

11.0 PERSONAL BANKRUPTCY ISSUES

11.1 Overview

The damages and dislocation caused by a disaster are expected to make some storm victims think about filing bankruptcy. Below is a summary of certain applicable sections of the Bankruptcy Code and answers to common questions asked about bankruptcy. This outline is meant to only be a bankruptcy primer.

The current Bankruptcy Code was enacted in 1978 and has been amended several times since then. The most significant amendments to the Bankruptcy Code were implemented in 2005 by the Bankruptcy Abuse Prevention and Consumer Protection Act (the “BAPCPA”). The outline below is intended to highlight certain relevant provisions of the Bankruptcy Code and certain BAPCPA’s changes to it; however, it is advisable for any storm victim considering bankruptcy to consult a qualified bankruptcy attorney. To the extent that state law is relevant, the emphasis is on South Carolina law.

11.2 Most Common Issues/Questions

- The bankruptcy process and decision to file
- Pre-requisites or other requirements for filing
- The Federal District for filing
- Types of debts discharged in bankruptcy
- Types of property exempt in bankruptcy
- How marriage, divorce, and child support affect bankruptcy
- The automatic stay

11.3 Summary of the Law

There are four different chapters of the Bankruptcy Code affecting individuals: Chapter 7, Chapter 11, Chapter 12, and Chapter 13. Of these, Chapters 7 and 13 are generally most relevant to individuals.

Chapter 7

A Chapter 7 case is sometimes called “liquidation.” In any individual bankruptcy case, certain types of property are exempt from creditors and are kept by the debtor. In a Chapter 7 case, all the debtor’s assets that aren’t subject to an exemption are surrendered and liquidated or distributed in order to pay creditors’ claims. Still, in many individual filings, due to the exemptions, the debtor will keep most or all his or her property, and once the case is

completed, most of the debtor's debts that existed prior to filing the petition (see the first paragraph of the answer to [Q. 230](#) below) are discharged.

As explained below, eligibility for Chapter 7 is subject to a "means test," which requires debtors making an income above certain levels to instead file a Chapter 13 case. This section of these materials contemplates debtors who file voluntary bankruptcy petitions. However, Chapter 7 cases may also be involuntarily instituted by a debtor's creditors. There are no limits on the amount of debt that an individual may have and still file a Chapter 7.

Possible additional details regarding the means test.

Chapter 13

A Chapter 13 case is sometimes called "reorganization." In Chapter 13, a debtor who has regular income is required to follow a "plan" that obligates the debtor to pay some or all of his or her debts over a 3-5-year period. Chapter 13 is available only to an individual with regular income whose unsecured debts are less than \$394,725 and whose secured debts (usually a mortgage) are less than \$1,184,200. [11 U.S.C. § 109\(e\)](#). (Under [11 U.S.C. § 104](#), the foregoing dollar figures are adjusted periodically; the figures provided throughout this section will be current until April 1, 2019.) A Chapter 13 case must be voluntary.

As noted above, debtors with incomes above a certain threshold (but below the thresholds in the previous paragraph) cannot file Chapter 7 cases and instead must file under Chapter 13. This requirement was implemented as part of the BAPCPA; the rationale was a belief among many of the BAPCPA's supporters that too many debtors who could afford to repay some or all of their debts were abusing Chapter 7.

Even though a Chapter 13 case requires a repayment plan that lasts several years, Chapter 13 does offer certain benefits compared with Chapter 7. For example, some homeowners who would lose their homes under a Chapter 7 case might be able to keep it under a Chapter 13 case. (With respect to Chapter 7 filings and home ownership, the "homestead" exemption is discussed in the answer to [Q. 248](#) below.) In addition, when the debtor is facing foreclosure under a mortgage, a mortgage lender generally cannot foreclose on a home during the automatic stay that goes into effect after the filing of a petition (the automatic stay is discussed below), and under a Chapter 13 case, missed payments can be cured over the term of the plan (and, in effect, the mortgage is reinstated).

