12 Things You Should Know Before Filing for Bankruptcy

SUBURBAN LEGAL GROUP PC
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By Suburban Legal Group PC
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Introduction: 12 Things You Should Know Before Filing for Bankruptcy

Filing for bankruptcy is a big deal. While it can certainly be a tremendous resource if you’re deep in debt and looking for a new start, there are rules, restrictions and financial ramifications to consider before jumping in headfirst. There’s a lot to absorb, so we’ve decided to lay out 12 of the top things to know before you decide to file bankruptcy. This isn’t a comprehensive list, and it is certainly no substitute for law school! If you have any questions or want to know more about the contents of this eBook, contact a qualified bankruptcy attorney. Without further ado, let’s begin!

1. You May Have Several Options Available if You Are Struggling With Debt

If you find yourself struggling with debt, before jumping into the bankruptcy process, your first step should be to explore your recovery options. While digging your way out of debt can obviously be quite a challenge, there are many avenues available to people who are struggling financially. This chapter will look at a few ways to address your debt issues. Getting started right away is one of the most important things you can do. The longer you delay, the fewer choices will be available.

A Few Ways to Get Help Reducing Your Debt

**Develop a Budget:** The first step toward taking control of your financial situation is to perform a realistic analysis of your finances. You need to make sure you can make ends meet when it comes to affording the basics: housing, food, health care, insurance, and education. Creating a budget is a great way to do this. You can find information about budgeting and money management techniques online through certified financial education centers, at your local public library, and in bookstores.
Contact Your Creditors: You should contact your creditors immediately if you are in debt and struggling with your payments; don't wait for them to contact you! You may still be able to make better arrangements, such as getting on a reduced payment plan, by being forthright, even if your payment history is less than perfect. Explain your current situation and frankly discuss your future income prospects and indicate that you’d like to work with them to come up with solutions to the problem. The reality is that most creditors would prefer to receive smaller payments on a regular basis than to begin expensive collection procedures.

Dealing with Debt Collectors: Federal law dictates how and when a debt collector may contact you:

- Collectors may not harass you, lie, or use unfair practices when they try to collect a debt.
- Collectors must honor a written request from you to stop further contact.
- No contact before 8 a.m., and after 9 p.m.
- No contact while you’re at work if the collector knows that your employer doesn’t approve of the calls.

If your debt collector is breaking these or any of the other rules in The Fair Debt Collection Practices Act, you should report them immediately your state Attorney General’s office and the Federal Trade Commission.

Debt Relief Services: If you’re struggling with credit card debt, and can’t work out a repayment plan with your creditors on your own, consider contacting a debt relief service like credit counseling or debt settlement. Depending on the type of service, you’ll get advice on how to deal with your mounting bills or create a plan for repaying your creditors. However, such services may not always be in your best interests, so it is often best to turn to an independent consumer’s association for advice before calling debt consolidation companies.

Credit Counseling: Reputable credit counseling organizations can advise you on managing your money and debts, help you develop a budget, and offer free educational materials and workshops. Their counselors know what to do when in debt and are certified and trained in consumer credit, money and debt management, and budgeting. Counselors discuss your financial situation and history with you, and can help you develop a personalized plan to solve your money problems. Most reputable credit counselors are non-profits and offer services through local offices, online, or on the phone. For a list of approved credit counseling agencies, check out the U.S. Department of Justice website.

Debt Management Plans: If your financial problems stem from too much debt or your inability to repay your debts, a credit counseling agency may recommend that you enroll in a debt management plan (DMP). A DMP alone is not credit counseling, and DMPs are not for everyone. Nonprofit organizations have a legal obligation to provide education and counseling. Be aware that not all credit-counseling organizations provide these services. Some charge undisclosed high fees, or urge people to make “voluntary” contributions that can cause even more debt. Don’t sign up for one of these plans unless and until an attorney or certified credit counselor has spent time thoroughly reviewing your financial situation.
Request a Free Consultation with a Bankruptcy Attorney: A bankruptcy attorney can help you determine what your options are and create a road map to help you get out of debt. They also understand the bankruptcy process and help you determine if Chapter 7 or Chapter 13 Bankruptcy is the best option for you. To get started, Request a Free Bankruptcy Filing Consultation Today.

2. How to Reduce Debt in 8 Steps

Along with the assistance of some of the above resources, there are a number of things your can do to proactively tackle your debt issues. Taking action to reduce debt can restore your sanity and help you avoid major setbacks like Bankruptcy or Home Foreclosure. Here are 8 steps to take to get your financial situation under control.

1. Prepare for battle

   First, it is important to remember that debt reduction is a process, rather than a quick fix. You need to develop a battle plan. Make an outline with all your goals and strategies and work on it daily. The Motley Fool offers a number of worksheets to help you outline your process.

2. Review your debt-to-income ratio

   In this step, you’ll look over your debts and determine which you have the most control over. There are some debts, such as mortgages and student loans, that have traditionally been very difficult to eliminate through bankruptcy and thus are relatively fixed. However, peripheral debt, like credit cards or car loans (‘bad debt’) are often what really destroy people’s finances. These debts can escalate quickly, but they are expenses that you have more ability to control (by controlling spending!). When you analyze your financial situation to assess your debt reduction potential, this is where you can make the greatest difference.

3. Pay off highest interest rates first

   Paying off the credit cards and loans with the highest interest rates eliminates the most expensive debt and reduces the total interest paid. However, this can take a while, so using your lowest interest rate as leverage with other creditors to lower their rates could be another strategy that pays off.

