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Bankruptcy

What Is Bankruptcy?

"Bankrupt" means filing a petition in federal bankruptcy court asking for protection from those to whom you owe money, the creditors. A single petition may cover an individual or married couple. The instant you, the debtor, file for bankruptcy, the court takes legal control of your assets and stops all debt collection efforts.

Shortly after the filing, a court-appointed trustee convenes a meeting to inventory your assets and debts and determine which assets are exempt from seizure. Ohio law regulates these exemptions, which include in part: pensions, clothes, household goods, and some equity in a home.

At the conclusion of bankruptcy, you are freed from most debts, but taxes, student loans, alimony, and child support remain payable in full, and you must make payments on all secured loans (such as home mortgages and car loans) or forfeit the collateral (the house and the car).

Two chapters of the bankruptcy section of the U.S. Code, regulate individuals filing bankruptcy: Chapter 7, liquidation, and Chapter 13, reorganization.

What Is Chapter 7 Liquidation?

When you file under Chapter 7, the bankruptcy trustee collects your non-exempt property, sells it and distributes the proceeds to your creditors. Your remaining debt is discharged, allowing you to have a fresh start, debt free.

State Exemptions

A debtor cannot use Ohio exemptions, the list of property that the debtor is allowed to keep, unless she has lived here for at least two years before filing. If a debtor moved during this two-year period, the state exemptions are those of the state in which the debtor lived the majority of the time in the six months before this two-year period.

What property in Ohio is exempt from Chapter 7 bankruptcy?

There are many exemptions for property. The list below includes some of the available exemptions. Values are increased based on cost of living increases every three years. Generally, the typical property claimed exempt include the following items: your home equity less than $182,625, one motor vehicle valued less than $5250, cash on hand less than $550, Household goods valued less than $16,850, jewelry less than $2,125, personal injury claims less than $31,650, interest in any property not to exceed $1,675. These amounts are valid through March 31, 2028.

What Is Chapter 13 Reorganization?

A Chapter 13 filing allows you to create a plan to use future earnings to pay off debt. The repayment plan can take 5 years and may not pay 100% of your debt. But Chapter 13 debtors retain their property so long as they stay current with their repayments, and at the end of the plan, they too are debt free.

The Chapter 7 "Means Test"

There is a "means test" formula (similar to a tax return) to identify debtors who are presumed ineligible for a Chapter 7 discharge.

However, debtors can skip the test and proceed with a Chapter 7 if their current monthly income, multiplied by 12, is equal to or less than Ohio's highest median family income. Ohio's figures, as of November, 2023 are:

Household	Annual income
1 person:	$ 62,952
2 person:	$ 79,491
3 person:	$ 96,951
4 person:	$119,897

About 90% of Chapter 7 filings will not be affected by the means test. But those with income above Ohio's highest median income who can pay 25% of their unsecured debt, or $9,075 over five years, whichever is greater will have to file a five-year Chapter 13 plan to repay creditors.

Waiver Of Filing Fee:

Debtors whose annual incomes are at or below 150% of the Federal Poverty Level ($23,940 – 1 person, $32,460 – 2 persons (2026)) and who are not able to pay the $338 Chapter 7 or other bankruptcy filing fee (2024) in installments, will not have to pay.

The Automatic Stay:

By law, the instant a bankruptcy is filed, an automatic stay is issued to all creditors prohibiting them from all debt collection efforts including letters, phone calls, repossessions, garnishments, lawsuits and sheriff's sales.

The automatic stay does not postpone an eviction based on a judgment obtained prior to the bankruptcy filing. If the landlord can show "endangerment" of the property or "illegal use of controlled substances" on the property in the 30 days before the bankruptcy filing, the landlord can go ahead with the eviction.

Additionally, if it is the debtor's second bankruptcy filed in the past 12 months, this automatic stay lasts only 30 days, but the debtor can request that it be extended. If the debtor had 2 or more

dismissed bankruptcies in the past year, there is no automatic stay, and a motion must be filed to obtain one.

Divorce Property Settlement Debts?

These debts are non-dischargeable even though they are neither child support nor alimony related.

Student Loans

Student loans are non-dischargeable, in the absence of undue hardship, regardless of the lender. This will cover loans from non-governmental and profit-making organizations.

Recent Debt

Certain debts will be harder to discharge, including: debts for luxury goods of more than $800, made within 90 days before filing, and cash advances of $1100 made within 70 days before filing.

Child Support & Alimony

These debts are given a higher priority under the new law. The automatic stay does not apply to the enforcement of a wage withholding order under a judicial or administrative order or under a statute, including obligations accruing from both before and after the filing.

Time Between Discharges

The length of time required between Chapter 7 discharges is 8 years. A Chapter 13 will be denied when the debtor has received a Chapter 7 discharge within the last 4 years, or has received a discharge from a previous Chapter 13 proceeding within 2 years.

Proof Of Income

All filers must give the Trustee a copy or transcript of their most recent tax returns at least 7 days before the creditors' meeting or their case will be dismissed. Also, those filing for Chapter 13 have to be current on tax returns for the previous 4 years.

Credit Counseling

All filers for either type of bankruptcy must attend credit counseling with an approved non-profit credit counseling service within 6 months prior to filing bankruptcy. As part of the course, the debtor must complete a budget and receive a certificate of attendance. In addition, debtors are required to complete a course on personal financial management.

Miscellaneous

The judge can dismiss a bankruptcy if it is in the best interest of the debtor's violent crime victim. Debtors must complete complicated forms and must keep detailed records of their finances. Lawyers will be required to certify that debtor disclosures are correct, similar to a tax audit. Lawyers also will have a marked increase in the number of files they have to keep and notices they must provide, all of which will result in more attorney fees.

Do I Need An Attorney?

Always consult a bankruptcy attorney for advice specific to your situation. There are many other bankruptcy laws, not discussed here, that may affect you.

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