



Answers to Common Bankruptcy Questions

Rev. 1/3/17

What Is Bankruptcy?

Bankruptcy is a legal process that may help a person who cannot pay their bills get a fresh financial start. The right to file for bankruptcy is provided by federal law, and all bankruptcy cases are handled in federal bankruptcy 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.

What Can Bankruptcy Do for Me?

Bankruptcy may make it possible for you to:

- Wipe out most or all of your debts. We say that a debt has been “discharged,” if the bankruptcy was able to get rid of it. This can give you a fresh financial start.
- Stop foreclosure on your home and give you a chance to catch up on missed payments.
- Prevent repo of a car or other property.
- Stop wage garnishments, debt collection calls, and other creditor actions to collect a debt.
- Restore or prevent termination of utility service.
- Defend you against creditors who are trying to collect money you don’t owe.

What If the Creditor Sued Me In Court? What If They have a Judgment?

- A collection suit in Civil Court will be stopped by the filing of a Bankruptcy case. If the creditor already has a judgment, Bankruptcy will stop them from collecting on that judgment.

What Debts can Bankruptcy Take Care of?

Bankruptcy will normally wipe out:

- Credit card debts
- Medical debts
- Unsecured lines of credit
- Overpayment of government benefits
- School tuition and fees (not student loans)
- Unpaid rent (but you may still lose your apartment if you take advantage of this)
- Secured debts for things you are willing to let go of
- Most other unsecured debts

What will I still owe after Bankruptcy?

Bankruptcy will not normally wipe out:

- Criminal fines and restitution, including traffic tickets and New York City parking tickets, BUT if your license has been suspended for unpaid tickets, take the bankruptcy discharge to the DMV—you may be able to get your license back;

- money owed for child support or alimony;
- Student Loans, except some rare cases where you can bring a special action in the Bankruptcy Court to include the student loans in the discharge;
- Income taxes that have been due for less than 3 years, or for which a return was not filed;
- Debts where a creditor can prove you did something bad—such as lie on a loan application or borrow money you weren't planning to repay;
- Mortgages and other secured debts—unless you give up the collateral.

What Bankruptcy Can Not Do

In bankruptcy, you usually CANNOT:

- Eliminate secured debts—unless you can give up the “collateral.” A “secured” debt is one where some property you have is the collateral, and if you don't make the payments, the creditor can take the collateral. Most car loans and home mortgages are secured debts. Bankruptcy can wipe out these debts—if you let go of the collateral. If you need to keep the collateral, you *can* keep it by continuing to pay on the loan. In some cases, you might be able to save a house or a car by filing a Chapter 13 bankruptcy, which is discussed later in this handout.
- Discharge child support, alimony, other debts owed from a divorce, most student loans, court restitution orders, criminal fines, and some taxes.
- Protect cosigners from your debts. When a relative or friend has co-signed a loan, your bankruptcy relieves you of the debt, but not the cosigner.
- Discharge debts that arise after the bankruptcy was filed.

What Are the Negative Consequences of Filing Bankruptcy?

- A chapter 7 bankruptcy filing will remain on your credit report for ten years.
- If you apply for credit or apply to rent an apartment, you will probably be asked to provide your credit report, and the bankruptcy may keep you from getting credit or renting an apartment. If you apply for a job outside of New York City, the employer may also ask you for credit or bankruptcy information. But remember: if you have defaulted debts on your credit report now, the creditors/landlords/employers would see those defaults if you don't file. Bankruptcy may look bad, but if your credit record is already bad, it might not be any worse than what they would see if you did not file bankruptcy.
- If you apply for a job, the employer might ask for your credit report or ask if you have filed bankruptcy. It is illegal for most employers to do so in New York City, and it is usually illegal for them to discriminate against you for having filed bankruptcy, but they may do so anyway.
- Government agencies cannot—and generally don't—discriminate against people who have filed bankruptcy. You cannot be denied a student loan because of having filed bankruptcy.
- Bankruptcy will make you ineligible for a home mortgage for at least three years. After that, you can apply for a government guaranteed FHA mortgage. Once the bankruptcy goes off your credit record (10 years) you can apply for a regular mortgage.
- Credit may be hard to get after bankruptcy, but not impossible. The first credit offers you will get will have high interest rates and low credit limits. As you develop a new, solid credit history after bankruptcy, you will begin to get better credit offers.
- If you file a Chapter 7 Bankruptcy and get discharge, it will be eight years before you can file Chapter 7 again and still get discharge.

