

# A Guide to Bankruptcy

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

## WHAT IS BANKRUPTCY?

Bankruptcy is a legal proceeding in which a person who cannot 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. In most cases, 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?

Bankruptcy may make it possible for you to:

- Eliminate the legal duty 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 or repossession of a car or other property so you can catch up on missed payments. But, in most cases, you will still need to choose between continuing to make payments or giving the property back. Bankruptcy won't eliminate a lease, mortgage or car loan and let you keep the property at the same time.
- Stop wage attachments, debt collection harassment, and similar creditor actions to collect a debt.
- Restore or prevent termination of utility service.
- Allow you to challenge creditors who have committed fraud or who are otherwise trying to collect more money than you really owe.

## WHAT BANKRUPTCY CAN'T DO

Bankruptcy can't cure every financial problem, nor is it the right step for everyone. In bankruptcy, it is usually **not** possible to:

- Eliminate certain obligations to "secured" creditors. A "secured" creditor is a creditor that can take something (called "collateral") if the debt is not paid as agreed. 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 more money if your property has been taken. But, you

- generally cannot keep the collateral unless you keep making payments on the debt.
- Discharge certain debts singled out by the bankruptcy law for special treatment, such as child support, alimony, certain other debts related to divorce, most student loans, court restitution orders, criminal fines, and some taxes.
  - Protect co-signers on your debts. If a relative or friend has co-signed a loan, and you discharge the loan in bankruptcy, the co-signer may still have to repay all or part of the loan.
  - Discharge debts that arise after bankruptcy has been filed.

## WHAT KINDS OF BANKRUPTCY CASES ARE THERE?

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

- Chapter 7 is known as "straight" bankruptcy or "liquidation." It requires a debtor to give up property which exceeds certain limits called "exemptions," so the property can be sold to pay creditors.
- Chapter 11, known as "reorganization," is used by businesses and a few individual debtors whose debts are very large.
- Chapter 12 is reserved for family farmers.
- Chapter 13 is called "debt adjustment." It requires a debtor to file a plan to pay debts (or parts of debts) from 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

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 you giving up property, except for "exempt" property which the law allows you to keep. In many cases, much of your personal property will be exempt. But property which is not exempt is sold so the money can be distributed to creditors.

If you want to keep property like a home or a car and you 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, unless you agree to continue making payments.

## CHAPTER 13

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. But, **you must be able to make the required payments** to your creditors. In most cases, these payments will be at least as much as your regular monthly car or mortgage payments, with some extra on top to get caught up on the amount you have fallen

behind.

You should consider Chapter 13 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 a while.

When considering chapter 13, it is important to remember that you must have enough income to pay for your necessities **plus** the required payments as they come due.

## HOW FREQUENTLY CAN I OBTAIN A BANKRUPTCY DISCHARGE?

The chart below will help you determine if you can obtain a discharge in bankruptcy.

Prior Case	New Case	Time period to Wait
7	7	8 years
13	7	6 years with some exceptions
7	13	4 years
13	13	2 years

When calculating the time period, you count from filing date of the prior case to the filing date of the new case.

## MEANS TEST

The "means test" is a formula set forth by Congress to make sure that a Debtor is not able to pay his/her debts. A "means test" will be used to determine if you have filed bankruptcy under the appropriate Chapter (7 or 13). Before filing bankruptcy and as part of the preparation of the petition, your attorney (or you, if no attorney is hired) will be required to calculate your income, *from all sources*, for the **six months** leading up to the bankruptcy filing date.

If, after performing the calculations, your current monthly income is greater than the State's median income for a household of your size, and shows disposable income ranging from \$100.00 to \$166.66 per month, then a "presumption of abuse" would exist. If filing a Chapter 7, you would then need to show that "special circumstances" exist to rebut the presumption, or the you would have to file (or convert to) a Chapter 13 case.

Many factors are taken into consideration in determining a your average current monthly income including, but not limited to, gross wages, salary, tips, bonuses, overtime and commissions, interest, dividends, pension and retirement income, unemployment compensation, and any other income that you have received within six months of the filing of the petition. If your are interested in filing bankruptcy without an attorney, you would need to consult the court's website (or go to the Court directly) for instructions on completing the forms and to learn what documentation will be required to perform the "means test" calculation.

## WHAT DOES IT COST TO FILE?



It now costs \$299 to file for a chapter 7 and \$274 to file for a chapter 13. The court may allow you to pay this filing fee in installments if you cannot pay all at once. The filing fee may be waived entirely for individuals who qualify under very strict fee waiver provisions. If you hire a private attorney, you will also have to pay the attorney's fees.

