

# Bankruptcy Basics

Have you ever wondered if bankruptcy might be a good option for you to regain your financial footing? Do you have questions about how bankruptcy works in Idaho? This video guides you through some of the information you need to know in order to make an informed decision about whether bankruptcy is right for you. This video is informational only and should not be considered legal advice and does not create an attorney-client relationship. If you are low income and would like more information about bankruptcy, please contact your local Idaho Legal Aid office.

If you need to file Chapter 7 bankruptcy, you may be able to file your bankruptcy through Upsolve. Upsolve is a national non-profit that helps people file for Chapter 7 bankruptcy at no cost. Read about whether Chapter 7 bankruptcy is right for you and visit Upsolve's web site, [upsolve.org](https://upsolve.org), to see if you qualify.

The information contained in this section is provided for informational purposes and does not substitute for legal advice. The laws and court rules pertaining to a bankruptcy proceeding are highly technical and complex. Following instructions and using the forms provided to you will not guarantee a favorable result. It is strongly recommended that you talk to a lawyer about your bankruptcy before proceeding on your own.

Contact the Idaho State Bar Lawyer Referral Service (208-334-4500, <http://isb.idaho.gov>) for the name of an attorney in your area who will provide an initial half hour consultation for no more than \$35.

 [Bankruptcy Basics \(PDF\)](#)

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## **Bankruptcy Overview**

Bankruptcy is a legal procedure for dealing with debt problems of individuals and businesses. The primary purposes of bankruptcy are:

- to give the person filing for bankruptcy a "fresh start" by relieving the debtor of most debts by giving him or her a "discharge," and
- to repay creditors (the persons who the debtor owes money) in an orderly manner to the extent that the debtor has property available for payment.

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## **Types of Bankruptcy for Individuals**

There are five basic types of bankruptcy cases provided for under the Bankruptcy Code, but only two are relevant for ordinary individuals. Chapter 7 bankruptcy requires the sale of a person's property with the proceeds to be used to pay that person's debts. This is called "liquidation." Chapter 13 bankruptcy provides for the adjustment of debts. In this type of bankruptcy, a debtor is allowed to keep property and pay debts over a period of time, usually three to five years.

***The information on this site is limited to individual bankruptcy only. If you are seeking information about filing a bankruptcy for a business, you MUST contact an attorney.***

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## **Credit Counseling**

Bankruptcy begins with the debtor filing a petition with the bankruptcy court. However, prior to filing this petition, the debtor must obtain credit counseling from an approved provider. The credit counseling must occur within 180 days prior to filing a petition. Once credit counseling has been obtained, the debtor must file a statement of compliance and a certificate of credit counseling furnished by the provider. Failure to obtain credit counseling may result in dismissal of the case. To assist bankruptcy filers, the U.S. Trustee Program has created a list of approved credit counseling providers, located at [http://www.justice.gov/ust/eo/bapcpa/ccde/cc\\_approved.htm](http://www.justice.gov/ust/eo/bapcpa/ccde/cc_approved.htm).

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## **Collect Your Financial Information**

The debtor's first step is to collect his or her financial information, including bank statements, tax returns, pay stubs, creditor statements, and a list of the debtor's assets (real property, investments, personal possessions, etc.).

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## **Decide What Type of Bankruptcy You Will File**

Once information has been gathered, the debtor must decide what type of bankruptcy to file. Individuals generally will file either Chapter 7 or Chapter 13 bankruptcy. These types of bankruptcies are discussed in more detail later. To determine whether to file under Chapter 7 or Chapter 13 bankruptcy, the debtor must complete the “means test.” The means test looks at the debtor’s income and expenses to determine if a person’s income is low enough to file a Chapter 7 bankruptcy. If the debtor’s income is lower than a certain threshold, the debtor qualifies to file a Chapter 7 bankruptcy. If the debtor’s income is higher than a certain threshold, the debtor may not file under Chapter 7, but can still file a Chapter 13 bankruptcy. The “means test” is discussed in more detail under the section “Chapter 7 Bankruptcy.”

