bankruptcy Petition. This is the opposite of a wage garnishment, when a creditor obtains a judgment against you, and is allowed by law to notify your employer and garnish your wages. Once again, in a Bankruptcy case, all wage garnishments cease immediately once the Bankruptcy Petition is filed.

Must I include all of my credit cards in my bankruptcy case, or can I keep one card for my continued use?

On the one hand, you are required by the Bankruptcy Code to list all of your creditors and debt. You are not allowed to “prefer” one creditor over another creditor such as keeping one credit card that offers you better terms and discharging another credit card. More importantly, you cannot “prefer” a family member or friend to whom you owe money by agreeing to pay them back while attempting to discharge your debt to Discover Card or Capital One. This concept is called “preferences” in the Bankruptcy Code.

On the other hand, it is also basic principle of the Bankruptcy Code that once you receive a discharge of your debt, you are then free to repay any creditor whom you wish to pay. Therefore, once a favored credit card is listed in the bankruptcy case, I always suggest that my clients call the credit card company, advise them that they have filed a bankruptcy case, and that they would like to reaffirm this particular credit card and continue paying it.

Different credit cards have different investor guidelines to allow you to continue using and paying the credit card once you have filed the bankruptcy.

At the time of this writing, approximately thirty-five to forty percent of credit card companies do allow a debtor to continue using and paying a credit card despite a bankruptcy filing.

Can we discharge income taxes in bankruptcy?

There is a common misconception that income taxes are never dischargeable in bankruptcy. This misconception arises because many bankruptcy attorneys will avoid the issue altogether and advise their clients that taxes are non-dischargeable, despite the fact that certain older federal and state taxes, including penalties and interest, may be dischargeable under the right circumstances.

A bankruptcy attorney will often refer to the “3-2-240 Rule”. For example, if the taxes came due 3 years prior to filing, if has been more than 2 years since you filed tax returns, and if it has been more than 240 days since the taxes were assessed, then you have passed the first hurdle of discharging your tax debt.

Certain variables will “toll” these time limits. For example, if you owe 2005 taxes but did not file your tax return until 2008, then the 2-year rule does not apply until you actually file your tax returns. Further, if you file an amended tax return, or you were audited by the IRS and a new assessment or tax return is filed, then the 240-day rule may be extended.

Taxes cannot be discharged if they are payroll tax, sales tax or other “trust taxes” that you are required to collect on behalf of the government.

Finally, in an irritating twist that applies to judgment liens as well, a tax lien will not be removed from your property despite the fact that the tax debt and interest and penalties may be discharged in full. Removing tax liens, as well as judgment liens, is a complex subject on its own that you should discuss with your bankruptcy attorney.

Prior to discussing the dischargeability of your taxes with your bankruptcy attorney, you should obtain a tax transcript from the IRS using IRS Form 4506-T for each year that you feel the taxes may be dischargeable.

Will filing bankruptcy prevent me from receiving student loans for myself or for my children?

Generally, federal guidelines permit a student to be denied further student loans based upon a prior bankruptcy filing. Private schools may, nevertheless, consider the bankruptcy and pre-bankruptcy and post-bankruptcy credit history of the student in determining their willingness to issue a new loan to the student.

Unfortunately, as of this writing, Section 523(a)(8) of the U.S. Bankruptcy Code exempts from discharge student loans, except those student loans that would impose an “undue hardship on the debtor and the debtor’s dependents”. It is almost impossible to obtain a hardship discharge of student loans unless the debtor is fully disabled or absolutely unable to obtain employment in any field whatsoever.

It should be noted that unpaid tuition bills or other charges incurred by college students may be discharged as long as they are not characterized as “student loans”. Therefore, if you are attending a school on a “pay as you go” basis, and you have defaulted on the tuition payments, those payments will be discharged in your Bankruptcy case.

Does my husband or wife have to file Bankruptcy with me?

No. Each person may file as an individual, or as a married couple. The effect of your Bankruptcy on your spouse will depend on your individual Bankruptcy circumstances.

What happens to my credit when I file a Bankruptcy case?

In most cases, a person’s credit is already ruined when he or she files his/her Bankruptcy case. Late payments, collections, lawsuits, foreclosures and repossessions all destroy your credit. A person usually files Bankruptcy after some or all of these events have occurred.

The credit reporting laws allow for credit reporting agencies to report your debt for 10 years. This 10-year period applies to late payments, collection efforts, foreclosures, and repossessions. This 10-year period also applies to a Bankruptcy case.

