

A man in a white dress shirt, red tie, and black trousers is captured mid-air, jumping with his arms raised and a black suit jacket flying through the air. He is positioned in front of a tall, modern skyscraper with many windows. The sky is clear blue. The overall scene conveys a sense of triumph and a fresh start.

# FRESH START

WHAT YOU SHOULD KNOW ABOUT BANKRUPTCY

MICHELLE LABAYEN & JAYSON LUTZKY

## About The Authors



**Michelle Labayen:**

Michelle Labayen has been practicing Bankruptcy law for the past seven years and formerly the managing attorney of three bankruptcy offices for Legal Helpers. Michelle possesses thorough knowledge of bankruptcy which includes knowledge of Chapter 7, Chapter 13, Adversary Proceedings, litigation under the Fair Credit Reporting Act and the Fair Debt Collection Practice Act. Michelle has represented clients selling their property in Bankruptcy under Section 363 and assisted in Commercial Sales of property. Michelle has represented clients at the Legal Aid Society and was lead litigator in the State of New Jersey representing a national creditor law firm . Working for national banks enabled her to be very familiar with the legal practices of credit card companies and foreclosure firms. Michelle is a member in good standing in the New York Bar Association, admitted to practice in the Eastern and Southern District of New York and throughout New Jersey. Michelle graduated from Columbia University in 1999 and New York Law School in 2003.

## About The Authors



**Jayson Lutzky**

Jayson Lutzky has been practicing bankruptcy and civil matters for over 26 years. Jayson is a member of the New York State Bar association and has received numerous awards. In 2000, Jayson won the President's Pro Bono Service Attorney Award and also received recognition from the Network for Women's Service Commitment to Justice Award. Jayson is also an Arbitrator in the Small Claims Part in the Civil Court of New York and has served on the Board of Trustees of the Greenburgh Hebrew Center for eight years and as President for two years. Jayson is admitted to the Eastern and Southern District of New York and a member of the Bronx County Association. Jayson attended Union College where he received his Bachelor's degree and graduated in 1979. Jayson attended Cardozo Law school and graduated in 1982.

## Things To Know



### What Is Chapter 7?

- Chapter 7 is a discharge of your debt which means there is no legal responsibility for you to repay the amount owed.
- Certain debt is non-dischargeable such as taxes, student loans, domestic support obligations, divorce debt and government fines and debt.

### What Is Chapter 13?

- Chapter 13 is a repayment of your debt over a three or five year period
- The amount of your repayment is based on your monthly disposable income, equity in property and income from the means test.

## Things To Know

### What Is Foreclosure?

Defined by Wikipedia: Foreclosure is the legal and professional proceeding in which a mortgagee or other lienholder, usually a lender, obtains a court ordered termination of a mortgagor's equitable right of redemption.

### What happens if I fall behind on my mortgage?

- Stay in touch with your mortgage
- FHA loans with 80-20 loans purchased in the last 5 years are provided additional protection with the newly passed bill
- Provide a statement to your mortgagee of your hardship and send in all financial information such as paystubs, tax returns to help assess the possibility of refinancing
- Avoid using “mortgage specialist” which insist on you paying them and not your mortgage.
- Filing chapter 13 will allow you to pull your arrears into your plan, stay in your home and avoid foreclosures.

## Things To Know

### What is a short sale?

- Defined by Wikipedia: short sale is a sale of real estate in which the proceeds from the sale fall short of the balance owed on a loan secured by the property sold.
- In a short sale, the bank or mortgage lender agrees to discount a loan balance due to an economic or financial hardship on the part of the mortgagor. This negotiation is all done through communication with a bank's loss mitigation or workout department. The home owner/debtor sells the mortgaged property for less than the outstanding balance of the loan, and turns over the proceeds of the sale to the lender, sometimes (but not always) in full satisfaction of the debt. In such instances, the lender would have the right to approve or disapprove of a proposed sale. Extenuating circumstances influence whether or not banks will discount a loan balance. These circumstances are usually related to the current real estate market and the borrower's financial situation.
- A short sale typically is executed to prevent a home foreclosure, but the decision to proceed with a short sale is predicated on the most economic way for the bank to recover the amount owed on the property. Often a bank will allow a short sale if they believe that it will result in a smaller financial loss than foreclosing as there are carrying costs that are associated with a foreclosure. A bank will typically determine the amount of equity (or lack of), by determining the probable selling price from a

