

## When an Individual is Considering Filing for Bankruptcy Without an Attorney

### Overview of Topics discussed in this section

- I. Eligibility to File a Bankruptcy Case
- II. Requirement for Pre-Petition Credit Counseling
- III. Some Considerations if you Filed a Prior Bankruptcy Case that was Dismissed
- IV. Bankruptcy Discharge
- V. Foreclosure

This page discusses a few subjects that are commonly-encountered by debtors in consumer bankruptcy cases. The information included on this page is provided only as a guide, and should not be seen as a comprehensive list of issues, or details regarding any specific issue, that a party must consider when filing a bankruptcy petition. The information provided herein is not a substitute for the advice of legal counsel, and should not be relied upon or cited as legal authority.

The topics discussed on this page, and other topics that may be helpful to debtors proceeding *pro se*, are discussed in General Bankruptcy Info, Chapter 7 Info, Chapter 13 Info, and Bankruptcy Basics, all of which can be found in the [Filing Information and Information for Parties without an Attorney section of the Court's web site](#).

- I. **Eligibility to File a Bankruptcy Case.** You must meet certain statutory requirements to be eligible to file a petition for bankruptcy relief under a specific chapter of the Bankruptcy Code.
  - Chapter 13. If you wish to file a petition for relief under Chapter 13 of the Bankruptcy Code, be sure that you meet the debt eligible requirements for such a case. *See* 11 U.S.C. §§[109\(e\)](#) and [104](#).
  - Chapter 7. If you wish to file a case under Chapter 7 of the Bankruptcy Code, be sure you meet the eligibility requirements for a Chapter 7 debtor. *See* [11 U.S.C. §109\(b\)](#). In addition, review the means test under [section 707\(b\)\(2\) of the Bankruptcy Code \(11 U.S.C. §707\(b\)\(2\)\)](#). *See also* [Official Forms 122A-1, A-1 Supp, and A-2](#) (information you must file addressing the means test). You should also review [section 707\(b\)\(1\) of the Bankruptcy Code \(11 U.S.C. §707\(b\)\(1\)\)](#) regarding dismissal of cases found to be an abuse of the provisions of Chapter 7.
    - Be aware of the consequences, discussed below, of certain events in any prior bankruptcy case you have filed that was later dismissed.
    - Make sure that your case will not be dismissed based on failure to comply with

the pre-petition credit counseling requirement discussed below.

- Make sure that you paid, or have arranged to have paid, the applicable filing fee.

**II. Requirement for Pre-Petition Credit Counseling.** The law (*see* [11 U.S.C. § 109\(h\)](#)) requires an individual debtor to obtain a briefing (called credit counseling) **within the 180 day period prior to filing a bankruptcy petition**. Such credit counseling outlines the opportunities for available credit counseling and assists the individual in performing a related budget analysis. The credit counseling must have been obtained from a U.S. Trustee-approved non-profit budget and credit counseling agency. If you plan to file a **joint bankruptcy petition with your spouse**, each debtor must complete the credit counseling. Credit counseling by one debtor in a joint case will not prevent dismissal of the case of the debtor who does not obtain pre-petition credit counseling.

- **Possible Consequences of Failing to Obtain Pre-Petition Credit Counseling:** If you do not obtain the required credit counseling **before you file your bankruptcy petition** (and no earlier than 180 days before you file your petition), **your case may be dismissed**.
- Extension of time to Obtain Credit Counseling Post-Petition - The Court can only allow you to complete the credit counseling **after** filing your bankruptcy petition if you meet **all** of the following three conditions:
  - (1) You requested the credit counseling from an approved non-profit budget and credit counseling agency approved by the Office of the U.S. Trustee, but you were unable to obtain the required services during the 7 day period beginning on the date when you made the request; and
  - (2) There exist exigent (emergency) circumstances that the Court determines to merit a waiver of the requirement that you obtain credit counseling **before** filing your bankruptcy petition.
  - (3) You must file a certification stating that the facts regarding the conditions listed in the two paragraphs above exist and the certification must be satisfactory to the Court.

