

# BANKRUPTCY

*SOME FREQUENTLY ASKED QUESTIONS  
AND ANSWERS*

You should file for bankruptcy only after carefully deciding that bankruptcy is the best way to deal with your financial problems.

This pamphlet can't explain every aspect of the bankruptcy process. If you have questions after reading it, talk to a bankruptcy lawyer.

**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.**

## WHAT IS BANKRUPTCY?

Bankruptcy is a legal process. After completing the bankruptcy process, a person can get a financial fresh start. The right to file for bankruptcy is governed by federal law. Bankruptcy cases are held in federal courts. In Vermont, the federal courts are in Rutland and Burlington. In most cases, once you file for bankruptcy your creditors must stop trying to collect debts from you until the bankruptcy is complete.

Bankruptcy is not the right solution for every person. Bankruptcy can't cure every financial problem.

## WHAT CAN BANKRUPTCY DO FOR ME?

Bankruptcy *may* make it possible for you to:

- Discharge most or all of your debts. "Discharge" is the legal term for getting rid of debt.
- Stop foreclosure on your house or mobile home. You may get a chance to catch up on missed payments. (Bankruptcy does not automatically get rid of your mortgage, liens on your property, or other secured debt.)
- Stop repossession of your car or other property.
- Have creditors return property even if it was repossessed.
- Stop debt collection including wage garnishing, harassing phone calls, and other debt collection practices.
- Restore utility service.
- Challenge creditors who try to collect more than you really owe or who have committed fraud.

## WILL BANKRUPTCY WIPE OUT ALL MY DEBTS?

No. Congress has decided that bankruptcy can't wipe out certain debts. These debts include:

- Money owed for child support, alimony, and certain other debts related to divorce.
- Court restitution orders and criminal fines.
- Some taxes.
- Debts not listed on your bankruptcy petition.
- Loans you got by knowingly giving false information to a creditor, who reasonably relied on that false information in making you the loan.
- Debts resulting from "willful and malicious" harm.
- Most student loans.
- Mortgages and other secured liens which are not paid in the bankruptcy case.
- Debts created from large cash advances, from luxury purchases, or from many large charges to a credit card account within six months of filing bankruptcy.

## CAN I KEEP MY PROPERTY IF I FILE FOR BANKRUPTCY?

Yes. You can keep at least some of your property if you file for bankruptcy. The law says the creditors can't get at certain property. This property is "exempt." There are limits on how much property you can claim is exempt. If you have lived in Vermont for at least 2 years before you file for bankruptcy you can choose to follow the Vermont limits or the Federal limits on exempt property. If you have lived in Vermont less than 2 years, your choice is between the Federal Limits and the limits of the previous state you lived in. You must pick one. You can't mix and match. This is a list of some of the most common exemptions:

Item	Vermont State Limit	Federal Limit
Equity in Your Home	\$75,000	\$18,450
Equity in Your Car	\$ 2,500	\$ 2,950
Tools of the Trade	\$ 5,000	\$ 1,850
Household goods	\$2,500 total	\$475/item, up to \$9,850 total
Wild Card*	\$ 400	\$ 975
Unused Amount of other allowed exemptions	Up to \$7,000	Up to \$9,250
Benefits (examples: SSI, unemployment compensation; veteran's benefits, public assistance)	No Limit	No Limit
Self-directed retirement account	\$10,000	No Limit
Sheep	6	Not Applicable
Hog	1	Not Applicable
Pig	1	Not Applicable
Horse, Cow or Oxen	1 (if oxen, 1 yoke)	Not Applicable

\* A wild card exemption is one you can use on any property you choose.

**Note:** There are other exemptions a person may claim; this list is meant only as a sample.

### How do I know if my property is exempt?

First, figure out the value of your property. The value is what you could sell it for now. Sometimes this is called the "fair market value." For furniture and cars the fair market value could be a lot less than what you paid for it or what it would cost to replace.

Second, figure out how much equity you have in the property. Equity is your interest in the property. To figure out how much equity you have in your property subtract the amount you owe on the property from the fair market value of the property. The amount left over is your equity in the property. For example, if you have a home with a fair market value of \$125,000 and a mortgage of \$60,000 your equity in the home would be \$65,000. Because your equity is less than the \$75,000 home exemption amount, your home would be exempt.

If your equity is higher than the exemption you might be able to keep your property if you can pay the portion that is not exempt.

## Can I keep all of my exempt property?

Maybe. If property is exempt you do not have to sell it in order to pay off your debts. However, the exemptions do not affect the right of a **secured creditor** to take property that is pledged as **collateral** to cover their loan if you are behind on payments. Secured creditors have a **security interest** in your property. There is more information about secured creditors below.