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## **Prepare a Petition**

After the debtor decides what type of bankruptcy to file, he or she may begin filling out the petition. To prepare a [bankruptcy petition](#) the debtor must have accurate and up-to-date information on finances. The bankruptcy court will want to see information on a person’s income, debts and assets. In addition to the petition, a debtor will also need to file forms known as “schedules” that discuss the debtor’s assets, liabilities, and creditors in more detail. The petition, schedules, and other forms can be found at

<http://www.uscourts.gov/FormsAndFees/Forms/BankruptcyForms.aspx>.

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## **Bankruptcy Stay**

Once the petition is filed, an injunction, called a “stay,” immediately goes into effect stopping the debtor’s creditors from taking any further action relating to the collection of debts. This means that the creditor will not be able to garnish wages, bring a lawsuit, or make a telephone call demanding payment without first getting approval from the bankruptcy court.

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## **Section 341 Meeting**

Following the filing of the petition, the debtor is required to attend a meeting with a court-appointed trustee. The purpose of this meeting, a [341 meeting](#), is to ensure that the debtor accurately represented assets and liabilities in the petition. The trustee will put the debtor under oath and ask questions about the debtor's income and property. Creditors are also allowed to attend and may ask the debtor questions.

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## **Financial Management Course**

Following the 341 meeting, the debtor is required to attend a court-approved course in financial management. The court may refuse to discharge debts if the debtor fails to complete this course. This requirement is found in the U.S. Bankruptcy Code at [11 U.S.C. § 727](#) for Chapter 7 and [11 U.S.C. § 1328](#) for Chapter 13. A list of approved financial management courses can be found at [http://www.justice.gov/ust/eo/bapcpa/ccde/de\\_approved.htm](http://www.justice.gov/ust/eo/bapcpa/ccde/de_approved.htm). If the court determines that no financial course exists near the debtor, the court may waive this requirement. However, if the court does not waive this requirement and the debtor fails to complete the course, the court may refuse to discharge the debtor's debts.

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## **Next Step - Chapter 7**

The next step in the bankruptcy process often depends on the type of bankruptcy the debtor filed. In a Chapter 7 bankruptcy proceeding, the debtor must surrender any non-exempt assets to a trustee appointed by the court. Exempt property, which does not need to be surrendered, is discussed under "Chapter 7 Bankruptcy." Once the trustee has received all of the non-exempt property from the debtor, the trustee will then sell all the non-exempt property for cash and distribute the cash to the debtor's creditors. This process is called "liquidation." Any debts not satisfied through the liquidation process are usually discharged within a few months, meaning the debtor is no longer responsible for paying those debts.

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## **Next Step - Chapter 13**

In a Chapter 13 bankruptcy proceeding, the debtor normally keeps all nonexempt assets and creates a plan to repay debts within a three-to-five year time period. The nonexempt assets can be retained so long as the total of the payments made under the plan exceed the value of the nonexempt assets. The repayment plan must be approved by the court. Once approved, the debtor makes payments to a court appointed trustee, who distributes the payments to the creditors. Once the payment plan is completed, the debtor may receive a discharge of other outstanding debts.

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## **Adversary Proceedings**

In both Chapters 7 and 13 bankruptcy cases litigation may be started to determine the true owners of property, the value of property, how much debt is owed, and whether the debtor should be discharged from certain debts. These cases are called “adversary proceedings.” Litigation in bankruptcy court is similar to litigation in civil cases; there may be discovery, pretrial proceedings, settlement efforts, and a trial.

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## **Chapter 7 Bankruptcy**

In a Chapter 7 bankruptcy proceeding, the debtor must surrender any non-exempt assets to a trustee appointed by the court. The trustee will then sell all the non-exempt property for cash and distribute the cash to the debtor’s creditors. This process is called “liquidation.” Any debts not satisfied through the liquidation process are usually discharged within a few months, meaning the debtor is no longer responsible for paying those debts.

