

# Easy Explanation of Bankruptcy

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 ask Warren Law Firm for answers to your specific issues.

## **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 by canceling debts. The right to file for bankruptcy is provided by federal law. Debts are created by state law. Federal law is superior to state law, so bankruptcy trumps debts.

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.

Ohio divides its bankruptcy courts between north and south. The southern division includes offices in Dayton, Cincinnati, and Columbus. If you live in southeastern Ohio, then your case will likely be handled by the Columbus office.

## **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.
- Stop foreclosure on your house or mobile home and allow you an opportunity to catch up on missed payments. (Bankruptcy does not, however, 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, however, cure every financial problem. Nor is it the right step for everybody. In bankruptcy, it is usually *not* possible to:

- Eliminate certain rights of “secured” creditors. A “secured” creditor has taken a mortgage or other lien on property as collateral for the 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 if your property is taken. Nevertheless, you generally can not keep the collateral 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, certain other debts related to divorce, most student loans, court restitution orders, criminal fines, and some taxes.
- Protect cosigners on your debts. When a relative or friend has co-signed a loan, and you cancel the debt in bankruptcy, the cosigner may still have to repay the loan.
- Discharge debts that arise after bankruptcy has been filed.

## What Different Types of Bankruptcy Should I Consider?

There are two basic types of bankruptcy cases provided under the law:

- *Chapter 7* is known as “straight” bankruptcy. It requires a debtor to give up property which exceeds certain limits called “exemptions,” so the property can be sold to pay creditors. Usually, all property is exempt and you won’t lose anything.
- *Chapter 13* is called “debt adjustment.” It requires a debtor to file a plan to pay debts (or parts of debts) from current income.

Either type of case may be filed individually or by a married couple filing jointly.

If your income is above the median income for a family the size of your household in your state, you may have to file a chapter 13 case. If the consumer is found to have a certain amount left over that could be paid to unsecured creditors, the bankruptcy court may decide that the consumer can not file a chapter 7 case, unless there are special extenuating circumstances.

### *Chapter 7 (Straight Bankruptcy)*

In a straight bankruptcy case, you file a petition asking the court to discharge your debts. The basic idea in straight 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. Straight bankruptcy does not require you to pay any of your wages to the Trustee nor to any creditors.

If you want to keep property like a home or a car and are **behind** on the payments on a mortgage or car loan (secured creditors), a chapter 7 case may 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. But, if you are **current** on your secured debts,

then you will be able to continue paying your secured creditor during and after the bankruptcy in order to keep the collateral.

### ***Chapter 13 (Repayment Plan)***

In a repayment plan 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 repayment plan case is that it will allow you to keep valuable property--especially your home and car--which might otherwise be lost, so long as 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 should consider filing a chapter 13 plan if you

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

### **How Much are Court Costs to File for Bankruptcy?**

It now costs \$299 to file for bankruptcy under chapter 7 and \$274 to file for bankruptcy under chapter 13, whether for one person or a married couple. This does not include your attorney fees.

### **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. Here are some of Ohio’s primary exemptions. Refer to Exemptions on page 8 for more detail about what property is exempt.

Ohio exemptions include:

\$5,000 in equity in your home;

\$1,000 in equity in your car;

Unlimited amount of money in government- qualified retirement accounts;

Your right to receive certain benefits such as social security, unemployment compensation, veteran’s benefits, public assistance, and pensions--regardless of the amount.

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 now. 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. This means that 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 count your exemptions against the \$10,000 which is your equity if you sell it.

While your exemptions allow you to keep property, your exemptions do not make any difference to the rights of a mortgage holder or car loan creditor to take the property to cover the debt if you are behind. In most cases you will have to pay the mortgages or liens the same 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.

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. 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 all your wages and anything you obtain after the bankruptcy is filed. You can open a new bank account after bankruptcy without fear that a creditor will attach your money for an old debt.

However, if you receive an inheritance, a property settlement, or life insurance benefits within 180 days after filing for bankruptcy, that money may have to be paid to your creditors.

### **Will Bankruptcy Wipe Out All My Debts?**

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

1. money owed for child support or alimony, fines, and some taxes;
2. debts not listed on your bankruptcy petition;
3. loans you got by knowingly giving false information to a creditor;
4. debts resulting from "willful and malicious" harm;
5. most student loans, except if the court decides that payment would be an undue hardship;
6. 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?**

No. You only have to go to an informal 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. An attorney from Warren Law Firm will attend the meeting with you.

Occasionally, if complications arise, or if you choose to dispute a debt, you may have to appear before a judge at a hearing. For the most part, bankruptcy judges spend their time on big business cases and leave personal bankruptcy cases to the trustee. If you need to go to court, you will receive notice of the court date and time from the court.

### **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. Most credit agencies only report it for seven years. But because bankruptcy wipes out your old debts, you are likely to be in a better position to pay your current bills, and you will get new credit based on your income.

### **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.

*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 a chapter 13, you may be able to protect co-signers, depending upon the terms of your chapter 13 plan.

*Discharge*--You will receive your Order of Discharge officially cancelling your debts about four months after your meeting of creditors.

*Spouse*--Your spouse's assets are not included in your bankruptcy unless you file together. Likewise, your discharge will not cancel your spouse's debts. A married couple may file a joint petition but are not required to.

### **This Is Important**

Remember: Laws change often. Every case is different. This brochure is only meant to give you general information and you should not consider it to be legal advice. You should ask Warren Law Firm for answers to your specific issues.

# Common Bankruptcy Terms and Definitions

Bankruptcy attorneys sometimes seem to speak a different language. Whenever you hear or read something you are not familiar with, look it up here.

