

INDIVIDUAL BANKRUPTCY ALTERNATIVES

The immediate benefit of any bankruptcy is the automatic stay (injunction) which comes into effect immediately upon the filing of the petition. With very few exceptions, all creditors, including governmental agencies, such as tax agencies, are stopped from proceeding against you at the moment the bankruptcy is filed. Even if an asset has been seized already, it may be possible to get it back.

There are two Individual bankruptcy choices:

- Chapter 7
- Chapter 13 - <https://nathanhorowitzlaw.com/files/2020/03/Chapter-13.pdf>

Chapter 7

This Chapter provides a complete fresh start. With few, specified, exceptions the personal obligation to pay debts is discharged and you get what the law simply calls a fresh start. This directly relieves you of unsecured debts. These include regular credit card debts, medical bills, old utility bills, personal loans; in short, any debt not secured (see below) and not subject to special rules (see below).

With secured debts, you would have to make a choice. A secured debt is one where the creditor has the right to repossess something if you do not pay. The best examples are car loans or leases, and mortgage loans. If you want to keep the home, car or other collateral, you must continue to make your payments. However, if you are willing to give back the collateral to the bank, or lender, you can be free of the payments. **This choice is only yours.** Neither the court nor the creditor can make the choice or force you to pick a particular option. And there is no penalty to either choice. For example without a bankruptcy, if you lease a car, and you give the car back early there are penalties and charges. In a bankruptcy you can give the car back without any penalty. Whatever is owed to the creditor is discharged with other general debts.

Non-Dischargeable Debts

Some debts, even though unsecured, cannot be discharged in Chapter 7 bankruptcy. These include:

- Maintenance and child support
- Income taxes less than 4 years old
- Trust Fund (withholding and sales taxes) - no time limit
- All student loans
- Drunk driving related debts

These are non-dischargeable by definition. Bad faith or bad conduct is irrelevant. No action need be brought by the creditor to have these types of debts declared non-dischargeable.

There are other debts, based on improper conduct, which can be found to be non-dischargeable. For these debts, the creditor must file an action in the Bankruptcy Court within a time limit and request the Court to find the debt non-dischargeable. The most common objection is based on some type of fraudulent conduct.

Chapter 7 Effect on Property or Belongings

As stated above, your personal obligation is discharged. This means no one can come to you and ask for payment, or sue you, or garnish your pay. But, if you own something which the law allows the Court to sell, the Court will sell the asset and use the proceeds to pay part of your debts. If what you have is defined by the law as exempt that means you keep the asset.

Exempt assets cannot be taken from you.

In New York, we have a choice between exemptions provided by the Bankruptcy Code, and those provided by NY State law. Some exemptions are unlimited; others have limits, which are different in the federal and state exemption list.

The most common Exemptions are:

- Household Furnishings, personal clothing and specified jewelry

- A car with equity (value over the loan amount). Husband and Wife can each claim an exemption;
- Residence. Husband and Wife can each claim an exemption;
- IRAs, Keoghs and pension and retirement plans
- All life insurance including proceeds and cash value
- Most Annuities
- Personal injury claims up to fixed amount for bodily injury, plus lost earnings
- Cash up to a limit, and also limited if we take homestead exemption
- Tools of Occupation
- Burial Plot

Procedure:

After filing, you will have to make one (1) appearance at the Bankruptcy Court. The Trustee examines you regarding your petition, to be sure you have listed everything accurately.