Nonetheless, the general rule is that 12 months after a Bankruptcy case is completed, you will once again be eligible for credit card offers. Approximately 24 months after your Bankruptcy case is completed (or 24 months into your Chapter 13 Bankruptcy Plan), mortgage lenders and auto finance companies will be

willing to be extend credit to you. The reason for this is that once you have filed a Bankruptcy, you have become a better risk to your remaining creditors. You have eliminated much of your other debt, allowing you to keep current on your mortgage or car loan. Additionally, in most cases, you cannot file another Bankruptcy within the next eight years, so that your new creditors are assured that you will not be able to discharge their new debt under the Bankruptcy laws.

Should I transfer my assets to someone else's name before I file a Bankruptcy?

No. The Bankruptcy Trustee has the right to "look back" at transfers made up to 10 years ago. In certain cases where the transfers were made with the intent to hide assets from your creditors, or defraud your creditors, the Bankruptcy Trustee may have the right to recover those assets from the persons who received the assets. For example, if you transfer your house to a relative right before filing a Bankruptcy, the Trustee would have the right to proceed against your relative to transfer the house back to your name, and sell the house to pay your creditors. Additionally, the Bankruptcy Trustee may recommend a denial of your entire Bankruptcy discharge based upon your wrongful transfers.

Would I be better off with debt consolidation or debt negotiation?

Overall, most debt consolidation companies or debt negotiators achieve poor results, and further hurt your credit.

Most debt consolidators or negotiators will collect a monthly payment from you over the course of 12 to 24 months. In the meantime, these companies have stopped paying your credit cards, and the interest rates, penalties, late charges and over the limit fees accumulate. Additionally, your credit score goes from bad to worse. These companies will then approach each credit card company and attempt to negotiate your debt using the sums they have collected from you during the last 12 to 24 months. Sometimes these methods are effective, but usually they are not. Most creditors do not make it easy to negotiate or consolidate the debt. Even if the debt is paid at a reduced rate, your credit is not restored.

Additionally, when you negotiate a credit card debt, or obtain a debt reduction in a credit card case, the IRS will treat that portion of your savings as income for tax purposes. In a Bankruptcy case, the IRS cannot tax you on all the credit card debt, medical bills and personal loans that you have discharged in Bankruptcy.

Debt negotiation may be an option if you have liquid assets to settle the debt with a reduced lump sum. Debt that is still with the issuing card is easier to settle than debt that has been sold to a debt purchasing company, or debt that you have been sued on in court.

What happens when I file a Bankruptcy Petition?

A Bankruptcy attorney will prepare a Bankruptcy "Petition" to file with the court. A Petition can be 50 pages or more. It includes all of your financial information, your financial history, and a list of all of your assets, cars, real estate property, bank accounts, CD's, IRA's, and life insurance policies. It also includes lists of all of your debt, including credit card debt, medical bills, personal loans, bank loans, mortgages, and car loans. The Bankruptcy Petition also lists the names and addresses of all of your creditors.

As soon as you file the Bankruptcy petition, the Bankruptcy Court imposes an injunction on all of your creditors called the "Automatic Stay". The Automatic Stay prohibits creditors from any further collection activities, including lawsuits, wage garnishments, collection calls, collection letters, bank restraints, foreclosures or repossessions.

The Bankruptcy Court will then appoint a "Trustee" to supervise your case. The Bankruptcy Trustee is a Bankruptcy attorney who will review your Bankruptcy Petition. You must provide to the Trustee copies of your tax returns, paystubs, bank statements and appraisals for your home or car.

Approximately 3-4 weeks after your Bankruptcy Petition is filed, you will meet with the Bankruptcy Trustee in the Bankruptcy Court. There is no judge present. The Trustee conducts this meeting in a conference room. The meeting usually lasts from five to fifteen minutes, and it is tape-recorded. This meeting is also called a "Creditors Meeting" because your creditors have the right to appear at this meeting

and to challenge your Bankruptcy case. However, most banks, credit card companies and collection agencies never appear at these meetings.

In a Chapter 7 case, if the Bankruptcy Trustee approves your case, then you will receive a discharge of all of your debts within 4-6 weeks after the Creditors Meeting.

Do I need a lawyer to file Bankruptcy?

No. All Bankruptcy forms are located on the U.S. Bankruptcy Court website at www.uscourts.gov/Bankruptcy_courts.html.

However, unfortunately for the layperson, the Bankruptcy laws and the Bankruptcy Petition have become so detailed and complicated that many people filing a Bankruptcy case without an attorney end up having their cases dismissed by the Bankruptcy Trustee. Alternatively, many people who initially file their cases without an attorney end up hiring an attorney to sort out problems that arise in filing your own case.

What is the Credit Counseling Requirement?

Prior to filing a Bankruptcy under either Chapter 7 or Chapter 13, you must complete a credit-counseling course. This course is approximately ninety minutes long, and is available in person, by telephone, or through the internet. The course must be given by an agency approved by the U.S. Trustee's Office. You are then given a certificate that must be filed with your Bankruptcy Petition.

