



A S S I S T A N C E

# Bankruptcy: Is It the Right Choice for You?

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## Introduction

This is to help you to understand some basics about the bankruptcy laws and rules. This may help you to make a more informed decision about whether filing for bankruptcy makes sense for you. We assume that you are a low-income client who may not be able to afford a lawyer.

If you can afford to speak with a lawyer about whether you should file for bankruptcy, we encourage you to do that. If you cannot afford a lawyer, here are some other possible resources:

- If you are 60 or over, contact Legal Services for the Elderly at: **1-800-750-5353**. They will advise you. They also have a “reduced fee panel” of lawyers. If you qualify, based on your income and assets, they can refer you to someone on that panel. Your fee for this lawyer would be substantially reduced.
- Contact the Lawyer Referral and Information Service of the Maine Bar Association **1-800-860-1460** and ask for a one-half hour consultation with a lawyer. The referral fee is \$25. If you decide to hire the lawyer to take your case, or to advise you beyond the ½ hour, you will have to pay for that service.

## What is bankruptcy?

Bankruptcy is a process that helps you to resolve your debts if they have become

unmanageable. If you have a very low income and decide to file for bankruptcy, you will probably file under “Chapter 7” of the law. This means that you will turn over to the Bankruptcy Court all of your property that is not protected by law. This property will be used to pay your creditors.

If you have very little property, all of it may be protected so that you will not lose it. How much your creditors will get in this process depends on how much your unprotected property can be sold for. During this process, the court “discharges” you from certain debts, meaning that you will not have to pay them.

## The language of bankruptcy

Here are some basic terms that you will need to understand.

**Automatic stay.** When you file a petition for bankruptcy with the Bankruptcy Court, all collection actions against you automatically stop. Any court judgment handed down before you filed for bankruptcy cannot be enforced against you or your property. This is called an “automatic stay.” Although the 2005 law provides more exceptions to this rule, the automatic stay still prevents most collection efforts while your case is pending, especially if your case is a relatively simple and quick one.

**Discharge.** This is what you are seeking when you file for bankruptcy. In the typical Chapter 7 case, about four months after your case is filed, your unsecured debts will be



forgiven, or discharged. This discharge does not apply to secured debts and does not apply to “non-dischargeable” debts. (Read more below about these different categories of debt.)

**Debtor** is a person who owes debts; in a bankruptcy proceeding, you are the debtor.

**Creditors** are persons or businesses that have loaned you money or who provided goods or services to you on credit.

**Secured creditor** is a creditor who has a legal interest, called a “lien,” in a piece of property. If you default on your loan agreement, that creditor can take steps to repossess or foreclose on the property. Examples: A bank that gives you a home mortgage has a “secured interest” on your home. Usually, a lender on a car purchase will take a secured interest in the car. “Home equity” loans are also “secured loans.”

**Unsecured creditors** are people to whom you owe money but who do not have any legal interest in your property. These creditors include credit card companies, doctors and hospitals who do not have a court order against you. (These “unsecured creditors” can become “secured creditors” by suing you, getting a court judgment and then placing a lien on your property.)

**Equity** is the value of your interest in a piece of property. If you own a car worth \$2000 and you owe \$1500 on it, your equity is \$500.

**Exempt property** is property that the law protects from your unsecured creditors.

**Exempt income** is a small amount of income that the law protects from your creditors.

**Lien.** A secured creditor has a lien, or legal claim, on your property. This serves as a notice to any future buyer that you do not own the property free and clear. In some cases, this **lienholder** can repossess or foreclose and force a sale of your property so that he can be paid on the debt from the proceeds of the sale. Liens can be “voluntary” or “involuntary.” You “voluntarily” give a creditor a lien when you buy a car on credit. You incur an “involuntary” lien when a court orders that a creditor has a legal claim on your property or a workman puts a lien on your property.

**Chapter 7, or liquidation, bankruptcy.** This is the type of bankruptcy petition that is usually filed by a person who is not able to pay his existing debts.

**Chapter 13, or repayment, bankruptcy.** This type of bankruptcy can be used by someone who has a regular income and who can pay all of some of her debts over a period of 5 years or less. The debtor seeks a court-supervised repayment plan that she can afford.

**Chapter 12, family farmer and fisherman bankruptcies.** Similar to Chapter 13, this chapter can be used by a farmer or fisherman to pay off debts over a period of time.

**Chapter 11, or reorganization.** Primarily used by businesses to re-organize. Although individuals with debt over a certain amount can also file this kind of petition, it is probably the most complicated; you would definitely want to get a lawyer to help you with this type of filing.



