

United States Bankruptcy Court Eastern District of Missouri

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Clerk of the Court

General Information About the Bankruptcy Process

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This booklet contains general information about the bankruptcy process. It is intended to answer common questions from pro se debtors and creditors but should not be relied upon as legal advice. While the information presented is accurate as of the date of publication, it should not be used as a substitute for reference to the Bankruptcy Code and Federal Rules of Bankruptcy Procedure. This information should supplement, not substitute for advice of competent legal counsel. The Bankruptcy Court cannot give legal advice.

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What is Bankruptcy?

Bankruptcy is a federal court proceeding designed to provide individuals and businesses with a way to address debt problems. It is intended to provide debtors with a “fresh start” or debt relief, while treating creditors fairly. There are six types of bankruptcy: Chapter 7, 9, 11, 12, 13 and 15. This material discusses Chapter 7 and 13 bankruptcies – the chapters most commonly used by consumers. Chapter 9 is for municipalities. Chapter 11 is typically for business reorganization. Chapter 12 is for family farmer and fisherman reorganization, and Chapter 15 is to recognize a foreign bankruptcy proceeding.

Different Types of Bankruptcy

Chapter 7 Chapter 7 is often called “liquidation” or “straight” bankruptcy and is available to businesses and individuals. In Chapter 7, a trustee is appointed to sell the debtor’s non-exempt property and distribute proceeds to creditors. In exchange for surrendering assets, the debtor obtains a discharge or release from most debts.

Chapter 13 Chapter 13 is often called a “wage earner plan” and is available to individuals with regular income. In Chapter 13, the debtor makes a fixed monthly payment to the Chapter 13 Trustee who distributes money to the debtor’s creditors. Unlike Chapter 7, in exchange for making monthly payments, the debtor may retain possession of his assets and will receive a discharge at conclusion of the plan (3 to 5 years).

Effects of Filing Bankruptcy

Automatic Stay Generally, filing bankruptcy imposes an “automatic stay” prohibiting continued collection against the debtor or the debtor’s property. It generally stops garnishments, foreclosures and other collection actions. The automatic stay can terminate for a number of reasons and is usually terminated in Chapter 7 cases to allow foreclosure. Additionally, under the Bankruptcy Reform Act of 2005, the automatic stay *does not go into effect* on filing a bankruptcy petition if the debtor had two prior cases pending and dismissed during the year preceding the current filing. If the debtor had a single case pending and dismissed in the preceding year, the automatic stay expires 30 days after filing.

Discharge Unless a debtor commits fraud or dishonesty in connection with the case or fails to meet other obligations, an individual Chapter 7 debtor should receive a discharge from most debts within 60 to 90 days of the

meeting of creditors. Certain debts, such as student loans, certain taxes, and child support cannot be discharged. Others can be discharged in Chapter 13 but not in Chapter 7. In Chapter 13, the discharge is granted on completion of all plan payments. The discharge cancels a debtor’s personal liability or obligation to pay a debt. It does not mean the debtor may continue to keep collateral (e.g. a car or home) without paying. Secured creditors normally retain rights that permit them to seize their collateral after the bankruptcy case is over.

Credit Report Credit reporting agencies regularly check bankruptcy filings. A bankruptcy can remain on your credit report for ten years. The court does not control whether, or for how long, credit is affected.

Eligibility & Duties of Debtors

Credit Counseling To be eligible for bankruptcy, all individual debtors (under any chapter) must have received credit counseling from an approved credit counseling agency within 180 days before filing. Very limited exceptions apply in emergency situations. Additionally, in order to receive a discharge, all debtors in Chapter 7 and Chapter 13 must also attend a financial education course after filing.

Prior Cases An individual or entity may not file a bankruptcy petition if the debtor had a prior case dismissed within the past 180 days for failure to pay filing fees, appear at the 341 meeting, or comply with a court order.

Prior Discharges A debtor may file a subsequent case but may not be entitled to a discharge in the new case if the debtor received a discharge in a prior case within a certain period of time. In Chapter 7, the debtor is not entitled to a discharge if the debtor received a discharge in a previous Chapter 7 or 11 case commenced within 8 years of the new filing or if the debtor received a discharge in a previous Chapter 12 or 13 case commenced within 6 years of the new filing. In Chapter 13, the debtor is not entitled to a discharge if the debtor received a discharge in a previous Chapter 7, 11 or 12 case filed within 4 years of the new filing or if the debtor received a discharge in a previous Chapter 13 case filed within the last 2 years.

Debtor’s Obligations All debtors must file required bankruptcy schedules and statements, attend a meeting of creditors, and file notice of any change of address. All debtors must also provide current tax returns to the trustee and, in Chapter 13, debtors must timely file future tax

returns. Detailed information on the filing requirements and fees for Chapter 7 and 13 cases can be obtained in separate handout materials from the court. The court does not provide basic bankruptcy forms. Forms may be available at an office supply store or on the Court's web site, www.moeb.uscourts.gov. Debtors should retain copies of all bankruptcy documents they file.

