

Answers to Common Bankruptcy Questions

Filing for Bankruptcy is a serious decision. File for bankruptcy only if it is the best way to deal with your money problems. This handout only talks about some parts of the bankruptcy process. If you have questions, talk to a bankruptcy lawyer.

What Is Bankruptcy?

Bankruptcy gives you a fresh financial start. You must file a case in federal bankruptcy court. Filing bankruptcy stops all your creditors from asking you for money and collecting your debts. For some creditors it stops them from ever coming after you again. For others it only stops them for a little while.

What Can Bankruptcy Do for Me?

In Bankruptcy you can:

- * Get rid of most or all your debts. This is a “discharge” of debts. You get a fresh financial start.
- * Stop foreclosure on your house or manufactured home. It can give you time to catch up on missed payments. (Bankruptcy does not get rid of mortgages on your property unless you pay the debt or give up the property.)
- * Stop repossession of a car or other property. It can also get back property after it was repossessed.

- * Stop wage garnishment, debt collection harassment, and bad debt collection actions.

- * Stop the turn off of a utility. It can also get a utility turned back on.

- * Let you challenge creditors who lied or cheated you or who are trying to collect more money than you owe.

Bankruptcy Cannot:

Bankruptcy cannot fix every money problem. It is not the right choice for everyone. In bankruptcy, you cannot:

- * Get rid of some debts like car loans and home mortgages and still keep your car or home. Lenders who make these loans are “secured creditors” and your car or home is called “secured property”.

In bankruptcy you can force secured creditors to take payments over time to catch up on missed payments. Or you can force the creditor to take back the property so you will owe no more money. But you usually cannot keep secured property unless you pay the debt.

- * Get rid of some types of debt. For example: child support, alimony, most student loans, court restitution orders, criminal fines, and most taxes.

- * Protect cosigners on your debts. A relative or friend who cosigned a loan may still have to repay all or part of the loan if you discharge it.

* Get rid of debts you get after you file for bankruptcy.

What Type of Bankruptcy should I file?

There are four types of bankruptcy cases:

* Chapter 7 is a “straight” bankruptcy or “liquidation.” You must give up non- “exempt” property. The property is sold to pay back creditors. Exemptions protect property from being sold. People who file chapter 7 usually keep all their property. Usually only very valuable property is taken.

* Chapter 11 is a “reorganization.” It is used by businesses and individuals with very large debts.

* Chapter 12 is for family farmers and fishermen.

* Chapter 13 lets you pay all or a part of your debts over 3-5 years. It is also a “reorganization.”

Most people filing bankruptcy file either chapter 7 or chapter 13. You can file alone or in one case as a married couple.

Chapter 7 (Straight Bankruptcy)

In a chapter 7 bankruptcy you ask the court to wipe out your debts in exchange for giving up property. You only give up property that is not “exempt.” Usually all your property is exempt. Property that is not exempt is sold so the money can pay your creditors.

You cannot keep your house or car in a chapter 7 case if you are behind on the payments. Mortgage holders and car loan creditors can take your property to repay the debt if you do not pay.

Not everyone can file a chapter 7 case. If your income is over the median family income in Massachusetts, you may have to file a chapter 13 case. For example, in 2017, your income could not be over \$112,235 for a family of four. If your income is over the limit, you must fill out a special form. The form gives detailed information about your income and expenses. The bankruptcy court can decide that you cannot file a chapter 7 case if you have enough money to pay your unsecured creditors.

Chapter 13 (Reorganization)

In a chapter 13 case you can keep valuable property like your home and car. You must file a “plan” with the court showing how you will catch up on your missed payments. You must make an extra payment to the court each month to catch up on your missed payments. This is a plan payment. If you can catch all the way up, you can keep your house or car. You have three to five years to catch up. You must also stay current with all your regular bills like your mortgage, utilities, and food bills.

Consider filing a chapter 13 case if you:

* Own your home and may lose it because of missed payments;

* Missed payments, but can catch up if you have more time;

* Have valuable property that is not exempt, but you can afford to pay creditors from your income over time.

