

BANKRUPTCY CHAPTER 7 AND 13 QUESTIONS AND ANSWERS



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WHAT IS 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. Your wages can be garnished if you work at least 30 hours per week at or above minimum wage.

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. Also, list the debts you want to pay, such as a house or car.

You must pay \$335 to file a Chapter 7 bankruptcy and \$275 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. These fees may be waived if Legal Aid represents you in a bankruptcy.

When you file bankruptcy there are some things the law allows you to keep. If you own your home, and it is your principal place of residence, the Tennessee homestead exemption allows a single homeowner to exempt \$5,000 from the sale of their home, and \$7,500 for a couple. If you have one or more minor children in your custody, you have a homestead exemption of \$25,000. If you are 62 or over and single you have a homestead exemption of \$12,000. If you are married, and one person is 62 or older, you have a homestead exemption of \$20,000. If you are married, and both of you are 62 or older, you have a homestead exemption of \$25,000. You should see an attorney if your creditor tries to sell your home to collect a judgment. Each person is allowed to keep an additional \$10,000 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 can be discharged in a bankruptcy. Some debts that are not able to be discharged are alimony, child support, and student loans.

HOW OFTEN CAN I FILE BANKRUPTCY?

You can file a Chapter 7 bankruptcy once every eight 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 may 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.

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

Usually collateral must be given back to the creditor that gave you 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 keep 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 Chapter 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.

CAN MY SPOUSE ALSO FILE BANKRUPTCY?

In Tennessee a spouse is liable for food, clothing, shelter, medical expenses, and other necessities 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

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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.

