



## THE NEEDLEMAN LAW OFFICE

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### **Chapter 7 Bankruptcy -- Who Can File?**

#### **The bankruptcy "means test" and other Chapter 7 eligibility rules.**

Filing for Chapter 7 bankruptcy can be a powerful tool for dealing with overwhelming debt. But it isn't available to everyone. There are several situations in which you won't be allowed to file Chapter 7 bankruptcy.

#### **You Have Enough Income to Repay Your Debts**

Under the old bankruptcy rules, the bankruptcy judge had the power to dismiss a Chapter 7 case if he or she thought the debtor had sufficient disposable income to fund a Chapter 13 repayment plan. There were no hard and fast rules dictating when a judge should dismiss a case on these grounds -- it depended on the facts of the case and the attitude of the judge.

Now that the new bankruptcy law has gone into effect, however, there are clear criteria that dictate who will be allowed to stay in Chapter 7 bankruptcy -- and who will be forced to use Chapter 13 bankruptcy if they want to file. Disabled veterans whose debts were incurred during active duty and people whose debts come primarily from the operation of a business get a fast pass to Chapter 7. All others must meet the requirements set out below.

#### **How High is Your Income?**

Under the new rules, the first step in figuring out whether you can file for Chapter 7 is to measure your "current monthly income" against the median income for a family of your size in your state. Your "current monthly income" is your average income over the last six months before you file. If your income is less than or equal to the median, you can file for Chapter 7.

If your income is more than the median, however, you must pass "the means test" -- another requirement of the new law -- in order to file for Chapter 7.

#### **Do You Have Enough Disposable Income to Repay Some Debts?**

The purpose of the means test is to figure out whether you have enough disposable income, after subtracting certain allowed expenses and required debt payments, to repay at least a portion of your unsecured debts over a five-year repayment period.



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### **You Previously Received a Bankruptcy Discharge**

You cannot file for Chapter 7 bankruptcy if you obtained a discharge of your debts in a Chapter 7 case within the last eight years, or a Chapter 13 case within the last six years.

### **A Previous Bankruptcy Was Dismissed Within the Previous 180 Days**

You cannot file for Chapter 7 bankruptcy if a previous Chapter 7 or Chapter 13 case was dismissed within the past 180 days because:

- you violated a court order
- the court ruled that your filing was fraudulent or constituted an abuse of the bankruptcy system, or
- you requested the dismissal after a creditor asked for relief from the automatic stay.

### **You Defrauded Your Creditors**

A bankruptcy court may dismiss your case if it thinks you have tried to cheat your creditors or concealed assets so you can keep them for yourself.

Certain activities are red flags to the courts and trustees. If you have engaged in any of them during the past year, your bankruptcy case may be dismissed.

These no-nos include:

- unloading assets to your friends or relatives to hide them from creditors or from the bankruptcy court
- running up debts for luxury items when you were clearly broke and had no way to pay them off
- concealing property or money from your spouse during a divorce proceeding, or
- lying about your income or debts on a credit application.

In addition, you must sign your bankruptcy papers under "penalty of perjury" swearing that everything in them is true. If you deliberately fail to disclose property, omit material information about your financial affairs, or use a false Social Security number (to hide your identity as a prior filer), and the court discovers your action, your case will be dismissed and you may be prosecuted for fraud.

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