

CLOON LEGAL SERVICES INFORMATION HANDOUT

I. Kinds of Bankruptcy

There are two kinds of bankruptcy available for individuals and families - Chapter 7 and Chapter 13.

II. Kinds of debt

There are two kinds of debt - secured and unsecured.

(a) *Secured debts* are those kinds of loans with collateral pledged on them, for example, car loans and house loans. Most loans from finance companies are usually also secured. In addition, some credit cards can be secured. For example, furniture store credit cards (Nebraska Furniture Mart), jewelry store credit cards (Helzberg's, Zale's) and electronic store credit cards (Radio Shack, Best Buy) usually claim a security interest in items purchased on the cards.

(b) Most other kinds of debt are *unsecured*. Examples are medical bills, credit cards, utility bills, personal loans, payday loans, rent and phone bills.

III. Can I file for bankruptcy protection?

Most people can, although the higher your income, the greater the chance you will have to pay some debts that would otherwise get wiped out. However, **90% of the people who contact us meet the requirement**. If you don't, we will advise you at your appointment what options you have.

IV. What gets wiped out and what must I pay back?

The following discussion assumes that you will be able to file.

Unsecured debt

Bankruptcy generally "wipes out" unsecured debt, such as credit cards, medical bills, signature loans, and payday loans. However, some types of unsecured debt don't get wiped out in bankruptcy:

1. Income taxes (if more than 3 years old, it may be dischargeable; please discuss with the attorney);
2. Student loans, tuition;
3. Child support or Spousal maintenance (alimony);
4. Debts you were ordered to pay in a divorce decree (these are dischargeable in a Chapter 13, but not in a Chapter 7);
5. Court fines, fees and restitution;
6. NSF checks (payday loans and overdrafts are NOT considered NSF checks);
7. 401(k) loans.

There are some other unusual kinds of debt that are not dischargeable. When we review your debts, we will be able to tell you if there are any of your debts that may fall into this category.

Secured debt

The main thing to remember is that, if you want to keep property that is pledged on a loan, you must pay for it. If you give it back, you will not owe anything.

In Chapter 7, you have three options for the treatment of secured debt:

1. **Surrender** the secured property and wipe out the debt.
2. If you wish to **keep** the property, you can do so, you must keep making the payments direct until it is paid for. If you are behind, you have a limited amount of time to catch up.
3. If you wish to keep the property, but it is worth far less than you owe, you can make a cash **settlement** with the creditor, provided you both agree on the value and you can pay it within 60 days.

In Chapter 13, you can:

1. **Surrender** the secured property and wipe out the debt.

2. If you wish to **keep** the property, you can do so.

(a) If it is a **house loan**, you continue to pay your regular house payment. If you are current on your house payments, you can pay them direct. If you are behind on your house payments, you will pay them through a consolidated payment to the Court Trustee. He will not only make your regular house payment, he will also catch up any amount you are behind on your house. After your case is over, and you are caught up, you would resume making your house payments directly.

(b) If it is a **vehicle loan or any other kind of secured loan**, you pay it as part of the payment you make to the Court Trustee each month.

(c) If it is a vehicle you bought more than two and a half years ago, or other secured stuff (besides houses) that you bought more than one year ago, you only have to pay the amount of the loan or the value of the stuff, whichever is less.

V. Comparison of Chapter 7 and Chapter 13

Remember - both Chapter 7 and Chapter 13 usually wipe out the same amount of debt. The major difference is in how that which must get paid back gets paid back.

When Chapter 7 is Better

Chapter 7 is usually a better choice when:

1. Most of your debts are unsecured, and you would not have a problem making your house and car payments if the credit cards, medical bills and other unsecured debt were wiped out;
2. If you are current on your payments on the secured debt, particularly your house;

3. If you have no non-dischargeable debts such as taxes or student loans;
4. You don't anticipate any large medical expenses in the next 4 years; and
5. You can afford to pay the fees upfront.

