

Answers to Common Bankruptcy Questions

A decision to file for bankruptcy should be made only after determining that bankruptcy is the best way to deal with your financial problems. This brochure cannot explain every aspect of the bankruptcy process.

There have been many news reports suggesting that changes to the bankruptcy law passed by Congress in 2005 prevent many individuals from filing bankruptcy. It is true that these changes have made the process more complicated. **But the basic right to file bankruptcy and most of the benefits of bankruptcy remain the same for most individuals.**

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What is bankruptcy?

Bankruptcy is a legal proceeding in which a person who cannot pay his or her bills can get a **Financial Fresh Start**. The right to file for bankruptcy is provided by federal law, and all bankruptcy 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.

What must I do before filing bankruptcy?

You must receive budget and credit counseling from an approved credit counseling agency within 180 days before your bankruptcy case is filed. The agency will review possible options available to you in credit counseling and assist you in reviewing your budget. If you decide to file bankruptcy, you must have a certificate from the agency showing that you received the counseling before your bankruptcy case is filed. The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 mandates that consumers receive financial counseling with an approved agency prior to their bankruptcy petition being filed. Further, the law requires consumers to participate in a financial education course before their debts can be discharged.

*CCCS Dallas is approved to issue certificated in compliance with the Bankruptcy code.

You may take this class via the internet or in-person in Longview or Tyler.

Further instructions will be given after you have retained your lawyer

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 **Financial 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.)

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 or who are otherwise trying to collect more than you really owe.

What Bankruptcy Can Not Do

Bankruptcy cannot, however, cure every financial problem. Nor is it the right step for every individual. In bankruptcy, it is usually *not* possible to:

Eliminate certain rights of “secured” creditors. A creditor is “secured” if it has taken a mortgage or other lien on property as collateral for a 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 on the debt if you decide to give back the property. But you generally cannot keep secured property unless you continue to pay the debt. Discharge types of debts singled out by the bankruptcy

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law for special treatment, such as child support, alimony, most student loans, court restitution orders, criminal fines, and most taxes.

Protect cosigners on your debts. When a relative or friend has co-signed a loan, and the consumer discharges 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.

How to file bankruptcy

Filing bankruptcy can be a complicated process which requires the assistance of a Bankruptcy Attorney as each case is different and the law often changes. The process is difficult and without the assistance of a Bankruptcy Attorney, you may lose property or other rights.

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 an individual to give up property which is not “exempt” under the law, so the property can be sold to pay creditors. Generally, those who file chapter 7 keep all of their property except property which is very valuable or which is subject to a lien which they can not avoid or afford to pay.

Chapter 11, known as “reorganization,” is used by businesses and a few individuals whose debts are very large.

Chapter 12 is reserved for family farmers and fishermen.

Chapter 13 is a type of “reorganization” used by individuals to pay all or a portion of their debts over a period of years using their 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.

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. It is important to check the exemptions that are available in the state where you live. (If you moved to your current state from a different state within two years before your bankruptcy filing, you may be required to use the exemptions from the state where you lived just before the two-year period.) In some states, you are given a choice when you file bankruptcy between using either the state exemptions or using the federal bankruptcy exemptions. If your state has “opted” out of the federal bankruptcy exemptions, you will even in an “opt-out” state, you may use a special federal bankruptcy exemption that protects retirement funds in pension plans and individual retirement accounts (IRAs).

\$20,200 in equity in your home;

\$3,225 in equity in your car;

\$525 per item in any household goods up to a total of \$10,775;

\$2,025 in things you need for your job (tools, books, etc.);

\$1,075 in any property, plus part of the unused exemption in your home, up to \$10,125;

Your right to receive certain benefits such as Social Security, unemployment compensation, veteran’s benefits, public assistance, and pensions—regardless of the amount.

The amounts of the exemptions are doubled when a married couple files together. Again, you may be required to use state exemptions which may be more or less generous than the federal exemptions.

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 when your bankruptcy case is filed. Especially for furniture and cars, this may be a lot less than what you paid or what it would cost

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to buy a replacement. You also only need to look at your equity in property. That means you count your exemptions against the full value minus any money that you owe on mortgages or liens. For example, if you own a \$50,000 house with a \$40,000 mortgage, you have only \$10,000 in equity. You can fully protect the \$50,000 home with a \$10,000 exemption.

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 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 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 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. 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.

In a chapter 13 case, you may be able to keep certain secured property by paying the creditor the value of the property rather than the full amount owed on the debt. Or you can use chapter 13 to catch up on back payments and get current on the loan.

There are also several ways that you can keep collateral or mortgaged

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property after you file a chapter 7 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. 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 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.

Will Bankruptcy Wipe Out All My Debts?

Yes, with some exceptions. Bankruptcy will not normally 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 can not be discharged;
- Student loans, unless you can prove to the court that repaying them will be 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 making you the loan;
- Debts resulting from “willful and malicious” harm;
- Debts incurred by driving while intoxicated;
- 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 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 at a hearing. In a chapter 13 case, you may also have to appear at a hearing when the judge decides whether your plan should be approved. 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 Must I Do to Complete My Case?

After your case is filed, you must complete an approved course in personal finances.

This course will take approximately two hours to complete. Many of the course providers give you a choice to take the course in-person at a designated location, over the Internet (usually by watching a video), or over the telephone. Your attorney can give you a list of organizations that provide approved courses, or you can check the website for the United States Trustee Program office at www.usdoj.gov/ust.

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 from the date your case was filed. But because 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. If you decide to file bankruptcy, remember that debts discharged in your bankruptcy should be listed on your credit report as having a **zero balance**,

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meaning you do not own anything on the debt. Debts incorrectly reported as having a balance owed will negatively affect your credit score and make it more difficult or costly to get credit. You should check your credit report after your bankruptcy discharge and file a dispute with credit reporting agencies if this information is not correct.

What Else Should I Know?

Utility services—Public utilities, such as the electric company, can not 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 can not discriminate against you because you have filed for bankruptcy. Government agencies and private entities involved in student loan programs also cannot discriminate against you based on a bankruptcy filing.

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. If you file under chapter 13, you may be able to protect co-signers, depending upon the terms of your chapter 13 plan.

If you believe that bankruptcy might be an option for you to achieve a **Financial Fresh Start** and help you obtain **Peace of Mind** then please, do not delay. Call the office of Rodney S. Scott and schedule your **Free Initial Consultation today!** Or, for faster service you can complete our **On-0line Evaluation** and one of our staff will contact you as quickly as possible.

903-753-3023 or 800-572-9629.

We wish you the best of luck and hope to hear from you soon!