4. Transfer your balance
An alternative to step #3 is transferring credit card balances to a zero interest credit card deal. This is most useful if your debts are restricted to one or two credit cards which are incurring interest. There are many options available out there. Most of them offer an introductory rate of 0% for 12 month, with the rate jumping to 13%–21% after this ‘honeymoon’ period. These can be a good option if you have a reasonable sized debt that you would like to make a big dent in over a one year period. Bankrate.com compares introductory 0% interest rate cards here.

5. **Think outside the box**

Think of ways to find extra cash to put toward your principal payments. Some ideas are

- Sell home products and items you no longer use at a yard sale or online
- Scale back on takeout and restaurant foods
- Clip coupons
- Apply any tax refunds to the debt
- Scale back to a less expensive automobile
- If you’re a two or three car family, eliminate one vehicle
- Take on a part-time job

If you combine these efforts, you can make a large impact on your debt without significantly altering your lifestyle.

6. **Stop using the high interest rate credit cards (or all cards, ideally)**

This will keep the balance and interest payment from rising.

7. **Negotiate a reduction of your interest rates**

Working up the courage to make that one scary phone call can save you thousands of dollars. Getting your lender to lower your interest rate can really take a large chunk out of your debt.

8. **Cancel non-essential services**

Anything that you do not really need should be fair game. For example, cable television is generally a staple in most households. While most of us can't imagine our life without a cable or satellite services, many are now going without entirely, or making the switch to Netflix and other less expensive options. Consider it collateral damage in your battle to reduce debt to zero.

An attorney can help you sort through your options and come up with a plan to reduce your debt. Reach out and set up a **FREE No-Obligation Bankruptcy Consultation Today!** Together, we’ll explore ways to reduce your debt. This is a no fee, no obligation, no risk consultation!
3. How to Find an Attorney

If you’ve been searching for a way to solve debt issues, finding an attorney can make a big difference. This is because bankruptcy can be an effective way to eliminate debt and get a fresh start, and it is a qualified bankruptcy attorney’s business to understand the process better than anyone. However, all attorneys are not created equal and if you are considering filing for Chapter 7 Bankruptcy or Chapter 13 Bankruptcy, finding the right fit is important.

Follow These 7 Steps to Find the Right Attorney

Below are 7 important steps to follow when choosing the attorney who will guide you through the process of filing for Bankruptcy:

1. **Start Your Search**: Look online in your area and develop a list of prospects. Read everything you can about your top prospects before contacting them, especially reviews and testimonials. If you can’t find much about a particular firm, it’s best to move on. Carefully consider what you are looking for in an attorney and make a list of the qualities you value most. You’re essentially conducting a job interview. Be selective and do your research, but remember to trust your instincts and try not to delay your search. The more time you give your attorney to prepare for your case, the more effective they can be.

2. **Take Advantage Of Free Consultation Offers**: Many practices offer an initial free consultation, which will allow you to get a feel for the attorney without pressure. This will also give you an idea about what to expect in the process and what a bankruptcy will mean for your situation. Additionally, you will see the lawyer in their own environment and get a feel for how they handle the bankruptcy process. This time is best used to determine if bankruptcy is the right choice for you, and if the attorney is the proper fit. Learn all you can: Use this time to ask anything and everything.

3. **Look Into Qualifications**: When searching for an attorney, you need to find out if your lawyer is qualified. Make sure they have earned certifications specific to their law practice.

4. **Evaluate The Attorney’s Experience**: While there aren’t specific types of lawyers (such as bankruptcy attorneys), there are lawyers who have significant experience in areas of the law. Discover how long the attorney been practicing law with a focus on bankruptcy. While a newly minted attorney may not be a bad choice, attorneys who have been
practicing for a while will have accumulated a reputation that you can judge for yourself.

5. **Inquire About Workload**: Find out how many cases your lawyer has going on at one time. If they seem overworked and you aren't confident that you are going to get the attention you deserve, you may need to move on.

6. **Consider Costs**: As a Bankruptcy prospect, you may not have much cash to spare, but this does not necessarily mean that you should hire the cheapest lawyer. Since your case is going to affect your finances for years to come, it is advisable to choose a skilled attorney who can help you achieve the best possible outcome. You should also have all fees explained right away to avoid surprises.

7. **Check Out A Court Room**: Many of us have only seen court proceedings on television, and the reality can be very different. Still, seeing attorneys in action can give you a better idea of what type of personality you would like to represent you.

If you’d like, we can set up a [FREE No-Obligation Bankruptcy Consultation](#) to see if we’d be a match. Together, we’ll explore ways to solve your debt dilemma. Our consultations are no fee, no obligation, and no risk!

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**4. How Chapter 7 Bankruptcy Works**

**What is Chapter 7 Bankruptcy?**

Chapter 7 Bankruptcy is a way to eliminate unsecured debt when you are in over your head with your monthly payments. A discharge can take care of money owed on credit cards, medical bills, personal unsecured loans and many other types of unsecured debt.

A Chapter 7 Bankruptcy attorney can explain which of your monthly obligations would be covered by this type of bankruptcy filing in a [Free Bankruptcy Consultation](#).

**Chapter 7 Bankruptcy Frequently Asked Questions**

- **What Debts Are Exempt From Chapter 7 Bankruptcy?** There is a category of debt classified as “non-dischargeable debts”, which include child support, student loans and
most types of tax related debt. If you have questions about whether a certain type of debt is exempt, you should consult with a Chapter 7 Attorney.

- What is the Difference Between Secured and Unsecured Debt in Chapter 7 Bankruptcy? Filing for bankruptcy will not automatically discharge liens such as your mortgage. If you want to continue to own your home or car, you will need to continue making payments. It is possible, under Chapter 7, to give the “security” back and discharge the remaining debt along with the rest of your unsecured debt.

