

# frequently asked questions

## What is Bankruptcy?

Bankruptcy is provided for in the Constitution. It is a process that allows for the orderly forgiveness of debt. There are several different options depending on the status of the person who owes the debt and the type of debt that is owed. Most consumers choose between [Chapter 7](#) and [Chapter 13](#).

Business entities can choose between [Chapter 11](#) and [Chapter 7](#).

The decisions of what chapter to file and when to file are crucial. That is why hiring competent counsel early on in the decision making process is important.

## Is Bankruptcy right for me?

There are many factors that should be taken into account when considering filing for bankruptcy. Heidi McLeod can help.

**1. Figure out what bankruptcy options you have.** There are types of bankruptcy most commonly used by individual filers in the United States:

- **Chapter 7 bankruptcy** is a bankruptcy proceeding that can wipe out many of your debts. The tradeoff is that in limited circumstances, some of your assets may have to be given to a bankruptcy trustee to be sold to pay creditors. It also doesn't help if you are behind on house or car payments.
- **Chapter 13 bankruptcy** allows you to keep all of your assets but you must make payments to a trustee to be used to pay creditors.

**2. The type of Bankruptcy you file:** There are many differences between the two but the major difference has to do with who makes the payments on the debt after filing. In Chapter 7 if there is debt that continues beyond discharge such as IRS, Student loans, mortgage payments or car payments, the debtor pays these payments. In Chapter 13, the Chapter 13 Trustee pays the debt (charging a 10% fee for the privilege). Because we live in the great state of Texas, most people get to keep their home regardless of the equity as long as the future mortgage payments are made. There is a limit on equity if the Debtors have recently purchased the home and the equity exceeds \$160,000.00. There is a limit of \$160,000 per debtor on recently purchased homes, unless the equity is rolled and is from a prior home.

3. Find out what debts can be discharged.
4. How will bankruptcy affect your house and mortgage.
5. How will bankruptcy affect other items of property you own.
6. Find out if your credit card debts will be wiped out.
7. Ensure that your pension plans are safe.
8. Make sure that any co-signers are not stuck with your debt.

#### **Can I keep my home after Bankruptcy?**

The answer, like so many others in law, is that “it depends.” Most people that declare bankruptcy are able to keep their houses throughout the process, but some are not. There are three factors that determine whether you can keep your home in bankruptcy proceedings:

1. **The type of bankruptcy you file:** There are two types of bankruptcies to choose from: chapter 7 and chapter 13. There are many differences between the two. How your mortgage is affected, depends on which chapter you file.
2. **How much equity you have in your house:** Many bankruptcy filers have little or negative equity in their houses, so their houses are exempt and need not be sold in the bankruptcy process.
3. **Whether you can afford your mortgage:** After the bankruptcy you are free to keep your home as long as you continue to pay the mortgage.

#### **Can I be fired for filing Bankruptcy?**

While Section 525 of the Bankruptcy code prohibits any employer from firing a person “SOLELY” because they filed for bankruptcy. If your employer really wants to get rid of you, they can find another reason.

#### **How long does it take to recover from bankruptcy?**

A notation will remain on your credit for 10 years regardless of what Chapter you file. At the present time, if your credit score stays high after filing for bankruptcy, you can buy a house after one year of being in Chapter 13. After filing a Chapter 7 one must wait 3 years in order to qualify for an FHA mortgage. It is easier to buy a car after filing for Chapter 7 than Chapter 13. The current Chapter 13 plan, authored by the court and the Trustee, requires Debtors in Chapter 13 to obtain prior approval from the Court before obtaining Debt. This makes the process almost impossible to navigate. Credit may be easier to obtain after receiving a Chapter 7 discharge because credit card companies

only make money when you have their card, charge and carry a balance. If you pay cash for all purchases they are unable to make money.

## **GLOSSARY**

