



Tips If You're Facing Debt Problems

Bankruptcy Basics

Before the 20th century, people could be jailed for not paying their debts; these "debtor's prisons" are unthinkable by today's standards. Today, people experiencing financial difficulty have the right to have their debts reorganized or discharged. In fact, according to the Administrative Office of the United States Courts, a fundamental goal of the federal bankruptcy laws enacted by Congress is to allow consumers to obtain relief through the bankruptcy discharge, the purpose of which is to provide a "fresh start" to the honest debtor. In 2006, more than 1.1 million consumers filed for bankruptcy protection.

Generally, there are two bankruptcy chapters available to consumers.

Chapter 7 liquidation is designed for debtors in financial difficulty who do not have the ability to pay their existing debts. The purpose is to obtain a discharge (i.e. elimination) of their existing debts.

Chapter 13 repayment is designed for individuals with regular income who are temporarily unable to pay their debts but would like to pay them in installments over a period of time. The bankruptcy courts will approve a repayment plan that will repay their debts in no more than five years.

According to the Federal Trade Commission, both Chapter 7 and Chapter 13 bankruptcy may get rid of unsecured debts and stop foreclosures, repossessions, garnishments, utility shut-offs, and debt collection activities. Both also provide exemptions that allow people to keep certain assets, although exemption amounts vary. Note that personal bankruptcy usually does not erase child support, alimony, fines, taxes, and some student loan obligations.

Consumers filing for bankruptcy protection can file on their own; however, bankruptcy laws can be quite complicated. A trusted attorney will likely prove to be helpful. To find a bankruptcy attorney, consumers can ask someone they trust to recommend a good attorney, contact the Lawyer Referral Service sponsored by a State Bar Association or use the [Union Plus Legal Service](#). Filers should make sure that their lawyer specializes in bankruptcy. Potential attorneys should be asked specific questions about their qualifications and fee structure. Finally, consumers should set a time to meet with their lawyer to determine if they are comfortable working with this person. Filing bankruptcy can be an emotional event so it is imperative that filers have a good relationship with their attorney.

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BACPA) was enacted to address the problem of consumers' skyrocketing debt. According to the Federal Reserve Board, the total U.S. consumer debt stands are more than \$2 trillion dollars with personal unsecured debt averaging approximately \$9,000 per person. Simultaneously, the consumer's understanding of budgeting and financial management has decreased — resulting in a nation of people who are not financially prepared to manage credit responsibly.

The BACPA made some sweeping changes to the former bankruptcy law. One of the most significant changes includes the development of a "means test." The Trustee or any creditor can now bring a motion to dismiss a Chapter 7 bankruptcy if the debtor's income is greater than the state median income. Certain debtors who meet a new standard would be shifted from a Chapter 7 bankruptcy to five-year repayment plan in Chapter 13.

The bill also includes two provisions mandating financial counseling and education: Before filing for bankruptcy, consumers are required to complete a pre-filing counseling session; and before receiving a bankruptcy discharge, debtors are required to complete "an instructional course concerning personal financial management." These provisions were included to provide debtors in bankruptcy with the skills and tools needed to avoid future financial problems.

Meeting the counseling and education requirement

Financial counselors support Congress's efforts to ensure that consumers are better informed about the bankruptcy process. To make the most of this benefit, consumers should carefully choose a quality bankruptcy counseling agency. When choosing a bankruptcy counseling and education provider, consumers should:

- Verify that the counseling agency of choice is approved by the Executive Office for U.S. Trustees to deliver the necessary counseling and education. A list of approved agencies can be found on the [U.S. Department of Justice's Web site](#).
- Check that the organization has the capacity to help better their clients' overall financial situation through continuing counseling and education.
- Determine if the organization has the systems in place to effectively assist consumers in an appropriate timeframe. For example, verify that the organization offers online counseling and education around the clock.
- Consider the organization's commitment to quality. Make sure the organization is a member of the National Foundation for Credit Counseling or the Association of Independent Consumer Credit Counseling Agencies. Verify that they are accredited by an independent third party organization, such as the [Council on Accreditation \(COA\)](#).



[Download a PDF of this article](#)

[Debt Home](#) | [Assess Your Debt](#) | [Tips](#) | [Calculators](#) | [Union Plus Programs](#) | [Union Stories](#) | [Union Plus Home](#)

Union Plus benefits are for participating union members, retirees and their families.

Copyright © 2007 Union Privilege. All rights reserved.

Union Privilege, 1125 15th St., N.W., Suite 300, Washington, DC 20005

