

BANKRUPTCY BASICS

WHAT IS BANKRUPTCY?

Bankruptcy is the legal process that (1) gives a debtor acting in good faith a “fresh start” by eliminating most of the debtor’s debts, and (2) repays creditors in an orderly manner to the extent the debtor has available property.

WHAT IS THE EFFECT OF FILING BANKRUPTCY?

The filing of a bankruptcy petition triggers an “automatic stay” that prevents creditors from collecting debts. Most creditors cannot take any action during the course of an open bankruptcy without permission of the court. Notably, filing bankruptcy will:

- Stop bill collectors from calling
- Stop wages from being garnished
- Stop most pending civil court proceedings
- Temporarily stop foreclosures and possibly delay evictions


Once a bankruptcy is successfully completed, most of a person’s debt is permanently erased (“discharged”). This means creditors cannot collect on the discharged debt.

WHAT IS CHAPTER 7 BANKRUPTCY?

A Chapter 7 bankruptcy is often referred to as a “liquidation” bankruptcy. This type of bankruptcy cancels most ordinary consumer debt and allows the debtor to keep certain “exempt” property. However, you may have to surrender some property. A bankruptcy trustee may collect and sell your nonexempt money and assets, and then use the proceeds to pay your creditors. Any remaining balances owed to those creditors are discharged.

WHY WOULD ONE FILE CHAPTER 7?

People who file Chapter 7 are usually low income earners with few assets to protect. Chapter 7 is designed primarily to help eliminate overwhelming debt.



Chapter 7 will not permanently stop a pending foreclosure or car repossession. To keep a car or house in Chapter 7, you must be able to keep making the regular payment. Chapter 7 can be helpful for car owners who want to stop paying a car loan and surrender the car. It also helps homeowners by eliminating the deficiency balance due on their mortgages after foreclosure.

WHAT IS CHAPTER 13 BANKRUPTCY?

A Chapter 13 bankruptcy provides a “reorganization” of debts by allowing the debtor to either partially or fully repay debts through a three to five year repayment plan. Chapter 13 allows you to keep some or all of your property. In exchange, you must pay the trustee all of your monthly disposable income for three to five years, and the trustee in turn pays your creditors. Upon successful completion of a Chapter 13, your remaining dischargeable debts are eliminated.

The total of payments over the three to five years must be enough to pay at least the full amount of all mortgage arrears, back taxes, payments for retained secured items, child support and spousal support arrears, and a trustee fee.

WHY WOULD ONE FILE CHAPTER 13?

People who typically file Chapter 13 are:

- Regular income earners
- Homeowners trying to save a house and who can pay mortgage arrears in full in three to five years
- Homeowners with no equity seeking to eliminate a second mortgage

WHAT DEBTS ARE ELIMINATED IN BANKRUPTCY?

Bankruptcy can erase many debts, such as:

- Credit card balances
- Medical bills
- Payday loans
- Personal loans
- Mortgages (Personal liability; you must keep paying if you want to keep the house)
- Car loans (Personal liability; you must keep paying if you want to keep the car)
- Most court judgments

WHAT DEBTS ARE NOT ELIMINATED IN BANKRUPTCY?

There are several federally protected debts that are usually not eliminated through a bankruptcy, including:

- Child support
- Spousal support
- Most IRS taxes
- Student loans
- Court-ordered restitution
- Court judgments for injury or death as a result of a DUI
- Debts incurred fraudulently
- Certain credit card charges and cash advances made shortly before filing bankruptcy

I FILED BANKRUPTCY BEFORE. HOW LONG MUST I WAIT TO FILE AGAIN?

Federal law limits how frequently a person can file for bankruptcy. If you previously filed a Chapter 7 and received a discharge, you will have to wait:

- Eight years to file another Chapter 7
- Four years to file a Chapter 13

If you previously filed a Chapter 13 and received a discharge, you will have to wait:

- Generally six years to file a Chapter 7
- Two years to file another Chapter 13

If your case was dismissed in the past 180 days, you may have to wait to file again 180 days after the dismissal.

Repeat filers could face limitations on the duration of the automatic stay: if you filed a bankruptcy case within the last year that was dismissed, the automatic stay lasts only for 30 days in your next case; if you filed two or more bankruptcy cases within the last year that were dismissed, there is no automatic stay for subsequent cases. You will have to file a motion asking the court to impose the stay.

WHERE DO I GO FOR HELP?

Legal Aid Center of Southern Nevada offers free informational classes regarding bankruptcy. Those who attend the class and who are income eligible may apply for a free attorney to file Chapter 7 bankruptcy for them. To find out when the bankruptcy class is offered, please visit our website at www.lacsn.org or call 702-386-1070.

OTHER RESOURCES

U.S. Bankruptcy Court, District of Nevada

The Bankruptcy Court's website has helpful information for debtors at www.nvb.uscourts/gov/debtors. The Bankruptcy Courthouse is located in the Foley Federal Building, 300 Las Vegas Boulevard South, Las Vegas, Nevada 89101. The Court's main number in Las Vegas is 702-527-7000; please be aware that the Court's staff cannot give you legal advice.

Lawyer Referral & Information Service

If you do not qualify for a free attorney to file a Chapter 7 case through the Legal Aid Center of Southern Nevada, or if you want to file a Chapter 13, the State Bar of Nevada provides referrals to private attorneys with a set fee for an initial consultation. Call 702-382-0504 in Las Vegas, toll-free at 1-800-789-5747, or submit an on-line referral request at www.nvbar.org/lawyerreferral.



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