

# CHAPTER 7 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 7 BANKRUPTCY?

Chapter 7 is also referred to as “straight bankruptcy.” Chapter 7 lets you get rid of (“discharge”) debts that are not secured by property (“unsecured debts”) without paying any money to the creditors. Chapter 7 will also let you get rid of debts secured by property (“secured debts”) if you are willing to give up the property to the creditor. A Chapter 7 bankruptcy typically lasts three to four months if no major problems arise.

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

A Chapter 7 bankruptcy lets you get rid of (or discharge) unsecured debts without paying them. In a Chapter 13 bankruptcy, you 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.**



## CAN ALL DEBTS BE DISCHARGED IN A CHAPTER 7 BANKRUPTCY?

No, not all debts can be discharged in a 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
- Student loans, **unless** you can prove that repaying them would cause "undue hardship"



## WHAT HAPPENS WHEN I FILE A CHAPTER 7 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; 5) a list of all your debts; and 6) a list of all your property. Your lawyer might also ask 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 free copy of your credit report by going to [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 13 Bankruptcy.)
5. Your lawyer writes up your request for bankruptcy, which is called the "bankruptcy petition." You will read and sign this petition and swear that all of the information is true and correct.
6. The costs for lawyer fees and court filing fees will be worked out in advance with your lawyer. Currently, the court fees for a Chapter 7 bankruptcy are \$299.00. Your lawyer fees are set by your lawyer.
7. Your lawyer files your bankruptcy papers with the bankruptcy court.
8. 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.
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 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. Three to four months will pass. The court will then say that you do not have to pay back your debts if:
  - There are no legal problems with your bankruptcy papers, **and**
  - Your debts are the kind that can be discharged.

## HOW OFTEN CAN I FILE A CHAPTER 7 BANKRUPTCY?

You can only file a Chapter 7 bankruptcy once every eight years. **NO EXCEPTIONS.**

## WILL I LOSE EVERYTHING IF I FILE BANKRUPTCY?

No. Bankruptcy is designed to give you a fresh start, not to totally wipe you out. You can keep:

- \$4,000 worth of personal property (cars, furniture, bank accounts, cash, etc.). If you are married and both of you file a bankruptcy, you can keep \$8,000 worth of personal property.
- Your clothes
- Your photographs
- Your school books and family Bible
- Your burial plot
- Your home if you have a limited amount of equity and your mortgage holder agrees (see next question)

Be aware that if you own property worth more than the limits, the bankruptcy trustee has the power to sell any item above that value to pay back your creditors.



## WILL I LOSE MY HOUSE IF I FILE A BANKRUPTCY?

Not necessarily. You can keep your home **if**:

- The payments are up to date
- You do not have much “equity” in the home. Equity is the value of the property today minus what you still owe on it. **AND**
- Your mortgage holder is willing to enter into a reaffirmation agreement with you where you agree to continue your regular monthly payments outside of the bankruptcy.



You are allowed equity in your home up to the following amounts:

- \$5,000 for single person
- \$7,500 for a married couple filing bankruptcy together
- \$12,500 for a single person over 62 years old
- \$20,000 for a married couple, one person is over 62 years old, and they file bankruptcy together
- \$25,000 for a married couple, both are over 62 years old, and they file bankruptcy together
- \$25,000 for a person with minor children living in the home

## WHAT IF I'M BEHIND ON MY HOUSE PAYMENTS OR I HAVE TOO MUCH EQUITY?

If you are behind in your house payments **and** your mortgage holder is not willing to enter into a reaffirmation agreement with you, then the mortgage company will likely ask the bankruptcy court for permission to move forward with foreclosure proceedings. If you have too much equity in your home, the bankruptcy trustee can sell your house and use the money from the sale to pay your creditors. If there is any money left after your creditors are paid, then you will get the remainder.

## CAN I KEEP PROPERTY THAT I PUT UP AS COLLATERAL (SECURITY) FOR A LOAN?

To keep property that you put up as collateral, you will have to:

- Keep your monthly payments up to date and enter into an agreement with the creditor that you will continue to make your payments outside of the bankruptcy (“reaffirmation agreement”) **OR**
- Pay the lender the actual value of the property.

If you decide that you do not want to keep property that you put up as collateral for a loan, you always have the option to give up (“surrender”) your property to the creditor. Generally, when you give up the property to the creditor holding the note, any difference between the value of the property and the amount that you owed is discharged in the bankruptcy. This can be done with homes, cars, and household goods.



## CAN I BE SUED AFTER FILING BANKRUPTCY?

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.

**Note:** If you enter into a reaffirmation agreement with a creditor in order to keep property that you put up as collateral for a loan and you miss a payment, the creditor can move forward to collect the debt, including repossession, foreclosure, or a lawsuit, **without** having to ask the bankruptcy court for special permission to do so.

## 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 papers. 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 how to send letters 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. Consider a chapter 13 bankruptcy where you pay your debts through the bankruptcy court in payments that are computed based on your monthly income and expenses.
4. Speak with a bankruptcy attorney for additional options other than bankruptcy.

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