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## **Filing for Chapter 7 Bankruptcy**

### **Who can file for Bankruptcy?**

Any individual can file a Chapter 7 bankruptcy case. However, Chapter 7 bankruptcy was created for individuals who truly cannot pay their debts. Therefore, to receive relief under Chapter 7, an individual must qualify under the “means test.” The means test is a method to determine if an individual’s income is too high for Chapter 7 bankruptcy. An individual can qualify under the means test if his or her current

monthly income is less than the median monthly income for a household of his or her size in Idaho. If an individual's current monthly income is higher than the median monthly income, that individual may still qualify under the means test if his or her disposable income is less than a certain amount. Disposable income is the amount of money a person has remaining after he or she pays all allowed monthly expenses—such as housing, utilities, and food. The [means test calculator](#) may assist an individual in determining if he or she qualifies under the means test for Chapter 7 bankruptcy.

An individual must complete [Form 22A](#) in order to determine if he or she qualifies for Chapter 7 bankruptcy under the means test. If an individual does not qualify for Chapter 7 bankruptcy under the means tests, the court will either dismiss the Chapter 7 bankruptcy petition or permit the debtor to change the petition to Chapter 13 bankruptcy. Chapter 13 bankruptcy is available for those who do not qualify under Chapter 7 bankruptcy.

Filing a bankruptcy case without using an attorney, known as filing “pro se,” is extremely difficult. ***It is very important that a bankruptcy case be filed and handled correctly. Bankruptcy has long-term financial and legal consequences. Hiring an attorney is strongly recommended.***

Corporations and partnership must have an attorney to file a bankruptcy case.

### **How do I file for bankruptcy?**

First, individual debtors are generally required to obtain credit counseling from an approved provider within 180 days before filing a case, and to file a statement of compliance and a certificate of credit counseling furnished by the provider. Failure to do so may result in dismissal of the case. To assist bankruptcy filers, the U.S. Trustee Program has created a list of approved credit counseling providers, located at [http://www.justice.gov/ust/eo/bapcpa/ccde/cc\\_approved.htm](http://www.justice.gov/ust/eo/bapcpa/ccde/cc_approved.htm).

After completing credit counseling, a bankruptcy case begins with a debtor obtaining and filling out the [Official Bankruptcy Forms](#). The official bankruptcy forms contain a [petition](#) and several forms known as “schedules.” The petition informs the court of the debtors desire to file for bankruptcy. The schedules contain information about the debtor's assets, liabilities, income, expenditures, and other necessary financial information. The debtor must fill out these forms and file them with the court. The forms should be filed with the bankruptcy court serving the area where the



individual resides or where the business debtor has its principal place of business.

In order to complete the Official Bankruptcy Forms, a debtor will need the following information:

1. A list of all creditors and the amount and nature of their claims;
2. The source, amount, and frequency of the debtor's income;
3. A list of all of the debtor's property; and
4. A detailed list of the debtor's monthly living expenses, *i.e.*, food, clothing, shelter, utilities, taxes, transportation, medicine, etc.

In addition to completing the Official Bankruptcy Forms, the debtor will also need to pay a filing fee. The amount of the filing fee can be found at <http://www.uscourts.gov/services-forms/fees/bankruptcy-court-miscellaneous-fee-schedule>. The fee should be paid to the clerk of the court upon filing or may, with the court's permission, be paid by individual debtors in installments.

Once the petition is filed, a trustee is appointed to administer the case. The trustee receives all of the debtor's non-exempt property from the debtor. The trustee then sells the non-exempt property and distributes the funds to the debtor's creditors.

Generally, the debtor will receive a discharge from most debts within three months after the Chapter 7 petition has been filed.

\*Please visit the U.S. Courts website at

<http://www.uscourts.gov/FederalCourts/Bankruptcy/BankruptcyBasics/Chapter7.aspx>, as bankruptcy information changes on a regular basis.

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## **Exempt Property**

Certain categories of property are exempt from creditors when a debtor files for Chapter 7 bankruptcy. Exempt property does not need to be surrendered to the trustee, but instead the debtor is able to keep possession of exempt property. In order to claim these exemptions, the debtor must list all his or her protected assets on [Bankruptcy Schedule C](#). Failure to list exempt properties on this schedule could result in the properties being liquidated. The following categories are exempt:

For items with an asterisk, an individual can only claim these exemptions to the extent reasonably necessary for support of family and if not commingled with other funds.

