

This brochure is for **general** information. If you need legal advice about bankruptcy, you should contact an attorney. *Please note that any bankruptcy laws are subject to change by Congress at any time.*

WHAT IS BANKRUPTCY?

Bankruptcy is federal law which allows a person in financial distress to get a fresh economic start. Bankruptcy provides both relief from debts and protection from creditors. A married couple may file a joint bankruptcy case.

The two types of bankruptcy which are generally available to individual debtors are **Chapter 7** ("straight bankruptcy") and **Chapter 13** ("debt-payment plan").

A Chapter 7 bankruptcy allows you to discharge many debts, which means that you are no longer legally responsible for them. A Chapter 13 case allows you to repay all or part of your debts under a 3 to 5 year plan in regular installments (usually monthly). The amount of your installment payments depends on your ability to pay, and, of course, you must have a reliable source of income.

WHAT PROTECTION DOES BANKRUPTCY PROVIDE?

Once a bankruptcy case is filed, all creditor collection must stop. Creditors may not call, write, bill, visit, repossess, foreclose, file a lawsuit, or continue with a lawsuit already in progress. Any court-ordered wage garnishments will also be stopped.

Creditors may resume collection only if granted permission by the Bankruptcy Court. This may happen if the debtor agrees, or in certain other circumstances.

WHAT DEBTS ARE DISCHARGED IN BANKRUPTCY?

In a Chapter 7 case, many debts can be discharged, such as medical bills, credit cards, "payday" and other loans, back-rent, delinquent utility bills, and debts owed after repossession.

Some debts owed to government can be discharged.

Some debts, however, **cannot** be discharged. These include child support, some tax debts, most student loans, criminal fines or penalties, very recent credit card charges, or debts in which the creditor proves fraud. There are other debts (such as car payments) in which it may be better to continue making payments. There are certain exceptions to these rules, which your attorney will discuss with you.

In a Chapter 13 case, your debts will be put into a repayment plan.

WHAT ABOUT MORTGAGES AND SECURED DEBTS?

Either a Chapter 7 or Chapter 13 may help you resolve problems with "secured" debts, such as mortgages and debts in which you have pledged property (car, furniture, etc.) as collateral.

MORTGAGES: If you file Chapter 7, you may keep your home by reaffirming, which means signing an agreement to continue paying your mortgage. Mortgage-holders usually agree to reaffirm when payments are current. If you are behind, you will normally have to catch up or make arrangements to do so.

If you file a Chapter 13, your plan may include any mortgage arrears (back-payments), including property taxes. Current mortgage payments must continue to be paid.

OTHER SECURED PROPERTY (CARS, FURNITURE, ETC.): In Chapter 7 cases, some kind of security interests (liens) on household property can be extinguished (wiped out). In other cases, you must agree to make or continue payments in order to keep the property. Sometimes, you can negotiate lower or lump-sum payments to keep the property. Sometimes, debtors elect to surrender the property and owe nothing. Your attorney will advise you of your options.

In Chapter 13 cases, secured debts can be put into your repayment plan. You keep the property as long as you continue making your plan payment.

WILL I LOSE ANY PROPERTY?

In Chapter 7, state "exemption" laws allow you to keep certain amounts of property you own. In most Chapter 7 cases, persons keep all their property. There are certain exceptions, such as large tax refunds, or secured property you wish to surrender (see above). Your attorney will review your options with you.

In Chapter 13, you'll usually keep all property, if your plan is approved.

WHEN SHOULD I CONSIDER BANKRUPTCY?

Bankruptcy may be an option in any of the following circumstances:

- If you have very high debts, and no realistic possibility of paying them or becoming current in the foreseeable future;
- If you have wages which are being garnished or may be garnished;
- If you have been subject to lawsuits, repossession (actual or threatened) or repeated, long-term debt collection or harassment;
- If you believe you can pay future debts and expenses, if given a fresh start by discharging most or all your existing debts.

