



Bankruptcy FAQ

A decision to file for bankruptcy should be made only after determining that bankruptcy is the best way to deal with your financial problems. This brochure can not explain every aspect of the bankruptcy process. If you still have questions after reading it, you should speak with an attorney familiar with bankruptcy.

There have been many news reports suggesting that changes to the bankruptcy law passed by Congress in 2005 prevent many individuals from filing bankruptcy. It is true that these changes have made the process more complicated. But the basic right to file bankruptcy and most of the benefits of bankruptcy remain the same for most individuals.

What Is Bankruptcy?

Bankruptcy is a legal proceeding in which a person who can not pay his or her bills can get a fresh financial start. The right to file for bankruptcy is provided by federal law, and all bankruptcy cases are handled in federal court. Filing bankruptcy immediately stops all of your creditors from seeking to collect debts from you, at least until your debts are sorted out according to the law.

What Can Bankruptcy Do for Me?

Bankruptcy may make it possible for you to:

- Eliminate the legal obligation to pay most or all of your debts. This is called a “discharge” of debts. It is designed to give you a fresh financial start.
- Stop foreclosure on your house or mobile home and allow you an opportunity to catch up on missed payments. (Bankruptcy does not, however, automatically eliminate mortgages and other liens on your property without payment.)
- Prevent repossession of a car or other property, or force the creditor to return property even after it has been repossessed.
- Stop wage garnishment, debt collection harassment, and similar creditor actions to collect a debt.
- Restore or prevent termination of utility service.
- Allow you to challenge the claims of creditors who have committed fraud or who are otherwise trying to collect more than you really owe.

What Bankruptcy Can Not Do

Bankruptcy can not, however, cure every financial problem. Nor is it the right step for every individual. In bankruptcy, it is usually not possible to:

- Eliminate certain rights of “secured” creditors. A creditor is “secured” if it has taken a mortgage or other lien on property as collateral for a loan. Common examples are car loans and home mortgages. You can force secured creditors to take payments over time in the bankruptcy process and bankruptcy can eliminate your obligation to pay any additional money on the debt if you decide to give back the property. But you generally can not keep secured property unless you continue to pay the debt.
- Discharge types of debts singled out by the bankruptcy law for special treatment, such as child support, alimony, most student loans, court restitution orders, criminal fines, and most taxes.
- Protect cosigners on your debts. When a relative or friend has co-signed a loan, and the consumer discharges the loan in bankruptcy, the cosigner may still have to repay all or part of the loan.

- Discharge debts that arise after bankruptcy has been filed.

What Different Types of Bankruptcy Cases Should I Consider?

There are four types of bankruptcy cases provided under the law:

- Chapter 7 is known as “straight” bankruptcy or “liquidation.” It requires an individual to give up property which is not “exempt”

under the law, so the property can be sold to pay creditors. Generally, those who file chapter 7 keep all of their property except property which is very valuable or which is subject to a lien which they can not avoid or afford to pay.

- Chapter 11, known as “reorganization,” is used by businesses and a few individuals whose debts are very large.
- Chapter 12 is reserved for family farmers and fishermen.
- Chapter 13 is a type of “reorganization” used by individuals to pay all or a portion of their debts over a period of years using their current income.

Most people filing bankruptcy will want to file under either chapter 7 or chapter 13. Either type of case may be filed individually or by a married couple filing jointly.

Chapter 7 (Straight Bankruptcy)

In a bankruptcy case under chapter 7, you file a petition asking the court to discharge your debts. The basic idea in a chapter 7 bankruptcy is to wipe out (discharge) your debts in exchange for your giving up property, except for “exempt” property which the law allows you to keep. In most cases, all of your property will be exempt. But property which is not exempt is sold, with the money distributed to creditors.

If you want to keep property like a home or a car and are behind on the mortgage or car loan payments, a chapter 7 case probably will not be the right choice for you. That is because chapter 7

bankruptcy does not eliminate the right of mortgage holders or car loan creditors to take your property to cover your debt.

If your income is above the median family income in your state, you may have to file a chapter 13 case (the national median family income for a family of 4 in 2006 was approximately \$65,796 – your state’s figures may be higher or lower). Higher-income consumers must fill out “means test” forms requiring detailed information about their income and expenses. If the forms show, based on standards in the law, that they have a certain amount left over that could be paid to unsecured creditors, the bankruptcy court may decide that they can not file a chapter 7 case, unless there are special extenuating circumstances.

