

The 10 Most Common Questions About Bankruptcy

1. What Is Bankruptcy?

Bankruptcy is a legal proceeding in which a person who cannot pay their bills can get a fresh start. The right to file for bankruptcy is provided by federal law and all 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.

2. 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, which is called a “discharge”. It is designed to give you a fresh 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., but motions may be filed with the court to possibly accomplish that)
- 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, sold defective merchandise or otherwise trying to collect more than what is actually due.

What Bankruptcy Cannot Do

Bankruptcy cannot, however, cure every financial problem. In bankruptcy, it is usually not possible to:

- Eliminate certain rights of “secured” creditors. A “secured” creditor has taken a mortgage or other lien on property as collateral for the loan. Common examples are car loans and home mortgages. You *can* force secured creditors to take payments over time in the Chapter 13 bankruptcy process and bankruptcy *can* eliminate your obligation to pay any additional money (deficiency balance) if your property is repossessed. In most cases, you cannot keep the collateral unless you continue to pay the debt.
- Discharge certain debts, such as child support, alimony, certain other debts related to divorce, most student loans, court restitution orders, criminal fines, and certain taxes.
- Protect cosigners. 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.

3. What Different Types of Bankruptcy Should I Consider?

Chapter 7 “Straight Bankruptcy”

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

If you have equity in property and want to keep it and you are behind on the payments, a Chapter 7 case may not be the right choice. 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. Chapter 13 may be a better option.

Chapter 13 “Payment Plan”

In Chapter 13, your attorney files a “plan” showing how you will pay off some of your past-due and current debts over three (3) to five (5) 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 plan payments.

You should consider filing a chapter 13 plan if you:

- (1) own your home and are in danger of losing it because of past due payments;
- (2) are behind on payments, but can catch up if given some time;
- (3) have valuable property which is not exempt.

You must have enough income in chapter 13 to pay for your necessities (food, utilities, gasoline, car insurance, etc) and to keep up with the plan payments.

4. What Property Can I Keep?

In a chapter 7 case, you keep everything that the law says is “exempt” from the claims of creditors which includes:

- \$20,200 equity in your residence;
- \$3,225 equity in your car;
- \$525 per item in household goods, appliances, electronics, clothing, books, animals, crops, musical instruments, and firearms up to a total of \$10,775 if those items are held primarily for personal, family or household use;
- \$1,350 in jewelry (total of all items)
- \$2,025 in items needed for your profession, trade or business (tractor, tools, books, office equipment, computer, etc.);
- \$850 in any property, plus part of the unused exemption in your home, up to \$8,075;
- \$5,000 in death benefits;
- \$20,000 in personal injury awards;
- \$400 in cash;
- \$1,075 to be applied to any property of the debtor’s choosing;
- Burial plot;
- Your right to receive certain monies or benefits such as earned wages, IRAs, pensions, retirement, spousal support, child support, disability, life insurance, social security, unemployment compensation, veteran’s benefits, public assistance, and pensions may be exempt up to certain limits.

The exemptions are doubled when a married couple files jointly.

In determining whether property is exempt, the value of property is not what you paid for it, *but what it is worth now (Fair Market Value)*. This may be much less than what you paid or the cost of a replacement (especially electronics, furniture and motor vehicles).

The “equity” in the property is the key issue. You deduct your exemptions from the fair market value, minus loans that may be against the property. For example, if you own a \$50,000 house with a \$40,000 mortgage, you count your exemptions against the \$10,000 equity.

In a Chapter 7 bankruptcy, your exemptions do not affect the right of a mortgage holder or loan creditor to take the property to cover the debt if you are past due.

In a Chapter 13, you can keep all of your property—if your plan meets the requirements and the court approves.

5. 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. In most cases, bankruptcy does not remove these security interests. 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 (Reaffirmation). Or you can pay the creditor the amount that the property you want to keep is worth (Redemption). In certain cases involving fraud, defective merchandise or other improper conduct by the creditor, you may be able to challenge the debt. If you pledge your household goods as collateral for a loan (except the original loan used to purchase the goods), you can usually keep your property without paying the debt.

6. Can I Own Anything After Bankruptcy?

Yes. You keep your exempt property and anything you obtain after the bankruptcy is filed, with certain exceptions. If you receive an inheritance, a property settlement, life insurance benefits or other monies within 180 days after filing bankruptcy, that money or property may have to be paid to your creditors unless it is exempt.

7. Will Bankruptcy Wipe Out All My Debts?

Yes, with some exceptions. Bankruptcy will not normally wipe out:

- (1) money owed for child support or alimony, fines, and certain taxes;
- (2) debts not listed on your bankruptcy petition;
- (3) loans you obtained by knowingly giving false information to a creditor, who reasonably relied on it in making you the loan;
- (4) debts resulting from “willful and malicious” harm or debts as a result of drunk driving;
- (5) student loans owed to a school or government body, except if the court decides that payment would be an undue hardship;
- (6) mortgages and other liens which are not paid in the bankruptcy case (but bankruptcy will wipe out your obligation to pay any additional money (deficiency balance) if the property is sold by the creditor).

8. Will I Have to Go to Court?

In most bankruptcy cases, you only have to attend a proceeding called the “Creditor’s Meeting” to meet with the bankruptcy trustee and any creditor who chooses to attend. This meeting will last about 15 minutes and you will be asked relatively easy questions about the forms filed with the court. You will not be asked why you believed that you had to file bankruptcy.

9. How Will Bankruptcy Affect My Credit?

There is no clear answer to this question. However, if you are behind on your bills, your credit may already be bad.

Bankruptcy will stay on your credit record for up to ten (10) years. But since bankruptcy wipes out your old debts, you are likely to be in a better position to pay your current bills, and in a better position to obtain new credit.

10. 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 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 cannot discriminate against you because of 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. In a chapter 13, you may be able to protect co-signers, depending upon the terms of your chapter 13 plan.

Finding 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 with you and answer questions as necessary.

One 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 that you are asked to sign.

Keep in mind that an attorney charging the lowest rate may or may not necessarily be the best. Many good attorneys do not advertise at all.

Credit counseling may be a good idea if you are within \$100-\$200 per month of balancing your budget. The best would be a non-profit organization such as Consumer Credit Counseling Service (4500 E. Broad St., Columbus). It is not recommended that you retain a "debt relief/reduction" service as many of them do not immediately disburse funds to your creditors which leads to debtors being sued and their wages garnished.

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

- Which debts causing the most trouble?
- What are your assets, if any?
- Are there pending actions to garnish, foreclose, repossess you car or shut off utility service?

Bankruptcy is a complex subject, but hopefully, this pamphlet has answered many of your questions. For further assistance, please contact a bankruptcy attorney, Consumer Credit Counseling Service or the National Consumer Law Center.

Sources consulted for this pamphlet: National Consumer Law Center, Consumer Credit Counseling Service, applicable statutes and case law

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