

INFORMATION ABOUT BANKRUPTCY (Illinois)

SHOULD YOU FILE BANKRUPTCY?

Filing bankruptcy may be a solution for your legal problems, but it is not for everybody. The following is a list of some of the pros and cons of filing bankruptcy.

- for + most debts are discharged (wiped out), giving you a fresh start (see other side for details)
- + stops garnishments and harassment by collection agencies
- + foreclosures and repossessions are stopped and cannot go ahead without court approval
- + you can keep exempt property (see list on other side)
- + you can stop utility shutoffs, or restore service after paying a reasonable deposit, then pay only for current service
- + employers and public agencies cannot retaliate against you for filing bankruptcy
- against - bankruptcy stays on credit rating for 10 years
- getting credit may be harder or more expensive
- can cause strain in relationship with some creditor and cosigners
- may have to return property that is not paid for (Chapter 13 can be used to save some property)
- can only get a Chapter 7 discharge once in an eight year period
- you may be able to protect your income and property without filing bankruptcy

PROTECTIONS IF YOU FILE BANKRUPTCY

Automatic Stay. Once you file bankruptcy, all collection activity by your creditors or collection agencies must stop. Foreclosures and repossessions cannot go ahead unless the Bankruptcy Court gives its permission. Exception -if you have filed before and the case was dismissed in the previous year, special rules apply to the automatic stay.

Fresh start. After a bankruptcy is filed a utility must restore service; you must provide assurance of future payment by paying a deposit.

No discrimination. It is illegal for your employer to fire you for filing bankruptcy. If you do not file bankruptcy, it is illegal for your employer to fire you for one garnishment, but it is legal for your employer to fire you if you get garnishments for more than one debt. A government agency cannot deny a license or discriminate against you because you have filed bankruptcy, although it can deny you credit if your credit is otherwise bad.

HOW DO YOU FILE BANKRUPTCY?

You must get credit counseling from credit counseling agency approved by the United States Trustee. Except in extreme circumstances, this must be completed **before** you file. You file papers listing **all** your debts and **all** property you own, your recent and current income, your expenses, and answer some other questions about your finances. All of these forms must be answered honestly and completely or else you will not receive the benefits of a bankruptcy. There is a filing fee of \$274 for a Chapter 13 and \$299 for a Chapter 7 bankruptcy (Chapter 7 filing fee can be waived if you are poor and the Judge waives the fee.)

After the papers are filed with the Bankruptcy Court, you must go to a "meeting of creditors". At this meeting the trustee, who represents your creditors, will ask you questions about the papers you filed and about your finances. Before the meeting you must provide copies of recent tax returns and paystubs to the trustee. Also, any individual creditor can appear and ask you questions.

CHOOSING BETWEEN CHAPTER 7 AND CHAPTER 13 BANKRUPTCY

Usually you have a choice whether to file under Chapter 7 or Chapter 13. The other side of this brochure is a comparison of some of the major differences between Chapter 7 and Chapter 13. **You should consult with an attorney before you make a final decision what kind of bankruptcy to file, or whether to file at all.**

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CHAPTER 7 BANKRUPTCY

Summary. In this type of bankruptcy you receive a "discharge" of all your debts, except for certain types of debts. A "discharge" is a court order that you no longer have to pay the debt. You can also keep certain types of property ("exempt" property).

Debts. Most debts are discharged. Debts that are not dischargeable in a Chapter 7 include, child support, alimony, fines, most taxes, criminal restitution orders, debts due to fraud, theft or embezzlement, damages to another person caused by drunk driving or willful and malicious conduct, debts arising out of a property settlement in a divorce, student loans unless paying back the student loan would be an undue hardship, and some other types of debts.

Property. You can keep exempt property as long as it is not subject to a lien (a mortgage or security interest). Liens on property generally survive a Chapter 7 bankruptcy. The major types of **exempt property** are:

1. up to \$15,000 of equity in a home, including a mobile home, cooperative or condominium;
2. up to \$2,400 of equity in one motor vehicle;
3. necessary clothing;
4. up to \$4,000 of personal property of any kind;
5. tools of the trade;
6. pension benefits and qualified retirement accounts.

Garnishment. Bankruptcy stops garnishment of wages or other income for any debts other than child support or alimony.

CHAPTER 13 BANKRUPTCY

Summary. The debtor proposes a plan to repay creditors. The Court reviews the Chapter 13 plan and will approve it if the plan can work and meets the requirements of the bankruptcy laws. Payments are made to the Chapter 13 trustee, who pays the creditors according to the plan. The debtor can keep some property that would be lost in a Chapter 7.

Chapter 13 requirements. You must pay your creditors in full if you can. If that is not possible, you must pay all of your disposable income (the income left over after paying your necessary living expenses) for 3-5 years. Once the plan is completed you will get a discharge of debts. You must pay certain back taxes, and any arrearages in child support and alimony in full during the plan.

Advantages over Chapter 7. In addition to the benefits of a Chapter 7, you can keep property that is secured by a lien by paying for it through the Chapter 13 plan. This can save a home from foreclosure, or stop repossession of a car. Chapter 13 can also stop evictions, if filed before the 5 day notice or other lease termination expires and if you can pay the back rent owed through the Chapter 13 plan. If you cannot repay all of your debts, but have made the best effort to pay that you can, you can get a discharge of the balance left on your debts, although you cannot remove a lien unless you have paid it off through the plan. You can discharge (wipe out) some debts that cannot be discharged in Chapter 7. All debts except alimony, child support, criminal fines and restitution, damages to individuals caused by drunk driving or intentional torts, money owed due to fraud, theft or embezzlement, most taxes and long term debts, such as mortgages, can be discharged in a Chapter 13. Student loans are not discharged unless denying a discharge would cause an undue hardship to the debtor.

Special rules for Chapter 13. If you fall behind on your payments, the payments can be deducted directly from your paycheck. While you are in Chapter 13 you cannot get new credit without the trustee's approval.

WHO CAN FILE A BANKRUPTCY?

If you have filed bankruptcy before, you cannot obtain another discharge under Chapter 7 for eight years; however, you can file a Chapter 13 to protect property as long as the Chapter 13 is filed in good faith.