

# UPDATE

Date: \_\_\_\_\_

Mr. \_\_\_\_\_ Ms. \_\_\_\_\_ Mrs. \_\_\_\_\_

First Name: \_\_\_\_\_

Last Name: \_\_\_\_\_

Spouse's First Name: \_\_\_\_\_

Spouse's Last Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Zip Code: \_\_\_\_\_

Home Phone #: \_\_\_\_\_

Cell Phone #: \_\_\_\_\_

Cell Phone Provider: \_\_\_\_\_

Preferred Phone #: \_\_\_\_\_

Spouse's Cell Phone #: \_\_\_\_\_

Spouse's Cell Phone Provider: \_\_\_\_\_

Email Address: \_\_\_\_\_

Spouse's Email Address: \_\_\_\_\_

Consent to Email (mark with an "X")? YES \_\_\_\_\_ NO: \_\_\_\_\_

Spouse Consent to Email (mark with an "X")? YES \_\_\_\_\_ NO: \_\_\_\_\_

Consent to Text Messages (mark with an "X")? YES \_\_\_\_\_ NO: \_\_\_\_\_

Spouse Consent to Text Messages (mark with an "X")? YES \_\_\_\_\_ NO: \_\_\_\_\_

Brief description on why you are here today:

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# Bankruptcy Counseling Requirements

**In order to file for bankruptcy relief, two courses are required!**

One BEFORE you file bankruptcy and a second course AFTER you file bankruptcy.

**FIRST COURSE:** You must complete the **pre-file counseling course** and have a certificate *before The Law Office of Michael J. Heath can file your case.*

**SECOND COURSE:** You must complete the AFTER your case is filed, more information will be provided at a later date.

**RECOMMENDED CREDIT COUNSELING AGENCY TO CONTACT:**

**[www.DebtHelper.com](http://www.DebtHelper.com)**

In order to receive the discounted fees  
for the courses, please use our exclusive

***ATTORNEY CODE: VA0091***

**By Internet: To begin, go to [www.debthelper.com](http://www.debthelper.com)**

\$24 for the first course and \$14 for the second course

**By Phone: To begin, call 800-920-2262**

\$44 for the first course and \$44 for the second course

**Have Questions? Call 1-800-920-2262**

Our Fax Number: (757) 431-8667

Our Email Address: [lawoffice@hamptonroadsbankruptcy.com](mailto:lawoffice@hamptonroadsbankruptcy.com)

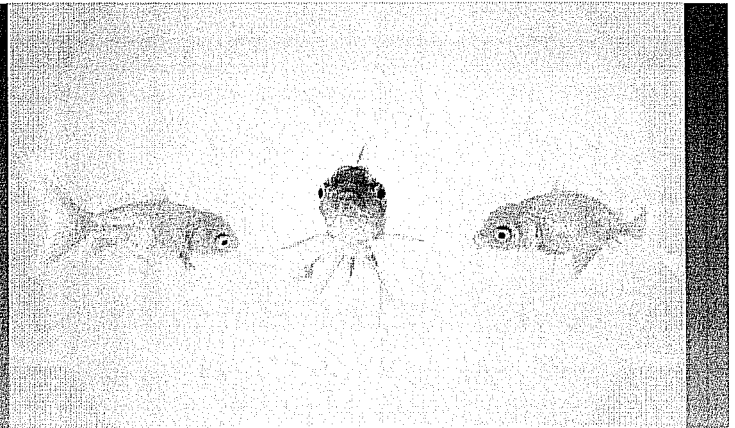
# AnnualCreditReport.com

The only source for your free credit reports. Authorized by Federal law.

[Home](#)
[All about credit reports](#)
[Request yours now!](#)
[What to look for](#)
[Protect your identity](#)
[Frequently asked questions](#)
[Contact us](#)

## One of these things is not like the others.

You may think you have one credit report and one credit score. But you really have several, and they may differ. You should check all three reports regularly.

[Request your free credit reports](#)

[PLAY](#)
[SPOT IDENTITY THEFT](#)
[GOOD CREDIT](#)
[DON'T BE FOOLED](#)
[MORE THAN A SCORE](#)
[NOT LIKE THE OTHERS](#)

### Your credit reports matter.

- Credit reports may affect your mortgage rates, credit card approvals, apartment requests, or even your job application.
- Reviewing credit reports helps you catch signs of identity theft early.

[Request your free credit reports](#)

### FREE Credit Reports. Federal law allows you to:

- Get a free copy of your credit report every 12 months from each credit reporting company.
- Ensure that the information on all of your credit reports is correct and up to date.

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# Notice Required by 11 U.S.C. § 342(b) for Individuals Filing for Bankruptcy (Form 2010)

## This notice is for you if:

**You are an individual filing for bankruptcy,**  
and

**Your debts are primarily consumer debts.**

*Consumer debts* are defined in 11 U.S.C.  
§ 101(8) as "incurred by an individual  
primarily for a personal, family, or  
household purpose."

