

U.S. Legal Forms™, Inc. - Bankruptcy Forms and Information Package

DISTRICT OF SOUTH DAKOTA

This package includes uniquely packaged forms and information for Chapter 7 or Chapter 13 Bankruptcies, with current federal bankruptcy forms current through the December 2018 updates for use into 2019.

IMPORTANT PRELIMINARY NOTES on FILER-TYPE and ATTORNEYS

Per the authorities contained herein, if filing bankruptcy for a “**non-individual**,” including a corporation, LLC, or partnership, Chapter 13 bankruptcy MAY NOT BE USED, and the filing entity MUST be represented in the bankruptcy case by an attorney.

If an “**individual**,” including an individual person, a married couple, or a sole proprietorship – is filing bankruptcy, an attorney’s representation is not required but is most strongly recommended.

DECIDING ON CHAPTER 7 or 13

The types of bankruptcy that are available to “**individuals**” through this package are: Chapter 7 (Liquidation) and Chapter 13 (Voluntary repayment plan for individuals with regular income). Chapters 11 (Reorganization, \$1,717 fee) and 12 (family farmers or fishermen) are beyond the scope of this package. The following information is from the Notice required for individuals:

You should have an attorney review your decision to file for bankruptcy and choice of chapter.

Chapter 7 (“Liquidation” - \$335 total fee) is for individuals who have financial difficulty preventing them from paying their debts and who are willing to allow their non-exempt property to be used to pay their creditors. The primary purpose of filing under Chapter 7 is to have your debts discharged. The bankruptcy discharge relieves you after bankruptcy from having to pay many of your pre-bankruptcy debts. Exceptions exist for particular debts, and liens on property may still be enforced after discharge. For example, a creditor may have the right to foreclose a home mortgage or repossess an automobile. However, if the court finds that you have committed certain kinds of improper conduct described in the Bankruptcy Code, the court may deny your discharge. You should know that even if you file Chapter 7 and you receive a discharge, some debts are not discharged under the law. Therefore, you may still be responsible to pay: most taxes; most student loans; domestic support and property settlement obligations; most fines, penalties, forfeitures, and criminal restitution obligations; and certain debts that are not listed in your bankruptcy papers. You may also be required to pay debts arising from: fraud or theft; fraud or defalcation while acting in breach of fiduciary capacity; intentional injuries that you inflicted; and death or personal injury caused by operating a motor vehicle, vessel, or aircraft while intoxicated from alcohol or drugs.

If your debts are primarily consumer debts, the court can dismiss your Chapter 7 case if it finds that you have enough income to repay creditors a certain amount. You must file Chapter 7 Statement of Your Current Monthly Income (Official Form 122A-1) if you are an individual

filing for bankruptcy under Chapter 7. This form will determine your current monthly income and compare whether your income is more than the median income that applies in your state. If your income is not above the median for your state, you will not have to complete the other Chapter 7 form, the Chapter 7 Means Test Calculation (Official Form 122A-2). If your income is above the median for your state, you must file a second form - the Chapter 7 Means Test Calculation (Official Form 122A-2). The calculations on the form - sometimes called the Means Test - deduct from your income living expenses and payments on certain debts to determine any amount available to pay unsecured creditors. If your income is more than the median income for your state of residence and family size, depending on the results of the Means Test, the U.S. trustee, bankruptcy administrator, or creditors can file a motion to dismiss your case under § 707(b) of the Bankruptcy Code. If a motion is filed, the court will decide if your case should be dismissed. To avoid dismissal, you may choose to proceed under another chapter of the Bankruptcy Code.

If you are an individual filing for Chapter 7 bankruptcy, the trustee may sell your property to pay your debts, subject to your right to exempt the property or a portion of the proceeds from the sale of the property. The property, and the proceeds from property that your bankruptcy trustee sells or liquidates that you are entitled to, is called exempt property. Exemptions may enable you to keep your home, a car, clothing, and household items or to receive some of the proceeds if the property is sold. Exemptions are not automatic. To exempt property, you must list it on Schedule C: The Property You Claim as Exempt (Official Form 106C). If you do not list the property, the trustee may sell it and pay all of the proceeds to your creditors.

Chapter 13 (“Voluntary repayment plan for individuals with regular income” - \$310 total fee) is for individuals who have regular income and would like to pay all or part of their debts in installments over a period of time and to discharge some debts that are not paid. You are eligible for Chapter 13 only if your debts are not more than certain dollar amounts set forth in 11 U.S.C. § 109. Under Chapter 13, you must file with the court a plan to repay your creditors all or part of the money that you owe them, usually using your future earnings. If the court approves your plan, the court will allow you to repay your debts, as adjusted by the plan, within 3 years or 5 years, depending on your income and other factors. After you make all the payments under your plan, many of your debts are discharged. The debts that are not discharged and that you may still be responsible to pay include: domestic support obligations, most student loans, certain taxes, debts for fraud or theft, debts for fraud or defalcation while acting in a fiduciary capacity, most criminal fines and restitution obligations, certain debts that are not listed in your bankruptcy papers, certain debts for acts that caused death or personal injury, and certain long-term secured debts.

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Because bankruptcy can have serious long-term financial and legal consequences, including loss of your property, you should hire an attorney and carefully consider all of your options before you file. Only an attorney can give you legal advice about what can happen as a result of filing for bankruptcy and what your options are. If you do file for bankruptcy, an attorney can help you fill out the forms properly and protect you, your family, your home, and your possessions. Although the law allows you to represent yourself in bankruptcy court, you should understand

that many people find it difficult to represent themselves successfully. The rules are technical, and a mistake or inaction may harm you. If you file without an attorney, you are still responsible for knowing and following all of the legal requirements.

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To access the Package and download the forms and information you will need the following login. Please write this login down so you will have it available when needed to download the forms. You may be asked for the login more than once.

The login is:
USERNAME: rabbit
PASSWORD: fox539

To view the package, click the following link (or hold down CONTROL and click):

<https://www.uslegalforms.com/data/bankruptcy/SD/SD-BANKR.htm>

Click on the blue, underlined link to open the package, or type (or copy and paste) the link directly into you browser location window and press 'ENTER' – then enter the **login**, above.

Tip 1: If you cannot click on the link, then you may type it into the address bar of your web browser. If you are typing it in, make sure that you type it EXACTLY as shown below. The link is CASE SENSITIVE, and it will make a difference if you do not enter capital letters.

Tip 2: If you are using AOL or Internet Explorer, you may have a problem with getting the download page to come up by “clicking” on the link. If this is so, then please try to either copy and past the link into the address bar of your web browser or type the link in. Remember to type it EXACTLY as shown.

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