

TAKE-1

BANKRUPTCY

XVIII AIRBORNE CORPS LEGAL ASSISTANCE OFFICE



BANKRUPTCY

1. Q. WHAT IS THE MAIN PURPOSE OF FEDERAL BANKRUPTCY LAW?

A. Bankruptcy has a wide variety of purposes, one of which is to relieve an honest debtor of certain debts, thereby providing an opportunity for a *fresh* start. A debtor must keep in mind, however, that filing for bankruptcy is not necessarily a “free ride” to dispose of debt- there are long term consequences which are discussed below. Bankruptcy also benefits creditors by allowing them an opportunity to possibly collect a portion of the debtor’s debt once bankruptcy is filed.

2. Q. WHAT ARE THE DIFFERENT TYPES OF BANKRUPTCIES?

A. The two types of bankruptcies that individual debtors are eligible for are a Chapter 7 bankruptcy and a Chapter 13 Bankruptcy under the Bankruptcy Code.

3. Q. DO I QUALIFY FOR A CHAPTER 7 BANKRUPTCY?

A: Recently Congress passed the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. This Act restricts those eligible to file for Chapter 7 bankruptcy. In order to be eligible for a Chapter 7 in North Carolina your monthly income must be less than the median income AND cannot pay \$100 per month towards your debts. The median income for North Carolina in 2009 is dependent on income and family size. Please consult the chart directly below. (Please consult the U.S. Trustee Program if you are filing bankruptcy in a different state or to ensure the median salary is still the amount listed below at www.usdoj.gov/ust).

	Family Size			
	1 Earner	2 People	3 People	4 People *
North Carolina	3087.92	4201.58	4598.50	5628.42

*Add \$575 for each individual in excess of 4

4. Q. DO I QUALIFY FOR A CHAPTER 13 BANKRUPTCY?

A: If your monthly income is above the median income for your state and you CAN afford to pay \$100 per month towards your debt then you must file for a Chapter 13 bankruptcy. In addition, one must (1) have a *regular income* (2) have unsecured debts total less than \$250,000, and (3) have secured debts total less than \$750,000. The amount of the debt is determined at the time of filing of the petition.

5. Q. SHOULD I FILE FOR A CHAPTER 7 OR 13 BANKRUPTCY?

A. A general way to differentiate between the two types of bankruptcies is to think of a Chapter 7 bankruptcy as liquidation and Chapter 13 as reorganization. In a Chapter 7 case, a trustee is appointed by the Bankruptcy Court, and the trustee is required to collect all non-exempt property from the debtor’s estate, reduce it to cash, and pay the debtor’s creditors in a prescribed manner. After this process is

complete, the debtor will receive a discharge from the Court, resulting in the debtor being “debt—free.” Thus, the term “liquidation” refers to the process of reducing a debtor’s estate to cash and distributing the proceeds to the creditors in order to satisfy any existing debt. Be advised that not all of a debtor’s property is available for liquidation, as some of the property will be exempt. Exempt property will be discussed in more detail below.

A Chapter 13 bankruptcy is designed for a debtor who has a regular source of income, and who desires to repay all or a percentage of his or her debts pursuant to a plan that the debtor proposed to the Bankruptcy Court. The court will place the debtor on a 5 year repayment plan that is based on a strict expenses and income formula. Thus, a Chapter 13 debtor usually retains possession of the property of the estate and makes payments to creditors while a Chapter 7 debtor’s property is liquidated.

6. Q. WHAT ARE EXEMPTIONS?

A. An exemption is a piece of real or personal property that one can protect or “exempt” from creditors when you file bankruptcy. Typical exemptions are as follows:

- 1. Homestead:** The debtor may exempt up to \$18,500 in real or personal property of the debtor or dependant that is used as a residence. This exemption is applied to the equity in the residence. Thus, the exemption only covers the difference between the amount of the loan or mortgage and the value of the home. For example, if the debtor owes \$10,000 on the residence, and the residence is only worth \$15,000, the debtor may only exempt \$5,000 of the property. Therefore, in most cases, when a residence is involved, and the debtor desires to keep the property, it is best to pursue a bankruptcy under Chapter 13 instead of Chapter 7 so that the debtor may keep the property and establish a payment plan.
- 2. Motor Vehicle:** You may exempt \$3,500 worth of equity in your car. This is similar to the homestead exemption, where the exemption is only applied toward the equity in the vehicle. However, one must reaffirm the loan in order to keep the vehicle.
- 3. Household Goods:** There is an exemption of up to \$5,000 for the debtor’s household goods and an additional exemption of \$1,000 for each dependant in the debtor’s home (up to 4 dependants or \$4,000). This exemption can include household furnishing and goods, musical instruments, animals, appliances, clothes or books.
- 4. Wildcard Exemption:** There is an exemption of up to \$3,500 minus any amount of the homestead exemption the debtor has used, thus if the debtor claims a homestead exemption of \$3,500 or more they receive no wildcard exemption. This exemption may be used *in any property*.
- 5. Tools of the trade:** The debtor may exempt up to \$2,000 in professional books or tools of a trade.
- 6. Life insurance:** Any unmaturred life insurance contract owned by the debtor may be exempt.
- 7. Health Aids:** Any professionally prescribed health aids such as wheelchairs, hearing aides, kidney machines etc.
- 8. Government benefits:** There is an exemption for the debtor’s right to receive social security benefits, veteran’s benefits, local public assistance, unemployed benefits or compensation, or disability or illness benefits.

9. Alimony, support or maintenance received from another

10. Pension benefits

11. Crime victim awards

12. Wrongful death awards

13. Personal injury awards: Up to a maximum of \$15,000.

7. Q. WHAT IS A DISCHARGE?

A. A discharge is when is when the debtor's debts are expunged at the conclusion of the bankruptcy case. In a Chapter 7 case, this usually occurs after 2-3 months. In a Chapter 13 case, a discharge does not occur until the end of the plan. Thus, a discharge permanently prevents creditors from attempting to collect or recover any debts that were included in the bankruptcy petition. As a general rule, all debts created to filing are discharged. However, before debts are discharged the debtor must participate in government approved financial management education program. Other exceptions are discussed directly below.

8. Q. ARE ANY DEBTS NON-DISCHARGEABLE?

A. Yes. Certain debts of an individual debtor are non-dischargeable and, therefore, survive the bankruptcy. There are numerous debts that may be non-dischargeable but the most prevent are: certain types of taxes, debt obtained by fraud, punitive damage awards, alimony, maintenance and child support, and student loans. For further assistance regarding non-dischargeable debts please contact legal assistance attorney.

9. Q. WHAT ARE THE FILING FEES?

A. A court must charge \$299 for a Chapter 7 bankruptcy case, including administrative fees and a trustee surcharge. A court must charge \$274 for a Chapter 13 bankruptcy, including administrative fees. Either Chapter 7 or 13 cases can be paid in installments to the court.

10. Q. DO I NEED AN ATTORNEY OR CAN I REPRESENT MYSELF?

A: Technically, a debtor may represent him or herself, but it is strongly discouraged. The procedure for filing a bankruptcy case is complicated and very time sensitive. The consequences of a late filing could result in the case being dismissed and potentially barring a subsequent filing for six years, or causing you to pay in order to file the case again. Therefore, it is in the debtor's best interest to hire an experienced bankruptcy attorney to handle his or her case.

11. Q. HOW MUCH ARE ATTORNEY FEES?

A: Typically attorneys charge a flat fee for most Chapter 7 and Chapter 13 cases and payment is expected to be made "up-front" before the bankruptcy petition is filed. The debtor must contact the attorney regarding the amount of fees as they will vary widely from attorney to attorney.

12. Q. WILL FILING FOR BANKRUPTCY AFFECT MY SECURITY CLEARANCE?

A: Yes. Filing for bankruptcy, under most circumstances, may prevent you from keeping or obtaining a security clearance. Pursuant to AR 380-67, the criteria for determining eligibility for a security clearance includes “excessive indebtedness, recurring financial difficulties, or unexplained affluence.” Therefore, filing for bankruptcy is one factor that may be considered in deciding whether a security clearance will be issued. For more information regarding this issue, please contact a legal assistance attorney or the security manager.

13. Q. WHAT IF I HAVE OTHER QUESTIONS:

A: Please set up an appointment to see one of our legal assistance attorneys. They are here to help you.