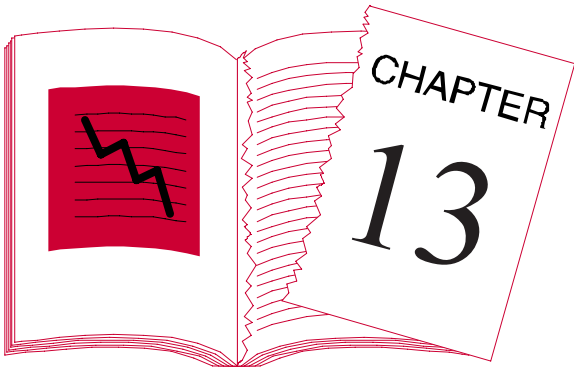
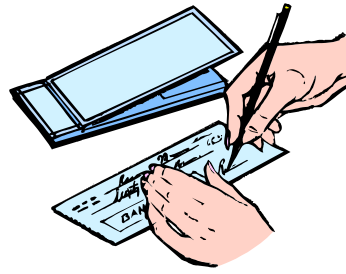


Bankruptcy



Bankruptcy

Debts & Debt Collection



What happens if I can't pay my bills?

Persons to whom you owe money have several methods of recourse if you fail to pay a debt. The method used depends on whether the debt is "secured" or "unsecured."

A secured debt is one for which there is some "collateral" or property used to secure payment. For example, if you buy an appliance on a time payment plan, the appliance usually serves as the collateral. If you fail to make your payments, the creditor can take back, or repossess, the merchandise to apply toward your debt.

In other situations, personal property may be put up as collateral for a cash loan or for a purchase. If you default on the loan, the creditor may force the sale of the collateral to satisfy the debt.

An unsecured debt is a debt you incur without providing the creditor any collateral. Medical bills and utility bills are common examples.

How is a secured debt collected?

A creditor can collect a secured debt by repossessing the property which you have put up as collateral for the loan.

For example, if you finance the purchase of a car through a bank, loan company or car dealer, using the car as collateral, and then fail to make your payments, the creditor will usually declare the entire debt payable immediately. If you cannot pay, the creditor can retake possession of the car, sell it and apply the proceeds to the balance due on the debt.

A creditor cannot breach the peace (for example, break down your garage door) to take possession, and must notify you in writing that the car will be sold and when it will be sold. Once the creditor has notified you, however, he or she can sell it and apply the proceeds to your debt. If the car sells for less than the amount you owe, the creditor may be able to sue you and get a judgement against you for the difference. If the car sells for more than you owe, any surplus must be paid to you, after the creditor has been reimbursed for the expenses of retaking possession and of the sale.

Can secured debts also be collected by the means outlined in the following section on unsecured debts?

A creditor can take several steps toward collecting an unsecured debt. First, the creditor usually calls or sends notices about the overdue debt. This is the time to work out a compromise by agreeing to pay a

certain amount each month until the bill is paid. Most creditors are willing to take this approach because it is less costly than using a collection agency or going to court.

However, don't just assume that if you "pay a little each month" your creditors will be satisfied. Unless you have reached an agreement with a creditor about a longer-term payment of your debt, you can expect that the claim on the debt will be turned over to a collection agency or that you will be sued, either by the collection agency or by the creditor directly.

What can a collection agency do?

Once a debt has been turned over to a collection agency, the agency may have the same rights as the original creditor. Debt collection agencies, however, are governed by the Fair Debt Collection Practices Act, which imposes certain restrictions on what the agency can do. For example:

Debt collectors (defined as individuals or companies who regularly collect debts owed to another party) cannot contact you at unreasonable times (generally, before 8 a.m. or after 9 p.m.), or at work if your employer objects. They may not use obscene language, threats or harassment, repeatedly use the telephone to annoy you, or contact you at all if you have hired a lawyer. There are also restrictions on the types of contacts a debt collector can make with your family and friends.

If you are having problems with debt collection practices and feel you are being wronged in some way, contact a lawyer.

Can the creditor take all of my property?

If the creditor or the collection agency files suit against you to collect a debt, contact an attorney. If the creditor can prove in court that you have failed to pay a valid debt, a judgement will be entered against you. This will allow the creditor to use legal process to sell your property — possibly including your car and other personal property, and possibly your home — to recover what is owed.

