

**Chapter I**  
**Iowa Bankruptcy Basics**

- A. What is Bankruptcy?**
- B. Overview of a Typical Iowa Bankruptcy**
- C. Philosophy and History of Bankruptcy**

**A. What is Bankruptcy?**

Bankruptcy is a way for people who can no longer keep up with their bills to legally discharge the debt and get a fresh start. Your right to file bankruptcy is in the United States Code, see **Bankruptcy Code**.

Link to-

[http://www.law.cornell.edu/uscode/html/uscode11/usc\\_sup\\_01\\_11.html](http://www.law.cornell.edu/uscode/html/uscode11/usc_sup_01_11.html)

In Chapter 7 bankruptcy, theoretically your property is “liquidated”, but since your home, car(s), furniture, appliances, employer sponsored retirement plans and such are normally exempt from the “bankruptcy estate” most clients do not lose any property. Some clients file under Chapter 13 and pay back their debt, typically over five years. Unless you have a specific reason that you want to repay like better treatment of past due taxes, you are normally better to file a complete discharge under Chapter 7.

The entire Chapter 7 process takes about three months and results in a discharge of your debt. Back taxes, student loans and child support are the most common non-dischargeable debt. All bankruptcy cases are filed in Federal Court. Each of our two Iowa Federal Courts (**Northern District of Iowa** and **Southern District of Iowa**) have jurisdiction over the entire state.

**B. Overview of a Typical Iowa Bankruptcy**

1. Client contacts attorney to find out:
  - A. Whether client qualifies for Chapter 7 or needs to consider Chapter 13 or maybe Consumer Credit Counseling.

This involves discussing such issues as amount of income and expenses, whether the homestead is exempt, non-homestead real estate, whether vehicles are exempt, and whether client may want to reaffirm, surrender or redeem vehicles. Business issues, pending claims against others, and in the fall and winter, anticipated tax returns will normally be discussed.

The attorney will normally discuss the “red flag” issues like recent credit card cash advances or balance transfers, other recent debt and payments to family.

## B. Pre-Bankruptcy Planning

- i. How to go about protecting assets
- ii. How to handle any non exempt assets
- iii. Timing of filing with respect to wages due or tax refunds or other issues

## 2. Drafting of the Petition

The petition is the document that will list all of your assets, debts, income and other information the Court may consider in granting a discharge. Some attorneys draft the petition from a packet that you have filled out; others draft one on one with you so that no packet is required. You can also purchase software online to draft your own petition for filing “pro se”. It is common for a pro se debtor to file a defective petition resulting in the loss of assets the debtor would have kept if they had been represented by an attorney who knows the “rules of the road” for a successful bankruptcy filing.

## 3. Filing

Both the Northern and Southern District Courts in Iowa require electronic filing of petitions and all other documents. Your attorney will file your petition and you will receive a notice of your hearing date and time from the Clerk by U.S. Mail within a few days of filing. Each Court has jurisdiction over debtors throughout Iowa.

## 4. Hearing

The Meeting of Creditors is required by the Bankruptcy Code, and provides your creditors an opportunity to ask you questions about your assets. The trustee will ask you questions intended to verify the contents of your petition. Your attorney will attend your hearing and ensure that you are not treated unfairly.

## 5. Post Hearing Issues

Practice varies widely, but the Trustee may request documents from you such as tax returns, bank or wage statements (check stubs from work). If so, you need to be sure to promptly and fully comply with these requests since your case could be dismissed for a simple failure to cooperate even though the documents would otherwise be fine if provided. After the hearing your attorney will help you resolve any outstanding issues that could impair discharge.

## 6. Discharge

Discharge normally occurs about eight or nine weeks after the hearing. Your discharge can be revoked if you do not provide requested documents or cooperate in some other way, but as a practical matter most cases are over when the discharge is issued. You should save a copy of your discharge in your permanent file since you may occasionally need to provide a copy to a creditor in the future, if for example, they mistakenly sell your discharged account to a collection agency.

Once discharged, your case will normally remain on your credit report for 10 years. However, many debtors are offered credit right away and many purchase homes within two years of filing. The most important thing is to have stable employment and income, save a reasonable down payment and avoid taking on new credit card, furniture or other debt that would impair your debt to income ration.

### **C. Philosophy and History of Bankruptcy**

Many clients struggle with the emotional aspects of filing bankruptcy. It may help to review some of the historical underpinnings and philosophy of modern bankruptcy law.

Prior to modern bankruptcy law, if a merchant in Italy could not pay his debts, his creditors would seek him out and break his work bench, so that he could not continue in business. They would take whatever assets he had and leave him destitute. From “break the bench” arose the word “bankrupt”.

However, there is a theological basis for a more humane approach to heavy debt.

*“At the end of every seven years you must cancel debts. This is how it is to be done: Every creditor shall cancel the loan he has made to his fellow Israelite. He shall not require payment from his fellow Israelite or brother, because the LORD's time for canceling debts has been proclaimed.”*

-The Year for Canceling Debts, Deuteronomy 15

See [www.biblegateway.com](http://www.biblegateway.com)

This “seven year” rule may be the basis for the modern American requiring consumers wait seven years between Chapter 7 filings (since changed to 6 years).

In modern day America, bankruptcy is considered an important way to encourage risk taking. If entrepreneurs could not fall back on bankruptcy they would be much less likely to start businesses and develop new ideas and products. International students studying in the U.S. often say one of the biggest differences between America and Europe is that we have a “right to fail” here. In fact, we almost celebrate failure and redemption. When someone like Donald Trump goes bankrupt and then ends up with another successful business he is welcomed right back into the business and social

community and perhaps afforded even more respect for “rising from the ashes” like a phoenix. Even CNN host Larry King had to file bankruptcy when he was a “cub reporter” but we embrace him as a leading journalist today.

But as a practical matter for those of us who’s last name is not Trump, modern bankruptcy is a last resort when we can no longer pay our debts. We would all much prefer to pay in full if we could. Many of my clients have gone to great lengths to try and satisfy their creditors including taking out second mortgages and cashing out retirement plans, neither of which I recommend by the way.

Unfortunately, the other alternative to bankruptcy for most clients is to simply continue to acquire debt they will never be able to repay. That is why our courts consider bankruptcy the *responsible approach* to unmanageable debt. It is much better to “draw a line in the sand” and realize that you are simply digging yourself a deeper hole than to continue to acquire debt you will never be able to repay.