

## What Is Bankruptcy?

Bankruptcy is a legal proceeding for people who cannot pay their bills and want to get a fresh start. Under federal law you have the right to file for bankruptcy. All bankruptcy cases are handled in federal court. Filing bankruptcy immediately stops all of your creditors from seeking to collect debts from you until your debts are sorted out.

## When Should I File Bankruptcy?

As a general rule, you should not file a bankruptcy if you have only a small amount of debt, or if all of your current income and assets are "exempt" from collection. You also should not file a bankruptcy if you think you will continue to go deeper into debt in the future. If you are going to file for bankruptcy, it may be better to wait until you have stopped gathering more debt. But, a bankruptcy may be right for you if you are in danger of losing important property, such as your home, car or utility service. Every case is different, so you should talk to a lawyer to find out if bankruptcy is right for you. See the helpful organization search below to find a legal aid organization that may be able to help you.

## What Can Bankruptcy Do For Me?

Bankruptcy may make it possible for you to:

- Get rid of 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 on your house or mobile home and give you a chance to catch up on missed payments. (Bankruptcy does not, however, automatically get rid of mortgages and other liens on your property without payment).
- Stop 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.
- Challenge the claims of creditors who have committed fraud or who are trying to collect more than you really owe.
- Keep exempt property.

## What Can't Bankruptcy Do For Me?

Bankruptcy cannot fix every financial problem. In bankruptcy, you usually cannot:

- Get rid of some 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.
- Discharge types of debts singled out by the bankruptcy law for special treatment, such as child support, alimony, some student loans, court restitution orders, criminal fines, and some taxes.
- Protect co-signers 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 are created after you file for bankruptcy.

## 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". You have to give up property with value over certain limits called "exemptions", so the property can be sold to pay creditors.
- Chapter 11 is known as "reorganization". It is used by businesses and a few individual debtors whose debts are very large.

- Chapter 12 is for family farmers.
- Chapter 13 is called "debt adjustment". You have 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 (Straight Bankruptcy)

### What Is A Chapter 7 Bankruptcy?

In a bankruptcy case under Chapter 7, you file a petition asking the court to discharge your debts. Therefore, Chapter 7 "wipes out" your debt. In exchange, you give up any non-exempt property. You are allowed to keep "exempt" property. In most cases, all of your property will be exempt. But property which is not-exempt is sold, and the money is given to creditors.

If you want to keep property like a home or a car and are behind on the payments on a mortgage or car loan, a Chapter 7 case probably will not be the right choice for you. This is because Chapter 7 bankruptcy does not get rid of the right of mortgage holders or car loan creditors to take your property to cover your debt.

Only some people are allowed to get a Chapter 7 bankruptcy. If your income or assets are over a certain level, then you will not be allowed to file a Chapter 7 bankruptcy, and will have to file a Chapter 13.

### Can I Get A Chapter 7 Bankruptcy?

It depends on how much your monthly income is. The law uses a "means test" to identify debtors who can pay some money to their creditors. If your income is above a set amount in the "means test" you will have to file a 5-year Chapter 13 plan to pay creditors back instead of filing a Chapter 7.

If your family's income is lower than the median income in Illinois then you will be allowed to file a Chapter 7 bankruptcy. The median monthly income for an Illinois family of 4 is about \$6,765.

If your income is lower than this, then the "means test" won't affect you and you can file a Chapter 7 bankruptcy. If your income is over the median then you will have to qualify under the "means test" to get a Chapter 7.

Also, you can only file Chapter 7 once every eight years.

### What Is The "Means Test"?

If your income is over the median income in Illinois, then the "means test" will apply to your bankruptcy. The "means test" looks at 3 things:

- (1) Current monthly income, measuring the total income a debtor has available;
- (2) A list of allowed deductions from current monthly income; and
- (3) "Trigger points," which are the income levels that tell you that the debtor will not be able to file a Chapter 7 bankruptcy.

According to the "means test," you take your current monthly income and subtract the deductions that are allowed. If the amount left over qualifies as a trigger point, then you cannot file for Chapter 7 bankruptcy.

### What Are The Trigger Points?

You will not be able to file a Chapter 7 bankruptcy if either of these applies to you:

- If you have at least \$166.67 in current monthly income after the allowed deductions; or
- If you have at least \$100 in current monthly income after the allowed deductions and the income is enough to pay at least 25% of your general unsecured debt over five years.

## What Happens If My Monthly Income Is Over The Trigger Points?

If the amount left over qualifies as a trigger point, then your Chapter 7 bankruptcy case will either be dismissed or changed to a Chapter 13 bankruptcy case. In a Chapter 13 bankruptcy, the debtor tries to repay his creditors rather than wipe out his claims with no payment.

## Chapter 13 (Reorganization)

In a Chapter 13 case, you file a "plan" that shows 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. 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 own home and are in danger of losing it because of money problems;
- Are behind on debt payments, but can in time catch up with payments in the future;
- Have valuable property which is not exempt, but you can afford to pay creditors from your income over time.

Chapter 13 bankruptcy requires a certain level of income in order to pay for your necessities and to keep up with the required payments as they come due.

Also, you can only file Chapter 13 once every six years.

## What Does It Cost To File For Bankruptcy?

It costs \$274 to file for a Chapter 13 bankruptcy and \$299 to file for a Chapter 7 bankruptcy in Illinois. This fee is the same for one person or a married couple. The court may allow you to pay this filing fee in installments if you cannot pay it all at once. If you hire an attorney you will also have to pay the attorney's fees you agree to.

## 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. In some states you can choose between your exemptions under state law or under federal law. Illinois has "opted out" of the federal exemption scheme contained in the Bankruptcy Code. Therefore, residents of Illinois are prohibited from using federal exemptions except to the extent permitted by Illinois law.

For an explanation of exemptions allowed under Illinois law click here: **Your Exemption Rights.**

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 your mortgage and 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. 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.

There are several ways that you can keep collateral or mortgaged property after you file bankruptcy. You can agree to keep making 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. You can keep your exempt property and anything you get after the bankruptcy is filed. But, if you get 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 Bankruptcy Wipe Out All My Debts?

Yes, with some exceptions. Bankruptcy 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;
- 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 (although bankruptcy will wipe out your obligation to pay any additional money if the property is sold by the creditor);
- debts for luxury goods of more than \$500 that were purchased within 90 days before filing, and cash advances of \$750 made within 70 days before filing.

## Will I Have To Go To Court?

Yes. You will have to go to a proceeding called the "meeting of creditors." Here you will 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 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.

## 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.

**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.