## The types of bankruptcy that are available to individuals

Individuals who meet the qualifications may file under  
one of four different chapters of Bankruptcy Code:

Chapter 7 - Liquidation

Chapter 11 - Reorganization

Chapter 12 - Voluntary repayment plan  
for family farmers or  
fishermen

Chapter 13 - Voluntary repayment plan  
for individuals with regular  
income

**You should have an attorney review your  
decision to file for bankruptcy and the choice of  
chapter.**

## Chapter 7: Liquidation

\$245 filing fee

\$75 administrative fee

+ \$15 trustee surcharge

\$335 total fee

Chapter 7 is for individuals who have financial  
difficulty preventing them from paying their debts  
and who are willing to allow their nonexempt  
property to be used to pay their creditors. The  
primary purpose of filing under chapter 7 is to have  
your debts discharged. The bankruptcy discharge  
relieves you after bankruptcy from having to pay  
many of your pre-bankruptcy debts. Exceptions exist  
for particular debts, and liens on property may still  
be enforced after discharge. For example, a creditor  
may have the right to foreclose a home mortgage or  
repossess an automobile.

However, if the court finds that you have committed  
certain kinds of improper conduct described in the  
Bankruptcy Code, the court may deny your  
discharge.

You should know that even if you file chapter 7 and  
you receive a discharge, some debts are not  
discharged under the law. Therefore, you may still  
be responsible to pay:

most taxes;

most student loans;

domestic support and property settlement  
obligations;

most fines, penalties, forfeitures, and criminal restitution obligations; and

certain debts that are not listed in your bankruptcy papers.

You may also be required to pay debts arising from:

fraud or theft;

fraud or defalcation while acting in breach of fiduciary capacity;

intentional injuries that you inflicted; and

death or personal injury caused by operating a motor vehicle, vessel, or aircraft while intoxicated from alcohol or drugs.

If your debts are primarily consumer debts, the court can dismiss your chapter 7 case if it finds that you have enough income to repay creditors a certain amount. You must file *Chapter 7 Statement of Your Current Monthly Income* (Official Form 122A-1) if you are an individual filing for bankruptcy under chapter 7. This form will determine your current monthly income and compare whether your income is more than the median income that applies in your state.

If your income is not above the median for your state, you will not have to complete the other chapter 7 form, the *Chapter 7 Means Test Calculation* (Official Form 122A-2).

If your income is above the median for your state, you must file a second form—the *Chapter 7 Means Test Calculation* (Official Form 122A-2). The calculations on the form—sometimes called the *Means Test*—deduct from your income living expenses and payments on certain debts to determine any amount available to pay unsecured creditors. If

your income is more than the median income for your state of residence and family size, depending on the results of the *Means Test*, the U.S. trustee, bankruptcy administrator, or creditors can file a motion to dismiss your case under § 707(b) of the Bankruptcy Code. If a motion is filed, the court will decide if your case should be dismissed. To avoid dismissal, you may choose to proceed under another chapter of the Bankruptcy Code.

If you are an individual filing for chapter 7 bankruptcy, the trustee may sell your property to pay your debts, subject to your right to exempt the property or a portion of the proceeds from the sale of the property. The property, and the proceeds from property that your bankruptcy trustee sells or liquidates that you are entitled to, is called *exempt property*. Exemptions may enable you to keep your home, a car, clothing, and household items or to receive some of the proceeds if the property is sold.

Exemptions are not automatic. To exempt property, you must list it on *Schedule C: The Property You Claim as Exempt* (Official Form 106C). If you do not list the property, the trustee may sell it and pay all of the proceeds to your creditors.

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## Chapter 11: Reorganization

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	\$1,167	filing fee
+	\$550	administrative fee
	<hr/>	
	\$1,717	total fee

Chapter 11 is often used for reorganizing a business, but is also available to individuals. The provisions of chapter 11 are too complicated to summarize briefly.

## Read These Important Warnings

Because bankruptcy can have serious long-term financial and legal consequences, including loss of your property, you should hire an attorney and carefully consider all of your options before you file. Only an attorney can give you legal advice about what can happen as a result of filing for bankruptcy and what your options are. If you do file for bankruptcy, an attorney can help you fill out the forms properly and protect you, your family, your home, and your possessions.

Although the law allows you to represent yourself in bankruptcy court, you should understand that many people find it difficult to represent themselves successfully. The rules are technical, and a mistake or inaction may harm you. If you file without an attorney, you are still responsible for knowing and following all of the legal requirements.

You should not file for bankruptcy if you are not eligible to file or if you do not intend to file the necessary documents.

Bankruptcy fraud is a serious crime; you could be fined and imprisoned if you commit fraud in your bankruptcy case. Making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to \$250,000, or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

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### Chapter 12: Repayment plan for family farmers or fishermen

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	\$200	filing fee
+	\$75	administrative fee
	<u>\$275</u>	total fee

Similar to chapter 13, chapter 12 permits family farmers and fishermen to repay their debts over a period of time using future earnings and to discharge some debts that are not paid.

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### Chapter 13: Repayment plan for individuals with regular income

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	\$235	filing fee
+	\$75	administrative fee
	<u>\$310</u>	total fee

Chapter 13 is for individuals who have regular income and would like to pay all or part of their debts in installments over a period of time and to discharge some debts that are not paid. You are eligible for chapter 13 only if your debts are not more than certain dollar amounts set forth in 11 U.S.C. § 109.

Under chapter 13, you must file with the court a plan to repay your creditors all or part of the money that you owe them, usually using your future earnings. If the court approves your plan, the court will allow you to repay your debts, as adjusted by the plan, within 3 years or 5 years, depending on your income and other factors.

