

Mark L. Korb  
Charles C. Tucker  
Shannon B. Sharrock

110 East Oak Street, Suite 220  
Fort Collins, CO 80524  
Telephone: (970) 266-5156  
Fax: (970) 493-0516  
[ctucker@KorbTuckerAttorneys.com](mailto:ctucker@KorbTuckerAttorneys.com)

**THIRTY-TWO SHORT QUESTIONS AND ANSWERS  
ABOUT PERSONAL BANKRUPTCY UNDER CHAPTER 7**

If you are wondering what to do about personal or business debts that have become overly burdensome, or you are thinking about filing for bankruptcy relief in Colorado, our firm can help.

This brief Q & A describes some of the main points of a typical consumer bankruptcy under Chapter 7. Business bankruptcies must be handled differently. Please note that if you have a sole proprietorship (a one-person business that is not a corporation, partnership, LLC, or a similar entity), the business cannot file for bankruptcy – you would have to file a personal bankruptcy instead. Contact us to see whether a personal or business Chapter 7 filing might be appropriate for you.

After reading this Q & A, please return to the main Bankruptcy page on this website for the links to our Online Inquiry Form, “How to Become a Bankruptcy Client of Korb Tucker PLLC,” and the Required Notices.

**KORB TUCKER PLLC is a debt relief agency under the Bankruptcy Code.  
We help people and companies file for bankruptcy relief.**

**The information on this website is not legal advice.  
We can't give you legal advice until we understand your particular circumstances.**

**The documents on this website contain summaries of the  
procedures involved in most bankruptcy cases.**

**Your case may be different.**

## 1. What is “Chapter 7”?

Bankruptcy is a legal proceeding under federal law that allows *debtors* to obtain relief from debts they cannot pay and *creditors* to be repaid some of the amounts owed to them. The law, known as the *Bankruptcy Code*, is divided into *Chapters*, which govern the kinds of bankruptcies available in different circumstances. Most people file under *Chapter 7*, also known as *liquidation* or *straight bankruptcy*. In 2010, nearly 27,000 debtors filed under Chapter 7 in Colorado. As an alternative, some individuals choose to file, or must file, under *Chapter 13* to create a court-approved repayment plan.

## 2. How does a Chapter 7 bankruptcy work?

In a Chapter 7 bankruptcy, the debtor can have debts cancelled by following a strict set of requirements and procedures:

- The debtor must be *eligible* according to Chapter 7 of the Bankruptcy Code.
- Most individual debtors must qualify under the *means test*.
- The debtor must produce all the required *financial information and documents*.
- The debtor must complete a pre-filing *credit counseling session* with an approved nonprofit agency.
- A bankruptcy *petition* is electronically filed with the federal district court in Denver.
- The debtor must pay (or obtain a waiver of) all *court fees*.
- The court appoints a person known as a bankruptcy *trustee* to handle the case.
- The debtor may keep property that is defined as *exempt* under state law.
- The debtor must turn over all *nonexempt* property to the trustee, who converts the property into cash and divides the cash among the creditors. Most cases are *no-asset* cases, in which the debtor does not have any nonexempt property to turn over.
- The debtor must attend a hearing conducted by the bankruptcy trustee. The hearing, which is required by Section 341 of the Bankruptcy Code, is known as the *meeting of creditors* or *341 meeting*.
- The debtor must *cooperate* with the trustee and obey all the rules and orders of the bankruptcy court.

- The debtor must attend and complete a *financial management course*, again with an approved nonprofit agency, after obtaining the discharge.
- When the bankruptcy case is complete, the court cancels some or all of the debtor's debts by issuing a *discharge*.

### 3. What is a “discharge”?

A Chapter 7 discharge is the court order that releases you from some or all of your debts. The discharge also orders your creditors not to attempt to collect those debts from you in the future. Some kinds of debts are *non-dischargeable* and cannot be cancelled.

### 4. What types of debts are non-dischargeable in a Chapter 7 case?

Some of the common types of debts that cannot be discharged under Chapter 7 are:

- Most tax debts, and debts incurred to pay taxes.
- Overdue child support and spousal maintenance.
- Other divorce-related debts, such as property settlements.
- Debts for government-insured student loans (except in rare cases where undue hardship is proven).
- Debts that the debtor could have listed in the Chapter 7 filing but did not.
- Judgments for damages against the debtor in a drunk-driving case.
- Judgments for damages against the debtor in a personal injury case.
- Debts to obtain money, credit, or property with a false financial statement or under false pretenses.