In a Chapter 13 case you may be able to keep all of your property. Read more in our section about the different Bankruptcy Chapters.

## What is a “Secured Creditor”? What is a “Secured Debt”? What is a “Security interest”? What does this mean to me?

A **secured creditor** is a lender (usually a bank) that creates a loan that is backed up by collateral. **Collateral** is property you promised the lender they could take if you missed your payments. The lender’s debt is “secured” by the property.

For example: You got a loan from the bank to buy a car. When you got the loan you agreed that the bank could have your car if you weren’t able to make the payments. You bought the car with the money you got from the bank. The bank has a **security interest** in the car you bought. They can’t take it if you make all your payments but they can take it if you miss payments. The car loan is a **secured debt**. The car is the collateral. The bank is a **secured creditor**. The bank has a **security interest** in the car equal to the amount you owe on the loan.

**Bankruptcy does not make security interests go away. If you don’t make your payments on secured debts, secured creditors may be able to take and sell the home, car, or other property that you promised (or “pledged”) as collateral during or after the bankruptcy case.**

To keep your collateral (usually a car) or mortgaged property (usually your home) after you file bankruptcy, you can:

- agree to keep making your payments on the secured creditor’s loan until it is paid in full; or
- pay the secured creditor the amount that the property is worth.

Also, if you put up or pledge your household goods as collateral for a loan and the money from that loan is *not* used to buy the household goods you pledged, you may be able to keep your property without making any more payments on that debt.

## I HEAR THERE ARE DIFFERENT TYPES OF BANKRUPTCY; WHICH ONE IS RIGHT FOR ME?

There are several different types of bankruptcies. Each type is referred to under a different “Chapter” of the bankruptcy law. Each Chapter has its own requirements and limitations on the type of relief it offers. In summary, these Chapters are:

- **Chapter 7** is often called “straight” bankruptcy or “liquidation.” It requires a debtor to give up property that is not protected from creditors so the property can be sold. The amount of money made on the sale of the property is used to pay off creditors. Usually most or all of a debtor’s property is protected—or “exempt”—from creditors. (Exemptions are discussed above in the section entitled “Can I Keep My Property If I File for Bankruptcy?”)
- **Chapter 11** is also known as “reorganization.” This Chapter is usually used by businesses to give them a chance to catch-up on late payments while they continue to operate their businesses; sometimes, persons with very large debts will also file under this Chapter.
- **Chapter 12** is a special chapter for family farmers and fishermen. It lets family farmers and fishermen who have gotten behind on payments to reorganize their debts and pay their creditors over time.
- **Chapter 13** is also a reorganization Chapter. Cases filed under this Chapter are sometimes called “debt adjustment” cases. Chapter 13 requires a debtor to file a plan outlining how the debtor will pay debts (or parts of debts) from current income. The plan will run from three to five years.

Most people filing bankruptcy will want to file under either Chapter 7 or under Chapter 13. Current bankruptcy law requires you take a test to determine if you are eligible to file under Chapter 7. If you do not pass this test, you will have to file under Chapter 13.

Married couples may file jointly for bankruptcy relief. (Domestic partners are not allowed to file a joint bankruptcy.)

### How Do I Know If I Should File A Chapter 7 or a Chapter 13 Bankruptcy?

There is a preliminary step all debtors are required to take before choosing Chapter 7 or Chapter 13. This first step is called the “means test.” The test limits your choice. If you don’t pass it, you can’t file under Chapter 7. (You will have to consider another chapter of bankruptcy.) In order to file under Chapter 7, you must show your income for the last six months, multiply it by 2 and then compare it to the State’s average income for your household size. As of January 1, 2008, the following averages (sometimes called “median income”) apply:

<u>1 Person</u>	<u>2 People</u>	<u>3 People</u>	<u>4 People</u>	<u>&gt; 4 People</u>
\$41,171	\$52,137	\$60,113	\$67,884	Add \$6,900/person

(These figures come from the U.S. Census Bureau; the Bankruptcy Court does not set them. Updated figures are available from the Clerk of the Bankruptcy Court and available on the Bankruptcy Court’s website: [www.vtb.uscourts.gov](http://www.vtb.uscourts.gov) .) If the average income for your household size is below the State’s average, you can file bankruptcy under Chapter 7.

If you are over the median income you must subtract certain expenses from your income. (Be careful because there are specific instructions about what expenses must be deducted.) Once

you have taken out the required expenses, you are left with your “net income.” Multiply your net income by 60. This figure is your projected excess or “disposable” income for the next 5 years.

