

LET'S TALK ABOUT **BANKRUPTCY**

THE PROCESS AND HOW IT EFFECTS YOU



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THE BANKRUPTCY PROCESS IN ARKANSAS

The bankruptcy process can be complicated and confusing. It can be difficult to navigate without the proper experience or guidance. It is essential to understand the ever-evolving bankruptcy laws of Arkansas and how those laws can affect your case.

The Bankruptcy Process

Understanding the process and knowing what to expect is half the battle when deciding if and what kind of bankruptcy may be right for your unique situation.

The first step that is required before filing is credit counseling. The credit counseling course reviews an individual's financial situation; it does not determine if you are able to file, but it is a requirement. Once you are issued the certificate, it is valid for six months.

The Steps for Determining the Type of Bankruptcy You Need

The next step is to determine what type of bankruptcy may be best. Most consumers will ultimately file a Chapter 7 or a Chapter 13. One Chapter is not better or worse than the other because each chapter serves different purposes. Figuring out which Chapter is right for you is part of the bankruptcy planning process.

The chart below offers a comparison between the two types of bankruptcy.

Chapter 7	Chapter 13
Commonly known as “liquidation”	Reorganization
Eligibility: <ul style="list-style-type: none"> - Pass the means test: compares your household income and expenses to a state requirement - Have not received a discharge within the last 8 years from Ch 7 or 4 years from Ch 13 - Limitations on amount of property owned 	Eligibility: <ul style="list-style-type: none"> - Cannot have unsecured debt greater than a certain limit (~\$420k) - Must have income sufficient to make regular payments
How long it takes to achieve a discharge: Usually under six months.	How long it takes to achieve a discharge: Between 36 months -5 years.
Benefits: <ul style="list-style-type: none"> - Immediate protection from your creditors - One of the fastest and most efficient ways to resolve debt issues 	Benefits: <ul style="list-style-type: none"> - Immediate protection from your creditors - Can help you resolve your debts while retaining certain assets or getting caught up on secured debts, like an auto loan or mortgage.
Drawbacks: <ul style="list-style-type: none"> - Does not protect from repossession or foreclosure 	Drawbacks: <ul style="list-style-type: none"> - Length of time until discharge is extended
Cost: Varies by attorney	Cost: Filing fee; remaining fees set by the Bankruptcy Court

A means test is a process of analyzing income and expenses to gauge if your income is above or below the “median income” for Arkansas. If you fall *below* the median, you can file for Chapter 7. If you are above the median level, Chapter 13 may be the best option. You may still qualify for Chapter 7 after a closer look into your unique situation.

Preparing and Filing a Bankruptcy Petition

After a means test narrows down what kind of bankruptcy you are qualified to file, the necessary paperwork needs to be gathered. This paperwork includes pay stubs, bank transactions, expenses, debts, tax returns, lists of property and deeds, and any paperwork pertaining to loans. Other documentation may be needed depending on the case. Spending time gathering the documentation in its entirety will help your case run smoothly.

The bankruptcy petition is an intricate document that describes and categorizes all of your outstanding debts using a strict format. Before we file these documents with the court, an attorney will review the petition with you to ensure the information is complete and accurate.

Once your case has been filed, the automatic stay goes into effect. The automatic stay prohibits most creditors from continuing with collection actions, but it may take a week or two for creditor communication to stop completely. If you are contacted by a creditor after filing, let them know you have filed and provide them with your case number.

Another indicator of your situation rests in the numbers. You should add up all of your debt and compare it to your assets' value, including accounts, pensions, and real estate. If your debt outweighs your current assets' value, you may be digging a deeper hole each month.

341(a) Creditor Meeting

Chapter 7 and Chapter 13 cases are assigned a bankruptcy trustee that administers your case. They will review the petition to ensure it complies with the law. The trustee will also review your taxes, paystubs and identification, and monitor the progress of your case.

Your creditor meeting will be scheduled about 4 weeks after your case is filed. You must attend the creditor meeting at the specified time. It is held by conference call, and your attorneys should be on the phone with you. Put your phone on mute until your name is called by the Trustee's office. The trustee will ask a series of questions about your petition and your finances, and will finalize any questions or concerns.

