



AMERICAN BAR ASSOCIATION

Guiding People Through Bankruptcy: A Primer on the Law & Client Counseling

COURSE MATERIALS

Presented by the
American Bar Association
Standing Committee on Pro Bono and Public Service and
American College of Bankruptcy Foundation



Guiding People Through Bankruptcy: A Primer on the Law & Client Counseling

Thursday, December 19, 2024 | 3:00 pm Eastern

Sponsored by the ABA Standing Committee on Pro Bono and Public Service and the American College of Bankruptcy Foundation

Objectives

By the end of the program, learners will:

- Learn about the different types of bankruptcies available to individuals;
- Learn how to advise low-modest means individuals whether to file bankruptcy;
- Learn to help navigate the bankruptcy court system on their own; and
- Learn to explain the risks of filing a bankruptcy without a lawyer.

Agenda

Introduction

- What is bankruptcy?
- Should I file for bankruptcy?
- Can I avoid filing bankruptcy?
- Can I file for bankruptcy?
- Can I file for bankruptcy without an attorney?
- What is Chapter 7?
- Will I get immediate relief from debt collection?
- What debts can I get rid of with bankruptcy?
- What property can I keep with bankruptcy? What property do I have to give up with bankruptcy?
- When should I file for bankruptcy?
- What do I need to do/not do before I file for bankruptcy?
- What is Chapter 13?

What is ABA Free Legal Answers?

- How do I volunteer?
- How do I handle the bankruptcy questions?

Other Common Questions

- What happens to my student loans?
- Can I stop and eviction with bankruptcy?

Q&A

- Can I keep my car if I file for bankruptcy?
- What if I filed for bankruptcy before?
- What if I am married? What if I am separated or getting a divorce?
- What do I need to know if I am the creditor?

What is bankruptcy?

Bankruptcy Background

- **Article I, Section 8, of the United States Constitution** authorizes Congress to enact “uniform Laws on the subject of Bankruptcies throughout the United States.” Under this grant of authority, Congress enacted the “Bankruptcy Code” in 1978.
- **The fundamental goal of the federal bankruptcy laws** enacted by Congress is to give debtors a financial “fresh start” from burdensome debts.
- **The purpose of bankruptcy law** is defined in a 1934 Supreme Court decision: “it gives the honest but unfortunate debtor... a new opportunity in life and clear field for future effort, unhampered by the pressure and discouragement of preexisting debt. (Local Loan Co. v. Hunt, 292 U.S. 234, 244 (1934)).
- **Any individual, married couple, or business/corporation may file for bankruptcy protection.**
- **There are six types of bankruptcy choices**, with Chapter 7 and 13 being the most common for individual consumer debtors.
- **Fundamentals players** are the debtors, creditors, trustees, and judges.

What does bankruptcy do?

- The filing of a bankruptcy provides debtors with an **automatic stay** that stops most collection efforts, foreclosure proceedings, evictions, and garnishments.
- It also creates a "**bankruptcy estate**" that pools in all the debtor's legal and equitable interest in real and personal property as of the date of the bk filing.
 - Property can be tangible or intangible.
 - It will include current and future interests in property.
 - Bankruptcy estate is created for the benefit of the unsecured creditors and its valuation will determine if they are sufficient to pay creditors.
 - Certain property can be protected and excluded from the estate.
- The bankruptcy estate is overseen by a bankruptcy **trustee**.
 - The trustee steps into the shoes of the debtor and controls the bankruptcy estate
 - The trustee has a fiduciary duty to ensure the estate is properly administered for the benefit of unsecured creditors.
 - Chapter 7 Trustee liquidates property; Chapter 13 trustee collects plan payments
- The end goal of a bankruptcy filing is for the debtor to obtain a **discharge** that eliminates their obligations to pay certain debts.

Should I file for bankruptcy?

Should The Client File For Bankruptcy?

- Compare outcomes for
 - **Doing nothing**
 - **Defensive litigation** in state court; affirmative litigation asserting rights under consumer protection laws
 - **Filing bankruptcy**
 - Chapter 7 or
 - Chapter 13

Can I avoid filing bankruptcy?

You might not need to file if there is nothing your creditors can take.

- We call this "**collection proof.**" If so, is this temporary or likely to be permanent
 - If temporary, what is best time to file bankruptcy?
 - If likely to be permanent, is there a tangible benefit to filing bankruptcy?
- **Must know debtors' exemptions** and creditors' collection remedies
 - Jurisdiction specific
- **Has state opted out** of federal bankruptcy exemptions?
 - If not, are federal exemptions better for this client?
- To determine whether collection proof, **consider assets and income.**

Can I file for bankruptcy?

Eligibility and Requirements

- **Eligibility**
 - Chapter 7 – everyone can file but discharge not guaranteed, may lose property
 - Chapter 13 – need to be able to make plan payments
- **Pre-filing credit counseling course required**
- **Filing Fees**
 - Chapter 7, \$338, waivable in Judge's discretion
 - Chapter 13 \$313, non waivable

Can I file bankruptcy without an attorney?

Filing Bankruptcy Without An Attorney

- **Should debtors file bankruptcy without a lawyer?**
 - This is going to depend on whether local legal aid programs, law school clinics, pro se assistance programs, or pro bono programs that handle the kind of bankruptcy that client needs.
- **Pro se filers are more likely to have their cases dismissed** without any relief because of the following:
 - They do not file or correctly complete all the required bankruptcy forms.
 - They not understand all the requirements needed to obtain bankruptcy relief, such as completing required pre- and post-bankruptcy credit counseling courses.
- **There is a risk of debtors losing substantial assets** if exemptions are not claimed or are claimed improperly.
- **Not all debts are dischargeable** – debtors should be advised about which debts outlive the discharge and how to best manage those.
- **Navigating the bankruptcy court system can be confusing.**

What is Chapter 7?

Chapter 7 Overview

- **Chapter 7 is the most common form of bankruptcy proceeding** and is available to individuals and business entities.
- **Its purpose is to discharge an individual's obligation** to repay most, if not, all their consumer debt.
- **It also provides fair distribution** to unsecured creditors from proceeds gathered from liquidating the debtor's non-exempt assets.
- **In “no-asset” case** where all of the debtor’s assets are exempt property, there will not be any distribution of property to the unsecured creditors.
- **Not all debts are dischargeable.**
- **Debtor must be eligible to file chapter 7** by:
 - Showing there is no "presumption of abuse" by applying a means test calculation that shows the debtor does not have sufficient disposable income to repay their unsecured creditors
- **Debtors may only file once every 8 years.**

Will I get immediate relief from
debt collection?