Under both Chapters 7 and 13, certain debts cannot be discharged (these include alimony and child support, student loans under most circumstances, or debts relating to death or injury due to the debtor's drunk driving), but Chapter 13 contains a "super discharge" that allows for discharge of some debts, upon completion of the plan, that would not be dischargeable in a Chapter 7 case (explained below). The Chapter 13 super discharge was much more extensive prior to 2005, when it was narrowed substantially by the BAPCPA, but it still covers certain debts that cannot be discharged under Chapter 7. Chapter 13 also allows the debtor to retain possession of his or her property, even non-exempt property, while making payments under a repayment plan. However, Chapter 13 requires that creditors be paid at least as much as they

would receive under Chapter 7, which means that the amount repaid under the plan must equal or exceed the value of the retained non-exempt property.

Chapter 11

Chapter 11 is primarily used by businesses that need to reorganize in order to get out from under debt, although individuals may also file Chapter 11 if they otherwise do not qualify under the Chapter 13 debt limits. In Chapter 11, the debtor proposes a plan for paying some or all of his debts, and his creditors get a chance to vote on whether to accept or reject that plan. Chapter 11 may be the only recourse for a consumer debtor with an extremely large mortgage that causes the debtor's secured debt to exceed the limit for Chapter 13. Its procedures and requirements are significantly more expansive than in Chapter 13.

Chapter 12

Chapter 12 is for "farmers." The Code defines this to be someone who earned more than 80 percent of his gross income from farming during the year immediately preceding the year of filing for bankruptcy. [11 U.S.C. § 101\(20\), \(21\)](#). There are special provisions for farmer debtors and this will include filing a plan as well and devoting income in the future to pay creditors.

Benefits & Concerns with Filing

In general, a major benefit of bankruptcy is that an automatic stay is implemented which prevents further collection actions by creditors once the bankruptcy case is filed. [11 U.S.C. § 362](#). However, the BAPCPA added several new exceptions to the automatic stay. In addition, the BAPCPA imposed several new requirements on debtors, including (1) increased filing and disclosure requirements, (2) a requirement to complete credit counseling before filing for bankruptcy, and (3) a requirement to complete a personal financial management course before receiving a discharge of debts.

Filing bankruptcy will be reported on credit reports and may affect future credit applications. In addition, a bankruptcy filing could affect a debtor's eligibility to benefit from the protections of certain provisions under the Bankruptcy Code in the event of a future filing. Therefore, it is important to evaluate how this may affect an individual before proceeding.

Finally, a note about the dollar figures in this section. As of April 1, 2008, and each three-year interval ending on April 1 thereafter, certain dollar amounts in the Bankruptcy Code (such as figures used in the means test) are adjusted. [11 U.S.C. § 104\(a\)](#). Therefore, if you are looking at the Bankruptcy Code in a printed source or even online, be careful to note that the dollar figures you see might not be up to date, even if the source otherwise contains the current law. This section reflects current dollar figures as of September 2018 and will be current until April 1, 2019.

11.4 Relevant Courts/Agencies

Consult the website of the U.S. Bankruptcy Court for the District of South Carolina for updates and information. The court's website is <http://www.scb.uscourts.gov/>. In order to reach the Clerk of Court's Public Services Department dial 803-765-5436.

There are several forms that debtors must file as part of the bankruptcy process.

The forms can be found at <http://www.uscourts.gov/FormsAndFees/Forms/BankruptcyForms.aspx>.

A particularly useful link can be found at <http://www.uscourts.gov/FederalCourts/Bankruptcy/BankruptcyBasics.aspx>, which provides a good summary of the bankruptcy process under the BAPCPA.

Again, although debtors have this information available to them, if at all possible, they should not file bankruptcy without an attorney. Bankruptcy is highly specialized, filled with traps and pitfalls for attorneys, let alone a pro se debtor. It may be difficult for a debtor to fix any mistakes he or she makes when filing for bankruptcy pro se, and it may be harder for an attorney to correct those mistakes if the case is dismissed. The South Carolina Bankruptcy Court's website addresses how to fund a bankruptcy lawyer.

11.5 FAQs

Q. 230 What is involved in the bankruptcy process?

A bankruptcy case begins with the filing of a petition. The debtor's petition must ultimately be supported by schedules (forms in which the debtor lists all property, secured claims, unsecured claims, claimed exemptions, and other information), and a statement of financial affairs (which provides personal background information). The debtor must also file a statement of intent with respect to any secured property indicating which such property he or she will surrender, reaffirm, or redeem. If the debtor fails to carry out the statement of intent within the appropriate time, the automatic stay (explained below) may be lifted with respect to this property. [11 U.S.C. §§ 521\(a\)\(2\), 362\(h\)](#).

