
Volunteer Lawyers Project
Nebraska State Bar Association

Bankruptcy



Deciding to file for bankruptcy should involve careful consideration of the benefits and burdens of filing bankruptcy. This brochure can not explain every aspect of bankruptcy. **If you still have questions after reading this pamphlet, you should speak with an attorney familiar with bankruptcy.**

What is bankruptcy?

Bankruptcy is a legal proceeding in which a person can obtain a fresh financial start/forgiveness of debt. The right to file for bankruptcy is given by federal law, and all bankruptcy cases are held in federal court. Filing bankruptcy stops most of your creditors from seeking to collect debts from you, including garnishments, executions, levies, and certain actions against your property.

What can bankruptcy do for me?

Bankruptcy may help you to:

- Get rid of the legal duty to pay most or all of your debts. This is called a “discharge” of debts. It is meant to give you a fresh financial start.
- Stop foreclosure on your home and give you a chance to catch up on missed payments (Bankruptcy does not automatically get rid of mortgages and other liens on your property without payment).
- Prevent repossession of a car or other property, or force the creditor to give back property even after it has been repossessed, depending on the timing of repossession.
- Stop wage garnishment, debt collection harassment, and similar creditor actions to collect a debt.
- Restore or prevent shut-off of utility service.

What bankruptcy cannot do

Bankruptcy cannot cure every financial problem. It is not right for everyone. In bankruptcy, you usually cannot:

- Get rid of certain rights of “secured” creditors. A creditor is “secured” if it has taken a mortgage or other lien on property as collateral for a loan. Common examples are car loans or home mortgages. You can force secured creditors to take payments over time in the bankruptcy process and bankruptcy can get rid of your duty to pay additional money on the debt if you decide to give back the property. But you generally cannot keep secured property unless you continue to pay the debt.
- Discharge types of debts singled out by the bankruptcy law for special treatment, such as child support, alimony, debts obtained for education, court restitution orders, criminal fines, money borrowed by fraud or false pretense, drunk driving injury claims, and most taxes.
- Discharge debts that arise after the bankruptcy has been filed.

What are the types of bankruptcy?

The most common types of bankruptcy are:

- Chapter 7 is typically the quickest option for ordinary consumers; however, it sometimes requires a person to give up property that is not exempt so the property can be sold to pay creditors. Nebraska law provide a list of exemptions (discussed in more detail below). If property does not fall within one of the enumerated exemptions it may be sold by the Chapter 7 Trustee and the proceeds used to pay creditors.
- Chapter 11 is used by businesses and sometimes by individuals in certain circumstances.
- Chapter 12 is for family farmers and fishermen.
- Chapter 13 bankruptcy has a principal goal of providing you the opportunity to keep your non-exempt assets rather than have them sold (as in Chapter 7) by paying back some of your creditors over a period of 3-5 years.

Chapter 7

Chapter 7 for individuals is a way of resolving financial difficulty preventing them from paying their debts; and, it is for those who are willing to allow their non-exempt property to be used to pay their creditors. The primary purpose of filing under Chapter 7 is to have your debts discharged. The bankruptcy discharge relieves you after bankruptcy from having to pay many of your pre-bankruptcy debts.

If you are an individual filing for Chapter 7 bankruptcy, the trustee may sell your property to pay your debts, subject to your right to exempt the property or a portion of the proceeds from the sale of the property. Exemptions may enable you to keep your home, a car, clothing, and household items or receive some of the proceeds if the property is sold.

If your income is above the median income for your household size, you may be excluded from filing a Chapter 7.

Chapter 13

Chapter 13 is for individuals who have regular income and would like to pay some or all of their debt in installments over a period for time and to discharge some not paid. You are eligible for chapter 13 only if your debts are not more than certain dollar amounts set forth by bankruptcy law.

Under Chapter 13, you file a plan to repay your creditors over the course of 3-5 years. After you make all payments pursuant to your plan, the remaining debts will be discharged, unless ineligible for discharge.

What must I do before filing bankruptcy?

