

# BANKRUPTCY

## SHOULD I FILE FOR BANKRUPTCY

Bankruptcy is a legal action in which a person who cannot pay his or her bills can get a fresh financial start. The right to file for bankruptcy is provided for by federal law, and all bankruptcy cases are handled in federal court. Bankruptcy is not necessarily the answer for all people facing financial difficulties. Whether you should declare bankruptcy depends on the particular circumstances of your financial situation. You may be able to resolve your problems through payment arrangements, consolidated loans, or other means less drastic than bankruptcy. However, bankruptcy may be a necessary step for an overwhelmed debtor.

There are two kinds of bankruptcy for individuals<sup>1</sup>: straight bankruptcy (Chapter 7) and wage earner plans (Chapter 13). Credit cards, medical debt, and most judgments can be discharged in bankruptcy. Any co-debtors remain liable for the debts.

## STRAIGHT BANKRUPTCY - CHAPTER 7

In a straight bankruptcy under Chapter 7, you, the debtor, file a petition asking the Court to discharge<sup>2</sup> your debts in exchange for giving up your property, except for **EXEMPT** property that the law allows you to keep.

- In many cases, most or all of your property may be exempt.
- Property that is not exempt is sold to the bankruptcy trustee and the money is distributed to creditors.

To keep a home or vehicle in a Chapter 7 Bankruptcy, you must be current on payments or be able to become current.

You can only file for and receive a Chapter 7 Bankruptcy once every 8 years, so timing of filing is very important.

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<sup>1</sup> Who are not farmers.

<sup>2</sup> To clear or erase.

## CHAPTER 13 BANKRUPTCY

In a Chapter 13 case, you, the debtor, file a *PLAN* showing how you will pay off some of your past due and current debts over an extended period, normally 3–5 years. This is different from Chapter 7 cases where you ask the Court to discharge your debts. The most important thing about a Chapter 13 case is that it will allow you to keep valuable property - especially your home - that might otherwise be lost. A Chapter 13 might also allow you to discharge debts that you could not discharge in a Chapter 7.

You should consider filing a Chapter 13 if you:

- Own your home and are in danger of losing it because of money problems; or
- Are behind on debt payments but can catch up if given some time and have a regular income - this includes government benefits, such as Social Security or public assistance.
- If you are not eligible for a Chapter 7 due to the means test, or if you have significant non-exempt property.

### TO CONSIDER:

To determine whether you should file for bankruptcy, you need to consider your personal financial situations. In some cases, you might be better off not filing for bankruptcy. **Consider the following points carefully:**

- **“Collection Proof”:** If you are collection proof, then you do not have any income, assets, or property that a creditor could take, either by garnishment or attachment.
  - If this describes your financial situation, then you do not want to file for bankruptcy. Filing for bankruptcy will stop creditors from calling but will not change your income or assets.
- **Secured Property:** If you have secured property, and the equity in that property is less than the exemption amount, and you are current on payments for that secured property, you can continue making payments and keep that property - even if you file for bankruptcy.
  - You may have to re-affirm the debt or redeem the property.
- **Medical Bills:** Medical bills are usually a primary reason people file for bankruptcy.
  - If you do not have medical insurance, you may want to consider whether bankruptcy is a good option for you

- **Automobile Insurance:** If you do not have insurance and you drive, you should obtain insurance before filing for bankruptcy.
  - Lenders require that you have insurance on the vehicle if you are making payments.
  - The bankruptcy court will ask if you have automobile insurance.
- **Garnishment:** If you have income that a creditor is currently garnishing, a bankruptcy under Chapter 7 should stop the garnishment.
  - A Chapter 7 bankruptcy will not stop child support or maintenance garnishments, and these debts cannot be discharged.
- **Assets:** If you have property in which the equity is higher than the exemption amount, you will have to pay the bankruptcy court the excess equity or turn over the property.
- **Keep in mind that bankruptcy may not wipe out all your debts.**

## COST TO FILE FOR BANKRUPTCY

It currently costs \$338 to file for Chapter 7 bankruptcy, whether for one person or a married couple. It currently costs \$313 to file for a Chapter 13 reorganization plan.

The Court can waive the filing fee if you are financially eligible.

