



Cannon Law Offices, PLLC
ATTORNEYS AT LAW

Richard L. Cannon, III

Local 252.355.2010

300 East Arlington Blvd., Suite 5
Greenville, NC 27858

Toll Free 800.849.0133

Mailing Address:
Post Office Drawer 8425
Greenville, NC 27835-8425

Fax 252.355.2994

Email rick@cannonlaw4u.com

THINGS YOU NEED TO KNOW BEFORE FILING BANKRUPTCY

Guidelines: If you are considering filing for bankruptcy, you are not alone. Many people have and will continue to file for bankruptcy based upon the times with corporate layoffs, downsizing and continuing business failures. Although not inclusive, the general guidelines below will help you determine if you should consider filing bankruptcy.

1. You should file for bankruptcy when you cannot reasonably pay your bills.
2. If your income does not sufficiently pay off or pay down your bills, it's time to consider bankruptcy.
3. If your monthly debt is 1.5 times your monthly income. For example, if you have a monthly net income of \$2,800.00, but your monthly expenses are about \$4,200.00, it's time to think about bankruptcy.
4. If you cannot budget yourself out of the debt within four years, it's time to seriously consider bankruptcy.
5. If you are more than two months late on your bills, bankruptcy may be a consideration.
6. If your loan or mortgage has been "called" or accelerated, it's time to seriously consider bankruptcy.
7. If you get a foreclosure notice from the bank or a lender it's time to seriously consider bankruptcy.
8. If you have withdrawn from your savings account for two months bankruptcy may be a consideration.
9. If you are depressed about your financial situation, it may be time to consider bankruptcy.
10. If you have a severe financial setback such as the loss of a job, major surgery without medical insurance, etc., it's time to seriously consider bankruptcy.
11. If a creditor has filed a lawsuit against you to collect a debt you owe.
12. If a creditor has garnished your wages or taken your tax refund.

Generally, people filing for bankruptcy are dealing with the following situations:

- Loss of their job or their primary means of support;
- Been laid off from their job;
- Been demoted or given a significant pay cut;
- Experienced major family problems leading to divorce, child custody or separation;
- Excessive major credit card problems;
- Catastrophic medical-doctor bills from an uninsured major surgery or illness such as terminal cancer;
- Desperate financial situations with little hope.

How Filing Bankruptcy Can Help You: Filing a bankruptcy is as simple as filling in a bankruptcy questionnaire and returning it to your attorney's office with supporting documents. The attorney's office then takes your information and works up a "petition" that will be electronically filed with the Bankruptcy Court. In whole, the process takes only as long as it takes you to provide the necessary information to your attorney. Once your petition is filed with the Bankruptcy Court, the following good things can happen to you:

11. Anybody you owe cannot contact you in any way (once they receive notice in the mail from the court).
12. Any wage garnishments taken out of your check will cease to be lawful. If the garnishment is taken out of your check after you file bankruptcy, you may be entitled to a refund.
13. Any foreclosure action on your home or other real property is stopped.
14. Any Sheriff's sales are stopped immediately.
15. Any taxes you owe that are currently being collected on by the government are put on hold (while your debts are being reorganized).
16. Anybody coming to repossess your auto, boat, furniture, appliances, or anything else are stopped immediately and cannot remove anything without the Bankruptcy Court's permission.

Terms You Need to Know Concerning Bankruptcy:

17. **Creditor**: This is the person or company you owe money to because they extended credit to you.
18. **Debtor**: This is YOU. You owe debts, so you are a debtor.
19. **Secured Debt**: This is a debt you owe for an item that *could* be taken away from you if you don't pay the bill. For instance, if you don't make your house payment, the creditor (or bank) you owe can repossess your house.
20. **Unsecured Debt**: This is a debt you owe for something that *cannot* be taken from you. For instance, anything you charge on a credit card is an "unsecured debt." If you don't pay the MasterCard bill this month, they cannot come and take whatever you bought with the credit card. All they can do is harass you on the telephone until you pay the bill, turn the bill over to a collection agency, or attempt to get a judgment against you (depending on the amount you owe them).
21. **Asset**: This is something you own that has resale value. Your car, TV set, computer, stocks, bonds, bank accounts, piggy bank, clothes, bed, etc. are all things that have some type of value that could be turned into cash. These types of things are your assets.
22. **Discharge**: This is what happens when your debts are erased and you have completed your bankruptcy.
23. **Exemption**: There are exemption allowances allowed by the Bankruptcy Court to protect the assets you own that you need to keep in order to live a normal life. For instance, you need a house to live in, a car to drive for transportation, clothes to wear, medicine refills, personal care items, etc. The law allows you to keep these types of items by allowing you exemptions on them. When anything you own is totally exempt from the bankruptcy, no one can take it away from you.
24. **Automatic Stay**: The moment a bankruptcy is filed, all creditor activity to collect debts, obtain judgments, or obtain property of a debtor to satisfy a debt is completely stopped. This is the protection provided to you as a consumer under the Bankruptcy law in the United States.
25. **Relief From Stay**: This is a court order, requested by a creditor, who asks the court to lift the Automatic Stay that was immediately put in place when the debtor filed the bankruptcy petition. If a creditor is granted a Relief from Stay, the debtor will receive notice from the court of its existence and the bankruptcy attorney can prepare a Motion on the debtor's behalf to request the court to remove the Relief from Stay (of course, there must be a lawful reason to do so).
26. **Reaffirmation Agreement**: This is what you file with the court if you decide to pay a creditor outside your bankruptcy. For example, you may want to reaffirm with Bob's

Auto Sales when you file your Chapter 7 bankruptcy petition, because you want to keep making payments on your car since you need it to get back and forth from work.

27. **Trustee**: This is a real “live” person that works for the Bankruptcy Court who normally oversees the entire process from beginning to end concerning your bankruptcy.

28. **Conversion**: This is when you start out by filing one chapter of bankruptcy and decide later to file another chapter. For example, you originally file a Chapter 7 but decide to convert to a Chapter 13.

29. **Dismissal**: Among other things, your bankruptcy case can be dismissed at any time if you fail to comply to any rules, don’t turn over asset monies that are requested by the Trustee or if you convert from one Chapter of bankruptcy to another. Your case is “discharged” if you completely pay off your Chapter 13 or when your Chapter 7 is legally finished.

Chapter 7 Bankruptcy:

30. In order to be eligible to file a Chapter 7 bankruptcy, you must be able to meet the following guidelines:

- You must reside or have a domicile, a place of business, or property in the United States, and more specifically in the State of North Carolina.
- You must not have received a bankruptcy discharge within the last six (6) years or have had a bankruptcy case dismissed within the last 180 days.

31. People who file a Chapter 7 bankruptcy do so in order to discharge their debts and get a “fresh start” in life. There are income requirements that you must be below in order to file Chapter 7; and people who file this type of bankruptcy are those who can no longer afford to repay all their debts due to illness, unemployment, marital problems, unexpected medical expenses, over-extended credit or other large expenses. However, not all debts can be discharged. For example, alimony, student loans, child support and taxes that are less than 3 years old are non-dischargeable and must be repaid in full.

32. Most consumers file a Chapter 7 bankruptcy and then reaffirm on the debts they want to continue paying. For instance, you can file a Chapter 7 and reaffirm on your house. This could possibly erase your other debts and you would continue making your house payments like you normally do now, outside the bankruptcy.

Steps that Occur in Filing a Chapter 7 Bankruptcy:

33. In order to be eligible to file a Chapter 7 bankruptcy, you must be able to meet these guidelines:

- Income for the past 6 months falls below a National Income Median test. You will provide your pay stubs or other documentation of income for the 6 months prior to filing and we will tell you if you are eligible.

34. When your bankruptcy petition is prepared and signed by you, it is filed with the Bankruptcy Court. You are assigned a case number and a Trustee. A Trustee is the person who is responsible for overseeing your bankruptcy until your case is closed.

35. If you plan to reaffirm on a debt (which means you want to continue paying the bill on your own after the bankruptcy is over), your attorney or paralegal needs to submit a Reaffirmation Agreement to the creditor, obtain their signature and file this with the court. However, you can still pay the bill on your own without filing a Reaffirmation Agreement; but it is best to file one if the creditors you owe can repossess something you want to keep (i.e., car, house, television, computer, tools, etc.).

36. Our office, will send a notice to all of your creditors (people/companies you owe money to). This notice is normally sent within 5 days after you file your petition.

37. The Bankruptcy Court will then send you and all of your creditors a notice informing you of the Meeting of Creditors hearing date, and time, that you should appear in Court.