Certain exempt items may not be taken to satisfy the judgement; immediate personal possessions; necessary clothing; kitchen utensils and furniture, not to exceed \$1,500 in value; tools and equipment, not to exceed \$1,500 in value; and six month's worth of supplies and fuel. There is also a personal property exemption of \$2,500 if you do not own a home and a \$6,500 exemption on your home if you do own it.

The creditor also may garnish your wages or bank accounts. However, the law limits the amount of your take-home pay that can be garnished.

Would a credit counseling service help?

In many communities free credit counseling services are available to assist individuals who have trouble handling a budget or taking care of debt. The arrangements you make with a service of this kind are not legally binding on your creditors, but they can help you get your feet on the ground and work out a budget to pay your debts.



Should I get a consolidation loan?

Be cautious about loans, which are advertised as paying off all of your bills with "one small monthly payment." What you pay in interest could far exceed the original loan and could increase, rather than help solve, your financial difficulties. Don't hesitate to "shop around" and check several sources for such a loan.

What obligations do I have if I co-sign a note?

If you co-sign a promissory note to a lender, you are guaranteeing to the lender that the note will be paid. If the primary borrower does not pay the note, you will be liable to the creditor to the same extent as the primary borrower. Any decision that you make to co-sign a note should be based on your knowledge of and confidence in the primary borrower's financial responsibility and ability to pay. The best advice is: be **very** cautious about co-signing **any** financial obligation.

Bankruptcy

When should I file bankruptcy?

Filing bankruptcy should be considered only as a last resort, after all attempts to resolve your financial difficulties have failed. The bankruptcy laws are intended to give you a fresh start, to wipe out most of your debts and help you rebuild your credit rating. However, certain types of debts, such as taxes, student loans and child support, usually cannot be discharged through bankruptcy.

There are three basic types of bankruptcy proceedings, which are commonly referred to as Chapter 7, Chapter 13, and Chapter 11.

Whether to declare bankruptcy and which proceeding to use should be decided after consulting a lawyer. This is a procedure which should not be attempted without professional legal assistance. (Chapter 12 bankruptcies, available for farmers and ranchers, will not be discussed in this pamphlet.)

What is a Chapter 13 plan?

If you have a regular income, you may be able to use a Chapter 13 plan (also called a "wage-earner's plan") to repay all or part of your debts on a monthly basis over a period of at least three and sometimes up to five years. The plan must be submitted to the bankruptcy court and your creditors for approval. The bankruptcy court may approve the plan over the objection of a secured or unsecured creditor in certain instances.

A starting point in deciding whether to file a Chapter 13 plan is to add up your debts, add 10% for the trustee's fee and divide this amount by 36 months. This is approximately what your monthly payment would be. If you cannot afford this amount, you and your lawyer can look at your budget to determine how much of a payment you can afford, and whether a five-year plan might be allowable.

You must pay your secured creditors 100% of the fair market value of the security, which is collateral for the debt, plus interest. Your unsecured creditors must receive at least the amount of money through a Chapter 13 plan they would receive if you filed a Chapter 7. (In a Chapter 7 proceeding, only certain property is exempt from the sale by the trustee. For example, if you had non-exempt property worth \$10,000 and an unsecured debt of \$100,000, in a Chapter 7 proceeding your unsecured creditors would receive approximately 10 cents on the dollar. Therefore, in this example your Chapter 13 plan would call for payment of at least 10% to your unsecured creditors.)



If you submit a plan to pay less than 100% of your unsecured debt, the court will require you to pay all of your disposable income towards your debts. Your attorney can explain what constitutes disposable income, and how this will effect your filing. There may be situations in which a plan might be approved to pay different percentages to different classes of unsecured creditors, (for example, to pay a percentage of all credit card debts and a different percentage of all medical bills.) Discuss this with your attorney.

If your financial situation changes dramatically, you may pay all of your debts, even if your approved plan was to pay only a percentage. Needless to say, this would improve your credit rating.

Does interest on my Debts keep adding up?

Once a debt is included in your approved bankruptcy plan, the creditor usually cannot add any more interest. One exception to this is the interest on secured debts, thus the interest on a car loan or home loan may continue.

Do I have to appear in court?

Yes. You must appear at an initial hearing, which is called a "meeting of creditors." At this hearing, your creditors or their representatives will be able to question you about your income and your ability to pay your debts. You must begin making payments within 30 days after a Chapter 13 Plan is filed. There may be other occasions directed by the Court or your attorney for you to appear in court.

