

## CAN BANKRUPTCY HELP ME?

If you are over your head in debt, probably the bankruptcy laws can help you. One of the major aims of the bankruptcy code is to assist a financially distressed person to get back on their feet financially. Your bankruptcy case normally results in the discharge or release from obligations of your debts -- or, at least, of many of them -- so that no further legal action can be taken against you on those debts. In short, your discharge in bankruptcy gives you a fresh start. There are 2 types of bankruptcies generally available to individuals--chapter 7 and chapter 13 (payment plan). There are several concepts (discussed below) that apply to both types of bankruptcy.

"But" many people ask, "Won't I have to give up all of my property if I file bankruptcy?" The answer is no. Tennessee law recognizes that some things are necessary for a person's comfort and survival. Certain property, including your working tools, insurance, household furnishings, radio, television, musical instruments, some bank, savings and loan or credit union accounts, your home, and other property that you own, may be exempt from unsecured creditors -- which means you will be allowed to keep them -- if the value of your equity in them does not exceed certain amounts, and if proper steps are taken to claim the exemption. Most debtors have no assets that exceed the exemption amounts. Assets that exceed the exemption amounts can be sold or liquidated by a Chapter 7 trustee.

Many debtors have purchased cars and other personal property on installment sales contracts. Such debts are called "secured" and the exemptions generally do not apply to them. Under the bankruptcy code, the court must approve any reaffirmation of consumer debt. If you want to keep the collateral, the court will only approve reaffirmations that are in the best interest of the debtor. You may expect that the court will approve settlements with secured creditors only if you will pay the fair value of the car, furniture, or their personal property involved. Some liens on furniture and household goods may be avoided by bankruptcy if they were used as security for a personal loan that was made after you had purchased the furniture or household goods. Loans made to you to purchase assets normally may not be avoided.

Debts secured by a mortgage or deed of trust, on your home or other real estate, generally will not be affected by a liquidation-type bankruptcy if you have little or no equity in the real estate -- you will have the choice of keeping the property and paying that debt or surrendering the home to the lender. If you are seeking to avoid foreclosure of your home, you should consult an attorney about filing a Chapter 13 or Chapter 7 bankruptcy case.

Some debts are not discharged by either type of bankruptcy. These include most taxes, child support, spousal support, most student loans, and debts resulting from submission of false financial statements or other similar fraudulent conduct and debts arising from the willful or malicious injury to another's person or property. A debtor faced with this type of debt should review their situation with an attorney to determine the best way to deal with these debts.

In a Chapter 13 case, the debtor proposes for court approval a plan to pay all or some part of their debts. The court may approve the plan if it is proposed in good faith and will result in the creditors receiving at least as much as they would receive in a Chapter 7 bankruptcy case. It must also meet certain other requirements. These include submission of part of the debtor's future earnings to a trustee to use in completing the plan. A trustee will manage the Chapter 13 plan. Even some small individually-owned businesses can use Chapter 13 now.

Most of us try to plan our affairs so that debts do not get out of hand. Sometimes, though, unexpected expenses or losses can upset our plans. Others of us are just careless. Whatever the cause, if you find yourself hopelessly in debt, bankruptcy may give you an opportunity to start over. However, if you have received a previous Chapter 7 discharge, there is an eight (8) year limit before you may file for another Chapter 7 discharge. Under Chapter 13 you must wait 2 years to file another Chapter 13 and obtain a discharge.

All debtors must undergo credit counseling from a court-approved credit counseling provider before filing for any type of bankruptcy. Each debtor must also undergo a personal financial management course before becoming eligible for a discharge in any type of bankruptcy case. A list of these providers and the cost of the program is available on the Bankruptcy Court website – [www.tneb.uscourts.gov](http://www.tneb.uscourts.gov). NOTE: These programs are available to be completed online or by telephone, and should be discussed with your attorney.

If you are considering bankruptcy, you should seek legal advice from an attorney about your legal options. The Knoxville Bar Association's Lawyer Referral & Information service can refer you to a qualified bankruptcy attorney for a free consultation. Contact them at [www.knoxbar.org](http://www.knoxbar.org) or at 865-522-7501 for more information.

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