

# CHAPTER 13 BANKRUPTCY

## Questions and Answers



### WHAT IS BANKRUPTCY?

Bankruptcy is the legal way to “discharge” debts. A discharge means that once the bankruptcy is finished, creditors cannot collect from you.

There are two types of bankruptcy that consumers can file:

- Chapter 7 (“straight bankruptcy”)
- Chapter 13 (“wage earner”)

### WHAT IS CHAPTER 13 BANKRUPTCY?

A Chapter 13 bankruptcy lets you keep property that is put up for loans (“secured debts”) and lets you pay back that debt over an extended period of time. You **typically** pay back up to ten percent (10%) of other debts that are not secured by property (“unsecured debts”), like credit cards, hospital bills and payday loans. Your lawyer writes up a payment plan based on your monthly income and the secured debt that you owe, and the plan is approved by the bankruptcy court. In West Tennessee, all plans last sixty months (or five years). Under the plan, you make one or more payments each month to the Chapter 13 trustee (a lawyer appointed by the judge to oversee Chapter 13 bankruptcies), who then makes your monthly payments to each of your creditors until your debts are paid. At the end of the 60 months, your secured debts are paid in full (with the exception of large secured debts like mortgages) and ninety percent (90%) of the unpaid debt owed to unsecured creditors is discharged.

### HOW IS CHAPTER 13 DIFFERENT FROM CHAPTER 7 BANKRUPTCY?

A Chapter 7 bankruptcy allows you to get rid of (or discharge) unsecured debts without paying them. A Chapter 13 bankruptcy lets you to pay back secured creditors over an extended period of time.

### IS CHAPTER 7 OR CHAPTER 13 BETTER FOR ME?

Your bankruptcy lawyer will tell you what kind of bankruptcy is best for your situation. The following are tips to keep in mind when deciding which bankruptcy fits your circumstances the best:

1. If your monthly income is too high, you may **have** to file a Chapter 13 instead of a Chapter 7. In order to qualify for a Chapter 7 bankruptcy, your monthly income from the six months before filing bankruptcy must be less than the average monthly income of a family of your size in West Tennessee (also called the “means test”). The IRS computes the average monthly income of family sizes in the different states each year. Your lawyer will ask for your last six months of pay stubs. Using these pay stubs, your lawyer will determine if you qualify for a Chapter 7 bankruptcy.
2. If you have property that could be taken away (“repossession” or “foreclosure”), then a Chapter 13 is usually the best option. In most cases, a Chapter 13 will allow you to keep your property while you continue to make payments on it.  
In some Chapter 13 cases, your lawyer can lower your monthly payments and interest rates. For example, if you purchased a car **more than** 910 days (or 2 ½ years) before filing bankruptcy and if you still owe money on this car, then your attorney may be able to reduce the amount of the car note to the actual value of the car. (Example: I took out a note to buy a 1998 Chevy Impala for \$18,000 in 2002. I file a Chapter 13 bankruptcy in 2009. Your bankruptcy attorney may be able to lower the note of \$18,000 to the actual Blue Book value of the car, which lowers your monthly payments.) If you have debts secured by other property, like household items, that you got **more than** one year before filing bankruptcy, then your attorney may be able to reduce the amount of the debt to the actual value of the household items. This is called a “cram down.”
3. If you are **behind** on mortgage payments, car payments, or payments for any other loan secured by property **and** you want to keep that property, then a Chapter 13 is likely the best option.
4. If you are **up-to-date** on your mortgage payments, car payments, or other payments for loans secured by property **and** you want to keep the property, a Chapter 7 **may** work for you. However, your creditor must be willing to enter into an agreement with you where you agree to continue paying for the debt regularly outside of the bankruptcy. This agreement is called a “reaffirmation agreement” and must be approved by the bankruptcy court. You must be able to continue making your regular monthly payments in order for a reaffirmation agreement to work.
5. If you have filed a Chapter 7 bankruptcy in the past eight years, then you **must** file a Chapter 13. **NO EXCEPTIONS.**



