

Lakeland Library Cooperative
BANKRUPTCY GUIDELINES

Adopted by the PPS Committee: March 19, 2009

Overview of Bankruptcy Law and Lakeland Library Cooperative Libraries

1. The filing of a bankruptcy case automatically prohibits creditors from collecting most debts from a debtor, unless the bankruptcy case is dismissed.
2. A discharge releases individual debtors from personal liability for most debts and prevents the creditors owed those debts from taking any collection actions against the debtor.
3. Additional bankruptcy information and sample forms are attached.
4. Case law on bankruptcy and libraries is limited, and bankruptcy law is complex. This document is only a guideline. Local libraries should consult with their own attorney to discuss any questions they have about bankruptcy law or specific bankrupt library patrons.

Guidelines

1. If the library is notified that a patron has filed for bankruptcy, put a note on the patron's record, "*Library name, date of bankruptcy filing, date library received notice of bankruptcy filing, library code and the initials or name of the staff member.*" If the library has not been sent a bankruptcy notice by the Bankruptcy Court, ask the patron to provide proof of the bankruptcy. Until a Discharge is entered by the Bankruptcy Court, the patron remains responsible for costs for unreturned collection materials, fines/fees on their record, and all applicable Lakeland Library policies will apply. If a patron does not name the library as a creditor, but provides a copy of a bankruptcy notice, the library would be wise to treat it as official and follow the same guidelines as if the library were listed as a creditor on the notice.
2. Overdue notices, bills or collection activity should stop. Failure to do so may result in being in contempt of court. (Note: In Innovative e-mail and telephone notices can be removed, however, catching mailed overdue notices from potentially multiple libraries is too risky to guarantee that a notice will not be mailed to a bankruptcy petitioner.)
3. If the initial library the patron contacts is not the library that put the patron in collections with Unique Management, inform the patron that he/she should notify the library of the bankruptcy that did place them in collections.
 - a. After a library that put the patron into collections has been notified, that library must then notify Unique Management Services that the patron is in bankruptcy.
 - b. Put a note on the patron's record "*Library name, Unique Management notified, date, library code and the initials or name of the staff member.*"
4. An official Bankruptcy Order of Discharge from the court releases the patron from any obligation to pay for unreturned collection materials. Do not retain the fines and fees on the patron record except in a note field.
5. Any charges incurred after the bankruptcy was filed are not discharged.
6. Charges incurred by spouse or children not listed on the bankruptcy papers are not considered part of the bankruptcy and should be left on those patron records. (Note: a joint petition can be filed by a married couple.)

7. The patron should be asked to provide the library with a copy of the Bankruptcy Court Order of Discharge. The guidelines:
 - a. Lakeland Library Cooperative libraries should honor Bankruptcy Court discharge orders even if the library or libraries are not listed as creditors in the bankruptcy case.
 - b. Make a copy of the court's Order of Discharge and file.
 - c. The first library receiving the Bankruptcy Court Order of Discharge from the court or provided by the patron should put a note on the patron's record "*Library name, library code, Bankruptcy Discharge Order date, date library received the order, and the initials or name of the staff member*".
 - d. Remove all costs related to non-returned collection materials for your library only from the bankruptcy patron's record.
 - e. Inform the patron that he/she should provide each library in the Lakeland Library Cooperative with a copy of the Discharge Order so the items on their patron record can be removed from each library.
8. Fines and fees should not remain on the patron record after a Discharge Order is entered by the Bankruptcy Court. This includes removing/waiving the collection agency fee.

Lakeland Library Cooperative Disclaimer

The Lakeland Library Cooperative bankruptcy guidelines are not intended to constitute legal advice. The Lakeland Library Cooperative makes no representations or warranties regarding the accuracy or completeness of this bankruptcy information. Lakeland Library Cooperative libraries are encouraged to consult with their own attorney with any specific bankruptcy questions they may have.