- Why is Chapter 7 Bankruptcy Called Liquidation? A bankruptcy trustee can liquidate your unprotected assets to pay part of your bills. However, due to the exemptions provided by Illinois law, most people who file for Chapter 7 Bankruptcy don’t have unprotected assets. A Chapter 7 attorney in Chicago can help you determine if your assets are protected by these exemptions.

- How Long Does the Bankruptcy Process Take? Typically, 3-4 months from the time your Chapter 7 attorney files the bankruptcy on your behalf. Your attorney can go over their Chapter 7 Bankruptcy services and explain the process in detail.

- Is Chapter 7 Bankruptcy for Me? Every situation is unique. Your first step is to contact a Chapter 7 attorney to review your situation and give you a detailed analysis of your case. Filing for Chapter 7 Bankruptcy is a difficult decision that is not right for everyone. If your attorney feels that there is a better option, they should be able to provide you with alternatives.

Chapter 7 Bankruptcy Benefits

1. **Eliminates Debt**: Filing a Chapter 7 Bankruptcy puts you in control of your future financial security. A discharge can take care of money owed on credit cards, medical bills, personal unsecured loans and many other types of unsecured debt.

2. **Help with Crippling Medical Bills**: People who’ve experienced an illness or injury and found themselves buried in bills (even if they have health insurance) may consider filing for Chapter 7 Bankruptcy as a way to get out of debt. A recent study by Professor Elizabeth Warren of Harvard Law School found that over half of all bankruptcies are related to illness, and 75% of those people who end up filing because of medical bills have health insurance. If you do not have insurance and are overcome with medical bills, Chapter 7 can also help you eliminate those debts.

3. **Stop Harassing Behavior from Creditors and Collection Agencies**: Collectors may not harass you, lie, or use unfair practices when they try to collect a debt. And they must honor a written request from you to stop further contact. And this is before you file!! The
12 Things You Should Know Before Filing for Bankruptcy

minute you file bankruptcy, the Bankruptcy Court issues an order telling all of your creditors to leave you alone. No more phone calls. No more collection letters. No more lawsuits. No garnishments. No repossessions. No foreclosures. Nothing.

4. **Bankruptcy is Not a Reason to be Fired:** What does bankruptcy mean for your work status? In a Chapter 7 Bankruptcy a debtor may fear for their job safety if their bankruptcy filing is discovered at work. However, you cannot be fired from your job solely because you filed for bankruptcy.

5. **No Repayment Necessary:** In a Chapter 7 Bankruptcy, if the new bankruptcy laws are complied with, then you aren’t required to offer a monthly repayment to your creditors. This is especially beneficial if you are currently unemployed or have minimal disposable income.

6. **Get Your Driver’s License Back:** Chapter 7 Bankruptcy helps you keep or regain your driver’s license subject to revocation because of an unpaid accident judgment, which may mean increased ability to find employment and income for your family.

**Chapter 7 Bankruptcy Limitations**

- **Credit Hit:** Bankruptcy information (both the date of the filing and the later date of discharge) stays on a credit report for 10 years and can make it difficult to get credit, buy a home, get life insurance, or sometimes get a job.

- **Liquidation:** A bankruptcy trustee can liquidate your unprotected assets to pay part of your bills. Luckily, Illinois law provides a number of exemptions, and most people who file for Chapter 7 Bankruptcy don’t have unprotected assets. A Chapter 7 attorney can help you determine if your assets are protected by these exemptions.

- **Non-Dischargeable Debts:** You may not be able to discharge certain debts, including child support, student loans and most types of tax related debt. You’d need to check with an attorney to discover which debts are exempt.

- **Liens:** Liens such as your mortgage are not automatically discharged. If you want to continue to own your home or car, you will need to continue making payments. However, an attorney can help negotiate a reaffirmation agreement with your lien holders where you continue to make payments in exchange for keeping your property.

An attorney can walk you through the process and come up with a plan to reduce your debt. Reach out and set up a **FREE No Risk, No Obligation Bankruptcy Consultation Today!** Together, we’ll explore ways to improve your financial outlook.
We’ve just learned that Chapter 7 Bankruptcy liquidates assets to pay off debts in a discharge. Chapter 13 Bankruptcy is a different process, and has a different set of qualifications and outcomes. First of all, Chapter 13 Bankruptcy includes a repayment plan, which commits disposable income to a regular scheduled payments over a three to five year period. This means that you get to keep your assets, and debts may be consolidated into manageable monthly payments.

Whereas in Chapter 7, you might not be employed, with Chapter 13 Bankruptcy you must be working or have a consistent source of income for your repayment plan to be approved by the court. Not only must you be able to pay for your monthly living expenses, but you must also be able to make a payment to the court to consolidate your debts. You must continue to make your payments to the trustee over the 3-5 year period.

If payments are not made to the trustee in a timely manner, your case may be dismissed. If mortgage payments are not kept up to date, the mortgage lender may ask to be removed from the bankruptcy and attempt to collect the debt outside the bankruptcy case. Likewise, if taxes are not maintained on property, or if insurance is not maintained on any homes or vehicles, those creditors may ask to be removed from the bankruptcy and may be allowed to collect the debt while the bankruptcy case is still open.

How Does the Chapter 13 Bankruptcy Process Work?