Automatic Stay Overview

- **The automatic stay is one of the fundamental protections** afforded to debtors by the bankruptcy laws.
- **It stops and stays almost all pre-petition collection efforts** and proceedings to collect on a debt against a debtor.
- **It provides the debtor a breathing spell** from their creditors. It stops all collection efforts, all harassment, and all foreclosure actions.
- **The stay is temporary** and will terminate by operation of law upon the occurrence of one of the events in §362(c), including closing or dismissal of the case, discharge of the debtor (permanent discharge injunction kicks in)
- **It permits the debtor to attempt a repayment** or reorganization plan, or simply to be relieved of the financial pressures during the pendency of the bk case.
- **There are limitations to the stay** – it doesn't cover every type of proceeding or action against the debtor and it may be lifted by court order.

Automatic Stay Protections and Limitations

Actions Stayed

- Collection Activity
- Wage Garnishments
- Lawsuits
- Evictions and Foreclosures
- Repossessions
- Utility Disconnection
- Collection of overpayment of public benefits

Actions Not Stayed

- Criminal Proceedings
- Paternity Suits
- Domestic Support Obligations
- Certain Tax Proceedings
- Pension Loan Payments
- Two cases filed in one year - previous bankruptcy case in the same year, the automatic stay is only in effect for 30 days unless the debtor asks the court to extend the stay.
- Three cases filed in a single year - no automatic stay without a motion and a hearing.

What debts can I get rid of with
bankruptcy?

The Discharge

- **The bankruptcy discharge releases the debtor** from the legal obligation to pay certain debts.
- **It is permanent** and bars most creditors from making any attempts to collect on the discharged debt.
 - Note: secured creditors with perfected liens may recover the property secured by the lien
- **Debtors must complete all required** in the chapter 7 or 13 filing to obtain a discharge.
- **A notice of discharge** is sent to all creditors listed in the debtor's bankruptcy filing.
- **Not all debts are dischargeable.**
 - Some debts (i.e. domestic support obligations) are automatically excepted from discharge
 - Other types of debts incurred by fraud or maliciousness may be nondischargeable but only if creditor files an objection and obtains a determination from the court that the debt is excepted from discharge.

Non-dischargeable Debts

Statutorily nondischargeable

- Child Support, alimony, property division in a divorce
- Debts for personal injury incurred under DUI
- Debts for educational loans and grants
- Tax debts that have been due for less than 3 years, or for which a return wasn't filed, tax debts resulting from fraud
- Debts for willful and malicious injuries to personal property
 - the last three listed have exceptions

Nondischargeable by court order

- Debts incurred through fraud or false pretenses.
- Debts incurred for luxury purchases more than \$500 within 90 days prior to the bankruptcy filing or cash advances more than \$750 within 70 days before the bankruptcy filing.
- Certain criminal fines and restitution debts, restitution or damages awarded in a civil action for willful or malicious injury by the debtor that caused personal injury or death.

What property can I keep with
bankruptcy? What property do I have
to give up with bankruptcy?

Bankruptcy Exemptions

- All debtor's property becomes part of the bankruptcy estate.
- **Exempt property is removed from bankruptcy estate** and is protected from creditors during and after bankruptcy.
- Depending on where the debtor lives, **debtors may choose to use the federal bankruptcy exemptions** found in 522 of the bankruptcy code or their State exemptions (some states have opted out of using the federal bankruptcy exemptions).
- For states that allow debtors to choose either their state laws or the bankruptcy code to exempt property, **debtors can only opt to choose one exemption scheme** but not both.
- **Debtor must list all property** on schedules in order to exempt property.

TIP: See NCLC list of major exemptions by state

Exemption Considerations

- If state has not opted out, **would federal exemptions protect assets** that are not protected under state law?
- **Is an asset fully exempt**, or is there a dollar limit?
- If there is a dollar limit, **liens on the property must be taken into account**
- Property owned under **tenancy by the entirety**
- Is there a **debt owed by both spouses?**
- **Future tax refunds** are property of the estate, can they be exempted?
- **Exemptions can be challenged** if the debtor chooses the wrong types of exemptions or the fair value of the property claimed by debtor is incorrect.

When should I file for
bankruptcy?

Timing issues – reasons to file sooner (1)

- Stop current garnishment of income
- Prevent repossession of property
- Utility service disconnection
- Driver's license suspension for financial reasons
- Will not pass means test in future because of increase in income
- Termination of housing vouchers for nonpayment

Timing issues – reasons to file sooner (2)

- Before sale of property cuts off right to save property in Chapter 13
 - May also apply when a right to redeem is involved – e.g. many tax sales
- **Before lease is terminated**
 - Can only assume lease in Chapter 13 if lease is "unexpired"
- **Before land sale contract is terminated**
 - In some jurisdictions land sale contracts are security agreements not leases
- **Exact deadline depends on state law**

Timing issues – reasons to file later

- **Debts will become dischargeable** with passage of time– e.g. income taxes
- **Effect of prior bankruptcy** where discharge received (2-4-6-8 rules- see below)
- **Will be able to 'cram down' secured claim** on motor vehicle – 910 day rule
- **Will have enough income to fund Chapter 13 plan**
- **Will "pass" means test** because of decrease in income

What do I need to do/not do
before I file for bankruptcy?

Things to do, or avoid, before filing

- Don't load up on debt, especially credit cards
- Don't try to hide property
- Be careful repaying debts to friends and relatives (possible preference)
- Don't commingle exempt and non-exempt assets
- Don't withdraw funds from exempt assets to pay dischargeable debts
- Do maximize your exemptions
- It is ok to fund an IRA or 401(k)

What is Chapter 13?

Chapter 13 Overview

- **Chapter 13 is a repayment plan** that lasts 3 to 5 years
- **Ch 7 should be the starting place**; if that's not possible, Ch 13 offers repayment solutions.
- **Best for saving mortgages** and in some cases, tenancies
- **Can refinance/recapitalize auto loans** (cram down)
- **Can discharge certain debts** not discharged in Chapter 7
- **Can save property from sale** that is beyond what exemptions protect
- **Can be used when a debtor wants to pay something.**
- **More complex than Chapter 7**—which is mostly done upon filing.

What is ABA Free Legal Answers?
How do I volunteer? How do I handle
the bankruptcy questions?

