

Consumer Bankruptcy

Before there was freedom of speech, freedom of religion, the right against unreasonable search and seizure, the right against self-incrimination or the right to bear arms, our founding fathers sought to guarantee each and every United States citizen the right to file bankruptcy. In Article One, Section Eight of the United States Constitution, Congress was authorized to enact bankruptcy laws. Bankruptcy is a Constitutional right because those who drafted our Constitution believed that people should get a fresh start after experiencing financial distress. Imagine how different our lives might be if Henry Ford or Walt Disney had not been given a fresh start after their bankruptcies!

1. Who should file bankruptcy?

If you are unable to pay all of your bills with your current income, especially bills such as credit cards, bankruptcy may offer the relief that you need. Sometimes divorce, medical bills, the failure of a small business, or any setback can throw good people with good intentions into bankruptcy. When bad things happen to good people, they need a fresh start.

No one should file bankruptcy without first engaging in an in-depth consultation with an experienced bankruptcy attorney. Only after a thorough examination of your particular situation can a recommendation be made about whether or not bankruptcy is the right thing for you and what type of bankruptcy might be appropriate.

2. What types of bankruptcy are there?

For most individuals, there are two types of bankruptcy, Chapter Seven and Chapter Thirteen.

Chapter Seven is the liquidation chapter of the Bankruptcy Code. In theory, a trustee collects all of your property that is not exempt (See **“Exemptions Under Illinois Law” below**), sells it and uses the proceeds to partially pay your creditors. In general, however, most people for whom Chapter Seven is appropriate have only exempt property, which means that they often keep their property while having most of their debts forgiven or discharged.

Some debts, such as child support, alimony, court-ordered fines, debts obtained through fraud or deception, personal injury debts caused by driving while intoxicated, most taxes and most student loan debts may not be discharged in bankruptcy. Also, you may receive a Chapter Seven discharge only once every six years.

Chapter Thirteen permits individuals to keep their property by repaying creditors out of their future income. Each Chapter Thirteen debtor, with their attorney, writes a repayment plan that must be approved by the court and then, the debtor pays the trustee the amounts set forth in their plan and the trustee distributes payments to the creditors. Chapter Thirteen is generally for an individual who has a lot of non-exempt property that would otherwise have to be sold in a Chapter Seven bankruptcy and has had a temporary problem repaying debts. There are some specific restrictions on Chapter Thirteen bankruptcies that make them appropriate only about 10 percent of the time.

3. Will I lose my house?

Not necessarily. If the equity in your house does not exceed the exemption amount, you may keep your house in a Chapter Seven bankruptcy as long as you keep up the mortgage payments.

A Chapter Thirteen bankruptcy is often chosen largely because an individual debtor has a lot of equity in his or her home and they want to keep it. As long as the mortgage payments are made on time and the debtor can also make the payments to the trustee as agreed in the Chapter Thirteen plan, the debtor should have no problem holding on to a house. If a homeowner has fallen into arrears on mortgage payments, Chapter Thirteen is frequently used to halt or forestall foreclosure actions, but the obligation to make mortgage payments continues while the amount of the arrearage is put into the Chapter Thirteen plan for repayment over time.

4. Can my belongings be repossessed?

Generally, any property that is not collateral or security for a loan cannot be repossessed. Property that is exempt under state law cannot be taken from you nor can you be forced to sell it to satisfy any creditors.

If property is used as collateral or security for a loan, such as an auto loan, and the loan is in default and not repaid, the property can be repossessed by the lender and then sold to repay the balance on the loan. If the lender sells the property for less than the balance on the loan, the difference between the balance on the loan and the price received for the property when sold is called a deficiency. That deficiency is dischargeable in a Chapter Seven bankruptcy.

5. What happens to my credit rating?

The fact that you filed bankruptcy can appear on your credit report for as long as ten years. Filing a bankruptcy petition may affect your ability to obtain credit in the future. The way in which a potential lender interprets what they see on a credit report is entirely up to them. Certainly, credit is a privilege and not a right and some lenders will not look with favor on a loan applicant with a bankruptcy on their credit report.

6. Will I be able to get a mortgage and credit cards after bankruptcy?

Some lenders will look at a bankruptcy debtor as someone with no other debt, who cannot file another bankruptcy for another six years and perceive them as a relatively low risk. In fact, one of the greatest dangers for someone who has recently filed a bankruptcy is all of the credit card applications that they receive. At the interest rates many credit card companies charge, many will gladly extend credit to a recent bankrupt debtor. The temptation to apply for such credit cards should be resisted to avoid getting in the same kind of trouble that necessitated a bankruptcy filing in the first place.