Attire Bankruptcy Court is federal court. Appropriate attire is required.

Events in a Bankruptcy Case

Commencement and Notice Every bankruptcy begins with the filing of a petition. In addition, all individual debtors must also file:

- a list (matrix) of all creditors
- official schedules & statement of financial affairs
- credit counseling certificate
- means test or disposable income form, and
- social security verification form.
- See the Court's web site for a list of filing requirements www.moeb.uscourts.gov

The Court sends an Order and Notice of Commencement of Case to all creditors on the matrix. This Notice contains the date of the meeting of creditors and other important deadlines, such as the deadline for filing proofs of claim and objections to discharge, dischargeability, and exemptions. *All parties should carefully read the Notice of Commencement of Case.*

Meeting of Creditors The meeting of creditors is a hearing conducted by the case trustee (not the bankruptcy judge) to review the debtor's financial affairs. All creditors are welcome to attend and may ask questions. The debtor is sworn to answer under oath. In St. Louis, the meeting of creditors is usually held at the Thomas F. Eagleton U.S. Courthouse at 10th and Walnut, downtown. On occasion, meetings of creditors are held at other locations. The location and time are always printed on the Notice of Commencement of Case.

Discharge & Case Process In Chapter 7 cases, unless an objection to discharge has been filed or the debtor fails to attend a financial education course or meet other obligations, the court will issue a discharge order approximately 60 to 90 days after the meeting of creditors. In Chapter 13 cases, the court will issue the discharge order upon completion of payments under the plan. Creditors may object to the debtor receiving a discharge or to the dischargeability of a particular debt

but must do so by the deadlines set forth in the Notice of Commencement of Case. Individual debtors will not receive a discharge if they do not complete a post-filing financial management education course.

Claims and Closing The Notice of Commencement of Case will instruct creditors whether it is necessary to file a proof of claim and will state the deadline for filing. Claims are not to be filed in Chapter 7 no asset cases. A Chapter 7 case will close shortly after discharge or after the trustee makes distribution in an asset case. A Chapter 13 case will close after conclusion of the plan. In all asset cases, the trustee files a final report of amounts distributed to creditors.

Dismissal The court may dismiss a bankruptcy case for many reasons. Typically, cases are dismissed for debtor's failure to attend the meeting of creditors or failure to file any document when required. Other parties may also seek dismissal. Dismissal terminates the bankruptcy case; it does not discharge any debts.

General Information

Is an Attorney Necessary? An attorney is not necessary, however, handling a bankruptcy case successfully without an attorney (known as being "Pro Se") is difficult and certain rights may not be fully protected. Although the law permits individuals known as petition preparers to assist preparation of bankruptcy documents, they are prohibited from giving legal advice. If a petition preparer is used, a "Notice to Debtor by Non-Attorney" must be filed. Both attorneys and petition preparers must file a statement disclosing the fee they charged for their services. Only attorneys and not petition preparers may collect and remit the filing fee for commencing a case.

Bankruptcy Crimes The petition and many other bankruptcy documents must be signed under penalty of perjury. Failure to provide complete information can be grounds for denial of discharge and can be a federal crime.

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| Court Location | 111 South Tenth Street |
| Eastern Division (St. Louis) | Fourth Floor St. Louis, MO 63102 |
| Southeastern (Cape Girardeau) | 555 Independence Street Cape Girardeau, MO 63701 |
| Northern (Hannibal) | 8 th and Broadway, Room 312 Hannibal, MO 63401 |

Bankruptcy court staff is located only in St. Louis. All documents must be filed in St. Louis.

Hours - (St. Louis) Monday through Friday 8:30 a.m. to 4:30 p.m.
Main Telephone (314) 244-4500
MVCVCIS (voice case info) (866) 222-8029 #87
CM/ECF Help Desk (Toll Free) (866) 803-9517
PACER (internet case information)
pacer.login.uscourts.gov

Bankruptcy Terms

Asset: Property owned by the debtor. A "no asset case" is one in which there is not enough money or equity to make distribution to creditors.

Creditor: A person to whom the debtor owes money.

Certificate of Service: A document required to be filed showing the date another document was mailed or delivered and the names and addresses of the parties to whom it was mailed.

Debtor: The debtor is the person who files bankruptcy and who owes money to creditors.

Exemptions: The amount of property the debtor is allowed to keep from payment to unsecured creditors. The debtor must elect to claim exemptions under applicable law. Exemptions are not automatic and if not selected, otherwise exempt property may be sold to pay creditors.

Liabilities or Debts: Financial obligations or amounts the debtor owes others.

Lien: A claim or right to property (collateral) held by a creditor to secure payment of a debt. A deed of trust, mortgage, or security interest creates a lien.

Secured Creditor: A creditor who holds a lien on property (collateral) to secure payment of a debt. Secured creditors have a lien or right to foreclose on collateral for payment of a secured debt.

Trustee: An independent person appointed to administer a bankruptcy case, collect assets, and pay creditors.