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## ANSWERS TO COMMON QUESTIONS ABOUT BANKRUPTCY

### What Is Bankruptcy?

Bankruptcy is a legal proceeding 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 by federal law, and all bankruptcy cases are handled in federal 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:

- \* Eliminate the legal obligation to pay most or all of your debts. This is called a "discharge" of debts. It is designed to give you a fresh financial start. If your case is successful, then you will get a discharge at the end of your case.

- \* Stop foreclosure on your house or mobile home and allow you an opportunity to catch up on missed payments. (Bankruptcy does not, however, automatically eliminate mortgages and other liens on your property without payment.)

- \* Prevent repossession of a car or other property, or force the creditor to return property even after it has been repossessed.

- \* Stop wage garnishment, debt collection harassment, and similar creditor actions to collect a debt.

- \* Restore or prevent termination of utility service.

### What Bankruptcy Cannot Do?

Bankruptcy cannot cure every financial problem. In bankruptcy, it is usually not possible to:

- \* Eliminate certain rights of "secured" creditors. A "secured" creditor has taken a mortgage or other lien on property as collateral for the loan. Common examples are car loans and home mortgages. You can force secured creditors to take payments over time in the bankruptcy process and bankruptcy can eliminate your obligation to pay any additional money if your property is taken. Nevertheless, you generally cannot keep the collateral unless you continue to pay the debt.

- \* Discharge types of debts singled out by the bankruptcy law for special treatment, such as child support, alimony, some student loans, credit obtained through fraud, court restitution orders, criminal fines, and some taxes.

- \* Protect co-signers on your debts. When a relative or friend has co-signed a loan, and the consumer discharges the loan in bankruptcy, the co-signer may still have to repay all or part of the loan.

- \* Discharge debts that arise after bankruptcy has been filed.

### **What Different Types of Bankruptcy Cases Should I Consider?**

There are four types of bankruptcy cases provided under the law:

Chapter 7 is known as "straight" bankruptcy or "liquidation." It requires a debtor to give up property which exceeds certain limits called "exemptions", so the property can be sold to pay creditors.

Chapter 11, known as "reorganization", is used by businesses and a few individual debtors whose debts are very large.

Chapter 12 is reserved for family farmers and family fishermen.

Chapter 13 is called "debt adjustment". It requires a debtor to file a plan to pay debts (or parts of debts) from current income.

Most people filing bankruptcy will want to file under either Chapter 7 or Chapter 13. Either type of case may be filed individually or by a married couple filing jointly.

If your income is above the median income for a family the size of your household in your state, you may have to file a chapter 13 case (In Maine, the median income for a family of 4 in 2004 was approximately \$64,083.00). A higher-income consumer must fill out "means test" forms requiring detailed information about income and expenses. If, under standards in the law, the consumer is found to have a certain amount left over that could be paid to unsecured

creditors, the bankruptcy court may decide that the consumer cannot file a chapter 7 case, unless there are special extenuating circumstances.

### **Chapter 7 (Straight Bankruptcy)**

In a bankruptcy case under chapter 7, you file a petition asking the court to discharge your debts. The basic idea in a chapter 7 bankruptcy is to wipe out (discharge) your debts in exchange for your giving up property, except for "exempt" property which the law allows you to keep. In most cases, all of your property will be exempt. But property which is not exempt is sold, with the money distributed to creditors.

### **Chapter 13 (Reorganization)**

In a chapter 13 case you file a "plan" showing how you will pay off some of your past-due and current debts over three to five years. The most important thing about a chapter 13 case is that it will allow you to keep valuable property - especially your home and car - which might otherwise be lost, if you can make the payments which the bankruptcy law requires to be made to your creditors. In most cases, these payments will be at least as much as your regular monthly payments on your mortgage or car loan, with some extra payment to get caught up on the amount you have fallen behind.

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 valuable property which is not exempt, but you can afford to pay creditors from your income over time.

You will need to have enough income in chapter 13 to pay for your necessities and to keep up with the required payments as they come due.

### **What Property Can I Keep?**

In a chapter 7 case, you can keep all property which the law says is "exempt" from the claims of creditors. Here are some examples of exemptions available in Maine. This is not a full list:

- \* \$47,500 in equity in your home (\$95,000.00 if your interest is held jointly or if you have minor or elderly dependants at home; \$95,000.00 if you are over 60 years of age or seriously disabled);
- \* \$5,000 in equity in your car;
- \* \$200 per item in any household goods. There is no limit on the total amount;
- \* \$5,000 in things you need for your job (tools, books, etc.);

\* \$400 in any property, plus part of the unused exemption in your home;

\* Your right to receive certain benefits such as social security, unemployment compensation, veteran's benefits, and public assistance - regardless of the amount; and

\* Most retirement accounts up to \$1,000,000.00 in value (such as IRA's, 401(k) plans and 403(b) plans).

The amounts of the exemptions are usually doubled when a married couple files together.

