

Bankruptcy means in part that your unsecured debts are legally forgiven. It doesn't mean the debts never existed or that the old debt will no longer be on your credit report. It does mean the debts become uncollectible. Some debts cannot be bankrupted. For example, most taxes, child support, student loans, bad checks, fines, court costs, speeding tickets, and certain government assessed or imposed debts. That means you would still owe them after the bankruptcy is over. Bankruptcy also means that secured debts, such as car loans, house loans, furniture, or appliance purchases can be bankrupted or forgiven if you give the item (car, house, etc.) back. For example, if you owe \$10,000 on a car loan and the car is only worth \$5,000, you can file bankruptcy, surrender the car, and not have to pay the other \$5,000 after they re-sell the car. Bankruptcy usually does not get rid of the lien the bank or loan company may have on the furniture or appliance & you will have to pay them if you want to keep the item.

There is no constitutional right to a bankruptcy. It is a creature of federal statute, as such you have to obey and follow all the rules if you want bankruptcy relief. One of the rules is you must initially list all of your bills on the bankruptcy, as well as ANY asset you are even part owner of.

As you probably know, the bankruptcy law has only recently changed. One of the problems we face as attorneys and one of the problems you, as the client, will face is that the court is frequently adding to all of the documents you need to give them in order to satisfy the court that you qualify for bankruptcy.

One thing is for sure, if you have a job or are employed in any way and if you are required to file taxes, and have not filed your federal and state taxes, you will not be allowed to file any form of bankruptcy. In fact, if you cannot give me the last four years' of federal and state taxes *before* you file bankruptcy, you will not be able to file Chapter 13 bankruptcy. I do not need them today to proceed, but I will need actual copies of the returns with W-2 forms before the case is filed. In addition, I must have copies of pay-stubs for the previous 60 days, checking account statements for the previous four months, a credit report, two billing statements from as many creditors as possible, divorce decrees from all divorces and proof of insurance for all homes and cars. I *may* need utility statements for the previous six months and an appraisal of your home(s) (you can use the copy from your closing papers). You can also get a copy of the real estate assessment from the county recorder. If you have whole or universal life insurance or a 401K you will need to call them get the amount that the account is worth today. If the policy has a beneficiary other than your spouse or children you will lose it. You must also provide the address of any person you pay child support to. My advice to you is to also dig up copies of all current car loans and call your bank to get a payoff amount for your car loans. I realize this is a lot to do, but just take the position that you can do one thing at time until the list is complete. You will have to be patient as the case cannot be filed in one day or possibly not even in a week or two.

Please be advised that this above list is not complete. There will likely be more documents you will need. By your signature below, you understand that if you do not bring in the documents, your case will be dismissed. Please also be advised from the beginning that not all people who come in to see me will be able to file any form of bankruptcy. I estimate that 5-10% of all people I see will not be able to file at all. For example, if you have filed chapter 7 within the last four years, it strongly appears that you will not be allowed to file any form of bankruptcy at all or if you do not have your taxes done you will not be allowed to file any form of bankruptcy, in my opinion.

If you have a car loan or loans and/or loans for furniture and appliances and want to keep the items, you really should very strongly consider a hardship chapter 13. Contrary to popular belief and previous bankruptcy experience, in today's bankruptcy world a person filing chapter 7 will possibly NOT be able to keep a car loan. For one thing, a recent appellate case in the 7<sup>th</sup> Circuit, which includes Indiana, states that a creditor does not have to reaffirm even if you agree to pay the full amount owed at the full monthly payment. Secondly, if you successfully argue that you qualify for a chapter 7 by saying you can't afford to make monthly payments, it may

not be possible to turn right around and say, "Oh, but I can afford to pay my car payment." Thirdly, the new bankruptcy law specifically allows the judge or court official to disallow the reaffirmation of a car loan or other consumer debt. I am very serious about this point. You can be assured that the judge will disallow many people from keeping their car or house in chapter 7. THEREFORE, I RECOMMEND that if you want to keep your house or car, you should strongly consider filing chapter 13. While language in the bankruptcy code allows reaffirmation in chapter 7, the Court doesn't always approve it. You have been warned. Fourth, language in chapter 13 specifically allows you to keep car loans except if it is a grossly, excessively high payment. Also, I can truthfully say that in a lot of cases your monthly chapter 13 payments will be lower than a chapter 7 case even where you can reaffirm. You can always buy another house and/or car after the bankruptcy, plus you can live in the house payment free for several months while they foreclose. I actually recommend you continue living in the house until after the foreclosure.

It is untrue to say that chapter 13 payments is a big burden in most cases. Payments can be as low as \$100 a month in some cases. Under the new law, if you have a house loan, contrary to old law, you should tell the mortgage company that you are going to file a chapter 7 bankruptcy before you file so you will get assurance from them that you can reaffirm. In my opinion, if you do not get assurance from them in writing before filing, you should file chapter 13. If you file chapter 13 and if you pay your house payment each month on time, and if your chapter 13 succeeds, it is virtually guaranteed you can keep your house.