## WHAT PROPERTY CAN I KEEP?

Bankruptcy does not change your right to get Social Security, unemployment compensation, V.A. benefits, or welfare. Plus, in Delaware, you are allowed to "exempt" (keep out of bankruptcy) a total of \$25,000 worth of property and up to \$50,000 of equity in your principal residence. For example, you can exempt \$25,000 of your furniture and money in your bank account. Nearly anything can be exempt, so long as the value of everything you choose to exempt does not add up to more than \$25,000 in personal property and \$50,000 in equity in principal residence. The amounts of the exemptions are doubled (except for the principal residence equity exemption) when a married couple files together.

Also, if only one spouse in a marriage files for bankruptcy, property that is jointly owned as part of the marriage will be kept out of the bankruptcy.

In determining whether property is exempt, you must keep a few things in mind. The value of property is replacement value.

**Remember**, although your exemptions allow you to keep property even in a chapter 7 case, your exemptions do not change the right of a mortgage company or car loan company to take the house or car 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 just as you would if you didn't file bankruptcy.

## WHAT WILL HAPPEN TO MY HOME AND CAR?

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 **and** you can keep making the regular payments (if the loan is not already paid off). 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.

There are several ways that you can keep collateral or mortgaged property after you file bankruptcy. You can agree to keep making your payments on the debt until it is paid in full. In some cases, 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. If you put up your household goods as collateral for a loan (other than a loan to purchase the goods), you can usually keep your property without making any more payments on that debt.

## **CAN I OWN ANYTHING AFTER BANKRUPTCY?**

Yes! Many people believe that they cannot 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.

## **CREDIT COUNSELING AND FINANCIAL EDUCATION COURSES**

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 requires that in order to file bankruptcy you must participate (within 180 days prior to the filing) in a budget and credit counseling course offered by an approved non-profit credit counseling agency. In addition, in order to receive a discharge in bankruptcy, the you must participate in a financial education course with an approved course provider. The U.S. Trustee's office has a list of the approved non-profit credit counseling agencies and financial education providers on the website. This information can be obtained from the Bankruptcy Clerk's office and/or attorney, as well.

## **WILL I HAVE TO GO TO COURT?**

In most bankruptcy cases, you only need 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 need 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.

## **WILL BANKRUPTCY WIPE OUT ALL OF MY DEBTS?**

No. Bankruptcy will wipe out most debts, but it will **not** normally wipe out:

- Money owed for child support or alimony, fines, and some taxes;

- Debts not listed on your bankruptcy petition;
- Loans you got by knowingly giving false information to a creditor, who reasonably relied on it in making you the loan;
- Debts resulting from "willful and malicious" harm (such as damages caused by drunk driving);
- Most student loans;
- Mortgages and other liens which are not paid in the bankruptcy case (but bankruptcy will wipe out your obligation to pay any additional money if the property is sold by the creditor).

## **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.

The fact that you've filed a bankruptcy can appear on your credit record for ten years. But, since 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 (although most likely at a much higher interest rate).

## **WHAT ELSE SHOULD I KNOW?**

**Utility Services** - public utilities, such as the electric company, cannot refuse or cut off service because you have filed for bankruptcy. However, the utility can ask for a deposit for future service and you do have to pay bills that arise after bankruptcy is filed.

**Discrimination** - an employer or government agency cannot discriminate against you because you have filed for bankruptcy.

**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.

**Co-signers** - if someone has co-signed a loan with you and you file for bankruptcy, the co-signer may have to pay your debt.

## **DO I NEED AN ATTORNEY?**

Although it may be possible for some people to file a bankruptcy case without an attorney, you should not take this step lightly. The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 requires Debt Relief Agencies to inform consumers that they do not need an attorney to file bankruptcy, however, you should not take this step lightly. The process is difficult and you may lose property or other rights if you do not know the law. Filing bankruptcy, now more than ever, takes patience and careful preparation.

## SHOULD I FILE FOR BANKRUPTCY?

There are many different reasons to file or not. If you are unsure, you should speak to an attorney for advice. It is important to remember that bankruptcy will not fix everyone's money problems.

When you try to decide what to do, you should first make a monthly budget. List, and add up, all of your regular monthly expenses **for necessities**. Include expenses like: rent/mortgage payments, utilities, food, gas or bus fare, clothing, and other regular monthly expenses that you expect to have even after bankruptcy. If you have a car loan and you want to keep the car, include the car payments too. Then add up the monthly income for everyone in the house who shares expenses. Include your job, public benefit checks, food stamps, pensions, or disability payments.

If your income is a lot less than your expenses, then bankruptcy might not help. Bankruptcy only wipes out **old** debts. So if your budget shows that you will have trouble making ends meet **after** bankruptcy, or if you think you will still need to use credit cards or borrow money **after** filing, then you need to think about getting a second job or cutting expenses (for example, by getting a cheaper car or apartment).

Also look at how old your debts are. Most consumer debts only stay on your credit report for seven years. A bankruptcy will stay for ten years. So, if your debts are a few years old, it might be better to just hang in there for a few more years until they are taken off your credit report and your creditors give up (or until you can pay them).

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