

Changes in the Bankruptcy Law That Affect Low-Income People

I need a bankruptcy but I heard about a new law that may change my rights. What is this law?

The new federal law went into effect October 17, 2005. This law makes many changes in bankruptcy law. Just a few are discussed here. Some of the changes are more important to people with low incomes. Other changes are more important to people with higher incomes.

I'm low-income. How does this new law change my rights in bankruptcy?

Bankruptcy lawyers are finding that, especially for low-income people, bankruptcy is still available. The biggest change in the law is the “*means test*.” The *means test* will be used when a debtor’s monthly income is higher than the median income in the debtor’s state. If a Debtor’s annual income is above the median income, then his/her expenses will be the expenses allowed under the *means test* and not necessarily his/her actual expenses. Most low-income people will fall below the median income figures and not be subject to the *means test*.

The approximate median income for a 4-person family in Washington is currently \$73,259. For one person the median income is \$43,891. If your annual income is below that amount, you will not be subject to the *means test*. The median income is calculated by averaging your last six months’ income (from *all* sources except Social Security income) and then multiplying that average monthly income by 12.

The *means test* will identify debtors who are able to pay some money to their creditors. These people will not be able to file “Chapter 7” bankruptcy to discharge their debts. These people will have to file a five year “Chapter 13” plan to pay creditors back.

Are there any other changes that affect me?

Other changes to bankruptcy law that may affect the low-income are:

Time Between Discharge: The length of time between bankruptcy discharges for Chapter 7 debtors has gone up from six to *eight* years from the time of filing the last Chapter 7. A Chapter 13 bankruptcy will be denied when the debtor has received a Chapter 7 discharge within the last 4 years, or has received a discharge from a previous Chapter 13 proceeding filed within 2 years.

Counseling: All debtors must take an approved financial counseling course **before** filing bankruptcy. Once the debtor has gotten the counseling certificate it is good for 180 days. If a case is filed *without* the counseling having been done, the case will almost certainly be dismissed.

Financial education: After the bankruptcy case has been filed and before the Debtor

receives his/her discharge, the Debtor must attend a financial management class. The class can be taken in person or online.

Tithing: Up to 15% of a debtor's income may be given to charity.

Child Support and Alimony: These debts are given a higher priority. The automatic stay does not apply to the payment of a domestic support obligation from property that is not property of the estate, or to the enforcement of a wage withholding order under a judicial or administrative order or under a statute, including obligations owing from both before and after the filing.

Also, child support and alimony [or maintenance] claims holders will be paid ahead of every other creditors except the bankruptcy Trustee if there is money in the bankruptcy estate.

Property Settlement Debts: These debts are now automatically non-dischargeable in Chapter 7 and Chapter 11 even if not child support or alimony related. In a Chapter 13 these debts are still dischargeable.

One example of this kind of debt would be where, in a divorce or separation, one spouse agrees to pay some or all of the credit card debt, and then that spouse files bankruptcy. That debt, in a Chapter 7 or 11, is no longer dischargeable.

Proof of Income: Chapter 7 and Chapter 13 debtors must give the Trustee, at least 7 days before the creditors' meeting, a copy or transcript of their most recent tax returns and all pay stubs [or other proof of income] received by the debtor in the sixty (60) days before filing the bankruptcy. Otherwise, the case will be dismissed.

Scope of Discharge: Certain debts will be harder to discharge: debts for luxury goods of more than \$500, made within 90 days before filing, and cash advances of \$750 made within 70 days before filing. Many of the debts that used to be dischargeable under a Chapter 13 but not under a Chapter 7 (called a "superdischarge"), will no longer be dischargeable. For example, if a creditor can prove misrepresentation or fraud on the part of the debtor, that debt is no longer dischargeable in either a Chapter 7 or Chapter 13.

Waiver of Filing Fee: This is available for debtors whose incomes are at or below 150% of the Federal Poverty Level and who are not able to pay the filing fee in installments.

Persons in Family Unit	150% FPL Annual
1	\$14,355.60
2	\$19,245.60
3	\$24,135.60
4	\$29,025.60
5	\$33,915.60
6	\$38,805.60

7	\$43,695.60
8	\$48,585.60
For each additional person, add	\$4,890.00

State Exemptions: Debtors may not use Washington exemptions unless they have lived here for at least two years before filing. If a Debtor has moved during this two-year period, the state exemptions are those of the state in which the Debtor has lived the majority of the time in the six months before this two-year period. In every case, however, the Debtor will be allowed to exempt property under federal exemptions or the exemptions of the relevant state. No Debtor will be denied all exemptions because s/he did not live in one place long enough.

There are some new exemptions favorable to Debtors: Money held in educational IRAs and certain qualified prepaid college tuition programs are excluded from the bankruptcy estate [the Trustee cannot liquidate them] for money placed in such an account more than 365 days prior to filing bankruptcy, up to certain limits.

The majority of Debtors in Chapter 7 keep all of their assets, because most Debtors do not have assets with a liquidation value large enough not to be exempted.

Vehicles: Chapter 13 Debtors can no longer reduce (“strip down”) vehicle liens to the value of the vehicle if purchased within two-and-a-half years before filing. Debtors can, however, usually keep their vehicles after the bankruptcy. If there is a lien against the car by the lender, the Debtor will need to keep making payments if s/he wants to keep the car. The bankruptcy Trustee will not sell the car, if Washington exemptions are used, unless there is equity [value of the car above the amount of debt against the car] of over \$2,500 in the car. Each Debtor in a joint case gets the \$2,500 exemption under Washington exemptions.

Car loans: Under the new law Debtors are under increasing pressure to “reaffirm” loans secured by liens on vehicles if Debtors want to keep their cars. Debtors should consult with a bankruptcy lawyer, if possible, before deciding whether or not to reaffirm such a debt. A potential consequence of not reaffirming the debt is that the creditor might repossess the vehicle.

Evictions: Usually, Debtors can get legal actions against them “stayed” (temporarily stopped). The new law changes that for landlords who are trying to evict tenants:

- (1) When a landlord gets a judgment of possession before the bankruptcy filing, the eviction can continue; and
- (2) If the landlord can show “endangerment” of the property or “illegal use of controlled substances” on the property in the thirty days before the bankruptcy filing, the landlord can go ahead with the eviction.

Student Loans: Student loans are non-dischargeable, in the absence of undue hardship,

regardless of the lender. This will cover loans from non-governmental and profit-making organizations. New case law makes the “undue hardship” a little easier to prove because Debtors do not need to show evidence exceptional circumstances.

Stay Relief: The new law limits the application of the stay or provides that it does not go into effect, in certain circumstances, where there are successive bankruptcy filings. In other words, if a Debtor has had one or more bankruptcy cases dismissed within twelve months of filing a new case, there may be a very limited stay or no stay at all to protect the Debtor unless the Court is convinced to extend the stay.

You should always consult a bankruptcy lawyer before filing any type of bankruptcy case. The above is just a general short outline.

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