The BAPCPA imposed a number of new filing requirements on debtors, including copies of all payments received from an employer within 60 days before filing, an itemized statement of monthly net income, a statement disclosing anticipated increases in income or expenditures within the next 12 months, evidence of attendance from a credit counseling agency (discussed below), and a "record" of any interest in an education IRA or tuition savings program. [11 U.S.C. § 521\(a\)–\(c\)](#). The debtor must also file a certificate proving that the debtor received certain required notices. [11 U.S.C. § 521\(a\)](#). The BAPCPA also requires the debtor to provide certain tax returns to the trustee and any creditor that requests copies. [11 U.S.C. § 521\(e\), \(f\)](#). Failure to comply with filing requirements will result in dismissal. [11 U.S.C. § 521\(i\)](#).

In a Chapter 7 (liquidation) case, the Office of the United States Trustee will appoint a trustee to perform a number of duties involving the chapter 7 estate. Around a month after filing, the debtor must attend the “Section 341 meeting” of creditors conducted by the trustee to answer questions under oath regarding the debtor’s assets and schedules. Creditors are invited, though in routine bankruptcy cases do not usually appear and ask questions. The Section 341 meeting is usually pretty quick, although a debtor’s lack of compliance with requirements, incomplete information, or responses to questions may result in the hearing lasting longer than usual or being continued. After the Section 341 meeting, the trustee will gather and attempt to sell any nonexempt property. The debtor can sometimes purchase the nonexempt property from the trustee. The trustee may also file lawsuits to recover funds of the bankruptcy estate that are considered to be “preferences” and/or fraudulent transfers or to pursue other claims that a debtor may have. (“Preference” is a term referring to a debtor’s payment or transfer of assets to a creditor shortly before the bankruptcy.) The proceeds from all sales and lawsuits are eventually distributed to the creditors once all such property is administered. As a general matter, the debtor will receive a full discharge of all creditor claims a few months after the Section 341 meeting, while the administration of the bankruptcy case will continue until all assets are administered and the proceeds distributed.

In all bankruptcy cases, the debtor must attend credit counseling classes before filing and a financial management class before a discharge will be granted. [11 U.S.C. § 109\(h\)\(1\)](#). The federal government does have the authority to waive this requirement for a district if it determines that “the approved nonprofit budget and credit counseling agencies for such district are not reasonably able to provide adequate services to the additional individuals who would otherwise seek credit counseling.” [11 U.S.C. § 109\(h\)\(2\)](#). The Justice Department exercised this authority in Louisiana and in the Southern District of Mississippi after Hurricane Katrina, but there is no guarantee that any such waiver authority will be exercised in the future.

A Chapter 13 (wage earner) case begins by filing similar papers as under a Chapter 7. Unlike Chapter 7, where all assets that are not exempt are sold by a trustee, in Chapter 13 the debtor will file a repayment plan. The debtor makes payments under this plan from future income each month directly to the Chapter 13 trustee, who is an administrator for the benefit of the creditors. It is extremely important that you check your local rules or Court Chamber Guidelines for any special procedures regarding mortgage payments. These can also be found on the court’s website. Once the plan is approved by the court, the trustee pays creditors according to the terms of the plan. The debtor typically retains possession of all property during repayment. The plan typically has between a three- to five-year term (but the term may not exceed five years). The plan may provide for cure of a home mortgage, property taxes, automobile loan arrearages, and in certain instances might permit a write down of the debt to the value of the automobile as well as a reduction in interest rate, if the vehicle has been owned long enough by the debtor. The plan may also strip off a wholly unsecured second lien on a debtor’s homestead. When the debtor has repaid creditors according to the plan, the debtor will be discharged of all debts (with some exemptions), even if the plan did not pay them in full. The percentage paid to creditors will be dependent on the disposable income a debtor has, the amount of nonexempt property, and an amount calculated by the means test. The amount of personal expenses will be potentially subject to adjustment by the court if excessive, in order to permit disposable income to be allocated to creditors under the plan. The requirements for the plan can be found at [11 U.S.C. § 1321 et seq.](#)

Q. 231 Should I file for bankruptcy?

Filing bankruptcy is a strictly personal decision. The ratio of a debtor's assets to liabilities is an important factor. The type of debt a debtor has is another factor. A debtor cannot discharge all debts. So, it is very important to determine before any filing whether certain types of your debts may be "nondischargeable" in a bankruptcy proceeding (see [Q. 234](#) below). The effect bankruptcy might have on your credit rating, ability to borrow in the future, or reputation may be important. The impact bankruptcy might have on prior transfers of money or property may be a factor. The need to cure mortgage debt arrearages might be important. The desire to retain nonexempt property in the future might also be a factor. The decision as to whether and when to file a bankruptcy petition should be based upon the facts of each debtor's individual case.

