

# Missouri Legal Services

Legal aid programs providing free legal help to the low-income and disadvantaged in Missouri



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## Bankruptcy Questions

### **What is Bankruptcy?**

Bankruptcy is a legal proceeding in which a person who cannot pay his or her 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. Filing bankruptcy immediately stops all creditors from seeking to collect debts from a petitioner, at least until the debts are sorted out according to the law.

### **What Can Bankruptcy Do?**

Bankruptcy makes it possible to—

1. Eliminate the legal obligation to pay most or all of debts. This is called a "discharge" of debts. It is designed to give you a fresh financial start.
2. Stop foreclosure on your house or mobile home and allow an opportunity to catch up on missed payments.
3. *Caution: Bankruptcy does not normally eliminate mortgages and other liens on your property without payment.*
4. Prevent repossession of your car or other property, or force the creditor to return property even after it has been repossessed.
5. Stop wage garnishment, debt collection harassment, and similar actions to collect a debt.
6. Restore or prevent termination of utility service.
7. Challenge the claim of a creditor who commits fraud or who tries to collect more than is really owed.

### **What Can't Bankruptcy Do?**

Bankruptcy cannot cure every financial problem. More importantly, bankruptcy is simply the *wrong* solution for many debtors. A bankruptcy generally—

1. **Won't Eliminate rights of secured creditors in collateral.** A secured creditor is someone who has a mortgage or other lien on your property that is collateral for your loan. Common examples are car loans (secured by your car) and home mortgage loans (secured by your home). You cannot generally remove a creditor's collateral interest in a bankruptcy proceeding. Rather, you must either give up the collateral or make payment. Payments, however, might in a bankruptcy proceeding be stretched out over time and/or limited to the value of the collateral.
2. **Won't Discharge types of debts singled out by the bankruptcy law for special treatment**, such as child support, alimony and certain other debts related to divorce, most student loans, court restitution orders, criminal fines, and some taxes.
3. **Won't Protect cosigners on your debts.** When a relative or friend has co-signed a loan, and you discharge your debt in bankruptcy, the cosigner may still have to repay all or part of the loan.
4. **Won't Discharge debts that arise after bankruptcy** has been filed.

What Are the Types of Bankruptcy Cases?

There are four types of bankruptcy cases provided under the law:

1. *Chapter 7* is known as "straight" bankruptcy or "liquidation." It requires you to give up property that exceeds certain limits called "exemptions," so the property can be sold (liquidated) to pay creditors.
2. *Chapter 11* is known as "reorganization." Businesses and a few individual debtors whose debts are very large use it.
3. *Chapter 12* is reserved for family farmers and fishermen.
4. *Chapter 13* is called "debt adjustment." It requires you to file a plan to pay debts (or parts of debts) from current income over the period of the plan.

Most people considering bankruptcy will be looking at either Chapter 7 or Chapter 13. Either type of case may be filed individually or by a married couple filing jointly.

Current law provides a "safe-harbor" for Chapter 7 filings if your income is below the median family income for the same size household in your state. But if your income is above that level, you more or less must go into a Chapter 13 case.

If you are a higher-income debtor you must fill out "means test" forms requiring detailed information about your income and expenses. If, under standards in the law, you are found to have sufficient income after expenses to allow payment to unsecured creditors, the bankruptcy court may not allow you to proceed with a Chapter 7 case unless you can present sufficient special circumstances.

### ***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 giving up property, except for the "exempt" property that the law allows you to keep. In many cases, all of your property will be exempt. But your property that is not exempt is sold to allow distribution of the resulting money 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. That is because chapter 7 bankruptcy does not eliminate the rights of mortgage holders or car loan creditors to take your property 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 a home and car—which might otherwise be lost, if you can make the payments which the bankruptcy law requires to be made to creditors. In most cases, these payments will be at least as much as your regular monthly payments on a 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 a home and are in danger of losing it because of money problems;
2. Are behind on debt payments, but can catch up if given some time; or
3. Have valuable property that is not exempt, but can afford to pay creditors from regular income over time.

You will need to have enough income in chapter 13 to pay for necessities and to keep up with the required payments as they come due.

#### **What Does It Cost to File Bankruptcy?**

It costs \$306 to file for bankruptcy under chapter 7, and \$281 to file for bankruptcy under chapter 13, whether for one person or a married couple.

The court may allow you to pay this filing fee in installments if it cannot be paid all at once.

If you are unable to pay the filing fee in installments, you may request that the court waive the filing fee. If you hire an attorney, you will also have to pay the agreed attorney's fees—unless it is a Legal Aid attorney, who is free.

### **What Must You Do Before Filing Bankruptcy?**

You must receive budget and credit counseling from an approved credit counseling agency within 180 days before a bankruptcy case is filed. The agency will review possible options available in credit counseling and assist in reviewing the debtor's budget. Different agencies provide the counseling in-person, by telephone, or over the Internet. If you decide to file bankruptcy, you will need to file with the forms in the bankruptcy case a certificate from the agency stating that you received the counseling.

If you decide to go ahead with bankruptcy, you should be very careful in choosing an agency for the required counseling. It is extremely difficult to sort out the good counseling agencies from the bad ones. Many agencies are legitimate, but many are simply rip-offs. And being an "approved" agency for bankruptcy counseling is no guarantee that the agency is good. It is also important to understand that even good agencies won't be able to help much if you are already too deep in financial trouble.

