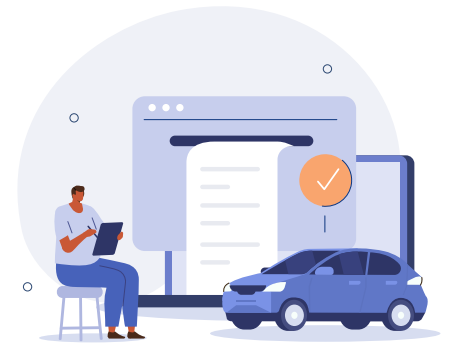


bankruptcy basics / CAR MATTERS



The bankruptcy automatic stay

will halt any repossession proceedings and you may be able to save your car as long as the lender has not sold it.



Can I save my car in bankruptcy?

To answer this you need some information about your car:

- **Is there a loan secured by your car?** Or, do you own it outright (are any loans paid off)?
- **Do you have equity in your car?** Equity is calculated by subtracting the unpaid balance on any loan from the value of your car. “Value” is not the price you bought the car for or how much you paid for it. Value is determined by the year, make, mileage and condition. Sources like Kelley Blue Book or Edmunds, which list values for cars, can help.
 - For example, if you have a car worth \$6000 and \$3000 remaining on a loan, you have \$3000 of equity less costs of sale. Costs of sale is not an exact number it is calculated by how much it would cost the trustee to sell the car.
- **Is your car exempt (cannot be sold by a bankruptcy trustee)?** The motor vehicle exemption in Illinois is \$2,400 and you can also apply the wildcard exemption of \$4,000. So if your car has no liens (secured loans) or if the equity is less than \$6,400, your car is exempt.
- **How long ago was your car loan taken out?** Was it more than 910 days (2.5 years)?

The bankruptcy automatic stay will halt any repossession proceedings and you may be able to save your car as long as the lender has not sold it. There are two main types of bankruptcy: Chapter 7 – liquidation (selling) of any non-exempt assets, and Chapter 13 – repayment plan to save assets.

Cars in a Ch. 7

When filing a Ch. 7 you must also file a statement of intention (Form 108) that tells the court whether you plan to reaffirm your car loan, redeem the

continued →

bankruptcy basics / CAR MATTERS

car, or surrender it. The statement of intention must be filed within 30 days of filing.

A Chapter 7 does not eliminate a lien on your car. If you are behind on payments, a Ch. 7 will not help you get caught up.

However, you can keep the car IF:

You own a vehicle outright and the car is exempt (value is less than \$6,400 + costs of sale.)

You have a loan secured by your vehicle and the value of the vehicle with or without exemptions is less than the amount of the loan (for example, if the loan is \$6000 and the car is worth \$6000), you can keep the car by reaffirming the note. Reaffirmation means you still have to make payments and you will still owe the money for the loan. The bankruptcy court will hold a hearing to determine if you can afford to make the car payments. If reaffirmation is approved, you must keep up with the payments in order to keep the car.

You redeem your vehicle.

Redemption requires you to pay the fair market value of the vehicle in full.

If none of these apply to you, you may lose your car:

- If you have significant equity are current on your payments or own

the car outright, the trustee can sell your vehicle or give you the option to pay off the equity at a discount in order to keep the car. If the trustee sells your vehicle, they will give you the exempted amount and use the remainder to repay creditors

- If you are behind on your vehicle loan payments, the lender can repossess the car or you can voluntarily surrender it.

Cars in a Chapter 13

If you own your car with no liens, you can keep it if

- it is exempt **or**
- if you pay the non-exempt value to your unsecured creditors during the Chapter 13.

In a Ch. 13, you must propose a payment plan to pay off your debts.

If you purchased your vehicle more than 2.5 years before filing bankruptcy (910 days), you may be able propose a plan which reduces the total amount owed to the current value of the vehicle, reduce the interest rate, and pay out the value of the car through the bankruptcy. If you finish the bankruptcy repayment plan successfully you would then own the car outright.

If you have a loan secured by your car but are not behind on payments,

you can include the car payments in your plan or pay outside the plan.

If you are behind on your payments, you can catch up in your plan.

What about my drivers license? Can bankruptcy stop suspension of my license?

The first step is to figure why your license is suspended.

If it is suspended for traffic violations or unsafe driving such as a DUI, negligent driving, etc. a bankruptcy discharge will not restore your license.

If it is suspended due to an amount assessed for being involved in an accident when you were not insured, a bankruptcy discharge may restore your license.

Drivers licenses are no longer suspended due to municipal parking tickets.

What if my car was repossessed or towed?

If your car has been repossessed, a bankruptcy filing will cause your car to be returned to you. However, your car will only be returned to you if you are able to catch up on your loan payments and/or pay repossession fees and parking ticket liens by redemption in a Ch. 7 or through a Ch. 13 plan. You may have to file a motion to turn over the vehicle.