After you make all the payments under your plan, many of your debts are discharged. The debts that are not discharged and that you may still be responsible to pay include:

domestic support obligations,

most student loans,

certain taxes,

debts for fraud or theft,

debts for fraud or defalcation while acting in a fiduciary capacity,

most criminal fines and restitution obligations,

certain debts that are not listed in your bankruptcy papers,

certain debts for acts that caused death or personal injury, and

certain long-term secured debts.

### **Warning: File Your Forms on Time**

Section 521(a)(1) of the Bankruptcy Code requires that you promptly file detailed information about your creditors, assets, liabilities, income, expenses and general financial condition. The court may dismiss your bankruptcy case if you do not file this information within the deadlines set by the Bankruptcy Code, the Bankruptcy Rules, and the local rules of the court.

For more information about the documents and their deadlines, go to:  
[http://www.uscourts.gov/bkforms/bankruptcy\\_forms.html#procedure](http://www.uscourts.gov/bkforms/bankruptcy_forms.html#procedure).

### **Bankruptcy crimes have serious consequences**

If you knowingly and fraudulently conceal assets or make a false oath or statement under penalty of perjury—either orally or in writing—in connection with a bankruptcy case, you may be fined, imprisoned, or both.

All information you supply in connection with a bankruptcy case is subject to examination by the Attorney General acting through the Office of the U.S. Trustee, the Office of the U.S. Attorney, and other offices and employees of the U.S. Department of Justice.

### **Make sure the court has your mailing address**

The bankruptcy court sends notices to the mailing address you list on *Voluntary Petition for Individuals Filing for Bankruptcy* (Official Form 101). To ensure that you receive information about your case, Bankruptcy Rule 4002 requires that you notify the court of any changes in your address.

A married couple may file a bankruptcy case together—called a *joint case*. If you file a joint case and each spouse lists the same mailing address on the bankruptcy petition, the bankruptcy court generally will mail you and your spouse one copy of each notice, unless you file a statement with the court asking that each spouse receive separate copies.

### **Understand which services you could receive from credit counseling agencies**

The law generally requires that you receive a credit counseling briefing from an approved credit counseling agency. 11 U.S.C. § 109(h). If you are filing a joint case, both spouses must receive the briefing. With limited exceptions, you must receive it within the 180 days **before** you file your bankruptcy petition. This briefing is usually conducted by telephone or on the Internet.

In addition, after filing a bankruptcy case, you generally must complete a financial management instructional course before you can receive a discharge. If you are filing a joint case, both spouses must complete the course.

You can obtain the list of agencies approved to provide both the briefing and the instructional course from:  
[http://justice.gov/ust/eo/hapcpa/ccde/cc\\_approved.html](http://justice.gov/ust/eo/hapcpa/ccde/cc_approved.html)

In Alabama and North Carolina, go to:  
<http://www.uscourts.gov/FederalCourts/Bankruptcy/BankruptcyResources/ApprovedCreditAndDebtCounselors.aspx>.

If you do not have access to a computer, the clerk of the bankruptcy court may be able to help you obtain the list.

## **BANKRUPTCY INFORMATION SHEET**

**BANKRUPTCY LAW IS A FEDERAL LAW. THIS SHEET PROVIDES YOU WITH GENERAL INFORMATION ABOUT WHAT HAPPENS IN A BANKRUPTCY CASE. THE INFORMATION HERE IS NOT COMPLETE. YOU MAY NEED LEGAL ADVICE.**

### **WHEN YOU FILE BANKRUPTCY**

You can choose the kind of bankruptcy that best meets your needs (provided you meet certain qualification):

Chapter 7- A trustee is appointed to take over your property. Any property of value will be sold or turned into money to pay your creditors. You may be able to keep some personal items and possible real estate depending on the law of the State where you live and applicable federal laws.

Chapter 13- You can usually keep your property, but you must earn wages or have some other source of regular income and you must agree to pay part of your income to your creditors. The court must approve your repayment plan and your budget. A trustee is appointed and will collect the payments from you, pay your creditors, and make sure you live up to the terms of your repayment plan.

Chapter 12- Like chapter 13, but it is only for family farmers and family fisherman.

Chapter 11- This is used mostly by businesses. In chapter 11, you may continue to operate your business, but your creditors and the court must approve a plan to repay your debts.

There is no trustee unless the judge decides one necessary; if a trustee is appointed, the trustee takes control of your business and property.

If you have already filed bankruptcy under chapter 7, you may be able to change your case to another chapter.

Your bankruptcy may be reported on your credit record for as long as ten years. It can affect your ability to receive credit in the future.

### **WHAT IS A BANKRUPTCY DISCHARGE AND HOW DOES IT OPERATE?**

One of the reasons people file bankruptcy is to get a “discharge”. A discharge is a court order which states that you do not have to pay most of your debts. Some debts cannot be discharged. For example, you cannot discharge debts for-

- Most taxes
- Child support
- Alimony
- Most student loans
- Court fines and criminal restitution
- Personal injury caused by driving drunk or under the influence of drugs

The discharge only applies to debts that arose before the date you filed. Also, if the judge finds that you received money or property by fraud, that debt may not be discharged.

It is important to list all your property and debts in your bankruptcy schedules. If you do not list a debt, for example, it is possible the debt will not be discharged. The judge can also deny your discharge if you do something dishonest in connection with your bankruptcy case, such as destroy or hide property, falsify records, or lie, or if you disobey a court order.

