

BANKRUPTCY; IS IT THE RIGHT OPTION FOR ME?

Introduction:

If you are reading this pamphlet you are probably in debt. If so, you are no doubt being called by debt collectors. These debt collectors, whose job is to frighten you into paying your debts, may have caused you to start worrying about being sued, and - also - about what may happen if a creditor obtains a court judgment against you. If you own a home you are worrying about whether you can afford to keep it, and whether your creditors can take it from you. You are wondering whether or not you should file bankruptcy.

At the outset, don't believe everything you are being told by debt collectors. You cannot be put in jail for failure to pay consumer debts in America. While failure to pay court ordered child support or alimony can, sometimes, result in incarceration for Contempt of Court, the American Constitution says you cannot be jailed for debt.

Similarly, contrary to what you may have been told, the mere fact that someone has taken a judgment against you does not necessarily mean that they can force the sale of your home and belongings, or - even - that they can garnish your income. Mississippi, like every other state in the nation, has laws, which allow you to keep your essential belongings safe from your creditors unless you have voluntarily given them a security interest in such items. There are also laws limiting the amount of your wages, which can be garnished, and completely prohibiting the garnishment of social security, veteran, worker's compensation, and unemployment benefits. For a more complete discussion of these benefits see our pamphlet "*How To Declare Your Exemptions And Keep Your Property Safe From Creditors.*"

Again, contrary to what debt collectors may have told you, the fact that you are not currently able to pay your debts despite your best efforts to do so does not mean you are immoral, a bad person, or a criminal. The Constitution of the United States provides us the right to file bankruptcy, as do both federal statutes and the laws of the State of Mississippi. In fact, you may be surprised to learn that the Bible itself states that all debts should be released every seven (7) years:

“At the end of every seven years thou shalt make a release. And this is the manner of the release: every creditor shall release that which he has lent unto his neighbor and his brother; because the Lord's release hath been proclaimed.

Deut. 15:1-2.

You may be interested to learn that many famous people and even large corporations have filed bankruptcy so as to obtain a fresh start. For instance Texaco, Macy's, T.W.A., Penn Central, World Com, United Airlines, Jerry Lewis, Mickey Rooney, Tammy Wynette, and even former United States Treasury Secretary John Connally have filed bankruptcy, to name just a few.

So, bankruptcy is not always necessary, but - should it become necessary - it is not something about which you need to feel ashamed.

Finally, again contrary to what you may have been told, while some debts are not dischargeable in bankruptcy, most debts can either be eliminated, or - at the very least - your past due payments can usually be put into a payment plan

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.

Once your debts are sorted out your exempt assets will be separated from your non-exempt assets. Your non-exempt assets will be used to pay your creditors in an order determined by federal law. At the conclusion of the bankruptcy proceeding all dischargeable debts will be discharged and you will be left with your exempt assets. For a discussion of what assets are exempt see our pamphlet "*How to declare your exemptions and keep your property safe from creditors*"

What Can Bankruptcy Do For Me?

Bankruptcy *may* make it possible for you to:

1) 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.

2) 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.).

3) Prevent repossession of a car or other property, or force the creditor to return property even after it has been repossessed.

4) Stop wage garnishment, debt collection harassment, and similar creditor actions to collect a debt.

5) Restore or prevent termination of utility service.

6) 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 Cannot Do.

Bankruptcy cannot however, cure every financial problem. Nor is it the right step for every individual. In bankruptcy, it is usually not possible to:

1) 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 cannot keep the collateral unless you continue to pay the debt.

2) Discharge debts singled out by the bankruptcy law for special treatment such as child support, alimony, certain other debts related to divorce, some student loans, court restitution orders, criminal fines and some taxes.

3) Protect cosigners on your debts. When a relative or friend has co-signed a loan, and the consumer discharges the loan in bankruptcy, the cosigner may still have to repay all or part of the loan.

4) Discharge debts that arise after bankruptcy has been filed.

Persons Who Do Not Need To File Bankruptcy

There is an old folk saying: “You can’t get blood from a turnip.” If your income and assets fall below a certain level, or are of a certain type, they may be completely exempt from collection by creditors. If this is the case there may be no *legal* need for you to file bankruptcy since you have nothing, which can be taken from you if you take the appropriate steps to declare your property exempt.

For instance, if you own less than \$10,000.00 worth of tangible personal property, your equity in your home is worth less than \$75,000.00, and your sole source of income is protected such as - for instance - social security, you have nothing which an unsecured creditor can get even if they take you to court and obtain a judgment. For a more complete discussion of Mississippi's exemption statutes see our pamphlet "*How To Declare Your Exemptions And Keep Your Property Safe From Creditors.*" .

