

## Questions & Answers for Bankruptcy Creditors

**Disclaimer:** While the information presented is accurate as of the date of publication, it should not be cited or relied upon as legal authority. It is highly recommended that legal advice be obtained from a bankruptcy attorney. Please also refer to the [United States Bankruptcy Code \(title 11, United States Code\)](#), the [Federal Rules of Bankruptcy Procedure](#), the [Federal Rules of Civil Procedure](#) and the [Local Bankruptcy Rules for the United States Bankruptcy Court for the District of Vermont](#). Finally, if you do not understand terms used in these questions and responses, many of them are defined in [Bankruptcy Basics](#) issued by the Administrative Office of the Courts.

The Clerk's office CANNOT

- Explain the meaning of a particular rule
- Give an interpretation of case law
- Explain the result of taking or not taking action in a case
- Tell you whether jurisdiction is proper in a case
- Tell you whether a complaint properly presents a claim
- Provide advice on the best procedure to accomplish a particular goal
- Apply a Rule or Statute
- Explain who must be served with a copy of a particular document

What do I do if someone who owes me money has filed bankruptcy?

Shortly after the bankruptcy filing, the Court sends out a "notice of commencement of a bankruptcy case" that includes information regarding date, time and place of the first meeting of creditors, the deadline for filing proofs of claim (in a Chapter 13 case), and deadline for filing objections to the debtor's discharge. Please read the back of your notice as it has important information about both Chapter 13 and Chapter 7 case filings.

What is a Section 341 Meeting of Creditors and do I have to attend? Can I ask the debtor questions?

The meeting of creditors is often referred to as a 341 meeting because it is required by section 341 of the Bankruptcy Code. You are not required, as a creditor, to attend the meeting of creditors, although the debtor must attend the meeting. If you attend, you may ask questions. You may wish to seek the assistance of legal counsel depending upon the nature of your questions or the nature of your transactions with the debtor. If you need to make a detailed inquiry of the debtor, the case trustee (who is the presiding officer at the meeting of creditors) may advise you to pursue your inquiries by seeking permission for what is called a 2004 examination. (So named because it is authorized by Rule 2004 of the Federal Rules of Bankruptcy Procedure.)

If I believe the debtor is not reporting all assets or is otherwise not being truthful, what do I do?

The Office of the United States Trustee is a division of the Department of Justice and is charged with oversight of bankruptcy cases. It investigates allegations that a debtor has failed to file complete and accurate schedules. If you have reason to believe that a debtor has filed a false document, hidden assets, or made an untruthful statement under oath in connection with a bankruptcy case (whether orally or in writing), you should report that to the US Trustee. The US Trustee will review your complaint and, if it determines the allegation has merit, it will notify the U.S. Attorney for further investigation. For more information, or to report a concern regarding a bankruptcy case pending in Vermont, contact the U.S. Trustee's Office at (518) 434-4553.

If a debtor has filed a chapter 7 case, how will I know if and/or when I will get paid?

If the debtor has filed a chapter 7 "no asset" case, you will not receive any payment and it is most likely that your debt will be discharged, that is to say, that you will be forever barred from trying to collect it. If you receive a notice of possible assets asking you to file a proof of claim, that means there are assets to pay at least a portion of the claims in the case, and that you will be paid if you file a proof of claim. In order to be eligible for payment, you must file a proof of claim by the deadline printed on the notice. If you file a proof of claim and there is no objection to it, you will be paid, though it will likely be several months after the filing of the proof of claim before you receive your check. If you have not heard anything and you need information about if and when you will be paid, you may contact the Chapter 7 trustee to inquire about the status of distribution in the case. Remember that in more complex cases or cases involving litigation, there may be many months of case administration before payments are made to creditors. The Chapter 7 trustee's contact information is on the notice of the meeting of creditors.

What do I do if I want to receive notice of what is going on in this case?

