

Consumer Legal Guide



Your Guide to Bankruptcy for Individuals



ILLINOIS STATE

BAR ASSOCIATION

ASK A LAWYER

WHAT IS BANKRUPTCY?

Bankruptcy is a court proceeding that is governed by the federal law known as the “Bankruptcy Code.” The Bankruptcy Code is aimed at providing people or other entities in financial distress with relief from some or all of their debt. Bankruptcies are administered through a separate federal court division called the United States Bankruptcy Court.

IS THERE MORE THAN ONE KIND OF BANKRUPTCY?

Yes. For individuals, there are two main types of bankruptcies that can be filed: Chapter 7 bankruptcy and Chapter 13 bankruptcy. Chapter 7 cases are also referred to as “liquidation” cases, while Chapter 13 cases are commonly referred to as “debt adjustment” or “wage earner” cases. Individuals may also be eligible for a Chapter 11 bankruptcy, which allows the debtor to propose a plan for reorganization to pay creditors overtime, but Chapter 11 is normally used to reorganize a business. Farmers and fisherman can also file a separate type of bankruptcy available only to farmers under Chapter 12. The word “Chapter” is simply a reference to a chapter number in the Bankruptcy Code.

CAN SPOUSES FILE A BANKRUPTCY TOGETHER?

Yes. The Bankruptcy Code allows spouses to file jointly for bankruptcy. The question of whether you and your spouse should file a bankruptcy together depends on whether you both are lia-

ble for the debts involved. You should remember that filing bankruptcy generally protects only the person who files for it.

ELIGIBILITY TO FILE A CHAPTER 7 BANKRUPTCY CASE

In order to be eligible for a Chapter 7 case, you must receive credit counseling from an approved agency within 180 days prior to filing. When you file, you are required to provide the court with a certificate from the agency describing the services you received along with a copy of any debt repayment plan you and the agency may have developed. After you file, you will also have to complete an instructional course concerning personal financial management in order to receive a discharge. Classes are run by independent agencies and require additional costs. A list of accredited credit counselors can be found at the United States Trustee's website, <http://www.justice.gov/ust/credit-counseling-debtor-education-information>.

WHAT HAPPENS WHEN I FILE A CHAPTER 7 CASE?

A bankruptcy proceeding is initiated by filing a petition with the bankruptcy court. When you file for Chapter 7 liquidation, the petition operates as an automatic stay, which generally prevents creditors from pursuing debt collection actions against you unless the bankruptcy judge approves it first. The automatic stay goes into effect immediately upon filing the petition; no court hearing or approval by a judge is necessary. When the case is filed, the United States trustee for your judicial district appoints a trustee to review

your financial affairs and administer your case. The appointed trustee has the power to liquidate any asset you own that is not by law exempt from collection or subject to a lien in order to pay your creditors.

The Bankruptcy Code divides debts into two general categories: secured and unsecured. Unsecured debts are debts that are not secured by a lien on property, or in other words are not backed by collateral. The most common type of unsecured debt is credit card debt. If the court issues you a bankruptcy discharge, you are relieved from liability for all of your dischargeable unsecured debts. Secured debts are debts that are secured by a lien on property. For example, if you have mortgage, the mortgage lender has a lien on your home and thus your mortgage is a secured debt. A discharge does not relieve you from your obligations to pay your secured debts and thus creditors may still have the right to take the property securing the lien if you do not make your payments.

WHAT HAPPENS TO THE PROPERTY I OWN THAT IS SUBJECT TO A LIEN?

In some cases, the Bankruptcy Court can set aside or reduce a lien on your property. Additionally, individuals who want to keep the property secured by a lien can enter into reaffirmation agreements with the secured creditors. Under a reaffirmation agreement, the debtor promises in writing to continue to pay the amount owed to the creditor despite the bankruptcy and in return, the creditor agrees to not seize the secured property so long as the debtor continues to make the necessary payments. All reaffirmation

firmation agreements must be filed with the bankruptcy court. If you default on your payments under a reaffirmation agreement, the creditor can hold you liable on any deficiency and repossess the secured property accordingly.

