

Community Legal Aid

A non-profit law firm serving the legal needs of low-income individuals and families in central northeast Ohio



www.communitylegalaid.org

All you need to know about bankruptcy

Bankruptcy is a complex process. The links below can help you understand bankruptcy and what your next steps will be or you can read through all of the information on bankruptcy below.

[What is bankruptcy and what does it do?](#)

[What is a creditor and can there be different kinds?](#)

[What is bankruptcy court?](#)

[Are there different types of bankruptcy?](#)

[When should I file for bankruptcy?](#)

[How do I file for bankruptcy?](#)

[How can I get a free copy of my credit report?](#)

What is bankruptcy and what does it do?

Bankruptcy is a legal process that can stop people or companies from trying to collect debts you owe them.

There are several ways a bankruptcy can help you:

1. It can wipe out most or all of your debts to give you a fresh financial start. This is called a "discharge" of debts.
2. It can also stop foreclosure of your house and allow you to catch up on missed payments.
3. It can stop repossession, which is when creditors take your property to pay for your debts, or force a creditor to return repossessed property.
4. It can stop creditors from taking money out of your wages or bank account.
5. It can restore or keep your utilities from being turned off.
6. It can also help get rid of your reinstatement fees for your driver's license, if you have lost your driver's license.

If you find yourself feeling overwhelmed by debt, you can see how filing bankruptcy may be a good option for you to get a fresh start. It can help get rid of any debts you might have and give you a chance to restart. However, there are some things that people sometimes get confused about with bankruptcy, and it's important to know what a bankruptcy cannot do.

Here are some things a bankruptcy usually can't help with:

1. A bankruptcy cannot get rid of certain types of debt, like child and spousal support, most student loans, some taxes, and court fines and some restitution orders.
2. It cannot protect cosigners on your debts. So if you have a cosigner, they may still have to repay all or part of the loan, even if you file for bankruptcy.
3. A bankruptcy does not get rid of what is called "secured debt." This is when there is a mortgage or lien against property that was purchased with a loan, usually homes or vehicles. If you have this type of "secured" debt, you would have to decide whether to continue to pay on the debt or return the property to the creditor. You usually cannot keep

this type of property after bankruptcy unless you pay the debt that is connected to it.

4. You also won't be able to get rid of any new debts that you create after filing for bankruptcy.

What is a creditor and can there be different types?

A creditor is a company or a person who you owe money to. Creditors are also sometimes called "lenders," so if you see this term used, don't get confused. They are one and the same!

There are different kinds of creditors, and they have different rights and responsibilities.

An "original creditor" is the person or company who loaned you money or credit in the first place. Sometimes, the original creditor will try to collect on a debt by themselves, but most of the time they either hire a debt collection agency or sell your account to a debt buyer.

A debt collection agency is a company who is hired by your original creditor to collect your debt. A debt buyer, on the other hand, actually takes on (or "buys") your debt, meaning you now owe them, instead of the original collector. You will often be able to tell if your debt has been sold, or if your original creditor has hired a collection agency, because the name of the company calling you or sending letters will be different.

Collection agencies and debt buyers may take you to court, but they don't have as many rights as an original creditor. For example, if you tell a debt collection agency or debt buyer to stop contacting you, they are required by law to do so. You can find more information on how to do this [here](#).

Another difference for collection agencies and debt buyers in court is the "chain of title," or how the ownership and documents surrounding your debt are transferred. If it is not done correctly and able to be shown to the court, this can be a defense for you.

What is bankruptcy court?

Because bankruptcy is a legal process, it happens in a court. But a lot of people don't realize there is a special type of court that specifically deals with bankruptcy, called bankruptcy court.

If you're being sued by a creditor right now, or if you've gotten a letter threatening that someone is going to take legal action against you, these types of lawsuits usually happen in what's called the civil court system, so it may be in your local municipal court, small claims court, or common pleas court, for example.

Bankruptcy court is different. Once you file for bankruptcy, it stops all other legal action against you. If you're in the midst of a collection lawsuit right now or are worried someone is going to file a lawsuit against you, filing for bankruptcy stops those proceedings.