## WHAT PROPERTY CAN YOU KEEP?

You can keep all property (except secured property), which the law says is *EXEMPT* from the claims of creditors. Equity is the value of the property minus the amount you still owe. Some Colorado exemptions include:

- \$250,000 in equity in your home
- \$350,000 in equity in your home if there is an elderly<sup>3</sup> or disabled owner, spouse, or dependent
- \$15,000 in equity in your motor vehicles or bicycles (or combination of up to two)
  - Does not include snowmobiles, ATVs, golf carts, boats, watercraft, travel trailers, tent trailers, or mobile homes.
- \$25,000 in equity in up to two motor vehicles or bicycles if you are elderly or disabled.
- \$6,000 household goods per adult
- \$60,000 tools of trade for a primary occupation

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<sup>3</sup> Aged 60 or older

- \$2,000 wearing apparel.
- \$2,500 jewelry
- \$2,000 library, books, pictures
- Your right to receive certain benefits, such as Social Security and Veterans Benefits
- Public assistance
- Most pensions (regardless of amount)

If you transfer exempt property for less than its fair market value, the bankruptcy court can set aside the transfer, and the property will lose its exemption. This means that the Court can take it to pay creditors.

## SECURED CREDITORS

A few of your creditors have a *SECURITY INTEREST* in some of your property. A creditor has a security interest in your property only if you have a written agreement<sup>4</sup>. The security interest gives the creditor the right to take, under some circumstances, and sell your property if you fail to make your loan payments.

If the secured property is not exempt property, you may be able to pay the actual value of the property to the creditor and keep the property, even if you owe more than the actual value. To keep secured property in a Chapter 7, you must be current on your payments and continue to make payments. You may have to re-affirm the debt or redeem the property.

- If you re-affirm a debt the debt survives the bankruptcy, is still owed, and the creditor can sue you and/or enforce the debt after the discharge.

## DOES BANKRUPTCY WIPE OUT ALL DEBTS?

The answer is **NO**. You cannot discharge:

- Debt resulting from any fraud you committed.
- Money owed for child support or alimony, criminal restitution, fines, most taxes, and other limited kinds of debt.
- Domestic support obligations, including property settlements from a family law case.

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<sup>4</sup> Be aware that not all written agreements give a security interest.

- Property settlements may be dischargeable in a Chapter 13 bankruptcy.
- Debts not listed in your bankruptcy petition.
- Loans you got by knowingly giving false information to a creditor, who reasonably relied on it in making you the loan.
- Debts resulting from willful and malicious harm.
- Student loans owed to a school or government body, unless payments would be an undue hardship and an adversarial proceeding was filed.
- Debts you re-affirm.
- **Debts incurred after you filed are not discharged.**

## AUTOMATIC STAY

Once a bankruptcy is filed, an automatic stay goes into effect. The automatic stay is an order issued by the bankruptcy court, which stops the creditors from trying to collect the debt. The automatic stay stops garnishment of wages, repossessions, and other collection attempts.

Creditors are prohibited from attempting to collect on a debt unless they receive a “relief from stay.” The automatic stay **does not affect criminal cases.** If you have multiple bankruptcy filings, the stay may not go into effect or stay in effect.

## DISCHARGE

If everything goes well in a bankruptcy case, the final action of the Court is to grant a discharge, which excuses you from paying all of your eligible debts<sup>5</sup>. Note that your discharged debts still exist for any co-signers and co-debtors who are on the debt, and they will remain, unless they also filed a bankruptcy and received a discharge. The debts will still be on your credit report, but they will be marked as “discharged in bankruptcy.”

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<sup>5</sup> Except possibly for the debts mentioned above.

## CAN YOU OWE ANYTHING AFTER BANKRUPTCY?

The answer is **YES!** Many people believe they cannot own anything for a period of time after filing for bankruptcy. This is not true. However, if you receive an inheritance, a property settlement, or life insurance benefits, that money or property have to be paid to your creditors if:

- The property or money is not exempt, and
- You receive it within 180 days after filing for bankruptcy.

The discharge order also forbids creditors from doing anything to try to collect a debt that has been discharged from the party who filed for bankruptcy.

The Court can refuse to grant a discharge if you have done something improper, such as trying to cheat a creditor by hiding your property, giving false information to the Court, refusing to obey a court order, etc.

## STUDENT LOANS

Student loans are generally not dischargeable in bankruptcy. Outside of bankruptcy, there are medical hardship discharges that may be available for federal loans if you are disabled and unable to work. There are forms that you can obtain from your student loan providers to request the medical hardship discharge, though you may have to have your medical provider verify that you are unable to work. If you were approved for Social Security Disability (SSI or SSDI), your award letter may be sufficient. There are also many repayment options.

- For more information, contact your loan servicer or go to [www.studentloanborrowerassistance.org](http://www.studentloanborrowerassistance.org) or [www.studentloans.gov](http://www.studentloans.gov).

