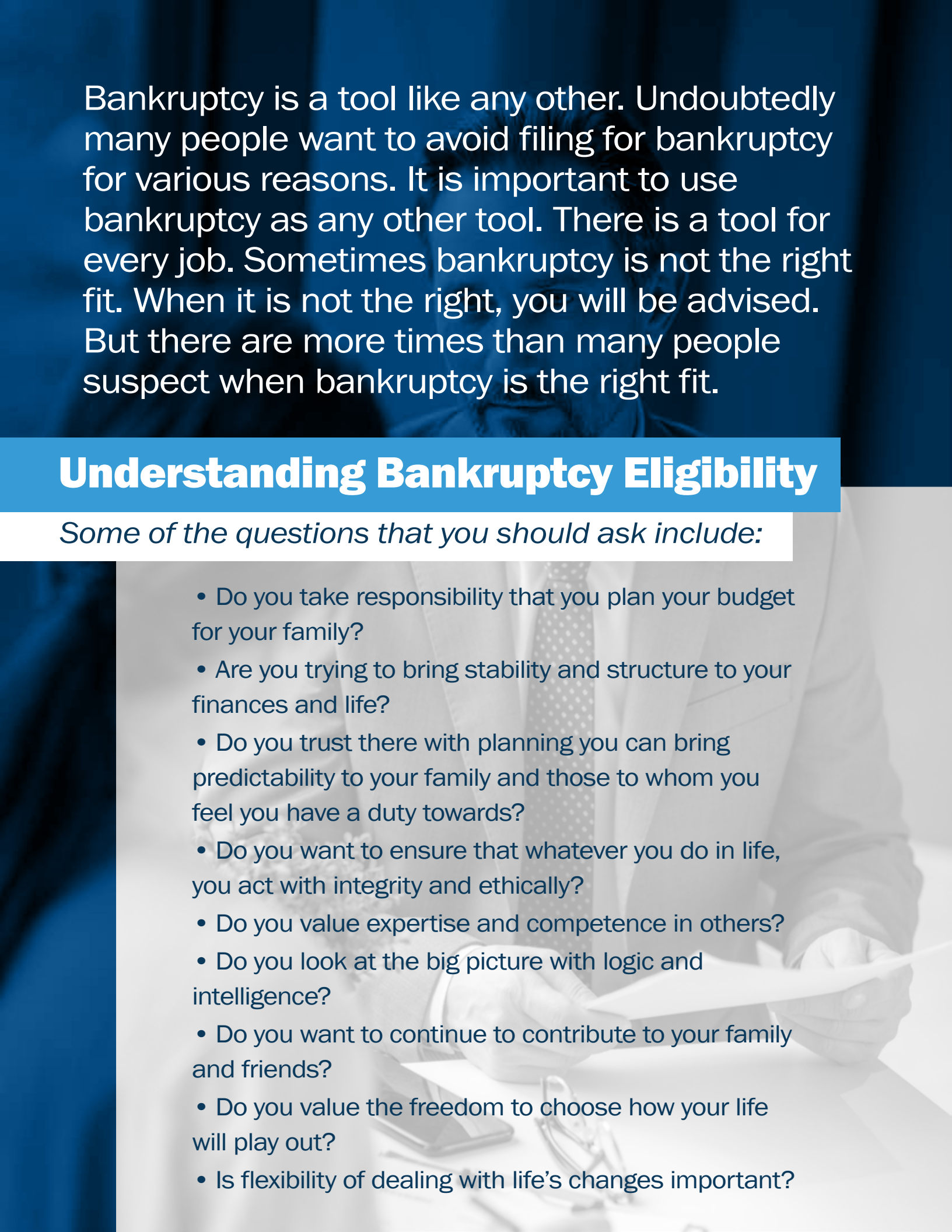


ANDREW CARROLL  
All NJ Bankruptcy



**Post-Bankruptcy  
Life Is Good**

A man in a dark suit and tie is looking directly at the camera. The background is a solid dark blue. The text is white and positioned in the upper half of the image.