Q. 232 Are there any pre-requisites to filing for bankruptcy?

Before an individual debtor can file a bankruptcy petition, he or she (or if filing as spouses, both) must complete an approved credit counseling course within 180 days before filing. [11 U.S.C. § 109\(h\)](#). Such a course must outline opportunities for credit counseling and provide budget analysis assistance. These courses can be taken online. The debtor must file a certificate of compliance. [11 U.S.C. § 521\(b\)](#). However, the law provides for a temporary waiver (30 days) of this requirement if a debtor can show "exigent circumstances" and that he or she requested credit counseling but was unable to receive it within seven days of the request. [11 U.S.C. § 109\(h\)\(3\)\(A\)\(i\), \(ii\)](#). This is rarely allowed. Case law has consistently held that a pending foreclosure IS NOT an exigent circumstance. The law also provides an exemption if such services are not available in the area where the debtor resides or if the debtor is incapacitated, disabled, or on active military duty. [11 U.S.C. § 109\(h\)\(2\), \(4\)](#). This would only be applicable in very rare circumstances, particularly given the access to online courses. As mentioned above, the Justice Department temporarily exercised authority to suspend the counseling requirement in Louisiana and in the Southern District of Mississippi after Hurricane Katrina, but there is no guarantee that any such waiver authority will be exercised in the future.

Q. 233 How does the "means test" work?

The BAPCPA introduced a new "means test" for Chapter 7 bankruptcies. [11 U.S.C. § 707\(b\)\(2\)\(A\)](#). The purpose of the test is to prevent abuse of Chapter 7. If a Debtor has primarily consumer debt (as opposed to business debt) and does not meet the "means test," a presumption of abuse arises, and a Chapter 7 case may be dismissed or converted to a Chapter 13 case. Debtors must file Official Bankruptcy Form B 122A-2, which contains the "means test" calculation. The form is available at <http://www.uscourts.gov/FormsAndFees/Forms/BankruptcyForms.aspx>.

The formula for the means test is quite complex, but in short, it works as follows:

First, the debtor's "current monthly income" must be determined. "Current monthly income" is defined as the average of the last six months income received by the debtor, excluding benefits received under the Social Security Act, payments to victims of war crimes, and payments to victims of international or domestic terrorism. [11 U.S.C. § 101\(10A\)](#). The debtor's "current

monthly income” (on an annualized basis—*i.e.*, multiplied by twelve) must then be compared to the “median family income” for his state. The median incomes for each state can be found at <http://www.justice.gov/ust/eo/bapcpa/meanstesting.htm>. As of May 1, 2018, median incomes for South Carolina based on household size are: \$45,740 (one person); \$58,348 (two people); \$61,473 (three people); \$77,564 (four people). If the debtor’s current monthly income is lower than the state median, no presumption of abuse arises. 11 U.S.C. § 707(b)(2).

If, however, the debtor’s current monthly income exceeds the state median, the “means test” applies and the debtor must calculate certain expense amounts based on IRS standards in order to determine if the debtor is eligible for a Chapter 7 bankruptcy. These allowed expenses are deducted from the current monthly income and then multiplied by sixty (in other words, the total amount over five years) to arrive at “disposable income.” If disposable income is greater than (1) 25 percent of the debtor’s nonpriority unsecured debt or \$7,700, whichever is greater, or (2) \$12,850, a presumption of abuse arises. 11 U.S.C. § 707(b)(2)(A). (Nonpriority unsecured claims include obligations such as credit card and medical-related debts.) Unless this presumption is rebutted, the case may be dismissed or converted to a Chapter 13 case.