Briefly, here are the typical steps that occur in a Chapter 13 case:

1. Your bankruptcy attorney files Chapter 13 Bankruptcy plan when the bankruptcy petition is filed. The plan will propose to pay a certain amount of money per month to the Chapter 13 trustee, based on the debtor's income and certain allowable expenses. According to the US Federal Courts, in order to complete the Official Bankruptcy Forms that make up the petition, statement of financial affairs, and schedules, the debtor must compile the following information:

   - A list of all creditors and the amounts and nature of their claims;
   - The source, amount, and frequency of the debtor's income;
   - A list of all of the debtor's property; and
   - A detailed list of the debtor's monthly living expenses, i.e., food, clothing, shelter, utilities, taxes, transportation, medicine, etc.
2. **Creditors review the plan and offer objections.** A few weeks after the debtor files the chapter 13 petition, the chapter 13 trustee will hold a meeting of creditors. During this meeting, the trustee places the debtor under oath, and both the trustee and creditors may ask questions. The debtor must attend the meeting and answer questions regarding his or her financial affairs and the proposed terms of the plan. If a husband and wife file a joint petition, they both must attend the creditors’ meeting and answer questions. In order to preserve their independent judgment, bankruptcy judges are prohibited from attending the creditors' meeting. The parties typically resolve problems with the plan either during or shortly after the creditors' meeting.

3. **Chapter 13 Bankruptcy plan is confirmed** and trustee begins collecting payments from the debtor and distributing funds to creditors according to the plan.

4. **When all payments are made and disbursed to creditors** according to the plan, a discharge will be issued eliminating any remaining unsecured debt that is discharge-able.

Many debt consolidation companies attempt to negotiate with your creditors or offer settlements which can ultimately be rejected. However, Chapter 13 Bankruptcy is a consolidation plan regulated by Federal Law and the Bankruptcy Court. Once a plan is confirmed, the creditors will be required to accept payments according to the terms of the plan or not get paid at all. In most cases, Chapter 13 will stop all interest on unsecured debt allowing you to pay just pennies on the dollar.

Chapter 13 also provides you protection from those creditors that are in the plan. In most cases, they cannot seek payments from you outside of the bankruptcy or may be subject to fines and penalties if they do.

**Chapter 13 Bankruptcy Benefits**

- **Chapter 13 Stops Foreclosures and Repossessions:** Many people have gone through loss of job, divorce, or illness which has caused them to fall behind on their obligations with their mortgage company or auto loan. Chapter 13 Bankruptcy can help you keep your property while managing a more affordable payment plan.

- **Too Many Assets:** If you have too much equity in your house, or you have assets that exceed the protected or exempt amounts, you may be able to keep your assets and pay your debts back through a consolidation bankruptcy.

- **Income is Too High:** Some people also file for Chapter 13 Bankruptcy in Chicago because they have too much income to qualify for a Chapter 7 Bankruptcy filing.

- **Previous Chapter 7 Filing:** If you have filed a Chapter 7 Bankruptcy in the preceding eight years, you are not eligible to file again. Chapter 13 Bankruptcy is your only option.

Unfortunately you can't just hire an attorney when debt becomes more than you can manage and then just sit back and let them do all the work. Yes, hiring a lawyer relieves you of all the
complicated paperwork and legal requirements of filing bankruptcy but there is still plenty for you to do.

Your job during a Chapter 13 Bankruptcy case involves the preparation. You need to organize all the information and debt details your attorney needs. Here is a basic list of what you want on hand for your Chicago bankruptcy lawyer.

7 Things You Need to Provide to Your Attorney for a Chapter 13 Bankruptcy Case

1. Personal information like the social security numbers of you and your spouse as well as recent addresses.

2. Proof of income is needed for a minimum of the past 6 months. This includes pay stubs as well as bank statements.

3. All asset information like mortgages or property titles.

4. Bill details for every creditor. Copies of the bills are best because you'll need contact information for the creditors.

5. Investment details like retirement accounts, insurance policies, and investments like CD's, bonds and stocks.

6. Assets sale details including property sales or transfers for the past year.

7. Legal details like past bankruptcy filings or any lawsuits against you will be needed.

The more organized you can be with the necessary documentation the more smoothly your bankruptcy filing will go. An attorney can help you through the process, and you can reach out and set up a **FREE No-Obligation Bankruptcy Consultation** to make sure the fit is right.
6. What is a Trustee in Bankruptcy?

A trustee in bankruptcy cases is a court appointed official who has been selected to represent the collective interests of your creditors during your case. If you have been having problems with debt, filing for bankruptcy is an option that can help you eliminate significant amounts of debt and get a fresh start.

Due to the vast differences between Chapter 7 Bankruptcy and Chapter 13 Bankruptcy the role that the trustee takes on is very different.

A Trustee In Chapter 7

The trustee in Chapter 7 Bankruptcy reviews all the assets that are owned by the debtor and then liquidates them. The cash from the liquidation is used to make payments to creditors and also goes to the debtor to help maintain monthly bills. Another portion of the money from the liquidation goes to pay the trustee. The trustee also considers whether there are preferences or fraudulent transfers that can be recovered from which creditors can be paid. There are also times in which the trustee will bring a motion to dismiss a case as an abuse of the bankruptcy system or to deny the debtor a discharge if the trustee finds evidence of fraud, perjury, or ineligibility.

A Trustee In Chapter 13

A Chapter 13 trustee reviews the debtor's plan and collects and distributes payments made by the Chapter 13 debtor. When someone files for Chapter 13 Bankruptcy they usually have a sizable income and usually either did not qualify for Chapter 7 because they make too much money, or wanted to keep whatever assets they have. The trustee in a chapter 13 case reviews the debtor’s income and debt. They then organize a payment plan which has to be approved by the bankruptcy court. Once they plan is approved and the debtor begins making payments, the trustee receives a payment/commission from these payments. Once the plan is completed (usually after a few years) the debtor is discharged of remaining debt.

