



**CHAPTER 7 BANKRUPTCY
BOOKLET**

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INTRODUCTION

This information is intended as general information ONLY. It is NOT legal advice. You should consult with an attorney if you have a specific question about your case. In addition, reading this packet does NOT create an attorney-client relation between the reader and AMABLE and/or any of its agents.

AMABLE has put together this packet in an effort to explain difficult legal concepts regarding chapter 7 Bankruptcy and all issues related to it. This is just a general information booklet and in no way should be understood as an all-encompassing guide to chapter 7 Bankruptcy. The issues in Bankruptcy are very complex and cannot be fully explained in an information booklet. Please consult with an attorney regarding your case for more detailed information.

The way AMABLE has approached this booklet is in a Question and Answer form. The questions chosen are among the most common individuals going through Bankruptcy have.

VOCABULARY

Automatic stay: the period in a bankruptcy proceeding where creditors are prohibited from collecting debts from the debtor. The automatic stay begins immediately upon the filing of the bankruptcy petition.

Generally, the automatic stay prevents foreclosures (temporarily at least), wage garnishments, lawsuits pending against the debtor, evictions, calls and/or any contact from any creditors/collection agencies to collect on a debt. The creditor can ask the bankruptcy judge for relief from the automatic stay in order to proceed with the collection process, and unless objected by the debtor, the relief is usually granted.

Asset: property owned by a debtor such as a car, bank account, cash, wearing apparel, furniture, etc.

Creditor: a person or entity that has extended credit to the debtor. There are several types of creditors i.e.: secured creditor, unsecured priority creditor and unsecured non-priority creditor. See definitions below.

Disposable income: for chapter 7 bankruptcy purposes, it is the amount of money left to the debtor at the end of the month after all monthly necessary expenses are deducted from the debtor's net monthly income.

Dependent: a person dependent on you for support that lives with you at least 50% of the time. A typical dependent could be a biological child, a parent, a sibling, or any other person that meets the definition of dependent. Note that a person who does not depend on support from you but lives in your home (i.e. a roommate) is not a dependent.

It is imperative to know the exact number of dependents in your case as this is one of the factors used to determine your ability to qualify for bankruptcy.

Equity: equity is the residual value or interest in an asset after all liabilities are paid.

Illustration 1: you have a car that could sell in today's market for \$5,000.00. The car is paid off and there are no liens on it. The equity in your vehicle is \$5,000.00.

Illustration 2: you have a car that could sell in today's market for \$5,000.00. The car has a lien on it in the amount of \$3,000.00. The equity in your car is \$2,000.00.

Illustration 3: you have a car that could sell in today's market for \$5,000.00. The car has a lien on it in the amount of \$6,000.00. The equity in your car is negative (\$1,000.00) or in other words there is no equity in the car at all.

Exemption: exemptions allow a debtor to keep property in a bankruptcy proceeding. Generally, whenever a debtor files for chapter 7 bankruptcy, the debtor agrees to allow the bankruptcy trustee to take all of the property of the debtor and sell it in order to pay the debtor's creditors. Exemptions allow a debtor to keep property, in turn preventing the trustee from touching any or most of the debtor's assets.

In Virginia there are several exemptions that allow a debtor to keep property during a bankruptcy proceeding such as the homestead exemption, a motor vehicle exemption, a gun exemption, household furniture exemption, wedding and engagement ring exemption, etc. Exemptions in Virginia are very specific and there are strict limits on how much equity in assets a debtor can retain. Consult with your attorney in order to determine whether or not you will be able to keep all of your assets if you file for bankruptcy.

Garnishment: a legal tool that allows a creditor to collect directly from the debtor's wages in order to satisfy a judgment against the debtor.

Means test: a test used to determine whether or not a person qualifies for bankruptcy. The means test is triggered if a debtor's income exceeds the median income in Virginia based on household size.

The means test is very complex and a debtor should not attempt to navigate through the means test without proper legal advice. Failure to complete the means test properly could mean dismissal of the bankruptcy case or conversion to a chapter 13 proceeding.