Some people may be in financial trouble despite a more than adequate income due to an inability to budget and live within their means. If you fall in this category you may wish to consult a reputable non-profit debt counseling service. They may be able to help you work out a repayment agreement with your creditors and help you learn to live within your income. In the long run such a solution may leave you better off than resorting to bankruptcy. However, if you choose this option remember it is almost always a mistake to borrow against your home, car or other paid off assets to pay off unsecured debt. This is because unsecured debt is dischargeable should you later have to file bankruptcy. Secured debt is not.

Other persons may be experiencing temporary cash flow problems such as result from the loss of a job. If you fall in this category you will usually find that your creditors are more than happy to work with you rather than see you file bankruptcy. Moreover, it is almost always advisable to wait to file bankruptcy until after you are once again employed as you are likely to continue accumulating debt until you find a job.

Some people may have debts, which may not be able to be discharged in bankruptcy. Debts for back taxes, student loans, child support, alimony, or damages caused by drunk driving or intentional torts are extremely difficult, and sometimes impossible to discharge in a Chapter 7 bankruptcy proceeding although they may be scheduled in a Chapter 13 bankruptcy. If your debts fall in these categories bankruptcy may not be the best option for you.

Finally, some people may be barred from filing bankruptcy because a previous bankruptcy petition was dismissed in the last 180 days for willful failure to abide by court orders or to appear in court in proper prosecution of the case, or because they voluntarily dismissed a case after a creditor filed a request for relief from the automatic stay. Similarly, some people may be prohibited from filing a Chapter 7 Bankruptcy Petition if it is less than six (6) years since they last filed bankruptcy under Chapter 7.

Persons Who May Benefit From Filing Bankruptcy.

Some people, even though their assets and income are all within the protection of Mississippi's exemption statutes, may nonetheless legitimately feel they need to file bankruptcy. These are people who may have medical conditions, which are adversely affected by stress. People with bad hearts, Acquired Immune Deficiency Syndrome, serious depression, may have a medical need to file bankruptcy to eliminate their indebtedness and the stress associated with calls from debt collectors and the inability to pay their bills.

Other people may have fallen behind on their house note or car payments but do have income coming in to the household. If their creditors have been unwilling to work with them bankruptcy may enable them to avoid foreclosure or repossession by forcing their creditors to accept a payment plan.

Some people may need to file bankruptcy to avoid having their wages garnished or income otherwise disrupted.

Others may need to discharge their debts to aid in their job search as some potential employers may consider heavily indebted employees to be security risks.

Still others may have lost or be about to lose their driver's license due to their inability to pay a judgment resulting from an auto accident. Such persons may need to file bankruptcy to regain or retain their driving privileges.

What Different Types of Bankruptcy Should I Consider?

There are four types of bankruptcy provided under the law:

- 1) Chapter 7 is known as "straight" bankruptcy or "liquidation."
- 2) Chapter 11, known as "reorganization," is used by businesses and a few individuals whose debts are very large.
- 3) Chapter 12 is reserved for family farmers and is being phased out.
- 4) 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 can be filed individually or by a married couple filing jointly.

Chapter 7 (Straight Bankruptcy)

In a bankruptcy case filed 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 or discharge your debts in exchange for giving up your non-exempt property to your creditors. In most cases all or most of your property will be exempt, but property, which is not exempt is either sold or returned to those creditors whom you have given a voluntary security interest in the property.

In addition to allowing you to keep your exempt property in which you have not voluntarily given a creditor a security interest as discussed above, it is also possible in a chapter 7 bankruptcy to eliminate a creditor's security interests taken in "household goods" so long as they were not taken pursuant to a purchase money loan. It may also be possible to eliminate non-purchase money security interests taken in certain other types of tangible personal property so long as each item is worth less than \$200.00 each, and cumulatively they total less than \$10,000.00. This ability to wipe out security interests in certain items is one reason to consider filing a bankruptcy.

If you want to keep property like a home or a car and are behind on the payments on your mortgage or car loan, a chapter 7 case probably will not be the right choice for you. Instead you will probably want to consider a chapter 13 bankruptcy.

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?

It now costs \$245.00 to file for bankruptcy under chapter 7 and \$235.00 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 all at once. If you hire an attorney you will also have to pay the attorney's fees you agree to.

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. In Mississippi you are required to use the exemptions authorized by Mississippi law. These exemptions include, among various others:

- \$75,000 in equity in your homestead;
- \$20,000 in equity in your trailer if you live in it and do not own the land under it;
- \$10,000.00 in tangible personal property;
- Your right to receive certain benefits such as social security, unemployment compensation, veteran's benefits, public assistance, and pensions.

The amount of the exemptions may be doubled when a married couple files together.

For a more complete discussion of Mississippi's exemption statutes see our pamphlet "*How To Declare Your Exemptions And Keep Your Property Safe From Creditors.*" .

