

GILLESPIE & MURPHY, P.A.

ATTORNEYS AT LAW

Bankruptcy Frequently Asked Questions

• Why should I file for bankruptcy?

A fundamental goal of bankruptcy law is to give debtors a financial "fresh start". This goal is accomplished through the bankruptcy discharge which releases you from personal liability from specific debts and prohibits creditors from taking further action to collect those debts. A bankruptcy may stop foreclosure and/or repossession and help protect your assets.

• What are the common reasons for filing bankruptcy?

Job Loss or Substantial Change in Income
Medical Expenses
Divorce or Separation
Business Debts
Loss of a Loved One or Family Member

• What is a Chapter 7 bankruptcy?

Chapter 7 is referred to as a complete bankruptcy. It involves a court-approved process whereby a court-appointed trustee reviews your case to determine if it is an asset case or no asset case. Due to the allowed exemptions, most Chapter 7 cases are classified as "no asset" cases and no actual loss of property occurs. Chapter 7 is relatively fast and effective. Chapter 7 debtors usually receive a discharge within 4-6 months. The typical Chapter 7 discharge will eliminate general unsecured debts. You will continue to pay for items you intend to keep such as your scheduled mortgage or car payment. If you are behind on these debts, we may recommend a different type of bankruptcy case. Certain types of debts may survive Chapter 7 bankruptcy such as student loans, taxes, and alimony/child support.

• What is Chapter 11 bankruptcy?

Chapter 11 is primarily used by businesses that desire to continue operations and repay creditors through a court-approved plan of reorganization. Chapter 11 may be utilized by individual debtors and may be advisable in certain situations. We can discuss this option in greater detail if we feel it may be necessary for your case.

• What is a Chapter 13 bankruptcy?

Chapter 13 involves the possible repayment of debts in accordance with a court-approved repayment plan. Chapter 13 debtors typically retain possession of property while making plan payments. Chapter 13 stops foreclosure and repossessions. The typical repayment plan takes 36-60 months to complete (3-5 years). The debtor will receive a discharge once the repayment plan is completed. Chapter 13 may be preferred because it allows one to get caught up on certain debts like a mortgage or vehicle payment, possibly modify or reduce certain loans, and maintain ownership of property. Each Chapter 13 plan is unique and subject to the review of the Judge, Chapter 13 Trustee, and the creditors. We will work to make it as affordable as possible and tailored to your specific needs.

• Where is the bankruptcy court?

The Eastern District of North Carolina is divided into five divisions: New Bern, Greenville, Wilmington, Fayetteville, and Raleigh. Hearings and creditor meetings will be held in one of these locations. We will advise you of your division based upon the County in which you live.

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• How often must I go to court?

Each person that files for bankruptcy must attend a Meeting of Creditors shortly after the case is filed. This may be the only time you are required to appear in court.

• What is the Automatic Stay?

When you file for bankruptcy, the court issues an Order preventing most creditors from taking action to collect against you or your property. The Automatic Stay will stop a collection phone call, collection lawsuit, foreclosure and/or repossession.

• What is a discharge?

A discharge releases you from personal liability for certain debts. The discharge order prohibits creditors from taking collection actions.

• When does discharge occur?

The timing of the discharge varies depending on the type of case. Chapter 7 debtors typically receive a discharge in approximately 4-6 months. Chapter 13 debtors will typically receive a discharge upon completion of the repayment plan (3-5 years).

• Can someone object to the discharge of a debt?

Yes, an objection may be filed by the trustee or a creditor. This is rare and usually due to special circumstances such as failure to disclose required information. Please discuss any special concerns with our office and make sure you provide accurate information when we prepare your case.

• Which debts are non-dischargeable?

Section 523(a) of the Bankruptcy Code excepts various categories of debts from discharge. The most common types of nondischargeable debts include: certain tax claims, domestic support obligations, debts for willful or malicious injuries to persons or properties, debts for governmental fines and penalties, student loans, debts for personal injury caused by the debtor's operation of a motor vehicle while intoxicated, and debts owed for certain tax-advantaged retirement plans.

• Can an employer terminate me because I filed for bankruptcy?

Federal law prohibits discriminatory treatment by both governmental units and private employers because a person filed for bankruptcy, was insolvent before or during the case, or has not paid a discharged debt.

• What will happen to my credit after bankruptcy?

Your case filing will be a matter of public record and will be shown on your credit report. Every case is different. Most individuals see an improvement in their credit score after filing for bankruptcy. Your credit score is based on many factors including payment history (35%), debt-to-credit ratio (30%), length of credit history (15%), new inquiries (10%), and type of credit (10%). We recommend you maintain an emergency fund for unexpected expenses, keep a positive payment history, and maintain a healthy debt-to-credit ratio.