Chapter 13 (Reorganization)

In a chapter 13 case you file a “plan” showing how you will pay off some of your past-due and current debts over three to five years. The most important thing about a chapter 13 case is that it will allow you to keep valuable property-- especially your home and car--which might otherwise be lost, if you can make the payments which the bankruptcy law requires to be made to your creditors. In most cases, these payments will be at least as much as your regular monthly payments on your mortgage or car loan, with some extra payment to get caught up on the amount you have fallen behind.

You should consider filing a chapter 13 plan if you:

- own your home and are in danger of losing it because of money problems;
- are behind on debt payments, but can catch up if given some time;

- have valuable property which is not exempt, but you can afford to pay creditors from your income over time.

You will need to have enough income in chapter 13 to pay for your necessities and to keep up with the required payments as they come due.

What Must I Do Before Filing Bankruptcy?

You must receive budget and credit counseling from an approved credit counseling agency within 180 days before your bankruptcy case is filed. The agency will review possible options available to you in credit counseling and assist you in reviewing your budget. Different agencies provide the counseling in-person, by telephone, or over the Internet. If you decide to file bankruptcy, you must have a certificate from the agency showing that you received the counseling before your bankruptcy case was filed. This class takes less than 2 hours to complete. Most approved agencies charge between \$30-\$50 for the pre-filing counseling.

It is important to keep in mind these important points:

- bankruptcy is not necessarily to be avoided at all costs. In many cases, bankruptcy may actually be the best choice for you;
- if you sign up for a debt management plan that you can’t afford, you may end up in bankruptcy anyway (and a copy of the plan must also be filed in your bankruptcy case);
- there are approved agencies for bankruptcy counseling that do not offer debt management plans.

It is usually a good idea for you to meet with an attorney before you receive the required credit counseling. Unlike a credit counselor, who can not give legal advice, an attorney can provide counseling on whether bankruptcy is the best option. If bankruptcy is not the right answer for you, a good attorney will offer a range of other suggestions. The attorney can also provide you with a list of approved credit counseling agencies, or you can check the website for the United States Trustee Program office at www.usdoj.gov/ust.

What Property Can I Keep?

In a chapter 7 case, you can keep all property which the law says is “exempt” from the claims of creditors. It is important to check the exemptions that are available in the state where you live. (If you moved to your current state from a different state within two years of your bankruptcy filing, you may be required to use the exemptions from the state where you lived just before the two-year period.). In some states, you are given a choice when you file bankruptcy between using either the state exemptions or using the federal bankruptcy exemptions. If your state has “opted” out of the federal bankruptcy exemptions, you will be required to choose exemptions mostly under your state law. However, even in an “opt-out” state, you may use a special federal bankruptcy exemption that protects retirement funds in pension plans and IRAs.

In determining whether property is exempt, you must keep a few things in mind. The value of property is not the amount you paid for it, but what it is worth when your bankruptcy case is filed. Especially for furniture and cars, this may be a lot less than what you paid or what it would cost to buy a replacement.

You also only need to look at your equity in property. This means that you count your exemptions against the full value minus any money that you owe on mortgages or liens. For example, if you own a \$50,000 house with a \$40,000 mortgage, you have only \$10,000 in equity. You can fully protect the \$50,000 home with a \$10,000 exemption.

While your exemptions allow you to keep property even in a chapter 7 case, your exemptions do not make any difference to the right of a mortgage holder or car loan creditor to take the property to cover the debt if you are behind. In a chapter 13 case, you can keep all of your property if your plan meets the requirements of the bankruptcy law. In most cases you will have to pay the mortgages or liens as you would if you didn't file bankruptcy.

What Will Happen to My Home and Car If I File Bankruptcy?

In most cases you will not lose your home or car during your bankruptcy case as long as your equity in the property is fully exempt. Even if your property is not fully exempt, you will be able to keep it, if you pay its non-exempt value to creditors in chapter 13.