## WHAT DEBTS CANNOT BE DISCHARGED IN A CHAPTER 13 BANKRUPTCY?

You cannot discharge:

- Taxes
- Alimony
- Child support
- Debts from doing something illegal or dishonest
- Debts for hurting another person or for damages caused while you were driving drunk
- Debts that you incurred just before filing the bankruptcy
- Debts secured by property, **unless** you are willing to give up ("surrender") the property to the creditor
- Student loans, **unless** you can prove that repaying them would cause "undue hardship"

## WHO CAN FILE A CHAPTER 13?



Anyone who has a regular source of income can file a Chapter 13. Income does not necessarily have to be from a job and could be from social security, disability, or a pension. You must have enough money to pay your basic living expenses and still have some money left over to make payments on your Chapter 13 plan. Basic living expenses are rent, food, lights, heating and cooling, insurance, clothing, and transportation. Basic living expenses do **not** include your monthly payments to creditors. You should add up these costs to determine if you would have any money left for a Chapter 13 plan.

## DO I NEED A LAWYER TO FILE A CHAPTER 13?

In most cases, yes. Bankruptcy laws are very complicated and preparing paperwork for a bankruptcy is just as complicated. Additionally, a lawyer will be able to tell you if a Chapter 13 bankruptcy is right for you. In most cases, the lawyer's fee is included in your Chapter 13 payment plan. In extreme circumstances, your lawyer may allow you to pay your court filing fee of \$274 through the plan.

## WHAT HAPPENS WHEN I FILE A CHAPTER 13 BANKRUPTCY?

1. Your lawyer will ask you to bring several items to your first appointment: 1) a photo ID and your social security card; 2) your last six months of pay stubs; 3) your last four years of tax returns; 4) a list of all your debts; and 5) a list of all your property. Your lawyer might also request that you bring a copy of your credit report. You are allowed one free credit report per year from each of the three major credit reporting agencies. You can get a copy of your credit report at [www.annualcreditreport.com](http://www.annualcreditreport.com).
2. You **must** give your lawyer a list of all of your debts. Filing bankruptcy protects you only from debts that you list in your legal documents, so it is important to tell your lawyer everything.
3. You **must** talk to an approved credit counselor twice. Your bankruptcy lawyer will give you a list of these approved credit counselors. You will talk to the counselor once before you file the bankruptcy. You will be given a certificate that allows you to file bankruptcy. You must speak with the credit counselor again before you are given a bankruptcy discharge. You will be given another certificate that gives you permission to get a bankruptcy discharge.
4. Your lawyer will talk with you about the two kinds of bankruptcy and will help you decide which bankruptcy best fits your situation. (Ask for our brochure on Chapter 7 Bankruptcy.)
5. Your lawyer writes up your request for bankruptcy, which is called the "bankruptcy petition," and writes up your payment plan. You will read and sign this petition and swear that all of the information is true and correct.
6. Your lawyer files your bankruptcy papers with the bankruptcy court.
7. The bankruptcy court notifies every creditor listed in your papers that you have filed bankruptcy. The court also tells them when to come to the creditors' meeting.
8. You **must** begin making your payments to the Chapter 13 Trustee immediately. Your first payment **must** be made within thirty (30) days of filing the bankruptcy or your bankruptcy case will be dropped ("dismissed"). Usually, these payments are taken directly out of your pay check; however, it takes several weeks to set this up.
9. You and your attorney attend a meeting called the "creditors' meeting." This meeting is not in a courtroom and is not in front of a judge. Instead, you meet with the Chapter 13 Trustee (a lawyer appointed by the bankruptcy judge), who will ask you about the information in your petition to make sure that it is correct. Your creditors will also have a chance to ask you about your debts and the property that you own.
10. The bankruptcy court will OK your payment plan one or two months after your meeting of creditors. This will happen at a "confirmation hearing." Unless there are problems with your payment plan, you will **not** have to attend this hearing.