38. At your Meeting of Creditors NO judge will be present. The Trustee will ask you some of the same questions you answered when you first filled out the paperwork for the attorney or paralegal; who originally prepared you bankruptcy petition.

39. In actual practice, creditors rarely appear at the Meeting of Creditors; however, a representative from one of the companies you owe, or a person you owe, may show up at this meeting. They normally only appear to ask where the secure item is and if it is insured.

40. If your bankruptcy case is a “no asset” Chapter 7 bankruptcy, the Meeting of Creditors will normally only last 5-10 minutes.

41. If your bankruptcy case is a “no asset” Chapter 7 bankruptcy, you normally will not have to appear in court again. Essentially, you will receive a discharge through the mail and all your allowed debts are forgiven.

Chapter 13 Bankruptcy:

42. People who file a Chapter 13 bankruptcy do so in order to keep property in which a creditor has a lien- like a house or car, or if payments are behind and the creditor is about to foreclose or repossess the property. The filing of a Chapter 13 will stop the foreclosure sale or repossession and allow the person 3 to 5 years to repay some, but not all, of their debts. Rather than wiping out all their debts in a Chapter 7 proceeding, Chapter 13 allows a person to reorganize and pay a certain percentage of their debts over a period of 3 to 5 years. The unpaid balance is discharged after the payment plan is completed. Payments are made monthly by you to the Chapter 13 Trustee.

43. A Chapter 13 is NOT a bill consolidation loan, although many people look at it that way. Although it is a similar concept, a bill consolidation loan is money actually loaned to you to repay other creditors. In a Chapter 13, no money is loaned to you because you make you monthly payments to the Trustee, who disburses the money among your creditors.

44. Your priority claims are paid first in a Chapter 13. Priority claims include debts for things like taxes, child support, alimony, etc.

45. The amount you owe unsecured creditors, like medical bills, credit cards, etc. can normally be paid back as low as 5¢ on the dollar. (This figure is not written in stone. It is subject to change depending on your individual State laws, type of debt it is, as well as the income and budget of the debtor).

46. You are normally allowed to keep your home, car and everything else you own when you file a Chapter 13 as long as you make regular monthly payments to the Chapter 13 Trustee.

Steps that Occur in Filing a Chapter 13 Bankruptcy:

47. When your bankruptcy petition is prepared and signed by you, it is filed with the Bankruptcy Court. You are assigned a case number and a Trustee. A Trustee is the person who is responsible for overseeing your bankruptcy until your case is closed.

48. Your attorney or paralegal will also file a Chapter 13 Plan with your bankruptcy petition that details the amount of your monthly payments and the length of time you are going to be in the Chapter 13 Plan.

49. The amount you pay each month to the Trustee is determined by the amount of money you currently make and how much money you need to live on each month, as well as the amount of debt you need to repay.

50. Our office will send a notice to all of your creditors (people/companies you owe money to). This notice is normally sent within 5 days after you file your petition.
51. The Bankruptcy Court will then send you and all of your creditors a notice informing you of the Meeting of Creditors hearing date, and time, that you should appear in Court.
52. At your Meeting of Creditors, NO judge will be present. The Trustee will ask you some of the same questions you answered when you first filled out the paperwork for the attorney or paralegal; who originally prepared you bankruptcy petition.
53. In actual practice, creditors rarely appear at the Meeting of Creditors; however, a representative from one of the companies you owe, or a person you owe, may show up at this meeting. They normally only appear to ask where the secure item is and if it is insured.
54. After your bankruptcy case has been filed, you are required to pay your first Chapter 13 Payment on the first day of the following month. Your payment must be in the form of a money order or cashier's check. No cash will be accepted.
55. The Trustee will normally provide you with information on how to contact his/her office with any questions as well as an address where to mail your payments.
56. After your Meeting of Creditors, you may want to set up a payroll deduction so you don't have to worry about writing a check every month. Because a payroll deduction may take 4-6 weeks before it begins, you need to continue making payments to the Trustee on your own until the wage deduction starts. If you get behind in payments, your case could be dismissed and you will have to start all over again.
57. Finally, a Confirmation Hearing is scheduled but you normally do not appear in court. Your attorney normally appears on your behalf to simply confirm that you are approved to be in the Chapter 13 plan.