You will receive notices in a bankruptcy case only if (1) the debtor listed you on the mailing matrix of creditors in the bankruptcy case, (2) you filed a written notice of appearance with the Court, or (3) you filed a proof of claim in an asset case. (An asset case is one where funds will be available for distribution to creditors; the Court will send a notice directing creditors to file proofs of claim only if and when the trustee alerts the Court that it is an asset case.) If the address supplied by the debtor for you is not correct, or if you change your address during the time the case is proceeding, you must notify the Court in writing of your current address.

If the debtor has filed a chapter 13 case, how do I put in my claim for what I am owed?  
When can I expect payment?

A "claim" is any right to payment you may have against the person or entity that has filed a bankruptcy case. The written statement filed in a bankruptcy case setting forth a creditor's claim is called a "proof of claim." To file a valid proof of claim you must complete the proof of claim form and attach a copy of the documentation giving rise to the claim, as well as evidence of secured status, if you are asserting that you have a lien on collateral to secure

your claim. In most instances, you will receive a proof of claim form with the notice of meeting of creditors the Court sends to you. However, if you did not receive a proof of claim form, you can get one from the Clerk's Office or from the [U.S. Bankruptcy Court District of Vermont](#) website. There are several ways to file a claim: you may mail it to the Court's address, fax it to the Court, or deliver it in person to the Court. The addresses for each form of delivery are set forth on the Court's website. The timing for payment of the claim will depend upon the terms of the debtor's chapter 13 plan. If you are a creditor in the case, you are entitled to a copy of the debtor's plan and you should receive one in the mail shortly after the debtor files it. If you do not receive a copy of the plan, you can get one from the Court or the debtor's attorney.

If the debtor has filed a chapter 13 case, and I do not consent to the way my debt is being treated in the plan, is there anything I can do to get better treatment?

Chapter 13 of the Bankruptcy Code has a specific set of rules for how each category of debt gets treated in a chapter 13 plan. If the plan complies with those requirements, then it is not likely that you can get any better treatment. However, you may file an objection to the plan if you believe the plan does not comply with the requirements of chapter 13. The Court will address that objection at the confirmation hearing, provided you filed it in a timely manner (prior to the date set for the confirmation of the plan). If you have a question about whether you have a right to object to the plan, you are urged to consult with an attorney to determine if there is a legal basis for an objection to the debtor's plan. The debtor's attorney is not obligated to answer your questions in this regard and is prohibited by ethical rules from giving you (or any creditor in the case) legal advice. You may also be able to get useful information about the treatment of your debt in the plan by attending the meeting of creditors.

What do I do if I object to my debt being discharged? What do I do if I believe the debtor is not entitled to a discharge at all?

An objection to the debtor's discharge and/or to the discharge of just your debt is made by filing an adversary proceeding. An adversary proceeding is a lawsuit in a particular bankruptcy case. You begin an adversary proceeding by filing a Complaint with the Court. It is given a separate proceeding number from the bankruptcy case. The Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules state which actions must be brought as adversary proceedings, and provide the rules and procedures pertaining to adversary proceedings. Adversary proceedings are complex, so if you wish to file an adversary proceeding you should consult with a bankruptcy litigation attorney.

If the debtor wishes to reaffirm a debt with me, what do I do? Can any debt be reaffirmed?

A reaffirmation agreement is an agreement by which a bankruptcy debtor becomes legally obligated to pay all or part of a debt that he or she could discharge in their bankruptcy case. It is totally voluntary. A reaffirmation agreement must be made before the discharge is entered in the debtor's case and should be filed within sixty (60) days after the first date set for the meeting of creditors. Bankruptcy Form 240A (available on our website) must be filled

out and submitted, along with the required cover sheet (local form B27 -- also available on our website). The agreement must contain signatures of the debtor(s) and the creditor in Part B and the attorney for the debtor(s) in Part C. Unrepresented parties must also complete Part E: Motion for Court Approval. If the debtor reaffirms a debt and fails to make the payments as agreed, the creditor may take action to recover any property that was given as security for the loan and the debtor will be liable for any remaining debt. A hearing is required to approve the reaffirmation agreement if the debtor is not represented by an attorney. Only debts with collateral attached to them may be reaffirmed.

