**Federal Bankruptcy Law**

Filing bankruptcy can help a person by discarding debt or making a plan to repay debts. A bankruptcy case normally begins when the debtor files a petition with the bankruptcy court. A petition may be filed by an individual, by spouses together, or by a corporation or other entity.

All bankruptcy cases are handled in federal courts under rules outlined in the U.S. Bankruptcy Code.

There are different types of bankruptcies, which are usually referred to by their chapter in the U.S. Bankruptcy Code.

* Individuals may file Chapter 7 or Chapter 13 bankruptcy, depending on the specifics of their situation.
* Municipalities—cities, towns, villages, taxing districts, municipal utilities, and school districts may file under Chapter 9 to reorganize.
* Businesses may file bankruptcy under Chapter 7 to liquidate or Chapter 11 to reorganize.
* Chapter 12 provides debt relief to family farmers and fishermen.
* Bankruptcy filings that involve parties from more than one country are filed under Chapter 15.

**State Bankruptcy Law - NC**

State of North Carolina, among a handful of states that allows debtors to only claim state exemptions and not choose from the list of federal exemptions.

Under the North Carolina homestead exemption, debtors can protect up to $35,000 of equity in their primary residence. If [you are married](https://www.natlbankruptcy.com/will-bankruptcy-affect-my-spouse/) and filing a joint case with your spouse, you can double the exemption to protect $70,000 of equity in your home.

For example, if you own a home worth $200,000 with a mortgage of $150,000, you have $50,000 of equity accumulated in your home. If you file a joint Chapter 7 case in North Carolina, your home would be entirely off-limits to the bankruptcy trustee because all of your equity is exempt. In the scenario above, you could file for Chapter 7, discharge all of your debts, and keep your family home. It is important to keep in mind however, that filing for bankruptcy does not give you a free home. In order to retain ownership of your home after you file for bankruptcy, you will still need to pay the mortgage as you have in the past. Failure to do so can result in your lender initiating a foreclosure action.

In addition to the state homestead exemption, North Carolina bankruptcy law also offers protection for automobiles. North Carolina Chapter 7 debtors can protect up to $3,500 of equity in their cars. The auto exemption laws work in similar fashion to the homestead exemption, in that they protect equity, not overall value of the car.

**North Carolina Bankruptcy Exemptions**

The top 5 exemptions under North Carolina state law.

| Type of exemption | North Carolina law |
| --- | --- |
|  |  |
| Homestead | $35,000; $60,000 if age 65 or older, tenants or joint tenants as rights of survivorship, and debtor's spouse has died |
| Personal property | $5,000 in clothing, plus an additional $1,000 per dependent for a total of $4,000 (minus property purchased within 90 days of filing bankruptcy); college savings accounts up to $25,000, with limitations; $2,000 in tools of the trade; personal injury and wrongful death compensation; |
| Vehicle | $3,500 in one vehicle, but not if purchased within 90 days of filing bankruptcy |
| Wages | Earned but unpaid for work done 60 days before the filing date |
| Pension/retirement | Most are exempt under federal/state law |

In 2005, Congress passed a piece of legislation known as the [Bankruptcy Abuse Prevention and Consumer Protection Act](https://www.gpo.gov/fdsys/pkg/BILLS-109s256enr/pdf/BILLS-109s256enr.pdf) (BAPCPA). Among other things, this “new” law made it more difficult to file for Chapter 7 bankruptcy by implementing **the**[**bankruptcy means test**](https://www.natlbankruptcy.com/timing-and-the-means-test/). The means test is designed to steer consumers, who have the disposable income to pay something back to their unsecured creditors, into the [Chapter 13](https://www.natlbankruptcy.com/category/chapter-13-bankruptcy/) process rather than allowing them to shed all of their unsecured debt through Chapter 7.

When does the means test come into play? If you make more money than the average family of your size in the state of North Carolina, your last six months of income as well as your expenses will be run through the means test. Not all of your actual expenses will be used. Some will be based on average local expenses as determined by your [friends at the IRS](https://www.justice.gov/ust/means-testing).

**Comparison of Chapter 7 and Chapter 13**

|  |  |  |
| --- | --- | --- |
|  | Advantage | Disadvantage |
| Chapter 7 | 1. You receive a complete fresh start. After the bankruptcy is discharged the only debts you owe will be for secured assets on which you choose to sign a "Reaffirmation Agreement." 2. You have immediate protection against creditor's collection efforts and wage garnishment on the date of filing. 3. Wages you earn and property you acquire (except for inheritances) after the bankruptcy filing date are yours, not the creditors or bankruptcy court. 4. There is no minimum amount of debt required. 5. Your case is often over and completely discharged in about 3-6 months. | 1. If you choose and you can afford the payment plan, you can keep all your property, exempt and non-exempt. 2. While debts are not canceled as in a Chapter 7 discharge they can be reduced under a Chapter 13 payment plan. 3. You have immediate protection against creditor's collection efforts and wage garnishment. 4. More debts are considered to be dischargeable (including debt you incurred on the basis of fraud and credit card charges for luxury items of $1,150 or more made within 60 days of filing). 5. If the Chapter 13 plan provides for full payment, any co-signers are immune from the creditor’s efforts. 6. You have protection against foreclosure on your home by your lender as long as you meet the terms of the plan. 7. You have more time to pay debts that can't be discharged by either chapter (like taxes or back child support). 8. You can file a Chapter 13 at any time. 9. You can file repeatedly. 10. You can separate your creditors by class where different classes of creditors receive different percentages of payment. This enables you to treat debts where there is a co-debtor involved on a different basis than debts incurred on your own. |
| Chapter 13 | 1. You lose your non-exempt property which is sold by the trustee. If you want to keep a secured asset, such as a car or home, and it is not completely covered by your North Carolina bankruptcy exemptions then Chapter 7 is not an option. 2. If facing foreclosure on your home, the automatic stay created by your Chapter 7 filing only serves as a temporary defense against foreclosure. 3. Co-signors of a loan can be stuck with your debt unless they also file for bankruptcy protection. 4. You can file a Chapter 7 bankruptcy once every six years. | 1. You create a payment plan where you use your post bankruptcy income. This ties up your cash over the Chapter 13 plan period. 2. Legal fees are higher since a Chapter 13 filing is more complex. 3. Your debt must be under $1,000,000 (e.g., unsecured debts are less than $250,000 and secured debts less than $750,000). 4. Your plan and therefore your debt will last for 3 to five years. 5. You are involved in the bankruptcy court process for the term of the 3-5 year plan. 6. Stockbrokers, and commodity brokers cannot file a Chapter 13 bankruptcy petition. |

Reference:

1. <https://www.natlbankruptcy.com/filing-bankruptcy-in-north-carolina/>
2. <http://www.northcarolinabankruptcylaw.com/7v13.html>
3. <https://www.uscourts.gov/sites/default/files/bankbasics-post10172005.pdf>
4. <https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics>
5. <https://www.nolo.com/legal-encyclopedia/north-carolina-bankruptcy-exemptions.html>