Contact with a Trustee in Bankruptcy

Dealing with a trustee in bankruptcy is one of the steps in the process. During the meeting of creditors is one point in the bankruptcy process where you will meet with the bankruptcy trustee. In this meeting, you must submit to examination under oath and answer questions from creditors.
about your debts, income and assets. However, creditors rarely attend these meetings and the trustee usually attends as a proxy, asking you some simple questions about your bankruptcy filing. This meeting of creditors is held regardless of whether you file Chapter 13 or Chapter 7 bankruptcy.

Primary Trustee Duties

- Oversees the bankruptcy estate, which is the property and related property rights of someone who files for bankruptcy. A filer who has had problems with debt keeps exempt property nonetheless, which is protected from creditor claims. The trustee can decide to abandon other assets, if they aren't of value to the estate.

- Collects estate property from the debtor or any third party which might be in possession.

- Converts the property to cash, usually by selling it.

- Is accountable for estate property.

- Handles intangible property and voids or cancels certain transactions involving estate property. Estate assets include a filer's intangible rights that may have value.

- The trustee has power to cancel transactions or transfers, if transactions involving property aren't allowed under bankruptcy law.

When you file for bankruptcy, a bankruptcy estate is created. It is the trustee's job to collect all of the property of the estate (including your nonexempt property), convert it to cash, and use that money to pay creditors who have valid claims.

The bankruptcy trustee does not represent you or your creditors. There are times when the trustee will seem like your friend and other times when the trustee will seem like your foe. But in reality, the trustee is neither they are merely representing the interests of the bankruptcy estate.

If you’d like someone who is definitely on your side and has the legal experience to help you sort through your options and come up with a plan of attack, reach out and set up a FREE No-Obligation Bankruptcy Consultation Today! Together, we’ll explore ways to reduce your debt. This is a no fee, no obligation, no risk consultation!

7. You Can Use Chapter 13 Bankruptcy to Save Your Home
As we’ve seen above, **Chapter 7 Bankruptcy**, is a way to eliminate unsecured debt when you're in over your head with your monthly payments.

A bankruptcy trustee liquidates your unprotected assets to pay part of your bills, and the resulting discharge can take care of money owed on credit cards, medical bills, personal unsecured loans and many other types of unsecured debt.

However, while Chapter 7 can erase your mortgage debt, it won't eliminate a lender's lien or legal claim on your house. That means the lender still has the right to foreclose. However, Chapter 13 Bankruptcy does present options if you’re trying to save your home through bankruptcy.

**How Do Chapter 13 Bankruptcy Payments Halt a Foreclosure?**

Chapter 13 Bankruptcy provides opportunities for homeowners to delay or prevent foreclosure and pay off back debt on their mortgages. In some cases, homeowners can also eliminate the amount of second or third mortgages. In order for this option to work, you need to generate enough income to at least meet your current mortgage payment and your other basic expenses at the same time you're paying off the mortgage arrearage.

When you file a Chapter 13 Bankruptcy petition, all foreclosure proceedings must stop until your Chapter 13 repayment plan is approved by the court. This is called the “**automatic stay**.” If your repayment plan includes provisions for paying off your mortgage arrearage, then once the plan is confirmed (approved by the bankruptcy judge) the lender is bound by the plan and cannot continue with the foreclosure, assuming you make your regular mortgage and bankruptcy plan payments.

After you complete your three to five-year plan, the company that financed your mortgage and your car loan will have received the money owed; unsecured creditors such as a credit card issuer or a department store card may not have received anything. But it doesn't matter; execute your Chapter 13 Bankruptcy payments plan and all debt balances are eliminated. Once that happens, your financial life begins all over again!
If you’re looking to save your home and think Chapter 13 Bankruptcy may be the answer, reach out and set up a **FREE No-Obligation Bankruptcy Consultation Today!** Together, we’ll explore ways to save your home and reduce your debt. This is a no fee, no obligation, no risk consultation!

**8. How Bankruptcy Laws Affect Student Loans**

Historically, student loans have been exempt from a bankruptcy discharge, meaning that while you could eliminate a significant portion of your debt through a Chapter 7 Bankruptcy, your student debt would remain to hound you until it was paid in full.

Although this is still the case for the majority of former students, there is a ray of hope from a recent court decision that going forward, people who meet certain criteria (see below) will be able to discharge student loans in bankruptcy.

The court decision in question stems from a 10-year court battle waged by Michael Hedlund, a graduate of Willamette Law School, to discharge his student loans. Hedlund borrowed about $85,000 to get his undergraduate and law degrees, then failed the bar exam three times. He never practiced law as a result and ultimately took a job as a juvenile counselor. At 33, married and with a child, he declared bankruptcy.

While history and the odds were against Hedlund winning the case, the Ninth Circuit took a long, hard look at his circumstances. It found that he'd acted in good faith to repay his loans, and that paying the full amount would be an undue hardship for Hedlund and his family. The case ended with a 9th U.S. Circuit Court of Appeals decision **partially discharging ($58,000) his loans.**

While Hedlund's case is hopeful precedent, permanent discharge of student loans is probably not possible in most cases, but it is nonetheless worthwhile to speak with a bankruptcy attorney to gauge your options. Request a **FREE No-Obligation Bankruptcy Consultation Today!**

**How to Permanently Discharge Student Loans**

*Tara Clarke of MoneyMorning* notes seven aspects of Hedlund’s circumstances that could potentially be repeated with success:
1. **Make every effort to obtain employment:** Hedlund was good about always having a job. After getting fired from the local District Attorney's office for failing the bar exam a third time, Hedlund immediately found work as a Juvenile Counselor in his county.