ABA Free Legal Answers: An Online Pro Bono Clinic

- ✓ Navigate to FreeLegalAnswers.org
- ✓ Select "Attorney Registration" tab
- ✓ Choose state of licensure
- ✓ Follow the prompts





How to Answer Questions

- **Sort** for the right category, e.g. "Debts and Purchases" or "Bankruptcy"
- **Issue spot**
- If question is not related to debts or bankruptcy and you are not able to answer it, **notify the administrator** (orange box in top right) and return it to the queue
- Check **Training/Resources** tab for help
- Provide **empathy, legal advice and other legal resources.**
- If not enough info in question, use **if/then statements** and ask for clarification from the client
- **Keep the question open** for client follow up, will close after 10 days of no communications
- **Subscribe** to debts/bankruptcy category to get notified of new questions

Other Common Questions

What happens to my student
loans?

Student Loans

- Is it a federal or private loan?
- Did you finish your degree?
- Are you able to make payments now?
- Will you ever be able to repay?
- Have you ever made payments?
- Are you enrolled in an Income Driven Repayment Plan
- Importance of an attorney. [Link to Lawyer Referral Service in your state](#)

Can I stop an eviction with
bankruptcy?

Will a Chapter 7 stop an eviction? Yes and No.

- **If landlord has obtained a monetary judgment and order of eviction before the debtor's bankruptcy filing**
 - There is no automatic stay and the landlord may proceed with eviction, unless
 - The debtor obtain an automatic stay and avoid eviction by depositing 30 days of rent with the clerk of the BK court and then curing the judgment within 30 days of the bankruptcy filing.
- **If landlord has not obtained a monetary judgment and order of eviction prior to debtor's bankruptcy filing**
 - There is a stay against eviction, however, the landlord may request that the Bankruptcy Court lift (remove) the automatic stay as to the landlord only.
 - This will frequently be done by a landlord where the debtor remains in the apartment without paying the current rent.
- **A debtor might be able to remain in the rental unit by filing a Chapter 13 bankruptcy and proposing to pay the rent arrears.**

Can I keep my car if I file for
bankruptcy?

Can I keep my car in Chapter 7 bankruptcy? Yes

- Reaffirm debt (creditor must agree)
 - If current on contract, just keep paying on time
 - This is only a safe option in some states
 - Can debtor afford payments? giving up discharge, could be liable for deficiency
- "Redeem" by paying value of vehicle to creditor in a lump sum
 - Can't redeem in installments
 - There are actually lenders who will make redemption loans, though the interest rates are very high
- Ride through
 - If current on contract, just keep paying on time
 - This is only a safe option in some states
- Surrender

What if I filed for bankruptcy
before?

What if I filed bankruptcy before? Waiting period (years)

Filing a New case	Old case was Ch 13	Old case was Ch 7
Ch 13	Wait 2 years file another Ch 13	Wait 4 years to file Ch 13
Ch 7	Wait 6 years to file Ch 7	Wait 8 years to file another Ch 7

What if I am married? What if I
am separated or getting a divorce?

Special Considerations for Married Individuals

- **Married couples can file jointly**
 - Married couples can file a joint bankruptcy petition and pay only one filing fee
 - Married couples are not required to file jointly
 - If a previous bankruptcy was filed and it was not a joint petition, it is possible that only one spouse can receive a discharge
- **What if client is separated or divorcing?**
 - Is it better to file the divorce first, or file bankruptcy first?
 - If filing bankruptcy first, should the couple file a joint bankruptcy?
 - No simple answer
 - Consult your state statutes regarding how/if Community Property rules come into play

What do I need to know if I am
the creditor?

When the client is an individual creditor

- Child Support/maintenance/alimony; division of debts/property
- Wage claims by employees
- Small claims plaintiff
- Claims against home improvement contractors

Other common debtor questions

- How will it affect my credit score?
- How long does bankruptcy stay on my record?
- Getting credit after bankruptcy
- Can I be fired for filing bankruptcy?
- Can a private employer refuse to hire me because I filed bankruptcy?
- Can I be denied government benefits because I filed bankruptcy?
- Can a private party discriminate against me because I filed bankruptcy?
- Yes, as they don't ask you to repay a discharged debt
- Do I have to list all my debts?



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Thank You!



Answers to Common Bankruptcy Questions

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For more information on ABA Free Legal Answers, please visit Ambar.org/fla or contact Tali Albuquerk, the ABA FLA National Administrator at Tali.Albuquerk@americanbar.org.

What Is Bankruptcy?

Bankruptcy is a legal process that may help a person who cannot pay their bills get a fresh financial start. The right to file for bankruptcy is provided by federal law, and all bankruptcy cases are managed in federal bankruptcy court. Filing for bankruptcy immediately stops all creditors from collecting debts from you, at least until your debts are sorted out according to the law.

Should I File for Bankruptcy?

You should file Bankruptcy if you have debts that you cannot pay and cannot negotiate away. It is especially worthwhile if your wages are being garnished or you are suffering other problems because of debts you cannot pay. Sometimes a person with debts they cannot pay can avoid bankruptcy, but **Bankruptcy should not be thought of as the last resort. It is a bad idea to avoid bankruptcy by using retirement savings or other assets** to pay debts that could have been discharged in bankruptcy. You will need that retirement savings for retirement!

See sections below on

- What Debts can Bankruptcy Take Care of?
- What Bankruptcy Can Not Do
- What Are the Downsides of Filing Bankruptcy?
- Isn't it Better to Avoid Bankruptcy with Debt Consolidation?

If I file for bankruptcy, what Can Bankruptcy Do for Me?

Bankruptcy may make it possible for you to:

- Wipe out most or all your debts. We say that a debt has been “discharged,” if the bankruptcy was able to get rid of it. This can give you a fresh financial start.
- Stop foreclosure on your home and give you a chance to catch up on missed payments.
- Prevent repossession of a car or other property or force a creditor to return property, even after it has been repossessed.
- Stop wage garnishments, debt collection calls, and other creditor actions to collect a debt.
- Restore or prevent termination of utility service.
- Defend you against creditors who are trying to collect money you do not owe.

If I don't file for bankruptcy, where are some alternatives?

- Consider Bankruptcy Alternatives
 - Collection Proof/Exempt Income or Assets
 - Hardship dismissals
 - Process varies by creditor/debt collector; some require email requests, some require proof of disability, proof of income, financial statement, etc.
 - Cease and desist letter.
 - Collection proof letter
 - Debt Validation Letter

What If the Creditor Sued Me in Court? What If they have a judgment?