On the other hand, it may not be a good idea to file bankruptcy now, if you are unemployed or have no medical insurance, since it will be more difficult to stay out of debt, even after bankruptcy. Similarly, if you have no wages which can be seized by creditors, it may be better to wait until you are working, and may need bankruptcy to protect your wages.

There are other reasons for not filing bankruptcy. For example, your total debts may be too low. There may be reasons why you are ineligible for bankruptcy. Some of your debts may not be dischargeable. You may lose some kinds of property (like tax refunds). In any case, your attorney will review all your financial circumstances, in order to help you decide whether bankruptcy is right for you, and if so, whether a Chapter 7 or Chapter 13 would be best.

HOW WILL BANKRUPTCY AFFECT ME IN THE FUTURE?

Generally, bankruptcies will remain on your credit record for up to ten years, from the date you file the case. You are not, however, forbidden from obtaining credit. In fact, there are lenders who are willing to loan to people who have filed bankruptcy – but usually at higher interest rates. You should be very careful about incurring debt after bankruptcy – don't be too eager to "rebuild" your credit record, or you may wind up right back in financial trouble.

The law protects you from certain forms of discrimination because you filed bankruptcy, such as firing or denial of a license.

If you have filed Chapter 7, and were discharged, you may not file another Chapter 7 for eight years. Different rules apply for Chapter 13's, and you should consult an attorney.

WHEN MIGHT A CHAPTER 13 BE ADVISABLE?

If you have a steady, reliable income, you may be advised to file a Chapter 13 in the following circumstances:

- If you have a steady, reliable income, you may be advised to file a Chapter 13 if you are behind in mortgage or car payments;
- If you have substantial non-dischargeable debts such as student loans, and have been unable to work out payments with your lenders;
- If you have co-signers on your debts, whom you wish to protect (usually a Chapter 7 will not protect cosigners);
- If you are ineligible for Chapter 7 (such as under the 8 year rule);
- If you own too much property to keep it all in a Chapter 7.
- If you prefer to pay your debts, but need them extended, reduced, or both, in order to do so.

WHAT DOES BANKRUPTCY COST?

The court filing fee for a Chapter 7 case is presently \$274, and for a Chapter 13 is \$189 (note, these may be subject to change at any time).

You can get permission to pay them in installments. If your income is less than 150% of the federal poverty guidelines, you may be allowed to waive the filing fee altogether.

If you retain a private attorney for a Chapter 7, attorneys fees vary and are set by the attorney. They may depend on how complicated your case is. Some attorneys may require fees in advance of filing, while others may allow payment later (such as in installments, or when you receive your tax refund). Many attorneys do not charge fees for the first consultation. Make sure, however, you understand the attorney's fees and arrangements. Chapter 13 fees are usually higher – but they may be included in your payment plan, making them affordable to you.

DID THE BANKRUPTCY LAWS CHANGE IN 2005?

Yes. There were significant changes, which apply to all bankruptcy cases filed on or after October 17, 2005. Please refer to our separate brochure, "How Did Bankruptcy Laws Change in 2005?" for more information.

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To Submit an Application for Legal Assistance, Call ILS Intake:

Bloomington:
800-822-4774

Indianapolis:
800-869-0212

Evansville:
800-852-3477

Lafayette:
800-382-7581

Fort Wayne:
888-442-8600

New Albany:
800-892-2776

Gary/Hammond:
317-888-255-5104

South Bend:
800-288-8121

MORE INFORMATION ABOUT LEGAL ISSUES AND FINDING LEGAL HELP IS AVAILABLE ON THE INTERNET AT

WWW.INDIANAJUSTICE.ORG

INFORMATION ABOUT BANKRUPTCY

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Consumer Law Center

This is for information only. It is **NOT** legal advice. For legal advice, contact a private attorney or a lawyer at the nearest Legal Services Office.

Laws and Policies change. Please look at the last revised date to make sure the information is still current.

Information Available on the web www.indianajustice.org