Other Options Outside the Cooperative Guidelines

1. An individual library receiving a notice of bankruptcy and listed as a creditor has the option to file a claim with the appropriate Bankruptcy Court. Work with your own attorney on this. You should be aware, however, that only a small number of claims are ever paid off and that this may not be worth your time involvement.
2. Check with your own library attorney on the possibility of filing a misdemeanor in court for stolen items from a patron that has filed for bankruptcy and decide if you want to have your municipality approve a misdemeanor resolution on lost materials.



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<http://www.miwb.uscourts.gov/>

WHAT IS CHAPTER 13 BANKRUPTCY?

Chapter 13 Bankruptcy is also known as a reorganization bankruptcy. Chapter 13 bankruptcy is filed by individuals who want to pay off their debts over a period of three to five years. This type of bankruptcy appeals to individuals who have non-exempt property that they want to keep. It is also only an option for individuals who have predictable income and whose income is sufficient to pay their reasonable expenses with some amount left over to pay off their debts.

WHAT IS CHAPTER 7 BANKRUPTCY?



Chapter 7 bankruptcy, sometimes called a straight bankruptcy is a liquidation proceeding. The debtor turns over all non-exempt property to the bankruptcy trustee who then converts it to cash for distribution to the creditors. The debtor receives a discharge of all dischargeable debts usually within four months. In the vast majority of cases the debtor has no assets that he would lose so Chapter 7 will give that person a relatively quick "fresh start".

One of the main purposes of Bankruptcy Law is to give a person, who is hopelessly burdened with debt, a fresh start by wiping out his or her debts.

***Chapter 13 Bankruptcy
is also known as a
reorganization
bankruptcy.***

In re: [REDACTED]
[REDACTED]

Holland, MI49424

Case No. 00 - 08844

Chapter 7

Debtor(s)

ORDER AND NOTICE OF STAY

ALL CREDITORS and interested persons are hereby notified that the above noted debtor(s) has filed a petition for relief under Chapter 7 of the Bankruptcy Code and is entitled to the protection of the Automatic Stay provisions of Section 362.

IT IS ORDERED that, pursuant to Section 362 of the Bankruptcy Code, from the time and date of the filing of this case, all persons, their agents, employees and attorneys are hereby stayed and restrained from commencing or continuing any suits, and from levying any attachments, garnishments or other executions upon earnings or wages, and from repossessing property (or selling property repossessed) in the possession or under the control of the Debtor or in which the Debtor has any interest; and all such persons are further stayed and restrained from molesting, harassing or disturbing the Debtor or his employer or other persons on account of any debt or claim, or with respect to any property which the debtor has submitted to the exclusive jurisdiction of this Court, unless and until permission and leave of the Court be first obtained.

This order does not in any way modify the provisions of 11 USC 362. You should consult this statute to determine applicable exceptions.

A copy of this order will be returned to the Debtor for service on appropriate creditors and interested parties. The Debtor shall file a proof of service listing all persons served with this order.

Case Filed: 11/06/00

Jeffrey R. Hughes
Bankruptcy Judge

By Kristen Stevenson
Deputy Clerk

Parties Served: Debtor(s) Attorney for Debtor(s)
CC: File

SAMPLE BANKRUPTCY DISCHARGE FORM

B18 (Official Form 18) (12/07)

United States Bankruptcy Court

_____ District Of _____

In re _____)
[Set forth here all names including married,)
maiden, and trade names used by debtor within)
last 8 years.])
Debtor) Case No. _____)
))
))
Address _____)
_____) Chapter 7)
))
Last four digits of Social-Security or other Individual Taxpayer-)
Identification No(s)(if any): _____)
))
Employer Tax-Identification No(s).(EIN) [if any]: _____)
_____)

DISCHARGE OF DEBTOR

It appearing that the debtor is entitled to a discharge, **IT IS ORDERED:** The debtor is granted a discharge under section 727 of title 11, United States Code, (the Bankruptcy Code).

Dated: _____

BY THE COURT

United States Bankruptcy Judge

SEE THE BACK OF THIS ORDER FOR IMPORTANT INFORMATION.