Remaining Case Requirements

The remaining requirements in a Chapter 7 or Chapter 13 are dependent upon the type of case you file. In both cases, creditors are provided notice that you have filed and have a period during which they may contact the court about how their debt is treated.

In both a Chapter 7 and Chapter 13, cases are assigned a bankruptcy trustee that administers your case. They will review the petition to ensure it complies with the law. The trustee will also review your taxes, paystubs and identification, and monitor the progress of your case.

Before the bankruptcy can be finalized you must complete an approved debtor education course. Many of these can be completed online, and they take an average of two hours to complete.

After you have completed the requirements to receive a discharge and finished the

agreed-upon payment plan the court will issue a Notice of Discharge. This notice means that any debt included on your bankruptcy petition is cleared from your record and that you can never be bothered about them again. After your debts are discharged by the courts, you have a fresh start.

DO I QUALIFY FOR BANKRUPTCY?

It can be hard to decide to file for bankruptcy. Oftentimes, there is a bad connotation when it comes to bankruptcy. One common misunderstanding is that you can never recover from filing. Misconceptions like these can make people nervous to even consider filing for bankruptcy. But, the truth is, filing for bankruptcy could be one of the best decisions you can make in an effort to get out from underneath a mountain of debt. Any step forward is a good step. Filing bankruptcy is ultimately your decision. Many people file bankruptcy for the following reasons:

- **Medical Debt or Hardship:** Have you recently experienced a medical hardship that ended with an extended hospital stay? Or maybe lost wages? Hospital bills can be incredibly expensive, and lost hours working can cause a drastic loss in income.
- **Recent Divorce/Change In Marital Status:** If you have recently gone through a divorce, you may have realized just how taxing it can be on your financial situation. Not only are you having to divide your estate, but you also have to pay for attorney fees, court dues, and more. It may even end with you having to pay child support or alimony.
- **Unemployment:** No one plans for unemployment, but when you find yourself without a job, upcoming bills can be terrifying. If you don't have an emergency fund that can help you take care of your bills and debts until you find a new job, you may not have a lot of options available to you.
- **Overwhelming Credit Card Debt:** Even if you have never missed a single credit card payment, getting your credit cards paid off in full is a struggle when you're only making the minimum required payment. No one wants to be paying off that new phone for another 20 years! Credit card companies rarely allow missed payments without reporting them on your credit report.

- **Car Loans or Home Mortgages:** Typically, when someone applies for a car or home loan, they are in a spot where they feel financially secure and able to take on the payments that will follow. However, should something happen that affects your ability to make those monthly payments, you're still accountable for the debt. Sometimes, you may even find yourself upside down on a home or car, meaning you owe more money than the object is worth. Many times, this situation occurs, for whatever reason, and forces an individual to either sell the car or home, or file for bankruptcy.

These are just a few of the reasons why people consider filing for bankruptcy. There isn't a right or wrong reason to consider bankruptcy. What you need to consider is whether or not you need *help*.

COMMON QUESTIONS FOR ARKANSAS BANKRUPTCY

Is there a certain amount of debt to qualify for bankruptcy?

There is no minimum amount of debt to qualify for bankruptcy. However, certain debt limits apply to Chapter 13 bankruptcy. It is also important to keep in mind that there are limits on how many times you can discharge your debts in bankruptcy. If your debt amount is relatively low, it may be a good idea to consider alternatives to bankruptcy now so that filing for bankruptcy remains an option for you in the future..

Will I Lose Everything in My Bankruptcy?

After filing for Chapter 7, your property will go into a bankruptcy estate held by the Chapter 7 bankruptcy trustee appointed to your case. However, you don't lose everything because you can "exempt" or remove property reasonably necessary to maintain a home and employment.

Chapter 13 bankruptcy allows you to keep your assets and repay debts according to an agreed-upon amount and timeline.

Can I file without my spouse if I am married?

Yes, you can file as an individual if you are married. But it should be noted that even if you file alone, your spouse can still legally be held responsible for your debt. Also, if you file for bankruptcy together as a couple, you can double the number of exemptions for which you qualify.

Will Bankruptcy Affect My Credit?

If you are filing for bankruptcy, your credit is already in trouble. How much depends on the amount of debt you have and the amount of money you make—your debt to income ratio. If you have pretty good credit and file for bankruptcy,

your credit score will take a deep dip. However, if you have a high debt to income ratio - massive debt and a small income - your credit score will dip slightly. Any bankruptcy filing will remain on your credit report for up to ten years.

