

## How Chapter 7 Works

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A chapter 7 case begins with the debtor filing a petition with the bankruptcy court serving the area where the individual lives or where the business debtor is organized or has its principal place of business or principal assets.

In addition to the petition, the debtor must also file with the court:

1. schedules of assets and liabilities;
2. a schedule of current income and expenditures;
3. a statement of financial affairs; and
4. a schedule of executory contracts and unexpired leases.

Debtors must also provide the assigned case trustee with a copy of the tax return or transcripts for the most recent tax year as well as tax returns filed during the case (including tax returns for prior years that had not been filed when the case began). Individual debtors with primarily consumer debts have additional document filing requirements. They must file: a certificate of credit counseling and a copy of any debt repayment plan developed through credit counseling; evidence of payment from employers, if any, received 60 days before filing; a statement of monthly net income and any anticipated increase in income or expenses after filing; and a record of any interest the debtor has in federal or state qualified education or tuition accounts.

A husband and wife may file a joint petition or individual petitions. Even if filing jointly, a husband and wife are subject to all the document filing requirements of individual debtors.

**Effective June 1, 2014, the fees for Chapter 7 filings will increase from \$306 to \$335. This new increase includes \$245 filing fee, \$75 administrative fee and a \$15 Chapter 7 trustee surcharge.** Normally, the fees must be paid to the clerk of the court upon filing. With the court's permission, however, individual debtors may pay in installments. The number of installments is limited to four, and the debtor must make the final installment no later than 120 days after filing the petition. For cause shown, the court may extend the time of any installment, provided that the last installment is paid not later than 180 days after filing the petition. The debtor may also pay the \$75 administrative fee and the \$15 trustee surcharge in installments. If a joint petition is filed, only one filing fee, one administrative fee, and one trustee surcharge are charged. Debtors should be aware that failure to pay these fees may result in dismissal of the case.

If the debtor's income is less than 150% of the poverty level (as defined in the Bankruptcy Code), and the debtor is unable to pay the chapter 7 fees even in installments, the court may waive the requirement that the fees be paid.

In order to complete the Official Bankruptcy Forms that make up the petition, statement of financial affairs, and schedules, the debtor must provide the following information:

1. A list of all creditors including addresses, 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.

Married individuals must gather this information for their spouse regardless of whether they are filing a joint petition, separate individual petitions, or even if only one spouse is filing. In a situation where only one spouse files, the income and expenses of the nonfiling spouse is required so that the court, the trustee and creditors can evaluate the household's financial position.

Among the schedules that an individual debtor will file is a schedule of "exempt" property. The Bankruptcy Code allows an individual debtor to protect some property from the claims of creditors because it is exempt under federal bankruptcy law or under the laws of the debtor's home state. Filing a petition under chapter 7 "automatically stays" (stops) most collection actions against the debtor or the debtor's property. But filing the petition does not stay certain types of actions listed under 11 U.S.C. § 362(b), and the stay may be effective only for a short time in some situations. The stay arises by operation of law and requires no judicial action. As long as the stay is in effect, creditors generally may not initiate or continue lawsuits, wage garnishments, or even telephone calls demanding payments. The bankruptcy clerk gives notice of the bankruptcy case to all creditors whose names and addresses are provided by the debtor.

Between 21 and 40 days after the petition is filed, the case trustee (described below) will hold a meeting of creditors. During this meeting, the trustee puts the debtor under oath, and both the trustee and creditors may ask questions. The debtor must attend the meeting and answer questions regarding the debtor's financial affairs and property. If a husband and wife have filed a joint petition, they both must attend the creditors' meeting and answer questions. Within 14 days of the creditors' meeting, the U.S. trustee will report to the court whether the case should be presumed to be an abuse under the means test described in 11 U.S.C. § 704(b).

It is important for the debtor to cooperate with the trustee and to provide any financial records or documents that the trustee requests. The Bankruptcy Code requires the trustee to ask the debtor questions at the meeting of creditors to ensure that the debtor is aware of the potential consequences of seeking a discharge in bankruptcy such as the effect on credit history, the ability to file a petition under a different chapter, the effect of receiving a discharge, and the effect of reaffirming a debt. Some trustees provide written information on these topics at or before the meeting to ensure that the debtor is aware of this information. In order to preserve their independent judgment, bankruptcy judges are prohibited from attending the meeting of creditors. 11 U.S.C. § 341(c).

In order to accord the debtor complete relief, the Bankruptcy Code allows the debtor to convert a chapter 7 case to a case under chapter 11, 12 or 13 as long as the debtor is eligible to be a debtor under the new chapter. However, a condition of the debtor's voluntary conversion is that the case has not previously been converted to chapter 7 from another chapter. Thus, the debtor will not be permitted to convert the case repeatedly from one chapter to another.