SAMPLE BANKRUPTCY DISCHARGE FORM

B18 (Official Form 18) (12/07) - Cont.

EXPLANATION OF BANKRUPTCY DISCHARGE IN A CHAPTER 7 CASE

This court order grants a discharge to the person named as the debtor. It is not a dismissal of the case and it does not determine how much money, if any, the trustee will pay to creditors.

Collection of Discharged Debts Prohibited

The discharge prohibits any attempt to collect from the debtor a debt that has been discharged. For example, a creditor is not permitted to contact a debtor by mail, phone, or otherwise, to file or continue a lawsuit, to attach wages or other property, or to take any other action to collect a discharged debt from the debtor. *[In a case involving community property:* There are also special rules that protect certain community property owned by the debtor's spouse, even if that spouse did not file a bankruptcy case.] A creditor who violates this order can be required to pay damages and attorney's fees to the debtor.

However, a creditor may have the right to enforce a valid lien, such as a mortgage or security interest, against the debtor's property after the bankruptcy, if that lien was not avoided or eliminated in the bankruptcy case. Also, a debtor may voluntarily pay any debt that has been discharged.

Debts that are Discharged

The chapter 7 discharge order eliminates a debtor's legal obligation to pay a debt that is discharged. Most, but not all, types of debts are discharged if the debt existed on the date the bankruptcy case was filed. (If this case was begun under a different chapter of the Bankruptcy Code and converted to chapter 7, the discharge applies to debts owed when the bankruptcy case was converted.)

Debts that are Not Discharged.

Some of the common types of debts which are not discharged in a chapter 7 bankruptcy case are:

- a. Debts for most taxes;
- b. Debts incurred to pay nondischargeable taxes;
- c. Debts that are domestic support obligations;
- d. Debts for most student loans;
- e. Debts for most fines, penalties, forfeitures, or criminal restitution obligations;
- f. Debts for personal injuries or death caused by the debtor's operation of a motor vehicle, vessel, or aircraft while intoxicated;
- g. Some debts which were not properly listed by the debtor;
- h. Debts that the bankruptcy court specifically has decided or will decide in this bankruptcy case are not discharged;
- i. Debts for which the debtor has given up the discharge protections by signing a reaffirmation agreement in compliance with the Bankruptcy Code requirements for reaffirmation of debts; and
- j. Debts owed to certain pension, profit sharing, stock bonus, other retirement plans, or to the Thrift Savings Plan for federal employees for certain types of loans from these plans.

This information is only a general summary of the bankruptcy discharge. There are exceptions to these general rules. Because the law is complicated, you may want to consult an attorney to determine the exact effect of the discharge in this case.



How Chapter 7 Works

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. (3) 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. Fed. R. Bankr. P. 1007(b). 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). 11 U.S.C. § 521. 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. *Id.* A husband and wife may file a joint petition or individual petitions. 11 U.S.C. § 302(a). Even if filing jointly, a husband and wife are subject to all the document filing requirements of individual debtors. (The Official Forms may be purchased at legal stationery stores or downloaded from the internet at www.uscourts.gov/bkforms/index.html. They are not available from the court.)

The courts must charge a \$245 case filing fee, a \$39 miscellaneous administrative fee, and a \$15 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. 28 U.S.C. § 1930(a); Fed. R. Bankr. P. 1006(b); Bankruptcy Court Miscellaneous Fee Schedule, Item 8. 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. Fed. R. Bankr. P. 1006. 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. *Id.* The debtor may also pay the \$39 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. 11 U.S.C. § 707(a).

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. 28 U.S.C. § 1930(f).

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 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 non-filing 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 (4) 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. 11 U.S.C. § 522(b). Many states have taken advantage of a provision in the Bankruptcy Code that permits each state to adopt its own exemption law in place of the federal exemptions. In other jurisdictions, the individual debtor has the option of choosing between a federal package of exemptions or the exemptions available under state law. Thus, whether certain property is exempt and may be kept by the debtor is often a question of state law. The debtor should consult an attorney to determine the exemptions available in the state where the debtor lives.