WHAT TYPES OF PROPERTY CAN I KEEP IF I FILE BANKRUPTCY?

Each individual who files a bankruptcy is entitled to keep any property that qualifies for an exemption under either federal or Illinois law. For some types of property, such as family pictures, necessary wearing apparel, worker compensation benefits, qualified retirement plans, IRAs, and life insurance, the value and amount of property an individual can claim as exempt is unlimited. In other cases, however, the equity an individual can claim as exempt is limited by a fixed dollar amount. Common examples of such exemptions include:

- Your personal residence (equity of \$15,000, or \$30,000 for spouses filing jointly);
- Compensation for personal injury claims (\$15,000);
- Motor vehicle (equity of \$2,400 for each individual owner);
- Tools or books used in your occupation (\$1,500).

Illinois law also gives each individual the right to exempt up to \$4,000 in equity for any other personal property, including cash or money in the bank. If a husband and wife file jointly for bankruptcy, each spouse is entitled to claim these exemptions as well.

WHICH OF MY DEBTS ARE NOT DISCHARGED IN CHAPTER 7?

While a discharge relieves you of your obligations to pay most of your debts, not all debts are dischargeable in a Chapter 7 bankruptcy. Nondischargeable debts include, for example, alimony and child support obligations, certain taxes and fines, certain education loans, debts for death or personal injury caused by the debtor's operation of a vehicle while intoxicated from alcohol or other substances, and debts you fail to disclose properly to the bankruptcy court when filing your petition. Some debts that are typically dischargeable can be excluded from discharge if the specific creditor requests that the bankruptcy court declare the debt nondischargeable. These debts include debts for money or property obtained by false pretenses and debts for willful and malicious injury by the debtor to another entity or to the property of another entity. If the bankruptcy judge grants the creditor's request, the debt owed to that creditor will not be discharged.

WHAT HAPPENS WHEN I FILE A CHAPTER 13 CASE?

In a Chapter 13 case, you do not have to liquidate assets in order to pay your creditors; instead, you develop a plan to repay all or a portion of your debts over time, which allows you to keep most or all of your property. During the period the plan is in effect, you make your regular payments to the trustee assigned to your case who, in turn, distributes the money to your creditors. The applicable commitment period for payment under a

Chapter 13 plan is three years for debtors whose family's current monthly income is less than the state median for a family of the same size and five years if it is greater. Your Chapter 13 plan must pay your unsecured creditors at least as much as they would receive if your non-exempt assets were liquidated under Chapter 7. Also, your plan payments for unsecured debts must be equal to your disposable income (the difference between your net monthly income and your court approved monthly expenses). In other words, you cannot retain a cash reserve each month.

In order to be eligible to file for Chapter 13 bankruptcy, you must have regular income and meet certain debt limitations for your unsecured and secured debts (unsecured debts must be less than \$383,175 and secured debts must be less than \$1,149,525 as of 2015). Individuals, sole proprietorship businesses, or spouses can file a Chapter 13 Bankruptcy. Just like a Chapter 7 case, filing a petition for Chapter 13 bankruptcy with the bankruptcy court automatically stays most debt collection actions against you. You must file your repayment plan either with your petition or within 14 days after filing your case.

WHAT ARE THE REASONS A PERSON WOULD FILE A CHAPTER 13 CASE INSTEAD OF A CHAPTER 7 CASE?

There are a few advantages to filing a Chapter 13 case over a Chapter 7 case that you should keep in mind if you are considering bankruptcy. For example, you might have more equity in your home than can be protected by the exemption for real estate in a Chapter 7 case. Filing

for Chapter 13 bankruptcy automatically stays a foreclosure proceeding, giving you time to incorporate into your plan a way to cure your delinquent mortgage payments that could allow you to keep your home. Furthermore, Chapter 13 bankruptcy has a special automatic stay provision that prohibits collection actions against co-debtors (individuals liable for a debt along with the debtor) for consumer debt. Also, whereas you are required to surrender all your nonexempt assets for distribution under Chapter 7, so long as you successfully complete all the payments under your Chapter 13 plan, your nonexempt assets are protected and do not have to be turned over to creditors. Before filing for bankruptcy, you should contact an experienced bankruptcy attorney, who can conduct a means test to determine your eligibility to file a Chapter 7 or Chapter 13 bankruptcy.

