

HAVE YOU FILED BANKRUPTCY BEFORE?

Was your previous bankruptcy case DISCHARGED?

A bankruptcy discharge releases the debtor from personal liability for certain specified types of debts. In other words, the debtor is no longer legally required to pay any debts that are discharged. The discharge is a permanent court order prohibiting the creditors of the debtor from taking any form of collection action on discharged debts, including legal action and communication with the debtor, such as telephone calls, letters, and personal contacts.

Not every debt can be discharged even if the debtor receives a discharge. Common examples of non-dischargeable debts include student loans, most IRS debts and child support. See Bankruptcy Code, Title 11 U.S.C. §§ 523(a), 523(c), and 1328(a). *The provisions regarding what debts are dischargeable are complicated, and the advice of counsel is strongly recommended.*

Bankruptcy law limits how often a debtor can file bankruptcy.

If you are presently interested in filing for bankruptcy protection under Chapter 7:

- Was your previous bankruptcy a Chapter 7? A debtor is not entitled to a discharge under another Chapter 7 for eight (8) years from the date of filing the previous petition.
- Was your previous bankruptcy a Chapter 13? A debtor is not entitled to a discharge under Chapter 7 for six (6) years from the date of filing the previous petition.

If you are presently interested in filing for bankruptcy protection under Chapter 13:

- Was your previous bankruptcy a Chapter 7? A debtor is not entitled to a discharge under Chapter 13 for four (4) years from the date of filing the previous petition.
- Was your previous bankruptcy a Chapter 13? A debtor is not entitled to a discharge under another Chapter 13 for two (2) years from the date of filing the previous petition.

Was your previous bankruptcy case DISMISSED?

If your case is dismissed, the case ends before you receive your discharge and your automatic stay terminates. Common reasons for dismissal include failure to pay filing fees and failure to timely file all necessary schedules and documents required as part of your bankruptcy filing. The Bankruptcy Code contains several provisions, which were designed to discourage repeat or serial bankruptcy petition filing, about which you should be aware if your previous case was dismissed. *If you did not have counsel in your previously dismissed case, it is strongly recommended that you seek the advice of counsel before filing a new case.*

Previous dismissal can have consequences!

1. Your ability to file another bankruptcy case can be limited if your previous case was dismissed. An individual cannot file another bankruptcy petition if, during the preceding 180 days, a prior bankruptcy case was dismissed due to the debtor's willful failure to appear before the court or comply with orders of the court, or was voluntarily dismissed after creditors sought relief from the bankruptcy court under section 362 of the Bankruptcy Code to recover property upon which they hold liens. 11 U.S.C. §§ 109(g)

If your previous bankruptcy was dismissed, determine whether the Order that dismissed your case restricts you from filing a new case for some period of time. If so, you cannot file your new case until that time has expired.

2. Even if you can file another case, your automatic stay (which freezes most creditors' actions against you when you file the bankruptcy) can be negatively affected if you file another case shortly after one or more of your previous cases have been dismissed:

- If a Chapter 7, 11, or 13 case is filed within one year of an earlier dismissed case (other than a case filed under a chapter other than 7 after dismissal under §707(b)), the automatic stay in the second case terminated 30 days after filing, unless the debtor, through a motion to extend the stay, shows the Court that the second case was filed in good faith. 11 U.S.C. §362(c)(3).

- If a second repeat case filing takes place within the one-year period, then the automatic stay will not go into effect upon filing of the third case. Once again, in order to extend the stay, the Court, upon notice and hearing, must find that the latest case was filed in good faith. The Court, upon request (by a creditor), shall promptly enter an order that the stay is not in effect. 11 U.S.C. §362(c)(4).

3. If a creditor obtained relief from the automatic stay with respect to real property (usually to pursue foreclosure), the debtor cannot file a new bankruptcy to frustrate the creditor's action with respect to the real property. If the Court finds that a bankruptcy filing relating to such real property was done with intent to delay, hinder and defraud creditors and involved multiple bankruptcy filings, the court may enter an order lifting the automatic stay and making it effective in future bankruptcy filings (called *in rem* relief) for two years after entry of the order. 11 U.S.C. §362(d)(4).