Filing a petition under chapter 7 "automatically stays" (stops) most collection actions against the debtor or the debtor's property. 11 U.S.C. § 362. 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 20 and 40 days after the petition is filed, the case trustee (described below) will hold a meeting of creditors. If the U.S. trustee or bankruptcy administrator (5) schedules the meeting at a place that does not have regular U.S. trustee or bankruptcy administrator staffing, the meeting may be held no more than 60 days after the order for relief. Fed. R. Bankr. P. 2003(a). 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. 11 U.S.C. § 343. If a husband and wife have filed a joint petition, they both must attend the creditors' meeting and answer questions. Within 10 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 case under chapter 11, 12 or 13 (6) 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. 11 U.S.C. § 706(a). Thus, the debtor will not be permitted to convert the case repeatedly from one chapter to another.

What is a discharge in bankruptcy?

A bankruptcy discharge releases the debtor from personal liability for certain specified types of debts. In other words, the debtor is no longer legally required to pay any debts that are discharged. The discharge is a permanent order prohibiting the creditors of the debtor from taking any form of collection action on discharged debts, including legal action and communications with the debtor, such as telephone calls, letters, and personal contacts.

Although a debtor is not personally liable for discharged debts, a valid lien (*i.e.*, a charge upon specific property to secure payment of a debt) that has not been avoided (*i.e.*, made unenforceable) in the bankruptcy case will remain after the bankruptcy case. Therefore, a secured creditor may enforce the lien to recover the property secured by the lien.

When does the discharge occur?

The timing of the discharge varies, depending on the chapter under which the case is filed. In a chapter 7 (liquidation) case, for example, the court usually grants the discharge promptly on expiration of the time fixed for filing a complaint objecting to discharge and the time fixed for filing a motion to dismiss the case for substantial abuse (60 days following the first date set for the 341 meeting). Typically, this occurs about four months after the date the debtor files the petition with the clerk of the bankruptcy court. In individual chapter 11 cases, and in cases under chapter 12 (adjustment of debts of a family farmer or fisherman) and 13 (adjustment of debts of an individual with regular income), the court generally grants the discharge as soon as practicable after the debtor completes all payments under the plan. Since a chapter 12 or chapter 13 plan may provide for payments to be made over three to five years, the discharge typically occurs about four years after the date of filing. The court may deny an individual debtor's discharge in a chapter 7 or 13 case if the debtor fails to complete "an instructional course concerning financial management." The Bankruptcy Code provides limited exceptions to the "financial management" requirement if the U.S. trustee or bankruptcy administrator determines there are inadequate educational programs available, or if the debtor is disabled or incapacitated or on active military duty in a combat zone.

How does the debtor get a discharge?

Unless there is litigation involving objections to the discharge, the debtor will usually automatically receive a discharge. The Federal Rules of Bankruptcy Procedure provide for the clerk of the bankruptcy court to mail a copy of the order of discharge to all creditors, the U.S. trustee, the trustee in the case, and the trustee's attorney, if any. The debtor and the debtor's attorney also receive copies of the discharge order. The notice, which is simply a copy of the final order of discharge, is not specific as to those debts determined by the court to be non-dischargeable, *i.e.*, not covered by the discharge. The notice informs creditors generally that the debts owed to them have been discharged and that they should not attempt any further collection. They are cautioned in the notice that continuing collection efforts could subject them to punishment for contempt. Any inadvertent failure on the part of the clerk to send the debtor or any creditor a copy of the discharge order promptly within the time required by the rules does not affect the validity of the order granting the discharge.

Are all of the debtor's debts discharged or only some?