Meeting of Creditors: also known as 341 hearing. It is a meeting schedule post-bankruptcy filing where the debtor is required to appear in front of a bankruptcy trustee in order to answer any questions that the trustee or any creditors of the debtor that show up may have. It is noteworthy to highlight that creditors rarely show up to these hearings and usually, the debtors ended interacting with the bankruptcy trustee only.

Nondischargeable debt: debts that are not wiped out in a bankruptcy proceeding. Nondischargeable debts include: domestic support obligations, federal and state liability, debt procured through fraudulent means, student loans, etc.

Priority debt: a type of nondischargeable debt that is not wiped out or forgiven in a bankruptcy proceeding. Generally, priority debt includes: debts owed to the federal or state government and domestic support obligations.

Reaffirmation agreement: a contract which a debtor signs in a bankruptcy proceeding in order to take a debt accrued prior to the filing of the bankruptcy which would otherwise be discharge and renew such obligation so that the debtor would remain liable for such debt.

Reaffirmation agreements are voluntary and debtors cannot be forced or coerced into signing one. Debtors should be aware that by signing a reaffirmation agreement they will

remain liable for the debt reaffirmed regardless of the bankruptcy. This means that if following the bankruptcy discharge, the debtor cannot make the payments for such reaffirmed debt, the creditor can attempt to collect, file suit against the debtor and garnish the debtor's wages. As if bankruptcy never happened.

Illustration: you have a car which has a lien in the amount of \$5,000.00. The lien holder is BB&T. You decide to file for bankruptcy. When you file for bankruptcy you must list your car as well as the \$5,000.00 lien in your petition (even if you plan on keeping the car).

Thus, after the bankruptcy, assuming it is successful and you are fully discharged, the \$5,000.00 liability which you were liable for prior to the bankruptcy is also discharged. Despite the fact that the liability was discharged, most debtors will continue to make payments on the vehicle in order to keep the car because otherwise BB&T could come and take the car at any point. But they are not actually legally obligated to do so. The debtor is voluntarily making the payments so that they can keep possession of the vehicle.

What the reaffirmation agreement does is, it revives the discharged debt, in this case the BB&T loan, making the debtor liable for that debt again post-bankruptcy.

Reaffirmation hearing: a hearing held by the Bankruptcy court in order to determine whether a debtor should be permitted to enter into a reaffirmation agreement.

Reaffirmation hearings are not always required. Consult with an attorney in order to see whether you will need to have a hearing or not.

Secured creditor: a creditor that has a lien or security interest in your property. A secured creditor can be a bank that gives you a loan for your home (i.e. home mortgage) or a bank that provides you with a loan so that you can buy a car.

A secured creditor is known as "secured" because in the event that the debtor fails to make the monthly payments, the creditor has the option of taking the property (known as collateral) back so that it can be sold in order to pay off the remaining loan balance.

In many cases, the collateral is sold for less than what the outstanding loan amount is and a deficiency amount will occur. Normally, the debtor is responsible for the deficiency amount but the good news is that such deficiency amount can also be discharged in bankruptcy.

Illustration: you go to Carmax and purchase a car for \$10,000.00. You, however, don't have any money. So Carmax finances the car for you and they give you a \$10,000.00 loan so that you purchase the car. Under these circumstances, Carmax is the secured creditor and also the lienholder. The car is the collateral. You are the debtor.

After a year of making payments you lose your job and cannot longer afford the car. Eventually, Carmax exercises its right to take back the car and eventually sells the car for

\$5,000.00. At the time the car is sold you still owe Carmax \$8,000.00 for the car. Thus, the sale of the car wasn't sufficient to cover the loan amount and there is a deficiency amount of \$3,000.00. You are ultimately responsible for the \$3,000.00 deficiency amount. Carmax can sue you and obtain a judgment against you and eventually it can garnish your wages in order to recoup the difference.

Trustee: the person in charge of administering your bankruptcy case. Trustees are not judges. They are bankruptcy attorneys who are assigned by the Department of Justice to oversee your bankruptcy case.

