



LEGAL AID
SOCIETY OF HAWAI'I



ANSWERS TO COMMON BANKRUPTCY QUESTIONS*

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Answers to Common Bankruptcy Questions

A decision to file for bankruptcy should be made only after determining that bankruptcy is the best way to deal with your financial problems. This brochure can not explain every aspect of the bankruptcy process. If you still have questions after reading it, you should speak with an attorney familiar with bankruptcy.

Changes to the bankruptcy laws have made the process more complicated. But the basic right to file bankruptcy and most of the benefits of bankruptcy remain the same for most individuals.

What Is Bankruptcy?

Bankruptcy is a legal proceeding in which a person who can not 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.
- Stall foreclosure on your house or mobile home and allow you an opportunity to catch up on missed payments. (Bankruptcy does not 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.
- Allow you to challenge the claims of creditors who have committed fraud or who are otherwise trying to collect more than you really owe.

What Bankruptcy CAN NOT Do

Bankruptcy can not cure every financial problem. Nor is it the right step for every individual. In bankruptcy, it is usually *not* possible to:

- Eliminate certain rights of “secured” creditors. A creditor is “secured” if it has taken a mortgage or other lien on property as collateral for a 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 on the debt if you decide to give back the property. But you generally can not keep secured property 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, most student loans, court restitution orders, criminal fines, and most taxes.
- Protect cosigners on your debts. When a relative or friend has co-signed a loan, and the consumer discharges the loan in bankruptcy, the cosigner 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 an individual to give up property which is not “exempt” under the law, so the property can be sold to pay creditors. Generally, those who file chapter 7 keep all of their property except property which is very valuable or which is subject to a lien which they can not avoid or afford to pay.
- **Chapter 11**, known as “reorganization,” is used by businesses and a few individuals whose debts are very large.
- **Chapter 12** is reserved for family farmers and fishermen.
- **Chapter 13** is a type of “reorganization” used by individuals to pay all or a portion of their debts over a period of years using their 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.

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.

If you want to keep property like a home or a car and are behind on the mortgage or car

loan payments, a chapter 7 case probably will not be the right choice for you. That is because chapter 7 bankruptcy does not eliminate the right of mortgage holders or car loan creditors to take your property to cover your debt.

If your income is above the median family income in your state, you may have to file a chapter 13 case (the national median family income for a family of four in Hawaii as of November 1, 2012 is approximately \$82,973—your state’s figures may be higher or lower). Higher-income consumers must fill out “means test” forms requiring detailed information about their income and expenses. If the forms show, based on standards in the law, that they have a certain amount left over that could be paid to unsecured creditors, the bankruptcy court may decide that they can not file a chapter 7 case, unless there are special extenuating circumstances.

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 may consider filing a chapter 13 plan if you:

- Own your home and are in danger of losing it because of money problems;
- Are behind on debt payments, but can catch up if given some time;
- 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 during your chapter 13 case to pay for your necessities and to keep up with the required payments as they come due.

What Does It Cost to File for Bankruptcy?

It now costs \$335 to file for bankruptcy under chapter 7 whether for one person or a married couple. The court may allow you to pay this filing fee in installments if you can not pay it all at once. If you hire an attorney you will also have to pay the attorney fees you agree to.

If you are unable to pay the filing fee in installments in a chapter 7 case, and your household income is less than 150 percent of the official poverty guidelines for Hawai‘i (for example, the figures for 2014 are \$27,135 for a family of two and \$41,145 for a family of four), you may request that the court waive the chapter 7 filing fee. The filing fee can not be waived in a chapter 13 case, but it can be paid in installments.

What Must I Do Before Filing Bankruptcy?

You must receive budget and credit counseling from a U.S. Trustee 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. If you decide to file bankruptcy, you must have a certificate from the agency showing that you received the counseling before your bankruptcy case was filed. Most approved agencies charge \$30–\$50 for the pre-filing counseling. However, the law requires approved agencies to provide bankruptcy counseling and the necessary certificates without considering an individual’s ability to pay. If you can not afford the fee, you

should ask the agency to provide the counseling free of charge or at a reduced fee.

There is one approved agency in Hawai‘i, Consumer Credit Counseling Service of Hawai‘i (“CCCS”). You can make an appointment for a session by calling this agency at (808) 532-3225. CCCS also offers counseling services at their neighbor island offices; check with the agency for more information.

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). A DMP 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. DMPs 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. You should not consider a debt management plan if making the monthly plan payment will mean you will not have money to pay your rent, mortgage, utilities, food, prescriptions, and other necessities.

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.

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. It is important to check the exemptions that are available in the state where you live. (If you moved to your current state from a different state within two years before your bankruptcy filing, you may be required to use the exemptions from the state where you lived just before the two-year period.) In some states, you are given a choice when you file bankruptcy between using either the state exemptions or using the federal bankruptcy exemptions. If your state has “opted” out of the federal bankruptcy exemptions, you will be required to choose exemptions mostly under your state law. However, even in an

“opt-out” state, you may use a special federal bankruptcy exemption that protects retirement funds in pension plans and individual retirement accounts (IRAs).

If you are allowed to use the federal bankruptcy exemptions, they include:

- \$22,975 in equity in your home;
- \$3,675 in equity in your car;
- \$575 per item in any household goods up to a total of \$12,250;
- \$2,300 in things you need for your job (tools, books, etc.);
- \$1,225 in any property, plus part of the unused exemption in your home, up to \$11,500;
- Your right to receive certain benefits such as Social Security, unemployment compensation, veteran's benefits, public assistance, and pensions—regardless of the amount.

