

BANKRUPTCY



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INTRODUCTION

Bankruptcy is a federal court proceeding that might allow a person with large debts to get a “fresh start” by freeing him or her from many or all of the debts. At the same time, a trustee of the court can sell the person’s property (unless it’s exempt) and divide the proceeds to pay off the person’s creditors.

SHOULD I CONSIDER BANKRUPTCY?

Bankruptcy should only be considered as a method of last resort for handling your debts. It can be difficult to obtain reasonable credit once you have filed bankruptcy. It is better to work with your creditors to avoid bankruptcy rather than filing for bankruptcy.

However, the bankruptcy process is designed to “relieve the honest debtor from the weight of oppressive indebtedness,” as stated by the U.S. Supreme Court. Thus, bankruptcy can provide relief from the worry and harassment of creditors attempting to receive payment.

Bankruptcy is not free. The court charges a filing fee, and your attorney will charge for his or her services. The attorney will require advance payment. Otherwise, he or she becomes a creditor as well.

EXEMPT PROPERTY IN IDAHO

Only certain property is exempt from being seized and sold to pay creditors.

The following property is exempt in Idaho:

- Real property or a mobile home worth up to \$100,000.
- Household furnishings, household goods, household appliances, clothing, books, musical instruments, family portraits and heirlooms, limit \$750 per item and \$7,500 total.
- 75% of disposable earnings.
- Interest in tangible personal property to \$800.
- Jewelry for personal use, \$1,000 total.
- One motor vehicle, \$7,000 or less.
- Tools, etc. used for work, \$2,500 total.
- Unemployment, disability, or public benefits so long as they are not mixed with non-exempt funds.
- Insurance, judgment, or settlement proceeds from injury or death.

In some cases, a married couple may be able to claim a double exemption amount.

NOTE: There are exceptions to the exemptions if you owe child support, spousal support, or state and federal taxes.

HOW DOES BANKRUPTCY WORK?

Bankruptcy begins by filing a petition in federal bankruptcy court listing your debts and property. A bankruptcy trustee then holds a hearing to review the petition, determine your debts, and plan repayment.

Non-exempt property may then be sold and the proceeds divided among the creditors. Property worth more than the exempt amount may be sold and the exempt amount returned to you. For example, using the state exemptions, if you own a car worth \$9,000, the trustee can sell the car and give you back \$7,500, the exempt amount.

Later, a second hearing will be held where you may receive a final discharge from your debts.

WILL BANKRUPTCY CANCEL ALL DEBTS?

No. It does not cancel spousal or child support, state or federal taxes, most student loans, and any debts that you failed to list in your bankruptcy petition. Also, any debts procured by fraud are not discharged by the bankruptcy. It may not cancel “secured debts.” A debt is secured if you gave the seller or the money-lender the right to repossess the property or goods used as collateral.

If you are married and your debts arose during the marriage, both spouses need to file bankruptcy or all the debts will be transferred to the other spouse.

BANKRUPTCY AND CREDIT

Not all creditors react the same way to bankruptcy, but your credit will be hurt. This does not mean that you will not be able to obtain credit. Some companies extend credit to individuals who have declared bankruptcy

because they know that bankruptcy can only be filed once every six years. However, you can expect the interest rates on such credit to be abnormally high.

ALTERNATIVES TO BANKRUPTCY

Contact your creditors, explain the situation, and ask that they agree to restructure your debts so that you can meet the revised payments.

You can consult with a “Consumer Credit Counseling Service” which will assist you in finding a way to pay your debts and help negotiate with your creditors. This is a non-profit service that charges a modest fee to assist you. It can represent you in negotiations with creditors. Some creditors will not extend you further credit in the future if you have used a counseling service in the past.

Another alternative is a “Debt Adjustment Plan” under Chapter 13 of the Bankruptcy Code. This court-controlled plan allows you to pay your bills through the court over a period of time. It stops interest from accruing on some debts, and you may not have to pay 100% of the amount owed on other debts. This plan keeps creditors from suing you, garnishing your wages, or taking other legal action to collect while you are making payments under the plan.

Avoid finance companies which offer debt-consolidation plans. Such companies charge high interest rates and tie up much of your property as non-exempt collateral.

***This handout is general in nature. It is not a substitute for legal advice from an attorney regarding individual situations. (August 2021)**

For additional information on this and other legal topics, see the Air Force Legal Assistance Website: <https://aflegalassistance.law.af.mil>