### **Homestead:**

Real property or mobile home. The exemption amount shall not exceed \$100,000. [Idaho Code 55-1001](#). [Idaho Code 55-1002](#). [Idaho Code 55-1003](#).

### **Insurance:**

Annuity contract proceeds up to the amount of \$1,250 per month. [Idaho Code 41-1836](#).

Benefits received by reason of disability or illness. [Idaho Code 11-604\(1\)\(a\)](#).\*

Benefits received by a Fraternal Benefit Society. [Idaho Code 41-3218](#).

Life insurance proceeds. [Idaho Code 41-1833](#). [Idaho Code 41-1835](#).

Life insurance proceeds if the beneficiary is a spouse or dependent. [Idaho Code 11-604\(1\)\(d\)](#).\*

An unmatured life insurance contract other than a credit life insurance contract. [Idaho Code 11-605\(9\)](#).

An aggregate interest, not to exceed \$5,000, in any accrued dividend or interest under, or loan value of, an unmatured life insurance contract under which the insured is the individual or a person of whom the individual is a dependent. [Idaho Code 11-605\(10\)](#).

Medical, surgical, or hospital care benefits. [Idaho Code 11-603\(5\)](#).

SSI (Supplemental Security Insurance Benefits). [Idaho Code 11-603\(3\)](#).

### **Pensions:**

Any money received as a pension from the government of the U.S. [Idaho Code 11-604A](#).

Pension: stock bonus, profit sharing annuity, or similar plans. [Idaho Code 11-604A](#).

Public Employee's Benefits including Federal Civil Service Retirement, Idaho Retirement and Disability. [Idaho Code 11-604A](#).

Firefighters retirement. [Idaho Code 72-1422](#).

Police Officers retirement. [Idaho Code 50-1517](#).

Public Employees retirement. [Idaho Code 59-1317](#).

### **Personal Property:**

Appliances, furnishings, books, clothing, pets, musical instruments, family portraits, and sentimental heirlooms up to the amount of \$750 per item and not to exceed \$7,500 total. [Idaho Code 11-605\(1\)](#).

Burial plots. [Idaho Code 11-603\(1\)](#).

Crops cultivated by debtor on maximum of 50 acres and not to exceed \$1,000 value. This also includes water rights up to 160 inches. [Idaho Code 11-605\(7\)](#).

Food and water together with storage containers and shelves, sufficient for twelve months. [Idaho Code 11-605\(4\)](#).

Health aids necessary to work or sustain health. [Idaho Code 11-603\(2\)](#).

Jewelry up to \$1,000. [Idaho Code 11-605\(2\)](#).

Motor vehicle up to \$7,000. [Idaho Code 11-605\(3\)](#).

One firearm up to \$750. [Idaho Code 11-605\(8\)](#).

Proceeds for damaged exempt property for 3 months after proceeds received. [Idaho Code 11-606](#).

Wrongful death recoveries needed for support. [Idaho Code 11-604\(1\)\(c\)](#).\*

\$800 in any tangible personal property. [Idaho Code 11-605\(11\)](#).

### **Public Benefits:**

Federal, state, and local public assistance. [Idaho Code 11-603\(4\)](#).

Public assistance. [Idaho Code 56-223](#).

Social security. [Idaho Code 11-603\(3\)](#).

Unemployment compensation. [Idaho Code 11-603\(6\)](#).

Veteran's benefits. [Idaho Code 11-603\(3\)](#).

Worker's compensation. [Idaho Code 72-802](#).

### **Tools of Trade:**

Arms, uniforms and accouterments that is required for the use of an individual as a peace officer, national guard or military personnel. [Idaho Code 11-605\(6\)](#).

Implements, book, business equipment, and tools of the trade not exceeding a total of \$2,500. [Idaho Code 11-605\(3\)](#).

### **Wages:**

Minimum of 75% of earned but not paid wages and pension payments. [Idaho Code 11-207](#). [Idaho Code 11-605\(12\)](#).

