Debt Relief or Bankruptcy?

Written by the Federal Trade Commission

Debt got you down? You’re not alone. Consumer debt is at an all-time high. Whether your debt dilemma is the result of an illness, unemployment, or simply overspending, it can seem overwhelming. In your effort to get solvent, be on the alert for advertisements that offer seemingly quick fixes. While the ads pitch the promise of debt relief, they rarely say relief may be spelled b-a-n-k-r-u-p-t-c-y. And although bankruptcy is one option to deal with financial problems, it’s generally considered the option of last resort. The reason: its long-term negative impact on your creditworthiness. Bankruptcy information (both the date of your filing and the later date of discharge) stays on your credit report for 10 years, and can hinder your ability to get credit, a job, insurance, or even a place to live.

The Federal Trade Commission (FTC) cautions consumers to read between the

lines when faced with ads in newspapers, magazines, or even telephone

directories that say:

“Consolidate your bills into one monthly payment without borrowing.”  
“STOP

credit harassment, foreclosures, repossessions, tax levies, and

garnishments.”   
“Keep Your Property.”  
“Wipe out your debts! Consolidate

your bills! How? By using the protection and assistance provided by federal law.

For once, let the law work for you!”

You’ll find out later that such phrases often involve filing for bankruptcy

relief, which can hurt your credit and cost you attorneys’ fees.  
If you’re having trouble paying your bills, consider these possibilities before

considering filing for bankruptcy:

* Talk with your creditors. They may be willing to work out a modified payment plan.
* Contact a credit counseling service. These organizations work with you and your creditors to develop debt repayment plans. Such plans require you to deposit money each month with the counseling service. The service then pays your creditors. Some nonprofit organizations charge little or nothing for their services.
* Carefully consider all your options before you take out a second mortgage or home equity line of credit. While these loans may allow you to consolidate your debt, they also require your home as collateral.

If none of these options is possible, bankruptcy may be the likely alternative. There are two primary types of personal bankruptcy: Chapter 13 and Chapter 7. Each must be filed in federal bankruptcy court. Filing fees are several hundred dollars. For more information visit [www.uscourts.gov/bankruptcycourts/fees.html](http://www.uscourts.gov/bankruptcycourts/fees.html).

Attorney fees are additional and can vary.

The consequences of bankruptcy are significant and require careful consideration. Other factors to think about: Effective October 2005, Congress made sweeping changes to the bankruptcy laws. The net effect of these changes is to give consumers more incentive to seek bankruptcy relief under Chapter 13 rather than Chapter 7.

Chapter 13 allows you, if you have a steady income, to keep property, such as a mortgaged house or car, that you might otherwise lose. In Chapter 13, the court approves a repayment plan that allows you to use your future income to pay off your debts during a three-to-five-year period, rather than surrender any property. After you have made all the payments under the plan, you receive a discharge of your debts.

Chapter 7, known as straight bankruptcy, involves the sale of all assets that

are not exempt. Exempt property may include cars, work-related tools, and basic

household furnishings. Some of your property may be sold by a court-appointed

official — a trustee — or turned over to your creditors. The new bankruptcy laws

have changed the time period during which you can receive a discharge through

Chapter 7. You now must wait eight years after receiving a discharge in Chapter

7 before you can file again under that chapter. The Chapter 13 waiting period is

much shorter and can be as little as two years between filings.

Both types of bankruptcy may get rid of unsecured debts and stop

foreclosures, repossessions, garnishments and utility shut-offs, and debt

collection activities. Both also provide exemptions that allow you to keep

certain assets, although exemption amounts vary by state. Personal bankruptcy

usually does not erase child support, alimony, fines, taxes, and some student

loan obligations. Also, unless you have an acceptable plan to catch up on your

debt under Chapter 13, bankruptcy usually does not allow you to keep property

when your creditor has an unpaid mortgage or security lien on it.

Another major change to the bankruptcy laws involves certain hurdles that you must clear before even filing for bankruptcy, no matter what the chapter. You must get credit counseling from a government-approved organization within six months before you file for any bankruptcy relief. You can find a state-by-state list of government-approved

organizations at [www.usdoj.gov/ust](http://www.usdoj.gov/ust). That is the website of the U.S. Trustee Program, the organization within the U.S. Department of Justice that supervises bankruptcy cases and trustees. Also, before you file a Chapter 7 bankruptcy case, you must satisfy a “means test.” This test requires you to confirm that your income does not exceed a certain amount. The amount varies by state and is publicized by the U.S. Trustee Program at [www.usdoj.gov/ust](http://www.usdoj.gov/ust).

\*Please be advised the Legal Assistance Office does not have the resources to assist you in filing for bankruptcy. You will need to hire a civilian attorney to draft the required pleadings, file the pleadings, and make the necessary court appearances for you.