Not all debts are discharged. The debts discharged vary under each chapter of the Bankruptcy Code. Section 523(a) of the Code specifically excepts various categories of debts from the discharge granted to individual debtors. Therefore, the debtor must still repay those debts after bankruptcy. Congress has determined that these types of debts are not dischargeable for public policy reasons (based either on the nature of the debt or the fact that the debts were incurred due to improper behavior of the debtor, such as the debtor's drunken driving).

There are 19 categories of debt excepted from discharge under chapters 7, 11, and 12. A more limited list of exceptions applies to cases under chapter 13.

Generally speaking, the exceptions to discharge apply automatically if the language prescribed by section 523(a) applies. The most common types of nondischargeable debts are certain types of tax claims, debts not set forth by the debtor on the lists and schedules the debtor must file with the court, debts for spousal or child support or alimony, debts for willful and malicious injuries to person or property, debts to governmental units for fines and penalties, debts for most government funded or guaranteed educational loans or benefit overpayments, debts for personal injury caused by the debtor's operation of a motor vehicle while intoxicated, debts owed to certain tax-advantaged retirement plans, and debts for certain condominium or cooperative housing fees.

The types of debts described in sections 523(a)(2), (4) and (6) (obligations affected by fraud or maliciousness) are not automatically excepted from discharge. Creditors must ask the court to determine that these debts are excepted from discharge. In the absence of an affirmative request by the creditor and the granting of the request by the court, the types of debts set out in sections 523(a)(2), (4) and (6) will be discharged.

A slightly broader discharge of debts is available to a debtor in a chapter 13 case than in a chapter 7 case. Debts dischargeable in a chapter 13, but not in chapter 7, include debts for

willful and malicious injury to property, debts incurred to pay non-dischargeable tax obligations, and debts arising from property settlements in divorce or separation proceedings. Although a chapter 13 debtor generally receives a discharge only after completing all payments required by the court-approved (*i.e.*, "confirmed") repayment plan, there are some limited circumstances under which the debtor may request the court to grant a "hardship discharge" even though the debtor has failed to complete plan payments. Such a discharge is available only to a debtor whose failure to complete plan payments is due to circumstances beyond the debtor's control. The scope of a chapter 13 "hardship discharge" is similar to that in a chapter 7 case with regard to the types of debts that are excepted from the discharge. A hardship discharge also is available in chapter 12 if the failure to complete plan payments is due to "circumstances for which the debtor should not justly be held accountable."

Does the debtor have the right to a discharge or can creditors object to the discharge?

In chapter 7 cases, the debtor does not have an absolute right to a discharge. An objection to the debtor's discharge may be filed by a creditor, by the trustee in the case, or by the U.S. trustee. Creditors receive a notice shortly after the case is filed that sets forth much important information, including the deadline for objecting to the discharge. To object to the debtor's discharge, a creditor must file a complaint in the bankruptcy court before the deadline set out in the notice. Filing a complaint starts a lawsuit referred to in bankruptcy as an "adversary proceeding."

The court may deny a chapter 7 discharge for any of the reasons described in section 727(a) of the Bankruptcy Code, including failure to provide requested tax documents; failure to complete a course on personal financial management; transfer or concealment of property with intent to hinder, delay, or defraud creditors; destruction or concealment of books or records; perjury and other fraudulent acts; failure to account for the loss of assets; violation of a court order or an earlier discharge in an earlier case commenced within certain time frames (discussed below) before the date the petition was filed. If the issue of the debtor's right to a discharge goes to trial, the objecting party has the burden of proving all the facts essential to the objection.

In chapter 12 and chapter 13 cases, the debtor is usually entitled to a discharge upon completion of all payments under the plan. As in chapter 7, however, discharge may not occur in chapter 13 if the debtor fails to complete a required course on personal financial management. A debtor is also ineligible for a discharge in chapter 13 if he or she received a prior discharge in another case commenced within time frames discussed the next paragraph. Unlike chapter 7, creditors do not have standing to object to the discharge of a chapter 12 or chapter 13 debtor. Creditors can object to confirmation of the repayment plan, but cannot object to the discharge if the debtor has completed making plan payments.