### **Miscellaneous:**

Alimony. [Idaho Code 11-604\(1\)\(b\)](#).\*

Child Support. [Idaho Code 11-604\(1\)\(b\)](#).\*

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## **The Discharge Process in Chapter 7 Bankruptcy**

### **What is a bankruptcy discharge?**

A bankruptcy discharge essentially releases the debtor from personal liability of all debts included in the bankruptcy. The discharge is a permanent court order establishing that the debtor is no longer legally obligated to pay debts that have been released in bankruptcy. Once a discharge is complete, the court clerk sends copies of the order to the debtor and all creditors. The order states that no collection attempts, legal actions or communications, such as phone calls and letters, can be made to the debtor regarding the debts.

### **Are all of my debts discharged?**

Not all debts are discharged. The Bankruptcy Code identifies 19 categories of debt that are nondischargeable. These categories can be found in [section 523\(a\)](#), and include debts such as debts received by false pretenses, debts for spousal support and child support, certain types of tax claims, and others. Most of these debts do not require a judicial order declaring them to be nondischargeable. Some examples of these are most taxes, divorce related debts and restitution. Three of the categories, however, do require a judge to determine whether or not they are dischargeable in an adversary proceeding. Debts listed in section 523(a) will survive a discharge meaning the debtor will still be obligated to pay those obligations after the bankruptcy proceeding..

### **When can I get my debts discharged?**

In a Chapter 7 case, a debtor receives a discharge once the time has expired for a creditor to file a complaint objecting to the discharge. A creditor must file a complaint within 60 days following the first date set for the 341 meeting. This is usually about three months after the bankruptcy petition is filed.

### **Do I automatically get my debts discharged?**

The debtor usually receives a discharge automatically. However, there are certain instances when a discharge is not automatic. The first instance is when the debtor fails to complete an instructional course concerning financial management. The failure to complete a financial management course could lead the court to deny a debtor a discharge. If there are no adequate education programs available, the court may waive this requirement. To assist bankruptcy filers, the U.S. Trustee Program has created a list of approved financial management courses, located at [http://www.justice.gov/ust/eo/bapcpa/ccde/de\\_approved.htm](http://www.justice.gov/ust/eo/bapcpa/ccde/de_approved.htm).

A discharge can also be denied if a creditor objects to a discharge by filing a complaint in bankruptcy court before the deadline. This begins a lawsuit known as an “adversary proceeding.” This lawsuit proceeds much like a civil lawsuit, with discovery, pretrial motions, and a trial. The objecting party has the burden of proving all the facts of the objection.

Other reasons why a debtor may not qualify for an automatic discharge are described in section [727\(a\)](#) of the Bankruptcy Code. This includes defrauding creditors, destroying records, violating earlier court orders, and others.

## **How do I get my debts discharged?**

The bankruptcy court will mail a copy of the order of discharge to the creditors, trustee, debtor, and the debtor's attorney. This order informs the creditors that the debts owed to them have been discharged and that they should not seek to further collect those debts. The order also warns the creditors that any failure to comply with the order could lead to punishment for contempt.

## **Are my spouse's debts discharged when I file for bankruptcy?**

In a community property state, such as Idaho, debts incurred by either spouse during the marriage are generally considered community debts. If only one spouse files for bankruptcy in Idaho, the eligible community debts of both spouses may be discharged.

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## **Filing for Chapter 7 Bankruptcy with a Spouse**

Idaho follows "community property" rules. This means that generally property acquired by one spouse during the marriage is owned by both spouses. Similarly, most debts incurred by one spouse during the marriage are owed by both spouses. Therefore, if only one spouse files for bankruptcy in Idaho, all of the eligible community debts of both spouses could be discharged but all of the community property must be addressed in the bankruptcy proceeding.

## **Do I Owe My Spouse's Debt?**

In Idaho, generally debts acquired by one spouse in a marriage are owed by the "community" (the couple), even if only one spouse signed the paperwork for the debt.

After a legal separation or divorce, a debt is generally owed only by the spouse who incurred the debt, unless the debt was incurred for family necessities, to maintain jointly owned assets (e.g. to make repairs to a home still owned by both spouses), or if the spouses keep a joint account.

