

# Answers to Common Bankruptcy Questions<sup>1</sup>

**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 handbook can not explain every aspect of the bankruptcy process. Do not hesitate to contact our office if you still have questions after reading it.**

## 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 of your creditors from seeking to collect debts from you, at least until your debts are sorted out according to the law.

## 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 fresh financial 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.)

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- 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 can not, 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 “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. Nevertheless, you generally can not keep the collateral unless you continue to pay the debt.
- Discharge types of debts singled out by the bankruptcy law for special treatment, such as child support, alimony, certain other debts related to divorce, most 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 co-signer may still have to repay all or part of the loan.

Discharge debts that arise after bankruptcy has been filed.

## 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 a Debtor to give up property which exceeds certain limits called “exemptions” so the property can be sold to pay creditors.
- *Chapter 11*, known as “reorganization” is used by businesses and a few individual Debtors whose debts are very large.
- *Chapter 12* is reserved for family, farmers and fishermen.
- *Chapter 13* is called “debt adjustment.” It requires a Debtor 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.

If your income is above the median income for a family the size of your household in Colorado, you may have to file a Chapter 13 case (the median family income for a family of 4 in Colorado in 2007 was approximately \$77,933.00). A higher-income consumer must fill out “means test” forms requiring detailed information about income and expenses. If, under standards in the law, the consumer is found to have a certain amount left over that could be paid to unsecured creditors, the Bankruptcy Court may decide that the consumer cannot file a Chapter 7 case, unless there are special extenuating 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 your giving up property, except for “exempt” property which the law allows you to keep. In most cases, all of your property will be exempt, but property which is not exempt is sold, with the money distributed 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. That is because Chapter 7 Bankruptcy does not eliminate the right 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 your home and car—which might otherwise be lost, if you can make the payments which the bankruptcy law requires to be made to your creditors. 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:

1. Own your 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;
3. Have valuable property which is not exempt, but you can afford to pay creditors from your income over time.

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

### **What Does It Cost to File for Bankruptcy? (Filing Fee Only)**

The Court now charges \$299.00 to file for bankruptcy under Chapter 7 and \$274.00 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 you cannot pay it 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 attorney's fees you agree to.

### **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. 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 bankruptcy forms in your 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. Also, being an "approved" agency for bankruptcy counseling is no guarantee that the agency is good. It is important to understand that even good agencies won't be able to help you 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 of your debts in which you send the counseling agency a monthly payment that it then distributes to your creditors. Debt Management Plans 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 Debt Management Plan as a way of avoiding bankruptcy whether it makes sense for you or not. It is important to keep in mind these important points:

- Bankruptcy is not necessarily to be avoided at all costs. In many cases, bankruptcy may actually be the best choice for you.
- 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 your bankruptcy case).
- 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 you with a list of approved credit counseling agencies, or you can check the website for the United States Trustee Program office at [www.usdoj.gov/ust](http://www.usdoj.gov/ust).

### **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.

#### **Colorado Exemptions**

- \$60,000 in equity in your home or sale proceeds if sold within the year prior to bankruptcy;
- \$50,000 - Farm machinery, tools, livestock
- \$3,000 - Household goods;
- \$2,000 - jewelry and watches;
- \$50,000 - Cash surrender value of a whole life insurance policy;
- \$5,000 in equity in motor vehicle or a bicycle; \$10,000 if elderly or disabled;
- \$1,500 - Personal books, family pictures;
- \$3,000 - Professional library;

- \$600 - Provisions and fuel;
- \$20,000 in things you need for your job (tools, books, etc.);
- \$1,500 - Wearing apparel;
- any amount in an IRA, 401(k), or pension plan;
- 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 (except homestead exemptions – only 1 per residence).

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 now, especially for furniture and cars, this may be a lot less than what you paid or what it would cost to buy a replacement.

You also only need to look at your equity in property. This means that 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 count your exemptions against the \$10,000 which is your equity if you sell it.

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 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. 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](http://www.usdoj.gov/ust). In

a Chapter 7 case, you should sign up for the course soon after your case is filed. If you file a Chapter 13 case, you should ask your attorney when you should take the course.

### **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 have filed a bankruptcy can appear on your credit record for ten years. 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.

### **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 which 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 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 a Chapter 13, you may be able to protect co-signers, depending upon the terms of your 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 any 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:

- What types of debt are causing you the most trouble?
- What are your significant assets?
- How did your debts arise and are they secured?
- Is any action about to occur to foreclose or repossess property or to shut off utility service?
- What are your goals in filing the case?

### **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.

***Remember: The law often changes. Each case is different. This pamphlet is meant to give you general information and not to give you specific legal advice.***