

A GUIDE TO:
CONSUMER
BANKRUPTCY

BY DAVID HILBERN, ESQ

A GUIDE TO:

CONSUMER BANKRUPTCY

BY DAVID HILBERN, ESQ

© David Hilbern, Esq

Please enjoy this informative guide to consumer bankruptcy. This guide is intended to provide the reader with a foundational understanding of what typed of bankruptcies are available to individual consumers, the process of filing for bankruptcy, and what to expect during and after filing. This guide is not intended to create a legal relationship between the reader and the author; it is for informational purposes only. If you have specific questions, please call our office, we will be happy to assist you any way we can. We look forward to helping you eliminate your debt and helping you take back your financial freedom.

Hilbern Law, PLLC
10415 Greenbriar Place
Oklahoma City, OK 73159
Telephone: (405) 213-1919
www.hilbernlaw.com

TABLE OF CONTENTS

- CHAPTER 1: THE BANKRUPTCY PROCESS
- Understanding the Process
 - Determining the Type of Bankruptcy
 - Knowing if You Qualify for Bankruptcy
- CHAPTER 2: CHAPTER 7 OVERVIEW
- What Is Chapter 7 Bankruptcy?
 - How Do I Qualify for Chapter 7?
 - Knowing if You Qualify for Bankruptcy
 - How Do Attorneys Help Filing Chapter 7?
- CHAPTER 3: CHAPTER 13 OVERVIEW
- What Is Chapter 13 Bankruptcy?
 - How Do I Qualify for Chapter 13?
 - What Is the Chapter 13 Process?
 - What Does It Cost To File Chapter 13?
 - How Do Attorneys Help Filing Chapter 13?
- CHAPTER 4: LIFE AFTER BANKRUPTCY
- Improving Your Credit After Bankruptcy
 - How To Avoid and Manage Debt
 - Avoiding Debt
 - Emergency Debts
 - Spending Debts
 - Investment Debts
 - How To Budget and Manage Your Finances
 - Rebuild and Improve Your Credit
- CHAPTER 5: ANSWERS TO COMMON QUESTIONS
- CHAPTER 6: CONCLUSION

1.

THE BANKRUPTCY PROCESS

UNDERSTANDING THE PROCESS

The bankruptcy process can be complicated and confusing. It can be difficult to maneuver without the proper experience or guidance. It is essential to understand the ever-evolving bankruptcy laws of Oklahoma and how those laws can affect your case.

Understanding the process and knowing what to expect is half the battle when deciding if and what kind of bankruptcy may be right for your unique situation. The first step that is required before filing is credit counseling. This step needs to be taken within six months before being able to file in Oklahoma. Credit counseling helps individuals and families get a handle on their financial situation and understand their position clearly.

DETERMINING THE TYPE OF BANKRUPTCY

The next step is to determine what type of bankruptcy may be best. A means test must be completed, to determine if a person qualifies for Chapter 7 bankruptcy, the most common kind.

A means test is a process of analyzing income and expenses to gauge where you are compared to the median income for Oklahoma. If you fall below the median, you may be able to file for Chapter 7. If you are above the median

level, Chapter 13 may be the best option. Even if you are above the median income, you may still qualify for Chapter 7 after a closer look into your unique situation.

After a means test narrows down what kind of bankruptcy you are qualified to file, the necessary paperwork needs to be gathered. This paperwork typically includes income statements, bank transactions, expenses, debts, tax returns, lists of property and deeds, and any paperwork pertaining to loans. Other documentation may be needed depending on the case.

Taking these steps opens the door to letting us help you file. Once you file, you can decide which property you wish to have declared exempt. We can help you fight for exemptions for the assets and property you have worked so hard for.

Finally, you will have to appear before a bankruptcy trustee and give a little testimony under oath.

KNOWING IF YOU QUALIFY FOR BANKRUPTCY

There are a few indicators that your debt situation may have reached a level that warrants a bankruptcy filing. Some of those indicators may include saying yes to the following questions:

- ✱ Have you already cut back on all extra expenses and still can't pay your bills?
- ✱ Have you already asked for lower interest rates or lower payments to no avail?
- ✱ Are you under the threat of foreclosure or eviction?
- ✱ Are you behind in your bills by more than a month with little hope of catching up?

- * Have you been unemployed for a while?
- * Have you recently experienced a significant change in your life that affected your finances, such as divorce or being sued?
- * Are you being harassed by creditors or have had property repossessed?

Another indicator of your situation rests in the numbers. You should add up all of your debt and compare it to your assets' value, including accounts, pensions, and real estate. If your debt outweighs your current assets' value, you may be digging a deeper hole each month.

2.

CHAPTER 7 OVERVIEW

WHAT IS CHAPTER 7 BANKRUPTCY?

You Chapter 7 is named after a section of U.S. bankruptcy law that deals with “liquidation”, or eliminating all eligible debts while sometimes requiring the sale of nonexempt property to pay off debtors. Chapter 7 is the fastest and simplest way to eliminate most (or sometimes all) of your debts. While Chapter 13 bankruptcy reorganizes your debts and creates a manageable repayment plan to eliminate debt over 3-5 years, Chapter 7 erases all eligible debt in 3-6 months. Here are some more important facts about Chapter 7.

HOW DO I QUALIFY FOR CHAPTER 7?

To file Chapter 7, there are certain qualification that you must meet. Otherwise, you will have to file Chapter 13 bankruptcy. An experienced attorney can analyze your financial situation to determine if you qualify for Chapter 7.

Here are a few of the qualifications to file Chapter 7:

- * **PRIOR BANKRUPTCY FILINGS:** If you have filed bankruptcy previously, you must wait 8 years from your past Chapter 7 or 6 years from your past Chapter 13 before you can file a Chapter 7.