Our firm will arrange and register you for the credit-counseling course. Almost all of our clients take this course by telephone or via the internet.

What is the Personal Financial Management Course or Debtor Education Course?

After you file your Chapter 7 or Chapter 13 Bankruptcy Petition, the Court requires that you complete a second course called a "Personal Financial Management Course" or "Debtor Education Course". Again, this course is approximately ninety minutes long, and is available in person, by telephone, or through the internet. The course must be given by an agency approved by the U.S. Trustee's Office.

Our firm will arrange and register you for the Debtor education course. Almost all of our clients take this course by telephone or via internet.

Once the course is completed, the accredited agency will issue a certificate of completion that will be emailed to our office. We will then file this certificate with the Bankruptcy court.

What is the new Means Test Calculation required by the 2005 Bankruptcy Code?

In order to qualify for a Chapter 7 Bankruptcy, the new Bankruptcy Code requires that you complete a Statement of Current Monthly Income and Means Test Calculation. These are mathematical calculations designed to ensure that Chapter 7 debtors are eligible to file.

Essentially, the Means Test Calculation compares your current monthly income to the current monthly income of a family of your size in the county in which you reside. The Current Monthly Income Calculation is not the same as your actual monthly income. Rather, it starts with an average of your actual income received during the last six months and reduces it by certain IRS and government deductions. Your disposable monthly income is then calculated and this sum will be used by the Bankruptcy Court to determine whether you are eligible for a Chapter 7 Bankruptcy or a Chapter 13 Bankruptcy.

What if I earn more than the average family income for the county in which I live?

If your family income is greater than the average family income for the county in which you live, then you must file a Chapter 13 case, in which your excess income will be used to pay your unsecured creditors a portion of the debt owed to them. The Chapter 13 Plan would be in effect for a period of 3-5 years. The Chapter 13 Plan can provide for as little as 5 – 10% payback of your unsecured debt. The remainder of the debt will then be discharged forever.

Is it immoral to file Bankruptcy?

Homeowners and individuals in debt often feel that it is “wrong” or “immoral” to file a Bankruptcy and “cheat” their creditors.

There are no moral or ethical issues in filing a Bankruptcy case, just as there are no morals or ethical issues in the contract you entered into with your credit card company or mortgage lender.

United States law clearly states that a credit card company or mortgage lender may contract with you to adjust its interest rates, charge you late fees, over the limit fees and other penalties. If you are late in making a payment, the law allows your creditor to call you numerous times a day, use a collection agency to harass you, or sue you in court. If the creditor obtains a legal judgment against you, the law allows the creditor to freeze your bank account, garnish your wages, repossess your car or sell your home in foreclosure.

The United States law also enacted the U.S. Bankruptcy Code, which prohibits creditors from collection activities, including lawsuits, wage garnishments, collection calls, collection letters, bank restraints, foreclosures or repossessions. The same U.S. Bankruptcy Code allows eligible debtors to eliminate their debt to creditors.

Even the Bible provides for some discharge of debt. “At the end of every seven years you shall grant a release of debts. And this is the form of the release: every lender who has lent anything to his neighbor shall release it; he shall not require it of his neighbor or his brother, because it is called the Lord’s release” (Deuteronomy 15:1-2).

Am I wrong to try to avoid paying my debt?

Most of our clients have been trying to pay their debts for years. In most cases, our clients have experienced loss of employment, divorce, or a serious illness. Most of our clients come to Bankruptcy after borrowing or extinguishing their pension plans, IRA’s and retirement accounts. Many clients have been living off of their credit cards (and encouraged to do so by their credit card companies) while they have undergone these periods of economic struggle.

Most clients who file for Bankruptcy are honest individuals who have been trying to support their families and home through difficult times of loss of employment, illness, divorce and other personal hardships.

What is a Chapter 11 Bankruptcy?

A Chapter 11 Bankruptcy is used mostly by businesses that wish to continue to operate and stay in business. The Chapter 11 Bankruptcy allows a business to continue operating and take in revenue, while holding off its creditors from collection efforts. A Chapter 11 debtor must submit a Plan to the court and a Creditors Committee, which will approve or disapprove of your Bankruptcy Plan.

Chapter 13 Bankruptcy FAQs

What is a Chapter 13 Bankruptcy?

A Chapter 13 Bankruptcy is for families that have assets, value to their home or earn above the average family income for the county in which they live.

A Chapter 13 Bankruptcy allows you to keep your assets while under the protection of the Bankruptcy Court.