A collection suit filed in Civil Court or Small Claims Court will be stopped by the filing of a Bankruptcy case.-Filing for bankruptcy immediately stops all your creditors from seeking to collect debts from you, from bringing new debt collection suits against you, and safeguards your property for a period, until the debts are sorted out according to law. (Automatic Stay 11 USC Sec 362)

If the creditor already has a judgment against you, Bankruptcy will stop them from collecting on that judgment. If the bankruptcy case ends successfully, the debt will be discharged as if there were no judgment, and you will no longer owe that debt. (so long as the debt is dischargeable).

Steps to take/Questions to consider – Part of Should I file bankruptcy:

- Do not assume that since you owe the debt you cannot contest it.
 - o Defend against suit - Goes to prove ownership of debt if debt buyer involved and notice of suit being brought.
- Consider the type of debts and the total amount of debt that is owed in determining whether bankruptcy is the right option for you.
 - o Does it make sense to consider a bankruptcy alternative or to try to defend against active collection suits?
 - o Negotiating with debt collectors/creditors – settlement

What Debts can Bankruptcy Get Rid of?

Bankruptcy will normally wipe out:

- Credit card debts.
- Medical debts
- Unsecured lines of credit
- Overpayment of government benefits
- School tuition and fees (not student loans)
- Unpaid rent (but you may still lose your apartment if you take advantage of this)
- Secured debts for things you are willing to let go of
- Income taxes—if they are old enough.
- Most other unsecured debts
- Bridge and highway tolls (but not the penalties and interest)

A Chapter 13 repayment plan can also discharge (see below section on Chapter 13 to decide make decision to file):

- Civil fines such as parking tickets and toll penalties and interest
- debts from a property settlement in a divorce
- debts for willful or malicious injury to another
- Even if not discharged in Bankruptcy, licenses suspended because of traffic and parking tickets can be reinstated.

Discharging Student Loans

- Student loans are not ordinarily discharged in bankruptcy, and you must bring a lawsuit in Bankruptcy Court claiming that repaying the loans would be an “undue hardship.” This is hard to show but can sometimes be done. At a minimum, you need to show the following:
 - You can’t currently pay anything on your student loans;
 - You’re unlikely to be able to pay anything for a “significant period of time” (probably more than 5 years);
 - You have made your best efforts to repay the loans.

Without a lawyer, student loan discharge is hard to get.

What will I still owe after Bankruptcy?

Bankruptcy will not eliminate or wipe out all debts. More specifically, the following are debts that are not dischargeable in bankruptcy and will still be owed and collectible after a bankruptcy discharge enters:

- money owed for child support or alimony
- court restitution orders, criminal fines and penalties, such as traffic tickets and toll violations (the unpaid toll IS dischargeable, but the penalty for not paying it survives)
- Mortgages, auto loans and other secured debt unless you give up the house, car or other collateral.
- Most student loans, unless you can show the court that repaying them is an “undue hardship”. (see can bankruptcy wipe out my student loan debt).
- Income taxes owed from the past 3 years, or for which a return was not filed
- Debts where a creditor can prove you did something bad or engaged in some form of fraud — such as lie on a loan application or borrow money you were not planning to repay;
- Debts not listed on the bankruptcy petition **are discharged**—unless there were assets distributed, and the omission was unintentional and/or the result of lack of information.

What Bankruptcy Can Not Do:

In addition to not discharging some debt, bankruptcy CANNOT:

- Avoid foreclosure on a house you cannot afford. Though bankruptcy temporarily stops a foreclosure, Bankruptcy is frequently and appropriately used to buy time for a debtor to sell or refinance a house but may be against the Bankruptcy Code to file JUST to “buy time.”
- Avoid an eviction. Although back rent can be discharged in bankruptcy, the landlord will still have the right to evict you for non-payment (this may be different if you live in Public Housing) or once the term of the lease has expired.
- Protect cosigners of your debts. When a relative or friend has co-signed a loan, your bankruptcy relieves you of the debt, but not the cosigner, unless your bankruptcy provides for payment of that debt. However, in Chapter 13, the co-signor enjoys a stay from collection during Chapter 13.
- Discharge debts that arise or are accrued after the bankruptcy was filed.

What Are the Downsides of Filing Bankruptcy?

- Chapter 7 bankruptcy filing will remain on your credit report for ten years; Chapter 13 will remain there for 7 years. It will affect your ability to borrow money, rent an apartment, and in some cases, get a job. But if you already have bad credit, bankruptcy will not make this worse, and will allow your credit rating to improve over time.
- Bankruptcy will make you ineligible for a home mortgage for at least three years. After that, you can apply for a government guaranteed FHA mortgage. Once bankruptcy goes off your credit record (10 or 7 years) you can apply for a regular mortgage.
- Credit may be hard to get after bankruptcy, but it is possible. The first credit offers you will get will have high interest rates and low credit limits. As you develop a new, solid credit history after bankruptcy, you will begin to get better credit offers.
- If you file Chapter 7 Bankruptcy and receive a discharge, it will be eight years before you can file Chapter 7 again. You would have to wait four years to file Chapter 13 and receive a discharge.
- Government agencies **cannot**—and generally don't—discriminate against people who have filed for bankruptcy. You cannot be denied a student loan because of having filed bankruptcy. Your employer cannot fire you because you filed bankruptcy, but a prospective employer may in some locations decline to hire you for that reason.

Who Will Know That I Filed for Bankruptcy?

- Bankruptcy cases are a public record. Usually, however, friends, family, and the general public will not know about a personal bankruptcy unless you choose to tell them, or they are listed as creditors or co-signers on the bankruptcy petition.
- All your creditors—and anyone collecting a debt for them--will get notice of the bankruptcy.
- Anyone you are in a contract with will get notice. This includes your landlord, if you have a lease. But landlords generally cannot refuse to renew a lease for this reason.
- Anyone you have co-signed a loan with will get notice.
- While bankruptcy is on your credit record (10 years for Ch. 7; 7 years for Ch. 13) anybody who requests your credit report will see that you filed.

What Different Types of Bankruptcy Cases Should I Consider?

Most people filing for bankruptcy want to file chapter 7. Married debtors can file a joint bankruptcy or choose to file for only one spouse.

Chapter 7 (Liquidation)

Also called “Straight Bankruptcy.” This is the most common form of bankruptcy. It is best for people with little property of value, and lower-than-average income. Most people can protect all their property and file Chapter 7 without losing anything. It takes about 4-6 months to run its course.

Chapter 13 (Reorganization)

Also called the “wage earner” or the “repayment” plan. It requires a debtor to make monthly payments that they can afford for three to five years. At the end of the payment plan, any remaining debt is discharged. Chapter 13 allows you to:

- catch up rent or mortgage payments that are behind, or remove second mortgages as secured debts, or to refinance a secured debt, such as a car loan, often paying the value for that collateral rather than the full balance;
- keep property you would lose in Chapter 7—such as a home with more equity than allowed in your state;
- repay unsecured what you can afford to repay (often nothing) and be protected from your creditors while you do so.

