



UTAH LEGAL SERVICES, INC.

at the Community Legal Center • 205 North 400 West

Salt Lake City, Utah 84103

(801) 328-8891 • (800) 662-4245 **toll free**

Fax: (801) 328-8898

www.AndJusticeForAll.org

Bankruptcy

What Is Bankruptcy?

Bankruptcy is a legal proceeding in federal court in which a person with debts (called the debtor) can be freed or “discharged” from most of them. In a “**Chapter 7**” bankruptcy, property of the debtor that is not exempt (protected by law) may be sold. The money from the sale of this property is divided among the people or companies to whom the debtor owes money (called the creditors). In a “**Chapter 13**” bankruptcy, the debtor is given 3 to 5 years to pay off debts, sometimes at less than the previously agreed amounts, and the debtor’s property remains in the debtor’s possession.

Should I Consider Bankruptcy?

The purpose of bankruptcy is to give someone a **fresh financial start**. Bankruptcy will work best for people who will have an income that is adequate to support them and to pay their bills after bankruptcy. It is usually advisable to wait until you have reached the point where your financial problems cannot be solved by personal efforts before filing

for bankruptcy. In other words, don't file if in six months your money problems are going to reappear. In most instances debts you get into after you file bankruptcy cannot be added to the bankruptcy. Before deciding to file, figure out what your expenses will be after you file and be sure to allow for some unexpected expenses. If you will not have enough money to cover your expenses after bankruptcy, you may want to consider an alternative to bankruptcy.

Automatic “Stay”

As soon as a petition in bankruptcy is filed, all other legal actions against the creditor are temporarily stopped, which is called a “**stay of execution.**” This includes evictions and foreclosures, debt collection actions, garnishments and repossessions as well as administrative actions and arbitration proceedings. However, a creditor can ask the Bankruptcy Court to lift the stay. And if too many bankruptcies are filed but not finished, a creditor may ask that the debtor be barred from filing for a time.

Can I Get Rid of All My Debts?

Not always. A bankruptcy generally will **not** rid you of debts for **child support, taxes, alimony, fines, and many student loans**, as well as debts incurred by fraud or malicious injury. Under some circumstances a debtor can be denied discharge of all his debts as opposed to certain specific debts. If this happens the primary reason for filing bankruptcy is defeated.

Are There Credit Service Organizations That Will Help Me Avoid Bankruptcy?

Yes. Utah's Division of Consumer Protection lists over 30 registered and bonded organizations on their website: www.commerce.utah.gov/dcp/education/registered_credit_service_orgs.pdf. Services range from advice and counseling on budgeting and family money-management to working with creditors to extend payments on your account and temporarily suspend collection activities. Because each organization has a different approach, it is worth the effort to shop around for the one that meets your needs.

Does Bankruptcy Hurt My Credit Rating?

Bankruptcy does not always make it impossible to get credit, but it usually makes it much harder. The fact that you have filed bankruptcy may stay on your credit rating for several years. On the other hand, foreclosures and garnishments hurt credit as well. If you think you need credit after bankruptcy to buy a home, car or other large items, you

may have to rebuild your credit history from the beginning. Sometimes credit is actually easier to obtain after bankruptcy, provided you are employed, because you are relieved of most, if not all, of your debts. But beware of getting deep into debt again after you file for bankruptcy because in most Chapter 7 cases you cannot file again for six years. Chapter 13 bankruptcy may be filed as soon as the last Chapter 13 is finished.

What Property Can I Keep?

Under most circumstances, the following property is exempt from being taken by the Bankruptcy Court. (More exemptions are listed in the Utah Code.)

- The equity in your house or mobile home up to \$20,000 if it is your primary personal residence (plus another \$20,000 if the property is jointly owned) not to exceed \$40,000
- All wearing apparel, but not jewelry or furs
- Certain furnishings and other household items
- Professional books or tools needed for your trade up to \$3,500
- A motor vehicle with a value not exceeding \$2,500

In the case where exempt property has been pledged as collateral for a loan (called a secured debt), the secured creditor will get the property back unless the debt is reaffirmed. For example, if you were loaned money to purchase a mobile home, the agreement you sign usually gives the seller the right to take the item back if you miss payments. This is a secured debt.

How Much Does It Cost To File?

