

Breaking Down Bankruptcy
What You Need to Know Before Filing Bankruptcy
With or Without an Attorney



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What is Bankruptcy?

Bankruptcy is a legal declaration and process which allows people to discharge debts owed to creditors which they are unable to repay. Declaring bankruptcy does not allow you to discharge all of your debts, only the ones allowed under federal bankruptcy law. Filing bankruptcy can also be a tool to reorganize and restructure your financial future, allowing for debts owed to be converted into a realistic payment plan so creditors can be paid and off of your back. Over 600,000 people filed for personal bankruptcy in 2020, with a predicted increase for 2021 due to the COVID-19 pandemic.

While bankruptcy filings are initiated in Federal Court, State Courts also play a significant role in determining which property is protected from creditors during the bankruptcy process. Some states allow the bankruptcy filer to choose between federal or state law in determining how to protect their vulnerable assets (also known as exemptions); Georgia, unfortunately, is not one of those states. If you file bankruptcy in Georgia, then you must use the Georgia state bankruptcy exemptions and cannot choose to use the federal bankruptcy exemptions. Exemptions are discussed in more detail below.

It is essential to know if filing bankruptcy is your best option. Make sure that you at least speak to an experienced bankruptcy attorney before deciding if you want to proceed with a bankruptcy filing. While many people may have anxiety about talking to an attorney, the area of bankruptcy is one of the few where clients consistently end up in a better position than where they were before they went through the bankruptcy process.

How Can a Bankruptcy Help Me?

A bankruptcy filing can help you erase unsecured credit card debt, personal loans, and medical bills that have gotten simply too big to pay. You will also be able to discharge debts that are secured by some type of property, but you will likely have to give up the property that secured the loan in the first place. Bankruptcy filings can ease a huge burden of financial pressure in a relatively short period of time.

The first thing that a bankruptcy filing will do is prompt the Court to order an “Automatic Stay” on collection activities. This Stay puts a stop to harassing creditor calls, prevents wage garnishment, and can stop active foreclosure proceedings against the bankruptcy filer. The Stay is not permanent; however, it simply allows a pause on collection while the filer proceeds with his or her bankruptcy case.

Depending on the type of bankruptcy you choose to file, the process and legally protected property vary. Different bankruptcy filings treat debt and property in their own specific ways, seeking to accomplish a variety of financial goals. You must assess exactly what you are looking to achieve in a bankruptcy filing, so the filing actually benefits you and your financial future.

Will a Bankruptcy Protect Me from Everyone Seeking Money from Me?

No, a bankruptcy filing will not discharge all of your debts. There are some debts that are not dischargeable in the bankruptcy process, they include:

- Child support obligations
- Alimony obligations
- Liens
- Most tax debts
- Most student loan debts
- Government penalties
- Court fines and costs
- Some debts related to fraud

Note: this is not a complete list of non-dischargeable debts; these are the most common. It is important to know which of your debts are dischargeable.

If the majority of your debt is not dischargeable, then a bankruptcy filing may not be your best option. In many of these situations, it is possible to work out a payment plan directly with the creditor in order

to avoid collection activities against you. You have the option to have an attorney help you work out a realistic payment plan for these debts, or you can attempt to do so on your own with your creditor(s).

Whichever type of bankruptcy you decide to file, it is important to know what that type of bankruptcy filing can and cannot do for you. Some bankruptcy filings are designated for personal use, while others are designated to be used in dealing with businesses and business debt. It is important to seek the advice of an experienced bankruptcy attorney who can help you decide which bankruptcy filing is the most beneficial for you.

What Are the Main Types of Bankruptcy Filings?

Bankruptcy laws can be found within the United States Bankruptcy Code. The specific sections of bankruptcy codes used in bankruptcy filings are referred to as “Chapters.” There are actually six different types of bankruptcy filings that exist under federal law, they are found in the United States Bankruptcy Code at:

- Chapter 7: Liquidation
- Chapter 13: Repayment
- Chapter 11: Large Business Reorganization
- Chapter 12: Family Farmers
- Chapter 15: Foreign cases
- Chapter 9: Governmental municipalities

Chapter 7 and Chapter 13 bankruptcy filings are the most common type of bankruptcy filing when dealing with personal debt. Chapter 11 bankruptcies are common for businesses who are not looking to close but instead are looking to reorganize their companies’ debts while still operating. It is possible to file for a personal Chapter 11 bankruptcy, but it is reserved for people who have many high-value assets and property. Chapter 12 bankruptcies are aimed at farmers and fisherman, while Chapter 15 bankruptcies deal with international bankruptcy cases. Finally, Chapter 9 bankruptcies are meant for municipalities such as cities or school districts to reorganize their debts and repay them over an extended period of time.