IF I FILE BANKRUPTCY, HOW WILL IT AFFECT MY FUTURE CREDIT AND MY JOB?

Different people have different experiences obtaining credit after they file for bankruptcy. As a general rule, most people find it more difficult to obtain long-term credit, such as a home mortgage, shortly after a bankruptcy has been filed. For other types of credit, however, experiences vary depending on other factors. The Bankruptcy Code prohibits your employer from discharging you or discriminating against you solely because you have filed a bankruptcy case. A bankruptcy can remain on your credit report for up to 10 years, but many people are able to raise their credit score to a relatively good level within a few years after bankruptcy.

IF I OWN A HOME, WILL I LOSE IT IF I FILE A CHAPTER 7 OR A CHAPTER 13 CASE?

The answer to that question depends on many factors, such as the equity in your home and whether you are seriously delinquent on your mortgage payments at the time you file bankruptcy. If you are concerned about what will happen to your home, you should consult an experienced bankruptcy attorney for guidance based on your circumstances. However, in most bankruptcy cases, individuals are able to keep their homes. In general, those who file for Chapter 13 bankruptcy have a greater ability to protect their assets than those who file under Chapter 7.

DO I NEED A LAWYER TO REPRESENT ME IF I FILE A BANKRUPTCY CASE?

You can represent yourself in a bankruptcy proceeding if you choose, but you do so at your own risk. It is crucial that bankruptcy cases be filed and handled correctly, and you must comply with all of the rules, which are highly technical. Bankruptcy courts in Illinois generally require that all bankruptcy materials be filed electronically and not through written papers, but if you are representing yourself, the courts will typically allow you to file your documents in paper form with the clerk's office. In every bankruptcy case, each individual is required to prepare and submit to the court detailed forms concerning his or her property, debts, and financial affairs, which are difficult to complete without the help of an attorney. Additionally, options avail-

able to each individual, such as property claiming exemptions, filing jointly with a spouse, and what type of bankruptcy to file, probably cannot be properly assessed without the assistance of an experienced attorney.

If you're looking for an
Illinois lawyer, look to
IllinoisLawyerFinder.com



IllinoisLawyerFinder.com is the Illinois State Bar Association's statewide lawyer directory on the Web. Search for lawyers by practice area, name, county or town.

Find a lawyer near you 24/7 on the Web at **IllinoisLawyerFinder.com** or call us from around the state at **217-525-5297** or **800-922-8757** Monday through Friday from 9:00 a.m. to 4:00 p.m.



ILLINOIS STATE
BAR ASSOCIATION

This pamphlet is prepared and published by the Illinois State Bar Association as a public service. Every effort has been made to provide accurate information at the time of publication.

For the most current information, please consult your lawyer. If you need a lawyer and do not have one, call Illinois Lawyer Finder at (800) 922-8757 or online **www.IllinoisLawyerFinder.com**

Pamphlets Available

Adoption

Advice to Newly Marrieds

Alternative Dispute Resolution

Auto Accidents

Auto Insurance

Bankruptcy

Being a Guardian

Buying a Car

Buying a Home

Buying on Time

Divorce

Estate Planning

Gender Transitioning

General Practitioner

Healthcare Privacy

Healthcare Decisions

Hiring a Lawyer

Illinois Traffic Courts

Jury Duty

Landlord-Tenant

Law-related Careers

Limited Scope Representation

Living Trusts

Patients' Rights

Rights of LGBT

Selling a Home

Serving as a Guardian for an Adult with Disabilities

Starting a Business

Your Rights if Arrested

For more information on legal issues or to obtain single copies of each of the pamphlets listed above (free to individuals), please visit

www.ISBAlawyers.com

ILLINOIS BAR CENTER
424 S. Second Street
Springfield, IL 62701-1779
www.isba.org