## What does bankruptcy do?

Generally, going through bankruptcy helps people with debts get a fresh start.

However, many people have false ideas about how it can help them. Before you decide that you need to file for bankruptcy, you should know some of the basic rules about what it can and cannot do for you.

What bankruptcy **may** do for you, depending on your situation:

- Discharge your **unsecured** debts; in Chapter 7, you may not pay or lose anything; in Chapter 13, you will probably pay less than you owe.
- Give you a short-term "automatic stay" against your creditors.
- Help you work out a repayment plan that lets you take longer to pay your debt and/or pay less than you owe. This approach, using Chapter 13, may allow you to keep property that secures a debt, like your home or car. It can also allow you to keep non-exempt assets that you would probably lose in a Chapter 7 case.

What bankruptcy does **not** do for you:

- Getting a discharge of your debts from the Bankruptcy Court will **not** discharge:
  - Student loans (unless you can meet a difficult "undue hardship" test)
  - Child support and spousal support owed, and certain other obligations under a divorce or separation order
  - Most taxes owed from the last 3 years
  - Certain debts you owe due to fraud or other criminal conduct
  - Fines owed to the government
  - Certain debts you owe under a court order because of willful behavior,

such as drunk driving or injuring another person or property

- Debts that you do not list on your bankruptcy filing
- The bankruptcy court can refuse to discharge your debts if it finds that you are abusing the process. Therefore, you should not assume that you can run up a lot of debt just before filing for bankruptcy and automatically have it forgiven. The court will look at what you spent the money on and can deny you a discharge if it finds that you have abused the system. You must be truthful and not try to hide assets.
- Getting a discharge:
  - **will not** help you with any debts you take on during and after the bankruptcy process.
  - **will not** give you a clean slate on your credit report (except to show what debts have been discharged).
  - **will not** protect some kinds of income and property you get during the course of the bankruptcy or within 6 months after the discharge (such as inheritance, tax refunds, gifts).
- Bankruptcy may not discharge all of your debts without some sacrifices. If you have very few assets and little income, you may not lose anything. But wealthier debtors can lose some of their assets, or may have to keep paying to keep them.



## Will bankruptcy help me if the bank is foreclosing on my house?

This depends on your situation. If you have a regular income that allows you to repay the debt on your house, you may be able to work out a deal with your lender that will save your home. You may want to file under **Chapter 13**, to seek help from the court. Try to speak with a lawyer right away. Do this as early as possible, before the situation has gone too far.

On the other hand, if you don't expect to be able to catch up on your payments in the foreseeable future, filing for bankruptcy will probably not help you to save your home. Your secured debt is not automatically discharged in bankruptcy. A **Chapter 7** filing will temporarily stop the foreclosure, but after the "automatic stay" ends, you will be back in the same position. Try to get a lawyer to help you with a threatened foreclosure.

Depending on your age and income, here are some possible resources:

- Volunteer Lawyers Project (low income)  
**1-800-442-4293**
- Pine Tree Legal (low income)  
Call your nearest office
- Legal Services for the Elderly (elderly)  
**1-800-750-5353**

Maine Lawyer Referral and Information (1/2 hour consultation; \$25 referral fee)  
**1-800-860-1460**

To learn more ask for our information on **Home Foreclosures**.

## So how do I decide whether to file for bankruptcy?

Here are some issues to consider:

- Bankruptcy filing and discharge will show up on your credit report. If you already have a bad credit report, this may not be a big negative, but you should be aware of this.
- If your income and assets are so low that you are "collection proof," then you don't necessarily need to file for bankruptcy. Take our quiz to find out where you stand on this.
- Another consideration if you are "collection proof:" There are steps you can take to protect yourself from harassment from collection agencies, short of filing for bankruptcy. Ask for our information on **Debt Collection**.
- On the other hand, even if you are "collection proof," you may want to file if, for example:
  - The worry and stress of having these debts and being pressured by collection agencies is too hard for you to handle, or
  - You are about to get a job where your wages could be attached by your creditors, or
  - Your assets are exempt now but you expect them to become non-exempt in the future.

**Example:** An elderly couple owns their own home worth \$130,000 with no mortgage. Their only income is Social Security and they have a lot of credit card debt that they can't catch up on. Their house is protected from creditors because they each get a \$70,000 exemption. Then one spouse dies; the surviving spouse's homestead exemption



drops to \$70,000. This couple would have been much better off filing for a Chapter 7 bankruptcy before the spouse's death. After the spouse's death, the trustee would have to liquidate the house to pay the creditors.

