

Bankruptcy

When facing financial hardship, bankruptcy may be a way to help you get out of debt. However, there are different kinds of bankruptcies and it's important to know what kind of bankruptcy is right for you. In bankruptcy, a person legally declares they are unable to pay their outstanding debts. Depending upon the bankruptcy filed, a court may decide all or a part of debts to be discharged. This means the debt may no longer be collected. The court may also set up a payment plan for the debt to be repaid over time. Businesses also may declare bankruptcy. This means the business will either close or that the business will continue to run with reduced payments to debtors.

What can bankruptcy do for me?

Bankruptcy may:

- Eliminate the need to pay for most or all of your debts and give you a fresh financial start. This is called a "discharge" of debts.
- Stop foreclosure on your house. Allow you to catch up missed payments.
- Prevent repossession or force a creditor to return repossessed property.
- Stop wage garnishment, bank attachment, and similar debt collection actions.
- Restore or prevent termination of utility services.

What can bankruptcy not do?

It can't fix all credit problems. It usually cannot:

- Eliminate certain rights of creditors holding debt that is secured. A "secured debt" is a loan that you agree to pay. The debt is guaranteed by putting something in place of the debt, like your house or car. If you have secured debts, you have to decide from the following: 1. continue to pay on the debt (reaffirmation) 2. pay the market value of the item (redemption) or 3. return the secured item to the creditor.
- Discharge certain types of debt including child and spousal support, most student loans, court restitution orders and fines, and some taxes.
- Protect cosigners on your debts. If you discharge a debt in bankruptcy, your cosigner may still have to repay all or part of the loan.
- Discharge debts incurred after bankruptcy has been filed.

What is the difference between a Chapter 7 and Chapter 13 bankruptcy?

A Chapter 7 bankruptcy fully discharges most unsecured debt. It is designed to give you a fresh start. You must decide whether to pay for or give up secured property (see above). In a Chapter 13, both secured and unsecured debts are paid under a repayment plan. The plan must be completed within 3 to 5 years. The court will usually consider your income, expenses, and other household factors in a payment plan. Both Chapter 7 and Chapter 13 bankruptcies have advantages and disadvantages. You should consult with an attorney to understand the best choice for your specific situation.

Both bankruptcies have an automatic stay provision. That means neither a creditor nor a state court can take any further action on the debt. Permission must be given from the Bankruptcy Court.

Will I lose my home or car if I file bankruptcy?

Under South Dakota law, a person may keep certain property and income if they file for bankruptcy. You may not lose your home or car during bankruptcy if what you have paid for the property is exempt. The amount of money allowed for exemption changes, so make sure you pay attention to what is allowed at the time you file for bankruptcy. If your home or vehicle is worth more than the allowed exemption amount, there may be other options available to keep them. It is best to discuss these options with an attorney.

You also may be able to keep your home or car in a bankruptcy if you own it outright. Your creditors may have a "security interest" in your home or car if you do not own them outright. 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 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 may be able to make payments on the debt until it is paid in full. Also, you could pay the creditor the amount that the property you want to keep is worth.

What does it cost to file?

As of January 2018, it costs \$335 in 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 one.

How does the “Means Test” affect my bankruptcy?

The “means test” compares your last six months actual household income to what the average income is for people that live around you. Depending on your

household size, income and some other factors, you may qualify for both Chapter 7 and Chapter 13 bankruptcy. If your income is above the median household income, you cannot file a Chapter 7 bankruptcy. If your household income is below the median, you can file either a Chapter 7 or a Chapter 13 bankruptcy. See the [South Dakota income tables](#) for current amounts.

Can I keep my tax refund?

You may be able to exempt your tax refund. If you are unable to exempt all of your refund, the bankruptcy trustee may use some or all of your refund to settle portions of your debts. Talk with an attorney about whether your refund is exempt.

Can I make purchases before I file for bankruptcy?

You may buy necessities. However, you should not increase debt when you know you will be filing for bankruptcy. Your creditors could claim that you are committing fraud.

Will bankruptcy affect my credit?

Yes. A bankruptcy can appear on your credit for ten years. However, bankruptcy removes many of the harmful things on your credit. Bankruptcy can often at once improve your credit score. Each person's situation is different and the results of bankruptcy can vary. Bankruptcy is not always a bad credit decision.

What are the time limits on filing bankruptcy?

You cannot file a chapter 7 bankruptcy if you received a Chapter 7 bankruptcy filing in the past eight (8) years. If you filed a Chapter 13 bankruptcy, you must wait six (6) years before filing a Chapter 7 bankruptcy.

Last updated on May 19, 2022.

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