2. **Maximize your income:** You must make as much money as you can with the skills you possess. The bankruptcy court determined that Hedlund was "well-placed for his skills." It noted he'd applied to higher-paying jobs, but to no avail. Hedlund had sufficiently maximized his income as best he could.

3. **Minimize your expenses:** The court looks at everything - clothing, recreation (including internet and cable), childcare, personal care, cell phone use - I mean everything, to decide if you are living frugally.

4. **Try to negotiate a repayment plan:** There is an expectation that you must attempt to work with the lender to negotiate a payment plan you can manage. In Hedlund's case, he offered the lender payment plans he could afford, but was rejected. The lender countered-offered options totally out of Hedlund's reach.

5. **Make payments whenever possible:** Some months may go better than others, and you must pay when you can. Hedlund got a $5,000 inheritance, and made a $950 payment to his lender. He used the rest to pay off other debts. He also endured wage garnishments for as long as he could without contest.

6. **Try to restructure the loan:** A debtor must utilize all the resources available to him or her. For instance, consolidate the loans to lessen the monthly payment, apply for the ICRP (Income Contingent Repayment Plan), etc.

7. **Suffer from undue hardship:** The court has to be convinced that you can't maintain a minimal standard of living if required to pay the loan. It must determine that this state of affairs is likely to persist for most of the loan's repayment period.

9. **Can You Discharge Tax Debt in Bankruptcy?**

While tax debt is not easily discharged through Chapter 7 or Chapter 13 Bankruptcy, there are ways to deal with tax debts through bankruptcy if you meet certain qualifications. Before counting on bankruptcy as a solution to tax debt, you'll need to speak with a qualified IRS tax attorney. In the meantime, read on for information on dealing with tax debt through Chapter 7 and 13 Bankruptcy.
12 Things You Should Know Before Filing for Bankruptcy

Tax Debt and Chapter 7 Bankruptcy

According to Kathleen Michon, J.D. of Nolo.com, you can discharge (wipe out) debts for federal income taxes in Chapter 7 Bankruptcy only if all of the following conditions are true:

- **The taxes are income taxes.** Taxes other than income, such as payroll taxes or fraud penalties, can never be eliminated in bankruptcy.
- **You did not commit fraud or willful evasion.** If you filed a fraudulent tax return or otherwise willfully attempted to evade paying taxes, such as using a false Social Security number on your tax return, bankruptcy can’t help.
- **The debt is at least three years old.** To eliminate a tax debt, the tax return must have been originally due at least three years before you filed for bankruptcy.
- **You filed a tax return.** You must have filed a tax return for the debt you wish to discharge at least two years before filing for bankruptcy.
- **You pass the "240-day rule."** The income tax debt must have been assessed by the IRS at least 240 days before you file your bankruptcy petition, or must not have been assessed yet. (This time limit may be extended if the IRS suspended collection activity because of an offer in compromise or a previous bankruptcy filing.)

Tax Debt and Chapter 13 Bankruptcy

Chapter 13 Bankruptcy is a debt payment plan, with a monthly payment to a court-appointed trustee. Chapter 13 Bankruptcy repayment plans last for a minimum of three years and a maximum of five years. Here are six tax tips that apply to Chapter 13:

1. Debts, including some taxes, may not have to be paid in full, in the discretion of the bankruptcy judge. The debts are referred to as "crammed down." To be discounted, taxes must be income taxes; with the returns due more than three years before filing and taxes must have been assessed by the IRS at least 240 days ago.

2. To be crammed down, the IRS must not have recorded a lien, or there is no property for that lien to attach to.

3. If a tax return was due less than three years ago, or the taxes were assessed less than 240 days ago, or the taxes are not income taxes (such as for payroll), they are "priority" taxes, which must be paid off in full through the plan. However, Chapter 13 Bankruptcy stops interest and penalties the moment it is filed. In effect, Chapter 13 forces a repayment plan on the IRS. The IRS cannot get anything more than the bankruptcy judge approves, and the IRS cannot restart collection activities -- seizures of property or wages -- as long as a Chapter 13 plan is underway.

4. Tax penalties may be greatly reduced by the court. Even fraud penalties, never dischargeable in Chapter 7, might be cut down in Chapter 13.
5. Unfiled income taxes may be paid a fraction on the dollar. Though actual filing of tax returns more than two years ago is a requirement to discharge taxes in a Chapter 7, there is no "2-Year Rule" in Chapter 13.

6. Tax Liens are extinguished once the Chapter 13 plan has been completed.

A Chicago Bankruptcy attorney can help you sort through your options and come up with a plan to reduce your tax debt. Contact us today to set up a **FREE No-Obligation Bankruptcy Consultation**. Our attorneys have the experience in both bankruptcy and Illinois tax law to tackle your case.

10. How Bankruptcy Affects Divorce

If you're thinking about bankruptcy and divorce, or more importantly, if your spouse is thinking about either, it’s a good idea to look further into the ramifications of your choices, because the way you approach your divorce settlement can have a lot to do with how bankruptcy will affect your divorce, and vice versa. To help you understand what this means, we’ll examine the pros and cons of bankruptcy and divorce timing, and the differences between Chapter 7 and Chapter 13 Bankruptcy proceedings when a divorce is involved.

When Should You File For Bankruptcy And Divorce?

- **Pre-Divorce Bankruptcy**: Bankruptcy filing fees are the same for joint and individual filings. Thus, choosing to file jointly for bankruptcy prior to a divorce will save each party significant costs and attorney fees. In fact, joint filing spouses can save roughly 50% by filing together while still married. Another good thing about filing before a divorce is that the bankruptcy case can clear up issues involving debts and assets, which may facilitate an easier divorce proceeding. If both parties have significant debt problems, it is wise to consider filing before the divorce.