For a chapter 13 case to work you must have enough income during your case to:

*Pay your regular bills including housing and food, and

*have enough extra money to pay the plan payments to catch up on other debts.

What Does It Cost to File for Bankruptcy?

It costs \$335 to file a chapter 7 bankruptcy and \$310 to file a chapter 13 bankruptcy case. It is the same price for a married couple to file.

The court may let you pay the chapter 7 or 13 filing fee in smaller payments over time if you cannot pay it all at once. If you hire a lawyer you will also have to pay the lawyer's fees.

You may be able to pay no filing fee in a chapter 7 case. You can only ask the court to waive the fee if:

- * you are unable to pay the filing fee over time, and;

- * your household income is less than 150 percent of the federal poverty guideline. For example, in 2017 \$ 36,900 was the limit for a family of four.

The filing fee is never free in a chapter 13 case. You must pay it in full or in installments.

What Do I Do Before I File For Bankruptcy?

You must take a budget and credit counseling course from an approved credit counseling agency no more than 180 days before you file for bankruptcy. The counseling agency gives you ways to deal with your money problems. They also go over your budget with you. You can do the counseling in-person, by telephone, or over the internet. To file bankruptcy, you must have a certificate from the agency that says you did the counseling before you file.

Most approved agencies charge between \$30–\$50 for pre-filing counseling. If you

cannot afford the fee ask the agency for a discount or to get the counseling free.

Some approved agencies offer debt management plans (DMP). A DMP is a plan to repay some or all of your debts. You send the counseling agency a monthly payment that it uses to pay your creditors. You need enough money each month to stay current on rent, mortgage, utilities, food, prescriptions, and other necessities. Do not do a debt management plan if you will not have enough money to pay them if you pay the monthly plan payment. Debt management plans are helpful for some people. For others, they are a terrible idea. Do not do a DMP if it will not fix your money problems. If you are thinking about a DMP remember:

- * Bankruptcy may be the best choice for you.

- * If you sign up for a debt management plan that you cannot afford, you may have to file for bankruptcy anyway. If that happens, a copy of the DMP is filed in your bankruptcy case.

- * Some approved bankruptcy counseling agencies do not offer DMPs.

Meet with a lawyer before you take the credit counseling course. A credit counselor cannot give legal advice. But a lawyer can help you figure out if bankruptcy is your best choice. A lawyer can also give you ideas to fix your money problems.

A lawyer will give you a list of approved credit counseling agencies, or you can find one at www.usdoj.gov/ust.

What Property Can I Keep?

In a chapter 7 case, you can keep all “exempt” property. Exemptions are lists of items, money and income that creditors

cannot take. Those items are not taken to pay back your creditors. Exemptions are different in each state. You use the exemptions from the state where you lived two years before you file for bankruptcy. If you lived in another state, you may have to use the exemptions from where you lived just over two years ago.

In Massachusetts you can use the federal exemptions or the state exemptions.

The federal bankruptcy exemptions include:

- * \$22,975 in equity in your home. Equity is the amount of value that is yours without a lien on it. If you sold the house, it is the amount you would get after you pay the mortgage and liens;
- * \$3,675 in equity in your car;
- * \$575 per item in any household goods up to a total of \$12,250;
- * \$2,300 in things you need for your job (tools, books, etc.);
- * \$1,225 in any property, plus part of the unused exemption in your home, up to \$11,500;
- * Social Security, unemployment compensation, veteran's benefits, public assistance, and pension income—in any amount.

Double the amounts of the exemptions for a married couple who files together.

The Massachusetts exemptions include:

- * \$500,000 in equity in your house if you file a declaration of homestead. If you own a home and have not filed a declaration, ask your lawyer to help you file one before you file bankruptcy.

- * Car –Worth up to \$7,500 in resale value or \$15,000 if you are elderly or disabled.

- * Cash and Savings – Up to \$2,500 plus some wages and money you got as public assistance.