The court's filing fee ranges from \$185 to \$200 depending on the type of bankruptcy you are filing. (You cannot avoid paying the filing fee by claiming poverty.) Husband and wife can file on the same Petition. Attorney fees depend on the complexity of the case and the attorney, although it is often the case that attorneys fees for Chapter 7 bankruptcies are lower than for Chapter 13. Self-help bankruptcy forms are available (for a fee) from some websites and stationery stores. The U.S. Bankruptcy Court *cannot* provide you with forms, nor can ULS.

What is a Chapter 13 Bankruptcy?

The Chapter 13 Plan or "Wage Earner Plan" is another type of case you can file in Bankruptcy Court. Under a Chapter 13 plan, you make monthly payments through the Bankruptcy Court trustee to your creditors. The plan usually runs over a three-year period and in most circumstances you do not have to pay your unsecured creditors in full to be discharged from the debts. An unsecured creditor is a creditor to whom you have not given any particular collateral or security interest in a specific piece of property. A Chapter 13 plan will usually be approved by the Bankruptcy Judge if the Judge finds you filed the Plan in "good faith" and that you earn enough money each month to make your planned payments after paying your living expenses. Under Chapter 13, you can usually keep both exempt and nonexempt property, including your home.

Chapter 13 also has other benefits compared to Chapter 7. First, the automatic stay (see page 1) applies to co-debtors too, even if the co-debtor is not filing bankruptcy. For instance, if you had a parent co-sign for the purchase of a car, filing Chapter 13 prevents the creditor from going after your parent. Additionally, many debts that cannot be discharged in a Chapter 7 bankruptcy can be discharged by Chapter 13. (But no bankruptcy can discharge alimony and child support, student loans, damages awarded for DUI offenses, or criminal restitution.)

Preventing Bankruptcy Discharge of Debt payments to be Ordered in Divorce Decrees

If the opposing party to your divorce action is ordered to pay debts by the divorce court, the opposing party may try to avoid actually making the debt payments by declaring bankruptcy. If the opposing party has the debts discharged by a bankruptcy court, the creditors can still collect on certain debts from you. The way in which the decree of divorce is written can reduce the likelihood of the bankruptcy court discharging the debts.

Even if you do not label debt payments by an opposing party as anything other than debts, a bankruptcy court could still decide not to discharge the debts. The court will make an independent evaluation for each debt in order to determine whether or not the debt should be discharged. The court will look at the reason the debt was incurred and what the intent of the

divorce court was in ordering the opposing party to pay the debts. You can improve the likelihood that the bankruptcy court will not discharge debts if you provide some guidance or "intent" by labeling the debt payments as either alimony or support in your divorce decree.

Labeling a debt as alimony shows a bankruptcy court that the divorce court considered the debt payment as part of an overall alimony award. Alimony is not dischargeable in bankruptcy. The bankruptcy court will still make an independent assessment as to whether or not the debt payment really is alimony, but calling the debt payment alimony in the final order will make it more likely that the debt payment will be seen as alimony. However, before asking that the divorce court order debt payment to be alimony, you should consider any potential problems with having debt payments be alimony. First, the opposing party does not have to pay alimony if you cohabit, remarry or die. Thus, if you cohabited, remarry or die after your divorce, the obligation for the opposing party to pay the debts could cease. Second, the person receiving alimony pays income taxes on the alimony and the person paying does not have to. If the opposing party in your divorce pays a large number of debts, you may end up paying income taxes on the amount of money paid, without

receiving any actual increase in your income that would help you pay those taxes.

Labeling a debt as child support shows a bankruptcy court that the divorce court considered the debt payment as part of an overall child support award. Child support is not dischargeable in bankruptcy. Therefore, you increase the likelihood that the bankruptcy court will not allow the opposing party to discharge the debts.

However, child support usually only has to be paid until the youngest child living with you turns 18 (unless the court orders otherwise). If your youngest child will turn 18 prior to the time calculated for the opposing party to pay off the debts, the opposing party's obligation could cease.

Important

This document is only a general statement of your rights and responsibilities. The law is complex and always changing. If you need specific legal advice, see a lawyer. Many bankruptcy attorneys advertise in the newspaper, the yellow pages of the telephone directory, and on the internet. Utah Legal Services cannot assist you with a bankruptcy nor answer your questions.

Ogden

893 24th St., #300 • 84401
(801) 394-9431
1-800-662-2538

Provo

455 N. University #100 • 84601
(801) 374-6766
1-800-662-1563

Cedar City

965 S. Main #3 • 84720
(435) 586-2571
1-800-662-1772

