

CAN I KEEP WHAT I PUT UP AS COLLATERAL (SECURITY) ON A LOAN?

Usually these things can be taken back by the person who made the loan. If this happens, you will not have to pay anything owed on the debt. It will be discharged in the bankruptcy. To keep the property, you will usually have to either reaffirm the debt and pay off the loan or pay the lender the actual value of the property. There are some exceptions, so talk with your lawyer.

CAN I BE SUED AFTER FILING BANKRUPTCY?

The minute the Chapter 7 or 13 bankruptcy papers are filed, creditors must temporarily stop all collection efforts, including lawsuits, garnishments, foreclosures and repossessions. After the court discharges the debts, the creditors can never legally try to collect the discharged debts. You should tell your lawyer if anyone later tries to collect those debts.

SHOULD MY SPOUSE ALSO FILE BANKRUPTCY?

In Tennessee a spouse is liable for food, clothing, shelter, medical expenses, and other expenses of the other spouse. In addition, your spouse would be liable for other debts if he/she cosigned that debt.

If both spouses are liable for a debt, but only one goes bankrupt, the creditors can go after the spouse who did not file bankruptcy.

OFFICE HOURS AND LOCATION

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This pamphlet is intended for general information only. The circumstances of every case are different and need to be dealt with on a case-by-case basis. This is not a substitute for the advice of a lawyer. Also, the law may change and may be different from county to county.

BANKRUPTCY CHAPTER 7 AND 13: QUESTIONS AND ANSWERS



LEGAL AID OF EAST TENNESSEE

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WHAT IS A BANKRUPTCY?

Bankruptcy is the legal process by which your debts are “discharged” by Federal Bankruptcy Court. After this discharge, creditors listed on your bankruptcy papers cannot legally make you pay those debts.

WHEN SHOULD I FILE A CHAPTER 7 BANKRUPTCY?

You should talk to a lawyer about filing a Chapter 7 bankruptcy if your wages are being garnished or will be garnished because of court judgments against you. At present, wages cannot be garnished if you earn \$175.50 or less per week.

WHEN SHOULD I FILE A CHAPTER 13 BANKRUPTCY?

You should talk to a lawyer about filing a Chapter 13 bankruptcy if you have large unpaid debts and you want to keep your home. A Chapter 13 lets you pay off your debts through the court.

WHAT DO I HAVE TO DO IF I FILE A BANKRUPTCY?

You must give your lawyer a complete list of

what you own including money, land, personal property; anything of value. List all your debts, judgments and lawsuits against you.

Tell your lawyer everything about your money situation. Filing bankruptcy will only protect you from the debts listed on the bankruptcy form. Also, list the debts you want to pay.

You must pay \$299 to file a Chapter 7 bankruptcy and \$274 to file a Chapter 13 bankruptcy. There will be a fee for the lawyer’s services. There are also charges for credit counseling and financial courses now required by law.

When you file bankruptcy there are some things the law allows you to keep. If you have a home you can keep \$5,000 of the equity if you are single, \$7,500 of equity if you are married and filing bankruptcy with your spouse, \$12,500 of the equity if you are 62 and single, \$20,000 if married and one person is 62 or older, and \$25,000 in equity if married and both persons are over 62. If a person has one or more minor children in their custody they can exempt \$25,000 on real property owned by the individual and used by individual as a principal place of residence. Each person is allowed to keep an additional \$4,000 worth of personal property such as furniture, cars, cash, etc. Each person is allowed to keep all of their clothes and a burial plot if already purchased.

WHAT HAPPENS WHEN I FILE?

The court notifies everyone listed in your bankruptcy that you have filed bankruptcy and gives them the date for a “creditors’ meeting”.

You and your lawyer will go to a “creditors’ meeting”. The trustee (a lawyer appointed by the bankruptcy judge) will ask you about your bankruptcy papers. This is to make sure the information is complete and correct. Your creditors will also have a chance to ask about your assets, debts and property. Usually only secured creditors (creditors who have collateral) appear at the creditors’ meeting.

The court usually discharges the debts eight to twelve weeks after your bankruptcy papers are filed if there are no legal problems with your bankruptcy papers and if your debts are the kind that can be discharged. Not all debts (certain taxes, alimony, child support, student loans) can be discharged in a bankruptcy.

HOW OFTEN CAN I FILE BANKRUPTCY?

You can file a Chapter 7 bankruptcy once every 8 years.

WHAT CAN I DO IF MY MORTGAGE COMPANY IS THREATENING TO FORECLOSE ON MY HOME?

Filing a Chapter 13 bankruptcy will stop foreclosure and you will not lose your equity in your home. Act promptly. Contact a lawyer.

You can file a Chapter 13 bankruptcy to pay off all or some of your debts through a plan approved by the Bankruptcy Court.

Once the Chapter 13 bankruptcy is filed you will need to continue to make regular monthly mortgage payments. The plan will set up an additional amount you must pay on the past due amount each month.