- * Household Furniture up to \$15,000.

- * One computer and one television.

- * “Wild card” exemption between \$1,000 and \$6,000 from unused exemptions.

- * Money for utilities - \$500.

The value of your property in bankruptcy is not how much you paid for it. The value is what it costs to buy the item used. The amount will almost always be less than you paid, especially for furniture and cars.

To keep an item, an exemption only has to be enough to protect your equity in the property. Compare the exemption amount to the used value of the item minus any money that you owe on mortgages or liens. For example, if you own a \$50,000 house and you owe \$40,000 on your mortgage, you have \$10,000 in equity. You can protect the \$50,000 home with a \$10,000 exemption.

Exemptions will not stop a mortgage holder or car loan creditor from taking property if you are behind on your payments. You can only keep your property if you are behind on payments in a chapter 13 case. To keep the property, you must pay the regular mortgage or lien payments.

What Happens to My Home and Car If I File Bankruptcy?

Most people will not lose their home or car during bankruptcy if:

- You stay current with the payments, and;
- the equity in the property is all exempt.

Even if your property is not all exempt, you can keep it if you pay its non-exempt value in a chapter 13 case.

Some creditors may have a “security interest” in your home, car, or other personal property. This means you gave that creditor a mortgage or lien on the property in exchange for borrowing money. Secured debt is different than other debt.

Bankruptcy does not make security interests go away and let you keep the property. If you do not make payments on that debt, the creditor can sell the property to pay back the debt.

A chapter 13 case gives you tools to keep property that has secured debt on it. You may be able to keep secured property by paying the creditor the value of the property instead of the whole amount owed on the debt. Or you can use chapter 13 to catch up on back payments and get current on the loan.

You can also keep secured property in a chapter 7 bankruptcy. You can agree to keep making payments on the debt until it is paid in full. Or you can pay the creditor all at once the amount that the property is worth.

If you agreed to give a creditor your household goods if you did not pay a loan, you can usually keep that property without making any more payments. This is only true if you agreed after you purchased the items.

In either a chapter 7 or 13 case if there is fraud or the creditor acts badly, you may be

able to fight the debt and may not have to pay it.

Can I Own Property After Bankruptcy?

Yes! You can keep your exempt property and anything new you get after the bankruptcy is filed.

Can Creditors Take My Money and Things After Bankruptcy?

Within 180 days after you file your case if you get a non-exempt inheritance, property settlement, or life insurance money, it can be taken to pay your creditors.

After your discharge, any secured property that you do not pay the bill for can be taken by the creditor to pay the debt

You still owe any debt that was not discharged, like most student loans. The lender can still sue you to garnish your wages and collect money if you stop paying.

Will Bankruptcy Wipe Out All My Debts?

Yes, most of the time. Bankruptcy will not wipe out:

- * Money owed for child support or alimony;

- * Most fines and penalties owed to government agencies;

- * Most taxes and debts incurred to pay taxes which cannot be discharged;

- * Most Student loans, unless you can show the court that repaying them is an “undue hardship”;

- * Debts not listed on your bankruptcy petition;

* Loans you got by knowingly giving false information to a creditor, who reasonably relied on it in giving you the loan;

* Debts resulting from “willful and malicious” harm;

* Debts you got for driving while intoxicated;

* Mortgages and other liens which are not paid in the bankruptcy case. Bankruptcy will wipe out your debt if you give up the property.

Will I Have to Go to Court?

Usually no. In most cases you only have to go to a “meeting of creditors.” At the meeting of the creditors you meet with the bankruptcy trustee and sometimes some of your creditors. Usually this meeting is quick. You are asked a few questions about your bankruptcy forms and your money situation. Your lawyer goes with you.

You may have to go to a court hearing if:

*There is a problem

*If you are fighting about a debt, or

*if you do not stay up to date on your secured debt.

In a chapter 13 case, you may also have to go to a hearing when the judge approves your plan. 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 Do I Have To Do In My Case?