You can only receive a chapter 7 discharge once every eight years. Other rules may apply if you previously received a discharge in a chapter 13 case. No one can make you pay a debt that has been discharged, but you can voluntarily pay any debt you wish to pay. You do not have to sign a reaffirmation agreement (see below) or any other kind of document to do this.

Some creditors hold a secured claim (for example, the bank holds the mortgage on your house or the loan company that has lien on your car). You do not have to pay a secured claim if the debt is discharged, but the creditor can still take the property.

**WHAT IS A REAFFIRMATION AGREEMENT?**

Even if a debt can be discharged, you may have special reasons why you want to promise to pay it. For example, you may want to work out a plan with the bank to keep your car. To promise to pay that debt, you must sign and file a reaffirmation agreement with the court. Reaffirmation agreements are under special rules and are voluntary. They are not required by bankruptcy law or by any other law. Reaffirmation agreements-

- Must be voluntary
- Must not place too heavy a burden on you or your family
- Must be in your best interest
- Can be canceled anytime before the court issues your discharge or within 60 days after the agreement is filed with the court, whichever give you the most time

If you are an individual and you are not represented by an attorney, the court must hold a hearing to decide whether to approve the reaffirmation agreement. The agreement will not be legally binding until the court approves it.

If you reaffirm a debt and then fail to pay it, you owe the debt the same as though there was no bankruptcy. The debt will not be discharged, and the creditor can take action to recover any property on which it has a lien or mortgage. The creditor can also take legal action to recover a judgment against you.

**IF YOU WANT MORE INFORMATION OR HAVE ANY QUESTIONS ABOUT HOW THE BANKRUPTCY LAWS IMPACT YOU, YOU MAY NEED LEGAL ADVICE.  
(THE TRUSTEE IN YOUR CASE AND COURT CAN NOT GIVE LEGAL ADVICE).**

# **The Bankruptcy Process**

## **LAWS AND COURT RULINGS CHANGE AND VARY. THIS IS GENERAL INFORMATION AND MAY NOT APPLY TO YOUR SPECIFIC CASE. PLEASE CONSULT AN ATTORNEY.**

The Bankruptcy Law Section of the Virginia State Bar has prepared this information as a public service to answer basic questions about the bankruptcy process. This information cannot address every issue that may arise when considering bankruptcy; however, it will provide an introduction to basic concepts that can be discussed in detail with an attorney. This information is directed to individuals, but it is also important for businesses and creditors.

### **1. What Is It—And How Does It Work?**

Bankruptcy is a legal process governed by federal law found in the U.S. Bankruptcy Code and Rules and is conducted by the Federal Bankruptcy Court. The primary purpose of bankruptcy is to give a debtor a “fresh start” through which some debts can be paid, restructured, or discharged. Bankruptcy also provides a way for creditors to be treated fairly. The debtor is the person or company who owes money, and the creditor is the person to whom the money or service is owed.

A bankruptcy case begins when you (the debtor) pays a filing fee and files certain papers, called a petition, with the bankruptcy court. You must provide financial information, including a list of all of your assets and debts. You must certify this information under penalty of perjury. Additionally, all debtors must now participate in consumer credit counseling with an approved nonprofit agency before filing a Chapter 7 or Chapter 13 bankruptcy petition. The law also requires that you provide the trustee with copies of your federal tax return for the tax year ending prior to the filing of the petition, along with certain copies of pay stubs.

As soon as you file the bankruptcy petition, an “automatic stay” goes into effect except in unusual circumstances. The “automatic stay” stops most debt-collection efforts against you. However, in some cases, the bankruptcy court can grant the creditor permission to pursue collection activities, and for some matters, the automatic stay expires a few weeks into the case. Creditors, and sometimes a trustee, review the information you have provided, and they may file objections or other motions concerning your affairs. It is important for you to meet all the requirements of the trustee and the bankruptcy procedure on time or your case might be dismissed. Eventually, if you have met the requirements, the court issues an order discharging the debts and your financial affairs and your case is concluded.

### **2. What Are the Different Kinds of Bankruptcy Cases?**

There are several different types of bankruptcy cases:

Chapter 7—Liquidation of Certain Assets

Chapter 11—Reorganization (or liquidation)

Chapter 12—Family Farmer and Fisherman Reorganization

Chapter 13—Payment of Some Debts from Regular Earnings

**In a Chapter 7** liquidation case, sometimes called “straight bankruptcy,” a trustee collects and sells the debtor’s nonexempt assets (as explained below, you keep, or “exempt,” some assets such

as basic household goods and some money) and pays the proceeds to creditors in order of priority. Most Chapter 7 cases are “no asset” cases, meaning that the debtor does not have enough nonexempt assets to distribute to creditors. A trustee usually will not sell property on which a creditor has a lien, such as a lien on a car title or mortgage on a house, unless there would be money left over after paying off the lien. However, if the loan is not current, a creditor can often repossess the car or foreclose on the house after a short period of time.

**Chapter 11** is available to individuals and businesses that seek to reorganize their affairs or to liquidate in an orderly manner. In Chapter 11, the debtor remains in control of his property and operates as a “debtor in possession” subject to bankruptcy court supervision. In Chapter 11, the debtor is allowed a certain period of time within which to propose a plan of reorganization, which sets the terms for payment of the debts under bankruptcy procedures. The terms of Chapter 11 plans vary, depending on the nature of the debts or the type of business the debtor operates, and creditors usually get to vote on the plan.