- **Bankruptcy in Mid-Divorce**: It is fairly common for one party to file for bankruptcy during a divorce, which can cause considerable stress and financial turbulence. Typically, this is a tactic which is taken by one spouse to hurt the other and delay divorce proceedings. While most proceedings will not be stayed by a bankruptcy filing, property divisions are an exception, and the bankruptcy trustee will need to become involved to
keep divisions fair. This may lead to higher fees and costs to the divorcing parties and higher scrutiny to property divisions. However, if there are no assets for the bankruptcy estate to administer, a mid-divorce filing may not be as disruptive.

- **Post-Divorce Bankruptcy**: When pursued after a divorce, a bankruptcy filing may lead to increased scrutiny of the marital settlement agreement and the division of assets. If the division is not reasonable, then a bankruptcy trustee can bring an avoidance action where debts incurred by one spouse and owing to the other during the bankruptcy proceedings are likely not dischargeable. Furthermore, costs will be higher than if a couple filed for bankruptcy just prior to a divorce.

### Divorce and Chapter 7 vs. Chapter 13 Bankruptcy

The chapter of bankruptcy you file makes a difference if a divorce is in the picture:

- **Chapter 7 Bankruptcy** is a liquidation bankruptcy designed to get rid of your unsecured debts such as credit card debt and medical bills. In a Chapter 7, you usually receive a discharge after only a few months, so it can usually be completed quickly before a divorce.

- In contrast, a **Chapter 13 Bankruptcy** lasts three to five years because you have to pay back some or all of your debts through a repayment plan. So if you were looking to file a Chapter 13, it may be a better idea to file individually after the divorce because it takes a long time to complete.

*Justin Harelik of Bankrate* provides one final note on bankruptcy and divorce:

“You need to understand one harsh truth. Your creditors are not part of your decision to get divorced, even though debt might be one of the reasons for your divorce. Through your divorce decree or separation agreement, the debt is divided between you and your spouse, but that does not mean your liability for any portion of the debt is magically lifted. It only means that one spouse has agreed to make payments on his or her part of the debt.”

Set up a [FREE No-Obligation Bankruptcy Consultation Today!](#) Together, we can explore the best way to navigate a bankruptcy along with divorce proceedings. We understand that this is a difficult time, and we have the experience and compassion to help!
11. Understanding Chapter 13 Bankruptcy and Social Security Income

Retirees struggling with debt may wonder how Chapter 13 Bankruptcy and social security income laws apply to them. In general, filing a Chapter 13 Bankruptcy allows a debtor to make consolidated payments on outstanding debt over a period of up to 60 months. To demonstrate how social security would fit in, we’d like to share some information on Chapter 13’s effect on income from social security.

The Law on Chapter 13 Bankruptcy and Social Security Income

First of all, the Bankruptcy Code states that Social Security income is not included in a debtor’s “disposable income”, and because it is not included in “disposable income” it cannot be included in a Chapter 13 debtor’s “projected disposable income.”

The Bankruptcy Code does not define “projected disposable income”, but it does define “disposable income” as Current Monthly Income minus certain deductions. Section 105(10A)(B)’s definition of “Current Monthly Income” specifically excludes benefits received under the Social Security Act. Therefore, Social Security income is not included when calculating disposable income.

When determining a Chapter 13 debtor’s projected disposable income, the Supreme Court has said the starting point is the debtor’s disposable income. In unusual cases this amount may be modified to account “for changes in the debtor's income or expenses that are known or virtually certain at the time of confirmation.” Furthermore, the Social Security Act shields payments made pursuant to the Act from “execution, levy, attachment, garnishment, or other legal process,” or from “the operation of any bankruptcy or insolvency law. The 2005 act made it more difficult for individuals to declare bankruptcy, but it also reinforced long-standing congressional rules protecting Social Security benefits.

However, there are Chapter 13 Bankruptcy cases in which Social Security benefits are included in repayment plans. The fact is that some bankruptcy trustees, who represent creditors, may try to pack as many assets as possible into a repayment plan. If the debtor and their attorney don't challenge it, the benefits may remain in the repayment plan.
A Recent Court Decision on Social Security Income

The AARP outlines a recent case decision on the matter.

“In a case before the 8th Circuit Bankruptcy Appellate Panel (PDF), an older Missouri couple who had filed for Chapter 13 Bankruptcy devoted $1,155 a month to their repayment plan. But they had more than $2,560 a month available. The extra funds were from Social Security.

The law has always allowed a debtor to voluntarily use Social Security payments to fund a repayment plan, but the trustee claimed that failing to apply these extra funds to the plan meant the couple had not proposed their plan in good faith.

The appellate panel disagreed. In a ruling that summer, the judges pointed out that Congress had excluded Social Security from consideration as disposable income, so it was not bad faith for the couple to do what Congress said they could do.”

This ruling applies to seven Midwestern states. This particular decision applies only to those states but can carry weight with courts outside the circuit. To find out if your social security income would be affected by Bankruptcy, contact a bankruptcy attorney and set up a FREE No-Obligation Bankruptcy Consultation Today!

12. Find out Who Can Garnish Your Wages and What You Can Do About It

Your wages may be garnished in several scenarios, including if you owe child support, student loans, back taxes, or if a court judgment has been entered against you.

Technically, a wage garnishment is a legal procedure which requires an employer to withhold some portion of a person's earnings for the payment of a debt. This is how it works - once state and federal taxes are withdrawn from your paycheck you are left with disposable earnings, which are up for grabs if you are in debt to a creditor. In general, the creditor may garnish a certain percentage of these disposable earnings, depending upon what you owe. This amount is withheld by your employer rather than your creditor.