Bankruptcy is a tool like any other. Undoubtedly many people want to avoid filing for bankruptcy for various reasons. It is important to use bankruptcy as any other tool. There is a tool for every job. Sometimes bankruptcy is not the right fit. When it is not the right, you will be advised. But there are more times than many people suspect when bankruptcy is the right fit.

## Understanding Bankruptcy Eligibility

*Some of the questions that you should ask include:*

- Do you take responsibility that you plan your budget for your family?
- Are you trying to bring stability and structure to your finances and life?
- Do you trust there with planning you can bring predictability to your family and those to whom you feel you have a duty towards?
- Do you want to ensure that whatever you do in life, you act with integrity and ethically?
- Do you value expertise and competence in others?
- Do you look at the big picture with logic and intelligence?
- Do you want to continue to contribute to your family and friends?
- Do you value the freedom to choose how your life will play out?
- Is flexibility of dealing with life's changes important?



Both individual Chapter 7 bankruptcy or Chapter 13 bankruptcy and business bankruptcy can address all of these issues and more. Bankruptcy helps a person save their home, sometimes only hours away from being sold at a sheriff's sale. It helps to stabilize your finances with the many important protections found under bankruptcy.

Contact us today to speak with a New Jersey bankruptcy attorney who does nothing but New Jersey bankruptcy law.

An experienced New Jersey bankruptcy lawyer, I will sit down with you and explain the differences between a Chapter 7 and Chapter 13 and help you determine which of these is right for you, if bankruptcy is the right choice overall. In order to schedule a time, please contact me to schedule your free New Jersey debt relief and bankruptcy consultation.

## Chapter 7 Personal Bankruptcy

Chapter 7 for individuals is designed for debtors facing financial difficulty who do not have the means to pay their existing debts. In many cases, this type of bankruptcy can be triggered by an adverse scenario — like divorce, illness, unemployment, student loans, or an unexpected lawsuit. These circumstances will often lead to assets being seized — which is why it is extremely important to hire an experienced lawyer who can protect your assets.

If you meet any of the following criteria, filing for Chapter 7 personal bankruptcy protection may be the best solution for you if:

- You are unable to pay high credit card debt or medical bills.
- You have repossession deficiencies on vehicle loans.
- You are losing income because of wage garnishment.
- You are dealing with harassment or threats of lawsuits from creditors.

Call us today to schedule your free debt relief and chapter 7 bankruptcy consultation.

# Filing Chapter 7 Bankruptcy in New Jersey

As an individual who is facing mounting debt without any idea about how to begin to pay off your creditors, bankruptcy might be the right choice for you. Chapter 7 bankruptcies involve the liquidation of all non-exempt property of the debtor, which is sold and the proceeds used to pay off some of the debts of the bankruptcy filer. After this has been done, the remaining debts are discharged and the debtor is no longer responsible for any of them. Most bankruptcy filers in Kansas are able to keep their property as part of the state exemptions.

In order to start a Chapter 7 action, the debtor files a Petition in the bankruptcy court, along with the required schedules and other documents. Once the action has been commenced, a trustee is assigned to the case, along with a bankruptcy judge. The trustee's first action is to call a Section 341 meeting, where all the creditors of the debtor are invited and the debtor has to appear and answer questions. Although technically the creditors may have the debtor answer questions under oath, this initial meeting usually serves as the place where the trustee can get clarification about anything contained in the initial filing.

A Chapter 7 filing is not available to everyone. In order to file, a person must qualify under the Means Test. If the debtor does not meet the requirements, then he will have to file a Chapter 13 where a repayment plan is necessary. The Means Test is comprised of three parts, including the calculation of the debtor's monthly income, the actual means test where allowable deductions are deducted from the debtor's calculated income, and then a comparison with the total debt.



# Calculating the Current Monthly Income

The current monthly income (CMI) is the average of the gross income of the debtor over the previous six months, starting the month before the filing date, before there are any taxes taken out or other allowed deductions made.

## *The calculation of the CMI includes:*

- All salary and wages;
- Income from any interest in a business or corporation;
- Income from rent or real property;
- Retirement or pension income;
- Payment of any interest, royalties, or dividends;
- Child support payments;
- Unemployment benefits; and
- Money from family and friends to be used for debtor's expenses.