**Chapter 12** allows family farmers and family fishermen with regular annual income to adjust their debts. Generally, the family farmer must have less than \$4,153,150 in debts (50 percent of which must arise out of the farming operation) and at least 50 percent of the individual’s gross income must come from the farming operation. The aggregate debts of a family fisherman must not exceed \$1,924,550 (80 percent of which must arise out of the commercial fishing operation) and at least 50 percent of the individual’s gross income must come from the fishing operation. A debtor under Chapter 12 must have regular and stable income that enables him or her to repay creditors under a long-term plan.

**Chapter 13** is available to individuals (including married couples) with regular income who owe unsecured debts of less than \$394,725 (unsecured debts are debts owed to creditors who do not have liens on any collateral) and secured debts of less than \$1,184,200 (secured debts are debts subject to valid liens such as mortgages and car loans). By choosing Chapter 13, an individual debtor often may keep his property, stop home mortgage foreclosures, reinstate defaulted home mortgages and obtain a broader discharge of debts than is available in a Chapter 7 liquidation. The debtor may be able to pay less than what is owed, or change the interest rate or number of months to pay. In exchange, the debtor in a Chapter 13 case must repay unsecured creditors a portion of their claims from the debtor’s future income over a three-year to five-year period. Ordinarily, the debtor makes monthly payments to the Chapter 13 trustee, who then pays the creditors according to the plan filed by the debtor, accepted by the creditors, and approved by the bankruptcy judge. The debtor pays the trustee a set amount based on his monthly earnings from all sources, less fixed living expenses.

### **3. Who May File for Bankruptcy?**

Almost any person who has a residence, business, or property in the United States can file bankruptcy. Individuals, sole proprietorships, partnerships, corporations, and family farmers are eligible for bankruptcy relief. In rare cases, creditors may force someone into bankruptcy by filing an “involuntary petition” against a debtor. If you own a business that is not a separate corporation, you must include both your personal and business debts and property in your case.

Generally, there are no minimum financial requirements for a debtor to file a bankruptcy case. However the law now has certain financial requirements for filing a petition under Chapter 7. Specifically, a debtor must pass the “means test,” which compares your family’s current monthly income with the statewide median income and then, if your income is above the median level, it

uses IRS standard expense deductions to determine whether a presumption of abuse would exist if you were to file a Chapter 7 petition. In that case, you may be required to use Chapter 13 (where you must pay at least some portion of your debts). Note that certain debt restrictions or financial requirements also apply in Chapter 12 or 13 bankruptcy cases, which then may require you to file Chapter 11.

#### **4. Do I Have to Go to Court?**

In the early stage of a bankruptcy case, you must attend a meeting of creditors (also called a Section 341 meeting) at which you must provide information and answer questions under oath from the bankruptcy trustee, the United States Trustee, or your creditors. The bankruptcy judge does not participate in such meetings. Although the meetings are not formal court hearings, testimony is taken under oath and you are subject to criminal penalties for perjury. You must provide your tax return and the pay stubs to the trustee at least seven days before the meeting of creditors (discussed below). Some trustees will require other financial documents as well. If you do not attend your creditors' meeting, your case may be dismissed.

Bankruptcy courts are part of the federal judicial system, and federal bankruptcy judges decide most disputes that arise in bankruptcy cases. If any challenges are raised by creditors in your bankruptcy case, it may be necessary for you to testify in court. Although many of the typical legal issues and procedures can be handled by an attorney without requiring your attendance at a bankruptcy court hearing, it is important that you attend, on time, if you are required to be there.

#### **5. How Long Will It Take?**

In a Chapter 7 case, you will typically receive an order discharging most of your debts within three or four months. Chapter 13 usually requires you to make monthly payments over a three-year to five-year period before you will receive a discharge.

#### **6. How Does Bankruptcy Help?**

Bankruptcy can help a debtor in a number of ways. The filing of a bankruptcy case automatically stops most collection actions against you, such as garnishments, foreclosures, and lawsuits, at least temporarily. This allows you to have a "breathing spell" during which you have the opportunity to put your finances in order and chart your financial future. While the bankruptcy case is pending, creditors cannot pursue most actions against debtors without bankruptcy court approval.

The ultimate goal of a bankruptcy filing is to obtain a discharge from certain debts that arose prior to the bankruptcy filing. Once the discharge is obtained, creditors cannot pursue collection efforts against the debtor, and those claims are permanently forgiven, unless a lien remains in place or you "reaffirm" your obligation to the creditor (see below for a description of reaffirmation of debts). If a lien remains in place, the creditor can pursue the collateral securing the lien even after bankruptcy. If you reaffirm a debt, and do not pay according to its terms, then the creditor can sue and collect from you personally even after bankruptcy.

Bankruptcy also affords a debtor an opportunity to reject ongoing obligations under certain types of contracts and leases, recover property or assets that were transferred or seized prior to the bankruptcy case, and remove certain kinds of liens. If a debtor gives property or pays money to others before filing, other than ordinary expenses, sometimes the trustee can recover that money or property from the person who has it.