- ✳ **INCOME/MEANS TEST:** To file Chapter 7 bankruptcy, your income must be equal to or below the median income in your state. If your income is above the median income, you must pass the “means test” to file Chapter 7. The Means Test determines your ability to make repayments in a Chapter 13 repayment plan. Depending on your household size, expenses, total income, and disposable income, you may or may not be able to afford paying a Chapter 13 repayment. If you can make Chapter 13 payments, the court will not allow you to file for Chapter 7, while if you can’t afford a Chapter 13 plan, you may file a Chapter 7.
- ✳ **CREDIT COUNSELING:** Before you can file Chapter 7, you are legally required to take a simple, brief, inexpensive class on credit counseling, where you learn principles of debt and financial management.

WHAT DOES IT COST TO FILE CHAPTER 7?

You may be worried about the cost of filing Chapter 7. Remember that any money you spend filing bankruptcy will save you thousands of dollars in the long run. So while it may seem expensive, filing bankruptcy is a good financial investment on your part.

There are three main costs to filing bankruptcy:

- ✳ **FILING FEES:** This fee is standard in every state and pays for the bankruptcy court to file and administer your case. This fee may sometimes be paid in installments depending on your circumstances. As of 2021, the filing fee for a Chapter 7 is \$338.
- ✳ **ATTORNEY FEES:** Usually varies based on the complexity of your situation and where you live. The nationwide average Chapter 7 attorney fee is around \$1,500, but it is often less if your case is less complex. An attorney can review your case and

help you determine what your attorney fees will be and help you find ways to pay for them.

- ✳ **DEBTOR EDUCATION FEES:** You are required by law to take two classes, one before filing and one after filing. There are plenty of inexpensive classes offered by a variety of companies. Usually the credit counseling class costs between \$10-50 and the financial management class costs around the same amount as well.

If you are worried about paying for bankruptcy, please discuss payment options with your bankruptcy attorney, who will help you determine how you can pay for bankruptcy with your current income and budget.

HOW DO ATTORNEYS HELP FILING CHAPTER 7?

There are many benefits of hiring an attorney to help you file Chapter 7. An experienced bankruptcy attorney makes sure you eliminate as much debt as possible and get the financial fresh start you are looking for.

Here are some benefits of having an attorney on your side:

- ✳ **PEACE OF MIND:** You don't have to worry about filing alone, learning bankruptcy law, making legal mistakes, or having your case dismissed. You are more likely to have a successful bankruptcy case and have your debts eliminated with professional help.
- ✳ **FREE INITIAL CONSULTATION:** A bankruptcy attorney can help you understand your options for debt relief and choose the best option to help you get a fresh start.
- ✳ **AVOID LEGAL MISTAKES:** Individuals who try and file alone often make mistakes that can create legal and financial

difficulties, while experienced attorneys avoid making these mistakes.

- * **SUPPORT AND ADVICE:** Your attorney will help and advise you through the entire process and become your friend and ally. Your attorney will advise and help you during your required meeting with the trustee and creditors.

3.

CHAPTER 13 OVERVIEW

WHAT IS CHAPTER 13 BANKRUPTCY?

Chapter 13 bankruptcy is named after the section of U.S. bankruptcy law dealing with reorganization of debts. Essentially, with Chapter 13, you keep your property (such as home, vehicles, etc) and create a repayment plan that is approved by the court. After successfully keeping up with your debt payments in this plan over 3-5 years, all eligible debts are discharged. Here are some more important facts about Chapter 13:

- * Chapter 13 is often used to prevent foreclosures and keep your home.
- * Stops creditors from pursuing you for debt collections, lawsuits, repossessions, and more.
- * Erases credit card debt, personal loans, medical debt, and other debt.
- * Unlike Chapter 7, you do not lose any of your assets.
- * It takes 3-5 years to successfully complete a Chapter 13 repayment plan and eliminate debt.
- * You must qualify for a Chapter 13 based on having enough discretionary income to make the plan payments.

HOW DO I QUALIFY FOR CHAPTER 13?

If you do not qualify for Chapter 13, you can still file for Chapter 7. To file Chapter 13, you must meet these qualifications:

- ✱ **PRIOR FILINGS:** You must wait 4 years after filing a prior Chapter 7 bankruptcy or wait 2 years after filing a prior Chapter 13 bankruptcy.
- ✱ **DISPOSABLE INCOME:** Based on the living expenses and payments you have (such as home mortgage and vehicle payments), you may or may not have enough remaining income to be sufficient to successfully fund a debt repayment plan. An attorney can help you calculate whether or not you have sufficient disposable income for a Chapter 13 plan. If you don't have sufficient income to fund the plan, you can file for Chapter 7 bankruptcy instead.
- ✱ **DEBT AMOUNTS:** Your debts cannot be too high. As of 2020, your unsecured debt cannot exceed \$419,275. Your secured debt cannot be higher than \$1,257,850. Most people have far less debt than these amounts, so this usually isn't an issue in qualifying for Chapter 13.
- ✱ **INCOME TAXES:** You must be current on your income tax filings and must show proof that you have filed both state and federal income taxes over the last 4 years. If you are not current on your tax payments, you cannot file a Chapter 13.
- ✱ **CREDIT COUNSELING:** You are required to take an inexpensive, helpful class on financial and debt management within 6 months before filing.

WHAT IS THE CHAPTER 13 PROCESS?