- If you are thinking about filing for bankruptcy during or soon after a divorce, or in anticipation of a divorce, talk to a lawyer first. You cannot use bankruptcy to evade support obligations.

### Can I file for bankruptcy?

**Time Limits.** If you have filed for bankruptcy under Chapter 7 within the last 8 years and got a discharge, you cannot get a new Chapter 7 discharge now. You are barred from getting a discharge under Chapter 13 if you got a discharge under Chapter 7 within the last 4 years or if you concluded a prior Chapter 13 case within the last 2 years.

**Note:** If you have any old debts that pre-date an earlier bankruptcy filing and were not discharged then, you cannot get them discharged now.

**Residency.** You can file in the Bankruptcy Court covering the area where you live if you have lived there for 3 months and a day or longer.

**Fees.** The up-front fees for filing under Chapter 7 is **\$299**, plus **\$50** for required credit counseling. Later you are also required to go through "credit education" before getting a discharge—for another **\$50** fee. The Chapter 13 filing fee is **\$274**. Although you can ask for fee waivers if you cannot afford these costs, you cannot be sure that these fees will be waived.

### What else do I need to do to prepare for filing for bankruptcy?

If you still think you want to file, we recommend that you take these steps first:

- ✓ **If you are over age 60, call Legal Services for the Elderly at 1-800-750-5353.** They may be able to help you find a lawyer who will charge you a lower fee for bankruptcy.
- ✓ If you have a low income, contact the Volunteer Lawyer's Project at: **1-800-442-4293.**
- ✓ Talk to private lawyers about the cost of filing your bankruptcy. Some lawyers offer payment plans that you may be able to afford. If you don't know who to call:
  - ❑ get a list of bankruptcy lawyers from the Maine Lawyer Referral and Information Service at **1-800-860-1460**
  - ❑ look in the phone book
  - ❑ talk to family and friends
- ✓ Start following a bill payment plan (using the enclosed guide).
- ✓ Save at least \$400 for court and counselling fees, if you can.
- ✓ Get a copy of your credit report. You will need a current credit report from at least one of the three major credit reporting agencies in order to file for bankruptcy.

**TIPS**

You can get free annual credit reports online, by phone or by mail. Go to: **www.annualcreditreport.com**.

If you are planning to get a lawyer, wait to talk to him first. He may want to get your once-per-year free report at a later date.

- ✓ Use the enclosed Debt Summary Sheet to make a **complete** list of your bills. For each item include:
  - ❑ the account numbers,
  - ❑ the exact amount you owe, and
  - ❑ the billing address
- ✓ Use the enclosed Property Summary Sheet to make a **complete** list of everything you own and the value you place on it.
- ✓ Gather and organize all of these documents:
  - ❑ All your current bills including mortgage statements and car, student, home equity or other loan statements **Do not throw your bills away!**
  - ❑ All mortgages or liens on real estate
  - ❑ Titles for and information about the current value of **all** real estate you own, including your home, business property and burial plots
  - ❑ Titles to all vehicles in your name and proof of insurance on all vehicles registered under your name

- ❑ Pay stubs or payment advices from an employer for the past 60 days; also, you must know your income amount for the past 6 months
- ❑ All life insurance policies you own
- ❑ Federal Income Tax returns for last 3 years
- ❑ Your divorce decree or separation agreement if the divorce or legal separation occurred in the last 12 months or is pending
- ❑ All documents that show the value or existence of retirement accounts including IRAs
- ❑ All security agreements, financing statements or personal property leases (including car leases)
- ❑ Bank statements (checking, mutual fund or savings accounts) for the last three months
- ❑ Stock certificates or bonds

**OK. I've done all of my homework. What do I do next?**

Once you have completed all of these preliminary steps, contact the Volunteer Lawyers Project. They may be able to help you get a lawyer or, if this is not possible, they will advise you on the next steps to take.

If you have exhausted all other options and you still want to file a Chapter 7 case, you can find online self-help information at [www.ptla.org/bankruptcy.htm](http://www.ptla.org/bankruptcy.htm). Doing a bankruptcy case without a lawyer is difficult.



Thanks to Will Sandstead, an experienced bankruptcy attorney with offices in Portland, for his help in developing this information.

**Notice**

Prepared by Volunteer Lawyers Project and  
Pine Tree Legal Assistance  
December 2005 (partially updated June 2008)

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