

Steps to File for Bankruptcy

1. **Make sure that there are no other alternatives.** A bankruptcy will remain on your credit file for up to ten years. However, if you are considering filing, your credit is probably already in bad shape. Bankruptcy allows for a fresh start. Under the Bankruptcy Abuse Prevention and Consumer Protection Act ("BAPCPA"), which significantly amended the U.S. Bankruptcy Code effective October 17, 2005, prior to filing a bankruptcy case, an individual must obtain credit counseling from an entity approved by the U.S. Trustee within 180 days prior to the date of the filing of a bankruptcy case. Such counseling is intended to provide an individual with alternatives to filing a bankruptcy case.
2. **Consider the two common bankruptcy types.** The most popular is the chapter 7 (which is a straight or liquidation bankruptcy), and there is also the chapter 13 (which is a repayment plan for individuals). BAPCPA has made it more difficult to file a chapter 7 case because of the means test. Many individuals will be forced to file a chapter 13 case because of the means test.
3. **Call to schedule your pre-bankruptcy credit counseling appointment.** AABC-All About Bankruptcy & Credit is a Department of Justice approved credit counseling agency. Call AABC at 1-800-579-2414. Complete your pre-bankruptcy credit counseling registration at www.aboutbk.com. After this appointment you will receive a credit counseling certificate, which your attorney will need before they can file your bankruptcy. If filing joint bankruptcy, both individuals must participate in and receive Credit Counseling. Each individual will receive a separate certificate.
4. **Do not use your credit cards** if you are thinking about filing bankruptcy. If you do so with the intent to file, a creditor can challenge the discharge of the debt owed or even your right to discharge any debt. If you obtained the debt knowing that you could not repay it, you may not be able to discharge that debt if the creditor challenges it through a lawsuit, or adversary proceeding, in your bankruptcy case.
5. **Research your options as it relates to filing.** Some people choose to file without the aid of an attorney. However, it's highly recommended to hire an attorney. Your research should help you decide on an attorney. In most cases, people who choose large firms to represent them will work with a paralegal and not the attorney. Try to find a firm in which you have direct contact with your attorney.
6. **Meet with the attorney you've selected and go over your "case."** Your attorney should be asking and answering ALL of your questions. They will determine which chapter is best for you, based on your financial affairs. An attorney will also assist you with completing the BAPCPA's means test.
7. **Find out how much it will cost.** The fees for filing are varied. Some attorneys will charge a flat fee, while others will charge based upon the amount of debt that you have. The former is always the best route to go. Some attorneys will require that you pay up front before they file. Others will allow you to pay in installments, and will file the case with a deposit. The average fee is \$1,700 but this may vary significantly depending on where you live (e.g., a large city). There are some places that will file for free if you do not have the financial means to do so. The average fee will vary

depending upon where you live. An attorney cannot be your creditor in a chapter 7 case, so the attorney's fee for a chapter 7 case must be paid in full before the case is filed. If you still owe an attorney part of the bankruptcy fee when you file a chapter 7 case, it becomes uncollectable and the attorney must waive the unpaid balance or else cannot continue to represent you. In a chapter 13 case, if agreed with the attorney, the entire attorney's fee need not be paid prior to filing, and may be paid through your chapter 13 plan.

8. **Refer all creditors to your attorney's office**, once he or she has been retained. They will then be able to speak on your behalf (which means no more annoying calls). Once your attorney has filed your case, the "automatic stay" goes into effect. This means that NO creditors should be contacting you about your debt. This stay is enforced, and creditors can be liable if they go against it. A willful violation of the automatic stay can result in damages being assessed against a creditor, including a reasonable attorney's fee, and in appropriate cases, punitive damages may be awarded.
9. **Meeting of creditors will occur.** Once your attorney has submitted your petition, you will be notified by mail (most often) of your date for a meeting of creditors (or a "341 meeting," named after the section of the Bankruptcy Code requiring it). This meeting allows the trustee to ensure that you have given truthful answers on your bankruptcy petition and that you understood and agree to filing for bankruptcy. Your attorney should have met with you prior to this meeting to go over all of your debt to ensure that it is all listed. You must also list all of your assets. He or she will also go over sample questions that will be asked at the meeting. Prior to the meeting, you should have reviewed your file with your attorney. Once you are sworn in at the meeting, you will answer questions that are recorded. The meeting will last about ten minutes. In a chapter 7 case, the trustee will determine whether or not there are assets that can be liquidated and used to repay your creditors. If the trustee determines that all your assets are exempt, a report of no distribution will be filed with the bankruptcy court. If the trustee determines that there are non-exempt assets, they will be sold and payments may be made to your creditors. In a chapter 7 case, you may never have to pay a creditor back. In a chapter 13, you will be required to enter into a 3 to 5 year plan, in which you will pay creditors as much as you can over time, taking into consideration the BAPCPA means test.
10. **Call and schedule Bankruptcy Debtor Education.** AABC-All About Bankruptcy & Credit is a Department of Justice approved credit counseling agency. Call AABC at 1-800-579-2414. Complete your post-bankruptcy Debtor Education registration at www.aboutbk.com. This Personal Financial Management class may be taken any time after the bankruptcy case is filed and before the case is discharged. (NOTE: you must have a bankruptcy case # before going through this class.) After completing Debtor Education you will receive bankruptcy Debtor Education certificate. If filing joint bankruptcy, both individuals must participate in and receive the Debtor Education certificate. Each individual must have a separate certificate.
11. **Bankruptcy will be discharged.** The 60th day after your meeting of creditors is first set is the deadline for creditors to file lawsuits to challenge the discharge of a particular debt or your entire discharge. If no such lawsuits are filed, shortly after that 60th day you will receive notification of a discharge of debt if you filed chapter 7. A discharge means that you have no further obligation to repay the discharged debt

(the existence of that discharged debt may still appear in your credit reports), and that your creditors can never collect the debt from you. If you filed chapter 13, you will receive the notice of discharge approximately 30 to 60 days after your final payment has been made and the trustee ensures your payment plan has been followed and completed. NOTE: Not all debt is discharged in a chapter 7 or 13 case, including student loans and certain taxes, so you may not be completely relieved of the obligation to repay all debt. Whether or not a debt is discharged depends upon certain Bankruptcy Code provisions, and with respect to some debts, whether or not a creditor succeeded in convincing a judge that your debt to that creditor should not be discharged.