However, some of your creditors may have a “security interest” in your home, automobile or other personal property. This means that you gave that creditor a mortgage on the home or put your other property up as collateral for the debt. Bankruptcy does not make these security interests go away. If you don't make your payments on that debt, the creditor may be able to take and sell the home or the property, during or after the bankruptcy case.

In a chapter 13 case, you may be able to keep certain secured property by paying the value of

the property rather than the full amount owed on the debt. Or you can use chapter 13 to catch up on back payments and get current on the loan.

There are also several ways that you can keep collateral or mortgaged property after you file a chapter 7 bankruptcy. You can agree to keep making your payments on the debt until it is paid in full. Or you can pay the creditor the amount that the property you want to keep is worth. In some cases involving fraud or other improper conduct by the creditor, you may be able to challenge the debt.

Can I Own Anything After Bankruptcy?

Yes! Many people believe they can not own anything for a period of time after filing for bankruptcy. This is not true. You can keep your exempt property and anything you obtain after the bankruptcy is filed. However, if you receive an inheritance, a property settlement, or life insurance benefits within 180 days after filing for bankruptcy, that money or property may have to be paid to your creditors if the property or money is not exempt.

Will I Have to Go to Court?

In most bankruptcy cases, you only have to go to a proceeding called the “meeting of creditors” to meet with the bankruptcy trustee and any creditor who chooses to come. Most of the time, this meeting will be a short and simple procedure where you are asked a few questions about your bankruptcy forms and your financial situation.

Occasionally, if complications arise, or if you choose to dispute a debt, you may have to appear before a judge at a hearing. If you need to go to court, you will receive notice of the court date and time from the court and/or from your attorney.

What Else Must I Do to Complete My Case?

After your case is filed, you must complete an approved course in personal finances. This course will take approximately two hours to complete. Many of the course providers give you a choice to take the course in-person at a designated location, over the Internet usually by watching a video, or over the telephone. Your attorney can give you a list of organizations that provide approved courses.

Will Bankruptcy Affect My Credit?

There is no clear answer to this question. Unfortunately, if you are behind on your bills, your credit may already be bad. Bankruptcy will probably not make things any worse. Bankruptcy will reduce your debt to income ratios which does help your credit.

The fact that you’ve filed a bankruptcy can appear on your credit record for ten years from the date your case was filed. But because bankruptcy wipes out your old debts, you are likely to be in a better position to pay your current bills, and you may be able to get new credit.

If you decide to file bankruptcy, remember that debts discharged in your bankruptcy should be listed on your report as having a zero balance, meaning you do not owe anything on the debt. Debts incorrectly reported as having a balance owed will negatively affect your credit score and make it more difficult or costly to get credit. You should check your credit report after your bankruptcy discharge and file a dispute with credit reporting agencies if this information is not correct.

What Else Should I Know?

Utility services--Public utilities, such as the electric company, can not refuse or cut off service because you have filed for bankruptcy. However, the utility can require a deposit for future service and you do have to pay bills which arise after bankruptcy is filed.

Discrimination--An employer or government agency can not discriminate against you because you have filed for bankruptcy. Government agencies and private entities involved in student loan programs also can not discriminate against you based on a bankruptcy filing.

Driver's license--If you lost your license solely because you couldn't pay court-ordered damages caused in an accident, bankruptcy will allow you to get your license back.

How Do I Find a Bankruptcy Attorney?

As with any area of the law, it is important to carefully select an attorney who will respond to your personal situation. The attorney should not be too busy to meet you individually and to answer questions as necessary.

The best way to find a trustworthy bankruptcy attorney is to seek recommendations from family, friends or other members of the community, especially any attorney you know and respect. You should carefully read retainers and other documents the attorney asks you to sign. You should not hire an attorney unless he or she agrees to represent you throughout the case.

In bankruptcy, as in all areas of life, remember that the person advertising the cheapest rate is not necessarily the best. Many of the best bankruptcy lawyers do not advertise at all.

When first meeting a bankruptcy attorney, you should be prepared to answer the following questions:

- What types of debt are causing you the most trouble?
- What are your significant assets?
- How did your debts arise and are they secured?
- Is any action about to occur to foreclose or repossess property, to attach your wages or bank account, or to shut off utility service?
- What are your goals in filing the case?

Remember: The law often changes. Each case is different. This pamphlet is meant to give you general information and not to give you specific legal advice.