



Legal Briefs

From the Fort Knox Legal Assistance Office

BANKRUPTCY

WHAT IS BANKRUPTCY?

Bankruptcy is a legal action 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 for by federal law, and all bankruptcy cases are handled in federal court.

A person who files for bankruptcy is called a Debtor.

By filing for bankruptcy, you may:

- 1) Get most or all of your bills wiped out (Discharged);
- 2) Get to keep most or all of your property which otherwise might have been lost to creditors (people to whom money is owed);
- 3) Get extra time to pay bills, if you have regular income;
- 4) Stop wage garnishment, debt collection harassment, and similar creditor actions to collect a debt;
- 5) Restore or prevent termination of utility service.

There are two kinds of bankruptcies for individuals: Chapter 7 (Liquidation) and Chapter 13 (Reorganization).

CHAPTER 7: LIQUIDATION

In a bankruptcy under Chapter 7, a court may discharge (cancel) all (eligible) debts. In exchange for discharging your debts, all of your non-exempt property will be sold (liquidated) and distributed to creditors. In many cases, most of the debtor's property is exempt from liquidation. Some examples of exempt property are listed below. A debtor must also receive approved credit counseling before they can file for bankruptcy.

One significant limitation to liquidation is that your income is subject to a "means test" that evaluates whether you are eligible for bankruptcy based on your ability to pay creditors. If your income is above the state median income (\$56,768 for a family of four in Kentucky), then the court will apply the means test to evaluate how much of your income is available to pay creditors. The means test uses your average monthly income over the past six months. Certain expenses will be deducted such as housing, transportation, food, etc. The amount left over (presumed as the amount available to pay creditors) is multiplied by 60. If the total exceeds \$10,000 or 25% of your unsecured debt, then you may not be able to have your debts discharged.

In order to file for bankruptcy you will need to file with the court. To do this you will need:

- 1) A list of all your creditors including the amount owed and type of claim
- 2) Detailed income information
- 3) A list of all of your property
- 4) A detailed description of your monthly expenses
- 5) The official petition for bankruptcy and the filing fee.

Once you have filed with the court, a stay will be placed on most collection actions against you. A trustee will then take control of your non-exempt property. You will then be required to attend the first meeting of creditors. Once that is complete, you will not normally have to attend any further proceedings. The court will then decide whether or not to discharge your debts.

Also in a Chapter 7 bankruptcy, you can choose to continue paying your debt on assets you wish to keep. For instance, if you want to keep your automobile(s), you can choose to “**reaffirm**” the original debt and continue making your monthly payments until the loan is fully paid. You could also choose to “**redeem**” your automobile, which means you want to keep the automobile, however not for the price of the remaining loan but rather for the current value of the automobile. In order to “redeem,” you must pay the redemption amount all at once (usually by obtaining another loan). If you choose not to reaffirm or redeem your loan, then by default you are choosing to “**surrender**” your automobile to the creditor.

CHAPTER 13: REORGANIZATION

In a Chapter 13 case, you, the debtor, file a PLAN showing how you will pay off some of your past-due and current debts over an extended period, normally three to five years. This is different from Chapter 7 bankruptcy, where you ask the court to wipe out (discharge) your debts.

The most important thing about a Chapter 13 case is that it will allow you to keep valuable property - especially your home - which might otherwise be lost.

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 regular income (including Government benefits such as social security or public assistance);
- 4) Have filed a Chapter 7 within the last six years.

The process for filing Chapter 13 also begins with filing a petition with the court. Again you will need to provide a statement of financial affairs that gives details of your debts, income, and expenses. You will also provide a copy of a proposed plan for paying off your debts. The payment plan will categorize your debts and determine the schedule for paying them. If the plan is confirmed by the court, you will be required to fulfill your obligations under the plan or the proceeding may be terminated and the claims collected.

WHAT DOES IT COST TO FILE FOR BANKRUPTCY?

The court fees for filing bankruptcy are approximately \$300.00. These must be paid to the clerk of the court at the time of filing. Attorney fees are not included in the filing fee. The cost of representation is a matter between you and your civilian lawyer; however, a legal assistance attorney can provide you with a range of attorney fees in the Fort Knox area.

WHAT PROPERTY CAN YOU KEEP?

You can keep all property which the law says is EXEMPT from the claims of creditors. In Kentucky, the following exemptions, among others, apply:

- 1) \$11,525 in household goods;
- 2) \$21,625 in equity in your home (equity is the value of the property minus the amount you still owe on mortgages);
- 3) \$3,450 in equity in your car;
- 4) \$1,150 + up to \$10,825 of any unused portion of your homestead exemption;
- 5) \$1,171,650 in retirement accounts such as pensions and IRAs;
- 6) \$1,450 for jewelry
- 7) Your right to receive certain benefits such as social security, unemployment compensation, veterans' benefits, AFDC, workers compensation, and most other public assistance, regardless of the amount. The amounts of the exemption are doubled when a married couple files together.

SECURED CREDITORS

Some of your creditors may have a SECURITY INTEREST in your home, car, or personal property. This means that you gave the creditor a mortgage on your home, a lien on your car, or put your property up as collateral for a debt. If you don't make your payments on the debt, the creditor may be able to take and sell the home, the car, or the property.

There are several ways that you can keep collateral or mortgaged property after you file bankruptcy. One way is to agree to keep making your payments on the debt until it is paid in full. This is called reaffirming a debt. If you put up your household goods as collateral for a personal or consolidation loan, you can usually keep your property without making any more payments on the debt.

Other creditors may not have any security interest in your property. Such creditors are called unsecured or general creditors. Secured creditors generally have greater rights to your property than unsecured creditors. A creditor may have a security interest or other claim against property which you can claim as exempt. You may be able to keep this property in some situations.

DOES BANKRUPTCY WIPE OUT ALL DEBTS?

No. Exceptions include:

- 1) Money owed for child support or alimony, fines, some taxes, and other limited kinds of debts;
- 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 loan first became due more than seven years before the bankruptcy was filed or
 - payment would be an undue hardship.

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 very short and simple procedure where you are asked a few questions about your bankruptcy forms and your financial situation.

DISCHARGE

If everything goes normally in a bankruptcy case, the final thing the court does is to grant you a DISCHARGE, which excuses you from paying all of your debts (except possibly for the few already mentioned). The discharge order also forbids creditors from doing anything to try to collect a debt that has been discharged.

WILL BANKRUPTCY AFFECT YOUR 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 have filed a bankruptcy can appear on your credit record for ten years; however, because 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.

OTHER INFORMATION

Utility service: Public utility, such as an electric company, cannot refuse to provide or cut off service because you have filed for bankruptcy, however, the utility can require a deposit for future service.

Discrimination: A 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.

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.

If you have any questions concerning these matters, please call the Legal Assistance Office for an appointment at (502) 624-2771 or visit our website at www.knox.army.mil/sja/. Our hours of operation are Monday, Tuesday, Wednesday and Friday, 0900 – 1600, and Thursdays 1300-1600. The Fort Knox Legal Assistance Office is located in Building 1310, Pike Hall at the corner of Knox and Third Street.
