



Bankruptcy Basics

What is Bankruptcy?

Bankruptcy is a legal process to get rid of or “restructure” debts when you can’t pay them. “Restructure” means you change the terms of a debt. Like paying less or taking more time. A bankruptcy can lower or erase the amount you owe.

While your bankruptcy case is going through the courts, creditors can’t collect the money you owe them. When you finish your bankruptcy, you get a *Discharge Order* from the Judge. The Discharge Order says that all debts that qualify for discharge are now discharged. This means you are not legally responsible for these debts anymore. Your creditors get a copy of this Discharge Order from the Court too.

What types of debts can I get rid of through bankruptcy?

- credit card debt
- business debt
- medical bills debt
- utility bills debt
- past due rent
- auto accident claims that don’t involve drunk driving
- personal loans from family and friends



Are there some types of debts that I still have to pay?

Even if you file for bankruptcy, there are certain debts you still have to pay. Some of these debts that don’t go away are:

- Court fines and penalties
- Court ordered child support
- Court ordered alimony
- Most student loans
- Most taxes owed to the government
- Debts for willful and malicious injury to another person or property. These are debts that happened because of deliberate or intentional actions like arson, theft, assault, and murder.

Why should I file for bankruptcy?

- Bankruptcy gives you a fresh start on managing your finances. You should time your bankruptcy for when you have a good chance at staying out of debt and can take full advantage of a fresh start.

- Bankruptcy can put a stop to things like garnishments, lawsuits to enforce debt collection, and utility cutoffs.
- If you have debts that you can't get discharged in bankruptcy, but you have good cash flow, bankruptcy can help restructure your payments. Like paying back mortgage arrears (see Chapter 13 bankruptcies, below).

What are some bad things about bankruptcy?

- Some of your property might not be protected. It might be sold to pay creditors.
- Your credit score goes down. A bankruptcy stays in your credit report for up to 10 years and can make it hard to get a loan in the future.
- A bankruptcy can make getting a job harder.
- It can sometimes make renting harder.
- Other people can be affected by your decision to file for bankruptcy. For example, if anyone co-signed a loan with you, they may be held responsible for that debt.
- If you paid back money to family or friends in the past year, they may have to return it. These are called "preference payments." The trustee in charge of your case is likely to tell your family and friends that they have to turn the money in. This is so the money can be used to pay your other creditors.

Will I lose my house or car?

There are a lot of factors to look at when it comes to your house and car.



Usually, the house you live in, and one car are protected up to a certain amount of equity. This protection is called "exempt." The amount that is exempt is set by exemption laws.

But if your equity is more than the exempt limit, you may have to pay some amount to keep the property. Or you might have to sell the property to help pay off your debts.

If you owe money on a house or car that you get to keep, you still owe that money after your bankruptcy. This means that if you miss payments after your bankruptcy is done, your car can still be repossessed, and your house can still go through the foreclosure process.

Houses and cars can get complicated, so try to talk to a lawyer to see if they are protected.

What is the difference between Chapter 7 and Chapter 13 bankruptcy?

Chapter 7 bankruptcy typically gets rid of your debt and lets you start over much faster than Chapter 13. If you have non-exempt property, it is sold off by the trustee. Nonexempt property are things that aren't protected. You may be able to pay the trustee money if you want to keep the non-exempt property.

Chapter 7 is best if:

- 1) your income is at or below the median income by household size, and
- 2) your debts are the kind that are dischargeable in bankruptcy.



Chapter 13 bankruptcy gives you a chance to keep your property by completing a court-ordered repayment plan. This plan can take 3 to 5 years. After that time, you get a Discharge Order for your dischargeable debts. Your other, non-dischargeable debts are hopefully back on track because of your payments on your payment plan.

Chapter 13 is best if:

- 1) your income is too high to file a Chapter 7 bankruptcy, and/or
- 2) your debts are a kind that can't be discharged in a Chapter 7 bankruptcy.

How does filing for bankruptcy affect my spouse?

If you are married and file for bankruptcy, only **your** debts go away.

If the debts are owed by you and your spouse together, the creditor can go after your spouse who didn't file for bankruptcy. The spouse who didn't file becomes fully responsible for the debt. This is true for debts you own with someone else too, not only a spouse.

Sometimes "assets" are sold off to repay creditors. Assets are things you own that have money value. Your spouse who didn't file won't lose their personal assets but if you own something together, it could be taken away.

Is it better for married couples to file jointly?

Married couples can file for bankruptcy together. This is called a "joint" filing. In a joint bankruptcy, both couples have their names on one bankruptcy application.

Filing for a joint bankruptcy can be a good thing.

- It might be cheaper. It means less in filing fees and legal fees.

- You may be able to double your exemptions. Exemptions are things that are protected. The federal exemptions can be doubled for property you own together. In Minnesota, most couples can double all exemptions, except the homestead exemption. This is the amount of home equity that is protected. There may be conditions.
- Joint debt is discharged, instead of one person becoming responsible for it on their own.

But there are downsides of filing for bankruptcy jointly. Some of these are:

- The bankruptcy affects the credit scores of both of you
- Both of your non-exempt property is sold off in a chapter 7 bankruptcy