What Property Can I Keep After Bankruptcy?

The first thing many people wonder when they file for bankruptcy is what property they may be able to keep and lose. Each case is different and answering this question can be complicated as your case moves forward.

Do I need a lawyer to file for bankruptcy or can I file on my own?

It is certainly possible for an individual to file for bankruptcy without a lawyer (or "pro se"). However, the rules and procedures governing the bankruptcy discharge process are extremely complex, and it can therefore be very beneficial to hire an attorney with experience in bankruptcy law. Trustees and the bankruptcy court are not more lenient on rules for pro se filers.

ARKANSAS BANKRUPTCY MYTHS DEBUNKED

Myth: The only people who have to file for bankruptcy are those who are failures at handling their finances, those who can't live within their means, or those who squander what they have.

Truth: Anyone, regardless of how fiscally responsible they may be, can find themselves in a position where bankruptcy is the only option for regaining control over finances. Most people who file for bankruptcy in Arkansas are hard-working and never expected to be in that position. The most common reasons for filing bankruptcy include losing a job unexpectedly, divorce, medical bills, and being hit hard by changes in the economy.

Myth: If you file bankruptcy, you will lose everything including your house.

Truth: The purpose of bankruptcy is to help you get the fresh start you need, not leave you more without anything you have worked hard to buy. There are both state and federal exemptions that will allow you to keep certain kinds of property. Even if you have assets in excess of what the exemption allows, Chapter 13 bankruptcy can allow you to keep most assets while you work to repay your debts. It would be in your best interest to consult with an Arkansas bankruptcy lawyer.

Myth: Your credit will be ruined forever if you file for bankruptcy.

Truth: Bankruptcy can remain on your credit report for up to ten years and affect your credit score. However, just how much of an affect bankruptcy will have varies from person to person. After bankruptcy is filed, certain debts will be discharged. This will improve your debt ratio and possibly free up funds to pay down other debt. While a score may drop at first, it may be easier to gain credit points as you work to stay current with payments and regain your financial footing after filing for

bankruptcy.

Myth: People file for bankruptcy to get out of paying back what they owe creditors.

Truth: Bankruptcy has had several stigmas attached to it for a long time. One is that it is an easy way out of having to pay what you owe. You can't go out and charge a ton of things and then file for bankruptcy to get out of paying. Bankruptcy court must approve your filing and will look closely into spending habits and credit use to prevent anyone from trying to take advantage of the system. While certain debts are discharged, the liquidation process repays many debts. Most creditors will get paid back, and you will need to stay current on any payment plans between you and those creditors. Also, certain types of debt can't be discharged at all. This includes child support, alimony, student loans, some taxes, and any court-ordered restitution.

COST TO FILE BANKRUPTCY IN ARKANSAS

The financial strain and anxiety that leads a person to file for bankruptcy can be overwhelming. Knowing what to expect from the process is vital. It is also vital to understand the financial costs of pursuing bankruptcy. You should find a bankruptcy lawyer with straightforward fees who can help you get back on stable financial footing.

Filing Fees

The costs involved depend on the type of bankruptcy filed: The cost of filing your bankruptcy petition is currently \$338 to file for Chapter 7 bankruptcy. Chapter 13 bankruptcy costs \$313 to file. Chapter 11 bankruptcy, which is for business reorganization, is the most expensive to file at the cost of \$1,717.

Attorney Fees

Attorney fees in a Chapter 7 case are paid directly to the attorney who is filing your case. The cost of a Chapter 7 attorney in Arkansas ranges from about \$1,000 to \$3,000. The cost can depend on the experience of the attorney, the specific facts and requirements of the case, and the location where you live.

Chapter 13 attorney fees are set by the bankruptcy court and range from \$3,500 to \$4,500. These payments are generally paid throughout your case as part of your payment plan rather than up front.

Having a skilled and experienced bankruptcy lawyer by your side to explain fees and the overall bankruptcy costs can help you prepare ahead of time. Our firm understands the anxiety and worry that may affect you and your family at this time. With our guidance and advice, we can ensure the bankruptcy process is smooth and fair as you prepare for a more stable financial future.