



# Bankruptcy

Facts and DO's

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# BANKR-U-P-TCY

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- Personal bankruptcy generally is considered the debt management option of last resort because the results are long-lasting and far-reaching. A bankruptcy stays on your credit report for 10 years, and can make it difficult to obtain credit, buy a home, get life insurance, or sometimes get a job. Still, it is a legal procedure that offers a fresh start for people who can't satisfy their debts. People who follow the bankruptcy rules receive a discharge -a court order that says they don't have to repay certain debts. The consequences of bankruptcy are significant and require careful consideration.



# Other factors to think about:



- Effective October 2005, Congress made sweeping changes to the bankruptcy laws. The net effect of these changes is to give consumers more incentive to seek bankruptcy relief under Chapter 13 rather than Chapter 7. Chapter 13 allows you, if you have a steady income, to keep property, such as a mortgaged house or car that you might otherwise lose. In Chapter 13, the court approves a repayment plan that allows you to use your future income to pay off your debts during a three-to-five-year period, rather than surrender any property. After you have made all the payments under the plan, you receive a discharge of your debts.



## Chapter 7

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- Chapter 7, known as straight bankruptcy, involves the sale of all assets that are not exempt. Exempt property may include cars, work-related tools, and basic household furnishings. Some of your property may be sold by a court-appointed official -a trustee -or turned over to your creditors. The new bankruptcy laws have changed the time period during which you can receive a discharge through Chapter 7. You now must wait eight years after receiving a discharge in Chapter 7 before you can file again under that chapter.



## Chapter 13

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- The Chapter 13 waiting period is much shorter and can be as little as two years between filings. Both types of bankruptcy may get rid of unsecured debts and stop foreclosures, repossessions, garnishments, utility shut-offs, and debt collection activities. Both also provide exemptions that allow you to keep certain assets, although exemption amounts vary by state. Personal bankruptcy usually does not erase child support, alimony, fines, taxes, and some student loan obligations. Also, unless you have an acceptable plan to catch up on your debt under Chapter 13, bankruptcy usually does not allow you to keep property when your creditor has an unpaid mortgage or security lien on it.

# Changes and Rules



- Another major change to the bankruptcy laws involves certain hurdles that you must clear before even filing for bankruptcy, no matter what the chapter. You must get credit counseling from a government approved organization within six months before you file for any bankruptcy relief. You can find a state-by-state list of government-approved organizations at [usdoj.gov/ust](http://usdoj.gov/ust). That is the website of the U.S. Trustee Program, the organization within the U.S. Department of Justice that supervises bankruptcy cases and trustees. Also, before you file a Chapter 7 bankruptcy case, you must satisfy a "means test." This test requires you to confirm that your income does not exceed a certain amount. The amount varies by state and is publicized by the: U.S. Trustee Program at [usdoj.gov/ust](http://usdoj.gov/ust). For more information, see *Before You File for Personal Bankruptcy: Information about Credit Counseling and Debtor Educa*

# Counseling and Education Requirements

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- Pre-bankruptcy credit counseling and pre-discharge debtor education may not be provided at the same time. Credit counseling must take place before you file for bankruptcy; debtor education must take place after you file.
- You must file a certificate of credit counseling completion when you file for bankruptcy, and evidence of completion of debtor education after you file for bankruptcy — but before your debts are discharged. Only credit counseling organizations and debtor education course providers that have been approved by the U.S. Trustee Program may issue these certificates. To protect against fraud, the certificates are numbered, and produced through a central automated system.

# Pre-bankruptcy Counseling



- A pre-bankruptcy counseling session with an approved credit counseling organization should include an evaluation of your personal financial situation, a discussion of alternatives to bankruptcy, and a personal budget plan. A typical counseling session should last about 60 to 90 minutes, and can take place in person, on the phone, or online. The counseling organization is required to provide the counseling for free for people who can't afford to pay. If you can't afford to pay a fee for credit counseling, ask for a fee waiver from the counseling organization before the session begins. Otherwise, you may be charged a fee for the counseling. It will generally be about \$50, depending on where you live, and the types of services you receive, among other factors. The counseling organization must discuss any fees with you before you start the counseling session.
- Once you complete the required counseling, you must get a certificate as proof. Check the U.S. Trustee's website to be sure that you receive the certificate from a counseling organization that is approved in the judicial district where you are filing bankruptcy. Credit counseling organizations may not charge an extra fee for the certificate.

# Post-Filing Debtor Education



- A debtor education course by an approved provider should include information on developing a budget, managing money, and using credit wisely. Like pre-filing counseling, debtor education can take place in person, on the phone, or online. The education session might last longer than the pre-filing counseling — about two hours — and the fee is between \$50 and \$100. As with pre-filing counseling, if you can't afford the session fee, ask the debtor education provider to waive it. Check the list of **approved debtor education providers** online or at the bankruptcy clerk's office in your district.
- Once you have completed the required debtor education course, you should receive a certificate as proof. This certificate is separate from the certificate you received after completing your pre-filing credit counseling. Check the U.S. Trustee's website to be sure that you receive the certificate from a debtor education provider that is approved in the judicial district where you filed for bankruptcy. Unless the debtor education provider told you there's a fee for the certificate before the education session begins, you can't be charged an extra fee for it.

# Approved Credit Counselors and Debtor Educators

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- The Department of Justice's U.S. Trustee Program approves organizations to provide the credit counseling and debtor education required for anyone filing for personal bankruptcy.
- Only the counselors and educators that appear on the U.S. Trustee Program's lists can advertise that they are approved to provide the required counseling and debtor education.
- By law, the U.S. Trustee Program does not operate in Alabama and North Carolina; in these states, court officials called Bankruptcy Administrators approve pre-bankruptcy credit counseling organizations and pre-discharge debtor education course providers.



# Choosing a Credit Counselor

- If you're looking for credit counseling to fulfill the bankruptcy law requirements, make sure you receive services only from approved providers for your judicial district. Check the list of **approved credit counseling providers** online or at the bankruptcy clerk's office for the district where you will file. Once you have the list of approved organizations, call several to gather information before you pick one. Some key questions to ask are:
  - What services do you offer?
  - Will you help me develop a plan for avoiding problems in the future?
  - What are your fees?
  - What if I can't afford your fees?
  - What qualifications do your counselors have? Are they accredited or certified by an outside organization? What training do they receive?
  - How do you keep information about me (including my address, phone number, and financial information) confidential and secure?
  - How are your employees paid? Are they paid more if I sign up for certain services, if I pay a fee, or if I make a contribution to your organization?



# Help and Information



- The U.S. Trustee Program promotes integrity and efficiency in the nation's bankruptcy system by enforcing bankruptcy laws and oversees private trustees. The Program has 21 regions and 95 field offices, and oversees the administration of bankruptcy in all states except Alabama and North Carolina. For more information, visit the **U.S. Trustee Program**.
- If you have concerns about approved credit counseling agencies or debtor education course providers, contact the U.S. Trustee Program by email at **USTCCDEComplaintHelp@usdoj.gov**, or send a letter to Executive Office for U.S. Trustees, Credit Counseling and Debtor Education Unit, 20 Massachusetts Avenue, N.W., Suite 8000, Washington, D.C., 20530. Include as much detail as you can, including the name of the credit counseling organization or debtor education course provider, the date of contact, and who you talked to.