

14.4: BANKRUPTCY

There are occasions where individuals (and companies) find themselves in so much debt, they can no longer pay their bills and function financially. This is where bankruptcy can assist a person by relieving them of their debt burden and give them a fresh start. The first thing to understand about bankruptcy is that it is a federal legal action. There is no New York State law allowing for bankruptcy. Our Founders realized that too much debt can become a problem and set forth in the U.S. Constitution a remedy.

“The Congress shall have Power To...establish...uniform Laws on the subject of Bankruptcies throughout the United States....”
ARTICLE I, SECTION 8, CLAUSE 4

Personal bankruptcies are covered primarily under two parts of the U.S. Bankruptcy Code, Chapter 7's and Chapter 13's.

Chapter 7 Bankruptcy: Chapter 7 liquidation, commonly referred to as straight bankruptcy, is often what people mean or think of when they use or hear the term generically. In its simplest form, Chapter 7 wipes out most, but not all of your debts and, in return, you may have to surrender some of your property. Chapter 7 doesn't include a repayment plan. Your debts are simply eliminated forever.

To qualify for a Chapter 7 bankruptcy, you must first pass the means test. If you have too many means, i.e. income or money, you can't declare Chapter 7 bankruptcy. Second, you must receive required credit counseling. At some point during the six months before you file for bankruptcy, you have to receive counseling and get a certificate from a court-approved nonprofit credit counselor.

Some debts cannot be discharged and will still be owed by the debtor even after the bankruptcy. Some assets are allowed to be kept by the debtor (exemptions) like a home allowance, a motor vehicle, and personal property up to certain amounts.

Some of the non-dischargeable debts are:

- Most taxes
- Debts owed to spouse (maintenance, child support, divorce property settlements)
- Student loans with rare exceptions
- Government fines, penalties, restitution
- Personal Injury judgments arising out of a DWI accident
- Debts not listed in the Bankruptcy filing

When you file a Chapter 7 bankruptcy, almost all of your assets and property become property of the bankruptcy estate. A bankruptcy trustee is appointed and given the authority to sell your assets to pay your creditors. However, under the bankruptcy law, there are asset exemptions. The law allows a person to retain some of their assets. Exemptions allow you to keep a certain amount of your property so that you can make a fresh start after the bankruptcy. How much property a debtor can keep in a Chapter 7 bankruptcy depends on the value of the assets and where the debtor lives.

The 2019 NYS Homestead Exemption for a debtor's residence is: \$170,825 for the counties of Kings, New York, Queens, Bronx, Richmond, Nassau, Suffolk, Rockland, Westchester, and Putnam; \$142,350 for the counties of Dutchess, Albany, Columbia, Orange, Saratoga, and Ulster; \$85,400 for the remaining counties in the state.

There are also personal property exemptions. In 2019, a debtor may keep a motor vehicle in value up to \$4,550, or \$11,375 if the vehicle is equipped for a disabled person. This is doubled if a married couple both file.

As of 2019, debtors can keep most household goods and clothing, and their tools that are necessary for their employment or trade up to a total of \$11,375.

For the most part, debtors keep their retirement assets like their IRA, 401(k), Keogh, or other qualified retirement plans. Social Security, unemployment, disability, public assistance, workers' compensation, or veteran's benefits are also exempt from bankruptcy garnishment.

Chapter 13 Bankruptcy: The primary difference with a Chapter 7 and Chapter 13 is that Chapter 13 is a repayment plan. Plans can include a partial payment of debt. It freezes debt and accumulating interest but requires a plan to repay creditors that must be

approved by the bankruptcy court.

There are other special kinds of bankruptcy. Chapter 11 bankruptcy is available to individuals, but primarily is used for large business reorganizations. Chapter 12 bankruptcy is similar to a Chapter 13 bankruptcy, but for family farmers and family fishermen.

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