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 only need to use your "equity" in property when calculating your exemptions. Your equity is the sum, which remains after any money that you owe on mortgages or liens is subtracted from the property's full value. For example, if you own a \$50,000 home with a \$40,000 mortgage, you count your exemptions against the \$10,000, which is your equity if you sell it.

While declaring your property exempt will allow you to keep much of your property safe from your creditors in a chapter 7 case, your exemptions do not make any difference to the right of a mortgage holder, car loan creditor, or other secured creditor to recover property in which they hold a non-voidable security interest if you are behind on your payments. For a discussion of voidable security interests see the Section titled ***Chapter 7 (Straight Bankruptcy)*** above.

In a chapter 13 case, you can keep all of your property if your plan meets the requirements of the bankruptcy law by scheduling a payment plan for your arrearages. In most cases you will have to pay the mortgages or liens as you would if you didn't file bankruptcy, plus an additional payment to catch up your arrearage.

What Will Happen to My Home and Car If I File Bankruptcy?

In most cases you will not lose your home or car during your bankruptcy case as long as your equity in the property is fully exempt. Even if your property is not fully exempt, you will be able to keep it, if you pay its non-exempt value to creditors in chapter 13.

However, some of your creditors may have a "security interest" in your home, automobile or other personal property. This means that you gave that creditor a mortgage on the home or put your other property up as collateral for the debt. Bankruptcy does not make these security interests go away. If you don't make your payments on that debt, the creditor may be able to take and sell the home or the property, during or after the bankruptcy case. If this happens you would still get to keep any equity you may have had which is realized at sale over and above what you owed on the property.

There are several ways that you can keep collateral or mortgaged property after you file bankruptcy in a chapter 7. You can agree to keep making your payments on the debt until it is paid in full or some negotiated amount (this is called a reaffirmation). Or you can pay the creditor the amount that the property you want to keep is worth. In some cases involving fraud or other improper conduct by the creditor, you may be able to challenge the debt. If you put up your household goods as collateral for a loan (other than a loan to purchase the goods), you can usually keep your property without making any more payments on that debt.

As discussed above chapter 13 provides another mechanism for keeping mortgaged property even though you may be behind on your note by allowing you to schedule a payment plan on the arrearage.

Can I Own Anything After Bankruptcy?

Yes! Many people believe they cannot own anything for a period of time after filing for bankruptcy,. This is not true. You can keep your exempt property and anything you obtain after the bankruptcy is filed. However, if you receive an inheritance, a property settlement, or life insurance benefits within 180 days after filing for bankruptcy, that money or property may have to be paid to your creditors if the property or money is not exempt.

Will Bankruptcy Wipe Out All My Debts?

Yes, with some exceptions. Bankruptcy will not normally wipe out:

- (1) money owed for child support or alimony, fines, and taxes;
- (2) debts not listed on your bankruptcy petition;
- (3) loans you got by knowingly giving false information to a creditor, who reasonably relied on it in making you the loan;
- (4) debts resulting from “willful and malicious” harm;
- (5) student loans owed to a school or government body, except if:
 - the court decides that payment would be an undue hardship, or
 - you can show that the school closed while you were still attending.
- (6) mortgages and other liens which are not paid in the bankruptcy case (but bankruptcy will wipe out your obligation to pay any additional money if the property is sold by the creditor).

Will I Have to Go to Court?

In most bankruptcy cases, you only have to go to a proceeding called the “meeting of creditors” to meet with the bankruptcy trustee and any creditor who chooses to come. Most of the time, this meeting will be a short and simple procedure where you are asked a few questions about your bankruptcy forms and your financial situation.

Occasionally, if complications arise, or if you choose to dispute a debt, you may have to appear before a judge at a hearing. If you need to go to court, you will receive notice of the court date and time from the court and/or from your attorney.

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've filed a bankruptcy can appear on your credit record for ten years. But since 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 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.

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.

Paying for debt counseling is almost never a good idea. There is almost nothing that a paid debt counselor can offer other than a recommendation about

whether bankruptcy is appropriate and a list of highly priced debt consolidation lenders. There is no good reason to pay someone for this service. A reputable attorney will generally provide counseling on whether bankruptcy is the best option. This avoids the double charge of having to pay a counselor and then an attorney. If bankruptcy is not the right answer for you, a good attorney will offer a range of other suggestions.

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.

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 and income sources?
- 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?
- Are you up to date on your secured debts?
- What are your goals in filing the case?
- Do you have any pending or contemplated litigation?
- Do you have a valid social security card and picture I.D.
- Have you ever filed bankruptcy before and - if so - when?

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. While every effort has been made to be accurate as of the time of writing no warranties, express or implied, are made regarding the foregoing information. This pamphlet has been provided free of charge and no attorney/client relationship is created hereby.*

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