

Bankruptcy

Will I have to appear in court?

Yes. When a debtor files a bankruptcy case, he or she is required to attend a hearing titled Section 341, First Meeting of Creditors. This hearing is scheduled approximately 30 days following the filing of the case. A debtor filing a Chapter 13 case may also be required to attend his or her Confirmation Hearing. The Confirmation Hearing is when the judge assigned to the case approves the repayment plan filed by the debtor. Further, a debtor may be required to attend additional hearings depending on the circumstances of his or her case.

Can I file by myself or does my spouse have to file with me?

A debtor can file an individual case or a joint case depending on the advantages or disadvantages of each. In order to determine which is better for you, it is advised that you consult with a bankruptcy attorney.

Will filing bankruptcy affect my credit report?

Yes. In most cases, you will see a reduction in your credit score once a bankruptcy case is filed. How much that score will drop depends on a debtor's individual financial circumstances.

What if I have a co-signer on a debt?

If someone co-signs a debt with you, that person could be affected by the bankruptcy filing. If the debtor files a Chapter 13, under Section 1301 of the *Bankruptcy Code*, the co-debtor is protected from actions by the creditor to the extent the debt is being paid through the Chapter 13 plan. In addition, the co-signer may find a notation on their credit report indicating that the debt they co-signed is in bankruptcy.

What if I have been sued or a foreclosure is pending before I file?

If a creditor files a lawsuit against a debtor and receives a judgment, that creditor may collect on that judgment by either attaching liens against the debtor's property or garnishing wages. When a debtor files for bankruptcy protection, any garnishment is automati-

cally stopped. Further, any pending foreclosure sale or repossession by a secured creditor must be stopped when the case is filed and remains stopped unless the Bankruptcy Court gives the creditor permission to proceed (on a first bankruptcy filing).

Will I ever be able to own a home after filing bankruptcy?

Yes. The filing of a bankruptcy case does not eliminate a person from ever owning property again. It may take some time before you can once again buy a house or car; generally, it takes approximately two years to recover from a bankruptcy filing although the bankruptcy may be noted on your credit report for 10 years.

How long does it take to file?

If a debtor decides to hire an attorney to help him or her file a bankruptcy, the time needed to file is not that long as most attorneys now file electronically. If debtors elect to file a case by themselves, then it could take longer. Most of the time necessary to file a case is used in gathering all the pertinent information so that a petition can be properly completed. This requires a thorough disclosure of the debtor's debts, assets, income and expenses along with disclosures about transfers, payments and gifts made in the past one to two years.

What does it cost to file bankruptcy?

The current court filing fees are \$274 for a Chapter 13 case, \$299 for a Chapter 7 and \$239 for a Chapter 12. If your financial situation does not allow you to pay the entire fee, then the court may waive the fee or allow you to pay it in installments. If you hire an attorney to help you file, you will also have to pay his or her fee.

Do I need to hire an attorney?

Whether you need or want to hire an attorney is a personal decision. Filing bankruptcy today is complicated and if you do not know the law, you could lose your property and have difficulty filing a subsequent bankruptcy case due to new rules. Although it is possible to file a case by yourself, it is advisable to seek legal assistance, especially when your home or car is affected.

If you decide to seek legal assistance and do not know an attorney, call the Lawyer Referral Service in your local phone directory, or your local bar association.

The dollar amounts and information noted in this brochure are correct as of April 2010. These numbers do change so you must consult with an attorney or someone in the Bankruptcy Clerk's office.

This pamphlet was prepared by the Alabama State Bar as a public service. It is not intended to be a comprehensive statement of law. Its purpose is to inform, not to advise, on any specific legal problem. If you have specific questions regarding any matter contained in this pamphlet, you are encouraged to consult an attorney.



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What is bankruptcy?

Bankruptcy is a legal proceeding under federal law that allows a debtor who is having serious financial difficulties to obtain financial relief. Bankruptcy allows debtors to either eliminate their debts or repay some or all of them under the protection of the Bankruptcy Court.

A debt may be either secured or unsecured. Secured debts are those that have collateral attached to them such as your house or car. For example, if you obtain a mortgage on your house, your house is considered collateral for your loan/debt. In the event your loan is not paid back, the lender may foreclose or repossess your property (the collateral) to recover the owed money. Examples of unsecured debts are credit cards, medical bills or anything else that is not attached/secured by collateral. Bankruptcy cases are administered by the federal bankruptcy court system.

What are the different types of bankruptcy?

Bankruptcy consists of several types of chapters that contain different mechanisms for addressing financial problems. A Chapter 7 bankruptcy, also known as liquidation, allows a debtor to eliminate or discharge (forgive) all or some of his or her unsecured debts. Anyone, even a corporation, may file a Chapter 7 bankruptcy case, however, only an individual or individuals may receive a discharge of debt. A Chapter 7 case will also allow a debtor to surrender secured property back to the creditor if the debtor can no longer afford to keep it. On the other hand, if a debtor can afford to keep his or her property, and is current with his or her payments, and that property does not have excessive equity, then it can be retained by reaffirming the debt with the creditor.