## **7. What Property Can a Debtor Keep?**

The Bankruptcy Code allows the individual debtor to retain certain property as “exempt.” Exempt property is free of the claims of creditors and cannot be taken by the trustee to be liquidated. Virginia law determines the types and amount of exempt property. The debtor is entitled to a “homestead exemption” which allows each debtor to claim a one-time exemption of up to \$5,000 (plus \$500 for each dependent) in any kind of property. Debtors over the age of 65 are entitled to claim a homestead exemption of up to \$10,000. The debtor is also entitled to a specific exemption, sometimes referred to as the “poor debtor’s exemption,” in different types of property (for example, clothes up to \$1,000; household furnishings up to \$5,000; tools of a person’s trade or business up to \$10,000). Other types of property (such as proceeds from a personal injury settlement or award and certain contributions to qualified pension plans or IRAs) may also be exempt under Virginia law. You must claim the property as exempt in your bankruptcy schedules and, to claim the homestead exemption, you or your lawyer must also properly prepare and file a “homestead deed” within a certain time limit. Creditors or the bankruptcy trustee can challenge the type or amount of the exemptions claimed by the debtor. Once you have claimed an exemption, you cannot claim it again in another case.

A debtor may “reaffirm” his or her obligations to a secured creditor who holds a lien on a house, car, or other significant item. A reaffirmation agreement must be in writing, signed by the debtor and, sometimes, the debtor’s attorney, and must be filed with the bankruptcy court. A debtor may rescind a reaffirmation agreement within sixty days after signing the agreement.

A debtor may also “redeem” property from a lien by paying the secured creditor the fair market value of the property in a lump sum. The bankruptcy judge can set the value if the parties do not agree. Property with a lien on it may be surrendered to the creditor, and the remaining balance would be discharged.

## **8. What Kinds of Claims Survive Bankruptcy?**

The liens of secured creditors survive bankruptcy unless the underlying debt is paid off or the lien is removed during the bankruptcy case. This means the creditor can pursue the collateral (i.e., repossess the vehicle) but the creditor cannot collect the balance due from the debtor unless the debt has been reaffirmed. Debts that are reaffirmed during the bankruptcy case will survive.

Some debts cannot be discharged in a bankruptcy case. These nondischargeable debts include recent taxes, alimony or child support obligations, criminal fines, student loans, and DUI claims. If a debt is nondischargeable, you are legally obligated to pay the debt even after the bankruptcy. If a creditor objects, a debtor might not be able to discharge debts arising from fraud, false financial statements, intentional injuries, or cash advances and luxury purchases shortly before filing. Some types of generally nondischargeable debt may be discharged in a Chapter 13 case but not in a Chapter 7 case.

## **9. What Effect Does Bankruptcy Have on Credit Ratings or Employment?**

A bankruptcy filing can be reflected on your credit record for up to ten years, regardless of the type or outcome of the bankruptcy case. A bankruptcy filing may also affect your ability to borrow money, although the effects of such a filing vary significantly depending on the creditor and the nature of the debt. For example, a person’s ability to obtain refinancing on a home mortgage may not be adversely affected by a prior bankruptcy filing as long as payments on similar obligations have remained current. The ability to obtain post-bankruptcy credit or to incur additional debt after

a bankruptcy filing may be limited in a Chapter 12 or 13 case because all of the debtor's disposable income must already be committed to repayment of prior creditors' claims under a plan. Otherwise, there are no legal prohibitions or restrictions against borrowing money, owning property, or transacting business after a bankruptcy filing other than the restrictions set forth in the Bankruptcy Code or by local bankruptcy courts.

Private employers are prohibited from terminating or otherwise discriminating against an individual solely because of a bankruptcy filing. A governmental employer may not terminate or refuse to hire a person solely as a result of a bankruptcy filing. Similarly, a governmental unit may not deny, suspend, or refuse to renew a license, permit, or similar grant to a debtor as the result of a bankruptcy filing.

### **10. How Much Does a Bankruptcy Case Cost?**

Each bankruptcy case requires a filing fee. Readers are advised to check with counsel or on the court's website for the current filing fees. Typically, the filing fee is paid in full with the filing, although an individual debtor may apply to pay the filing fee in installments. There are very limited circumstances under which an individual may apply to the court for a waiver of the filing fee. The waiver is not automatic, and may not be granted by the court. Please check with counsel, or on the court's website, for information regarding such applications. There may be other costs and administrative fees associated with a bankruptcy filing. The legal fees and costs charged by attorneys to handle a bankruptcy case vary significantly depending on the type and complexity of the case. The bankruptcy court has authority to approve or disapprove fees paid to a bankruptcy lawyer. Most attorneys require payment in advance for a Chapter 7, but collect most of their fees over time for Chapter 13 payments.

### **11. What Are the Alternatives to Bankruptcy?**

Bankruptcy is typically thought of as a "last resort." Prior to a bankruptcy filing, it is common for financially troubled individuals or entities to consider alternatives such as consumer credit counseling or an out-of-court workout or debt restructuring in which obligations to some or all creditors are modified to provide the individual or entity with some financial relief. Some consumer credit counseling companies can help a debtor renegotiate amounts owed or payment terms as an alternative to bankruptcy. However, not all "credit rescue" companies are legitimate. Virginia law also provides for an "assignment for the benefit of creditors" under which another individual handles the disposition of assets and proceeds for the benefit of creditors.

The nature and extent of a debtor's financial problems will dictate the course of action, or the legal procedure, that should be followed in a particular case. Individuals or entities who are experiencing such problems should consult with knowledgeable and competent professionals, including attorneys, before making such a decision.

If you need assistance in selecting an attorney to assist you with resolving your financial problems, the Virginia State Bar offers a [Lawyer Referral Service](#) through which you can obtain the names, addresses and phone numbers of attorneys in your area who practice bankruptcy law.