After your case is filed, you must take a second credit course. This is a course in personal finances. This course takes about

two hours. You can take the course in-person, over the internet (usually by watching a video), or over the telephone. Your lawyer can give you a list of approved courses, or you can go to www.usdoj.gov/ust. It costs money to take this course. If you cannot afford the fee, ask the agency to let you take the course free or at a reduced rate. In a chapter 7 case, sign up for the course right after your meeting of the creditors. If you file a chapter 13 case, ask your attorney when you should take the course.

Will Bankruptcy Affect My Credit?

Yes and No. If you are behind on your bills your credit may already be bad.

Filing for bankruptcy can stay on your credit record for ten years. Old debts are listed on your report for seven years. But because bankruptcy means you do not have to pay your old debts, you may be in a better position to pay your current bills. You may be able to get new credit.

Debts discharged in your case should have a zero balance on your credit report. This means you do not owe anything on the debt. Check your credit report after your bankruptcy discharge. Debts that show a balance owed will hurt your credit score and will make it harder or more expensive to get credit. File a dispute with the credit reporting agency if the information is not correct.

What Else Should I Know?

Utility services--Public utilities like the electric company cannot refuse or cut off service because you filed for bankruptcy. The utility can make you pay a deposit for future service. You must pay your bills as

they come due after the date you filed for bankruptcy.

Discrimination--An employer or government agency cannot discriminate against you because you have filed for bankruptcy. Government agencies and private entities involved in student loans also cannot discriminate against you because you filed for bankruptcy.

Driver's license—You can get your license back after you file for bankruptcy if you lost it because you could not pay court-ordered damages caused in an accident.

Cosigners-- A cosigner on your loan may have to pay the whole debt after you file for bankruptcy. If you file for chapter 13, you may be able to protect cosigners in your chapter 13 plan.

How Do I Find a Bankruptcy Lawyer?

Ask family, friends and any lawyers you know and respect for a recommendation. Look for someone who will meet with you alone and answer your question. Carefully read retainers and other documents the lawyer asks you to sign. Do not hire a lawyer unless she agrees to help you for the whole case.

Remember the person advertising the cheapest rate is not always the best. Many of the best bankruptcy lawyers do not advertise at all.

You can look for a free lawyer at:
<http://www.masslegalservices.org/findlegala id>.

Think about these questions before you first meet with a bankruptcy lawyer:

* What debts are causing you the most trouble?

* What are your most valuable assets? Assets are the things you own like your house, bank account, retirement account and stocks.

* How did you get your debts?

*Are your debts secured?

* Are any of these happening now or about to happen: foreclosure or repossession of property, taking money from your wages or bank account, or shutting off a utility?

* What do you want by filing the case?

Can I File Bankruptcy without an Lawyer?

Yes, although it is hard. You may lose property or other rights if you do not know the law. It takes patience and careful preparation to file a case and do the work needed to get the discharge at the end. Chapter 7 (straight bankruptcy) cases are easier than Chapter 13 cases to file and get to the end of. Very few people can file and get to the end of a chapter 13 case on their own.

Document preparation services or “typing services” or “paralegal services” are non-lawyers who fill-out bankruptcy forms for a fee. They are a bad idea. Non-lawyers cannot give advice and they do not help after the case is filed. There are many shady companies who give bad advice and defraud consumers.

You can get help filing bankruptcy without a lawyer at a “pro se clinic.” The Bankruptcy court runs the clinics. You must register. Get information and sign up at www.mab.uscourts.gov/mab/pro-se-debtors-bankruptcy-clinic.

Clinics are held at:

Boston
US Bankruptcy Court
5 Post Office Square
(617) 748-5351

Worcester
US Bankruptcy Court
595 Main Street
(508) 770-8925

Springfield
US Bankruptcy Court
300 State Street
(413) 785-6892

Remember: The law often changes. Each case is different. This handout gives general information and does not give specific legal advice.

- (This pamphlet was written by the National Consumer Law Center and has been modified for Massachusetts by Greater Boston Legal Services. February, 2017)