11. You continue to make your monthly payments for sixty months. Each month the Chapter 13 Trustee takes your payments and pays your creditors for you.
12. If you make all of your payments in full and on time for sixty months, then you are given a bankruptcy "discharge." Any unpaid balance owed to unsecured creditors goes away ("discharged"), and those creditors are not allowed to collect against you.

### HOW OFTEN CAN I FILE A CHAPTER 13 BANKRUPTCY?

There are no rules on how often you can file a Chapter 13, **BUT** there are rules on getting a discharge under a Chapter 13. For the most part, you would not want to file a bankruptcy unless you were able to get a discharge.

- Have you filed a Chapter 7 bankruptcy and received a bankruptcy discharge in the past four years?  
If so, then you **will not** receive a Chapter 13 discharge after finishing your sixty month payment plan.
- Have you filed a Chapter 13 bankruptcy in the past two years?  
If so, then you **will not** receive a Chapter 13 discharge after finishing your sixty month payment plan.

**BUT**, it might still be a good idea to file a Chapter 13 bankruptcy even if you cannot receive a discharge. Although it won't get rid of your debts, the bankruptcy would still stop an eviction, foreclosure or repossession. This would give you a chance to catch up on payments.

### HOW MUCH WILL MY CHAPTER 13 PAYMENTS BE?

This will depend on:

1. How much you owe,
2. How long the plan will last, and
3. How much you can pay each month after paying for basic living expenses.

Every plan in West Tennessee is for sixty months (or five years). Your lawyer will review your debts and the money available to pay into your plan and will help you come up with a monthly amount to pay towards your debt.

### WILL I LOSE MY HOME IF I FILE A CHAPTER 13?

First, you must be able to afford your home. You generally cannot change your monthly house payments in a bankruptcy. So, if you cannot afford your house payments now, bankruptcy **may not** make it any easier. Generally, if you can make your monthly house payments in full and on time, then you will not lose your home in a bankruptcy. Many people file Chapter 13 bankruptcy to keep their homes. You should tell your bankruptcy lawyer immediately if your home is in foreclosure.



### WHAT IF I'M BEHIND ON MY RENT?

A Chapter 13 bankruptcy may be able to stop an eviction. This works especially well if you live in Section 8 or public housing. In your Chapter 13 plan, you can pay your overdue rent in your monthly bankruptcy payments; however, the bankruptcy must be filed **before** your landlord gets a court order to evict you. If you have been served with court papers or if you think your landlord is going to evict you, you should see a bankruptcy lawyer immediately.

### CAN A CHAPTER 13 HELP ME GET BACK MY REPOSSESSED CAR?

Maybe. If your car or other property item has been taken back ("repossessed") by a creditor, but has not been sold to a new buyer, then the filing of a Chapter 13 bankruptcy may be able to get your car back. You will have to pay missed payments and repossession charges through your Chapter 13 payment plan.



### CAN I BE SUED AFTER FILING A CHAPTER 13?

Generally, not without special permission from the bankruptcy court. The moment the bankruptcy papers are filed with the bankruptcy court, an invisible shield called the "automatic stay" goes into effect and no creditor listed in your bankruptcy can sue you, garnish your paycheck, send you letters, contact you about your debt over the telephone, or attempt to collect the debt in any way. The automatic stay remains in place until the bankruptcy is over or until the bankruptcy court gives the creditor special permission to collect the debt. After your bankruptcy is discharged, you have no legal duty to pay the debts. If a creditor continues to contact you during your bankruptcy or after your bankruptcy, you should contact your lawyer immediately.

### WHAT IF I WANT TO BUY SOMETHING WHILE I'M STILL PAYING ON A CHAPTER 13 PLAN?

You **cannot** make a new debt without getting the bankruptcy court's permission **first**. This includes the following types of debt:

- Payday loans
- Rent-to-own
- Car leases and loans
- Loans from family and friends
- Rapid refunds for your tax refund.