*updated August 2018*

*prepared by the [Bankruptcy Law Section](#) of the Virginia State Bar*

## INSTRUCTIONS FOR OBTAINING TRANSCRIPTS OF TAX RETURNS OR COPIES OF TAX RETURNS

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Call the IRS at 1-800-908-9946 to request a transcript by the automated system.

Follow the options below:

- Press 1 for English
- Enter your SSN
- Press 1
- Enter the number of your street address
- Press 2
- Enter the year of the Return you are requesting
- Press 1
- Press 1
- Repeat for each year your requesting

OR:

Log into: <https://www.irs.gov/individuals/get-transcript> and order the transcripts online. This will also give you a way to print them as well.

## **PARTIAL SUMMARY LIST OF DEBTS THAT MAY BE NON-DISCHARGEABLE**

### **YOU MUST LIST ALL DEBTS YOU OWE IN YOUR PBANKRUPTCY PAPERWORK, INCLUDING THE FOLLOWING, EVEN THOUGH THEY MAY NOT BE DISCHARGED.**

- ❖ Certain types of tax debts, including, but not limited to, income tax debt
- ❖ Debt incurred through fraud
- ❖ Undisclosed debt
- ❖ Debt owed for fraud while acting in a fiduciary capacity
- ❖ Debt owed to a spouse, former spouse or child by court order
- ❖ Debt owed for willful and malicious injury to another property of another
- ❖ Government fine, penalty or forfeiture
- ❖ Debt owed for death or personal injury due to operating of a vehicle while intoxicated or under the influence of drugs
- ❖ Debt that was denied discharge in a prior bankruptcy case of debtor
- ❖ Restitution owed under title 18, United States Code.
- ❖ Debt owed that was incurred in order to pay tax debts
- ❖ Debt related to court fines
- ❖ Student loan debt
- ❖ Intentional infliction of harm or damage

# HOUSEHOLD GOODS WORKSHEET

NO.	ITEM	USED RETAIL VALUE		NO.	ITEM	USED RETAIL VALUE
	RUGS/CARPET				STEREOS	
	CHAIRS				TAPE PLAYERS	
	HEATERS				AIR CONDITIONERS	
	FREEZER				VACUUMS	
	MICROWAVE				BOOKS	
	BEDS				TELEVISIONS	
	TABLES				VCR	
	SILVERWARE				RADIOS	
	BUFFET				ENTERTAINMENT CTR	
	FANS				CHINA CABINET	
	REFRIGERATORS				NIGHTSTANDS	
	STOVE				COMPUTER	
	CHEST/DRAWERS				PRINTER	
	DISHES				YARD EQUIPMET	
	POTS&PANS				BIKES	
	WASHER				ITEMS IN GARAGE	
	DRYER				TOOLS	
	SEWING MACHINE				SPORTING EQUIPMENT	
	BOOK CASES				ITEMS IN ATTIC	
	SOFAS				OTHER:	
	DESKS					
	COFFEE TABLES					
	LAMPS					
	PICTURES					
	END TABLES				SUBTOTAL COLUMN 1	
	MIRRORS				SUBTOTAL THIS COLUMN	
	SUBTOTAL					
					TOTAL VALUE	

## **CLIENT ACKNOWLEDGMENT**

**Client(s) acknowledge that the Law Office of Michael J. Heath is unable to file Client(s) bankruptcy case until the following steps are completed. Failure to take the following steps promptly will prevent filing or cause your case to be dismissed:**

\_\_\_\_\_ Client(s) must fill out all requested forms in full and provide them to the Law Office of Michael J. Heath before we can open up your bankruptcy file.

\_\_\_\_\_ Client(s) must provide all documents requested to the Law Office of Michael J. Heath before we can open up your bankruptcy file. Please open all envelopes and flatten out the documents.

\_\_\_\_\_ If Client(s) own real estate which is to be retained, a title search is required.

\_\_\_\_\_ Client(s) must provide the above-described items all together at one time, not piecemeal. Call us at 757-431-8665 to make an appointment to bring all of the requested documents. If the items are not completed there may be additional fees for additional appointment(s).

\_\_\_\_\_ Your petition will be prepared AFTER we receive payment of all fees and costs due as well as all required documents, including, but not limited to, the required credit counseling course certificate. Extra fees may be assessed if you require service after normal business hours or on an expedited (rush) basis.

\_\_\_\_\_ Client(s) must take the mandatory Credit Counseling course and provide the Law Office of Michael J. Heath with the certificate of completion before we file your case in the bankruptcy court. Please be aware that the certificate is only good for 180 days prior to filing.

\_\_\_\_\_ We will prepare your bankruptcy petition, with you present which will require a two (2) hour appointment for you to come in to read and sign the bankruptcy petition and schedules in the presence of Michael Heath prior to filing your bankruptcy case with the bankruptcy court.

\_\_\_\_\_ If Client(s) are not proficient in the English language, they must provide their own translator.

\_\_\_\_\_ If Client(s) have previously filed a homestead deed they must provide the Law Office of Michael J. Heath a copy of any homestead deed filed.

**Client(s) acknowledge that they must take the following steps to protect their interests:**

\_\_\_\_\_ I/We acknowledge that we have been instructed to cease (stop) depositing money into any bank or credit union in which I owe money to. Further, I/We acknowledge I/We will cease using any bank or credit union account in which I/We owe any money to (including mortgages, car loans, personal loans, credit cards, bank fees, etc.).