There are some funds that are excluded from the CMI calculation, including social security payments, social security related unemployment payments, and compensation for victims of crimes.

The calculated CMI is then compared to the state's median income, as well as the county median in which the debtor resides. The office of the United States Trustee publishes these median income numbers. These figures vary based on the debtor's family size as well as the county or state in which the debtor resides. If the debtor's CMI is less than the applicable median income, then the debtor may file a Chapter 7 bankruptcy.

# The Means Test

If the debtor's CMI is higher than the relevant income, then the analysis moves to the second step, which is the Means Test. This process takes the CMI and then applies a series of expense deductions based on bankruptcy law. The deductions include actual expenses as well as allowed deductions. The allowed deductions are set by the Internal Revenue Service (IRS) and must be the established figures and not actual amounts from the debtor's life. These allowed deductions include limited charitable payments, taxes, elder care, health insurance, child support payments, and alimony.

In addition to the allowed deductions, there are established expense deductions such as mortgage payments, car payments, and health care expenses where the debtor can claim the expense deductions if they are higher than the actual payments being made. Certain expenses, such as contributions to a retirement plan or student loan payments, typically cannot be deducted.

## Debt Comparison

After the means testing, it is necessary to compare disposable income over the next five years for the debtor. If the debtor has less than \$6,000.00 over the next five years, then the debtor may file for Chapter 7. If the debtor has between \$6,000.00 and \$10,000.00 in disposable income over the next five years, then that income must be less than twenty-five percent (25%) of the total unsecured claims in order for the debtor to be able to file a Chapter 7 action. If the disposable income figure is more than \$10,000.00 then the debtor will not be able to file a Chapter 7 case.

# Means Testing is Not Required for Everyone

There are some people who believe that they do not qualify for Chapter 7 bankruptcy based on erroneous information or a misinterpretation of the general rules.

*There are people who do not have undergo means testing, including:*

- Consumer debtors whose debts are mostly non-consumer business debt;
- Disabled veterans who incurred the debt at issue during active duty;
- National guard members or reservists under certain circumstances; and
- Chapter 7 actions for businesses.

## Impact of Previous Bankruptcy Actions in New Jersey

Many people believe that they are not eligible to file for Chapter 7 or 13 based on a previous bankruptcy filing. Although there are limitations, it is possible to file another case. The debtor may file a Petition for Chapter 7 eight years after he or she filed a Chapter 7 action in which a discharge of debt occurred. The time period runs from the date of filing of the two cases. In addition, if the debtor filed a Chapter 13 action previously, he must wait six years before filing for Chapter 7.



# Secured Debts

There are debts that are secured by collateral that can be repossessed by the creditor, including residences on which there is a mortgage and vehicles where the debtor took out a purchase money loan.

*In a Chapter 7 action, there are three possibilities for this type of debt:*

- **Surrender** – The debtor may turn the property back over to the creditor in exchange for the discharge of the remaining debt. In a Chapter 7, the debtor cannot surrender the debt but retain possession of the property.
- **Redemption** – In this process, the debtor can buy the property for the fair market value (FMV) rather than the amount owed on the property. In this option, the debtor pays the creditor the FMV and the remainder of the debt is discharged.
- **Reaffirmation** – The debtor may choose to keep the property and continue to make payments on it under the terms of the original agreement or similar terms. This means that the obligation survives any Chapter 7 discharge and the debtor reaffirms the debt. In order to choose this option, the debtor must be current on the loan, or very close to current, when he files the Chapter 7.

## Exemptions

There are exemptions provided under the Bankruptcy Code, where property is protected from creditors and cannot be sold by the assigned trustee. Although there is a list of federal exemptions, Kansas, as well as neighboring Missouri, have opted-out of the federal exemptions and state exemptions apply to filings in these states.

The exemptions that apply are the state of domicile for the two years prior to the bankruptcy filing, generally.