## **Can a creditor take my spouse's property?**

Once a bankruptcy is filed an automatic stay is entered which prevents a debtor from trying to collect the debt.

In Idaho, before the bankruptcy is filed creditors of one spouse can go after the assets and income of the married couple to recover joint debts, regardless of whose name is on the title document to the asset. For example, a business owner's name may not be on the title to her spouse's boat, but in most community property states, that would not stop a creditor from suing in court to take the boat to pay off the business owner's debts, assuming the boat was purchased with community funds.

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## Chapter 13 Bankruptcy

In a Chapter 13 bankruptcy proceeding, the debtor keeps all assets and creates a plan to repay debts within a three-to-five year time period. The repayment plan must be approved by the court. Once approved, the debtor makes payments to a court-appointed trustee, who distributes the payments to the creditors. Once the payment plan is completed, the debtor may receive a discharge of other outstanding debts.

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### Filing for Chapter 13 Bankruptcy

#### Who can file for Bankruptcy?

Any individual can file a Chapter 13 bankruptcy case. Filing a bankruptcy case without using an attorney, known as filing “pro se,” is extremely difficult. ***It is very important that a bankruptcy case be filed and handled correctly. Bankruptcy has long-term financial and legal consequences. Hiring an attorney is strongly recommended.***

Corporations and partnership must have an attorney to file a bankruptcy case.

#### How do I file for Chapter 13 bankruptcy?

First, individual debtors are generally required to obtain credit counseling from an approved provider within 180 days before filing a case, and to file a statement of compliance and a certificate of credit counseling furnished by the provider. Failure to

do so may result in dismissal of the case. To assist bankruptcy filers, the U.S. Trustee Program has created a list of approved credit counseling providers, located at [http://www.justice.gov/ust/eo/bapcpa/ccde/cc\\_approved.htm](http://www.justice.gov/ust/eo/bapcpa/ccde/cc_approved.htm).

After completing credit counseling, a bankruptcy case begins with a debtor obtaining and filling out the [Official Bankruptcy Forms](#). The official bankruptcy forms contain a [petition](#) and several forms known as “schedules.” The petition informs the court of the debtor’s desire to file for bankruptcy. The schedules contain information about the debtor’s assets, liabilities, income, expenditures, and other necessary financial information. The debtor must fill out these forms and file them with the court. The forms should be filed with the bankruptcy court serving the area where the individual resides or where the business debtor has its principal place of business. In addition to completing the Official Bankruptcy Forms, the debtor will also need to pay a filing fee. The amount of the filing fee can be found at <http://www.uscourts.gov/services-forms/fees/bankruptcy-court-miscellaneous-fee-schedule>. The fee should be paid to the clerk of the court upon filing or may, with the court’s permission, be paid by individual debtors in installments.

In order to complete the Official Bankruptcy Forms, a debtor will need the following information:

1. A list of all creditors and the amount and nature of their claims;
2. The source, amount, and frequency of the debtor’s income;
3. A list of all of the debtor’s property; and
4. A detailed list of the debtor’s monthly living expenses, *i.e.*, food, clothing, shelter, utilities, taxes, transportation, medicine, etc.

In Chapter 13 bankruptcy, the debtor will also need to file a repayment plan with the court. Often, the repayment plan is created with the help of a credit counselor during credit counseling. The court must approve of the repayment plan in order to proceed with Chapter 13 bankruptcy. Generally, the court will conduct a confirmation hearing to determine whether the repayment plan is feasible and in accordance with the bankruptcy code. Once the repayment plan is confirmed, the debtor will need to start making payments according to the plan.

After the petition is filed, a trustee is appointed who will administer the case. The trustee collects payments from the debtor, according to the repayment plan, and distributes the payments to the creditors.



Once the repayment plan has been completed, the court may then grant a discharge of the debtor's debts.

\*Please visit the U.S. Courts website at <http://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/chapter-13-bankruptcy-basics>, as bankruptcy information changes on a regular basis.