It is worth noting that the concept of “current monthly income” also impacts certain calculations for Chapter 13 repayment plans. 11 U.S.C. § 1325(b). For debtors whose annualized “current monthly income” is less than the applicable state median but who nevertheless file a Chapter 13 bankruptcy, the repayment plan must be no longer than three years (unless there is court approval for a period of up to five years). 11 U.S.C. § 1322(d)(2). If the debtor’s “current monthly income” is equal to or greater than the applicable state median, the plan generally must be for five years. 11 U.S.C. § 1322(d)(1).

As discussed above, median incomes and expense deductions used to calculate the “means test” (as well as other dollar amounts under the Bankruptcy Code) are adjusted periodically. 11 U.S.C. § 104(a).

Q. 234 Which debts are not discharged in bankruptcy?

Certain debts are not dischargeable in bankruptcy, meaning bankruptcy does not affect them. Chapter 13 historically allowed for the discharge of more debts than Chapter 7, but the BAPCPA largely eliminated the scope of what debts can be discharged under Chapter 13.

In a Chapter 7, 11, 12, or 13 case, you cannot as a general matter obtain a discharge for, among other things: (1) domestic support obligations, including alimony, child support, and certain property settlements, (2) student loans, absent extreme hardship (if you are going to pursue this option make sure you do extensive case review; in the Fourth Circuit, which includes South Carolina, this standard is virtually impossible to meet), (3) damages resulting from driving under the influence, (4) court-ordered restitution or a criminal fine included in the sentence for conviction of a crime, (5) taxes that are generally less than three years old or, if older, arising under late or fraudulent tax returns, (6) damages for willful and malicious injury awarded for personal injury or death of another person, (7) debts incurred by fraud, (8) damages for willful and malicious injury to someone else’s person or property, (9) certain taxes and tax penalties, or debts incurred to pay non-dischargeable taxes, (10) debts that were or could have been listed in a prior case in which

you waived or were denied a discharge, (11) property settlements in a divorce, (12) condominium or cooperative housing fees and assessments (i.e., HOA dues), (13) court filing fees, or (14) damages resulting from securities fraud. 11 U.S.C. §§ 523, 1328. Note, however, that in Chapter 13 you can restructure the payments under the plan and provide some relief to immediate payment demands for these types of debts.

Notably, the BAPCPA also expanded the non-dischargeability for “luxury goods or services” and cash advances. Consumer debts to a single creditor for luxury goods or services greater than \$675 incurred within 90 days before filing are presumed non-dischargeable. 11 U.S.C. § 523(a)(2)(C)(i)(I). Likewise, cash advances greater than \$950 obtained within seventy days before filing are also presumed non-dischargeable. 11 U.S.C. § 523(a)(2)(C)(i)(II). Limitations have also been attempted concerning seeking legal advice concerning the incurrence of additional debt.

Q. 235 What happens if I leave out a debt on my petition?

Generally, if the debt is not listed on your schedules, then you may not get the benefit of the discharge and will have to repay that debt. 11 U.S.C. § 523(a)(3). However, there is some case law to suggest that the debtor may still be able to get the discharge in a no-asset Chapter 7 case, absent any fraud or intent to hinder a creditor. But if you fail to list the debt with the intent to conceal and defraud, then you may lose your discharge in its entirety and it may be considered a criminal offense.

For more information about listing debts on a bankruptcy petition, visit (note that this is a private, third-party resource and its content has not been reviewed for accuracy in preparing these materials): <http://www.nolo.com/legal-encyclopedia/leave-creditor-off-bankruptcy-mailing-matrix.html>.

Q. 236 Does a bankruptcy filing stop a wage attachment?

Yes. This is a result of the automatic stay that occurs when you file a bankruptcy petition. However, the stay only applies to debts incurred before you filed the bankruptcy petition. The automatic stay also does not apply to payments for child support or alimony.

Q. 237 What is a discharge in bankruptcy?

A “discharge” in bankruptcy means that the debtor is legally free and clear of any obligation to repay certain debts. The creditor no longer has any right to demand or collect that debt. The debtor no longer has any obligation to repay it. 11 U.S.C. § 727.

For more information on discharge in bankruptcy see <http://www.nolo.com/legal-encyclopedia/what-is-the-bankruptcy-discharge.html>.