# Debts That Cannot Be Discharged

Although many debts can be discharged in a Chapter 7 action, there are debts that are excluded, including child and spousal support, student loans, certain tax obligations, unreported debts, debts incurred through fraudulent actions, restitution payments, payments related to injury or death for which the debtor was responsible while operating a vehicle under the influence of drugs or alcohol, and court fees. Many of the debts that cannot be discharged relate to obligations to governmental entities. However, if the debtor purchased luxury items or made cash withdrawals exceeding \$750.00 within a specified period of time before the bankruptcy filing, then those debts will not be discharged in most cases.

## Chapter 7 Business Bankruptcy

Chapter 7 for businesses is often a good fit when the business can no longer carry on operations and meet its financial obligations. Filing will both wind up operations and put creditors on notice that the business either does not have the assets, or ability to pay its debts. This process can save an insolvent business the time, expense and stress of enduring multiple lawsuits that might otherwise be filed creditors.

Filing chapter 7 as a business can be both involved and complex. A lawyer is critical to assist insolvent businesses with both preparation and filing to petition in the appropriate jurisdiction, along with ensuring all required schedules and statements are accounted for. We also represent our clients through the 341 creditors' meeting and debtor examination, providing advice and counsel throughout the process. For business owners filing a Chapter 7 consumer bankruptcy, you may be able to keep your business and avoid the bankruptcy of your business

For consumer debtors who do not qualify for a New Jersey Chapter 7 Bankruptcy or who wish to reorganize debt while arriving at a reasonable payment plan, there is a Chapter 13 filing. This type of bankruptcy action involves arriving at a payment plan where creditors will be paid through a transfer of money from the debtor to the assigned bankruptcy trustee over a period of 36 to 60 months.

# Chapter 13 Bankruptcy in New Jersey

At the conclusion of this time period, when all agreed-upon obligations have been satisfied, the debt designated in the plan is discharged and the bankruptcy case is closed. This is different than the dismissal of the bankruptcy case when the debtor fails to comply with his or her obligations, in which case the debtor does not get the benefit of the bankruptcy action.

*There are many reasons why an individual may choose a Chapter 13 filing, including:*

- The person's income exceeds the limits for a Chapter 7 filing;
- The debtor has filed a Chapter 7 case within the previous eight years and, therefore, does not qualify to file another Chapter 7 case;
- The individual is not current on mortgage payments, but would like to make arrangements to keep the residence, if possible;
- The individual is not current on car payments, but would like to negotiate with the loan holder to keep the vehicle;
- The individual has debts that are not eligible for discharge under a Chapter 7 action, but might be discharged in a Chapter 13;
- The individual wants to retain certain non-exempt property after entering into a new payment agreement;
- The individual wants to eliminate or reduce interest payments on some debt; and
- The individual wants to arrive at a plan where he or she can make payments on debt that is owed.

By filing for Chapter 13 in New Jersey, the debtor is agreeing to a plan whereby at least some of the debt owed will be repaid. The length of time that the plan is in place, during which time the bankruptcy payments are made, depends upon the amount of disposable income that the debtor has to put towards the financial obligations.



# Determining Eligibility for Chapter 13 Filing in New Jersey

In order to qualify to file a Chapter 13 bankruptcy case, an individual or married couple must have less than \$1,149,525.00 in secured debts (this is subject to a scheduled adjustment in April 2016) and unsecured debts that do not exceed \$383,175 (this is subject to a scheduled adjustment in April 2016 to account for inflation).

A Chapter 13 plan must demonstrate that the debtor has sufficient income to meet all obligations, including the fee for the administration of the bankruptcy estate by the trustee and other expenses, which are capped at ten percent (10%) of the claims. The debtor must agree to update the file with submissions of future income or earnings provided to the trustee. The debtor also must agree to pay all priority claims in full, and to treat all claims that are classified in the same category in the same manner.

## *Common questions people ask about chapter 13 bankruptcy:*

- What is chapter 13 bankruptcy in New Jersey?
- What is a New Jersey chapter 13 trustee?
- How do I make chapter 13 bankruptcy payments in New Jersey?
- How much does it cost to file bankruptcy in New Jersey?
- What is a New Jersey chapter 7 bankruptcy?
- Where and how to file for chapter 13 in New Jersey?
- How much does a chapter 13 bankruptcy cost in New Jersey?