Unsecured creditor: a creditor that has offered you credit without taking a security interest in any of your property or assets. Unsecured creditors are generally credit card companies, medical providers, friends and family members that lend you money, etc.

Warrant in debt: a lawsuit filed against a debtor in order to obtain a judgment for an unpaid debt. A warrant in debt is the first legal step taken by a creditor in order to collect unpaid debt. A warrant in debt generally gives rise to a judgment. Once a judgment is entered by the judge, the creditor can proceed to garnish the debtor's wages.

CHAPTER 7 - BANKRUPTCY

What is chapter 7 Bankruptcy?

A Federal debt relief program which discharges (absolves) all of your unsecured debts. Although very unlikely, it may also liquidate (sell) all or some of your assets in order to pay your creditors. Chapter 7 Bankruptcy is the most common type of Bankruptcy in the United State.¹

Bankruptcy is preferred by most debtors because it provides them with a fresh start, meaning no more unsecured debts. A Bankruptcy can wipe out all credit card debt, medical bills, personal loans, judgments against you and certain federal and state income tax debts.

Am I a good candidate for Bankruptcy?

That is a question that only you can answer. Each one of us has a different level of tolerance for debt. Some of us are very sensitive to the feeling of being hounded by creditors or being sued in state courts for unpaid debts. Some others may be a little more resilient to this milieu.

If you feel that you cannot sleep at night because you worry about making ends meet, if you are afraid to answer your phone because you fear it might be a collection agency, if debts are taking a toll on your family or work, if you are at the verge of losing your home, or if your car is about to be repossessed, Bankruptcy is an option you should seriously consider.

Everyone deserves a second chance. Bankruptcy is a LEGAL and HONEST way to obtaining a fresh start.

Do I qualify for Bankruptcy?

Several factors must be considered before answering this question. Generally, some of the factors examined are: household size, income of entire household for the last 6 months, number of dependents, monthly expenses, secured and priority debts.

Whether or not you qualify for Bankruptcy is a very complex and factor driven question and can only be determined by your attorney after having thoroughly examined your financial situation.

How much do you charge for a Bankruptcy?

My fees vary. My fees range between \$1,000.00 to \$1,300.00, depending on the complexity of your case.

Court costs are generally \$356.00.

¹ Going forward this article will refer to Chapter 7 Bankruptcy as "Bankruptcy" for convenience purposes. The author will specifically delineate the type of Bankruptcy if referring to one other than Chapter 7.

Thus, you should expect to pay between \$1,356.00 to \$1,656.00 for a bankruptcy depending on the complexity of your case. Call our office to obtain an exact quote.

The entire amount must be paid in full before your bankruptcy petition can be filed.

Will I be able to keep all of my assets if I file for Bankruptcy?

Most likely yes. It truly comes down to what type of assets you own, how much equity your assets have and whether you have filed a homestead deed before. Based on our experience, most clients filing for Bankruptcy get to keep all of their assets.

To conclude, this is a very specific question that can only be answered at your initial appointment.

Creditors won't stop hounding me, can Bankruptcy stop it?

Yes. There is an automatic stay the moment your bankruptcy petition is filed. An automatic stay means that all creditors must immediately cease all collection efforts while the bankruptcy case is pending. The automatic stay also stops all lawsuits that you may have pending against you in state court as well as any garnishments against you.

If, after your petition is filed, you find that creditors continue to contact you, let us know immediately and we will send them a cease and desist letter to make them stop.

My wages are being garnished, can I get my garnished wages back?

Possibly. Assuming you have enough exemption available to protect your garnished wages, you will be able to get back all wages garnished during the preference period² if they exceed \$600 in aggregate.

Will I be able to keep my vehicle?

It depends. There is a motor vehicle exemption in Virginia which allows you to keep up to \$6,000.00 of equity in your car. Equity is the value of the car minus any liens on the car.

Thus, if you own the car free and clear, the equity in the car is how much you could reasonably sell it for in today's market.

If there is a lien on your vehicle, the equity is the value of the car minus the amount of the lien. If the lien amount is higher than the value of the car, then you have no equity or you actually have negative equity in the car and there is nothing to protect. This means you can keep the car without using your motor vehicle exemption as there is no equity to protect.