Q. 238 How can I escape from my student loan debt?

Student loans are dischargeable only on a showing of “undue hardship.” 11 U.S.C. § 523(a)(8). The undue hardship standard is very hard to meet. Unlike practically every other legal liability,

student loans never go away—there is currently no statute of limitations for student loan debt. In fact, the BAPCPA expanded the definition of student loans to encompass all types of lenders, including non-governmental lenders. [11 U.S.C. § 523\(a\)\(8\)](#).

Q. 239 Can I repay a creditor if I want to, even after bankruptcy?

Voluntarily repaying a debt even if it would be discharged by your bankruptcy is not prohibited, but you should be very careful if you consider pursuing this option. Once a discharge is obtained, the discharge will operate as an injunction against efforts to collect the discharged debt, and creditors cannot force a debtor to pay any amounts that are discharged. In a Chapter 7 case, if you choose to do this, you must use exempt assets (assets you listed on your schedules as being exempt) or post-petition earnings (money you earned after you filed the petition), so it may be wise to wait until the bankruptcy case is closed before making such voluntary payments. See <http://www.nolo.com/legal-encyclopedia/what-debts-must-i-continue-pay-during-my-chapter-7-bankruptcy.html>.

Q. 240 What is the automatic stay?

The “automatic stay” prevents a creditor from continuing to enforce a claim against a debtor during the pendency of the bankruptcy case. Some examples of actions by a creditor that would violate the stay are these: (1) filing a new lawsuit or continuing to press a lawsuit that had already been filed, (2) sending collection letters, (3) filing a “financing statement” to perfect a security interest, (4) refusing to issue a transcript of school records, or (5) seeking to foreclose on property.

There are a number of exceptions to the automatic stay, however. The automatic stay does not apply to certain proceedings involving certain domestic matters (*i.e.*, paternity, domestic violence, and dissolution of marriage matters), the withholding of income to pay domestic support obligations (*i.e.*, child support, alimony), the restriction or suspension of a driver’s license, and certain pre-existing eviction actions. [11 U.S.C. § 362\(b\)](#). In addition, the stay now automatically terminates after thirty days if the case is filed by a debtor within one year after he or she had another bankruptcy case dismissed, unless the court finds that the new filing is in good faith. [11 U.S.C. § 362\(c\)\(3\)](#). The automatic stay also automatically terminates with regard to secured debt if a statement of intent is not filed timely (within thirty days after the filing of the petition or by the date of the Section 341 meeting, whichever is earlier). [11 U.S.C. § 521\(a\)\(2\)](#). If the debtor files a third bankruptcy within one year after two previous bankruptcy cases were dismissed, the automatic stay does not go into effect when the third filing is made. [11 U.S.C. § 362\(c\)\(4\)\(A\)\(i\)](#).

Q. 241 I’m married. Can I file by myself?

Yes, but your spouse will still be liable for any joint debts, and all community property will be included in the debtor’s bankruptcy estate. If you file together you will be able to double your exemptions. In some cases where only one spouse has debts, or one spouse has debts that are not dischargeable, then it might be advisable to have only one spouse file. If the spouses have joint debts, the fact that one spouse discharged the debt may show on the other spouse’s credit report.

For more information, refer to <http://www.nolo.com/legal-encyclopedia/filing-bankruptcy-without-spouse-property-debt.html>.

Q. 242 Where do I file if I haven't lived in the same state or district for the last six months?

Under [28 U.S.C § 1408](#), the case should be filed where the debtor has lived “for the one hundred and eighty days immediately preceding such commencement, or for a longer portion of such one-hundred-and-eighty-day period.” See also [11 U.S.C. § 522\(b\)\(3\)\(A\)](#). This means that the case should be filed in the bankruptcy district in which the debtor has lived for the greatest portion of the last six months. Typically, your case will be handled within the district in the closest division, and the bankruptcy judges regularly conduct hearings at each of the division’s courts.

In order to receive certain state exemptions in the bankruptcy, such as a homestead exemption, the debtor must have lived in South Carolina longer (see [Q. 248](#) for more details).

Q. 243 If I am going through a divorce, how will my ex-spouse filing bankruptcy affect our divorce settlement?

Alimony, maintenance, and/or support are protected from discharge. The exceptions to discharge broadly include “domestic support obligations” as well as property settlements not otherwise covered as “domestic support obligations,” including attorney’s fees. [11 U.S.C. § 523\(a\)\(5\)](#), (15). In addition, domestic support obligations are now given the first priority for payment of unsecured debt. [11 U.S.C. § 507\(a\)\(1\)\(A\)](#). And if the debtor is filing a Chapter 13 case, the debtor cannot receive confirmation of a repayment plan or discharge under Chapter 13 unless the debtor has paid all domestic support obligations coming due after the bankruptcy filing. [11 U.S.C. § 1325\(a\)\(8\)](#).