Chapter 13 bankruptcy takes about 3-5 years to completely eliminate your eligible debts. Here is how it works:

- ✱ **DETERMINE ELIGIBILITY:** You should determine if you are eligible for Chapter 13. If not, you should file a Chapter 7 instead.
- ✱ **CREDIT COUNSELING:** Find a reputable non-profit credit counseling company, take the inexpensive, required class on financial management, and present your certificate of completion along with your bankruptcy paperwork. Time Between Prior Bankruptcy Filings Have Sufficient Disposable Income Debt Amounts Can't Be Too High Current on Income Tax Payments Take a Credit Counseling Class.
- ✱ **FILE PAPERWORK:** If you qualify for Chapter 13, you then fill out and submit the required paperwork to your local court. You must include accurate information about your income, secured and unsecured debts, exempt and non-exempt property, assets, living expenses, and other related financial information. In addition, you must provide records of your recent state and federal income tax returns. Filling out the required paperwork is much easier with an attorney, who can guide you through and make sure you complete it correctly.
- ✱ **AUTOMATIC STAY:** Once the court has received and processed your submitted paperwork, they immediately notify all of your creditors of your bankruptcy filing. Your creditors are then legally prevented from pursuing you further for debt collections, evictions, lawsuits, wage garnishments, foreclosures, and other related matters.

- * **CREDITORS' MEETING:** Soon after your petition is filed, you are required to attend a meeting at the courthouse with your creditors, trustee (the person in charge of overseeing your case), and your attorney. While this meeting is in the courthouse, it is not a trial. There is no judge present. During this meeting (which usually lasts less than 1 hour), the trustee and creditors review your financial paperwork for accuracy and dispute anything they find to be inaccurate. Your attorney can greatly help you to feel at ease during this part of the process as he or she can advise and help you.
- * **CONFIRMATION HEARING:** You create a repayment plan that outlines how much each of your creditors will be paid and how much you will pay each month. This plan is presented before your trustee, a judge, and your creditors in a confirmation hearing in court, where those present may dispute or modify your repayment plan (if necessary). Most often, your plan is approved in this meeting.
- * **REPAYMENT:** Over a 3-5 year period, you make consistent payments to the court. These payments go towards your creditors, trustee, and attorney (if you have an attorney). Your trustee will occasionally review your case to make sure that your plan is going smoothly.
- * **DEBTOR EDUCATION COURSE:** This legally required, inexpensive, short courses supplements the credit counseling class that you took prior to filing. You will learn various financial and budgeting principles and receive a certificate upon completion.
- * **DEBT DISCHARGE:** After you have successfully completed your repayment plan, you and your creditors will receive notice from the court that your eligible debts are now eliminated. You no longer have any legal obligation towards these debts! Some debts may remain, such as child support and student loans.

- * **FRESH START:** While a Chapter 13 bankruptcy can stay on your credit report for 7 years, you can begin taking steps to rebuild your credit and start fresh without burdensome debts.

WHAT DOES IT COST TO FILE CHAPTER 13?

If you are worried about the cost of filing Chapter 13, have no fear. Most Chapter 13 costs are spread out as a part of your 3-5 year repayment plan. So usually you don't have to pay much to start the process.

There are 3 main costs to filing Chapter 13 bankruptcy:

- * **FILING FEES:** This fee is standard across all states and goes towards paying for administrative and filing services from the court and the trustee. As of 2021, the filing fee for a Chapter 13 is \$313.
- * **ATTORNEY FEES:** Attorney fees are higher for Chapter 13 cases than for Chapter 7 cases due to more extensive work required over a longer period of time. All fees are publicly disclosed and can be modified by the court if they are determined to be unreasonable. These fees vary from area to area, but the court usually sets a benchmark fee standard of what they feel is appropriate to charge. Attorneys that stray too far from that fee will have their fees and case reviewed by the court and often times be forced to lower their fees to be closer to the set standard. Unlike Chapter 7 attorney fees, Chapter 13 attorney fees are often included (at least in part) as part of your repayment plan, meaning you can spread out your attorney fees over a 3-5 year period. You can call your local court or our bankruptcy attorney to learn about Chapter 13 standard attorney fees in your area.

- * **EDUCATION FEES:** You will need to pay for two classes on credit counseling (before filing) and debtor education (after filing). Both classes teach principles about wise financial management, debt, and budgeting.

HOW DO ATTORNEYS HELP FILING CHAPTER 13?

Unless you are very familiar with bankruptcy law, hiring an attorney to help you file Chapter 13 is most likely your best option. Chapter 13 cases last over several years and can sometimes become complex. Having an attorney by your side through the process will help you feel at ease that your Chapter 13 case will be successful.

Like Chapter 7, here are some benefits of having an attorney on your side:

- * **PROTECTION FROM CREDITOR HARASSMENT:** Any creditors that continue to contact you after you've filed bankruptcy are doing so illegally. Your attorney can see to it that these creditors are forced to comply with the law and stop harassing you.
- * **PEACE OF MIND:** You don't have to worry about filing alone, learning bankruptcy law, making legal mistakes, or having your case dismissed. You are more likely to have a successful bankruptcy case and have your debts eliminated with professional help.
- * **FREE INITIAL CONSULTATION:** A bankruptcy attorney can help you understand your options for debt relief and choose the best option to help you get a fresh start.
- * **AVOID LEGAL MISTAKES:** Individuals who try and file alone often make mistakes that can create legal and financial difficulties, while experienced attorneys avoid making these mistakes.

* **CONSTANT SUPPORT AND ADVICE:** Your attorney will help and advise you through the entire Chapter 13 process and become your friend and ally. Your attorney will advise and help you during your required meeting with the trustee and creditors, as well as through other Chapter 13 meetings in court.

4.

LIFE AFTER BANKRUPTCY

IMPROVING YOUR CREDIT AFTER BANKRUPTCY

Bankruptcy can be a financial lifesaver. However, while filing bankruptcy eliminates most or all of your debts and takes huge stress away, it usually doesn't completely solve your financial challenges. Many people struggle to make effective financial decisions after filing bankruptcy, which brings continued stress and frustration and sometimes the need to file bankruptcy again years later.

The good news is that there are many things you can do to improve your finances and credit score after bankruptcy. Within a few years, you can rebuild and improve your financial situation and have a more fulfilling future.