In exchange for keeping your assets, the Bankruptcy Court requires a Chapter 13 Debtor to submit to a “Plan” over the course of 3-5 years. The Plan will allow you to catch up on your mortgage payments and automobile payments while stopping your creditors from all collection activities.

Under a Chapter 13 Plan, Debtors repay their unsecured creditors only what they can afford to pay based upon their income and expenses. “Unsecured” debt includes credit cards, medical bills, personal loans or debts owed on car loans or mortgages once the car has been repossessed, or the home has been sold in foreclosure.

“Unsecured” debt is repaid from 5% to 100% over a 3-5 year period. Once a Chapter 13 Plan is completed, all remaining debt is eliminated (“discharged”).

As soon as you file a Chapter 13 Bankruptcy, the Bankruptcy Court imposes an injunction on all of your creditors called the “Automatic Stay”. The Automatic Stay prohibits creditors from any collection activities, including lawsuits, wage garnishments, collection calls, collection letters, bank restraints, foreclosures or repossessions.

As soon as you file a Chapter 7 Bankruptcy, the Bankruptcy Court imposes an injunction on all of your creditors called the “Automatic Stay”. The Automatic Stay prohibits creditors from any collection activities, including lawsuits, wage garnishments, collection calls, collection letters, bank restraints, foreclosures or repossessions.

Which of my debts will not be eliminated?

“Non-dischargeable” debt under the Bankruptcy laws includes recent income taxes, student loans, alimony, child support, restitution or compensation ordered by a Criminal Court, civil judgments for injuries due to intentional torts or driving while intoxicated, and any debts incurred by fraud.

Can I Strip the Second Mortgage off of my Property in a Chapter 13 Bankruptcy?

Yes, but only if your first mortgage exceeds the value of your home (your home is “underwater”), and you must complete your chapter 13 Plan.

What is the Means Test Calculation required by the Bankruptcy Code?

In order to qualify for a Bankruptcy, the Bankruptcy Code requires that you complete a Statement of Current Monthly Income and Means Test Calculation. These are mathematical calculations designed to ensure that you are eligible for the Bankruptcy.

Essentially, the Statement of Current Monthly Income and Means Test Calculation will determine your disposable monthly income and this sum will be used by the Bankruptcy Court to determine how much you must repay your unsecured creditors during your Chapter 13 Plan.

In a Chapter 13 Bankruptcy case, you will then have to submit a Chapter 13 Plan to the Court to prove to the Court that you can maintain your assets and pay your creditors over a three to five year period (even at a reduced rate). Then, a “Confirmation Hearing” before the judge will be scheduled. At this hearing, the Bankruptcy Trustee and the Court will either confirm your Plan, recommend changes to your Plan, or dismiss your case. The Confirmation Hearing usually lasts from five to fifteen minutes. In almost all cases, your Bankruptcy attorney and the Bankruptcy Trustee will have communicated with one another before the hearing to determine what changes, if any, to your Plan are necessary.

In a Chapter 13 case, once your Plan is confirmed by the Court, then you will have three to five years to complete your Chapter 13 Plan. At the end of the three to five year period, you will receive a discharge of all remaining debt.

Can I keep my bank account?

You may keep as much money as you wish in your bank account. The reason for this is that under a Chapter 13 Plan, you are paying your creditors (albeit at a reduced amount). Therefore, the Bankruptcy Court does not touch a Debtor's assets in a Chapter 13 case.

Can I keep my pensions, IRA's and retirement accounts?

Under the Bankruptcy law, IRA's, pension or profit sharing plans, or other retirement plans protected as Individual Retirement Accounts, are exempt from your Bankruptcy case. Therefore, you can hold unlimited funds in these protected accounts, even though you are filing a Chapter 13 Bankruptcy.

May I keep my house under a Chapter 13 Bankruptcy?

Yes. Under a Chapter 13 Plan, you must prove to the Court that you have sufficient income to once again start paying your monthly mortgage payments. You must also prove to the Court that you can pay the past due amounts to your mortgage lender ("arrears"), spread out over a 3-5-year period, with no interest. As long as you can restart your monthly mortgage payments, and pay the arrears over 3-5 years, then your mortgage lender is prevented from foreclosing on your home.

Am I eligible for a Chapter 13 Bankruptcy?

To file a Chapter 13 Bankruptcy, you must be an individual (no corporation, business or partnership), you must have a regular income, you must have disposable income at the end of each month (your income is greater than your reasonable living expenses), your unsecured debts may not exceed \$337,000, and your secured debts may not exceed \$1,010,650.

Will the IRS be notified of my Bankruptcy case?

Yes. However, even the IRS must stop its collection actions once a Bankruptcy Petition is filed. However, since most tax debt is non-dischargeable, any claims by the IRS against you must be paid through the Chapter 13 Bankruptcy Court.