On the other hand, if you want to give your house and car back, and if you don't make over the income guidelines, you may be able to file chapter 7. If you owe a lot of back child support or a lot of taxes, you may have to file chapter 7. You can only file chapter 7 if you have not filed another bankruptcy case for over eight years. One disadvantage of chapter 7 or chapter 13 is that the court will take any liquid asset from you if you file. A liquid asset is money in your checking account on the day of filing, stocks, bonds, certificate of deposits, personal injury suits, inheritances and tax refunds. So if you have any assets of that nature, do not file either form of bankruptcy unless you are willing to turn over the asset. If you file and do not turn over the asset in question, the bankruptcy will not go through.

Chapter 13 is still a bankruptcy and still can hurt your credit, but in it you make one monthly payment to the court which then pays your creditors. It is similar to a consolidation loan. One of the advantages to a chapter 13 is that it forces the bank to let you keep the house and car if you get behind. In the chapter 13 you would pay the amount of your regular house payment plus a little more each month that would gradually catch up on your house. Your car loans and other debts would also be consolidated in one monthly payment. You are hereby WARNED that one disadvantage regarding chapter 7 or 13 is that the court will not allow you to keep luxury items such as boats, four wheelers, or motorcycles (including Harley Davidson) unless the item is paid off or unless you reorganize to pay all debts in full.

If you decided to file regular bankruptcy chapter 7, your income has to be low enough such that you cannot afford to pay even your regular monthly bills, which includes rent, car loans, utilities, insurance, food, clothing, medicine, gas, car maintenance, child car, and school supplies. A large percentage of middle income people make too much to file under chapter 7 and need to file a chapter 13. We can help you prepare a monthly income and expense statement at your first consultation to see if you qualify for chapter 7, in my opinion. Another reason some people file chapter 13 over chapter 7 is if they have too much equity in a car, house, or other paid items. You are only allowed to keep \$10,300 of paid for items per person, or \$20,600 for a couple. If you have more than that the chapter 7 trustee can take the item, sell it, and give the money to your creditors. You also are only allowed about \$22,000-\$44,000 equity in your house. If you exceed that the trustee can try to sell your house even if you don't want to sell it. Now if you have little or no equity you will be allowed to keep your house or car.

The other most common (though not the only) problems are that the bankruptcy trustee can take your tax refund for this year and next year if you have not already received it. Further the trustee can take any inheritance you receive in the next six months and any personal injury claim you have against anyone. You also cannot give any property to a relative within four years prior to filing bankruptcy. If you did the trustee can sue them to get the property or money back. The money recovered by the trustee is used to pay your creditors. The trustee can also sue anyone, including creditors you have paid in the last 90 days, to recover money you paid them. In addition, you should not file chapter 7 or chapter 13 until you have waited more than 90 days since your last charge on credit cards or at least 120 days since you signed a loan.

When you talk to me try to bring to my attention any of the above problems that you see that may apply to your case (example, a pending personal injury suit or pending inheritance).

If you would like to begin today the first step to file bankruptcy is to fill out an application for bankruptcy that is processed by the computer. At the time we begin I need a list of your furniture, appliances, year & model of your cars, etc. Next, I need a list of your expenses & income, a list of your bills, and the answers to some biographical questions. Don't worry; I will help you fill out the form. The next step is to review the completed application, then sign it, and I will then file it with the court. The case cannot be filed until I have all the information I need and cannot be filed before you sign it and we get paid the retainer.

A few days later the court employees send a letter to you, me, and all your creditors informing them that you have filed bankruptcy. The letter also tells the creditors not to harass you, and it tells you and me when your court date is. You will have at least 3 weeks notice of your court date. But you will have to take that date off work to show up for your court date. Most court hearings are in the morning, but NOT all. Come to my office if you live in Tippecanoe, Carroll, Jasper, White, Newton or Benton or Warren County. Some hearings are telephonic IN MY OFFICE, but some are in Court. We will walk over to court. The trustee at the court date will review your list of assets to make sure you don't have too much property, and the trustee will review your income & expenses to make sure you qualify for chapter 7 bankruptcy. If neither problem affects you then the trustee will file a favorable report (called a no-asset report) with the court. Creditors have 60 days to object to your bankruptcy discharge. As I said before they may object if you have used credit cards less than 90 days before filing bankruptcy or signed loans less than 120 days before filing, or if they believe you lied on the loan application. If no one objects you will likely receive a discharge & your case will be both approved & will be over. This will end your bankruptcy case. Again mention to me if your case poses any of the preceding problems. Thank you for reading this carefully prior to seeing me.

**Please be advised that you are responsible for completing the pre-bankruptcy counseling class that is required by law, before you can sign the petition and before we can legally file your case. We can give you information regarding this procedure at your request. \***

**Jerry Paeth**

**I acknowledge that attorney Jerry L. Paeth has given to me and reviewed with me a copy of the Definitions as required by Bankruptcy Code Section 527(b).**

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Printed Name of Debtor/Date

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Printed Name of Joint Debtor /Date

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Signed Name of Debtor

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Signed Name of Joint Debtor