HOW TO AVOID AND MANAGE DEBT

While bankruptcy eliminates most types of debt, it doesn't eliminate all of them, nor does it prevent you from incurring future debts. To avoid these burdens, you should consistently strive to eliminate any remaining debts you may have that aren't discharged by bankruptcy and avoid unnecessary debts.

If bankruptcy eliminates all of your debts, great! If not, your top priority should be to pay off any remaining debts that you may have, such as student loans, unpaid taxes, and child

support. Be aggressive in paying off your debts. The faster you pay them off, the sooner you'll have peace of mind. It is also helpful to track how much debt you have with a spreadsheet.

If you have multiple debt sources, start by paying off the highest interest rate debts first or by paying off the smallest balance first. If possible, take a second job (temporarily) or work more hours at your current job to create extra income to pay off your debts. Try cutting your living expenses, eliminate luxury items, and live frugally to create extra income to pay off debts. Delay purchases on items that aren't immediate needs. Automate debt payments to ensure that you are paying off your debts consistently. Involve others in helping you stay motivated and accountable in your debt-reduction goals. Consider negotiating with your creditors (e.g. the IRS) to settle your debts.

AVOIDING DEBT

In addition to paying off any remaining debts, you should avoid adding additional debt. There are three general types of debt: emergency debts, spending debts, and investment debts. Each type of debt has different strategies you can use to manage them effectively.

EMERGENCY DEBTS

Emergency debts are unexpected and often occur from misfortunes or from immediate needs, such as medical/dental expenses, unemployment/underemployment, divorce, a death in the family, natural disasters, and injury/accidents. While you can't completely control whether or not these things happen, you can take precautionary measures to avoid them or reduce their negative impact if they do happen. You can reduce or eliminate your risk against these types of debt by doing the following:

* Medical/dental debt: Buy good health and dental insurance, eat healthy food, and exercise regularly. This reduces your chances of needing costly medical procedures.

* Family death: Buy quality life insurance that will meet your income needs and funeral costs should a family member pass away.

* Injury/Accidents: Buy auto and disability insurance to reduce any medical bills that you may have from car wrecks or work accidents.

* Divorce/Unemployment/Underemployment: Save up to 6-8 months of living expenses in a bank account to use in case you lose your job or get a divorce.

* Natural disasters: If your area is prone to disasters such as hurricanes, tornadoes, or floods, buy supplemental disaster insurance and home insurance to protect yourself financially.

SPENDING DEBTS

You are 100% in control of how you spend your money. However, many people get into financial trouble by not paying close enough attention to their spending habits or by not showing self-control. Spending debts are most often incurred through: car loans or leases, shopping purchases on electronics, jewelry, video games, etc., and excessive credit card use.

Spending debts can be reduced or eliminated entirely by following these tips:

* Focus on your needs, not your wants.

* Save up for large purchases instead of buying on credit.

- * Avoid impulse purchases on material items like clothing, gadgets, restaurants, travel, etc.
- * Limit the amount of credit cards you use to 2-3.
- * Pay with cash or debit cards to avoid overusing credit cards.
- * Avoid payday and short-term loans to avoid paying high interest rates.
- * Buy a car that is within your means.
- * Live in a home or apartment with a mortgage or rent payment that is well within your means.

INVESTMENT DEBTS

Investment debts help you improve your income potential and standard of living. These debts include home mortgages, student loans, and business loans. These types of debts are not necessarily bad, but need to be used with caution and wisdom. Consider these strategies to manage investment debts effectively:

- * Home mortgages: Just because you qualify for a certain value of home doesn't mean you should buy it. Keep your home mortgage reasonable and live within your means.
- * Student loans: Carefully determine what career goals you have and what type of skills and education is needed to help you achieve them. If formal education is required, consider attending an affordable university, community college, tech school, or online university. Try saving up for college, working during school, or spreading out classes over a longer period of time to avoid taking out as many (if any) student loans.

* Business loans: All aspiring entrepreneurs should carefully assess their business skills, create a business plan, and analyze potential risks and rewards of their business endeavor before seeking business loans. Alternatively, you can obtain funding without accruing debt by seeking equity funding from angel investors.

HOW TO BUDGET AND MANAGE YOUR FINANCES

Managing finances can often times feel like a burden that we easily set out-of-sight, out-of-mind. However, by taking control of your finances with effective habits and practices, you will have more financial freedom and a more fulfilling life. From books to online articles, and from financial experts to budgeting software and apps, there are plenty of resources that you can use to manage your finances efficiently.

Effective financial management is mainly a matter of self-control. If you can develop the attitude of using your money wisely, finances become easy to manage.

Having a written budget, whether on paper, a spreadsheet, or software tool, can help you stay disciplined and track your financial progress. You should set goals and keep record of your income, expenses, discretionary income, and savings. Pay attention to spending on charitable donations, food, rent, utilities, telephones, tv, cable, gas, insurance, vehicle maintenance, home maintenance, clothing, debt payments, dates, vacations, and medical expenses. As you stick to your budget, you will avoid wasted spending, avoid debt, and meet your financial goals. Allocate planning time to periodically set goals, track progress, and find ways to improve your financial management. To assist you with your budgeting, you can use a free Microsoft Excel budgeting template, or plenty of other free tools and apps available online.

Determining what things in your life are necessities (utilities, food, clothing) and what items are luxuries (eating at restaurants, cable TV, etc) will help you find ways to save. As you find ways to spend less, you will free up funds to be used towards more important things. For example, you may sell your fancy car and buy a used one, move to a more modest home, eat at home instead of at restaurants, use coupons and wait for sales, or buy more affordable clothing. Every dollar saved adds up and gives you more financial freedom.

