

bankruptcy basics

/ SHOULD I FILE FOR BANKRUPTCY?



Is it the right time to file?

You don't file just because you have debt; you file to protect what you have.



Should I File Bankruptcy?

Bankruptcy is not something that you HAVE to do if you cannot pay all your debts. It is a choice – a tool you can use to retain your assets such as income, car, or home.

Ask yourself:

- What type of debt do I have?
- What type of assets do I have and does my debt threaten my assets?
- Will bankruptcy help me achieve my goals such as saving a car or house or protecting my income?

What type of debt do you have?

- **Is the debt secured by a collateral, such as a car loan or mortgage?** If the creditor has a debt that is tied to your car or home, failure to make a monthly payment can put your car or home at risk even if you file bankruptcy.
- **Does my creditor have a judgment?** If the debt is not secured by a collateral, the creditor must have a judgment in order to collect. If the creditor does not obtain a judgment, your assets are not yet at risk.
- **Is the debt dischargeable through bankruptcy?** Some debts, such as child support, IRS liens, student loans, debt incurred through fraud on your part, are not typically dischargeable through bankruptcy.

What type of assets do you have and does my debt threaten my assets?

- **Wages income** – A creditor must have a judgment to garnish wages. If you make more than XXX, the creditor can garnish up to 15% of your take home pay. If you make less than XXX, the creditor cannot garnish your pay even if it has a judgment.

continued →

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- **Money in the bank** – You can protect up to \$4,000 of your money in the bank at any given time by using the “wild card exemption” to protect that money from judgment creditors.
- **Car** – If you have a car loan you must continue paying on the loan to keep your car even if you file bankruptcy. Sometimes, in a Chapter 13 bankruptcy, you can propose a plan which reduces your payments. A Ch. 7 will not get you caught up on your car loan or remove the debt on your car. If you do not have a car loan, it is very uncommon for a judgement creditor to try and take your car and it is likely not at risk. For more information on car matters in bankruptcy see our flyer on car matters.
- **House** – If you have a mortgage, you must continue paying on the mortgage to keep your home even if you file bankruptcy. Sometimes, in a Chapter 13 bankruptcy, you can propose a payment plan to catch up on your payments. A Ch. 7 will not get you caught up on your mortgage or remove the lien on your home. If you do not have a mortgage, it is very uncommon for a judgment creditor to try and take your home. For more information on house matters in bankruptcy see our flyer on house matters.
- **Public benefits income** – Social Security benefits, VA benefits and other types of public aid are exempt from collections even if they are now in your bank account. They cannot be touched by your creditors (unless your creditor is the federal government). To help protect this exempt income it is helpful to keep these exempt benefits separate from non-exempt funds in two separate bank accounts.
- **Pension income** – Income from pension is not collectible. HOWEVER, income from pension deposited in your bank account can be collected. It can be protected up to \$4,000 by the wild card exemption.
- **Peace of Mind?** – If Creditors are calling and disturbing your mental health, this could be a reason to file. But, there are other ways to deal with those and you may then lose the opportunity to file again if something is at risk. You may want to consider bankruptcy as a special card that you use only when you absolutely have to.

If you file	Must Wait (from date of filing)	Before Filing and receiving discharge
CH 7	8 years	CH 7
CH 7	4 years	CH 13
CH 13	6 years	CH 7
CH 13	2 years	CH 13