I would be happy to answer your questions. Please contact me to discuss your debt relief options and your legal rights today.

# Commencing a New Jersey Chapter 13 Case

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In order to file for Chapter 13 protections, the debtor must file a Petition, along with required schedules and other documents. This filing triggers the imposition of the automatic stay, which requires that all creditors stop trying to collect on any outstanding debts, including through foreclosure proceedings, lawsuits, collection agencies, wage garnishment, and enforcement of judgments. This is one of the most immediate of the benefits of a bankruptcy action and provides an opportunity for the debtor to begin to focus on reorganizing the debts that are owed and the amount of monthly payments. This initial filing also gets a trustee assigned to the case. The trustee will schedule the first meeting of the debtor and the creditors and will begin to collect necessary information in order to ensure that the debtor has accounted for all property and assets that could be used to satisfy existing debt.

One of the requirements of individual bankruptcy filings is that the debtor receives credit counseling before filing the action. There also are post-filing counseling requirements.

## New Jersey Chapter 13 Means Test

As in a Chapter 7 case, there is a Means Test by which the income of the debtor is calculated. This determination forms the basis for how much the debtor will be able to pay into the bankruptcy estate to be used to satisfy general, unsecured debts. This testing establishes income level and then permits certain deductions to arrive at the number that will be used to set payment schedules.



# Creating the Chapter 13 Plan

This involves a complex series of calculations and cannot be determined until all facts have been established. Depending on the final analysis, the plan could require the payment of all debts, a certain percentage of debts, or, in certain cases, none of the outstanding debt at all.

*In calculating payments under a Chapter 13 plan, the following will be considered:*

- Income and earnings from all sources, including salary and wages, business interest income, intellectual property, public benefits, Social Security, or child or spousal support;
- Any changes in income or earnings;
- The total amount of debt owed by the debtor;
- Exemptions that are available to the debtor;
- The Means Test;
- How many priority debts exist and the total amount of those debts;
- All non-exempt property owned, in whole or in part by the debtor;
- Information relating to an existing mortgage, any arrearages, and monthly payments;
- Car purchase loans or leasing information;
- Student loans;
- Retirement plan or account contributions;
- Other items that relate to the assets or liabilities of the debtor, or which impact his or her ability to make payments.

A Chapter 13 plan can be in place from 36 months to 60 months, depending on the debtor's income in relation to the relevant median income.

# Completion of a Chapter 13 Bankruptcy Case in New Jersey

In order to satisfy the requirements of the Chapter 13 plan and achieve a discharge of designated debts, the debtor must make all payments that were established under the terms of the plan. The discharge of these debts means that the debtor no longer is liable for any amounts remaining. A failure to meet his obligations will result in the dismissal of the bankruptcy case, which will lift the automatic stay and permit all remaining creditors to take all legally-permissible actions to collect the money owed to them. The debtor will have lost all the court fees and administrative expenses that were paid during the time that the bankruptcy action was open.

A debtor may file a motion with the court for a modification of the plan, whether temporary or permanent, based on an unforeseen change in circumstances.

In order to be eligible for the discharge of certain debts under a Chapter 13, the debtor must not have received a discharge of debt under a previous Chapter 13 filing within the last two years or under a Chapter 7 filing in the last four years. Moreover, the debtor must have remained current on all domestic support obligations.

## *Certain Debts Are Not Dischargeable Under a Chapter 13*

Although a Chapter 13 permits the discharge of more debts than a Chapter 7, including certain tax obligations, property settlements arising out of a divorce action, or judgments that resulted from the malicious destruction of property, there are certain debts that cannot be discharged in a Chapter 13, including:

- Some long-term debts, like mortgages;
- Student loans;
- Some tax debts;
- Personal injury or wrongful death obligations that arose as the result of operating a vehicle under the influence of drugs or alcohol;
- Debts incurred through fraudulent actions; and
- Certain criminal restitution.





# **We can help get your finances back on track**

## **3 easy steps:**

**1. Free case evaluation**

**2. Get your legal plan**

**3. Get your finances  
back on track**

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