Search



Bankruptcy

Bankruptcy is a legal process to help debtors (people who owe money) get relief from the debts they cannot pay and, at the same time, help creditors (people who are owed money) get paid from whatever property or assets the debtor has that he or she does not need to live. Deciding to file for bankruptcy is a very tough decision. You may be feeling overwhelmed and bankruptcy seems like the only option. But think about the decision carefully because it can really affect you for a long time. Also, bankruptcy does not remove all debt, and there are certain types of debt that cannot be discharged (eliminated) in bankruptcy.

 Watch a <u>series of videos about the bankruptcy</u> <u>process</u>.

Bankruptcy may not always work to save your home or property, so you need to get advice from a bankruptcy lawyer about whether or not bankruptcy is a good option for you. Since there are different types of bankruptcy, one may be better for you than another, or bankruptcy may not be a good solution for your type of problems at all.

To decide if you should file for bankruptcy, you need to know:

- What alternatives you have to filing for bankruptcy;
- What type of bankruptcy is the best option for you; and
- What debts will be discharged (eliminated) in bankruptcy.

Bankruptcy is governed by federal law, so it is the same from state to state. But each state may have different <u>exemptions</u> (assets you can keep even when you file for bankruptcy).

Español



Quick Links

Lawyers and
Legal Help
Find Court
Resources
Self Help A-Z
Index



Alternatives to bankruptcy

- Try to figure out if you can avoid bankruptcy on your own. Can you reduce your expenses, increase your income, negotiate lower interest rates, or sell some property? Think about whether you can make adjustments to your situation to start paying off your debts on your own.
- 2. Get help from a credit counseling agency. They can help you make a budget, negotiate a repayment plan with a reduced or even zero interest rate, and help you stop aggressive collection practices that are overwhelming you. But, BE CAREFUL! There are a lot of agencies claiming to help consumers that are actually taking advantage of people. What to watch out for if you get credit counseling help.
- 3. Talk to a bankruptcy lawyer. He or she will be able to tell you what your options are and whether bankruptcy is the best option for you.

Types of bankruptcy

There are four common kinds of bankruptcy cases, named by the chapter of the federal Bankruptcy Code that describes them.

- 1. Chapter 7 is the most common form of bankruptcy for individuals. It is a liquidation bankruptcy, which means that the court sells all your assets for cash and then pays your creditors. You can keep assets that are exempt from sale either under federal law or the law of your home state. Chapter 7 bankruptcy can wipe out most of your debts. There is a "means test" for filing this type of bankruptcy. You must make less than a certain amount of money. Talk to a lawyer to see if you qualify for this type of bankruptcy. You cannot repeat this type of bankruptcy filing for 6 years.
- 2. Chapter 11 is a reorganization proceeding, usually for corporations or partnerships because of its complexity, but individuals can file too. The debtor usually keeps his or her assets and continues to operate the business and tries to work out a reorganization plan to pay off the creditors.
- Chapter 12 is a simplified reorganization for family farmers, where the debtor keeps his or

- her property and works out a repayment plan with the creditors.
- 4. Chapter 13 is like Chapter 11 but for individuals. It is a repayment plan for individuals with regular income. Under this type of bankruptcy, you pay your debts off over a 3-to 5-year period and you keep your property. There are limits to how much debt and what type of debt you can owe to qualify for Chapter 13 bankruptcy. Talk to a lawyer to see if you qualify for a Chapter 13 bankruptcy.

Discharging debts in bankruptcy

A bankruptcy discharge releases a debtor from being personally responsible for certain types of debts. So, after a bankruptcy discharge, the debtor is no longer legally required to pay any debts that are discharged.

The discharge prohibits the creditors of the debtor from collecting on the debts that have been discharged. This means that creditors have to stop all legal action, telephone calls, letters, and other type of contact with the debtor. This prohibition is permanent for the debts that have been discharged by the bankruptcy court.

You cannot discharge all debts in bankruptcy. Some of the most common debts that you cannot get rid of in bankruptcy are debts from child or spousal support, most student loans, most tax debts, wages you owe people who worked for you, damages for personal injury you caused when driving while intoxicated, debts to government agencies for fines or penalties, and more.