# Chapter 7

## Chapter 7:



A chapter 7 bankruptcy provides relief to the debtors by granting a discharge of certain debts to give an individual a “fresh start”. This fresh start has been provided for nearly 200 years and is based on the proposition that the debtor’s future income should belong to the debtor. None of the debtor’s federal or state rights are denied because they choose to file [bankruptcy](#). New statistics estimates that every 30 seconds someone is filing bankruptcy. Empower yourself with information, take advantage of your rights and reclaim your future free of debt. Although collection agencies may argue that you must repay your debt; the debtor has no liability for discharged debts which may include:

- Surrendered real property
- Surrendered Cars
- Surrendered Secured personal property
- Medical Debt
- Credit Card Debt
- Loans
- Judgments in lawsuits \*

## Chapter 7

To qualify for a Chapter 7 filing the debtor may be an individual, a partnership or a corporation. 11 U.S.C Sec. 101. Subject to the means test and other statutory concerns (have not received a discharge from bankruptcy in the last eight years) relief is granted to individuals irrespective of the amount of the debtor's debts.

The process of a Chapter 7 case usually begins with the debtor filing a petition with the bankruptcy court. Once the petition is filed the automatic stay comes into effect. The automatic stay stops any legal action or collection process from going forward. The petition is comprised of schedules, statements and declarations. The schedules include a listing of assets and liabilities, creditor information, income and expenses, contracts and leases. Statements include statements of financial affairs and declaration about the debtor's intention, credit counseling compliance and social security number.

The debtor must provide 6 months of pay stubs, two years of tax returns (federal and state) bank account information, car and title information, mortgage title and information (if applicable), listing of all creditors (including recipient of alimony and child support payments if applicable) and provide a copy of the credit counseling course.

## Chapter 13

## Chapter 13

The Chapter 13 of the [Bankruptcy](#) Code provides for an adjustment of debt to be repaid by an individual with regular income. A chapter 13 allows the debtor to keep property and repay debts over a three (3) to five (5) year period.

A chapter 13 is also called a wage earners plan. It enables individual with regular income to develop a plan to repay all or a portion of their debts ranging from 1% to 100% depending on the debtor's particular circumstances. Under this chapter, the debtor makes a repayment plan to make installment payments to creditors over time. If the debtor's current monthly income is greater than the applicable state median, the plan generally must be for five years. In no case may a plan provide for payments over a period longer than five years. 11 U.S.C Sec. 1322(d). While the debtor is in Chapter 13, the law forbids creditors from starting or continuing collection activities. 11 U.S.C Sec. 362.

## Chapter 13

There are several advantages to Chapter 13. Chapter 13 offers individuals the opportunity to save their home from foreclosure, cure delinquent mortgage debt, cure delinquent car payments, reschedule secure debts, and significantly reduce payments of unsecured debts such as credit cards, medical debt, deficiencies on car loans and department card stores. Chapter 13 also has a special provision that protects third parties who are liable with the debtor on consumer debt. This provision may protect co-signers and loved ones who helped assist debtors establish credit worthiness to purchase secured items. Furthermore, Chapter 13 is similar to a consolidation program except it is under the protection of the federal bankruptcy court. The debtor will decide with his attorney how much he/she can afford to repay, regular monthly payments are sent to the Trustee. The trustee distributes the debtor's payments to all of the properly filed claimants/creditors. At the end of the time period, the Debtor receives his/her discharge. Unlike Debt consolidation plans the debtor is protected by the court against law suits from creditors which may attempt to freeze the debtor's bank account or garnish their wages, the debtor does not have to worry if payments are being received by the creditors and or if the appropriate amount is being sent to the creditors.