Chapter 7 Bankruptcies Explained

Chapter 7 bankruptcy filings are the most common type of bankruptcy filing for individuals. Chapter 7 bankruptcy is also referred to as the liquidation chapter. Known as liquidation chapter because, during the Chapter 7 process, the Court will appoint a Trustee who will oversee the sale of your unexempted assets in order to pay off your debts to creditors. Whatever unsecured debt is left over after your asset(s) are sold is generally excused by the Court. Most bankruptcy cases filed under Chapter 7 are known as “no-asset cases” where there isn’t any unexempted property owned by the filer that is worth selling.

In order to receive the discharge benefits of a Chapter 7 filing, the Court has to agree that you financially qualify for Chapter 7. To determine if you are eligible to file for a Chapter 7 bankruptcy, the Court has implemented a test what is known as the “Means Test.” The Means Test examines your income and compares it to the state average to determine if you have the financial means to pay back a good portion of your debts. If your income is below the state medium/average, making you unable to pay back your debts, then a Court may grant you a Chapter 7 discharge. Chapter 7 bankruptcies are reported on your credit report for a period of 7- 10 years. You will also have to wait 8 years before you are eligible to file Chapter 7 again.

Chapter 13 Bankruptcies Explained

Chapter 13 bankruptcies are different from Chapter 7 bankruptcies because Chapter 13 bankruptcies will help you reorganize your debt. Chapter 13 bankruptcies can offer some of the same benefits of a Chapter 7 in the ability to wipe out unsecured debt, but its primary function is to reorganize and restructure your debt. With a Chapter 13 you are allowed to keep all of your assets because in this type of filing you are agreeing to a Court-approved debt repayment plan to pay back your debt. This repayment plan can span from three to five years and covers both secured and unsecured debt.

In order to qualify for a Chapter 13 bankruptcy, the filer must simply be up to date with his or her taxes, have a consistent source of income and meet the following two requirements as of 2021 because it changes:

- The filer's unsecured debt is less than \$419,275,
- The filer's secured debt is less than \$1,257,850. And

A significant advantage of a Chapter 13 bankruptcy is the ability to stop a pending foreclosure proceeding and allow you time to get your mortgage payments back on track. The Court will review your proposed plan and budget and, if approved, your Chapter 13 plan and case will be confirmed. Chapter 13 bankruptcies are entered reported on your credit report for a period of 7-10 years just as a Chapter 7. You can file as many Chapter 13's as needed, but not every case will come with Automatic Stay protection or discharge eligibility.

What Are Exemptions?

Bankruptcy exemptions are a specific list of laws that allow you to protect your assets. Assets such as your home and car can be protected with bankruptcy exemptions, as well as benefits such as worker's compensation and most retirements and pension accounts. The idea behind exemptions is that bankruptcy should not make you homeless and should allow you the basic living necessities to start over fresh after you discharge your debts. Bankruptcy exemptions exist under both federal and state law. In some states, you are allowed to choose between the federal and state exemption when filing for a Chapter 7 bankruptcy. The state of Georgia, however, does not allow federal bankruptcy exemptions to be used and requires Chapter 7 filers to use the Georgia state exemptions. Chapter 7 filers may be able to use federal exemptions on certain retirement accounts and disability payments.

You can file a Chapter 7 bankruptcy after living in Georgia for at least 180 days. In order to use Georgia's bankruptcy exemptions, you will need to have lived in Georgia for a minimum of 730 days (2 years). If you have lived in Georgia for less than 730 days, then you can use exemptions from another state under the "180-day rule." Under the 180-day rule, you must use the exemptions of the state where you lived

during the 180-day period (6 months) immediately before the 730-day period (2 years) in question or the federal exemptions if allowable.

What Types of Exemptions Do I Qualify For?