Q. 244 Will my retirement plan or IRA be protected?

Generally speaking yes, if the funds are in a qualified account. Retirement plans that are ERISA-qualified are protected under current laws in all jurisdictions and are not included as property of the bankruptcy estate.

South Carolina opted out of the federal exemptions and so South Carolina law applies. See South Carolina Code Ann. section 15-41-30. Other exemptions are found elsewhere in South Carolina code, and this is where most parties who represent themselves make mistakes.

Q. 245 What effect does bankruptcy have on child support?

Filing bankruptcy does not allow your ex-spouse to discharge past due child support obligations. Any back payments owed for child support cannot be discharged in a bankruptcy case. As noted above, the automatic stay no longer applies to actions to establish or modify domestic

support obligations or to withholding of income for payment of domestic support. [11 U.S.C. § 523\(a\)\(5\)](#), (15).

Q. 246 What about co-signers on loans?

If someone has co-signed a loan with you and you file for bankruptcy, the co-signer may have to pay your debt. Chapter 13 extends the automatic stay to co-debtors for consumer debt in most cases pending confirmation of a plan. [11 U.S.C. § 1301](#). Nevertheless, if the co-signed debt is not fully repaid by a debtor, the co-signer is still liable for the balance.

Q. 247 Will my filing bankruptcy stop a foreclosure?

Yes and no. Filing bankruptcy temporarily stalls your lender's right to foreclose (the automatic stay, discussed above), until it gets permission to go forward with the foreclosure proceedings. However, a bankruptcy filing won't stop a foreclosure forever. Eventually, a debtor in bankruptcy will still have to provide "adequate protection" to a secured creditor by making payments on the debt (and/or satisfying certain other criteria), or the automatic stay can be lifted. See [11 U.S.C. §§ 361, 362](#). Moreover, in order to keep the secured asset, the debtor will have to become current on the mortgage in a Chapter 7 case or cure the arrears in a Chapter 13 case. Note that the Chapter 13 plan cannot modify the mortgage on a loan secured by the debtor's principal residence. [11 U.S.C. § 1322\(b\)\(2\)](#).

Q. 248 What property is exempt from the trustee in a Chapter 7 case?

In a Chapter 7 filing, certain property is exempt from the debtor's estate, meaning that the trustee and the debtor's creditors cannot liquidate the property in order to cover on the debtor's assets. South Carolina opted out of the federal exemptions and so South Carolina law applies. See South Carolina Code Ann. section 15-41-30. Other exemptions are found elsewhere in South Carolina .

In order to claim a state's exemptions, the debtor must have lived in the state for at least 730 days (two years). Otherwise, the debtor can only claim the exemptions of the state in which he or she resided for the largest portion of the 180-day period preceding the last two years. [11 U.S.C. § 522\(b\)\(3\)\(A\)](#). This is intended to prevent a debtor from moving to the state to take advantage of its more generous homestead laws and then immediately filing bankruptcy.

The following exemptions are allowed under South Carolina state law (again, these are available to individuals who meets the residency requirements):

Some of the more commonly used South Carolina exemptions are set forth below. These figures are good for July 1, 2018 thru June 30, 2020:

Category	Amount Exempt	Statute	remarks
Residence	\$60,975	§15-41-30(1)	Must be used as residence, if titled in husband and wife, total \$121,950
Motor vehicle	\$6100	§15-41-30(2)	One vehicle per person
Personal property	\$4875	§15-41-30(3)	Applies to household goods, must be necessary for day to day use. I.e. for a normal homeowner, a firearm would not be household goods.
Jewelry	\$1225	§15-41-30(4)	
Cash	\$6100	§15-41-30(5)	This is available if the debtor has not claimed a residence exemption
Tools of the trade	\$1825	§15-41-30(6)	Must be related to the debtor's trade or profession.

There are other exemptions available under state law.

~#4841-3148-7866 v.1 - 000999/06600 - 11/6/2018 09:39 AM~