To file under chapter 13, you need to have enough income to resume making your monthly mortgage or rent payments AND pay the monthly chapter 13 payment.

Some people have to file chapter 13 because their income is higher than the rules for chapter 7 allow. For example, in 2024, a single person whose income was above \$5,761 per month, or a family of 4 whose income was above \$10,949 per month, might need to file a Chapter 13.

Isn't it Better to Avoid Bankruptcy with Debt Consolidation?

Sometimes people can avoid bankruptcy with the help of an agency that negotiates repayment plans with creditors for you. These “debt consolidators” can be helpful if you can pay some or most of your debts but need help getting the creditors to talk to you. The problem is that while many debt consolidation agencies are legitimate, many are rip-offs. Even good agencies won't be able to help you much if you're already too deep in financial trouble.

Most of these agencies offer debt management plans to repay some or all of your debts. You send them a monthly payment and they distribute it to your creditors. One problem is that many counselors will pressure you into a debt management plan--as a way of avoiding bankruptcy--whether it makes sense for you or not.

Bankruptcy should NOT be thought of as “the last resort.” In particular, you should consider bankruptcy before spending your retirement savings or borrowing against your home to pay debts.

What Does It Cost to File for Bankruptcy?

It costs \$ 338 to file for bankruptcy under chapter 7 and \$313 to file for bankruptcy under chapter 13, whether for one person or a married couple. In 2024, If you file Chapter 7 and your income is low—less than \$1883/month for 1 person, or less than \$3,900/month for a family of 4—you might not have to pay the filing fee. If you do have to pay, the court may allow you to pay the fee over 4 months.

If you hire an attorney, you will also have to pay the attorney's fees you agree to.

What Are the Classes I Have to Take?

You must complete a credit counseling course before you file bankruptcy; you must complete a

debt management course after the case is filed. You listen to a recorded presentation, then answer questions—either over the Internet or by telephone.

Most lawyers, including NYC BAP, have an approved credit counseling agency they'll want you to work with. If a volunteer at NYC BAP is assisting you with preparing a bankruptcy petition, the volunteer will let you know how and when to take the courses.

Will I Have to Go to Court?

In most bankruptcy cases, you only have to attend a "Meeting of Creditors" to meet with the bankruptcy trustee and any creditor who chooses to come. Usually, this meeting is short and simple. You are asked a few questions by the trustee about your bankruptcy and finances. Creditors rarely come. Starting in 2024, these have usually conducted online in a Zoom Meeting.

Occasionally, if issues come up, 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.

What Property Can I Keep?

Most people who file bankruptcy are able to keep all of their property, but there are limits. If you have a lot of equity (see below) in real property, cars, or large amounts of money, things might be more complicated.

Exemptions protect your "equity" in property. Equity is what you would get if you sold the property. For example, if you have a house that sells for \$500,000, and you owe a \$300,000 mortgage on it, that mortgage gets paid off first, and you get the rest: \$200,000. That is your "equity."

In a chapter 7 case, as long as you can protect your equity with exemptions, you can keep it. Every state has exemption laws that say what you can keep. Some states also give you the option of using Federal Exemptions if they're better for you. Exemptions are complicated, but here's a breakdown of some of the common exemption amounts:

As of 2024, Federal Exemptions (if available in your state) let you protect

- up to \$15,425 in household furnishings, appliances, clothing, electronics and musical instruments. 11 U.S.C. 522(d)(3)
- The Federal Wildcard lets you protect up to \$14,425 in anything. This can be used to protect cash in the bank, or a pending tax refund, or a valuable piece of art. 11 U.S.C. 522(d)(5)
- The federal exemption for a personal injury award can protect up to \$27,900 in a personal injury award. If the Wildcard isn't being used to protect other things, the two can be added together to protect up to \$42,325 of a personal injury award. 11 U.S.C. 522(d)(11)(D)
- An exemption for cars protects up to \$4,450 of equity in a car. 11 U.S.C 522(d)(2)
- An exemption for jewelry can protect up to \$1,875 of jewelry. 11 U.S.C. 522(d)(4)

- The exemptions above can be combined with any unused portion of the Wildcard exemption to protect more.
- Retirement accounts, IRA's, pensions, Social Security, government benefits 11 U.S.C. 522(d)(12), Life insurance policies, 11 U.S.C. 522(d)(8), proceeds from a wrongful death claim, 11 U.S.C. 522(d)(11)(D) and a few other financial assets, are protected to the extent "reasonably necessary" for the debtor's living expenses. Nobody's really sure what that means, but it's a lot!
- Finally, usually if a husband and wife are both owners of any property and they file a joint bankruptcy, they can combine their exemptions together to protect twice as much equity.

The exemption rules are complex; for example, not all of the exemptions above can be taken at the same time. It is best to have an attorney figure out what can and cannot be protected. But for most filers, the exemptions are enough to protect everything they own.

Can I Keep Property in Bankruptcy If I Owe Money for It?

In most cases you will not lose your home or car during your bankruptcy case as long as it is not worth more than what the exemptions can protect (see: What Property Can I Keep? —above). Also, if the car or house is collateral for an auto loan or mortgage, you will need to keep paying that auto loan or mortgage to keep the car or house.

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. You can often use a Chapter 13 repayment plan to restructure a secured debt, making the monthly payments more affordable, or even making them part of the Chapter 13 plan payments.

My car has been repossessed because I haven't been able to make payments. What do I do?

Generally, creditors can repossess a vehicle if the car loan is even just a single payment behind. That is usually done through a "self-help" repossession, without any authorization or even warning.

In some states, such as Texas, a creditor is required to file a lawsuit seeking court permission to begin the car repossession process. Creditors who have received permission from the court to repossess a car can hire a company to retrieve the car from a person who is behind on payment.

Once repossession has occurred, you have several options. As a first step, immediately contact an attorney experienced in car repossession or bankruptcy.

Usually, when a creditor repossesses a vehicle, there is a specific process they must follow before they are allowed to sell your repossessed car. You will typically only have approximately ten days

after repossession to take action to get your car back. After that, the lienholder can legally sell the vehicle at auction. Any proceeds made at the auction will be applied to what you owe. Frequently the proceeds made at auction will not cover the full amount owed by you, and in that instance, you can still be pursued by a debt collection agency for that remaining debt.