Consult an attorney if you have significant non-dischargeable debts. You may be able to pay them back, or even have some of them discharged, under a Chapter 13 plan.

### 5. What should I do or not do before filing under Chapter 7?

Obtain advice from an attorney before taking the following actions:

- Depleting IRA or 401(k) funds before filing for bankruptcy. Generally these funds are exempt assets that you will be allowed to keep after the unsecured debts are discharged in bankruptcy.

- Letting creditors seize your assets by garnishment or repossession.
- Making large credit card purchases, cash advances, and balance transfers in the 3 months before filing bankruptcy. These will have to be disclosed in your petition.
- Repaying family loans before filing bankruptcy. The Bankruptcy Code does not allow you to favor certain creditors over others by making *preference* payments. The trustee can sue your family members to recover the amounts you paid them.
- Transferring nonexempt assets to others before filing bankruptcy. The trustee might view those transfers as *fraudulent conveyances* and sue the recipients of those assets, and you might not receive a discharge of your debts.

People often put off filing for bankruptcy as long as possible – but waiting too long can result in problems like those listed above.

## 6. Who is eligible to file and maintain a Chapter 7 case?

Broadly speaking, any person who resides in, does business in, or has property in the United States is permitted to file a Chapter 7 bankruptcy case. Relief may not be available under Chapter 7 if:

- The debtor intentionally dismissed a bankruptcy case within the 180 days before filing.
- The debtor was granted a discharge in a Chapter 7 case that the debtor filed within the last 8 years.
- The debtor was granted a discharge in a Chapter 13 case filed within the last 6 years, after which the debtor failed to pay at least 70 percent of the unsecured claims.

In addition, most debtors who have primarily consumer debt (credit cards, medical bills, and so on) must qualify according to a calculation called *means testing*.

## 7. What is “means testing”?

Means testing is one of the methods used to determine whether you as an individual debtor can have the privilege of having debts discharged under Chapter 7. It’s important to make this calculation before filing because if you file but don’t qualify under the means test, you will be presumed to have abused that privilege (*presumption of abuse*), and your case will either be dismissed or converted to a Chapter 13 case. You must therefore obtain and produce all of the requested financial information before your attorney files the petition. A Statement of Current Monthly Income and Means Test Calculation must be prepared for every Chapter 7 case.

## 8. What information is needed for the means test calculation?

The number of people in your household, your income from all sources, the monthly expenses allowable under published IRS standards, the median annual income in your home county as reported

by the U.S. Census Bureau, and other information are all factored into a number known as your *current disposable monthly income* or *CMI*. If according to the CMI you do not have enough income to pay a certain minimum amount per month to creditors, then you may file a Chapter 7 case. Sometimes a debtor with “excess” income will be allowed to file under Chapter 7 if the debtor can prove that a serious medical condition or other special circumstances exist.

### **9. What are the credit counseling requirements?**

During the 180-day period before filing a Chapter 7 case, the debtor must attend a credit counseling session. After filing the case, the debtor must attend a financial management course. You must complete these through an approved nonprofit agency, though you don't have to use the same agency for both. For the current list of approved agencies in Colorado, consult your bankruptcy attorney or go to [http://www.justice.gov/ust/eo/bapcpa/ccde/cc\\_approved.htm](http://www.justice.gov/ust/eo/bapcpa/ccde/cc_approved.htm). The sessions may be individual or group sessions, in person, by telephone, or over the internet. The debtor must pay for the sessions, which together will cost \$50 to \$100. After each session is completed, the agency gives the debtor a certificate, which must be filed with the bankruptcy court.

### **10. How much is the court filing fee in a Chapter 7 case and how is it paid?**

Beginning November 1, 2011, the court filing fee is \$306.00 for either a single or a joint case. The filing fee is payable when the case is filed. If you can't afford the fee, you may be eligible for a fee waiver or payment plan. An application is filed with the petition. The court clerk then sets a hearing date for the debtor to appear before the judge, who determines whether the debtor qualifies for the waiver or payment plan. Unless payment is waived by the court, the entire filing fee must be paid or the case will be dismissed and no debts will be discharged.