For more information, read the <u>Bankruptcy Code</u> section 523(a)₩

Exemptions

The Bankruptcy Code allows each individual who files for bankruptcy to keep basic assets that are necessary for the debtor's "fresh start" after bankruptcy. That property is the debtor's "exempt property."

Each state has its own list of property that can be exempt. California gives debtors a choice between the state law exemptions found in Code of Civil
Procedure section 704
and a set of bankruptcy-only

exemptions in Code of Civil Procedure section 703.140 that mirror the Bankruptcy Code exemptions that were in the federal law when the California law was adopted.

Bankruptcy cases

The length of the bankruptcy case depends on the type of bankruptcy you file. If you file a Chapter 7 bankruptcy, your debts can be discharged in as soon as 4 to 6 months. With a Chapter 11 or 13 bankruptcy, it can take as long as 5 years because you may still be making payments for some of the debts.

Automatic stay

When you file for bankruptcy protection, the federal court issues a notice of automatic stay that stops creditors listed in the bankruptcy petition from pursuing you for any debts until the bankruptcy court lifts the stay. Although this may stop an eviction or foreclosure sale for a short time, it will not provide any long-term protection if you do not have any equity in the property. If, for example, you are a tenant with a month-to-month tenancy, you do not have any property interest to protect for the benefit of creditors, so your landlord can get a stay lifted very quickly. The same is true for a lender who is foreclosing on property where the debtor has no equity.

Getting a lawyer to help you with your bankruptcy

Bankruptcy is a specialized area of law that is very complex. And the issues are not always apparent or simple. The bankruptcy laws changed in October 2005 to discourage many people from filing for bankruptcy. So the law became more complicated. And there are more situations where a mistake can result in your case getting dismissed. If your case is dismissed, the bankruptcy court often imposes a penalty of 180 days before you can refile, and in this time period a lot can happen. This is why it is so important to have a lawyer advise you and help you with your bankruptcy.

Find a lawyer who can help you work through the issues, alternatives you may have, and consequences of your choices.

 Pick a lawyer with whom you are comfortable, one who will allow you to ask questions and

- give you responses that you can understand.
- Pick a lawyer who either specializes in bankruptcy or does a large part of his or her practice in the field.
- Ask questions until you understand what your choices are.
- Don't be afraid to interview a lawyer and leave without hiring him or her.

If you decide to represent yourself in bankruptcy court, read a guide for <u>Filing for Bankruptcy Without</u> an Attorney.

To find a good bankruptcy lawyer:

- Call your local bar association's lawyer referral service and local legal aid offices.
- Check state bar groups and specialization/certification programs for bankruptcy lawyers in your community.
- Ask other lawyers or tax preparers you know for recommendations.
- Check out the <u>National Association of</u> <u>Consumer Bankruptcy Attorneys</u>.
- Identify the bankruptcy trustees in your area by calling the <u>bankruptcy court clerk</u> or the <u>United States Trustee's office</u>, and ask the trustee or his or her staff which attorneys appear most frequently.

More Information on Bankruptcy

Bankruptcy Basics

This pamphlet was created by the Administrative Office of the U.S. Courts. You can download it in PDF format. You can also watch a <u>series of videos about bankruptcy</u>.

LawHelpCalifornia Bankruptcy.

Links to information on what to do if you can't pay your debts, rebuilding good credit and more. (Select your county or enter your zip code for information specific to the area that you live in.)

<u>LawHelpCalifornia Debt Collection, Garnishment,</u> Repossession⊌

Links to information on collecting your judgment, what to do if you can't pay your debts, rebuilding good credit and more. (Select your county or enter your zip code for information specific to the area that you live in.)

Official Bankruptcy Forms

These bankruptcy court forms are posted by the Administrative Office of the U.S. Courts.

San Francisco Law Library's Student Loans and Bankruptcy Issues⊌

This guide can help you find books about student loans and bankruptcy options.

What Can I Do If I Can't Pay My Debts?

A State Bar of California pamphlet. Also available in Spanish and Chinese.

Facts for Consumers

Consumer Protection Information posted by the Federal Trade Commission.

Bankruptcy FAQs

Find answers to frequently asked questions about bankruptcy.