In recent years, mortgage companies have become much more liberal in their lending practices. Though it will probably be tough to get a mortgage within the first year after a bankruptcy, if you can satisfy a mortgage lender that you can make mortgage payments, your chances of getting a mortgage after that first year could be quite good. Consult with a mortgage broker for more detailed information.

7. What about student loans and back taxes?

The general rule is that student loan debts and tax obligations are not dischargeable in bankruptcy. However, there are some exceptions to that rule.

Personal or individual tax obligations that are more than three years old may be dischargeable. If more than three years have elapsed since the filing of a particular personal tax return, the tax obligation that you showed on that return and older returns from previous years can be discharged in a Chapter Seven bankruptcy. Generally, in a Chapter Thirteen Bankruptcy, the tax obligations get repaid in whole or in part through the Chapter Thirteen plan.

If a student loan debt will impose an undue hardship on the debtor and the debtor's dependents, a student loan debt may be dischargeable in a Chapter Seven bankruptcy.

You may voluntarily repay any debt. However, it is necessary to list all of your creditors on a bankruptcy petition for your own protection. If you choose to repay certain ones after the fact or if you choose to enter into a reaffirmation agreement with some of them, you may.

9. When will creditors leave me alone?

As soon as the Bankruptcy Petition is filed with the Clerk of the U.S. Bankruptcy Court and the creditors are notified, the creditors are legally prevented from pursuing any collection action of any kind. This is referred to as the "Automatic Stay." After the filing, if any creditors telephone you or attempt to collect from you, refer them to your attorney.

10. How much does it cost to file bankruptcy?

There are two parts to the cost to file bankruptcy, 1) The filing fee and 2) The attorney fee. The filing fees are currently \$200.00 for a Chapter Seven Bankruptcy and \$185.00 for a Chapter Thirteen Bankruptcy. Attorney's fees will naturally vary. Check with a lawyer referral service in the county in which you live and call several different attorneys to inquire about fees.

EXEMPTIONS UNDER ILLINOIS LAW **(Property that cannot be taken from you, legally)**

1. \$7500.00 of any individual's interest in their residence (\$15,000.00 for married couples). Proceeds from the sale of your residence are exempt for one year after receiving such proceeds; same dollar limits.
2. All of your necessary wearing apparel, school books, family pictures and Bible without a dollar limit. This applies equally to your dependents.
3. Your interest in any property not to exceed \$2000.00 in value (the "Wild Card" exemption). For married couples, husband and wife each get an exemption of up to \$2000.00. Property is generally valued at the current market value, or what you would actually get for it if you sold it used, right now, at a garage or yard sale or alternatively at 10% of the original purchase price.
4. Up to \$1200.00 of your interest in any one motor vehicle. Husband and wife each get an exemption of up to \$1200.00 in a motor vehicle for married couples. If a married couple owns only one motor vehicle, their \$1200.00 exemptions may be combined for a \$2400.00 exemption in the one motor vehicle. Your interest is your equity in the vehicle, or the difference between the current market value of the vehicle and the balance on the auto loan.
5. Up to \$750.00 in value of your interest in any implements, professional books, or tools of your trade. Husband and wife each get this exemption as with other exemptions with dollar limits. These are valued at their current market value; what you would get for them if you sold them, for example, at a garage or yard sale or at 10% of the original purchase price.
6. Any professionally prescribed health aids for you or any of your dependents.
7. Proceeds of a life insurance policy and the cash value of any life insurance policies.
8. Social Security benefits, unemployment compensation, or public assistance benefits.
9. Veteran's, disability, illness or unemployment benefits and Worker's Compensation Benefits.
10. Alimony, support, or separate maintenance, to the extent reasonably necessary for your support and your dependent's support.
11. An award under a crime victim's reparation law, a payment on account of the wrongful death of someone whom you were dependent on and a payment under a life insurance contract that insured the life of someone whom you were dependent on.
12. A payment up to \$7500.00 on account of personal bodily injury to you or someone whom you depend on for support.

13. Retirement Plans. An interest in the assets held in or the right to receive pensions, annuities, benefits, distributions, refunds of contributions or other payments under a retirement plan. Retirement plans include: stock bonus, pension, profit sharing, annuity, or similar plan or arrangement, including a retirement plan for self-employed individuals or a simplified employee pension plan; a government or church retirement plan or contract; an individual retirement annuity or individual retirement account; and a public employee pension plan created under the Illinois Pension Code.
14. Any real property held in tenancy by the entirety in which you are one of the tenants. Applicable only if just one of the tenants by the entirety is filing a bankruptcy. If both husband and wife are filing a joint bankruptcy petition or if there is a judgment against both husband and wife, then the \$15,000.00 exemption in your residence applies.
15. 85% of your gross weekly wages or 45 times the current Federal Minimum Hourly Wage, whichever is greater, for any work week is exempt from collection.
16. Any property belonging to a partnership in which you are a partner.