### **11. How are attorney fees determined and paid in a Chapter 7 case?**

An attorney representing a debtor in a Chapter 7 case will usually charge a flat fee, which must be paid before the petition is filed. The fee must be disclosed to the bankruptcy court and must be reasonable under the circumstances. The fee will vary depending on the specific facts, the complexity of the legal issues involved, and the level of personal attention and assistance required by the debtor. Additional filings or contested matters will typically require payment of an additional fee.

### **12. What is the role of the debtor's attorney in a Chapter 7 case?**

The attorney for the debtor in a Chapter 7 consumer case will typically:

- Analyze the amount and nature of the debts owed by the debtor and determine the best remedies for the debtor's financial problems.
- Advise the debtor of the relief available under Chapter 7 and the other Chapters of the Bankruptcy Code.

- Assist the debtor in obtaining the required pre-bankruptcy credit counseling session, and file proof of attendance with the court.
- Assemble the specific information and data required for the Chapter 7 filing, in the form required by the court.
- Engage in any planning needed to help the debtor retain as many assets as possible after the Chapter 7 case is concluded.
- Prepare the petitions, schedules, statements, and other Chapter 7 forms, file them with the bankruptcy court, and notify certain creditors as needed.
- Prepare for and attend the meeting of creditors with the debtor and appear with the debtor at any other hearings that may be held in the case.
- Work with the debtor to respond to any requests by the bankruptcy trustee or the court.
- Direct the debtor to attend and complete the required personal financial management course, and file proof of attendance with the court.
- If necessary, assist the debtor in reaffirming certain debts, redeeming personal property, and setting aside mortgages or liens against exempt property.
- If necessary, prepare and file amended schedules, statements, and other documents with the bankruptcy court in order to protect the debtor's rights.
- If necessary, help the debtor overcome any obstacles that may arise to the granting of a Chapter 7 discharge.

### **13. May my spouse and I file jointly under Chapter 7?**

Yes. In a joint Chapter 7 case, only one set of bankruptcy forms is needed and only one filing fee is charged. However, each spouse must receive the required credit counseling and financial management courses. A husband and wife should consider filing a joint Chapter 7 case if both of them are liable for one or more significant, dischargeable debts. If both spouses are liable for a substantial debt and only one spouse files under Chapter 7, the creditor may later attempt to collect the debt from the non-filing spouse, even if that spouse has no income or assets.

### **14. When is the best time to file a Chapter 7 case?**

The answer depends on the status of the dischargeable debts, the nature of the nonexempt assets, and any actions taken or threatened to be taken by creditors:

- Do you anticipate incurring further debts, such as medical expenses resulting from a serious illness or injury? Only debts that have been incurred on the date the case is filed are dischargeable. After that, you will not be eligible for another Chapter 7 discharge for another 8 years.
- Are you entitled to receive nonexempt assets, such as income tax refunds, inheritances, life insurance proceeds, or similar property? Nonexempt assets that you receive after filing for bankruptcy may have to be turned over to the trustee.
- Has an aggressive creditor threatened to garnish your income and bank account or to file a foreclosure action against your home? The sooner you file, the sooner you can take advantage of the *automatic stay* that accompanies the filing of a Chapter 7 case.

### **15. What is the “automatic stay”?**

Filing a Chapter 7 case automatically suspends virtually all collection and other legal proceedings pending against you. A few days after the Chapter 7 case is filed, the court will mail a notice to all creditors informing them of the automatic stay and ordering them to refrain from any further action against you. If necessary, your attorney can serve notice of the automatic stay on a creditor immediately after filing. Any creditor who intentionally violates the automatic stay may be held in contempt of court and may be liable for damages.

### **16. Are there exceptions to the automatic stay?**

Yes. Criminal proceedings and actions to collect domestic support obligations from exempt property (and from property acquired by the person after the Chapter 7 case was filed) are not affected by the automatic stay. Debtors who have had a prior bankruptcy case dismissed within the past year may be denied the protection of the automatic stay. Sometimes a creditor will file a motion for relief from the automatic stay. For example, if the automatic stay prevents a foreclosure action, the lender can request permission from the judge to proceed with the sale. Other common reasons lenders give for lifting the stay are car repossessions and evictions of month-to-month tenants.