It can also stop your wages from being garnished, your home or vehicle from being repossessed, or your home from being foreclosed on. All of this happens because once the bankruptcy is filed, the bankruptcy court decides which other actions against you can move forward and which have to stop until your bankruptcy case is over.

Are there different types of bankruptcy?

There are many forms or types of bankruptcy. We're going to share the two most common types - a Chapter 7 and a Chapter 13.

But it's important to know that whatever type you file, they all move forward in bankruptcy court.

A Chapter 7 bankruptcy helps you get rid of most debt. It is designed to give you a fresh start. But it doesn't get rid of those "secured" debts you may have, such as homes or vehicles. You will

need to decide whether to pay for or give up that property.

A Chapter 13 bankruptcy is a bit different. Instead of wiping out your debt, it can help you lower it, and will also put in place a plan for you to pay back the rest of the debt within 3 to 5 years.

There are two main reasons why you may need to file a Chapter 13 bankruptcy, instead of Chapter 7:

1. If you have regular income and have a secured debt, such as a home mortgage, and you want to keep that property but are behind on payments, or
2. If you make too much money to qualify for a Chapter 7

To figure out which type of bankruptcy is right for you, you should talk to a bankruptcy lawyer.

When should I file for bankruptcy?

Is now the right time for you to file for bankruptcy?

The first thing to know is that you can only file for Chapter 7 bankruptcy once every 8 years. If you have filed in the last 8 years, it's possible that you could file again, but you would need to talk with a bankruptcy attorney to learn if you can and what the right move is for you.

Since there are time limits on when you can file, make sure you can get back on your feet and stay financially stable once you file for bankruptcy. If your financial future still seems uncertain or if you think you will continue to go into debt after you file for bankruptcy, it may be best to wait.

How do I file for bankruptcy?

The first thing you need to do when filing for bankruptcy is to find a bankruptcy attorney and discuss what your options are. If you qualify to file for bankruptcy, your attorney will help you collect any information and documents you will need.

Before you file, you also have to complete the first part of a credit counseling course. This is to show the court that you are committed to getting back on your feet financially, moving forward. You will need to complete the second part of this course a little later in the process.

While you prepare to file, your attorney will put together a lot of paperwork that lists all your financial information, so the court has all the information they need to make a decision. You will have to share a lot of information with your attorney in order to do this, and they'll have you look it over and sign it when they're ready to file.

As soon as your attorney files your bankruptcy with the court, you will automatically be protected from any creditors trying to collect on any of your debts. This is called an "automatic stay," and it also stops any other pending court actions against you.

After your bankruptcy case is filed, your case will be assigned to an attorney who works with the bankruptcy court, but does not represent you personally. Their job is to process paperwork and move your lawsuit through the court process.

This attorney is known as a bankruptcy trustee. They'll schedule a hearing with you where they'll go over your income, assets, and debts, and ask any questions they may have.

Approximately two months after your hearing, you will receive your "discharge." This means that the court will get rid of all your debt.

The most important thing in filing for bankruptcy is to find an attorney to represent you. They can advise you on what you need to do and what you need to have to file. And keep in mind that you will have to complete a credit counseling course before you file your bankruptcy.

How can I get a free copy of my credit report?

When dealing with debt, it's important to know everything that's out there. You may have debts from the past you've forgotten about. Or, someone may have stolen your identity and created debts in your name.

The easiest way to find all this out is to look at your credit report.

Your credit report is a summary report kept by credit agencies that contain all your debt information in one place. The agencies then give you a number, or "score," that tells potential creditors how reliable you are for paying off debt.

Every American citizen is required by law to receive a free credit report each year. To request yours, visit www.annualcreditreport.com. There, you can request to receive a mail-in form. Once you get to the website, you'll see a tab at the top that says "Request Yours Now." You can also get the mail-in form by calling (877) 322-8228.

It's important to know that this report may not include your actual credit score, unless you request that specifically. But it will list all your debts.

Experian, Equifax, and Transunion are also offering free weekly credit reports through April of 2021.

Printed:October 24, 2020
<http://www.communitylegalaid.org/debt/bankruptcy>
©Community Legal Aid