After you are using your income as efficiently as possible, you can try and find ways to increase your income by working towards a pay raise, working additional hours, or finding a better-paying job. To make yourself more valuable in the workforce, seek out skills (Ex: web design, home repair), knowledge (Ex: Spanish, accounting), and formal education (Ex: nursing degree). Set aside time when you aren't working to learn from Internet resources and websites, online classes, night classes, and internships. The more you know and the more skills you have, the more you can raise your income

Saving helps you prepare for potentially difficult times and to avoid using credit for purchases. While it requires patience to save, saving can help you avoid many financial troubles. Saving helps you prepare for unexpected expenses (Ex: your car breaks down), unemployment, and unexpected opportunities (Ex: invest in a new business). Should bad times come, without sufficient savings you will be forced into overusing credit cards and loans to survive. Also, saving allows you to spend less on items that you want to purchase. Appliances, cars, and even homes cost less in the long run if you have money saved up to pay entirely with cash or pay a large down payment. The money you save by not having to pay as much interest makes saving worth the effort

Saving money will only create wealth for you if you invest it wisely. Once your money is being spent as efficiently as possible, it is time to make your money work for you. Instead

of paying interest, you can get paid interest by investing in various opportunities. Investments are primarily long-term tools, meaning they are fit for saving for retirement, children's educations, or starting a business.

Use the Internet to research various investment strategies (such as bonds, stocks, mutual funds, etc) and choose the investments that will help you reach your goals. You will find satisfaction watching your money grow and compound automatically over time through successful investments.

REBUILD AND IMPROVE YOUR CREDIT

Once you've got a firm grasp on your debts and your finances, you should also consider how to improve your credit score, which is a measurement of your credit history and trustworthiness to current and potential lenders. Since bankruptcy negatively affects your credit score for up to 7-10 years, it takes active effort on your part to improve your credit history and score. Why should you care about how good your credit score is? The higher your credit score, the more trustworthy and responsible lenders see you. This means you will be more likely to qualify for loans on homes, vehicles, education, businesses at lower interest rates.

First, you need to know what your credit score is to know how much improvement you need to make. You can look it up at any time for free through Credit Karma. Credit scores range from around 300-900. Generally, a score of 619 and below is considered poor, a score of 720 and above is seen as excellent, while in between 619-720 is considered fair to good. Your credit score is measured based on the timeliness of your payments, the amount of debt in relation to the amount of credit you have, the length of your credit history, the type of credit you have, and the amount of credit recently obtained, and amount of recent searches for credit. As you work to improve your credit history, you should periodically

track your credit score to see the impact of your financial decisions on your credit.

After bankruptcy, you likely won't qualify for many loans, such as mortgages, car loans, or business loans. The best place to start applying for credit is through a credit card. If you don't qualify for a standard credit card, try applying for a secured credit card or a store card (Ex: Home Depot, Wal Mart, etc). Don't apply too frequently for credit, as this will hurt your credit score. If you are rejected from a credit application, pay attention to the reasons the lender gives you for why you were rejected.

Once you have a credit card, use it wisely over time to improve your credit score. Only spend on things you can afford. Make every payment on time and schedule automatic payments if possible to avoid paying late. Pay more than the minimum payment each month, and ideally try and pay off the entire balance. If you can't pay off the entire balance, keep the balance as low as possible. Avoid having too many credit cards and keeping a high balance on cards that you do have. Ideally, use less than 30% of your max credit limit to avoid harming your score. Finally, keep cards active for long periods of time to improve your credit history.

Over time, your credit history will improve as you maintain healthy amounts of credit and successfully make payments over time. As a result, when you apply for credit for vehicles, homes, businesses, and education, you will be more likely to qualify and receive lower interest rates. Your credit limit will raise as well.

5.

ANSWERS TO COMMON QUESTIONS

GENERAL Q&A

WHAT IS BANKRUPTCY?

Bankruptcy is the legal process by which people or corporations, who cannot repay their debts to creditors, may seek relief from some or all of their debts through the use of certain laws. This guide will focus on individual filers. Generally, an individual filer initiates their bankruptcy by filing specific court papers with the local bankruptcy court. Did you know – the word *bankruptcy* is derived from Italian *banca rotta*, meaning “broken bench.”

WHAT IS THE INTENT OF BANKRUPTCY?

The intent of Congress in enacting the Bankruptcy Code of Laws is to: (a) Provide a legal solution to reduce or eliminate debt, (b) control the actions that creditors can take against a debtor and (c) provide a fresh financial start to the debtor.

WHAT DOES IT MEAN TO DECLARE BANKRUPTCY?

To file bankruptcy and declare bankruptcy is the same thing. Bankruptcy is a legal process created to eliminate debt and provide a fresh start to debtors. The process formally and legally begins with the official filing of the necessary paperwork with the local bankruptcy court. Once filed a case number will be generated. At this time the debtor has

formally *declared bankruptcy*. They have put their creditors, the court and the world on notice that they have filed, declared or lodged a bankruptcy filing. According to the dictionary, declare means “to make known formally.” Thus, when filed, a bankruptcy is “known” and the debtor has declared bankruptcy.

WHO CREATED THE BANKRUPTCY LAWS?

In the United States, bankruptcy is under Federal Jurisdiction. This means that Congress create bankruptcy law. It also means that bankruptcy laws are uniform throughout the United States. In other words, but for certain nuances, a bankruptcy filed in Oklahoma, California, or Florida will have the same process and use the same laws.

DO STATES HAVE ANY SAY?

Yes, when it comes to choosing exemptions for certain property and assets belonging to the debtor, we look to State law. *Exemptions* protect some property and assets from being taken from the debtor in bankruptcy.

HOMESTEAD EXAMPLE

An example of an exemption is the *Homestead Exemption*. Here the States provide protection for a debtor’s primary residence that has equity. Each State provides an amount of equity the debtor can keep in their primary residence when they file for bankruptcy. This number will vary depending on the State and County where the property is located. Thus, while bankruptcy law is Federal, the States have their exemptions. In Oklahoma, the homestead exemption is unlimited.