In determining whether property is exempt, you must keep a few things in mind. The value of property is not the amount you paid for it, but what it is worth now. Especially for furniture and cars, this may be a lot less than what you paid or what it would cost to buy a replacement.

You also only need to look at your equity in property. This means that you count your exemptions against the full value minus any money that you owe on mortgages or liens. For example, if you own a \$50,000 house with a \$40,000 mortgage, you count your exemptions against the \$10,000 which is your equity if you sell it.

While your exemptions allow you to keep property even in a chapter 7 case, your exemptions do not make any difference to the right of a mortgage holder or car loan creditor to take the property to cover the debt if you are behind. In a chapter 13 case, you can keep all of your property if your plan meets the requirements of the bankruptcy law. In most cases you will have to pay the mortgages or liens as you would if you didn't file bankruptcy.

*If you have not lived in Maine for the past 2 years, then your exemptions might be very different. Please let us know if you have lived outside of Maine during part of the past two years.*

### **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 your equity in the property is fully exempt. Even if your property is not fully exempt, you will be able to keep it, if you pay its non-exempt value to creditors in chapter 13.

However, some of your creditors may have a "security interest" in your home, automobile or other personal property. This means that you gave that creditor a mortgage on the home or put your other property up as collateral for the debt. Bankruptcy does not make these security interests go away. If you don't make your payments on that debt, the creditor may be able to take and sell the home or the property, during or after the bankruptcy case.

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 after your bankruptcy is filed, that money or property may have to be paid to your creditors. In a chapter 7, inheritances, property settlements, and life insurance benefits are safe if your right to receive them arises more than 180 days after your bankruptcy is filed. In a chapter 13, they are only safe if your right to receive them arises after your case is finished.

### **Will Bankruptcy Wipe Out All My Debts?**

Yes, with some exceptions. Bankruptcy will not normally wipe out:

- (1) money owed for child support or alimony, fines, and some taxes;
- (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 court decides that payment would be an undue hardship;
- (6) mortgages and other liens which are not paid in the bankruptcy case (but bankruptcy will wipe out your obligation to pay any additional money if the property is sold by the creditor);
- (7) cash advances and credit card charges made a few months before you file for bankruptcy.

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

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 and/or from your attorney.

### **Will Bankruptcy Affect My 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've filed a bankruptcy can appear on your credit record for ten years. But since bankruptcy wipes out your old debts, you are likely to be in a better position to pay your current bills, and you most likely will be able to get new credit.

### **What Must I Do Before Filing Bankruptcy?**

You must receive budget and credit counseling from an approved credit counseling agency within 180 days before your bankruptcy case is filed. The agency will review possible options available to you in credit counseling and assist you in reviewing your budget. Different agencies provide the counseling in-person, by telephone, or over the Internet. We can help you choose a credit counseling agency.

If you decide to go ahead with bankruptcy, you should be very careful in choosing an agency for the required counseling. It is extremely difficult to sort out the good counseling agencies from the bad ones. Many agencies are legitimate, but many are simply rip-offs. And being an "approved" agency for bankruptcy counseling is no guarantee that the agency is good. It is also important to understand that even good agencies won't be able to help you much if you're already too deep in financial trouble. Some of the approved agencies offer debt management plans (also called DMPs). This is a plan to repay some or all of your debts in which you send the counseling agency a monthly payment that it then distributes to your creditors. Debt management plans can be helpful for some consumers. For others, they are a terrible idea. The problem is that many counseling agencies will pressure you into a debt management plan as a way of avoiding bankruptcy whether it makes sense for you or not. It is important to keep in mind these important points:

- Bankruptcy is not necessarily to be avoided at all costs. In many cases, bankruptcy may actually be the best choice for you.
- If you sign up for a debt management plan that you can't afford, you may end up in bankruptcy anyway (and a copy of the plan must also be filed in your bankruptcy case).
- There are approved agencies for bankruptcy counseling that do not offer debt management plans. It is usually a good idea for you to meet with an attorney before you receive the required credit counseling. Unlike a credit counselor, who can not give legal advice, an attorney can provide counseling on whether bankruptcy is the best option. If bankruptcy is not the right answer for you, a good attorney will offer a range of other suggestions. The attorney

can also provide you with a list of approved credit counseling agencies, or you can check the website for the United States Trustee Program office at [www.usdoj.gov/ust](http://www.usdoj.gov/ust).

### **What Else Must I Do to Complete My Case?**

After your case is filed, you must complete an approved course in personal finances. This course will take approximately two hours to complete. We can give you a list of organizations that provide approved courses, or you can check the website for the United States Trustee Program office at [www.usdoj.gov/ust](http://www.usdoj.gov/ust). In a chapter 7 case, you should sign up for the course soon after your case is filed. If you file a chapter 13 case, you should ask us when you should take the course.

***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.***

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*We are a debt relief agency, and we help people file for bankruptcy relief under the Bankruptcy Code.*