



# Eligibility

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## **Bankruptcy**

People occasionally become so burdened with debts that it is impossible for them to repay their Creditors and pay necessary living expenses. The United States Congress has enacted the Bankruptcy Laws to provide relief to people (“**Debtors**”) in these circumstances. Bankruptcy voids or “**Discharges**” the debts of the Debtor with some exceptions; however, the Debtor must give up all of his property with some major exceptions.

## **The Chapters**

There are five common types of bankruptcy categorized by the “**Chapter**” of the Bankruptcy Law that authorizes that type of case. **Chapter 7** provides for the liquidation of persons or corporations. This is sometimes called “*straight*” or “*liquidation bankruptcy*”.

**Chapter 13** provides for the reorganization of the financial affairs of individuals with relatively small amounts of debt. **Chapter 12** deals with the reorganization of the finances of family farmers. **Chapter 11** allows for the reorganization of the financial affairs of persons or corporations with large amounts of debt. A fifth type – **Chapter 9** – is only for governmental entities.

Not everyone can file for bankruptcy and some are not eligible for all types of bankruptcies. This brochure discusses the limitations and requirements to be eligible to file for the three most common types of bankruptcy: Chapter 7 and Chapter 13.

## **Credit Counseling**

The new bankruptcy law requires that a Debtor attend approved credit counseling no more than 180 days before filing for bankruptcy and a second counseling *after* filing but before receiving a Discharge. These are a few of many changes designed to make it more difficult and expensive to file bankruptcy under the new law. You must pay the cost of this counseling.

## **Means Testing**

Another new provision of the law requires all debtors to undergo “**Means Testing**”. While very complicated, under Means Testing if you make too much money you **cannot** file for Chapter 7 and **must file Chapter 13**.

We will perform this Means Testing but you must provide us with full, complete and accurate information about you income and expenses. Simply if you make more money than the average family of your size, you will likely have to file for Chapter 13. Further, if you file for Chapter 13, Means Testing will also determine how long you Plan must last and how long you must remain in bankruptcy. Once we have performed Means Testing we will discuss your options.

## **Eligibility for Chapter 7**

The primary limitations on Chapter 7 are whether you have filed for bankruptcy before, what type of bankruptcy you may have filed and how recently.

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**“You cannot receive a Chapter 7 Discharge if you were granted a Discharge in a Chapter 7 filed less than eight years before your current case was filed. . . .”**

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**You cannot receive a Chapter 7 Discharge if you were granted a Discharge in a Chapter 7 filed less than eight years before your current case was filed. The eight year period is measured from filing date to filing date.**

Generally you cannot receive a Chapter 7 Discharge if you have previously been granted a Discharge in a Chapter 12 or Chapter 13 filed less than *six* years before your current case was filed, but there may be exceptions to this rule.

Your source of income and the amount of your debts are irrelevant. While a corporation is not eligible for a Discharge in Bankruptcy, it may find Chapter 7 advantageous under some circumstances.

## Eligibility for Chapter 13

Chapter 13 is reserved for persons with regular income which means that if you have no income or receive compensation in a highly irregular time and in erratic amounts you cannot file for Chapter 13.

**You cannot receive a Chapter 13 Discharge if you were granted a Discharge in a Chapter 7, 11 or 12 filed less than four years before your current case was filed. The important dates are from filing date to filing date.**

Generally you cannot receive a Chapter 13 Discharge if you have previously been granted a Discharge in a Chapter 13 filed less than *two* years before your current case was filed. You must have *less than \$383,175 in unsecured debts* and *less than \$1,149,525 in secured debts* to be eligible for Chapter 13. These amounts are periodically adjusted for inflation.

## State's Oldest Law Firm

Near as we can tell Mitchell DeClerck's roots in Oklahoma can be traced back to shortly after noon on September 16, 1893, when Charles H. Parker came to Enid on the train during the Land Run of 1893. The Cherokee Strip Land Run began that day with more than 100,000 participants hoping to claim land.

We don't know exactly when Mr. Parker opened his law practice in Oklahoma but until someone who was there tells us otherwise, we think that shortly after noon on September 16, 1893, the original predecessor of Mitchell DeClerck first opened its doors.

Parker was later joined by the former Attorney General of Oklahoma Territory Percy C. Simons forming Parker & Simmons in 1906. Simons had also made the run into Oklahoma in 1893 but began his practice in Grant County on the Kansas-Oklahoma border. Simons became the Attorney General of Oklahoma Territory in 1904 serving until 1906 when he came to Enid to join Parker.

Parker & Simmons grew in stature and was the only Enid firm listed in the prestigious Hubbell's Law Directory in 1918, the year of Parker's death. Mitchell DeClerck or its predecessors have been continuously listed in Hubbell's or its successor Martindale-Hubbell for 100 years. Parker was a Bankruptcy Trustee at least as early as 1918 so we've done bankruptcy for over a century.

For a number of decades Mitchell DeClerck and many of its members have held Martindale's highest possible "AV" peer review rating.

Mitchell DeClerck is the oldest law firm in Enid, Oklahoma by nearly a century and the oldest law firm in the state of Oklahoma by several years. So, over parts of three centuries we've long done most everything involving Oklahoma law.

**Our point:** If you need an Oklahoma Lawyer to help you solve a problem, in our 124 plus years representing Oklahomans beginning with Charles Parker in 1893 you can be assured that:

*We've been there and done that.*

**Caveat:**  
This brochure is  
designed to give  
general advice only.

Specific Questions  
should be directed  
to your Lawyer.