

What is the procedure to file for bankruptcy:

(SOME OF THESE FORMS REQUIRE ACROBAT READER. IF YOU NEED IT, GET IT HERE
http://get.adobe.com/reader/thankyou/?installer=Reader_9.2_English_for_Windows)

There are three processes that one must follow to file for bankruptcy. Some of these considerations were brought about by BAPCA , (Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) ([Pub.L. 109-8](#), 119 [Stat.](#) 23, enacted April 20, 2005) effective October 19, 2005), implemented far reaching changes to bankruptcy practice. It is a 506 page amendment to a 404 page law. A decent discussion of BAPCA can be found http://en.wikipedia.org/wiki/Bankruptcy_Abuse_Prevention_and_Consumer_Protection_Act

First: You should plan and structure your financial affairs to take maximum advantage of the law. If you wait too long, say on the eve of a foreclosure, it may be difficult or impossible to plan and structure to your best advantage. Thus you should meet with a bankruptcy lawyer to discuss what is possible and what action you should take. Must reading for someone who wants to file without a lawyer, or pro se filer is <http://www.uscourts.gov/bankruptcycourts/prose.html>

Second: Prior to filing it is necessary to undertake Consumer Credit Counseling from an approved provider. The ostensible purpose is to provide services which will allow you to avoid bankruptcy. The list of approved providers can be found on the web here <http://www.nceba.uscourts.gov/forms/cclist.pdf> The October 26, 2009 list is here. There is a fee unless you qualify for waiver because of low income. The fees range from \$30.00 to \$50.00. The agency may draft a plan to help in financial management and will provide a Certificate of Completion. The certificate is valid for 180 days.

Third: Filing, in its strict sense, is the three page Petition which makes a declaration of bankruptcy. Filing that document along with the filing fee will cause the court to enter an order which imposes an automatic stay against creditors to prevent collection activities under pain of contempt. This is called the “Order for Relief” The code can be found here: http://uscode.house.gov/download/title_11.shtml Of course, with any federal statute the devil is in the interpretation. There is an entire body of decisions both pre BAPCA and post BAPCA which govern the details of bankruptcy law. There is and has been various interpretations of the language of the code.

Fourth: The code and court will require other paper. You must provide a list of all of your assets, all of your creditors, complete disclosure of your financial affairs. Disclosure includes tax returns, income and expense information, list of exemptions, pay stubs, and much more. The forms can be found: http://www.uscourts.gov/bkforms/bankruptcy_forms.html You must complete a Means Test which is a calculation to determine if you should or must file under Chapter 13 or Chapter 7. Every Chapter 13 petitioner must complete the B22-C found here: http://www.uscourts.gov/rules/BK_Forms_08_Official/B_022C_0108f.pdf A Chapter 7 filer

must complete the B22A:

http://www.uscourts.gov/rules/BK_Forms_08_Official/B_022A_0108f.pdf

Fifth: The debtor, as he or she is called, is required to attend the Meeting of Creditors. Any creditor can show up and ask questions about your finances, assets or liabilities. The trustee appointed in a Chapter 7 or Chapter 13 has a list of required questions and other questions which are designed to help the trustee perform his or her duties. The Eastern District of North Carolina Trustees have developed a Uniform Production of Documents List to make sure they receive all the disclosure they are required to secure from the debtor. The list of documents which may be required to be produced is found here: http://www.nceba.uscourts.gov/forms/document_production_form.pdf

Sixth: Sometime prior to discharge, the debtor is required to undergo Debtor Counseling and submit the certificate. Once again, it must be done through an approved provider and a fee is required.

Seventh: The Discharge Order is what the debtor hopes to receive when the filing is contemplated. The case may remain open for administration of non exempt assets. Yes the trustee can take, and sell your property which you cannot exempt. One more good reason to engage in proper planning.

Eighth: A Chapter 7 is complete in about 120 days. A Chapter 13 requires payments of the debtor's net disposable income for a period of three to five years, unless the debts are paid in full in a shorter period of time.

Ninth: If you have filed a Chapter 7 within the last 8 years you cannot file a Chapter 7 until 8 years has passed, but you may file a Chapter 13. There are a lot of considerations in working through these provisions.

Tenth: There are lots of rules to follow. Just about all of them are on line, but all do require experience in implementation.

Eastern District of North Carolina Bankruptcy Rules can be found:

<http://www.law.cornell.edu/rules/frbp/>

http://www.nceb.uscourts.gov/FlashHelp/Local_Rules.htm