

# **Legal Assistance of Western New York, Inc. ®**

Bankruptcy in New York

We provide free legal aid to people with civil legal problems in western New York.

[www.lawny.org](http://www.lawny.org)

---

## **Bankruptcy in New York**

### **Should I file for bankruptcy?**

---

Bankruptcy is usually considered a last resort option. You should only file for bankruptcy after careful consideration of your options. If it is the best way to deal with your financial problems, filing for bankruptcy may be for you. This article cannot explain every aspect of the bankruptcy process. If you still have questions after reading it, you should speak with a bankruptcy lawyer.

### **What is bankruptcy?**

Bankruptcy is a legal proceeding in which a person who cannot pay his or her bills can get a fresh financial start. The right to file for bankruptcy is provided by federal law, and all bankruptcy cases are handled in federal court. Filing bankruptcy immediately stops all of your creditors from seeking to collect debts from you, until your debts are sorted out according to the law.

### **What can bankruptcy do for me?**

By filing for bankruptcy you may be able to discharge your debts, giving you a fresh financial start. You may also be able to temporarily stop a tax or mortgage foreclosure on your home, prevent a car from being repossessed, or stop your wages from being garnished to collect on a debt.

### **What can bankruptcy not do?**

Bankruptcy cannot cure every financial problem. Nor is it the right step for every individual. If you owe money on your mortgage or car loan, for example, you usually have to still make payments to those creditors in order to keep the home or car. In a bankruptcy, you can force these secured creditors to take payments over time, but again you generally cannot keep the collateral unless you continue to pay the debt. Bankruptcy will also not let you discharge certain types of debts,

such as child support, alimony, most student loans, court restitution orders, criminal fines, and some taxes. Bankruptcy may not let you discharge debts that arise after your bankruptcy case has been filed.

### **What type of bankruptcy should I file?**

Most people filing bankruptcy will want to file under either Chapter 7 or Chapter 13. There are other types of bankruptcy which may apply in rare cases, such as if you own a small business or a family farm.

### **Chapter 7 (Straight Liquidation)**

In a bankruptcy case under Chapter 7, you file a petition asking the court to discharge your debts. The basic idea in a Chapter 7 bankruptcy is to wipe out (discharge) your debts in exchange for giving up certain property. You are allowed to keep certain items that are considered "exempt" under the law. But property which is not exempt is sold, and the money from the sale is given to creditors. After your creditors have been paid back from what is available, you will receive a discharge of any remaining debts. In some cases, all of your property may be exempt and there may be nothing the creditors can receive. People in these cases can still receive a bankruptcy discharge.

If you want to keep a home or a car and you are behind on the payments on a mortgage or car loan, a Chapter 7 case probably will not be the right choice for you. Chapter 7 bankruptcy does not eliminate the right of mortgage holders or car loan creditors to take your property to cover your debt. You also have to fall below a certain income level to file for a Chapter 7 bankruptcy. This is called the "means test." If you make too much money and you don't pass the means test, you can still file for a Chapter 13 bankruptcy case.

### **Chapter 13 (Debt Adjustment)**

In a Chapter 13 case you file a "plan" showing how you will pay off some of your debts over three to five years. A Chapter 13 case will allow you to keep valuable property, which might otherwise be lost, such as your home and car, if you can make the required payments 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.

To file a Chapter 13 case, you will need to have enough income to pay for your necessities and to keep up with the required payments as they come due.

## **When should I not file for bankruptcy?**

You should get specific advice from an attorney to determine if bankruptcy is right for you. But in general, bankruptcy may not be right for you in the following situations:

- Your debts are not dischargeable in bankruptcy (child support, some student loans, criminal fines, etc.);
- You have not filed all of your required income tax returns;
- You are considered “judgment proof” (all of your assets and income are exempt from collection--see the exemptions below);
- You are likely to get into debt again soon after your discharge;
- You have a lot of non-exempt property that you do not want to lose in bankruptcy.

*Again, every situation is different, so you should talk to a bankruptcy attorney to see if bankruptcy is right for you.*

## **How much does it cost to file for bankruptcy?**

As of January 2018, it costs \$335 for court fees to file for bankruptcy under Chapter 7 and \$310 to file for bankruptcy under Chapter 13. The court will not likely waive the filing fees even if you are very low income. You may be allowed to pay the filing fee in installments if you cannot pay all at once. In addition to the filing fee, you will likely have fees for an attorney as well. Although you do not need an attorney to file a bankruptcy case, it can be very difficult to go through bankruptcy without an attorney.

## **What do I have to do before I file for bankruptcy?**

You have to go through an approved credit counseling session within 180 days before your bankruptcy case is filed. You have to file a certificate from an approved agency stating that you completed the counseling session with the bankruptcy forms in your case. A list of approved credit counseling agencies can be found at the website for the United States Trustee Program office at [www.usdoj.gov/ust](http://www.usdoj.gov/ust). Your bankruptcy attorney should be able to help you find an agency as well.

## **What property can I keep in bankruptcy?**

In a Chapter 7 case, you can keep all property which the law says is "exempt" from the claims of

creditors. There are different exemptions under Federal and State law. You can choose between your exemptions under New York State law or under Federal law.