Changes in Payments During a Chapter 13 Bankruptcy:

58. Nothing stays the same. During the 3-5 years that you are making regular payments to the Chapter 13 Trustee anything could happen. You may lose your job. Your spouse may lost their job. You may have a new baby. You may inherit some money. Your old car may conk out and you have to replace it. A million things can happen, which means your Chapter 13 payment can be lowered or raised depending on the circumstances.
59. Many people, when something occurs where they cannot make a Chapter 13 payment one month, will simply not pay it. This is a very bad idea. All you have to do is contact your attorney and ask them to file a Motion to Modify the Chapter 13 Plan. You will need to go to the office and supply the attorney with new, updated income and budget

information, which explains why you cannot make your normal Chapter 13 payment. This is worth the time.

60. If you need to go into debt and purchase something on credit while you are going through a Chapter 13 bankruptcy, your attorney can file a Motion to Incur Debt for you. This will allow you the needed money to purchase the item. (Example: sell one car and purchase another one).

Rules that Apply to All Forms of Bankruptcy:

61. Any debts you make AFTER you file your bankruptcy petition cannot be included in your bankruptcy.

62. Any debts you made BEFORE you filed your bankruptcy petition, but forgot to include when you filed, can be added by your attorney. He/she will file an Amendment to whichever Schedule of the bankruptcy petition is effected by the additional debt(s).

63. After your bankruptcy is over and the creditors have been satisfied, any lien you have is not automatically removed from your property. The attorney will need to be hired to remove the lien.

64. Never make the mistake of running up debts on all your charge cards and then filing bankruptcy. You can be held responsible for any charges you made within the last ninety (90) days.

Debts that Cannot be Discharged:

65. Some of the debts you owe cannot be forgiven in bankruptcy and will need to be repaid by you. Even if the debt is included in your original bankruptcy petition, any unpaid balance must be paid by you when the bankruptcy is over. The types of debts I am referring to include, but are not limited to the following:

- Credit obtained by false pretenses or acts of fraud;
- All taxes, customs or duties;
- Debts owed for fines and penalties to another government unit;
- Student loans
- Child or spousal support;

- Luxury items valued at \$500 or more that were purchased sixty (60) days from the date you filed your original petition;
- Cash advances of \$1,000 or more that were made within sixty (60) days from the date you filed your original petition;
- Debts made due to an act of embezzlement or larceny;
- Debts owed to a party where you maliciously caused injury to another;
- Debts owed for the death or personal injury while intoxicated by drugs or alcohol.

The First Steps to Filing a Bankruptcy Petition:

66. Take a file folder and put a statement from each and every creditor that you owe. If you don't receive a monthly statement from the creditor, put the following information on a sheet of paper and put it in your file:

- Name and complete mailing address of who you owe;
- Your account number (if applicable);
- The name of who owes the debt (husband, wife, or both);
- The total amount you owe this creditor;
- How much your monthly payments are;
- The date you originally went into debt with this creditor (If you can't remember the exact date, just approximate year [i.e., 2001, 2002, 2003, etc.]);
- If the debt is for a credit card, record the last date you charged on this credit card. If you charged less than 90 days ago, you need to write down the amount you charged and the reason for the purchase.

67. In the same file folder, also put in the following documents:

- Your current pay stub and all pay stubs from the past six months;
- If you are unemployed, include copies of documents showing any income you receive(d) from unemployment, worker's compensation, child support, SSI, social security, retirement, estate, etc. for the past six months;

- Mortgage and deed if you own or are purchasing a home or other real property (i.e., land, apartment complex, etc.);
- Copies of your car, boat, motorcycle, mobile home or other titles to motor vehicles;
- Copies of your past two years tax returns;
- Copies of any court proceedings filed against you.

68. When you have put together your file, you will have most of the information needed to file a bankruptcy petition. However, the attorney, or whoever you hire to prepare your bankruptcy petition may also require other documents, depending on your particular situation, but they will let you know when you go to their office for the initial intake interview.

69. A bankruptcy petition is then filed in court. It contains several sheets of paper that includes schedules and forms. Each schedule and form relates to different items that must be filled out properly. Normally people choose to hire an attorney to prepare their bankruptcy petition, but some people purchase bankruptcy kits and attempt to do it themselves.

How Your Credit Will be Effected by Bankruptcy:

70. If you are behind in paying your bills, your credit is already effected. Filing a bankruptcy may actually be your first step in repairing a bad credit situation. When a creditors finds a bankruptcy on your credit report, it shows them that all prior credit problems have been resolved. The question then becomes, “Are you creditworthy?”

