

What is chapter 7 bankruptcy?

Chapter 7 is a provision of the United States law under which you may be granted a “fresh start” financially by having your unsecured debts wiped out through what the law calls a “discharge”. Chapter 7 bankruptcy involves the liquidation of your non-exempt property to pay your creditors. In Oklahoma we have a very generous exemption law which allows a person to file a bankruptcy and keep most, if not all, the equity in their home, up to \$7,500.00 equity in their vehicle, and a number of other items of property of which we can advise you of in detail. A bankruptcy will stay on your credit report for nine to ten years and affect your credit for six to seven years after you file a case. But, if you haven’t been able to make regular payments on your debts, your credit rating has probably already suffered due to the missed payments on your bills.

Through a chapter 7 bankruptcy, you can wipe out most types of unsecured debt. Unsecured debts are obligations for which you did not pledge collateral. Examples of unsecured debt are credit cards, medical bills and general loans. Not all debt is discharged in chapter 7 bankruptcy, the primary examples of which are student loans, child support, spousal support and some federal and state taxes. Your personal liability on a home mortgage and vehicle loan is usually discharged but the creditor still has a mortgage on the real estate and a lien on the vehicle. This means that if you want to keep the house or car, you will have to continue paying for them or they will be taken by the secured creditor.

Who is eligible for chapter 7 bankruptcy?

The process for filing bankruptcy by individuals became more complicated with passage of the Bankruptcy Abuse Prevention and Consumer Protection Act in 2005. That law enacted provisions to ensure that people would not be allowed to file Chapter 7 bankruptcy when they had the financial ability to pay part or all their debts.

A measuring stick put in place by the 2005 law was an income analysis called the *means test*. The means test determines whether you have enough income to be able to afford to pay some or all of your creditors. The means test is applied by subtracting presumed expenses as determined by the IRS living standards for your residence area such as living expenses, healthcare and education, from your average monthly income. Depending on the amount of money left over, you will have three options: 1) you qualify for chapter 7 bankruptcy and decide to file such a case; 2) if you don’t qualify for chapter 7, you can file for chapter 13 under which you make full or partial payment on your debts over a three to five year term without having to pay any more interest on your unsecured debts and at the end of which you receive a discharge just as you would have in chapter 7; or 3) you choose not to file any type of bankruptcy.

Finally, if you have previously filed a chapter 7 case, you are not again eligible for a discharge under chapter 7 until eight years has run from the date your previous case was filed. However, if you need immediate relief, you are eligible for a discharge in chapter 13 once four years has run from the filing date of your previous chapter 7 case.

Please contact us for a detailed, no charge review of your financial situation. We can help you decide whether you would benefit by filing any type of bankruptcy.