As of January 2018, New York exemptions include:

- \$82,775 in equity in your home (the amount is higher in some counties in the Eastern part of NY);
- \$4,425 in equity in your car;
- Most clothing, furniture and household goods, including a TV and computer;
- \$3,330 in things you need for your job (tools, books, etc.);
- \$1,100.00 in any property or cash, if you do not have an exemption for your home;
- Certain benefits such as child support, Social Security, SSI, Social Security Disability, unemployment insurance benefits, veteran's benefits, public assistance, retirement funds and pensions--regardless of the amount you receive.

The amounts of the exemptions are doubled when a married couple files together.

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. Furniture and cars may be worth a lot less now than what you originally paid or what it would cost to buy a replacement. You also only need to look at your equity in property. Equity is the amount the property is worth minus any money that you owe on mortgages or liens. For example, if your house is worth \$150,000 and you owe \$100,000 on your mortgage, you have \$50,000 of equity in your home.

Again, if you have a mortgage or loan on your home or car, you will likely have to make payments to those creditors in order to keep the home or car in bankruptcy. Read on for more information.

### **What will happen to my home and car if I file for bankruptcy?**

You may be able to keep your home and your car if you file for bankruptcy, but this depends on your situation. If you own your car or home outright and it qualifies for an exemption (see above), you may be able to keep the home or car in a bankruptcy.

If you do not own your home or car outright, your creditors may have a "security interest." Creditors can have security interests in your home, car, or other personal property. This means that you gave that creditor a mortgage on the home or put your car or other property up as collateral for the debt. If you don't make your payments on this type of secured debt, the creditor may be able to take and sell the home or car, 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.

**If you have a mortgage on a home or a car loan and you want to keep this property in a bankruptcy case, you should talk to an attorney.** If you want to discharge your mortgage or car loan, you may be able to do so in bankruptcy, but you will likely lose the property.

### **Can I own anything after I file for 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. Your bankruptcy filing also should be carefully timed if you expect a large income tax refund.

### **Will bankruptcy wipe out all of my debts?**

It depends. Bankruptcy will not normally wipe out:

- child support or alimony;
- court fines;
- criminal fines or restitution;
- some taxes;
- debts not listed on your bankruptcy petition;
- loans you got by knowingly giving false information to a creditor;
- most student loans, unless the court decides that payment would be an undue hardship;
- mortgages and other liens which are not paid in the bankruptcy case (but bankruptcy may wipe out your obligation to pay any additional money if the property is sold by the creditor);
- amounts charged to credit cards during the few months immediately before you file

bankruptcy.

### **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 procedure where you are asked a few questions about your bankruptcy forms and your financial situation.

Occasionally, if complications arise, or if you choose to dispute a debt, 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 and/or from your attorney.

### **What else do I have to do to complete my bankruptcy case?**

After your case is filed, you must complete an approved course in personal finances. This course will take you about two hours to complete. Your attorney can give you a list of organizations that provide approved courses, or you can check the website for the United States Trustee Program office at [www.usdoj.gov/ust](http://www.usdoj.gov/ust). 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.

### **Will bankruptcy affect my credit?**

Yes. Bankruptcy can have long-term negative consequences on your credit rating. Unfortunately, if you are behind on your bills, your credit may already be bad. A bankruptcy discharge can appear on your credit report for ten years. But since bankruptcy wipes out your old debts, you may be in a better position to pay your current bills, and you eventually may be able to get new credit.

### **How do I find a bankruptcy attorney?**

As with any area of the law, it is important to carefully select an attorney who will respond to your personal situation. The attorney should not be too busy to meet you individually and to answer questions as necessary.

The best way to find an experienced bankruptcy attorney is to seek recommendations from family, friends or other members of the community, especially any attorney you know and respect. You should carefully read retainers and other documents the attorney asks you to sign. You should not hire an attorney unless he or she agrees to represent you throughout the case.

If you still need help finding a bankruptcy attorney, you can contact the New York State Bar Association Attorney Referral and Information Service at 1-800-342-3661 to find an attorney in your area. Be aware that an attorney referred by this service may charge up to \$35.00 for an initial 30 minute consultation.

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.

When first meeting a bankruptcy attorney, you should be prepared to answer the following questions:

- Who do you owe and how much?
- What types of debt are causing you the most trouble?
- What are your significant assets?
- How did your debts arise and are they secured?
- Is your property about to be repossessed or foreclosed on?
- What are your goals in filing the case?

### **Can I file a bankruptcy case without an attorney?**

Although it may be possible for some people to file a bankruptcy case without an attorney, it is not a step to be taken lightly. The process is difficult and you may lose property or other rights if you do not know the law. It takes patience and careful preparation. Chapter 7 (straight liquidation) cases are somewhat easier. Very few people have been able to successfully file Chapter 13 (debt adjustment) cases on their own.

\*\*\*\*\*

This article provides general information about this subject. Laws affecting this subject may have changed since this article was written. For specific legal advice about a problem you are having, get the advice of a lawyer. Receiving this information does not make you a client of our office.

Last Review Date: January 2018

---

Printed: April 23, 2019

<http://www.lawny.org/node/80/bankruptcy-new-york>

©Legal Assistance of Western New York, Inc. ®