

## What is a discharge of debts?

The discharge is usually the final step in a Chapter 7 bankruptcy. Receiving a discharge means you're relieved from paying back any debt not secured by property. There are some debts though that can't be discharged. For example, recent income taxes, withholding taxes, debts for spousal or child support, fines owed the government and most student loans can't be discharged. Talk with a bankruptcy attorney if you have any of these debts though since there may be some exceptions that would apply to you. Before you receive your discharge you'll need to take a second "financial management" course but this one can also be taken over the phone or Internet or taken in person.

## What is a "means test?"

In 2005, Congress amended the bankruptcy laws to create a "means test," or mathematical formula, to determine eligibility for Chapter 7. It applies to people and households who earn more than the median income. The process sounds more complicated than it really is though, so don't let it stop you from consulting a bankruptcy attorney. In general, the means test looks at your gross income minus living expenses and secured debt payments. If the balance remaining is sufficient to pay back a significant portion of your unsecured debt you will not be eligible for Chapter 7 but you will still be eligible for Chapter 13 bankruptcy.

## What is "Chapter 13" bankruptcy?

Chapter 13 bankruptcy is similar to a payment plan, but unlike most payment plans, you don't have to assume you need to pay back all the debt. In Chapter 13 you pay back what you can afford to pay over a 3-5 year period. Any debt remaining at the end of that 3-5 year period is discharged, just as it would be in a Chapter 7. If you're in a Chapter 13 bankruptcy you don't need to worry about whether property is exempt or not. You'll be able to pay the value of the property through the plan rather than liquidate it or pay its value quickly as you would in a Chapter 7. Chapter 13 is also useful if you're in default on a mortgage loan. Chapter 13 allows you to cure the default over a 3-5 year period while you're making

the regular mortgage payments. This makes Chapter 13 very useful in stopping foreclosures and allows debtors to catch up on house payments. There are also ways that Chapter 13 can be used to modify loans secured by property. For example, some mortgage loans can be converted from secured debt to unsecured debt depending on the value of the property. You may also be able to reduce the amount of certain vehicle loans and discharge some debts that weren't dischargeable in a Chapter 7. Be sure to talk with a bankruptcy attorney about all of the options available in your particular situation.

Before filing Chapter 13 you'll need to take the same credit counseling discussed above and the same rules apply about an automatic stay on collection of debt being created when you filed. The post-filing financial management course will also need to be completed before the Chapter 13 plan is completed.

## What is a trustee?

After a Chapter 7 or 13 is filed a trustee will be appointed to review the documents you've filed with the court. In a Chapter 7, the trustee will decide whether there are any non-exempt assets that could be used to pay unsecured creditors. In a Chapter 13 bankruptcy, the trustee will review the plan you've proposed and decide whether you're paying all you're required to pay each month to your creditors. In most cases a meeting with your trustee will be the only time you're required to "go to court." The trustee meeting is not really court but you'll still be required to answer questions under oath and comply with any requests for information. It's rare for debtors to need to go before a judge, especially in Chapter 7.

## How does bankruptcy affect my credit?

An issue of concern to many people is the impact of bankruptcy on your ability to get future credit. It's impossible to say for sure how bankruptcy will affect you because every case is different. The bankruptcy can remain on your credit report for up to ten years. But the effect of that information will vary. Some people see a short-term decline in their credit score. Some people see an improvement in their credit score because they've wiped the debt clean. There is research showing that people who file bankruptcy are offered more credit, especially from credit card companies, than people who don't. In some cases the bankruptcy doesn't affect your ability to get credit but it affects the cost of that credit.

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*If you do not have an attorney, contact:*

**The Iowa State Bar Association  
Lawyer Referral Service**

**515-280-7429 or 800-532-1108**

**or visit our website:**

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## Bankruptcy for Consumers



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Much of what you hear about bankruptcy is wrong. Even before bankruptcy laws changed in 2005 there were misconceptions about what bankruptcy did and what impact it had on people who file. But since 2005, bankruptcy myths have become more widespread. Don't trust what you've heard about bankruptcy until you first seek advice from a bankruptcy attorney. This Iowa State Bar Association brochure is also meant to clear up the misconceptions and provide accurate information about what bankruptcy can and can't do for you.

## What are the bankruptcy myths?

Let's start with what's not true about bankruptcy for the majority of people.

- It's not true you're required to repay most debts.
- It's not true you can't discharge medical or credit card debt in bankruptcy.
- It's not true you can't keep your home or vehicles in bankruptcy.
- It's not true you can make too much money to file bankruptcy.
- It's not true you can't stop a foreclosure with bankruptcy.
- It's not true you can't file bankruptcy after a judgment has been entered.