*See* [11 U.S.C. §109\(h\)\(3\)](#).

- Narrow Exception to the Creditor Counseling Requirement - There are exemptions from the requirement for pre-petition counseling that apply **ONLY** to people who meet certain legal requirements for being mentally ill, disabled or on military duty in an active combat zone. *See* [11 U.S.C. §109\(h\)\(4\)](#).

- **The Clerk, the judges and chambers staff cannot provide you legal advice or predict in advance how a judge will decide your request for an extension of time or an exemption from the credit counseling requirement.**
  
- **Logistics of Obtaining Credit Counseling.** To locate an approved agency that can provide you with pre-bankruptcy credit counseling, obtain a list of approved agencies from the Clerk’s Office or visit the website for the Office of the U.S. Trustee <http://www.usdoj.gov/ust/eo/bapcpa/ccde/index.htm>. **Your pre-petition credit counseling must come from one of the agencies that has been approved by the U.S. Trustee’s Office.**
  - ▶ You may conduct the counseling by telephone, in person or by computer. If you do not have a computer, but wish to obtain the counseling by computer, your public library may have a computer available for your use.
  - ▶ Be sure to tell the credit counseling agency that you need the counseling for the purposes of filing a bankruptcy case.
  - ▶ Ask the credit counseling agency for a certificate describing the credit counseling services provided to you. Obtain a copy of any debt repayment plan developed through the agency. You will need to file these documents in your bankruptcy case. See [11 U.S.C. §521\(b\)](#).
  - ▶ The safest way to be sure that you obtained the required type of credit counseling is to obtain a certificate of the counseling before you file your bankruptcy petition. The certificate should be in the same form as shown in the [Example of Credit Counseling Certificate](#) found at the end of this section.
  - ▶ Be sure that your certificate shows that you obtained the credit counseling within 180 days **before** you filed your bankruptcy petition. If you obtained credit counseling more than 180 days before you filed your bankruptcy petition, your certificate has expired. You will need to re-take the credit counseling course.
  - ▶ A financial management certificate from an approved debtor education provider is **not** the same thing as a certificate of pre-petition counseling and will **not** satisfy the requirement that you obtain pre-petition credit counseling.

For additional information regarding the pre-petition credit counseling requirement, see the

Federal Trade Commission's publication called [Before you File for Bankruptcy: Information About Credit Counseling and Debtor Education.](#)

**III. Some Considerations If you Filed a Prior Bankruptcy Case that was Dismissed:**

- If you voluntarily dismissed your prior bankruptcy case and a motion for relief from the automatic stay was pending in your prior case at the time of your dismissal, determine whether you are required to wait a certain period of time before filing your new case. See [11 U.S.C. §109\(g\)\(2\)](#).
- If you were a debtor in one or more bankruptcy cases that was/were dismissed during the one year period before filing your bankruptcy petition, examine whether you will need to take action to have the automatic stay apply in your new case. See [11 U.S.C. §§362\(c\)\(3\) and \(c\)\(4\)](#).
- Determine whether the order that dismissed your last case barred you from filing a new case for a period of time (for example, by dismissing the case “with prejudice for 180 days”). If so, you cannot file your new case until that time has passed (usually measured from the date the clerk entered the order of dismissal, which may be later than the date when the Judge signed the dismissal order). If the Court issued an 180-day bar to your filing of another bankruptcy case because you failed to pay the filing fee in your first bankruptcy case, review the Court's [Procedures Manual](#) to determine whether you can obtain waiver of the 180-day bar on refiling.

**IV. Bankruptcy Discharge.** A bankruptcy discharge is defined as a release from personal liability for pre-bankruptcy debts. There exist some exceptions to a debtor's right to obtain a discharge in bankruptcy. In addition, certain requirements will be imposed on you before you are entitled to a discharge.

