

## WHAT ARE THE REASONS A PERSON WOULD FILE A CHAPTER 13 CASE INSTEAD OF A CHAPTER 7 CASE?

Individuals consider filing a Chapter 13 case because the provisions of Chapter 13 have advantages to some persons who are considering bankruptcy. For example, you might have more equity in a home than can be protected in a Chapter 7 case with the exemption for real estate. The Chapter 13 plan could allow you to keep your home. When a co-signer is involved in consumer debt situations, a Chapter 13 proceeding could protect the co-signer who has not also filed for bankruptcy protection. Certain individuals will be required to file a Chapter 13 case, even if they do not have homes or excessive equity in their homes due to monthly excessive income. An experienced bankruptcy attorney will conduct a means test to determine your eligibility to file a Chapter 7 or Chapter 13 bankruptcy.

## IF I FILE BANKRUPTCY, HOW WILL IT AFFECT MY FUTURE CREDIT AND MY JOB?

Different people have different experiences obtaining credit after they file a bankruptcy case. As a general rule, most people find it more difficult to obtain long-term credit, such as a home mortgage, shortly after a bankruptcy has been filed. For other types of credit, experiences vary depending on other factors. The Bankruptcy Code prohibits your employer from discharging you or discriminating against you solely because you have filed a bankruptcy case. A bankruptcy may remain on your credit report for 10 years, but most people can obtain credit on good terms within 2 1/2 - 3 years after bankruptcy.

## IF I OWN A HOME, WILL I LOSE IT IF I FILE A CHAPTER 7 OR A CHAPTER 13 CASE?

The answer to that question depends on many factors, such as the equity in your home and whether you are seriously delinquent in your mortgage payments at the time you file bankruptcy. You should consult an experienced bankruptcy attorney to answer this question based on your circumstances. However, in most bankruptcy cases, individuals do not lose their homes in the bankruptcy. In general, a debtor has a greater ability to protect assets in Chapter 13 than in Chapter 7.

## DO I NEED A LAWYER TO REPRESENT ME IF I FILE A BANKRUPTCY CASE?

Any person has a right to file a legal case and represent himself or herself at all Court hearings, but remember that bankruptcy is a Court proceeding. Some Bankruptcy Courts in Illinois require that the bankruptcy materials themselves be filed electronically and not through written papers. In every bankruptcy case, each individual is required to prepare and submit to the Court detailed forms concerning his or her property, debts and financial affairs. Options available to each individual, such as property claiming exemptions, filing jointly with a spouse or what type of bankruptcy to file probably cannot be properly assessed without the assistance of an experienced attorney.

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For the most current information, please consult your lawyer. If you need a lawyer and do not have one, call Illinois Lawyer Finder at (800) 922-8757 or online [www.IllinoisLawyerFinder.com](http://www.IllinoisLawyerFinder.com)

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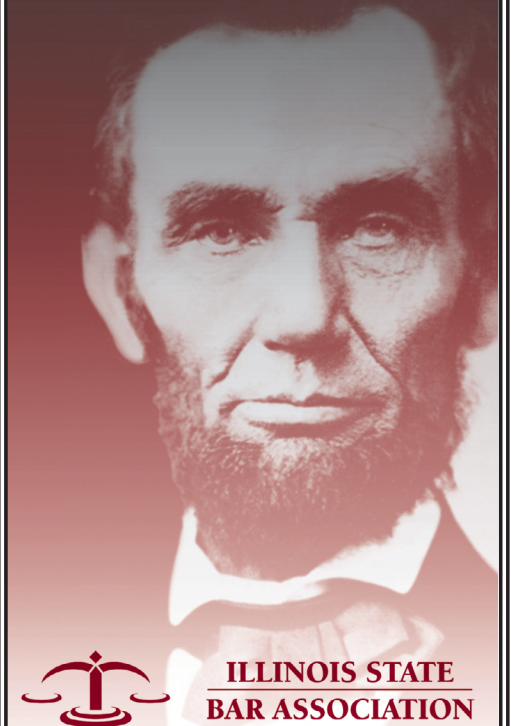
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Consumer Legal Guide

# Your Guide to Bankruptcy for Individuals



## BANKRUPTCY FOR INDIVIDUALS

### WHAT IS BANKRUPTCY?

Bankruptcy is a Court proceeding under a Federal statute called the “Bankruptcy Code.” The Bankruptcy Code allows persons or other entities in financial distress relief from some or all of that person’s debt. Bankruptcies are administered through a separate Federal Court called the United States Bankruptcy Court.

### IS THERE MORE THAN ONE KIND OF BANKRUPTCY?

Yes, there are several types of bankruptcies. For individuals, the two main types of bankruptcy filings are cases under Chapter 7 or Chapter 13 of the Bankruptcy Code. Chapter 7 cases are also referred to as “liquidation” cases. Chapter 13 cases are commonly referred to as “debt adjustment” or “wage earner” cases. Individuals can also be eligible for Chapter 11 reorganization, but Chapter 11 is normally used by debtors in business or debtors with extremely high amounts of debt. Farmers can also file a separate type of bankruptcy available only to farmers under Chapter 12 of the Bankruptcy Code. The word “Chapter” is simply a reference to a chapter number in the Bankruptcy Code.