Options:

1. Prior to the auction taking place, if able, you could pay the loan in full. Another option to consider is to catch up on payments, however you will have to pay all past-due payments, in addition to late fees and costs incurred by the lender for repossession. Refinancing your vehicle loan may be an option also, as is filing bankruptcy.
2. If you are able to file Chapter 13 bankruptcy, you can usually get your car back after repossession. However, if at all possible, this should be done prior to your car being repossessed.

Regardless, it is important to note that whatever tactic you take, you must do it before the ten-day deadline is up. If you are considering this option, be sure to refer to the other Frequently Asked Question on this page regarding bankruptcy (and the consequences of filing for bankruptcy).

Can I Own Anything After Bankruptcy?

Yes! Many people believe they cannot own anything for a period of time after filing for bankruptcy. That is not true. You can keep your exempt property and anything you buy or get after bankruptcy is filed. However, if you receive an inheritance or life insurance proceeds from someone who dies within 180 days (about 6 months) after filing for bankruptcy, that money or property may have to be paid to your creditors if the property or money is not exempt.

If, before you file bankruptcy, you have any kind of claim where you could get money—for example, a personal injury case, a wrongful death case, a medical malpractice claim, or other such claim—even if you haven't even talked yet to an attorney about it—that claim can be taken over by the Bankruptcy Court and settled for the benefit of your creditors. It is extremely important that you tell a bankruptcy attorney about such a claim before you file bankruptcy.

Will Bankruptcy Affect My Credit?

This depends on how good your credit is now. If you've been paying all your bills on time, bankruptcy will hurt your credit rating. But if you have already defaulted on some of your debts, your credit will already be bad, and bankruptcy will probably not make it any worse. Bankruptcy will appear on your credit record for ten years (7 years for Chapter 13). But its effect on your credit rating fades over time. And 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. Many people receive credit offers soon after filing for bankruptcy.

What happens if I discharge a Utility bill in Bankruptcy?

Public utilities, such as the electric company, cannot 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 come due after bankruptcy is filed.

Can bankruptcy help me get back a suspended license?

If you lost your license solely because you couldn't pay court-ordered damages caused in an accident, or unpaid parking or traffic tickets, bankruptcy can allow you to get your license back. But some license suspensions for dangerous traffic violations and other serious matters cannot be undone with bankruptcy.

If I get a loan discharged in bankruptcy, how does that affect the loan's co-signor?

If someone has co-signed a loan that you discharge in bankruptcy, the debt can still be collected from the co-signer.

How Do I Find a Bankruptcy Attorney?

For a referral to a fee-charging bankruptcy attorney, you may wish to call your state's [Lawyer Referral Service](#). The attorneys referred to through this service have been screened to ensure they have bankruptcy experience and have generally not gotten into serious trouble with client relations. 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.

Bankruptcy petition 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 cannot give you advice that you may need about problems that could come up in your case. They offer no services once a bankruptcy case has begun.

There are many shady operators in this field, who give bad advice and defraud consumers.

An online program called "UpSolve," allows some people to file bankruptcy without an attorney. Because no human is involved, this can be even riskier than the petition preparation services.

Can I File Bankruptcy Without an Attorney?

Yes. But while it is possible to file Bankruptcy without an attorney, it is very difficult to succeed without one—especially in Chapter 13. Even if you obtain a bankruptcy discharge, you could lose

property or other rights that an attorney could have protected. Note that hiding, or misrepresenting things in a bankruptcy petition can be a serious crime with prison and high fines. If problems arise in a bankruptcy you filed without a lawyer, you may find it more difficult or expensive to later find an attorney to assist you.

Here are links to other resources you may find helpful

- **US Courts: Bankruptcy Basics** <https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics>
- **Surviving Debt**, <https://library.nclc.org/book/surviving-debt> See Ch. 25 and 26, National Consumer Law Center, Inc., 2024
- **No Fresh Start 2023, Will States Let Debt Collectors Push Families Into Poverty as Economic Uncertainty Looms?** <https://www.nclc.org/resources/no-fresh-start-2023/>
National Consumer Law Center, Inc., 2023

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.

State Specific Rules: Indiana

What property are you allowed to keep if you file bankruptcy in Indiana? You are allowed to keep certain amounts of property, which are known as “exemptions.” The exemptions below are available per person, which means that in a joint bankruptcy (filed by two spouses), each may claim his / her own exemptions. Indiana law governs most property exemptions in bankruptcy cases.

Indiana does not use the U.S. Bankruptcy code’s exemptions. Indiana bankruptcy debtors may claim the following exemptions under state law:

1. Residence -- \$22,750 equity per person.
 - a. To get the equity, start with the value of the property (property tax assessment or recent appraisal), and subtract all mortgages or other liens.
 - b. Important: this exemption applies to all residential property, not just real estate. For example, a manufactured / mobile home gets this exemption, even if the debtor does not own the land it is on.
2. Real estate owned jointly by a married couple:
 - a. 100% of the real estate value is exempt from any debts in the name of only one of the spouses.
 - b. For joint debts (debts in the name of both spouses), the 100% rule doesn’t apply. However, both spouses can claim the exemption, so if they live on the property, the total exemption is presently \$45,500 (\$22,750 times two).
 - c. This can be complicated if a husband and wife are both filing bankruptcy (a joint bankruptcy case) and there are both individual and joint debts. It’s best to have an attorney evaluate this situation.
3. Other real estate and “tangible” personal property
 - a. You may claim an exemption of \$12,100 for real estate which you don’t live on, and any tangible personal property.
 - b. Tangible personal property means:
 - i) Property other than land or real estate
 - ii) Which can be seen, weighed, measured, felt or touched.
 - iii) This includes property like household goods and furniture, electronics, vehicles, collectibles, clothing, sports / hobby equipment and jewelry. It does not, however, include cash.
 - c. The \$12,100 exemption is for all non-residential land and personal property combined – not for each individual item.
 - d. To figure out your interest in the property, subtract any liens from the value. For example, if you own a car worth \$12,000 but there is \$7,000 owed to a bank or finance company, the value of your interest is \$5,000.
4. Intangible property
 - a. You may claim an exemption of \$450.00 for “intangible” personal property.
 - b. Intangible personal property includes items such as cash, money in a bank account, certificates of deposit, stock, money owed to you and claims you have against others. Note, however, that special rules apply to pension and retirement accounts, and tax

refunds.