Before filing for a Chapter 7 bankruptcy, it is important to know what bankruptcy exemptions you qualify for. The exemptions that you qualify for will allow you to protect certain assets and benefits from creditors and prevent these assets from being sold off. As mentioned earlier, the state of Georgia requires Chapter 7 filers to use the state's exemptions as opposed to the federal exemptions. Some of the more common Georgia state bankruptcy exemptions include:

- The Georgia Homestead Exemption: This allows for an exemption of up to \$21,500 for property used as a residence. This number goes up to \$43,000 if you are married.
- The Georgia Motor Vehicle Exemption: This allows for an exemption of up to \$5,000 towards any motor vehicles that you own.
- The Georgia Wildcard Exemption: This allows for an exemption of any property up to \$1,200. You can also combine this exemption with any unused homestead money up to \$10,000.
- The Georgia Personal Property Exemption: This allows for an exemption of personal items such as clothing, books, musical instruments, animals, plants up to \$300 each and a total exemption of up to \$5,000. You will also be able to exempt jewelry up to \$500, among other exemptions listed in this section.
- The Georgia Wages Exemption: This allows for an exemption of either 30 times the hourly minimum wage or a minimum of 75% of your unpaid earnings, whichever is greater.

These are not all of the available Georgia Chapter 7 bankruptcy exemptions. It is important to know which exemptions apply to you and your bankruptcy filing. While finding a website such as this can be a

good resource, it should not be substituted for the advice of an experienced bankruptcy attorney.

Required Financial Courses for Bankruptcy Filers

If you are a Georgia resident and file a Chapter 7 or Chapter 13 bankruptcy, then you will be required to complete 2 different financial education courses: credit counseling and financial management. Credit counseling is required to be completed before filing the bankruptcy, while financial management is required to be completed after you file. Federal bankruptcy law requires anyone filing bankruptcy to complete credit counseling within 6 months before filing bankruptcy. You will need to complete the credit counseling with an approved organization and will need to provide the Court with a copy of your completion certificate.

Note: The certificate expires (180 days) after course completion.

How Long Does a Bankruptcy Take?

The length of your bankruptcy case will be determined by the type of bankruptcy case you file. If you file for Chapter 7 bankruptcy, then you should expect your proceeding to take anywhere from 4-6 months. If you file for a Chapter 13 bankruptcy, then you should expect your bankruptcy proceeding to last anywhere from 3-5 years. This timeline is largely dependant on your debt repayment agreement. As long as you are making payments according to a Chapter 13 debt repayment plan, then you will still be under the jurisdiction and authority of the bankruptcy Court.

How Will My Credit Be Affected by Declaring Bankruptcy?

When credit card companies and lenders decide whether or not to loan someone money, they will always look into that individual's payment history. If these companies see that you have declared bankruptcy, it may prevent you from being extended a line of credit or from getting a loan application approved. The good news is, that this time period is probably shorter than you think.

While your credit report may indicate a bankruptcy filing for several years, you will still likely be able to finance a new vehicle immediately after filing for bankruptcy, albeit at a higher interest rate than pre-filing. Most Chapter 7 filers see their credit scores increase within the first 6-12 months after filing. They will also likely receive numerous offers for credit cards because credit card companies know that Chapter 7 filers must wait eight years to file another Chapter 7.

If you are looking to get a conventional, FHA, or VA loan, you will likely have to wait one-two years. Mortgage lenders require a two-year wait (from the date of discharge) before approving loans for a Chapter 7 bankruptcy filer and one-year for Chapter 13 filers. Private lenders, however, may not require this waiting period, but will likely require a higher down payment (typically 25-35%) to approve a loan. Your main focus after declaring bankruptcy should be on improving your credit score. You can accomplish this goal by obtaining a secured credit card and making timely payments on all of your bills, especially those that report to the credit bureaus.

Do I Need an Attorney to File Bankruptcy?

You are always able to represent yourself in Court by going “*pro se*” so you do not technically need an attorney to do anything in bankruptcy Court. It is also true that some Chapter 7 bankruptcies are not too complicated and can likely be handled *pro se* without too much of a problem. The problems arise, however, in things that people with an untrained eye fail to see. These include such things as missed exemptions and incomplete documents and filings. An experienced bankruptcy attorney will not only be able to help guide you towards filing (or not filing) the most appropriate chapter of the United States Bankruptcy Code, he or she will also make sure that you get the maximum benefit from your bankruptcy filing. You can always contact us at The Ballard Law Group for a free consultation to discuss your options.

Will All My Judgments and Garnishments Go Away When I File Bankruptcy?

No, your judgments and garnishments don't simply go away with a bankruptcy filing on its own. If you were previously sued and had a judgment awarded against you and/or are facing garnishment, then you have a judicial lien filed against you. To get rid of any outstanding judicial liens, you will have to file a motion with the Bankruptcy Court asking the Court to order that your property is not subject to the lien anymore. If you have been sued in the past or know that you have a judicial lien, make sure you mention this to your attorney so he or she can take the necessary steps to have these liens removed along with your bankruptcy debt.

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