71. Every creditor is different and each one treats bankruptcy with a different set of rules for determining your creditworthiness. Although there are many exceptions, normally a creditor likes to see how well you do in paying your bills during the first year or two after filing bankruptcy before they extend new credit to you. So although a Chapter 7 bankruptcy appears on your credit report for ten (10) years, and a Chapter 13 appears for seven (7) years, most people only find it to be a problem for a couple of years after filing-provided everything else looks good on their current credit report.

72. In addition, there are 1,000's of creditors who extend credit to people who have filed bankruptcy. The interest rates are normally higher, of course, but you can obtain credit easily with one or more of them. One of the best ways to build your credit after bankruptcy is to obtain a “secured” credit card. This is one where you put money in a bank and the bank issues you a credit card. The credit limit of the credit card will be the same amount of money you have in their bank. After you have shown that you make

timely payments, your credit line may be increased without you depositing any more money.

73. However, the fact remains- one of the main reasons for filing bankruptcy is to get OUT of debt- not back into it. You should take responsibility for your own financial spending and saving, making sure not to get to the point where you have to file another bankruptcy. About the only items the average American really needs to go into debt for is an automobile for transportation and a home for their family to live in. Everything else should be purchased out of the monthly income, or saved for and purchased in full. The only reason Americans are in debt is because they “want it now!” and don’t have the patience to wait.

Other General Questions and Answers:

74. *If I am married, does my spouse have to file bankruptcy?*

No, however, the spouse that does not file will not receive the benefits of bankruptcy. In other words, if the non-filing spouse is jointly liable on certain debts, he or she will remain liable for those debts if the filing spouse filed for a Chapter 7 bankruptcy. He or she will also remain liable for any amount not paid for in the filing spouse’s Chapter 13 plan. On the other hand, the non-filing spouse will not have bankruptcy noted on his or her credit report.

Therefore, if the debts you owe are also owed by your spouse, or co-signed by your spouse, it would be to your benefit to file a bankruptcy together as a married couple. If most of the debts are in your name only, you may consider filing a bankruptcy as the only debtor.

75. *What if I am unmarried but living with someone? Can we file a bankruptcy together?*

At the present time, if you are living together with a significant other but are unmarried, you cannot file a bankruptcy together, even if the bills are in both your names. In this case, each one of you would have to file a separate bankruptcy petition. A competent attorney or paralegal can separate the expenses and budget so that you each pay 50% of the day-to-day living expenses (if both of you share the expenses) and submit the information properly to the court.

76. *Will bankruptcy stop a wage garnishment?*

Yes, some of the money garnished from your paycheck may even be returned to you. It all depends on how much was garnished and when it was garnished. If your wages are currently being garnished, a notification of stay pleading will need to be filed in court as well as a letter mailed to the creditor and your employer to stop the garnishment after your bankruptcy petition is filed.

Stopping wage garnishment is possible because whomever you owe that is garnishing your check is now being paid (or is being discharged) through the bankruptcy petition you filed. As soon as the clerk file stamps your bankruptcy petition, you have immediate protection under the United States Bankruptcy Court and every creditor you owe must proceed through this court to collect anything from you.

77. How can I immediately stop creditor harassment?

The filing of a bankruptcy under Chapter 7 or Chapter 13 will IMMEDIATELY bring the harassment caused by creditors to a HALT. Once you bankruptcy has been filed, creditors are forbidden from taking action against you or against your property to collect money you owe them. If they try to do so, they can be held in contempt of court. This is the advantage of the law, administered by the United States Bankruptcy Court, and provided a way to help citizens get “another chance.” Even if there is a wage garnishment or other legal proceeding under way, the filing of a bankruptcy will bring it to a screeching halt, giving you the opportunity to take care of your financial affairs in an orderly and permanent way.

78. What if I owe the IRS back taxes? How will bankruptcy help me?

Most tax debts cannot be discharged in a bankruptcy. Trust funds and withholding taxes you owe, such as sales taxes or employee withholding obligations can never be discharged. However, income and self-employment taxes can be discharged if they are at least three (3) years old and the tax returns have been on file for at least two (2) years.

In situations like this, a bankruptcy can be a great help in many ways. The biggest benefit is that you may be able to reduce the amount of the tax you owe. In a Debt Adjustment Plan, you can also stop interest and penalties on all taxes you owe- even the ones that are non-dischargeable. This will place you in a situation where it will be easier to pay your taxes off.