- c. The \$450.00 exemption is for all intangible property combined – not for each individual item.
5. Note: The dollar amounts on Indiana property are adjusted every six years for the cost of living. The most recent adjustment happened in 2022, meaning the next adjustment will happen in 2028.
6. Tax refund
 - a. Generally, federal and state tax refunds are “intangible” property.
 - b. However, there is one important exception – any part of the refund which came from the Earned Income Credit (EIC) is completely exempt. Your tax return (federal and state) has a line item for the EIC.
 - c. For example, if you have (or are expecting) a \$7000 tax refund, which includes a \$4000 EIC line item, \$4000 plus any part of the \$450 intangibles exemption you don’t use on other property, is exempt.
 - d. The time of year you file a bankruptcy will also affect how much of the tax refund you get to keep. An attorney will help you determine whether it is best to file a bankruptcy right away or wait until later to file.
7. Child support owed to you is exempt under Indiana law.
8. Retirement and pensions: Generally, these are exempt. However, some exceptions and limits apply. It is best to review these with an attorney. Examples include tax-deferred pensions, IRA’s and 401(k) funds, public employees’ retirement, teachers’ state retirement a police and firefighters’ pensions.
9. Special accounts: Generally, these types of special financial accounts are exempt. However, some limits apply, and it is best to review these with an attorney. Examples include education savings accounts, qualified tuition programs, medical care accounts, health savings accounts, and ABLE accounts.
10. Group life insurance / proceeds, and life insurance / proceeds payable to a spouse or dependent are exempt.
11. Workers’ compensation and unemployment compensation awards are exempt. However, for unemployment compensation, there is no exemption once the funds have been deposited in a bank account.
12. Professionally prescribed health aids are exempt, regardless of value.

Unlike some states, Indiana does not have a “wildcard” exemption which allows debtors to protect property that is not covered by other exemptions.

A bankruptcy debtor in Indiana (and other states), may also claim certain federal law exemptions on income and property. Examples include Social Security Retirement and Disability, SSI, Veterans’ Benefits, certain federal employees’ retirement programs and federal student loan proceeds.

These are the more common exemptions available to a bankruptcy debtor in Indiana. If you have property or accounts which aren't mentioned on the list, consult an attorney.

If you have assets which are not exempt, you may still be able to keep them if you file a Chapter 13 (payment-plan) bankruptcy instead of a Chapter 7 case. An attorney who files Chapter 13 cases can evaluate your situation and help you decide whether a Chapter 13 would work for you.

Where do you file bankruptcy in Indiana? Bankruptcies are filed in the federal district in which you live. The Northern District of Indiana has federal bankruptcy courts in Hammond, South Bend, Ft. Wayne and Lafayette. The Southern District of Indiana has federal bankruptcy courts in Indianapolis, Evansville, New Albany and Terre Haute. Your county of residence determines the bankruptcy court in which you file.

State Specific Rules: Massachusetts

In Massachusetts, there are exemptions that allow you to keep certain amounts of property.

<https://malegislature.gov/Laws/GeneralLaws/PartIII/TitleII/Chapter235/Section34>

Debtors have the right to choose which exemptions they want to apply in their bankruptcy case to best protect their property. These include selecting state specific exemptions, federal exemptions, or federal non-bankruptcy law exemptions. Note, MA has not opted out of federal bankruptcy exemptions, while many other states have, and does allow the use of the U.S. Bankruptcy code's exemptions.

Massachusetts exemptions often exceed those provided for under the federal exemptions, including higher limits on homestead exemptions, pensions and insurance interests.

In a joint filing, each spouse must choose the same exemption scheme, and if unable to agree, then they default to the federal exemptions. Noting that each debtor may be able to assert the state exemptions separately. (Sec 522(m) of the Code); since each spouse of a married couple filing a joint case is entitled to claim exemptions individually. [If filing as a married couple, double the amounts of the exemptions.]

It is important to note that the value of property is not what you paid for it, rather it is what it costs to buy that item used; this amount will almost always be less than what you paid for it.

An exemption only needs to be enough to protect the **equity** in your property.

Massachusetts bankruptcy debtors may claim the following exemptions under state law:

1. Residence

- a. In MA, \$125,000 automatic exemption; \$500,000 equity value exemption on recorded homestead declaration.

i. Note:

1. exemption does not apply to tax or mortgage debts or liens recorded prior to declaration of homestead recordation.
 2. Applies to real property or personal property, which includes manufactured homes, houseboats, shares in cooperatives (up to \$100), burial plots, etc.
- ii. To get to equity, start with the value of the property (property tax assessment or recent appraisal), and subtract all mortgages and/or other liens.
 1. Massachusetts General Laws (MGL), Chapters 188 and 235.

2. Wages

- a. Greater of 85% of gross wages or 50 times state or federal minimum wage, whichever is greater.

i. Mass. Gen. Laws ch. 246, §§ 28 and 28A; Mass. Gen. Laws Ch. 235, § 34

3. Money Benefits

- a. In MA, unless otherwise stated, the full value of the following monetary-based assets is exempt:

- i. Alimony or spousal support
- ii. Annuity contracts payable to an insured's spouse or dependent
- iii. Child support
- iv. Disability benefit – up to \$400 per week (MGL Chapter 175, Section 110A)
- v. Displacement benefits
- vi. Healthcare provider self-insurance funds
- vii. Insurance policies
- viii. Pensions – excludes benefits subject to claims under support orders
- ix. Public Assistance
- x. Rented residential property – rent for primary residence, not to exceed \$2,500
- xi. Retirement benefits – excluding benefits subject to claims under support orders
- xii. Social Security benefits
- xiii. Unemployment compensation (MGL Chapter 151A, section 36)
- xiv. Utilities – up to \$500 per month
- xv. Veteran's benefits (MGL Chapter 115, section 5)
- xvi. Worker's compensation (MGL Chapter 152, section 47)

4. Motor Vehicle

- a. In MA, one motor vehicle valued up to \$7,500, or \$15,000 if 60 or older or disabled.
 - i. Note: exemption applies only to the debtor's interest that is over and above any security interest or other lien.
 - ii. MGL Chapter 235, Section 34.

5. Personal Property Exemptions

- i. Unlimited value for the following:
 - 1. 1 television, computer, heating unit, stove, refrigerator, freezer, and hot water heater; beds; military uniforms and arms, cemetery rights, etc.
 - ii. \$15,000 in additional necessary household furniture;
 - iii. \$500 in books;
 - iv. \$600 in food provisions
 - 1. Examples: Household furnishings, household goods, wearing apparel, appliance, books, animals, crops or musical instruments
 - 2. Notes:
 - a. valuation of property is adjusted for inflation every three years.
 - b. Items used primarily for business purposes are not meant to be included under this exemption.
 - 3. MGL Chapter 235, section 34 and Chapter 246, section 28.