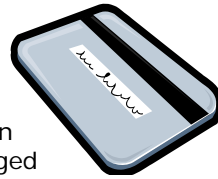
Typically, you are not allowed to get new debts while you are in a Chapter 13 bankruptcy unless it is an absolute necessity.

## **CAN I LIST A DEBT IN MY BANKRUPTCY PAPERS EVEN IF I HAVE ALREADY BEEN SUED ON IT?**

Yes. You **MUST** list all of your debts in your bankruptcy. The moment the bankruptcy is filed, the automatic stay goes into effect and stops all pending lawsuits and collection actions by your creditors. Any creditor that has a lawsuit pending at the time the bankruptcy is filed will have to dismiss its lawsuit and seek help through the bankruptcy court.

## **WILL I BE ABLE TO GET CREDIT AFTER FILING A BANKRUPTCY?**

Maybe. Some creditors will say that you are a bad risk and will not give you credit. Other creditors will be glad to give you credit but will charge you a high interest rate. A bankruptcy can remain on your credit report for up to ten years. After you receive a bankruptcy discharge, your credit report should reflect a \$0 balance on all debts discharged in the bankruptcy. Although your credit report cannot show a balance on debts discharged in the bankruptcy, the credit report **can** show any late or missed payments on debts discharged in the bankruptcy. If your credit report still reflects balances on debts that were discharged in your bankruptcy, then you should dispute those charges to the credit reporting agency.



## **SHOULD I FILE BANKRUPTCY?**

You should consult with a bankruptcy lawyer to help you decide if bankruptcy will help you. In some cases, you should **not** file a bankruptcy, even if you have a lot of debt.

Generally, you do **not** need to file a bankruptcy in Tennessee if you answer **no** to these four questions:

1. Did you put anything up as security (collateral) for a loan that the creditor can take if you don't pay?
2. Do you earn more than \$154.50 per week after subtracting Social Security and taxes?
3. Do you own or are you buying a home or other real estate?
4. Do you have personal property worth more than \$4,000?

If you answered "no" to **all four questions**, then you are judgment proof and your creditors cannot collect from you. Your creditors could still sue you, but you can stop them from collecting after you have been sued.

If you are sued, you should contact Legal Aid immediately and request a copy of our brochure called "What Can I Keep After I'm Sued?" This brochure will tell you how to file a paper with the court to protect your money and property. This paper must be filed **ten days** from your court date, so you must act quickly.

## **IS BANKRUPTCY THE BEST WAY TO STOP BILL COLLECTORS FROM BOTHERING ME?**

Not always. Just being bothered by bill collectors is not a good reason to file bankruptcy. There are other ways to stop bill collectors from harassing you. Contact Legal Aid and request a copy of our brochure "Bill Collectors Bugging You?" which will explain to you how to send a letter to the bill collectors asking them to stop contacting you.

## **ARE THERE OTHER WAYS TO HANDLE DEBT PROBLEMS?**

Yes. Bankruptcy is not always the best option.

You can:

1. Arrange a plan to pay your debts in small, regular payments.
2. Make a "Slow Pay Motion" if you have been sued over a debt. The slow pay motion allows you to create a manageable payment plan through the court. You should speak with the court clerk in the county where you were sued.
3. Speak with a bankruptcy lawyer for additional options other than bankruptcy.

*West Tennessee Legal Services*

**731.423.0616**

**1.800.372.8346**

***www.wtls.org - www@wtls.org***

*Local Offices:*

***113 West Paris Street – Huntingdon, TN 38344***

***210 West Main Street – Jackson, TN 38301***

***208 South Church Street – Dyersburg, TN 38024***

***141 North Third Street – Selmer, TN 38375***

**This information cannot take the place of advice from a lawyer.  
Each case is different and needs individual legal advice.**