Who Will Know That I Filed for Bankruptcy?

- Bankruptcy cases are a public record. Usually, however, friends, family, and the general public will not know about a personal bankruptcy unless you choose to tell them or they are listed as creditors on the bankruptcy petition.
- All of your creditors—and anyone collecting a debt for them--will get notice of the bankruptcy.
- Anyone you are in a contract with will get notice. This includes your landlord, if you have a lease. But landlords generally cannot refuse to renew a lease for this reason.
- Anyone you have co-signed a loan with will get notice.

What Different Types of Bankruptcy Cases Should I Consider?

Most people filing bankruptcy will want to file chapter 7. Married debtors can file a joint bankruptcy, or choose to file for only one spouse.

Chapter 7 (“Straight Bankruptcy” or “liquidation”)

This is the most common form of bankruptcy. If you have property that is not protected by “exemptions,” that property may be sold to pay creditors. Most people are able to protect all their property and file Chapter 7 without losing anything. It takes about 3 months to run its course.

Chapter 13 (Reorganization)

Also called the “wage earner” or the “repayment” plan. It requires a debtor to make monthly payments that they can afford for three to five years. At the end of the payment plan, any remaining debt is discharged. Chapter 13 allows you to:

- catch up rent or mortgage payments that are behind, or remove second mortgages as secured debts, or to refinance a secured debt—such as a car note;
- keep property you would lose in Chapter 7—such as a home with little or no mortgage debt;
- repay what you can afford to repay, and be protected from your creditors while you do so.

To file bankruptcy under chapter 13, you need to have enough income to resume making your monthly mortgage or rent payments AND pay the monthly chapter 13 payment.

Some people have to file chapter 13 because their income is higher than the rules for chapter 7 allow. For example, in 2016, a family of 4 who’s income was above \$7,571 per month, or \$90,852 per year, might need to file a Chapter 13.

Isn’t it Better to Avoid Bankruptcy With Debt Consolidation?

Sometimes people can avoid bankruptcy with the help of an agency that negotiates repayment plans with creditors for you. These “debt consolidators” can be helpful if you can pay some or most of your debts, but you need help getting the creditors to talk to you. The problem is that while many debt consolidation agencies are legitimate, many are rip-offs. Even good agencies won’t be able to help you much if you’re already too deep in financial trouble.

Most of these agencies offer debt management plans to repay some or all of your debts. You send them a monthly payment and they distribute it to your creditors. One problem is that many counselors will pressure you into a debt management plan--as a way of avoiding bankruptcy--whether it makes sense for you or not.

Bankruptcy should NOT be thought of as “the last resort.” In particular, you should consider bankruptcy before spending your retirement savings or borrowing against your home to pay debts.

What Does It Cost to File for Bankruptcy?

It costs \$ 335 to file for bankruptcy under chapter 7 and \$310 to file for bankruptcy under chapter 13, whether for one person or a married couple. If you file Chapter 7 and your income is low—less than \$1485/month for 1 person, or less than \$3,037.50/month for a family of 4—you might not have to pay the filing fee. If you do have to pay, the court may allow you to pay the fee over 4 months.

If you hire an attorney you will also have to pay the attorney’s fees you agree to.

If you qualify for assistance from NYC BAP, it is free.

What Are the Classes I Have to Take?

There are two courses you must complete: You must complete a credit counseling course, and a debt management course from an approved agency. The course must be completed within 6 months before you file bankruptcy. The counseling is usually by Internet or telephone.