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## **The Discharge Process in Chapter 13 Bankruptcy**

### **What is a bankruptcy discharge?**

A bankruptcy discharge essentially releases the debtor from personal liability of all debts included in the bankruptcy. The discharge is a permanent court order establishing that the debtor is no longer legally obligated to pay debts that have been released in bankruptcy. Once a discharge is complete, the court clerk sends copies of the order to the debtor and all creditors. The order states that no collection attempts, legal actions or communications, such as phone calls and letters, can be made to the debtor regarding the debts.

Generally, discharges in Chapter 13 bankruptcy are only allowed for debts that the debtor has completed payments under the repayment plan. However, in limited situation a debtor may receive a hardship discharge, which discharges a debt even if the debtor has not satisfied the payments under the repayment plan. A hardship discharge may occur if circumstances arise that prevents the debtor from complying with the repayment plan. A hardship discharge is only available if three requirements are met: 1) the debtors failure to complete the repayment plan is out of the debtors control and is not the fault of the debtor; 2) the creditors have received at least as much as they would have in a Chapter 7 bankruptcy case; and 3) modification of the repayment plan is not possible.

### **Are all of my debts discharged?**

Generally, all debts provided for in the repayment plan are discharged upon completion of the plan. However, some debts are not dischargeable in a Chapter 13 bankruptcy case. These debts are long-term obligations such as a home mortgage, debts for child support, debts for certain taxes, debts for most government funded or guaranteed educational loans or benefit overpayments, debts relating to the

death or physical injury of another while driving intoxicated or under the influence of drugs, and debts for restitution or a criminal fine included in a sentence on the debtors conviction of a crime.

### **When can I get my debts discharged?**

In a Chapter 13 case, a discharge is generally granted once the debtor has completed all payments under the repayment plan. Repayment plans usually occur over a three-to-five year time period. Therefore, a discharge in a Chapter 13 case typically occurs after three-to-five years.

### **Do I automatically get my debts discharged?**

The debtor usually receives a discharge once the debtor has completed all payments under the repayment plan. However, there are certain instances when a discharge will not be granted. The first instance is when the debtor fails to complete an instructional course concerning financial management. The failure to complete a financial management course could lead the court to deny a debtor a discharge. If there are no adequate education programs available, the court may waive this requirement. To assist bankruptcy filers, the U.S. Trustee Program has created a list of approved financial management courses, located at [http://www.justice.gov/ust/eo/bapcpa/ccde/de\\_approved.htm](http://www.justice.gov/ust/eo/bapcpa/ccde/de_approved.htm).

As long as the debtor completed payments according to the repayment plan, the debtor will receive a discharge. Creditors can object to confirmation of the Debtor's proposed plan.

Other reasons why a debtor may not qualify for a discharge are described in section [727\(a\)](#) of the Bankruptcy Code. This includes defrauding creditors, destroying records, violating earlier court orders, and others.

### **How do I get my debts discharged?**

The bankruptcy court will mail a copy of the order of discharge to the creditors, trustee, debtor, and the debtor's attorney. This order informs the creditors that the debts owed to them have been discharged and that they should not seek to further collect those debts. The order also warns the creditors that any failure to comply with the order could lead to punishment for contempt.

### **Are my spouse's debts discharged when I file for bankruptcy?**

In a community property state, such as Idaho, debts incurred by either spouse during the marriage are generally considered community debts. If only one spouse files for bankruptcy in Idaho, the eligible community debts of both spouses may be discharged.

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## **Filing for Chapter 13 Bankruptcy with a Spouse**

Idaho follows “community property” rules. This means that generally property acquired by one spouse during the marriage is owned by both spouses. Similarly, most debts incurred by one spouse during the marriage are owed by both spouses. Therefore, if only one spouse files for bankruptcy in Idaho, all of the eligible community debts of both spouses could be discharged.

## **Do I Owe My Spouse’s Debt?**

In Idaho, generally debts acquired by one spouse in a marriage are owed by the “community” (the couple), even if only one spouse signed the paperwork for the debt.

After a legal separation or divorce, a debt is generally owed only by the spouse who incurred the debt, unless the debt was incurred for family necessities, to maintain jointly owned assets (e.g. to make repairs to a home still owned by both parties), or if the spouses keep a joint account.

