

Common Questions about Bankruptcy

Q: If I declare bankruptcy, will I lose everything I own?

A: No. Most people do not lose their personal possessions through bankruptcy. There are provisions under State law called “exemptions” that protect most of your property. Unless you own property with significant value over any debt you owe on it, your personal possessions are usually protected. You may be required to surrender property that is not exempt. However, with prudent planning, you can avoid losing most property.

Q: Will I ever be able to get credit again after bankruptcy?

A: Yes. Most people qualify for credit again after filing bankruptcy. If you save and spend prudently, you should be able to repair your credit within a few years. You will might be charged a higher interest rate or be required to make a larger down payment until you re-establish your credit. You can re-establish your credit by paying your existing car payment, house payment, and other obligations on time every month. Your bankruptcy can be reported on your credit for up to 10 years.

Q: Is there a minimum amount of debt required to file for bankruptcy?

A: No. You can file bankruptcy with very little debt. There is no minimum debt requirement for filing a Chapter 7. Each person’s situation is unique. For some people, \$5,000 worth of debt might prevent them from making their house payment or buying food or necessary medications. A wage garnishment, particularly in a single income household, might prevent you from meeting basic survival expenses. Your peace of mind may make filing for bankruptcy worthwhile for you, even with little debt. Creditor harassment and garnishments from court judgments are two major reasons individuals file for bankruptcy protection.

Q: Will my spouse’s credit be ruined if I file for bankruptcy individually?

A: No. You can file an individual bankruptcy and not include your spouse. You can discharge your debt and your spouse will keep his or her good credit. If your spouse is not legally responsible for your debts, he or she should not be affected by your bankruptcy. Your spouse’s income will need to be included in the means test calculation of household income. Each situation is different. Discuss any joint obligations you have with your bankruptcy attorney.

Q: Isn’t it immoral to file for bankruptcy to escape payment of debts?

Many major religions include forgiveness of debt in their moral principles. Everyone is entitled to a fresh start. The Bible says: “At the end of every seven-year period you shall have a relaxation of debts . . . Every creditor shall relax his claim on what he has loaned his neighbor . . .” Deuteronomy 15:1-2. (Congress has rewritten the Bible to provide that Chapter 7 debt relief is available every *eight* years).

Q: Can the bankruptcy court take my retirement savings?

A: No. Qualified retirement plans are exempt in bankruptcy. If your plan qualifies as an IRA, 401(k), or similar pension plan, it will be protected from creditors. Many people make the mistake of borrowing against their retirement accounts to make house payments and avoid foreclosure. They may end up owing significant income taxes, lose their home, and be left without a retirement cushion. Because of this, it is generally not advisable to borrow against retirement accounts to pay unsecured creditors.

Q: Can I file for Chapter 7 bankruptcy if I have filed before?

A: Chapter 7 cannot be filed unless the debtor was discharged from the previous Chapter 7 or bankruptcy more than eight years ago. A debtor cannot file a Chapter 13 unless: (1) the debtor received a discharge under Chapter 7, 11 or 12 more than four years ago; or (2) the debtor received a discharge under Chapter 13 more than two years ago.

Q: Will everyone know that I've filed bankruptcy?

A: Your bankruptcy petition is a public record. However, someone would have to be looking for the record to find it. Many people think that the local newspaper prints bankruptcy filings. That is usually not the case.

Q: Will my taxes be discharged?

A: Tax debts are generally subject to discharge only if you file personal bankruptcy more than three years after you file a timely tax return. If your return is filed late, the taxes are generally discharged only if you file bankruptcy more than two years after filing a truthful tax return.

Q: Can they still take my house if I file for bankruptcy?

A: When you file Bankruptcy, you receive an "automatic stay" on court actions such as foreclosures and sheriff's sales. A creditor can still go to court and ask the for "relief from stay," If the motion is granted, the creditor can proceed to foreclose.

Q: Can my social security, disability or other public benefits be garnished or taken in bankruptcy?

A: Most public benefits are exempt under Oregon law, including old age assistance, aid to the disabled, veteran's benefits, unemployment compensation, vocational rehabilitation, public assistance, and workers' compensation.