If the equity in your car surpasses \$6,000.00, we can still protect it. Typically, the motor vehicle exemption is used to protect up to \$6,000.00 in equity and the Homestead Deed exemption is used to protect any surplus in equity.

² The preference period is defined as 90 days prior to the filing of your Bankruptcy.

Will I be able to keep my home?

It depends on how much equity you have on your home. The same reasoning applies as it does to question No. 8. If you have too much equity in your home, you are probably not a good candidate for Bankruptcy and you should look into a Chapter 13 Bankruptcy.

However, if you have no equity in your home or if your home is under water, you should be able to keep your home as long as you keep making your mortgage payments on time.

Will I be able to keep my retirement accounts?

Most likely yes. 401(k), 403(B), VRE's, Federal Pensions, IRA's and other similar pensions are protected.

Do I have to disclose all of my creditors or can I keep some credit cards?

You must disclose everyone that you owe money to in your Bankruptcy petition. Period. You are certainly welcome to pay back any debts that were discharged in the Bankruptcy but you have to list all of them anyway.

Do I have to file with my spouse?

It depends. If you have joint debt, meaning your spouse is also legally liable, then it is a good idea for your spouse to also file for Bankruptcy. Otherwise, you will be discharged from all joint debts but your spouse will remain liable; meaning that creditors can still attempt to collect for that particular debt from your spouse.

Example: While married to your spouse, you went to the hospital to get treatment. After treatment, you are liable to the hospital in the amount of \$10,000.00 Even though the services were provided to you, your spouse may also be responsible for this debt. If you file for bankruptcy, but your spouse does not, the hospital may still attempt to collect the \$10,000.00 obligation from your spouse.

Is there an extra fee if I file with my spouse?

Yes. My fees range between \$1,000.00 to \$1,300.00 depending on the complexity of the case. However, the court fees will be the same, \$356.00.

Call our office right now to obtain an exact quote.

Do I have to go to court?

Yes. It is called a 341 hearing or meeting of creditors. This hearing is meant to provide your creditors an opportunity to ask you questions (but creditors rarely show up to these hearings).

You will meet the bankruptcy trustee at the hearing. The trustee is an attorney whose main task is to revise your petition and make sure there are no assets to be distributed to your creditors.

Will an attorney be with me at the court hearing?

Absolutely.

What do I need to have with me at my court hearing?

You must have two forms of identification. One of them must have your social security number on it. Ideally, you want to have a driver's license, passport, birth certificate AND social security card or most recent W2.

What will happen at the court hearing?

The Bankruptcy trustee will ask you a series of questions to verify the veracity of your Bankruptcy petition. You do NOT need to prepare for this hearing, you just need to be honest and truthful about your answers.

I filed for Chapter 7 Bankruptcy before, is this going to hurt my case?

No. There is no limit on how many times you can file for bankruptcy. However, the Homestead Exemption in Virginia can only be used once. If you used up all or almost all of your exemption in the previous bankruptcy to protect your assets, you will not be able to use that exemption again, and some or all of your assets may end up unprotected and in the hands of the bankruptcy trustee. We will talk in more detail at the time of your appointment about this issue.

When can I file for Bankruptcy again?

If you filed a chapter 7 before and were discharged successfully:

You can file again for chapter 7 bankruptcy 8 years from the time you file your previous chapter 7 petition

If you filed a chapter 13 before and were discharged successfully:

You can file for chapter 7 bankruptcy 6 years later from the time you file your chapter 13 petition

If your case was dismissed:

You can file right away unless the court orders otherwise.

What if I don't remember when I filed for Bankruptcy?

We can find out for you during our appointment.

How long does a Bankruptcy take before I will receive my discharge?

It takes about 3 months before you get your discharge letter in the mail from the Bankruptcy Court.

What are the changes of my bankruptcy being dismissed?

No attorney can guarantee that your petition will be successful. However, the attorney should be able to predict the chances of your petition successful in bankruptcy based on the facts of your case.