## **Can a creditor take my spouse’s property?**

Once a bankruptcy is filed an automatic stay is entered which prevents a debtor from trying to collect the debt.

In Idaho, before the bankruptcy is filed creditors of one spouse can go after the assets and income of the married couple to recover joint debts, regardless of whose name is on the title document to the asset. For example, a business owner's name may not be on the title to her spouse's boat, but in most community property states, that would not stop a creditor from suing in court to take the boat to pay off the business owner's debts, assuming the boat was purchased with community funds.

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## **Frequently Asked Questions**

### **Can I file for Chapter 7 bankruptcy a second time?**

A debtor may not file for Chapter 7 bankruptcy if the debtor previously received a discharge in a Chapter 7 or Chapter 11 case filed within eight years.

A debtor may not file for Chapter 7 bankruptcy if the debtor previously received a discharge in a Chapter 12 or Chapter 13 filed within six years, unless the debtor either paid all the allowed unsecured claims in the earlier case or the debtor made payments under the earlier repayment plan totaling 70 percent of the allowed unsecured claims and the plan was proposed in good faith.

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### **Can I file for Chapter 13 bankruptcy a second time?**

A debtor may not file for Chapter 13 bankruptcy if the debtor received a prior discharge in a Chapter 7, 11, or 12 case filed within four years.

A debtor may not file for Chapter 13 bankruptcy if the debtor received a prior discharge in a Chapter 13 case filed within two years.

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### **How do I find an Attorney?**

Debtors are strongly encouraged to obtain the services of competent legal counsel. Contact the Idaho State Bar Lawyer Referral Service (208-334-4500, <http://isb.idaho.gov>) for the name of an attorney in your area who will provide an initial half hour consultation for no more than \$35.

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### **What can I do if a creditor attempts to collect a discharged debt after the case is concluded?**

If a creditor attempts collection efforts on a discharged debt, the debtor can file a motion with the court, reporting the action and asking that the case be reopened to address the matter. The bankruptcy court will often do so to ensure that the discharge is not violated. The discharge constitutes a permanent statutory injunction

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

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## **Can I Lose My home?**

Homeowners who are having trouble or have fallen behind in making their mortgage payments may have options that would allow them to avoid foreclosure and bankruptcy. For more information regarding foreclosure, please visit the U.S. Court's website at

<http://www.uscourts.gov/FederalCourts/Bankruptcy/BankruptcyResources/Foreclosure.aspx>

Beware of offers made once your house is in foreclosure—there are a number of fraudulent schemes specifically directed at individuals facing foreclosure. The Idaho Attorney General's Office has created a manual to help you prevent fraud from occurring. This manual can be viewed at

[http://www.ag.idaho.gov/publications/consumer/foreclosureWorkbook/foreclosureworkbook.p](http://www.ag.idaho.gov/publications/consumer/foreclosureWorkbook/foreclosureworkbook.pdf)

. If you feel suspicious about a proposal, such as one that requires the transfer of your property to a third party in order to avoid foreclosure, please submit a complaint form with the Idaho Attorney General's Office. The complaint form can be accessed at [http://www.ag.idaho.gov/ consumer Protection/forms/ ComplaintFormInformation.html](http://www.ag.idaho.gov/consumer/Protection/forms/ComplaintFormInformation.html).

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## **Is bankruptcy right for me?**

Sometimes it is best to postpone filing for bankruptcy. For instance, if you think you will incur significant debts in the near future, it might make sense to wait to file for Chapter 7 bankruptcy. Although your current debts will be discharged in your bankruptcy, debts incurred after you file for bankruptcy will not be. Because you cannot file for bankruptcy for eight years after the filing date in a previous Chapter 7 discharge, you will be on the hook for those debts for a long time. Other factors, such as your mortgage and income, may also help you understand when to file for bankruptcy.

***It is very important that a bankruptcy case be filed and handled correctly. Bankruptcy has long-term financial and legal consequences. Hiring an attorney is strongly recommended.***

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Last updated on October 31, 2022.

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