Of course there may be times when some of those things are true because of the unique facts of the case, but the majority of people who file bankruptcy receive a discharge of all debt not secured by property they have pledged as collateral. The truth is bankruptcy provides relief to people burdened with debt. Here's how it works.

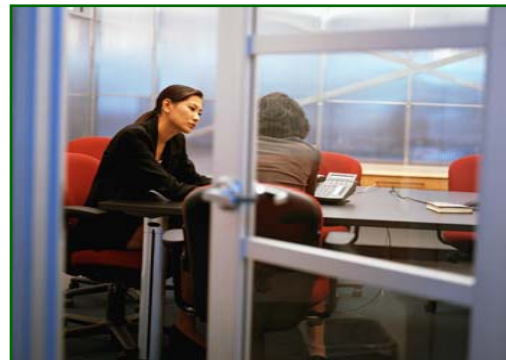
## What is "Chapter 7" bankruptcy?

Most people who file bankruptcy use what's known as "Chapter 7." In Chapter 7 bankruptcy debtors receive a discharge of most unsecured debts without having to repay creditors. If a debtor has "non-exempt" property it may have to be sold to repay debt, but much of the property owned by consumers will be exempt from creditors. Iowa's exemption

laws protect property considered essential for someone's health and well being:

- A homestead.
- A motor vehicle not greater in value than \$7,000.
- Farm equipment or tools of the trade not greater in value than \$10,000.
- Retirement accounts and pensions.
- Household goods, furniture and clothing not greater in value than \$7,000.
- Jewelry not greater in value than \$2000 (plus another exemption for wedding and engagement rings).
- A personal injury or wrongful death award.
- Whole life insurance cash value of not greater than \$10,000.
- Cash and bank deposits not greater than \$1,000.

This list doesn't include everything and there may be limitations on the exemptions in some cases so be sure to talk with a bankruptcy attorney if you're unsure of what property is exempt. If the property is exempt, it won't be affected by the bankruptcy.



## How do I become eligible?

To be eligible to file bankruptcy you must receive credit counseling from an approved credit counseling agency within 180 days before filing bankruptcy. This isn't as hard as it sounds. The counseling can be taken over the telephone or Internet, or taken in person. Your bankruptcy attorney can provide you with a list of approved agencies to contact for the counseling. The fee for this counseling generally costs around \$50.00. To receive a discharge in Chapter 7 you can't have received a discharge in a Chapter 7 filed within the prior eight years.

## Where do I begin?

A bankruptcy is started by filing several forms with the bankruptcy court. These forms contain detailed information about your financial situation, including your income and expenses, the property you own, and the debts you owe. It's very important that the information be accurate. You'll have to sign the forms agreeing that the forms are true and that you've fully disclosed everything asked for on them. If the information you provide isn't accurate or not complete, your case may be dismissed or there may be other penalties. You may also need to provide more information after the bankruptcy is filed while it's being reviewed by the trustee appointed to administer your case.

## Can I file without an attorney?

While it's possible to file bankruptcy without an attorney, it's not recommended. An experienced attorney can review your information before you file and help you determine whether it's the best choice for you and whether there are potential problems you need to worry about because of your financial situation. An attorney will also be able to help make sure all the correct forms are filed and all the deadlines are met.

## What is an automatic stay?

One of the benefits of filing bankruptcy is that an "automatic stay" immediately goes into effect. This means most collection activity against you or your property must stop. As long as the automatic stay is in effect, creditors usually can't begin or continue lawsuits, foreclosures, repossessions, wage garnishments, or even telephone calls demanding payment. Filing bankruptcy will not stop certain kinds of actions though, like criminal proceedings, paternity or child custody actions, or collection of alimony or child support. Creditors are sent notice of the bankruptcy by the court and if a creditor violates the automatic stay by continuing to try to collect the debt, you might be able to recover damages from them.

The automatic stay generally continues until your case is closed, dismissed, or your discharge is granted or denied. Creditors may seek to have the automatic stay lifted. For example, if you're surrendering a home or vehicle or aren't keeping up with the payments, the lender may request that the court allow it to take possession of the property.

## What is secured property?

Secured property is property you've pledged as collateral for a loan. For example, when you mortgage your home you give the lender "security" in the house in case you default on the loan. The same is true when you allow a lender to take a lien on your vehicle. If you want to keep the property that's been given as security for a loan there are many ways to do so. Talk with your bankruptcy attorney about reaffirming all or a portion of the debt, redeeming the property for its current market value, or just remaining current on the loan. Whichever option you choose you'll have to pay to keep the property. You can also choose to surrender the property if paying for it is too burdensome. This discharges any further debt on the property.

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