- If this number is less than \$6,575, you can file under Chapter 7.
- If it is over \$10,950, you have to file under Chapter 13 and use the disposable income to pay creditors.
- If the number is between \$6,575 and \$10,950, you have a final test question: *Is your disposable income 25% or less of your debt?*
  - If “yes”—your disposable income is 25% or less than your debt—you can still file under Chapter 7.
  - If “no”—your disposable income is greater than 25% of your debt—you will have to file under another chapter, probably Chapter 13.

Rarely there are extraordinary circumstances in which a person with available income will be allowed to file under Chapter 7. The Bankruptcy Court must first give that person permission to do so.

## **Chapter 7 (Liquidation)**

Chapter 7 is what most people think of when the term “bankruptcy” is used. A Chapter 7 bankruptcy wipes out (or “discharges”) your debts. In exchange for this benefit, you must be willing to give up any property that is not exempt to pay your creditors. In most cases, all of your property will be exempt. But if you have property that is not exempt, it will be sold and the money from the sale will be used to pay your debt. (If there is any money left over after paying your creditors it will be returned to you, but this is very rare.)

### **How Do I File A Chapter 7 Bankruptcy?**

In a bankruptcy case under Chapter 7, you file a petition with the Court. The petition asks the Court to discharge your debts. The petition is a document that gives the Court information about your finances. It includes information about the debts you owe, property you own, your income and expenses and other information.

### **How Can I Keep My Property in a Chapter 7 Bankruptcy?**

If you want to keep property like a home or a car but are behind on your payments, a Chapter 7 case may not be the right choice for you. That is because a Chapter 7 bankruptcy does not stop a mortgage holder from being able to take your home or a car loan creditor from being able to take your car to cover your debt.

You may want to enter into a “reaffirmation agreement.” This is an agreement with your lender in which you agree that you will continue to make payments on that loan even after the bankruptcy wipes out your other debts. In exchange for your promise the lender will let you keep the property. If you fall behind on your payments, the lender can take back the property and can come after you personally for any money left on the loan even after bankruptcy. For example if you reaffirm your car loan but later fall behind on your car loan payments the bank can repossess the car and can collect on the debt. Your bankruptcy will not protect you from the bank’s collection efforts in that case.

Reaffirmation agreements often require Court approval. The law requires specific financial disclosures in the agreement. These agreements must be entered into before the bankruptcy discharge is entered.

## Chapter 13 (Debt Adjustment)

You should think about filing Chapter 13 if you:

- Own your home and are in danger of losing it because you are behind on your mortgage payments.
- Are behind on debt payments, but can catch up if given some time.
- Have valuable property that is not exempt, and you can afford to pay creditors from your income over time.

In a Chapter 13 case you file a petition just like you would if filing a Chapter 7 bankruptcy. You also file a “plan” showing how you will pay off some or all of your past-due debts along with your current debts over the next three to five years. The major difference between a Chapter 7 case and a Chapter 13 case is that under Chapter 13 you may keep valuable property – such as your home and/or car—but only *if* you can make the plan payments in addition to your regular monthly payments. You must be able to make both your regular monthly payments to your creditors and the additional Chapter 13 plan payments.

You will need enough income to pay:

- (1) your necessary living expenses,
- (2) your regular monthly payments, and
- (3) the extra Chapter 13 plan payments.

The plan payments are made every month to the Chapter 13 trustee over a period of three to five years. The trustee uses the plan payments to pay most or all of your overdue bills.

## WHAT DOES IT COST TO FILE FOR BANKRUPTCY?

It currently costs \$299 to file for bankruptcy under Chapter 7 and \$274 to file for bankruptcy under Chapter 13 (whether filed individually or jointly by a married couple). The filing fee is paid to the Bankruptcy Court and must be paid in cash, bank draft, certified check or money order. The Court may allow you to pay this filing fee in installments if you cannot pay all at once. You must file an application requesting permission to make installment payments. If you cannot pay the filing fee in installments you may request that the Court waive the filing fee. If you hire an attorney you will also have to pay the attorney.

## WHAT MUST I DO BEFORE FILING BANKRUPTCY?

You must receive budget and credit counseling from an *approved* credit-counseling agency within 180 days before your bankruptcy case is filed. A list of approved agencies can be found at [www.vtb.uscourts.gov](http://www.vtb.uscourts.gov) or by calling the Bankruptcy Court. You must use an *approved* agency.

### What is Credit Counseling?

In your credit-counseling session, the agency will review your budget and discuss your possible options. For example, filing bankruptcy may be one option; another option may be to enter into a debt management plan administered by the agency. Under a debt management plan, you repay some or all of your debts by sending the agency a monthly payment. The *agency* then distributes that money to your creditors. For some people this makes sense. For others bankruptcy may be the best option.