After all payments have been made under the Chapter 13 Plan, the court will officially discharge those debts, which were included on your bankruptcy plan.

What if I cannot keep up the payments I agree to make?

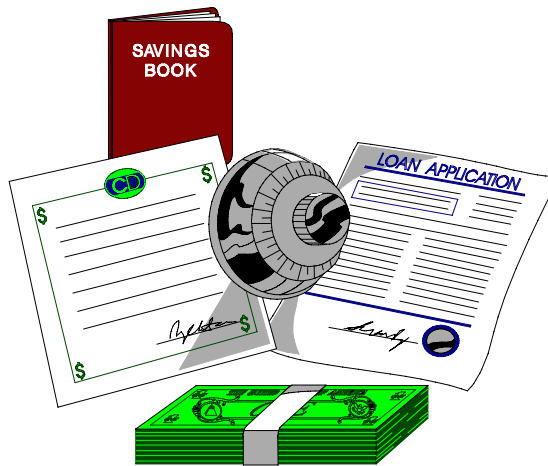
Initially, the court may be willing to grant an extension or allow you to reduce or defer a payment provided it is later made up. If you find the monthly payments are beyond your budget, or something happens to your regular source of income, the payments can be extended from three years up to five years, or the Chapter 13 bankruptcy can be converted to a straight bankruptcy and the debts discharged.

Do not just fail to make a monthly payment. Contact the trustee and your attorney and explain your situation. They can advise you about obtaining an extension of your plan.

How does a Chapter 7 bankruptcy differ from a Chapter 13 bankruptcy?

A Chapter 7 bankruptcy is often referred to as a straight bankruptcy, in which debts are discharged without payment (except for such debts as child support, alimony, taxes and student loans not more than five years old.) In effect, it wipes the slate clean. Generally, unsecured creditors receive little or nothing and secured creditors receive a return of their collateral.

The advantage of a Chapter 13 bankruptcy over a Chapter 7 bankruptcy is that a Chapter 13 will not be as harmful to your credit rating because it shows your willingness to pay at least some of your debts. A Chapter 7 filing may be made only once every six years, whereas a Chapter 13 filing may, with some restrictions, be made more often.



If I file bankruptcy, do I get to keep any possessions?

A person who files bankruptcy is allowed a number of exemptions under Nebraska law. Exemptions apply only to property upon which no creditor has a lien. (If you wish to keep some property upon which a creditor has a lien, and the creditor agrees, you may be able to "reaffirm" the debt and make new arrangements to pay it off. The court may require you to show this reaffirmation is in your best interests and is affordable.)

Among the exemptions allowed in any type of bankruptcy filing are a homestead exemption for your residence for the head of household, a limited exemption for an automobile, (only one spouse may claim this exemption); a personal property allowance for those who have no homestead property; an insurance exemption; the debtor's immediate personal possessions; wearing apparel and kitchen utensils; a limited amount of furniture; and provisions and fuel for six months' support of the family. Except as noted, a husband and wife filing bankruptcy can each claim the exemptions, which have specific dollar limits under the law. There are also exemptions on wages and other income, which your lawyer can explain.

What is Chapter 11 bankruptcy?

A Chapter 11 bankruptcy proceeding is also known as a "reorganization." It is more frequently used by businesses, but it can be used by individuals who wish to pay all or a portion of their debts over a period of time, but whose total debt is too large to qualify for a Chapter 13. A Chapter 11 is somewhat similar to a Chapter 13 in that a plan is proposed for the payment of secured and unsecured creditors over a period of time in various amounts. The procedure and variations available under a Chapter 11 are quite involved. Your lawyer can tell you whether it is advisable for you.

What happens to my credit rating?

Filing any type of bankruptcy is very harmful to your credit rating. It tells your creditors and others from whom you may seek credit you are not a good risk, that you have failed to be fully responsible for your debts. A bankruptcy may stay on your credit record for 10 years.

Rebuilding your credit rating after a bankruptcy is a lengthy and difficult process. Most lawyers advise starting slowly, establishing checking and savings accounts and then making one credit purchase you pay off promptly. Eventually, you will be able to establish good credit with that lender or merchant. You can then build on that basis.

This pamphlet, which is issued to inform, not to advise, has been prepared and published by the Nebraska State Bar Association. It is distributed by those who want to help you obtain your rights under the law.



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