**automatic stay** Order from the bankruptcy court against all creditors to stop lawsuits, garnishments, foreclosure, and all other attempts to collect a debt from a debtor, effective the moment a bankruptcy petition is filed.

**bankruptcy petition** Formal request for bankruptcy relief. It is prepared by Warren Law Firm after you have paid your fees and provided all your financial information.

**bankruptcy trustee** Person, usually an attorney, appointed by the bankruptcy court to oversee your bankruptcy case. His job is to review the truth of all your financial information and assure that all parties follow the bankruptcy rules. In chapter 13, the trustee will also take your payments and distribute them according to your repayment plan.

**confirmation** Approval of a chapter 13 repayment plan by a bankruptcy judge.

**creditor** Person or business to whom the debtor owes money.

**debtor** Person who files a bankruptcy petition.

**discharge** Order from the bankruptcy court releasing a debtor from personal liability for most claims. It prevents creditors from taking any actions against a debtor or a debtor's exempt property.

**equity** Value of property after deducting for liens. Ex. \$80,000 house with a \$50,000 mortgage has \$30,000 equity.

**exempt** Property that creditors may not claim, either in or out of bankruptcy.

**lien** Claim against specific property for payment of a debt, like collateral.

**liquidation** Sale of property to pay claims of creditors.

**meeting of creditors** Hearing to talk about your case. Usually attended only by the trustee, you, and Warren Law Firm.

**plan of reorganization** Debtor's detailed description of how a debtor intends to pay creditors' claims over three to five years. It must be confirmed by the bankruptcy judge. If you complete the plan, then all of your short-term debts are discharged.

**reaffirmation agreement** Written agreement by a chapter 7 debtor to voluntarily pay a discharged debt after bankruptcy, usually for the purpose of keeping collateral like a financed car or a mortgaged home.

**secured debt** Debt backed by mortgage or other lien on specific property as collateral for a debt. Discharge does not cancel a creditor's rights against the collateral.

## Exemptions

Exemptions refer to the amount of property you can keep despite the claims of creditors. You can keep exempted property after you file bankruptcy.

You may exempt any property that falls into the one of the exemption categories below, up to the dollar amount shown. If no specific amount is listed, then the exemption is unlimited.

You only need to exempt the equity you have in property. Equity is the value of the property after deducting liens. Ex. \$80,000 house with \$50,000 mortgage has \$30,000 equity.

Married couples may each claim a full set of exemptions.

### SHORT SUMMARY OF EXEMPTIONS

**Homestead exemption:** \$5,000

**Vehicle exemption:** \$1,000 in a single vehicle

**Household item exemptions:** Clothes \$200, Beds \$200, Bedding \$200, Stove \$300, Refrigerator \$300, plus \$2,000 in other items worth not more than \$200 each (except jewelry item can be worth up to \$400).

**Other exemptions:** Most pension plans, insurance, Erisa-qualified retirement accounts like a 401(K) or a 403(B) are unlimited.

**Cash exemption:** \$400

**Wild Card exemption:** \$400 for anything.

Ohio's exemptions are very specific so you should ask Warren Law Firm for answers to your specific issues.

# Pre-Filing Counseling & Pre-Discharge Education

Before you are eligible to file bankruptcy, you must complete a counseling session regarding credit and options to bankruptcy. You can take the course from any agency approved by the U.S. Trustee.

A good counselor will discuss alternatives to bankruptcy, and work with you to develop:

- ☞ Personal financial assessments
- ☞ Reasonable spending plans
- ☞ Short and long term financial goals

Most of the counseling agencies are available 24/7. They usually charge \$30-\$50.

After you file bankruptcy, you must complete another counseling session designed to help you learn things to help keep you from needing to file bankruptcy again. You will receive tips and tools for wise money management and credit use.

You will discover how to:

- ☞ Set achievable financial goals
- ☞ Calculate net worth
- ☞ Create a livable budget
- ☞ Build a savings plan

You will also get helpful tips on how to obtain credit reports, dispute errors in your report, establish credit, and prevent identity theft. These sessions are usually available from the same agencies, and the fee is usually about the same as for the pre-filing course.

You may ask Warren Law Firm for recommended agencies. If you are unable to complete the course by yourself, Warren Law Firm will assist you for a \$50 fee.

# Credit Reports

A credit report includes information on where you live, how you pay your bills, and whether you have been sued, arrested, or filed for bankruptcy. Nationwide consumer reporting companies sell the information in your report to creditors, potential lenders, and other businesses that use it to evaluate your applications for credit, insurance, employment, or renting a home.

Federal Law requires each of the three nationwide consumer reporting agencies to provide you with a free copy of your credit report once per year. You may order your free annual credit report online at [www.annualcreditreport.com](http://www.annualcreditreport.com) or by calling 1-877-322-8228. When you order, you will be required to provide your name, address, social security number, and date of birth.

You have the right to dispute incomplete or inaccurate information in your report by reporting it to the consumer reporting agency. The agency must investigate your claim, then correct any mistakes within thirty days. After you receive your bankruptcy discharge, you should review your report to make sure the only thing reported is bankruptcy and no prior negative history.

Bankruptcy can be reported for as long as ten years, though most agencies only report it for seven years. You will find that new creditors are not very interested in your bankruptcy, and that your bankruptcy will only affect your credit for about two years.

**Warning:** Do not rely on a credit report to find all of your debts because not all creditors report debts to the consumer reporting agencies. A credit report is just one way to locate some of your debts. You still should search your records, watch the mail, and call creditors for information in order to find all your debts.