### CAN A HUSBAND AND WIFE FILE A BANKRUPTCY TOGETHER?

Yes, the Bankruptcy Code allows a husband and wife to file bankruptcy together in one case. The question of whether a husband and a wife should file a bankruptcy together depends on whether both are liable on the debts involved. You should remember that filing bankruptcy generally protects only the person who files the bankruptcy.

## ELIGIBILITY TO FILE A CHAPTER 7 BANKRUPTCY CASE

In order to be eligible to file a Chapter 7 case, you must receive a Certificate of Completion from an approved credit counseling agency within 180 days before you file your case. After you file Chapter 7, you will also have to complete a debtor education class. Each class is run by independent agencies and requires additional costs. Listings of accredited credit counselors can be found at the United States Trustee’s website, [www.usdoj.gov/ust](http://www.usdoj.gov/ust).

### WHAT HAPPENS WHEN I FILE A CHAPTER 7 CASE?

One of the first things that happens in a Chapter 7 case is that the Bankruptcy Court issues an automatic stay against your creditors. An automatic stay prohibits creditors from proceeding with debt collection actions against you outside of the bankruptcy case, unless the bankruptcy Judge approves it first. The automatic stay does not affect criminal proceedings. When the case is filed, the Bankruptcy Court appoints a Bankruptcy Trustee to review your assets and financial affairs. The Trustee has the power to liquidate assets which exceed in value the amount of exemptions which the law allows you to keep. The Trustee does not liquidate any of your assets that you are allowed to exempt. Additionally, assets with no equity due to liens on those assets, (such as mortgages on real estate or auto loans on vehicles) or assets that are without any significant value will not be liquidated by the Trustee. If the Court issues a debtor a bankruptcy discharge, the debtor is relieved from liability for all his dischargeable unsecured debts. Liens on a debtor’s property are called “secured debts.” Secured debts can be such things as a mortgage on your home or a lien on your car. A discharge in bankruptcy, does not relieve a debtor from payment of secured debts, unless the debtor surrenders the property securing the debt to the creditor.

## WHAT HAPPENS TO PROPERTY I OWN WHICH IS SUBJECT TO A LIEN?

In some cases, the Bankruptcy Court can set aside or reduce a lien on property. Additionally, individuals who want to keep the property secured by a lien commonly enter into reaffirmation agreements with the secured creditor. A reaffirmation agreement is a voluntary written agreement to continue to pay a specific secured creditor despite the bankruptcy, so that the individual can also keep the property involved. All reaffirmation agreements must be filed with the Bankruptcy Court. If you default on the reaffirmation agreement, the creditor can hold you liable on any deficiency.

### WHAT TYPES OF PROPERTY MAY I KEEP IF I FILE BANKRUPTCY?

Each individual who files a bankruptcy is entitled under Illinois law to keep certain property claimed as “exempt”. For some types of property, such as family pictures, necessary wearing apparel, worker compensation benefits, qualified retirement plans, IRAs and life insurance, the value and amount of property an individual can claim as exempt is unlimited. In other cases, the equity an individual can claim as exempt is limited by a fixed dollar amount. Common examples of such dollar amount limitations for each individual are:

- Your personal residence (equity of \$15,000.00);
- Personal injury cases (\$15,000.00);
- Motor vehicle (equity of \$2,400.00 for each individual owner);
- Tools or books used in your occupation (\$1,500.00).

In addition, Illinois law also gives each individual the right to exempt \$4,000.00 in equity in any other personal property, including cash or money in the bank. If a husband and wife file a joint bankruptcy petition, each spouse is entitled to claim these exemptions as well.

## WHICH OF MY DEBTS ARE NOT DISCHARGED IN CHAPTER 7?

A discharge in a Chapter 7 will not affect some of your debts such as alimony, child support, certain taxes, fines, certain debts arising from education loans, and debts you fail to disclose properly to the Bankruptcy Court. A specific creditor may request the Bankruptcy Court to exclude it from your discharge debts resulting from loans you received by giving a lender a false financial statement as well as debts arising from fraud, embezzlement, drunk driving or certain other willful or malicious acts. If the Bankruptcy Judge rules in that creditor’s favor, the debt to that creditor will not be discharged.

### WHAT HAPPENS WHEN I FILE A CHAPTER 13 CASE?

In a Chapter 13 case, the Bankruptcy Court issues an automatic stay against your creditors just like in a Chapter 7 case. However, in a Chapter 13 case, a person filing bankruptcy generally keeps most or all of his or her property instead of liquidating assets, and proposes a plan to repay all or a portion of their debts over time. The Chapter 13 plan payment period is from 3 years to five years. During the period the “plan” is in effect, you make your regular payments to a Chapter 13 Trustee, who, in turn, distributes the money to your creditors. Your Chapter 13 Plan must pay your unsecured creditors at least as much as they would receive if your non-exempt assets were liquidated in Chapter 7. Also, your Plan payments must be equal to the difference between your net monthly income and your Court approved monthly expenses. You cannot retain a cash reserve each month. In order to be eligible to file a Chapter 13 case, you must have regular income and meet certain debt limitations for your unsecured and secured debts. Individuals, sole proprietorship businesses, or husbands and wives together can file a Chapter 13 Bankruptcy.