Once a secured debt is reaffirmed, payments on the secured debt will continue pursuant to the terms of the contract. Upon the filing of a Chapter 7 bankruptcy, a trustee is appointed to preside over the case and determine whether there are any nonexempt assets to liquidate for the benefit of creditors. Thus, if a trustee determines that your asset (for example, your

car or home) has equity and you cannot exempt this equity under Alabama law, then the trustee can sell your asset and pay your unsecured creditors with the proceeds from this sale.

For debtors with higher incomes who do not qualify for filing a Chapter 7 bankruptcy, a Chapter 13 bankruptcy can be filed. A Chapter 13 bankruptcy, known as a "Wage-Earners Plan," allows a debtor to protect valuable assets and also assist a debtor who has fallen behind on his or her mortgage or car payment to catch up on those payments through a reorganization plan. In this plan, a debtor proposes to pay back some or all of what he or she owes to creditors over a period of time. The plan is presented to a bankruptcy judge for approval and upon approval is administered by a Chapter 13 trustee. The Chapter 13 trustee collects and distributes funds paid by the debtor to all of his or her creditors based on the plan approved by the Bankruptcy Court. Payments on long-term debt (for example, a mortgage on a home being retained) must continue at their contract rate after the filing, in addition to the Chapter 13 plan payment.

This type of bankruptcy has certain financial limits and can only be filed by individuals having the income to fund a case as well as secured debt not exceeding \$1,010,650 and unsecured debt not exceeding \$336,900 (these figures are adjusted every three years). If a debtor exceeds these limits, then he or she must look to a Chapter 11 case should this type of protection from creditors be desired. A Chapter 12 bankruptcy is similar in nature to a Chapter 13, but is restricted to those individuals who earn their living from farming or fishing.

Should I file?

Filing for bankruptcy is not a decision to be made lightly or without thorough investigation. This is a decision greatly influenced by the amount of debt you owe and your ability to make payments to your creditors. Anyone considering filing for bankruptcy protection should investigate all possible options that may be available before deciding on bankruptcy. This pamphlet is only an overview and will not provide all of the

answers a debtor may need or want when considering bankruptcy as an option. However, it may provide answers to some general questions regarding the bankruptcy process. Anyone considering bankruptcy should speak with an attorney who is familiar with or specializes in bankruptcy for specifics and a greater explanation of the law.

Are there alternatives to bankruptcy?

The short answer is yes. A debtor should always investigate other methods of solving his or her financial problems prior to deciding to file for bankruptcy relief. Bankruptcy is typically considered a last-resort measure. A debtor has some options available other than bankruptcy such as credit counseling, negotiating settlements with creditors with or without the assistance of an attorney or some form of out-of-court settlement.

Each debtor's financial circumstances are unique and deciding whether one option is better than another is determined on a case-by-case basis. It is always a good idea for those experiencing financial difficulties to seek assistance from professionals who handle such matters.

What is a discharge of debts?

Basically a discharge of debts is the elimination of a debtor's personal obligation to pay the debt. There are some debts that cannot be eliminated such as student loans; domestic support obligations, such as child support and alimony; and some taxes, but a discharge will give the debtor a chance to start over financially.

Can bankruptcy solve all my financial problems?

In short, no. There are certain types of debts that are considered non-dischargeable. The types of debts that cannot be discharged are: recent income taxes, any type of payroll tax, student loans, domestic support obligations, such as child support and alimony, DUI claims, and any type of criminal fines or penalties.

Will I lose a valuable asset such as my home or car if I file for bankruptcy?

Depending on the type of bankruptcy a debtor files and his or her financial circumstances, they may or may not lose their home. If a debtor files a Chapter 7 bankruptcy case and has a home with equity, then there is the possibility that he or she could lose that home. It depends on how much equity the debtor has in the home. Alabama allows a certain dollar amount of any equity in a home to be exempt from the bankruptcy. If a debtor files an individual case, he or she may exempt up to \$5,000 of equity and if a married couple files, then the amount doubles to \$10,000. If the debtor's equity falls between these figures then, no, they may not lose their home; however if the equity is higher; then the possibility exists. Personal property works the same way with the figures being \$3,000 for an individual filer and \$6,000 for a joint filing of husband and wife.

If, on the other hand, a debtor files a Chapter 13 case and has equity over the exemption amount, then he or she can keep the home, provided they pay their unsecured creditors an amount equal to the unexempt equity. If the debtor believes he or she cannot afford to keep the collateralized property because of their financial situation, there is an option to surrender the property back to the creditor.

Do I have to do anything before filing for bankruptcy relief?

Yes. The current bankruptcy law requires that a debtor wanting to file for bankruptcy protection must obtain credit counseling prior to filing a case. The credit counseling must be completed within six months prior to the date the case is filed. Debtors must receive the credit counseling only from those agencies that have been approved by the U.S. Bankruptcy Administrator's Office. For a list of agencies approved for Alabama, go to www.alnba.uscourts.gov/creditcounsel.pdf.