

BANKRUPTCY

What is Bankruptcy?

Bankruptcy is a legal proceeding in which people who cannot pay their 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 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.
- ✓ Temporarily 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, at least temporarily.
- ✓ 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 Cannot Do?

Bankruptcy, however, cannot cure every financial problem, nor is it the right step for everyone. 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 bankruptcy process and bankruptcy **can** eliminate your obligation to pay any additional money if your property is taken. Nevertheless, you generally cannot keep the collateral 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, student loans in most cases, court restitution orders, criminal fines, and some taxes.
- ✓ Protect cosigners on your debts. When a relative or friend has cosigned 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, or were not included, for whatever reason, in the original bankruptcy filing.

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 a debtor to give up property which exceeds certain limits called "exemptions." (See more on the exemption limits below). In return, all debts, except those exempt by law, are discharged. Changes to the bankruptcy law made in October 2005 keep households whose yearly income is above the state median income level from getting a Chapter 7 "discharge" bankruptcy. Chapter 7 will, in most cases, still be available to households whose income is below the state median. As of 2012, for example, the yearly state median income for a one person household in Pennsylvania was \$46,477 and \$80,414 for a four person household.
- **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. Households whose income is above the state median and so cannot get a Chapter 7 bankruptcy discharge may seek Chapter 13 bankruptcy protection.

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, if you are eligible for free Legal Services, all of your property will likely be exempt. These types of cases are called "No Asset" bankruptcies. However, the court appoints a Bankruptcy Trustee to decide whether the property which is not exempt is sold, and how the money from the sale is distributed to creditors.

If you want to keep property like a home or a car and are behind on the payments, a Chapter 7 case probably may not be the right choice for you. That is because Chapter 7 bankruptcy does not eliminate the right of secured creditors (mortgage holders or car loan creditors) to take back the collateral to cover your debt.

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:

- (1) own your home and are in danger of losing it because of money problems;
- (2) are behind on debt payments, but can catch up over time;
- (3) have valuable property which is not exempt, but you can afford to pay creditors from your income with enough 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 Does It Cost to File for Bankruptcy?

As of the date of this pamphlet, it now costs \$335 to file for a Chapter 7 bankruptcy, whether for one person or a married couple. The court may allow you to pay this filing fee in installments if you cannot pay all at once and a complete waiver of the fee may be requested. If you hire a private attorney, you will also have to pay the attorney's fees you agree to, up front. In a Chapter 13 bankruptcy, sometimes the attorney's fees can be included in the plan along with the other creditors.

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. You can choose between your exemptions under your state law or under federal law. In many cases, the federal exemptions are better.

The most common types of property protected by the Federal bankruptcy exemption include:

- ✓ \$23,675 equity in your home;
- ✓ \$3,775 equity in your car;
- ✓ \$600 per item in any household goods up to a total of \$12,625;
- ✓ \$1,600 total interest in jewelry;
- ✓ \$2,375 in things you need for your job (tools, books, etc.);
- ✓ \$1,250 in any other property, plus part of the unused exemption in your home;

Note: these exemptions are subject to change with consumer price index increases and by law must be reviewed every three years. These amounts are effective beginning April 1, 2016. Your right to receive certain benefits such as social security, unemployment compensation, veteran's benefits, public assistance, and pensions--regardless of the amount--are also exempt. There are some other exemptions, not included in the above list which may also apply.

Also, the amounts of the exemptions are doubled when a married couple files together.

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 now (like at a yard sale). Especially for furniture and cars, which depreciate quickly, 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 the property. This means that you count your exemptions against the full value of the property minus any money that you still owe on mortgages or liens. For example, if you own a \$50,000 house with a \$40,000 mortgage, you count your exemptions against the \$10,000 which is your equity if you sell it.

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 back 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 did not 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 while your bankruptcy case is pending, 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 nonexempt 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 mean that the government makes the payments on your debt; the creditor may be able to take and sell the home or the collateral 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. 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. If you put up your household goods as collateral for a loan (other than a loan to buy them), you can usually keep your property without making any more payments on that debt.

Can I Own Anything After Bankruptcy?

Yes! Many people believe 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 bankruptcy, that money or property may have to be paid to your creditors if the property or money is not exempt.

Will Bankruptcy Wipe Out All My Debts?

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

- ✓ money owed for child support or alimony, criminal 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 that information in making you the loan;
- ✓ debts resulting from "willful and malicious" harm;
- ✓ student loans owed to a school or government body, except if: the court decides that payment would be an undue hardship;
- ✓ 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 at a loss by the creditor).

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.

Will Bankruptcy Affect My Credit?

There is no one 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 have filed a bankruptcy can appear on your credit record for 10 years. (Bad debts can appear on your credit history for 7 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 immediately. (Although you would probably not qualify for a mortgage for a few years.)

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 you filed for bankruptcy.

Driver's license - If you lost your license solely because you could not pay court-ordered damages caused by an accident, bankruptcy will allow you to get your license back (unless the accident was alcohol related).

Cosigners - If someone cosigned a loan with you and you file for bankruptcy, the cosigner may have to pay your debt.

Additional important 2005 Bankruptcy law changes - You must complete bankruptcy court approved credit counseling sessions before you file for bankruptcy and to get a discharge. The bankruptcy stay might not apply or be time limited if you file for bankruptcy more than once within a 12 month period and your previous filing is dismissed. You can only get a bankruptcy discharge once every eight years from the date you previously filed for a bankruptcy that resulted in a discharge of your debts.

How Do I Find a Bankruptcy Attorney?

Assuming that you do not currently qualify for a free attorney from Legal Services or pro bono attorney, but you still want to file bankruptcy, you will need to hire a private 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 individually and to answer questions as necessary.

Please note that your attorney will need much help from you in order to properly represent you in bankruptcy. If you do not fully and promptly cooperate with your attorney's requests or you hide or

give bad information to your attorney, your bankruptcy may be dismissed, some of your debts might not be discharged and/or you and your attorney could face sanctions (punishment) from the bankruptcy court.

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.

Remember that the person advertising the most expensive or 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 and when did your debts arise and are they secured?
- ✓ Is any action about to occur to foreclose or repossess property or to shut off utility service?
- ✓ What are your goals in filing the case?

Can I File Bankruptcy Without an Attorney?

Although it may be possible for some people to file a bankruptcy case without an attorney, it is not a step to be taken lightly. The process is difficult and you may lose property or other rights if you do not know the law. It takes patience and careful preparation. The 2005 changes in the bankruptcy law make properly preparing and completing a Chapter 7 (straight bankruptcy) case even more difficult than previously. Very few people have been able to successfully file Chapter 13 (debt adjustment) cases on their own.

We have attempted to insure the accuracy of the information in this pamphlet at the time it was created or revised. However, the law does change, sometimes quickly and unexpectedly. Therefore, you should consult an attorney before taking or refraining from any action based on the information in this pamphlet.

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