DO FEDERAL EXEMPTIONS EXIST?

Federal Law has its own set of exemptions. They can be more or less favorable to a debtor, depending on their assets. Some States allow a debtor to choose between State or Federal exemptions, while others do not. Oklahoma is an example of a State that has opted out of the federal

exemptions and has written their own exemptions for the residents of Oklahoma.

DOES BANKRUPTCY GIVE A FRESH START?

Bankruptcy law was created specifically to provide American's with an opportunity to start over financially. In fact, The Supreme Court of the United States (The highest court in the land) stated in 1934 that the fundamental goal of the federal bankruptcy laws is *to give debtors a financial "fresh start"* from burdensome debts. The Court stated "[I]t gives to the honest but unfortunate debtor...a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt. You will find this seminal writing in the case *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934). Therefore, the right to a fresh financial start is both in the Constitution and as interpreted by the Supreme Court of the United States.

WHO MAY FILE BANKRUPTCY?

Individuals who reside, have a place of business, or own property in the United States may file for bankruptcy. One may even file with just a Green Card.

WHAT ARE THE DIFFERENT CHAPTERS IN BANKRUPTCY?

Chapter 7 is the liquidation chapter of the Bankruptcy Code. Chapter 7 cases are commonly referred to as "straight bankruptcy" or "liquidation" cases, and may be filed by an individual, corporation, or a partnership. Under chapter 7, a trustee is appointed to collect and sell all property that is not exempt and to use any proceeds to pay creditors. In the case of an individual, the debtor is allowed to claim certain property exempt. In exchange for this, the debtor gets a discharge, which means that the debtor does not have to pay certain types of debts.

Chapter 9 is only for municipalities and governmental units, such as schools, water districts, and so on.

Chapter 11 is the reorganization chapter available to businesses and individuals who have substantial assets and/

or income to restructure and repay their debts. Creditors vote on whether to accept or reject a plan of reorganization which must be approved by the court. Due to the expense and complexity of chapter 11, the decision to file a chapter 11 petition should be made in consultation with an attorney.

Chapter 12 offers bankruptcy relief to those who qualify as family farmers or family fishermen.

Chapter 13 generally permits individuals to keep their property by repaying creditors out of their future income. Each chapter 13 debtor proposes a repayment plan which must be approved by the court. The amounts set forth in the plan must be paid to the chapter 13 trustee who distributes the funds for a percentage fee. Many debts that cannot be discharged can still be paid over time in a chapter 13 plan. After completion of payments under the plan, chapter 13 debtors receive a discharge of most debts.

WHAT HAPPENS AFTER MY CASE IS FILED?

After a bankruptcy is filed with the court, an imaginary protective bubble is created. We refer to this bubble as the *Bankruptcy Stay*. It prevents creditors from contacting or otherwise dealing with the debtor during their bankruptcy, allowing the debtor to focus on their filing free of harassment. Also, after filing the court will auto generate and assign a trustee and judge to the case. In a typical Chapter 7 filing, you will never meet the judge.

WHEN DOES A BANKRUPTCY END?

A discharge is the final part of the bankruptcy. It is an order generated by the bankruptcy court and sent to the debtor and the debtor's attorney. It acknowledges that the bankruptcy has been approved. This means that the debts listed in the filing have been discharged. The discharge releases the debtor from ever having to pay those listed debts. It also acts as a permanent court order, prohibiting the former creditors from all collection activity on the discharged debts.

WHEN CAN I EXPECT A DISCHARGE?

Receipt of a discharge depends on the type of bankruptcy filed. The most common forms of personal bankruptcy are Chapter 7 and Chapter 13. In chapter 7 (liquidation), the court usually issues a discharge 3 to 4 months after the filing. In Chapter 13 (consolidation/reorganization), it is issued after 2 to 5 years.

HOW WILL MY CREDITORS KNOW ABOUT MY DISCHARGE

The laws of bankruptcy state that the clerk of the bankruptcy court must mail a copy of the order of discharge to all former creditors. The debtor and the debtor's attorney also receive copies of the discharge order.

WHAT IS A DISCHARGE?

It's a notice, which is simply a copy of the final order of discharge. The notice informs former creditors generally that the debts once owed to them by the debtor have been discharged (eliminated) and that they should not attempt any further collection. They are even cautioned in the discharge notice that continuing collection efforts could subject them to punishment for violating the discharge order.

HOW LONG DOES A BANKRUPTCY STAY ON MY CREDIT REPORTS?

A Chapter 7 bankruptcy will remain on your credit for ten (10) years.

A Chapter 13 bankruptcy will remain on your credit for seven (7) years.

HOW LONG DOES A LATE CHARGE REMAIN ON MY CREDIT REPORT?

A late payment, also known as a delinquency, will typically fall off your credit reports seven (7) years from the original delinquency date. For instance: If you had a 30-day late payment reported in June 2020 and bring the account

current in July 2020, the late payment would drop off your reports in June 2027.