Most lawyers, including NYC BAP, have an approved credit counseling agency they’ll want you to work with. If a volunteer at NYC BAP is assisting you with preparing a bankruptcy petition, the volunteer will let you know how and when to take the courses.

Will I Have to Go to Court?

In most bankruptcy cases, you only have to go to a “Meeting of Creditors” to meet with the bankruptcy trustee and any creditor who chooses to come. Generally, this meeting is short and simple. You are asked a few questions from the trustee about your bankruptcy and finances. Creditors rarely come.

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.

What Property Can I Keep? (*This information is accurate for New York State only.*)

In a chapter 7 case, you can keep all property which the law says is “exempt.” New York and federal exemption laws allows you to protect, among other things:

- \$165,550 in equity (the value of the property above what you owe on it) in your home OR \$13,100 of personal property on top of what is listed below;
- \$4,400 in equity in your car;
- \$12,625 worth of household furniture, kitchenwares, and certain other household goods;
- Your right to receive certain benefits such as social security, unemployment compensation, veteran’s benefits, public assistance, and pensions--regardless of the amount.

A married couple filing a joint bankruptcy may be able to double the above amounts for property they own together.

The exemption rules are complex; for example, not all of the exemptions above can be taken at the same time. It is best to have an attorney figure out what can and cannot be protected. But for most filers, the exemptions are enough to protect everything they own.

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 it is not worth more than the exemptions can protect. Also, if the car or house is collateral for an auto loan or mortgage, you will need to keep paying that auto loan or mortgage in order to keep the car or house.

There are several ways that you can keep collateral or mortgaged property after you file bankruptcy. You can agree to keep making your payments on the debt until it is paid in full. 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.

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 Affect My Credit?

Generally, yes. This answer depends on how good your credit is now. If you've been paying all your bills on time, bankruptcy will hurt your credit rating. But if you are already behind on your bills, your credit will already be bad, and bankruptcy will probably not make it any worse. Bankruptcy will appear on your credit record for ten years. But its effect on your credit rating fades over time. And 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. Many people receive credit offers soon after filing for bankruptcy.

What Else Should I Know?

Utility services--Public utilities, such as the 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 come due after bankruptcy is filed.

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. If you file a chapter 13, you may be able to protect co-signers, depending upon the terms of your chapter 13 plan.

What does The New York City Bankruptcy Assistance Project Do?

NYC BAP provides free bankruptcy petition preparation and assistance for low-income residents of New York City. To find out if you are eligible for our services, call our hotline at **646-442-3630**.

Bankruptcy Workshop and Petition Process

If you call the NYC BAP hotline, we may schedule a date for you to come in for one of our Bankruptcy Workshops. There, you will receive information about bankruptcy and meet with someone, one-on-one, to discuss your case. During this meeting, the person helping you will determine if you are eligible for our services based on your current income level and residency.

If you are eligible for our services, an attorney or law student will be assigned to help you prepare the bankruptcy petition. The petition is a set of documents that is filed with the bankruptcy court, which sets out your personal finances.

Bankruptcy Petition Filing

When the bankruptcy petition is complete, you and the person who is assisting you will meet and review the petition. Then, we file it. Finally, the person assisting you will give you instructions on what to do after the petition has been filed.

If NYC BAP Can Not Assist Me, How Do I Find a Bankruptcy Attorney?

For a referral to a fee-charging bankruptcy attorney, you may wish to call the City Bar Lawyer Referral Service (212-626-7373). The attorneys referred through this service have been screened to insure they have bankruptcy experience and have generally not gotten into serious trouble with client relations. 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.

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 give you advice that you may need about problems that could come up in your case. They offer no services once a bankruptcy case has begun. There are also many shady operators in this field, who give bad advice and defraud consumers.

Can I File Bankruptcy Without an Attorney?

Yes. But while it is possible to file Bankruptcy without an attorney, it is very difficult to succeed without one. Even if you obtain bankruptcy, you might lose property or other rights that an attorney could have protected.

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.