

Will I have to pay a fee to file my case? Yes. As of March 2010 the filing fee for a Chapter 7 is \$299. It costs \$274 to file a Chapter 13. Both may be filed in installments. For very low income borrowers under 150% of the federal poverty level, it may be possible to have the fee waived.

Will I lose my house? Even if I'm not behind on payments? Not necessarily. It depends on how much your house is worth. If it's worth less than what you owe, you can keep the house as long as you pay the mortgage. If it's worth more than what you owe, state law will protect up to \$51,450 of equity, \$102,900 for joint owners. It may be possible to protect more than that through a Chapter 13 repayment plan or an agreement with the creditor.

Can I keep my car? Yes, but you will have to pay the amount you owe on it.

Can I put my property in someone else's name before filing? Generally, no. Your creditors can go after property you try to hide or give away. Also, the court will not discharge your debts if it finds that you acted dishonestly. In addition you could be charged with the crime of bankruptcy fraud.

What about my credit cards? More than likely, the credit card company will cancel your card unless you specifically promise, in writing, to pay it off. Your account can be cancelled even if it has no balance.

Do I have to list all my debts? Yes.

Will I lose my retirement savings? No, most retirement plans are exempt, and you can probably keep them.

What if I can't make the payments on my Chapter 13 plan? Your plan is voluntary and you can stop it at any time. You can also ask the court to change or temporarily suspend the plan. If you do not make payments, the plan will be dismissed or changed into a Chapter 7 bankruptcy case.

Does filing bankruptcy impact the taxes that I owe? Possibly. There are a few taxes that do not have to be paid depending on the kind of tax, the age of the tax, and whether a return was filed. As a general rule, current taxes do have to be paid.

Can my boss fire me if I file bankruptcy? No, it is against the law to fire someone for filing bankruptcy.

This is not all of the information you need to know before filing for bankruptcy.

If you do not have a lawyer, the South Carolina Bar Lawyer Referral Service can give you the name of a lawyer who is willing to meet with you and advise you at a lower rate. For the name of a lawyer in your area, call the Lawyer Referral Service (800) 868-2284 statewide or (803) 799-7100 in Columbia.

If you have a very low income, your local legal services office may be able to help you. To get in touch with them, call the Legal Assistance Telephone Intake Service for a referral (888) 346-5592 statewide or (803) 744-9430 in Columbia.

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SC Applesseed fights for low income South Carolinians to overcome social, economic and legal injustice.

To find out more about SC Applesseed, go to <http://www.scijustice.org>

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SOUTH CAROLINA
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LEGAL JUSTICE CENTER

BANKRUPTCY LAW

What is Bankruptcy?



Bankruptcy is a choice for someone with a lot of debts to receive a fresh start by canceling some or all debts or giving time to pay them off. There are two types of bankruptcy for individual debtors.

Here are some words to help you understand this leaflet:

Debtor - Person that owes money for debts.

Creditor - The person or company to whom money is owed.

Discharge - To free a person from his or her duty to repay debts.

Petition - The form you will need to file with the bankruptcy court to start your case.

Collateral - Property the creditor has used to secure the loan, usually your car or house or personal property.

Secured Debt - Arrangement in which the money loaned to you is backed by something you own. For example, if you fail to pay your car loan, the lender will get its money back by taking the car. **Unsecured Debt** is not backed by property.

Trustee - The trustee in bankruptcy is chosen by the court to oversee a bankruptcy case. She is in charge of reviewing financial statements, making sure that repayment plans are fair, and recommending the dismissal of fraudulent cases.

Exempt Assets - Specific dollar amounts of items you own that will not be used to repay debts. This can be a home, car or other personal property.

Liquidation - The sale of non-exempt assets to repay debts.

Equity - Value of property beyond debts owed on it.

Types of Bankruptcy

Chapter 7 Bankruptcy frees the debtor from their debts. However, any property owned that is not exempt may be sold to repay debts. If you have secured debts, you will either have to return that property or work out some agreement to keep the property. You may only file a Chapter 7 once every 8 years. **ELIGIBILITY:** the court will compare your income to the average income in your state to see if you are actually able to pay your debts. If you have more income than allowed for by Chapter 7, you may only be able to file for a Chapter 13. **Chapter 13 Bankruptcy** lets you pay your debts over time. At minimum three years, but can be up to five. Most people in Chapter 13 will pay back only a part of the debt, even as little as 1% of the amount you owe. This type of bankruptcy is good for people who have steady monthly income. Chapter 13 bankruptcy is often a better choice for people who want to keep their homes. Also, if you have filed for Chapter 13 once before, there are strict rules about filing repeatedly. Strict rules also apply if you are trying to change your filing from Chapter 13 to Chapter 7. **A NOTE ABOUT CREDIT COUNSELING:** To be eligible for Chapter 7 or 13 you **must** complete credit counseling with a certified credit counselor. You must do this within six months of filing. The counseling will probably take about an hour and can be done over the phone or on the internet. You can get a list of certified counselors from the Bankruptcy Court.

Do I have to hire an attorney to file? No, but bankruptcy law is very technical. Hiring an attorney is the best way to learn if filing for bankruptcy is in your best interest. An attorney can also represent you in bankruptcy court and help you avoid problems.

How do I know which chapter to file? It depends. Chapter 7 may be best if you have limited income, a large amount of debt, and you are not at risk of losing property. Chapter 13 may be best if you have enough steady income to make monthly payments.

Can I discharge all my debts? It depends. Debts gained through fraud, intentionally harmful actions and dishonesty cannot be discharged. Also, certain taxes, family support, student loans, criminal fines and restitution cannot be discharged.

Will my creditors stop harassing me? YES! Once you file for bankruptcy, your creditors cannot call, write or file lawsuits against you. If the creditor does not stop, you should tell the creditor that you filed bankruptcy and that he must stop contacting you.

Will everyone know I filed bankruptcy? Your bankruptcy case is a public court record. However, it is unlikely that most people you know will go looking for that information.

Does bankruptcy affect my spouse? Generally, no. However, if you and your spouse have joint debts or own property together, bankruptcy can affect your spouse.

Is my credit ruined forever? NO! A bankruptcy is on your credit record for 10 years, but over time it will be less harmful to your credit. Beginning to make regular payments could help rebuild your credit. Landlords and credit companies have a right to look at your credit history. Most people who file a Chapter 7 begin getting credit card solicitations a year after filing.

How much of my property will I be able to keep? Each state allows a debtor to keep some money and property after bankruptcy. In SC, you are allowed to keep \$51,450 in home equity, some insurance, earnings from a lawsuit, social security, some retirement, \$5,150 out of your car, other household goods up to \$4,125, jewelry up to \$1,025, job-related assets up to \$1,550, health aids, burial plot, and many others. South Carolina also has a "wild card" exemption that allows up to \$5,150 for any property, from unused exemptions amounts for homestead, burial, motor vehicle, personal property, jewelry or tool of trade exemptions.

What about my credit cards? You cannot use them, even if they are not cancelled while in a Chapter 13.