WHAT FEES ARE INVOLVED IN A TYPICAL CHAPTER 7 BANKRUPTCY

- **Attorney Fee** – The cost your attorney will charge you. This fee varies from lawyer to lawyer, however there are certain guidelines and caps that if breached, will be questioned by the Trustee. We will discuss the Trustee below.
- **Court Filing Fee** – This fee is statutory and fixed across the country. This fee pays for an Index Number and for the court to mail notice of your bankruptcy filing to all your creditors as listed on your creditor matrix. (The Matrix is simply a list or labels of all creditors by name and address)
- **Credit Reports** – it is imperative that a credit report is obtained from each of the 3 main credit reporting agencies so as to make certain you are finding ALL your creditors. Remember what is listed on Experian for example may not be listed on the Transunion report.
- **Tax Filings** – one is not able to file a bankruptcy of any sort until all tax filings are up to date. This requirement is not as onerous as it sounds. It simply means that there cannot be years where tax filings are still outstanding.
- **Credit Counseling & Debtors Education Courses** – The bankruptcy code requires that a debtor who files for bankruptcy take a Credit Counseling Course prior to filing – a course done online that teaches budgeting and best financial practices – and a Debtors Education Course after filing – again this course can be completed online. Both of these courses are offered by dozens of formal providers and usually a package for both is about \$20. These courses are integral to the debtor's filing and mandatory in order to file a bankruptcy and receive a discharge.

WHAT IS A TRUSTEE

A Bankruptcy Trustee is usually a bankruptcy lawyer in private practice but who also works per diem (on a case by case basis) for the bankruptcy court. However, the trustee does not have to be a lawyer and many trustees are in fact accountants and the like.

WILL I KNOW WHICH TRUSTEE IS ASSIGNED TO MY CASE?

A trustee is an appointed position and for each court there is a pool of rotating trustees depending on how busy that court is. A debtor has no control over which trustee they will be assigned in their bankruptcy filing. The electronic filing of the bankruptcy case will auto generate the Trustee, Judge and Case Number assigned to the debtors case.

WHAT DOES A TRUSTEE DO?

The main job of the trustee is to manage the debtor's estate after they file for bankruptcy. This includes making certain the debtor qualifies for the bankruptcy type (7 or 13) they have filed for. The Trustee is also charged with confirming that a debtor is not hiding or failed to list, certain assets. In a Chapter 13 bankruptcy which entails a financial reorganization and consolidation, the Trustee is the person to receive the debtor's monthly payment. The 13 payment plan last over the course of 2 to 5 years. The Trustee will also review the bankruptcy paperwork (Petition and Schedules) for accuracy and adherence to the law.

WHO PROTECTS THE CLAIMS AND INTERESTS OF THE CREDITORS?

A Trustee is also tasked with representing the creditor's interests in finding any assets that are not exempt and to distribute such assets amongst the creditors in accordance with their standing based on the law. For example, a priority claim will usurp a non-priority claim, like a mortgage versus credit card lender. Based on this legal hierarchy of creditors,

the trustee is also tasked with distributing assets based upon the legal standing of each creditor as designated by the law.

WHAT IS A 341 CREDITORS MEETING?

Another duty of the trustee is to hold a meeting with the debtor and their attorney usually 3 to 4 weeks after the case is filed. This meeting is legally referred to as the 341 Creditors Meeting. This is a meeting for any creditors to object to the bankruptcy should they feel there is an abuse or illegality in the filing.

AM I REQUIRED TO GO TO THE 341 MEETING?

It is unusual for a creditor to show up to a 341 meeting. However, the debtor and their attorney are required to show up. Missing the 341 meeting is grounds for the debtor's bankruptcy to be dismissed immediately. It is strongly recommended that you keep the date of this meeting, as adjourning is frowned upon by the trustee and is very difficult to obtain.

WHAT ELSE HAPPENS AT THE 341 MEETING?

Even if no creditors show up to this meeting, the debtor will be sworn in by the trustee and then the Trustee will begin recording the meeting and commence asking the debtor several questions about their bankruptcy filing. *Examples of actual Trustee questions are listed below.*

WILL I BE ALONE AT THE 341 MEETING?

Hilbern Law, PLLC not only attends all 341 Meetings with our clients, but also actively prepares them in advance of the 341 Meeting.

HOW LONG IS THE 341 MEETING & WHERE IS IT HELD?

The actual meeting itself is about 5 to 10 minutes and is held in a room in the District Court building. A 341 Meeting is never held in the courtroom, and barring creditor objections or suspected fraud, a debtor should not meet the Judge when a Chapter 7 is filed. Hilbern Law, PLLC, will have a dedicated

and experienced attorney sitting beside you through the entirety of the 341 Meeting.

WHAT DO I NEED TO BRING TO THE 341 MEETING?

It is vital that a debtor bring their actual Social Security Card as well as an official government issued picture identification such as a driver's license to the 341 Meeting. Without both forms of identification the bankruptcy case may be dismissed by the Trustee.

SAMPLE TRUSTE QUESTIONS AT 341 MEETING

- “Please provide your picture ID and Social Security Card for Review.”
- “Debtor, did you sign the petition, schedules, statements and related documents and is the signature your own?”
- “Did you read the petition, schedules, statements and related documents before signing them?”
- Are you personally familiar with the information contained in the petition, schedules, statements and related documents?”
- To the best of your knowledge, is the information contained in the petition, schedules, statements and related documents true and correct?”
- “Are there any errors to bring to my attention at this time?”
- “Are all of your assets listed in the bankruptcy filing?”
- “Have you listed all your creditors on the schedules?”
- “Have you previously filed bankruptcy?”
- “What is the address of your current employer?”
- “Is the copy of your tax return you provided, a true and accurate copy and your most recent filed tax return?”
- “Do you have any domestic support obligation?”
- “Have you read the Bankruptcy Information Sheet provided by the United States Trustee?”

- “Do you own or have an interest in any real estate?”
- “When you filed your bankruptcy, did you have any cash on hand?”
- “Do you have the right to file a claim against anyone?”
- “Do you own any mineral interests?”

WHAT DEBTS CANNOT BE DISCHARGED IN BANKRUPTCY

Irrespective of what chapter of bankruptcy you file, certain debts are not dischargeable. The most common types of non-dischargeable debts are: certain tax claims, debts the debtor did not include in their bankruptcy filing, debts for child support or alimony, debts for willful and malicious injuries to another person or property, debts to governmental agencies, debts for most government funded educational loans, debts for overpayment of government benefits, debts for personal injury caused by the debtor’s operation of a motor vehicle while intoxicated.