### **17. Will filing under Chapter 7 protect my home from foreclosure or my car from repossession?**

Possibly not. The automatic stay under Chapter 7 can provide temporary relief if a foreclosure or repossession action is imminent, but it will not eliminate the creditor’s rights to retake the property. Ask your attorney about the options that may be available in your circumstances, which could include: reaffirming the debt and continuing to make the payments; working out a different payment plan with the lender; surrendering the asset; or filing under Chapter 13 to create a court-supervised repayment plan.

### **18. Will the automatic stay protect the cosigners or guarantors on my loans?**

No. The automatic stay protects only the person or persons who filed the Chapter 7 case. A creditor can still try to collect a debt from a cosigner or guarantor after the case is filed. Moreover, the

discharge will release only the person or persons who filed. Any other party on a debt, such as cosigner or guarantor, will not benefit from the discharge. Be sure to consult with an attorney if cosigner or guarantor liability is a significant issue (in which case you may consider a Chapter 13 filing instead) or if you and your spouse own property that is subject to the law of a community property state (because of exceptions that may apply in this situation).

### **19. Will I lose all of my property if I file a Chapter 7 case?**

No. A debtor is generally allowed to keep exempt property, which is property that is protected by state law from the claims of creditors. Exempt property typically includes all or a portion of your unpaid wages, home equity, household furniture, personal effects, vehicle, and other assets. Your attorney can tell you which property is exempt in your case. If you have any property that is not exempt, you may have to turn it over to the trustee, who will sell it to pay any *claims* that are filed by your unsecured creditors.

### **20. How are unsecured creditors dealt with in a Chapter 7 case?**

An unsecured creditor is a creditor, such as a credit card issuer, that does not have a valid lien or mortgage against any of the debtor's property. The trustee will examine any claims filed by unsecured creditors and file objections to those deemed improper. When the trustee has collected all of the person's nonexempt property and converted it to cash, and when the court has ruled on the trustee's objections to improper claims, the trustee will distribute the funds to the unsecured creditors. According to the *priorities* set by the Bankruptcy Code, distributions are made first to pay:

- Domestic support obligations.
- Administrative expenses.
- Claims for wages, salaries, and contributions to employee benefit plans.
- Claims for the refund of certain deposits and tax claims.

Any remaining funds are distributed pro rata to the other unsecured creditors. In Chapter 7 cases filed by consumers, unsecured creditors usually get nothing.

### **21. How are secured creditors dealt with in a Chapter 7 case?**

Secured creditors are creditors with valid mortgages or liens against particular property of the debtor, such as your home or car. A secured creditor is usually permitted to foreclose on or repossess that property, unless the value of the property greatly exceeds the amount owed to the creditor. Before foreclosing on or repossessing the property, the creditor must prove the validity of its mortgage or lien and obtain a court order.

## **22. What is the “meeting of creditors”?**

About a month after your case is filed, you and your attorney will appear for the “meeting of creditors” or “341 hearing,” which is required under Section 341 of the Bankruptcy Code. You must bring your driver’s license or photo identification, your social security card, your most recent pay stub, and your bank and investment account statements for the period during which you filed your petition. The meeting of creditors is conducted by the bankruptcy trustee, who will put you under oath and question you about your debts, assets, income, and expenses. The trustee may also ask you about any anticipated tax refunds, large payments you recently made to creditors or relatives, how you estimated the value of your property, and any missing or inconsistent information. For most consumer debtors, the meeting of creditors will be brief and will be the only court appearance needed.

## **23. What situations could require a hearing before the bankruptcy judge?**

As a consumer debtor in Chapter 7, you might have to appear before the bankruptcy judge if:

- Your income appears to make you ineligible for Chapter 7 bankruptcy, but you want the judge to rule that an exception applies in your case.
- A creditor contests your right to file under Chapter 7 or to discharge a particular debt.
- You want the judge to rule that you are entitled to a discharge of a particular debt, such as taxes or student loans.
- You want to eliminate a lien on your property that will survive Chapter 7 bankruptcy if the judge doesn’t remove it.
- You do not have an attorney and you want to *reaffirm* a debt – that is, you are making payments on a car or other personal property, and you want to keep the property and continue making payments after bankruptcy.

## **24. Do I have to disclose my income tax returns?**

At least 7 days before the meeting of creditors, you must give the trustee, and any creditors who ask for them, copies of your most recent Federal income tax returns.