6. Jewelry

- a. In MA, \$1,225 exemption for necessary wearing apparel and jewelry
 - i. Comment: Issues arise relating to the value of wedding rings, engagement rings, and other jewelry of great sentimental value. An attorney assisting a

debtor should assess which exemptions are best to apply, for example, between this exemption, the wild-card exemption, and the any property exemption.

7. Wild Card

- a. In MA, wildcard exemption is between \$1,000 and \$6,000
 - i. \$1,000 wildcard plus up to \$5,000 of certain unused exemptions
 - 1. Miscellaneous property examples: livestock and hay, jewelry

8. Tools of the Trade

- a. In MA, \$5,000 exemption; additional \$5,000 for materials and stock in trade, \$1,500 in business-related fishing gear.
 - i. Examples: implements, professional books, tools of the trade, fixtures necessary for a profession, boats, and tackle of a fisher

9. Life Insurance

- a. Group Annuity Policy or Proceeds: MA General Law Ch.175, Section 132C
- b. Group Life Policies: MGL Ch. 175, Section 135

10. Bank Accounts

- a. In MA, up to \$2,500
 - i. MGL Chapter 246 section, 28A

<https://www.masslegalhelp.org/money-debt/bankruptcy>

US Bankruptcy Court for the District of MA: A Guide for the Self-Represented Debtor in a Bankruptcy Case: <https://www.mab.uscourts.gov/sites/mab/files/masspsguide.pdf>

- Consider Bankruptcy Alternatives
 - o Collection Proof/Exempt Income or Assets
 - <https://www.masslegalhelp.org/money-debt/debt-collection/money-and-property-protected-collection>
 - <https://www.mass.gov/doc/financial-statement-of-judgment-debtor/download>
 - Hardship dismissals
 - Process varies by creditor/debt collector; some require email request, some require proof of disability, proof of income, financial statement, etc.
 - Cease and desist letter
 - <https://www.masslegalhelp.org/media/431>
 - Collection proof letter
 - https://www.masslegalhelp.org/sites/default/files/2024-06/sample-collection-proof-letter_0.rtf
 - Debt Validation Letter
 - https://www.masslegalhelp.org/sites/default/files/2024-01/letter-to-creditor-requesting-verification-of-the-debt_2024.docx
 - Negotiating with debt collectors/creditors – settlement
 - <https://www.masslegalhelp.org/money-debt/debt-collection/how-negotiate-debt-collectors>

State Specific Rules: New York

As of 2024, New York laws allow you to protect

- up to \$204,825 of home equity, depending on what county you live in. NY CPLR § 5206

In that example where you have a house that sells for \$500,000 and you owe \$300,000, your equity is \$200,000. The Homestead exemption for New York City lets you protect \$204,825—so, all of your home equity, which means you can keep your home. But if you had a lot more equity—say, \$250,000—when the exemptions can only protect \$204,825, that property might be sold in a Chapter 7 bankruptcy to pay your other debts.

NY exemptions also protect:

- household furnishings, clothing, appliances and electronics up to \$13,625—which is probably enough. The numbers here are not what it would cost to buy these things, but what you would get for them if you sold them. NY CPLR § 5205(a)
- A cash exemption lets you protect cash, money in the bank, or a tax refund—up to \$6,825 NY Debtor & Creditor Law § 283(2)
- New York’s “baby wildcard” can protect up to \$1,325 of whatever you want—cash or not. NY CPLR § 5205(a)(9)
- New York also has two automobile exemptions—each for \$5,500 (they can be used for two different cars but can’t be “stacked” together on one car). A car equipped for handicapped driving can be exempted up to \$13,625. NY CPLR § 5205(a)(8) and NY Debtor & Creditor Law § 282(1)
- A jewelry exemption protects up to \$1,325 of jewelry. NY CPLR § 5205(a)(9)
- Retirement accounts, IRA’s, pensions, Social Security, government benefits N.Y. C.P.L.R. 5205(c)(1); N.Y. Debt. & Cred. § 282(2)(e)(iii), Life insurance policies, NY Ins. Law § 3212, Est. Pow. & Tr. §7-1.5, NYCPLR 5205(i), proceeds from a wrongful death claim, N.Y Debt. & Cred. Law 282(3)(iii), and a few other financial assets, are protected to the extent “reasonably necessary” for the debtor’s living expenses. Nobody’s really sure what that means, but it’s a lot!

The big advantage of the NY State exemptions is the homestead exemption; the big advantage of the Federal exemptions is the Wildcard—especially handy to protect a big tax refund. Note that you can’t mix & match exemptions—you must choose one scheme or the other.

- **Public housing** tenants can discharge rental arrearages without losing their tenancy. Other tenants must catch up the rent or landlord can evict.

State Specific Rules: North Carolina

North Carolina bankruptcy exemptions are laws that allow debtors to keep some of their property and assets when they file for bankruptcy. North Carolina has its own set of bankruptcy exemptions, which are different from the federal bankruptcy exemptions.

Some of the common exemptions in North Carolina include:

- Home (up to \$35,000, \$70,000 for married couples, \$60,000 for some widows and widowers)
- Car (up to \$3,500 or \$7,000 for married couples)
- Personal property (up to \$5,000 for household items, clothing, etc.)
- Tools of the trade (up to \$2,000 for professional books, implements, and tools)
- Other Property: Up to \$5,000 can be used to protect other property
- Personal Injury Compensation: Personal injury claims are fully protected
- Wages (up to 60 days wages or 75% of disposable earnings)
- Retirement and pensions
- Whole Life Insurance: IF your spouse or children are the named beneficiary
- Alimony, child support, and separate maintenance

It is important to note that the North Carolina bankruptcy exemptions only apply to residents of North Carolina who file for bankruptcy in North Carolina.

Additional Materials

1. About Bankruptcy, <https://www.uscourts.gov/court-programs/bankruptcy>
Administrative Office of the U.S. Courts on behalf of the Federal Judiciary
2. No Fresh Start 2023, Will States Let Debt Collectors Push Families Into Poverty as Economic Uncertainty Looms? <https://www.nclc.org/resources/no-fresh-start-2023/>
National Consumer Law Center, Inc., 2023
3. Providing Pro Bono Through ABA Free Legal Answers, https://www.americanbar.org/groups/probono_public_service/projects_awards/free-legal-answers/tips-for-providing-pro-bono-through-aba-free-legal-answers/
American Bar Association, 2024
4. Surviving Debt, <https://library.nclc.org/book/surviving-debt> See Ch. 25 and 26,
National Consumer Law Center, Inc., 2024