### Chapter 13

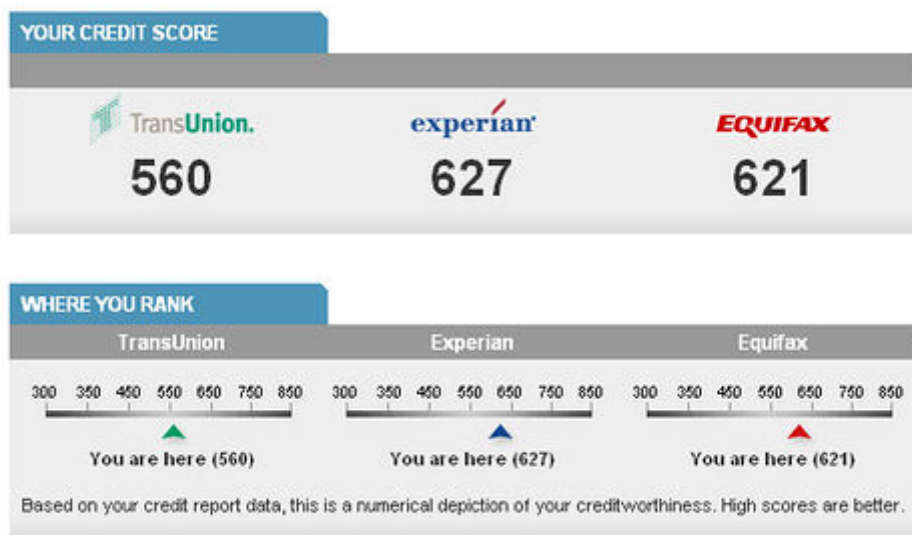
Who is eligible for a Chapter 13 Plan? Any individual, even if self-employed, is eligible for a chapter 13 as long as the individuals unsecured debts are less than \$336,900 and secured debts are less than \$1,010,650. U.S.C sec 109(e). An individual may not have filed under Chapter 13 or any other chapter if during the proceeding 180 days prior to the bankruptcy petition, the case was dismissed due to the debtor's willful failure to appear before the court or comply with the orders of the Court, or was voluntarily dismissed after creditors sought relief from the bankruptcy court to recover property upon which they hold liens. 11 U.S.C sec 109(g) and (e).

The process of a Chapter 13 begins with the filing of a petition with the bankruptcy court. The debtor must supply completed schedules of assets and liabilities, schedule of current income and expenditures, listing of all creditors, statement of financial affairs, comply with the means test and provide a certificate of credit counseling. The debtor must supply proof of pay (6 months), bank statements, car information, mortgage information, title and deeds, tax transcript and any other affidavit to certify income and expenses. Within 30 days after filing the bankruptcy case, even if the plan has not yet been confirmed by the court, the debtor must start making proposed plan payments to the trustee. 11 U.S.C 1326(a). The debtor must also continue to make "post-petition" payments on all secured assets that

the debtor wishes to maintain i.e. car payments and mortgages, and ordinary and necessary expenses for living i.e. rent, utilities, etc. Within 45 days after the meeting of the creditors, the bankruptcy court must hold a confirmation hearing and decide if the plan is feasible and meets the standards for confirmation set forth in the Bankruptcy Code 11 U.S.C 1324 and 1325. If the court confirms the plan, the Chapter 13 trustee will distribute funds received under the plan “as soon as practical” 11 U.S.C 1326. After confirmation of a plan, circumstances may arise that prevents the debtor from finishing the plan. In such circumstances, the debtor may ask the court to grant a hardship discharge under 11 U.S.C 1328 or the debtor may be eligible to convert to another chapter such as chapter 7.

## Credit Report Repair

## Credit Report Repair



Creditors must comply with Federal and State Rules and Regulations in regards to reporting accurate creditor information on an individual. If reporting agencies, such as Equifax, Experian and Transunion incorrectly or negligently provide creditor information; fines and penalties are imposed and proper and correct information must be supplied. Reporting agencies are required to report accurately under the Fair Credit Reporting Act or the FCRA. We ensure after [bankruptcy](#) that Experian, Equifax and TransUnion accurately report to ensure that you receive a “fresh start” that Bankruptcy provides. Bankruptcy attorneys will help you to rebuild your score so you can continue to pursue your dreams to own a house, buy a car or save for your family or retirement

## Creditor Harassment

The Fair Debt Collection Practice (FDCPA) is a law that regulates the practice and techniques of Debt Collectors. The FDCP restricts creditors from discussing you debt to third parties, harassing you at work, using vulgar language or threatening to send you to jail.