## **25. What happens after the meeting of creditors?**

After the meeting of creditors, the trustee may ask further questions about your property. The court may issue orders to turn certain property over to the trustee or to provide the trustee with certain information.

## **26. Can I reduce the amount of money or property that must be turned over to the trustee?**

In a Chapter 7 case, you are required to turn over all nonexempt money or property that you have at the time the case was filed. Nonexempt assets that the trustee will look for include:

- Cash
- Bank accounts
- Tax refunds
- Prepaid rent
- Money deposited with landlords and utility companies
- Accrued earnings and benefits
- Sporting goods

Talk to your attorney about whether reducing the value of these assets before filing a Chapter 7 case might make sense in your circumstances. This kind of planning isn't cheating or acting illegally, but simply using the law to your advantage, just as people use tax laws to their advantage when they can.

## **27. What if I have no nonexempt property for the trustee to collect?**

If your bankruptcy petition and related documents indicate that you have no nonexempt property, then the court will send a notice advising the creditors that there appear to be no assets for paying creditors' claims, that the creditors do not have to file claims, and that if assets are later discovered they will then be given an opportunity to file claims. This type of case is referred to as a no-asset case. Most Chapter 7 cases filed by consumers are no-asset cases.

## **28. How long does a Chapter 7 case last?**

A no-asset case is closed soon after the court issues your discharge, which is usually about four months after the case is filed. The case will take longer if there are nonexempt assets for the trustee to collect or if you or any creditors file motions that must be resolved by the court.

## **29. Can a creditor force me into bankruptcy?**

In some circumstances, one or more creditors can file a petition for *involuntary bankruptcy* to preserve assets, prevent fraudulent transactions and preference payments, and achieve fair and proportionate distribution of the debtor's nonexempt assets to the creditors as a group. However, the court will dismiss the petition if it finds that the creditor filed it in bad faith, maliciously, or to harass the debtor.

### **30. What can I do if a creditor attempts to collect a debt that was discharged in my Chapter 7 case?**

When a Chapter 7 discharge is granted, the court enters an order prohibiting creditors from later attempting to collect any discharged debt from the debtor. If a creditor later attempts to collect a discharged debt, the debtor should give the creditor a copy of the Chapter 7 discharge and inform the creditor in writing that the debt was discharged. If the creditor persists, the debtor should contact an attorney. The creditor may be held in contempt of court and may be liable to the debtor for damages. If a creditor files a lawsuit on a discharged debt, it is important to inform the court in which the lawsuit is filed that the debt was discharged in bankruptcy. Although a judgment entered on a discharged debt can later be voided, this may require the services of an attorney, which could be costly.

### **31. Will I be able to get a credit card or a loan after bankruptcy?**

Most people whose debts are discharged in bankruptcy receive unsolicited credit card offers shortly afterward and often can obtain a home loan a few years later. Credit card companies and other lenders may consider the debtor to be a better risk after bankruptcy than they were before bankruptcy. After all, they cannot file for bankruptcy again for 8 years. Note, however, that credit scoring is not a legal issue and is not governed by the bankruptcy laws.

### **32. Why are people allowed to have debts wiped away by filing for bankruptcy?**

Most people feel a strong obligation to repay their debts and feel badly if they find themselves unable to do so. Many people are uncomfortable with the whole idea of bankruptcy. The concept of debt relief, however, is very ancient. One of the earliest bankruptcy laws is found in Deuteronomy 15:1-2: “At the end of every seven years, you must cancel debts. This is how it is to be done: Every creditor shall cancel the loan he has made to his fellow Israelite. He shall not require payment from his fellow Israelite or brother, because the Lord’s time for canceling debts has been proclaimed.” When Congress first codified U.S. bankruptcy law in 1800, it looked to this provision when, at that time, it allowed debtors to file for bankruptcy once every seven years. Our law recognizes that if you are overwhelmed by debt, you can’t provide for your family or participate productively in the national economy. As the current recession has demonstrated, intelligent and well-intentioned people can experience financial reversals, sometimes through no fault of their own. Filing for bankruptcy is a major personal decision; it may be a better solution than trying to ignore financial problems or letting them get worse.

**The information on this website is not legal advice.**

**Consult an attorney for an evaluation of  
how the law applies to your particular circumstances.**