\_\_\_\_\_ Client(s) must continue to make all payments on secured debts promptly.

\_\_\_\_\_ Clients(s) must not sell, give away, or transfer any property prior to filing bankruptcy or within 180 days after filing bankruptcy without consulting with one of our bankruptcy attorneys first.

\_\_\_\_\_ Client(s) must provide the full name and mailing address including zip code of all creditors so that they can be notified of the bankruptcy, or the debts will **not** be discharged.

\_\_\_\_\_ If the Client(s) requests that additional creditors be added after the case is filed, there may be additional court and attorney fees the Client(s) may be responsible for.

\_\_\_\_\_ Client(s) must open and read all mail from creditors and notify the Law Office of Michael J. Heath promptly of all court dates and pending legal actions.

\_\_\_\_\_ Client(s) must keep all documents from creditors including statements received prior to filing bankruptcy and also while the bankruptcy is pending, and provide them to the Law Office of Michael J. Heath promptly.

\_\_\_\_\_ Client(s) must open and read all mail from the Law Office of Michael J. Heath promptly and call us with any questions.

\_\_\_\_\_ Client(s) must open and read all mail from the United States Bankruptcy Court and/or their bankruptcy Trustee promptly and call Law Office of Michael J. Heath with any questions.

\_\_\_\_\_ Client(s) must attend Meeting of Creditors (341 Hearing) (meeting with trustee) or the case will be dismissed without a discharge.

\_\_\_\_\_ Client(s) must bring their valid driver's license and Social Security card to the meeting with the trustee AND names must match. A birth certificate or passport is not an acceptable substitute.

\_\_\_\_\_ Client(s) must take the mandatory Debtor Education course after filing, and provide the Law Office of Michael J. Heath with the certificate of completion within 45 days after the Meeting of Creditors (341 Hearing), or the case will be dismissed without a discharge.

\_\_\_\_\_ Client(s) acknowledge receipt of the notices required by 11 USC §§ 527(A)(2) and 527(B) and §342(b), and the bankruptcy information sheet.

_____	X_____	
Printed Name of Client	Signature of Client	Date

_____	X_____	
Printed Name of Joint Client (if any)	Signature of Joint Client (if any)	Date

# **LAW OFFICE OF MICHAEL J. HEATH**

Marsh Landing Building  
575 Lynnhaven Parkway, Suite 180  
Virginia Beach, Virginia 23452  
Office: 757.431.8665  
Facsimile: 757.431.8667  
E-mail: [LawOffice@HamptonRoadsBankruptcy.com](mailto:LawOffice@HamptonRoadsBankruptcy.com)

## **CANCELLATION AND NO SHOW POLICY AGREEMENT**

I/We acknowledge & understand that if I/we are unable to keep a scheduled appointment, I/we must call the law office at least one full business day before my appointment to reschedule so the Law Office may accommodate other client(s).

I/We understand and agree that if I/We fail to appear and/or fail to provide a minimum of one full business day notice, in that event the Law Office reserves the right to assess a \$50.00 fee for a routine appointment and \$200.00 for a 2-hour bankruptcy "Signing" appointment.

I/We acknowledge if I/We are more than 10 minutes late for an appointment, I/We will be charged a cancellation fee, and will be asked to reschedule the appointment.

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Client Signature

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Date

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Client Printed Name

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Client Signature

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Date

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Client Printed Name

Please note: These charges will not apply to Chapter 13 debtors *after* the case has been filed.

## STATEMENT OF UNDERSTANDING

\_\_\_\_\_ I/We understand that I/We are only hiring The Law Office of Michael J. Heath at this time and that my/our bankruptcy is NOT being filed at this time.

\_\_\_\_\_ I/We understand that I/We must come in and sign my/our Chapter 7/13 Petition and Schedules BEFORE MY/OUR CASE CAN BE FILED.

\_\_\_\_\_ I/We further acknowledge that I/We must provide the law office copies of certain documents, a list of which has already been provided to me/us before my/our Bankruptcy petition (case) can be filed with the Bankruptcy Court.

\_\_\_\_\_ I/We also understand that if I/We have not done so already that I/We must file ALL required Tax Returns and provide copies of my 2016 and 2017 (and 2018 if filed) Federal and State Tax Returns with W-2's before my Bankruptcy petition (case) can be filed with the Bankruptcy Court.

\_\_\_\_\_ I/We further understand that the law office cannot provide a plan payment without documentation of employment.

\_\_\_\_\_ I/We acknowledge that we have been instructed to cease (stop) depositing money into any bank or credit union in which I owe money to. Further, I/We acknowledge I/We will cease using any bank or credit union account in which I/We owe any money to (including mortgages, car loans, personal loans, credit cards, bank fees, etc.).

\_\_\_\_\_ **I/We further acknowledge that we have no adverse collection activity, including, but not limited to, garnishments, threats of repossession, foreclosures or law suits pending.**

\_\_\_\_\_ I further acknowledge that I/We have not had any action or proceeding taken for any debt or property securing any debt which was taken since the dismissal of my prior bankruptcy and the filing of this bankruptcy, including repossession, foreclosure, law suit, levy or garnishment.

\_\_\_\_\_  
Client

\_\_\_\_\_  
Date

\_\_\_\_\_  
Client

\_\_\_\_\_  
Date