Some of the approved agencies offer debt management plans (also called DMPs). This is a plan to repay some or all debts in which you send the counseling agency a monthly payment that it then distributes to creditors. DMPs can be helpful for some consumers. For others, they are a terrible idea. The problem is that many counseling agencies will pressure you into a DMP as a way of avoiding bankruptcy whether it makes sense or not. It is important to keep in mind these important points:

1. Bankruptcy is not necessarily to be avoided at all costs. In many cases, bankruptcy may actually be the best choice for you.
2. If you sign up for a debt management plan that you can't afford, you may end up in bankruptcy anyway (and a copy of the plan must also be filed in the bankruptcy case).
3. There are approved agencies for bankruptcy counseling that do not offer debt management plans.

It is usually a good idea for you to meet with an attorney before you receive the required credit counseling. Unlike a credit counselor, who cannot give legal advice, an attorney can provide counseling on whether bankruptcy is the best option. If bankruptcy is not the right answer for you, a good attorney will offer a range of other suggestions. The attorney can also provide a list of approved credit counseling agencies, and you can also check the website for the United States Trustee Program office.

## What Property Can You Keep?

In a chapter 7 case, you can keep all property the law says is protected ("exempt") from the claims of creditors. In Missouri, the exemptions include:

1. \$15,000 in equity in a home;
2. \$3,000 in equity in a car;
3. \$3,000 in household goods, appliances, clothing, etc.;
4. \$3,000 in things needed for a job (*tools, books, etc.*);
5. \$600 in any property the debtor chooses;
6. \$1,500 in a wedding ring, plus \$500 in other jewelry;
7. \$750 per month in child support or alimony;
8. \$1,250 for the head of the family, plus an additional \$350 for each unmarried, dependent child under 18 years old;
9. Professionally prescribed health aids (*such as eyeglasses, wheelchairs, etc.*); and
10. The 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 listed are sometimes doubled when a married couple files together.)*

In deciding whether property is protected by law, you must keep a few things in mind. The value of property is not the amount paid for it, but what it is worth now. Especially for furniture and cars, this may be a lot less than what was paid or what it would cost to buy a replacement.

You also only need to look at equity in property. This means that exemptions count against the full value minus any money owed on mortgages or liens. For example, if you have a \$50,000 house with a \$40,000 mortgage, exemptions are counted against the \$10,000 in equity.

While exemptions will allow you to keep property even in a chapter 7 case, 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 the 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 Your Home and Car in Bankruptcy?

In most cases you will not lose your home or car during a bankruptcy case as long as the equity

in your property is fully exempt. Even if the 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 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 other property up as collateral for the debt. Bankruptcy does not make these security interests go away. If you don't make payments on that debt, the creditor may be able to take and sell your home or the property, during or after the bankruptcy case.

There are several ways that you can keep collateral or mortgaged property after filing for 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 is worth. In some cases involving fraud or other improper conduct by the creditor, you may be able to challenge the debt. If household goods are collateral for a loan (other than a loan to purchase the goods), you can usually keep that 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 exempt property and anything obtained after the bankruptcy is filed. However, if an inheritance, a property settlement, or life insurance benefits is received within 180 days after filing for bankruptcy, that money or property may have to be paid to creditors if the property or money is not exempt.

### **Will Bankruptcy Wipe Out All Debts?**

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

1. Money owed for child support or alimony, fines, and some taxes;
2. Debts not listed on the bankruptcy petition;
3. Loans obtained by knowingly giving false information to a creditor, who reasonably relied on it in making the loan;
4. Debts resulting from "willful and malicious" harm;
5. Most student loans, except if the court decides that payment would be an undue hardship;
6. Mortgages and other liens that are not paid in the bankruptcy case (but bankruptcy will wipe out the 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 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 the debtor's attorney.

### **What Else Must I Do to Complete a Bankruptcy Case?**

After a bankruptcy case is filed, you must complete an approved course in personal finances. This course will take approximately two hours to complete. Your attorney can provide a list of organizations that offer approved courses. In a chapter 7 case, you should sign up for the course soon after the case is filed. In a chapter 13 case, you should ask your attorney when to take the course.

### **Will Bankruptcy Affect My Credit?**

There is no clear answer to this question. Unfortunately, if a debtor is behind on bills, his or her credit may already be bad. Bankruptcy will probably not make things any worse.

The fact that a debtor has filed a bankruptcy can appear on a credit record for ten years. But because bankruptcy wipes out old debts, a debtor is likely to be in a better position to pay current bills and may be able to establish 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 and you do have to pay bills that arise after bankruptcy is filed.

**Discrimination.** An employer or government agency cannot discriminate against you because you have filed for bankruptcy.

**Driver's license.** If you lost a 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 the debt. If you file a chapter 13, you may be able to protect co-signers, depending upon the terms of the chapter 13 plan.

### **How Do I Find a Bankruptcy 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 you individually and to answer questions as necessary.

The best way to find a trustworthy bankruptcy attorney is to seek recommendations from family, friends or other members of the community, especially an 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.

In bankruptcy, as in all areas of life, remember that the person advertising the cheapest rate is not necessarily the best. Many of the best bankruptcy lawyers do not advertise at all.

Document preparation services also known as "typing services" or "paralegal services" involve non-lawyers who offer to prepare bankruptcy forms for a fee. Problems with these services often arise because non-lawyers cannot offer advice on difficult bankruptcy cases and they offer no services once a bankruptcy case has begun. There are also many shady operators in this field, who give bad advice and defraud consumers.

**When first meeting a bankruptcy attorney, you should be prepared to answer the following questions:**

1. What debts do you owe?
2. What debts are causing you the most trouble?
3. What are your assets?
4. How did the debts arise and are they secured by your property?
5. Is any action about to occur to foreclose or repossess your property or to shut off utility service?
6. What are your goals in filing bankruptcy?

**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. Chapter 7 (straight bankruptcy) cases are easier. Very few people have been able to successfully file chapter 13 (debt adjustment) cases on their own.

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