- If this is not your first bankruptcy case and you received a discharge in your previously-filed case, you will need to determine whether your previous discharge makes you **ineligible** to obtain a discharge in your new case. If your new case is filed under Chapter 7 and your previous case was filed under Chapter 7 or 11, see [11 U.S.C. §727\(a\)\(8\)](#). If your new case was filed under Chapter 7 and your previous case was filed under Chapter 12 or 13, see [11 U.S.C. §727\(a\)\(9\)](#). If your new case is filed under Chapter 13, see [11 U.S.C. §1328\(f\)](#).
- You may be denied a discharge (or your case may be dismissed, thereby precluding you from obtaining a discharge) if you refuse to comply with an order of the Court, knowingly and fraudulently make a false statement under oath in the case, fail to disclose all of your assets and debts or have otherwise engaged in

certain dishonest conduct with respect to the bankruptcy case. *See* 11 U.S.C. §§[727\(a\)\(4\) and \(b\)](#) and [1307\(c\)](#).

- In a Chapter 7 case, you may be denied a discharge for engaging in certain pre-bankruptcy conduct (such as failing to keep adequate records or having engaged in certain transfers of property in order to hinder, delay or defraud a creditor). *See* 11 U.S.C. §§[727\(a\)\(2\), \(3\) and \(5\)](#).
- As a prerequisite to obtaining a discharge in a Chapter 7 or 13 case, you are required to take a financial management course **after** filing your petition. Either the course provider must notify the Court of your completion of the course, or you must file your financial management certificate ([Certification About a Financial Management Course \(Official Form 423\)](#)) or the certificate provided to you by the agency providing the course) with the Court within 45 days after the first date set for your Meeting of Creditors. One of those things must happen within that 45 day time period. Do not wait for 45 days to see if the provider has notified the Court of course completion. It is your responsibility to monitor your case and timely file the certificate if the course provider has not notified the Court of your course completion.
- Another common way of having a discharge denied in a Chapter 13 case is a failure to file a [Domestic Support Certification Form \(Local Form\)](#).
- Certain debts may be excepted from a debtor's general discharge. *See* 11 U.S.C. §§ [523\(a\) and \(c\)](#) and [1328\(a\)](#). The provisions regarding a debtor's general discharge and the discharge of certain debts are complex.

V. **Foreclosure.** If you are considering bankruptcy because you face a foreclosure on real property, there may be ways of avoiding foreclosure without filing for bankruptcy. *See* the Avoiding Foreclosure section of this page on the website for the U.S. Courts. (<http://www.uscourts.gov/services-forms/bankruptcy/filing-without-attorney>)

EXAMPLE OF CREDIT COUNSELING CERTIFICATE

Certificate Number: 01267-DC-CC-003096744

**CERTIFICATE OF COUNSELING**

I CERTIFY that on December 30, 2007, at 3:53 o'clock PM CST,

Yvonne H. Fendall received from

Money Management International, Inc.,

an agency approved pursuant to 11 U.S.C. § 111 to provide credit counseling in the

District of Columbia, an individual (or group) briefing that complied with the provisions of 11 U.S.C. § § 109(h) and 111.

A debt repayment plan was not prepared. If a debt repayment plan was prepared, a copy of the debt repayment is attached to this certificate.

This counseling session was conducted by telephone.

Date: December 30, 2007

By /s/Kevin Hollemans

Name Kevin Hollemans

Title Phone Counselor

\* Individuals who wish to file a bankruptcy case under title 11 of the United States Bankruptcy Code are required to file with the United States Bankruptcy Court a completed certificate of counseling from the nonprofit budget and credit counseling agency that provided the individual the counseling services and a copy of the debt repayment plan, if any, developed through the credit counseling agency. See 11 U.S.C. § § 109(h) and 521(b).