DOES A DEBTOR HAVE A RIGHT TO A DISCHARGE IN CHAPTER 7?

A debtor does not have an absolute right to a discharge. An objection to the debtor’s discharge may be filed by a creditor, by the trustee in the case, or by the U.S. trustee. The U.S. Trustee is a representative of the Department of Justice. Examples of reasons to object include, the debtors failure to provide requested tax documents; failure to complete the course on personal financial management; the transfer or concealment of property with intent to hinder, delay, or defraud creditors; destruction or concealment of financial books or records; perjury and other fraudulent acts; failure to account for the loss of assets. In the event there is an objection to the debtor’s discharge, the matter may likely end up in front of the appointed Judge.

DOES A DEBTOR HAVE A RIGHT TO A DISCHARGE IN CHAPTER 13?

Unlike Chapter 7, creditors in a Chapter 13 do not have

standing to object to the discharge of chapter 13 debtor. The time for a Chapter 13 plan to be “attacked” by a creditor is regarding the proposed repayment plan, whereby a creditor can object to a proposed repayment plan. However, they cannot object to the Chapter 13 discharge, once the plan is accepted by the Court and the debtor made all payments in full and on time.

CAN A DISCHARGE BE REVOKED ONCE OBTAINED?

It is worth noting that in both a Chapter 7 and Chapter 13 bankruptcy a discharge can be revoked if later it comes out that there was fraud in the bankruptcy filing. A critical part of any bankruptcy filing, irrespective of chapter, is total and complete financial disclosure. Anything less and a debtor could be liable for fraud, which can translate into a felony.

MAY A DEBTOR PAY A DISCHARGED DEBT AFTER BANKRUPTCY?

A debtor who has already received a discharge may nonetheless voluntarily repay any discharged debt, even though it can no longer be legally enforced. An example of such occurrence is a debtor who agrees to repay a debt already discharged, because it is owed to a family member.

CAN A CREDITOR CONTACT ME AFTER DISCHARGE?

The discharge constitutes a permanent legal injunction prohibiting creditors from taking any action designed to collect a discharged debt. A creditor can be sanctioned by the court for violating the discharge. The normal sanction for violating the discharge injunction is civil contempt, which is often punishable by a fine.

IS MY EMPLOYMENT SAFE IF I FILE FOR BANKRUPTCY?

Yes, it is illegal for an employer to discriminate or retaliate against a debtor who was in bankruptcy or who got certain debts discharged in bankruptcy. This applies to both the private sector as well as governmental jobs.

WHAT IS A DEBT SETTLEMENT ATTORNEY?

A Debt Settlement Lawyer is an attorney specializing in helping a client settle their debts. It usually involves credit that is unsecured – think credit cards or medical bills or for a business, a Merchant Cash Advance Loan or Hard Money Loan. The Debt Settlement Attorney will negotiate with these creditors on behalf of the client, to settle the debt for less than what is owed. These settlements can often settle for 30% to 70% less than what is actually owed.

CAN I FILE BANKRUPTCY WITHOUT AN ATTORNEY?

Current law permits individuals to file their own cases and to represent their own interests in bankruptcy proceedings. However, it may not be wise to do so. Any bankruptcy case can become a complicated matter requiring both knowledge of the law and experience before the court to successfully complete. In order to fill out the forms required to file a case, you will need to know (among other things) the differences between the types of bankruptcies which can be filed, the types of exemptions permitted and the differences between secured and unsecured debts.

As your case progresses, many other areas of law and knowledge may be involved. Decisions made without an understanding of bankruptcy law can have serious consequences including the loss of property and legal rights.

CAN I FILE FOR A CORPORATION WITHOUT AN ATTORNEY?

Only an attorney may file a bankruptcy for a partnership or corporation. Even if an individual is the sole shareholder or the managing partner, that person may not represent the corporation or partnership before the bankruptcy court.

WHY HIRE AN ATTORNEY OVER A DEBT SETTLEMENT COMPANY?

While a debt settlement company may try to settle unsecured debt like credit cards, they cannot, by law, deal with secured

debt like a mortgage or a financed car. Moreover, a creditor is not obligated to speak with the debt settlement company and thus what they can do is very limited. In order to deal with ALL your debt in one comprehensive fashion, you will want to work with a bankruptcy lawyer. Only an attorney can include both secured and unsecured debt in any settlement and only an attorney holds the trump card of bankruptcy.

6.

CONCLUSION

Bankruptcy is a great first step towards eliminating most or all of your debt. However, you should actively take steps towards improving your credit and finances to fully restore your financial stability. By avoiding and managing debt, budgeting and managing finances efficiently, and rebuilding your credit, you will create a strong financial foundation that will help you avoid bankruptcy in the future and live a more fulfilling life.

For any other answers to your questions, find us online at www.hilbernlaw.com or call us at (405) 213-1919. We will be happy to assist you anyway we can.

DISCLAIMER

By visiting www.hilbernlaw.com, you are not entering into an attorney-client relationship with Hilbern Law, PLLC or any attorney within the law firm. The information you obtain at this site or in this ebook is not, nor is it intended to be, legal advice. You should consult an attorney for individual advice regarding your own situation.

Requesting a legal consultation or case review does not form an attorney-client relationship and you are not considered a client until a retainer agreement has been signed and your case has been accepted. The contents of the website and this ebook are provided for informational

purposes only and do not constitute legal advice. Prior results do not guarantee or predict a similar outcome with respect to any future matter.

We recommend that you read and familiarize yourself with the information on the website and this ebook, but highly encourage you to contact us regarding your own situation so that we may give you information on an individual basis. We are experienced Oklahoma City bankruptcy attorneys. Please feel free to contact us.