The amounts of the exemptions are doubled when a married couple files together. Again, you may be required to use state exemptions which may be more or less generous than the federal exemptions.

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 when your bankruptcy case is filed. 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. That means 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 have only \$10,000 in equity. You can fully protect the \$50,000 home with a \$10,000 exemption.

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.

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.

In a chapter 13 case, you may be able to keep certain secured property by paying the creditor the value of the property rather than the full amount owed on the debt. Or you can use chapter 13 to catch up on back payments and get current on the loan.

There are also several ways that you can keep collateral or mortgaged property after you file a chapter 7 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. If you put up your

household goods as collateral for a loan (other than a loan to purchase the goods), you can usually keep your property without making any more payments on that debt.

Can I Own Anything After Bankruptcy?

Yes! Many people believe they can not 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 within 180 days after filing for bankruptcy, that money or property may have to be paid to your creditors if the property or money is not exempt.

Will Bankruptcy Wipe Out All My Debts?

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

- Money owed for child support or alimony;
- Most fines and penalties owed to government agencies;
- Most taxes and debts incurred to pay taxes which can not be discharged;
- Student loans, unless you can prove to the court that repaying them will be an "undue hardship";
- Debts not listed on your bankruptcy petition;
- Loans you got by knowingly giving false information to a creditor, who reasonably relied on it in making you the loan;
- Debts resulting from "willful and malicious" harm;
- Debts incurred by driving while intoxicated;
- 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).

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 your financial situation.

Occasionally, if complications arise, or if you choose to dispute a debt, you may have to appear at a hearing. In a chapter 13 case, you may also have to appear at a hearing when the judge decides whether your plan should be approved. 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.

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. Many of the course providers give you a choice to take the course in-person at a designated location, over the Internet (usually by watching a video), or over the telephone. Your attorney 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. If you can not afford the fee, you should ask the agency to provide the course free of charge or at a reduced fee. 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 your attorney when you should take the course.

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 from the date your case was filed. But because bankruptcy wipes out your old debts, you are likely to be in a better position to pay your current bills, and you may be able to get new credit.

If you decide to file bankruptcy, remember that debts discharged in your bankruptcy should be listed on your credit report as having a **zero balance**, meaning you do not own anything on the debt. Debts incorrectly reported as having a balance owed will negatively affect your credit score and make it more difficult or costly to get credit. You should check your credit report after your bankruptcy discharge and file a dispute with credit reporting agencies if this information is not correct.

What Else Should I Know?

Utility services—Public utilities, such as the electric company, can not refuse or cut off service because you have filed for bankruptcy. However, the utility can require a deposit for future service and you do have to pay bills which arise after bankruptcy is filed.

Discrimination—An employer or government agency can not discriminate against you because you have filed for bankruptcy. Government agencies and private entities involved in student loan programs also can not discriminate against you based on a bankruptcy filing.

Driver’s license—If you lost your license solely because you couldn’t pay court-ordered damages caused in an accident, bankruptcy will allow you to get your license back.

Co-signers—If someone has co-signed a loan with you and you file for bankruptcy, the co-signer may have to pay your debt. If you file under chapter 13, you may be able to protect co-signers, depending upon the terms of your chapter 13 plan.

How Do I Find a Bankruptcy Attorney?

As with any area of the law, it is important to carefully select an attorney who will respond to your personal situation. The attorney should not be too busy to meet you individually and to answer questions as necessary.

The best way to find a trustworthy bankruptcy attorney is to seek recommendations from family, friends or other members of the community, especially any attorney you know and respect. You should carefully read retainers and other documents the attorney asks you to sign. You should not hire an attorney unless he or she agrees to represent you throughout the case.

In bankruptcy, as in all areas of life, remember that the person advertising the cheapest rate is not necessarily the best. Many of the best bankruptcy lawyers do not advertise at all.

Document preparation services also known as “typing services” or “paralegal services” involve non-lawyers who offer to prepare bankruptcy forms for a fee. Problems with these services often arise because non-lawyers can not offer advice on difficult bankruptcy cases and they offer no services once a bankruptcy case has begun. There are also many shady operators in this field, who give bad advice and defraud consumers.

When first meeting a bankruptcy attorney, you should be prepared to answer the following questions:

- What types of debt are causing you the most trouble?
- What are your significant assets?
- How did your debts arise and are they secured?

- Is any action about to occur to foreclose or repossess property, to attach your wages or bank account, or to shut off utility service?
- What are your goals in filing the case?

Can I File Bankruptcy Without an Attorney?

Although it may be possible for some people to file a bankruptcy case without an attorney, it is not a step to be taken lightly. The process is difficult and you may lose property or other rights if you do not know the law. It takes patience and careful preparation. Chapter 7 (straight bankruptcy) cases are somewhat easier. Very few people have been able to successfully file chapter 13 (reorganization) cases on their own.

For More Information Or Assistance Call The Legal Aid Office In Your Community:

www.legalaidhawaii.org

Legal Aid's Hotline Hours:

Monday through Friday
9:00am - 11:30am and 1:00pm - 3:30pm

O'ahu: 536-4302
Neighbor Islands: 800-499-4302

***REMEMBER: This pamphlet is meant to give you general information and not to give you specific legal advice about your case. The law often changes. Each case is different.**