When Chapter 13 is Better

If you fall into one of the following categories, Chapter 13 may be a better choice for you:

1. You have a large amount of secured debt; or
2. You are behind on your payments on the secured debt; or
3. You owe more on your vehicle than it is worth and the debt is more than 2 1/2 years old; or
4. You owe non-dischargeable debts such as taxes, student loans or back child support; or
5. You have a medical condition that will cause you to rack up significant medical debt in the next 4 years; or
6. You cannot afford to pay the fees upfront.

When we meet with you, we will go over your specific situation, and discuss with you which option would work better for you.

VI. Exempt Property

There is certain property you are allowed to keep in bankruptcy, and the neither the Court or your creditors will be able to take it away from you, provided that if you owe money on the property, you continue to pay for it. This is called **exempt property**:

1. Your house, provided you live in it;
2. One vehicle per person (two for a married couple);
3. \$500 worth of clothing per person (based on auction/garage sale value, which is usually very low compared to what you paid for it);
4. \$1000 worth of jewelry per person (based on auction/garage sale value, which is usually very low compared to what you paid for it);
5. \$7,500 worth of tools that are used in your job or business (based on auction/garage sale value, which is usually very low compared to what you paid for it);
6. Pensions, Social Security, workers compensation, 401(k)s, IRAs or life insurance, regardless of the value;

7. Child support and alimony owed to you; and
8. Those household goods and furnishings reasonably necessary to maintain your current standard of living (i.e., they won't take your furniture, TV, appliances, etc.).

Anything else not listed in the exempt property list above is **not exempt**, and you could lose it. The Trustee can sell it and give the money to your unsecured creditors. **This does not mean they will.** If you have some non-exempt property you want to keep, it may be possible to do so. We can discuss this at your appointment.

VII. What do I do next?

If you have not already made an appointment, call my office at (800)964-2957 to set up a time to meet with me for your **free consultation**. If you are married and are considering filing jointly, both of you should attend the initial appointment. It is helpful if you can bring with you the documents and information in the enclosed list.

VIII. Most Frequently Asked Questions

How much will it cost, and when do I need to pay it?

We should be able to quote you the exact fee at your first appointment. We do not quote fees over the phone, because each case is different, and it is impossible to quote a fee without examining your individual case. In a Chapter 7, fees must be paid before the case is filed. In Chapter 13, payment plans are available.

Will bankruptcy stop garnishments, repossessions, and other collection actions? If so, when?

The day the papers are filed with the Court, all collection actions must stop immediately. Although bankruptcy cannot get you back money already collected by garnishment prior to the filing, it can stop future garnishments. Even if the creditor already has a judgment against you, the debt will be wiped out. With repossessions, if the vehicle has been repossessed prior to filing, unfortunately, it is our opinion that we cannot force them to give it back. However, if the vehicle has not been repossessed prior to filing, we can keep them from taking it. If any collection agencies bother you after the filing, refer them to us and we will deal with them.

Bankruptcy's Effect on Your Credit

Bankruptcy can remain part of your credit history for 10 years in Chapter 7, and for 7 years in Chapter 13. Whether or not you will be granted credit in the future is unpredictable, and probably depends more on what good things you do in the nature of keeping a job, saving money, making timely payments on secured debts, etc., than the fact that you filed bankruptcy.

In some cases it may actually be easier to obtain future credit after bankruptcy, because new creditors may feel that since the old obligations have been discharged, they will be first in line. They also recognize that you cannot again file bankruptcy for at least the next four years in the case of Chapter 13 or eight years in the case of Chapter 7. The truth is that if you cannot pay your bills, and your credit is already ruined or exhausted, filing bankruptcy can actually be an important first step in re-building credit. In some cases, filing bankruptcy can actually improve your credit score.

A FINAL NOTE

Thanks for taking the time to read all of this. We hope it makes the picture a little clearer. Of course, you probably still have plenty of questions - most people do. We will discuss those, and we will try to answer them as best we can at your free consultation. We look forward to trying to help you achieve financial freedom, and get on with your life without the stress and fear of debt hanging over your head. We have over 18 years of combined experience, and have filed thousands of cases. It is all we do. It is our mission to make bankruptcy affordable and understandable for everyone. We look forward to meeting and working with you.

Sincerely,

Russ Cloon, Brad Medlin and the staff of Cloon Legal Services