Who Can Garnish Your Wages: 4 Categories
Child Support and Alimony

According to the Institute for Research on Poverty, in October of 1988 a welfare reform act became law. The act had the following objectives:

“The stated purpose of the act is to revise the AFDC (Aid to Families with Dependent Children) program to emphasize work, child support, and family benefits, to amend title IV of the Social Security Act to encourage and assist needy children and parents under the new program to obtain the education, training, and employment needed to avoid long-term welfare dependence, and to make other necessary improvements to assure that the new program will be more effective in achieving its objectives.”

One of the program’s objectives was creating more stringent child support collection laws. Thus, child support orders have included an automatic wage withholding order since the law’s inception.

Wage garnishment for child support can take a greater portion than other forms, in fact, up to 50% of your disposable earnings can be garnished to pay child support if you are currently supporting a spouse or a child who isn't the subject of the order. Additionally, up to 60% of your earnings may be taken if you aren't supporting a spouse or child.

Student Loans

In 2006, Congress passed a law that allows the U.S. Department of Education to garnish: “…the amount deducted for any pay period may not exceed 15 percent of disposable pay, except that a greater percentage may be deducted with the written consent of the individual involved”. In addition, no lawsuit or court order is required for this type of garnishment.

At least 30 days before the garnishment is set to begin, you must be notified in writing of all the procedure involved with the process. Finally, according to the law you may be able to suspend garnishment if you returned to work within the past 12 months after being laid off or fired.

Back Taxes

Owing money to the IRS puts you in a tight spot. They will take a big chunk of change and can do so at any time. The percentage depends on how many dependents you have, along with your standard deduction amount. To start the process, the IRS sends a wage levy notice to your employer, who is required to give you a copy of the notice.

According to the IRS, “A levy is a legal seizure of your property to satisfy a tax debt. Levies are different from liens. A lien is a claim used as security for the tax debt, while a levy actually takes the property to satisfy the tax debt. If you do not pay your taxes (or make arrangements to settle your debt), the IRS may seize and sell any type of real or personal property that you own or have an interest in. For instance, we could seize and sell property that you hold (such as your car, boat,
or house), or we could levy property that is yours but is held by someone else (such as your wages, retirement accounts, dividends, bank accounts, licenses, rental income, accounts receivables, the cash loan value of your life insurance, or commissions).”

State tax collectors may also be able to grab some wages as well, but in many states the law limits how much the state taxing authority can take.

Court Judgments

The winner of a lawsuit, be it a person or entity, is a party who can garnish your wages pretty easily by simply providing a copy of the court order to local authorities. The authorities will then forward it to your employer. Although some states may set a lower percentage limit for how much of your wages can be garnished, the federally required amount that can be garnished is anywhere up to 25% of your disposable earnings.

Furthermore, your employer is required to notify you of the following:

- Initiation of garnishment.
- The withholding part of your wages.
- The sending of garnished money to your creditor.
- Providing information on how you can protest garnishment of your wages.

Creditors must sue you and win, then get a court order requiring you to pay what you owe. They cannot just begin garnishing your wages whenever they like.

What Can You Do to Avoid Wage Garnishment?

1. **Stop Borrowing Money Immediately:** As your debt-to-income ratio increases, the ability to enjoy ‘normal’ rights on the loan decreases. Which can lead a creditor to decide to force wage garnishment upon the debtor that is already super late on monthly payments.

2. **Pay Priority Debts:** Determine which debt sources are most at risk for garnishment. Late payments, multiple attempts from the creditor to collect the debt, and multiple payments with insufficient funds in the bank are all clear red flags. Prioritizing these debts and addressing them can curtail later wage garnishment.

3. **Negotiate with Creditors:** Work to negotiate a deal with creditors who can garnish your wages. There have been cases where debts have been settled for a fraction of the total debt.

4. **Payment Plan:** One of the most crucial things you can do is to attempt to set up a payment plan as soon as you possibly can if you owe money to a creditor, who has received a judgment against you. The longer you ignore the debt or judgment, the more likely it is that a creditor will seek a garnishment order against you. But if you wait until
the garnishment has already been ordered, chances are good that you won’t be able to stop it.

5. **Bankruptcy:** Finally, if a creditor is garnishing your wages, you may be able to stop the garnishment and even get some of your garnished wages back by filing bankruptcy. However, certain exceptions do apply. When you file bankruptcy, an automatic stay goes into effect that prohibits and stops most collection activities by creditors. This means that wage garnishments are also stopped as long as the bankruptcy stay is in effect. If a creditor wants to resume collection efforts, it must ask the court to lift the stay. The court will lift the stay only if the creditor has a valid reason for doing so. An unsecured creditor such as a credit card company simply wishing to resume a wage garnishment is not a valid reason for the court to lift the stay. The automatic stay does not apply to domestic support obligations such as child support or alimony. These are considered priority debts that are unaffected by the automatic stay and cannot be discharged by filing bankruptcy.

If you’re facing wage garnishment, an attorney can help you sort through your options and come up with a plan to get your finances back on track. Reach out and set up a [FREE No-Obligation Bankruptcy Consultation Today!](#) Together, we’ll explore ways to reduce your debt in this no fee, no obligation, no risk consultation!

**Summary**

We’ve officially covered 12 of the most important things you should know before filing for bankruptcy. While we certainly didn’t cover everything related to these 12 topics, there’s a lot of information to absorb here. Once again, if you find you have any questions about anything related to bankruptcy, contact a bankruptcy attorney and ask for a [FREE bankruptcy consultation](#). An attorney with solid experience in bankruptcy law should be able to guide you through the bankruptcy process and any specific concerns which you may have regarding your situation.

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