You must receive credit counseling from an approved credit counseling agency within 180 days BEFORE your bankruptcy case is filed. The agency will go over options available to you in reviewing your budget. Different agencies provide the counseling in-person, by telephone, or over the internet. If you choose to file bankruptcy, you must have a certificate from the agency showing that you received the counseling before your bankruptcy was filed.

Most approved agencies charge \$10-\$50 for the pre-filing counseling. However, the law requires approved agencies to provide bankruptcy counseling and the necessary certificates without taking into account an individual's ability to pay. If you cannot afford the fee, you should ask the agency to provide the counseling free or at a reduced fee.

It is a good idea for you to meet with an attorney before you take the required credit counseling. Unlike a credit counselor, who can not give legal advice, an attorney can provide counseling on whether bankruptcy is the best option. If bankruptcy is not the right answer for you, a good attorney will offer a range of other choices. The attorney can also give you a list of approved credit counseling agencies, or you can check the website for the United States Trustee Program office at www.usdoj.gov/ust.

Will I have to go to court?

In most bankruptcy cases, you only have to go to a proceeding called the "meeting of creditors" to meet with the bankruptcy trustee and any creditor who chooses to come. Most of the time, this meeting will be a short and simple hearing where you are asked a few questions about your bankruptcy forms and financial situation. At this meeting, your creditors or their agents will be able to ask you about your income and your ability to pay your debts.

Once in a while, if problems arise, or you choose to dispute a debt, you may have to go before a judge at a hearing. If you need to go to court, you will be told of the court date and time from the court and/or from your attorney.

Will bankruptcy affect my credit?

It depends. If you are behind on your bills, your credit may already be bad. Bankruptcy will probably not make things worse.

The fact that you've filed a bankruptcy can be on your credit record for seven to ten years from the date your case was filed. But, because bankruptcy wipes out your old debts, you may be in a better position to pay your current bills; and, you may be able to get new credit.

What else should I know?

- Utilities – Public utilities, such as the electric company, cannot refuse or cut off service due to you filing for bankruptcy. However, the utility company can ask for a deposit for future service; and, you will have to make that deposit within a certain period of time as well as pay bills which arise after the bankruptcy is filed.
- Discrimination – An employer or government agency cannot discriminate against you because you have filed for bankruptcy. Government agencies and private entities involved in student loan programs also cannot discriminate against you based on a bankruptcy filing.
- Driver's license – If you lost your license solely because you could not pay court-ordered damages caused in an accident, bankruptcy will allow you to get your license back.

Will I be able to keep any of my property?

In Nebraska, debtors can retain:

- \$60,000 in equity of a dwelling house that the debtor resides in and the land on which it is situated, not exceeding 160 acres of land. Equity is the difference between what a home is worth and what you owe on it.
- \$5,000 in personal property
- Immediate personal possessions of debtor and family
- All necessary wearing apparel of the debtor and family
- \$3,000 in household furnishings, goods, computers, appliances, books, or musical instruments
- \$5,000 in implements, tools, or professional books or supplies held for use in the principal trade or business of such debtor or family. This also provides an exemption of \$5,000 for a vehicle used for business or trade purposes.
- Debtor's interest in any professionally prescribed health aids.
- Qualified Retirement Plans subject to certain restrictions.

Bankruptcy Crimes

If you knowingly and fraudulently conceal assets or make a false oath or statement under penalty of perjury—either orally or in writing—in connection with a bankruptcy case, you may be fined, imprisoned, or both.

All information you supply in connection with a bankruptcy case is subject to examination by the Attorney General acting through the Office of the U.S. Trustee, the Office of the U.S. Attorney, and other offices and employees of the U.S. Department of Justice.

How long does bankruptcy take?

The average Chapter 7 bankruptcy takes about 4 months.

A Chapter 13 bankruptcy takes three to five years.

For more information, see <https://www.justice.gov/ust/bankruptcy-information-sheet-0>

The information in this brochure is for educational purposes only. It is not legal advice or a substitute for legal advice by a lawyer. If you want legal advice, you should contact a lawyer licensed to practice law in Nebraska.

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