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FAQ: Bankruptcy Law Changes

Q: What is the new bankruptcy law, and when did it take effect?

A: The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, a major reform of the bankruptcy system, was passed by Congress and signed into law by President Bush in April 2005. The majority of changes instituted by this new law took effect on October 17, 2005 (180 days after the law was signed), although a few changes took effect immediately after the legislation was signed by the President.

Q: Does the new law make it more difficult to file for bankruptcy under Chapter 7?

A: Under the new bankruptcy law, as of October 17, 2005 bankruptcy applicants who wish to file under Chapter 7 must meet certain eligibility requirements under a "means test."

Under the "means test," if your current monthly income is less than the median income in your state, you can file for bankruptcy under Chapter 7. But if your current monthly income is above the median income in your state, and you can afford to pay \$100 per month toward paying off your debt, you cannot file under Chapter 7 and must proceed under Chapter 13 (more on Chapter 13 in the next section). Whether you can afford to pay \$100 per month (or \$6,000 over a five-year period) is based on a formula that includes your monthly income, your expenses, and the total amount of your debt.

Q: I want to file for bankruptcy, but I have not paid taxes for the past few years. Can I still file?

A: Since the new law went into effect on October 17, 2005, people wishing to file bankruptcy under Chapter 7 or Chapter 13 must now show proof of their income by providing federal tax returns from the last tax year. If a bankruptcy filer has not paid taxes for the previous tax year, he or she must do so before the bankruptcy can proceed.

Q: Is it true that people who want to file for bankruptcy now need to go through some type of credit counseling?

A: Yes. As of October 17, 2005, before filing for bankruptcy most applicants must undergo credit counseling in a government-approved program. Also, after the conclusion of bankruptcy proceedings, but before any debt can be discharged, bankruptcy debtors must participate in a government-approved financial management education program. You can get more information on pre-filing credit counseling and debtor education (and lists of approved counseling and debtor education agencies) from the [U.S. Trustee Program](#) (a component of the Department of Justice responsible for overseeing the administration of bankruptcy cases).

Q: If I file for bankruptcy, can my landlord still evict me from my apartment?

A: People who file for bankruptcy are entitled to certain immediate protections from certain legal actions -- part of what is called the "automatic stay" effect of a bankruptcy filing, because many potential legal actions against the filer are stopped (known as "stayed" in legal terms). But as of October 17, 2005, when the new bankruptcy laws took effect, some of these protections have been eliminated. One key change is that filing for bankruptcy no longer delays or stops eviction actions.

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