## Litigation for Adversary Proceeding

### What is an Adversary Proceeding?

An Adversary Proceeding (AP) is a lawsuit arising in or related to a bankruptcy case. The filer is the "plaintiff" and the party against whom the AP is filed is the "defendant". An Adversary Proceeding is initiated by filing with the Bankruptcy Court a document called a "complaint". Such filings serve to resolve both Federal and State issues. A separate case number is assigned to each Adversary Proceeding.

Certain types of disputes cannot be handled by motion in the bankruptcy case, but instead require the filing of an Adversary Proceeding. Adversary Proceedings are filed pursuant to Bankruptcy Rule 7001. The Federal Rules of Bankruptcy and the Local Bankruptcy Rules state which actions require the filing of an Adversary Proceeding.

Because Adversary Proceedings may be extremely complex, you are strongly encouraged to consult with a bankruptcy attorney. An Adversary proceeding is litigated like other complaints/civil matters which involve, depositions, discovery, interrogatories, pre-trial conferences and perhaps a trial.

### **Who are the Plaintiff's of an Adversary Proceeding:**

Any creditor, trustee or interested party may file an adversary if there is a concern or question of fraud or illegal transference of property by the Debtor.

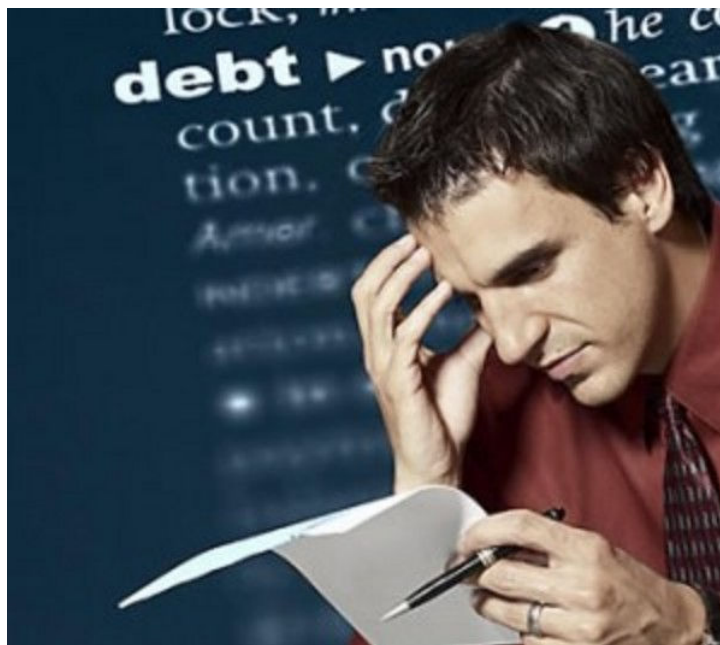
### **How much are the Court fees for filing an Adversary Proceeding?**

Defending an adversary depends on the complexity of the case and may range from a flat fee of \$1,000 to hourly fees of \$200.00.

### **Why is the bankruptcy case closed if my adversary case is still going on?**

The court does not necessarily lose jurisdiction to hear disputes simply because the bankruptcy case has been administratively closed. A Chapter 7 debtor can be discharged and the case closed while a Section 523 complaint is pending because the discharge will not apply to those debts for which a Section 523 complaint is granted in favor of the plaintiff.

## Litigation for Consumer Complaints



[Bankruptcy](#) lawyers will assist you in responding to complaints or summons from a credit card company. If you have a summons or complaint, please inform the attorney and bring a copy of the complaint/summons to your free consultation for the attorney to review. All legal documents must be answered within 30 days, therefore consumers should not delay.

## Litigation For Other Civil Matters

### Cramdowns/Stripping loans

Cramdown and Stripping are terminology used in Bankruptcy Court that allows the debtor to pay for the fair market value of the secured items vs. the contract price that you agreed upon the purchase of the secured item.