How do I file a Motion for Relief from Stay if I want to take back my collateral? Do I need an attorney? What if I am affiliated with a creditor that is a corporation?

When a debtor files for bankruptcy, an automatic stay goes into effect which stops most proceedings against a debtor and the debtor's property (while the bankruptcy case is open). In order for a person to continue a proceeding against the debtor that has been stayed, the person must file a Motion of Relief from the Automatic Stay, setting forth the nature of the relief sought and the legal basis authorizing you to obtain that relief. You must serve a copy of that motion on the debtor, the debtor's attorney (if any), the case trustee, and all other parties who have rights in the property. If the creditor is seeking permission to repossess collateral, the motion must also be accompanied by exhibits evidencing that the debt is secured, identifying the collateral and the creditor's interest in the collateral. All motions for relief from stay must be accompanied by a notice of motion, a proposed order for the judge to sign granting the motion, and a certificate of service showing how and to whom you served the papers. The motion may be filed using the Court's default procedure (which allows the judge to grant the order without a hearing if there are no objections). An example of a relief from stay motion and a notice of motion under default procedure, along with instructions on how to set a hearing, can be found on our website. Corporate entities must retain counsel to file a motion for relief from stay. Another way that a person may get relief from stay is if they file a Stipulation which they and the debtor sign, showing that both agree to relief from stay.

How do I file a document with the Court?

People who are not attorneys are not required to file documents electronically. They may file motions, claims and other papers by mail, in person at the Clerk's office in Rutland, by fax. If you want a file-stamped copy of your filing, you must include a copy of the document and a self-addressed stamped envelope. All attorneys who are registered with the Court to file electronically should file all documents electronically, using the Court's case management / electronic case filing (CM/ECF) system.

Is it mandatory to file documents with the Court electronically?

No, there are some requirements that attorneys must fulfill before practicing before the Court, but a pro se party (a person proceeding without counsel), or an attorney who is properly admitted to practice in the bankruptcy Court, may file documents on paper or by other means outlined in Vermont Local Bankruptcy Rule 5005-4.

What does it mean if a case is dismissed?

A dismissal order ends the case. (A dismissal is completely different from a case ending with the discharge of debt.) Upon dismissal, the "automatic stay" ends and creditors may start or resume debt collection proceedings, unless a discharge has been entered before the dismissal and was not revoked. An order of dismissal ends the case but does not extinguish debt - only a discharge order extinguishes debt. Unless the debtor appeals the order of dismissal or seeks reconsideration within ten (10) days after the entry of the order, the Clerk will close the case.

If my ex-spouse has filed bankruptcy, will this affect me?

It is very likely that your ex-spouse's bankruptcy filing will have a financial impact on you. Therefore it is very important to consult a lawyer with expertise in divorce law as soon as you learn of the bankruptcy filing. Creditors are not generally bound by the terms of a divorce decree or stipulation, so if there are still outstanding joint debts and your ex-spouse files for bankruptcy, the creditors who hold claims on which you were both liable will now be unable to collect from your ex-spouse and will likely be looking to you for payment. In many instances, if you are a co-debtor with your ex-spouse on a debt, the creditor can require the entire payment of that debt from your funds and from your share of the marital property, even though the divorce decree assigns the debt to your ex-spouse. It is also important to timely file a proof of claim in your ex-spouse's bankruptcy case if your ex-spouse owes you any money, or support / alimony / maintenance, or has promised (in the divorce case or otherwise) to pay any joint debt.

Can I collect money that the debtor owes me for services rendered after the bankruptcy case was filed?

Until the bankruptcy case has been closed, you may not make any effort to collect a debt, unless you first obtain relief from stay; and after the bankruptcy case is closed, you may only collect your debt if it was not discharged in the bankruptcy case. Generally, a bankruptcy only discharges debts incurred before the date of the bankruptcy case filing; any efforts to collect debts incurred before the date of filing are stayed. Debts incurred after the bankruptcy case is closed can be collected as usual.