Be very careful in choosing an agency for the required counseling. Some agencies have been known to pressure people into debt management plans as a way of avoiding bankruptcy whether it makes sense for those people or not. Before choosing an agency, keep these points in mind:

- In many cases bankruptcy may actually be the best choice for you.
- Don't sign up for a debt management plan that you can't afford, you may end up in a bankruptcy anyway.
- There are approved credit counseling agencies that do not offer debt management plans.

Agencies provide counseling in various ways. Some do it in person. Others do it by telephone or over the Internet. No matter what method you use, when you complete your counseling, the agency will give you a "certificate of completion." The certificate verifies that you received the required counseling. You must file this certificate with your bankruptcy petition.

It is usually good to talk with an attorney before you receive the required credit counseling. Unlike a credit counselor who cannot give legal advice, an attorney can provide counseling on whether bankruptcy is the best option for you and explain the legal consequences of filing bankruptcy. If bankruptcy is not the right answer for you, a good attorney will offer a range of other suggestions.

## **WILL I HAVE TO GO TO COURT?**

In most **Chapter 7 cases** you only have to go to a proceeding called the “meeting of creditors.” This meeting is also known as the “341 meeting.” At the meeting you will meet with the bankruptcy trustee and any creditor who chooses to come. The trustee is an impartial person appointed to administer your bankruptcy case; he or she is not the Judge. Most of the time, this meeting—which is run by the trustee—will be a short and simple procedure where you are asked a few questions about your bankruptcy forms and your financial situation.

If complications arise, or if you choose to dispute a debt a creditor claims that you owe, you may have to appear before the Judge at a hearing. 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.

If you file a **Chapter 13 case**, in addition to going to the required 341 meeting run by the Chapter 13 case trustee, you will also have to attend the confirmation hearing. During the confirmation hearing the Judge decides whether to approve your Chapter 13 plan. This is almost always on the same day as the 341 meeting. (The 341 meeting is held in the morning and the confirmation hearing is held in the afternoon.)

At the confirmation hearing, the Judge will ask you a few questions. For example, “Do you understand the plan?” And, “Are you confident you can make the plan payments?” If there are no problems with the plan, it will be approved or “confirmed.” If there are issues that still need to be worked out, the confirmation hearing may be continued. You may have to come back for a second hearing. The Court and/or your attorney will let you know if this is the case.

## **WHAT ELSE MUST I DO TO COMPLETE MY CASE?**

After your case is filed, you must complete an approved course in personal finances (sometimes called a “debtor education course”). This course is different from the credit counseling session you are required to take before you file bankruptcy. It will take approximately two hours to complete. Your attorney can give you a list of organizations that provide approved courses or you can go to the Bankruptcy Court’s website for a link to a list of approved providers (click on “Credit Counseling and Debtor Education” on the left side of the web page).

### **When Should I Take the Debtor Education Course?**

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; it is required later in Chapter 13 cases.

## **CAN I OWN ANYTHING AFTER BANKRUPTCY?**

Yes! Many people believe they cannot 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.

## **WHAT ELSE SHOULD I KNOW?**

*Utility Services* – Public utilities, such as the electric company, cannot refuse or cut off service because you have filed for bankruptcy. The utility can require a deposit for future service and you do have to pay bills that arise after the bankruptcy is filed.

*Discrimination* – An employer or government agency cannot 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 let you 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 the loan. If you file a Chapter 13, you may be able to protect the co-signer, depending upon the terms of your Chapter 13 plan.

## **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 have filed a bankruptcy can appear on your credit record for ten 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 may be able to get new credit.

## **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 recommended. The process is difficult and you may lose property or other rights if you do not know the law. Bankruptcy law is complex. Filing bankruptcy takes patience and careful preparation. If you start a bankruptcy case and: (1) you fail to complete it; (2) you make a mistake and are denied a discharge; or (3) you make other errors, you may be barred from filing again for many years. While hiring an attorney may seem expensive it may be money well spent in the long run.

## **HOW DO I REACH THE BANKRUPTCY COURT?**

The Bankruptcy Court is located in Rutland, Vermont at 67 Merchants Row on the second floor. It is opened Mondays through Fridays from 8:00 a.m. to 5:00 p.m. You may call the Clerk's Office at (802) 776-2000. You may leave a message on the Clerk's Office answering machine after business hours; in your message, be sure to include your name, contact number, and the best time to call you back. The Court also has its own website: [www.vtb.uscourts.gov](http://www.vtb.uscourts.gov) . It contains plenty of helpful information and links.

**The Court and the Clerk's Office cannot provide you with legal advice!**