A cramdown with a car can be allowed if the debtor redeems the secured property by paying in full the amount of the current fair market value of the secured claim. For example, you may sign a contract to purchase a car for \$25,000 by making monthly payments of \$600 a month which includes perhaps 9% interest. Three years later you are still paying \$600 a month but the car is no longer worth \$25,000 but perhaps \$17,000 (depending on the condition of the car). In bankruptcy the debtor can redeem the value of the car saving thousands of dollars.

## 9 Of The Biggest Myths About Bankruptcy

## 9 Of The Biggest Myth's About Bankruptcy

Do not be confused or misinformed about your rights to file bankruptcy. It has been a protected right of yours for over 200 years. You are not denied any of your Federal or state rights by seeking bankruptcy relief. You will be a better employee, parent, manager if you do not have the financial concerns constantly distracting you from what you need to do in your life

### 1. I Won't Be Able To Buy A House For Ten Years

Although chapter 7 bankruptcy is on your credit report for a period of ten years you will be able to buy a house again because of the positive change on your credit report.

### 2. I Won't Be Able To Buy A Car For Ten Years

Although chapter 7 bankruptcy is on your credit report for a period of ten years you will be able to buy a car again because of the positive change on your credit report.

### 3. I Won't Be Able To Get A Student Loan For Myself Or My Children.

Student loans backed by the government must be repaid therefore there is little concern that student loans will not be paid back. Any private student loan may be denied based on your credit score, however most student loans today are government backed.

## 9 Of The Biggest Myth's About Bankruptcy

### 4. My Boss Will Fire Me

- Although bankruptcy is a public record, Employer or prospective employers are not allowed to fire you based on your decision to file bankruptcy. If a prospective employer pulls your credit report and asks you about bankruptcy, most employers are relieved to know that you no longer have any financial issues which may affect your work vs a credit report that shows 90 days late, judgment, collections and/or concerns of creditors calling your place of employment.
- Your employers are not notified of your filing

### 5. I Don't Qualify For Chapter 7 Bankruptcy Because I Own A House

You can still qualify for a chapter 7 bankruptcy even if you own a house. Many states, including New York and New Jersey allow a homeowner a certain amount of equity in their residence. In the State of New York a single filer can have \$50,000 worth of equity in their residential property and joint filers (husband and wife) can have \$100,000 worth of equity in their property.

## 9 Of The Biggest Myth's About Bankruptcy

### 6. I Will Lose My Car If I File For Bankruptcy



If you have a financed car and can afford the payments the bankruptcy court will not take your car. You can still qualify for a chapter 7 bankruptcy even if you own a house. Many states, including New York and New Jersey allow a homeowner a certain amount of equity in their residence. In the State of New York a single filer can have \$50,000 worth of equity in their residential property and joint filers (husband and wife) can have \$100,000 worth of equity in their property.

## 9 Of The Biggest Myth's About Bankruptcy

### 7. I Am Not A Citizen Therefore I Can't File

You qualify to file [bankruptcy](#) even if you are not a United States citizen. If you have valid legal work visa, security card and file your required taxes, you can file for Chapter 7 or Chapter 13 Bankruptcy protection.

### 8. Bankruptcy Can't Help Me Because I Only Have Tax Debt

In a Chapter 13 we can reduce your monthly IRS payment and allow for payments without interest. Call us for an appointment and we will explain how.

### 9. My Creditor's Say They Will Still Sue Me

- Once your bankruptcy is filed you are protected by the court which denies creditors the right to proceed with any further litigation or attempts at collecting a debt. If you have secured property or purchase money security interest in property the creditors may ask for the property back if you do not continue to make payments.
- Adversary Proceedings. If a creditor can prove that you intentionally committed fraud a creditor may try to sue you in bankruptcy court. Particular facts must be relevant before an adversary proceeding commences such as luxurious purchases 90 days before the filing of your bankruptcy petition. If you believe this may apply to you mention this at your free consultation meeting...We will represent you at Adversary Proceedings.

# Resources

## Resources

For more information on filing for Bankruptcy, please visit <http://www.bankruptcynyc.com>

For up to the date news and information on bankruptcy please visit:

<http://www.bankruptcynyc.com/blog>