## WILL BANKRUPTCY HARM MY CREDIT?

The answer is yes, bankruptcy will negatively impact your credit. The fact that you have filed for bankruptcy can appear on your credit record for 10 years. Other debts cannot appear for more than 7 years. However, since bankruptcy wipes out your old debts, you should be in a better position to pay your current bills, so you may be able to get credit.

More information on bankruptcy and court forms can be obtained by visiting the U.S. Bankruptcy Court for the District of Colorado at <https://www.cob.uscourts.gov/>.

## OTHER INFORMATION

### EVICCTIONS

Eviction proceedings are stopped when a bankruptcy is filed. However, if you do not pay post-petition rent, you can be evicted.

### UTILITY SERVICES

A public utility, such as an electric company, cannot cut off service because you have filed for bankruptcy. However, the utility company can require a deposit for future service.

### DISCRIMINATION

A government agency cannot discriminate against you because you have filed for bankruptcy.

### DRIVER'S LICENSE

If you lost your license solely because you could not pay court-ordered damages caused in an accident, bankruptcy may allow you to get your license back.

### COLLECTION PROOF<sup>6</sup>

You are “collection proof” if you do not have any assets or property that a creditor can take from you, with or without a judgment. If your income is exempt, and all of your property is exempt, then creditors cannot take property from you.

### INCOME TAXES

Federal income tax refunds are not exempt. Earned Income Credit (EIC) and child tax credits are exempt. However, if you are filing for bankruptcy, you should not pay insiders or any past due debt. For more information on how to file your income taxes for free, go to [www.irs.gov](http://www.irs.gov).

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<sup>6</sup> Sometimes called “Judgment Proof”

## IDENTITY THEFT

Report identity theft to your local police department and your creditors. You can also contact the Federal Trade Commission at [www.ftc.gov](http://www.ftc.gov) or the Colorado Attorney General at [www.coag.gov](http://www.coag.gov)

- Contact your bank and other credit card issuers and put a stop-payment on outstanding checks.
- Close existing credit card and debit card accounts.
- Open new accounts; protect them with an obscure pin and complicated passwords
  - Do not use the same password that was on the original account
  - Do not use birth dates, your Social Security number, or family names and birth dates.
- File a report with the local police department. It will help when you are working with banks, creditors, and major credit-reporting bureaus.
  - Keep a copy of the report.
- File a report with the Federal Trade Commission online at [www.consumer.gov/idtheft](http://www.consumer.gov/idtheft) or call 1-877-428-4338
- Contact the three major credit reporting bureaus:
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| <b>Equifax:</b><br>P.O. Box 740241<br>Atlanta, GA 3037-0241<br><a href="http://www.equifax.com">www.equifax.com</a><br>1-888-766-0008 | <b>Experian:</b><br>P.O. Box 9532<br>Allen, TX 75013<br><a href="http://www.experian.com">www.experian.com</a><br>1-888-397-3742 | <b>TransUnion:</b><br>P.O. Box 6790<br>Fullerton, CA 92834-6790<br><a href="http://www.transunion.com">www.transunion.com</a><br>1-800-680-7289 |
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**REMEMBER: The law often changes. Each case is different. This pamphlet is meant to give you general information and not to give you specific legal advice.**



## SAMPLE LETTERS

NOTE: To have proof that letters were mailed, send them **CERTIFIED MAIL** with **RETURN RECEIPT REQUESTED** for your records. The Post Office can help you with this. ALSO - **make a copy** for your records of anything that you mail to a creditor or filed with the court.

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TO REQUEST THAT A DEBT BE VERIFIED:

DATE: \_\_\_\_\_

To: \_\_\_\_\_ (Creditor)

\_\_\_\_\_

RE: \_\_\_\_\_ (Account Number if any)

In accordance with the Fair Debt Collection Practices Act, I dispute the amount of the debt and request that you verify the debt you are seeking to collect from me. I am also requesting reasonable proof of the assignment of this debt, pursuant to C.R.S. 5-3-102.

Signed: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

# TO REQUEST THAT A COLLECTION AGENCY STOP CONTACTING YOU:

DATE: \_\_\_\_\_

To: \_\_\_\_\_ (Creditor)

\_\_\_\_\_

RE: \_\_\_\_\_ (Account Number if any)

I am writing to request that you stop communications to me about my account. The Fair Debt Collections Practices Act, U.S.C.A Section 1692c(c), requires that you honor my request. (THE FOLLOWING PARAGRAPH IS OPTIONAL. IF YOU CHOOSE TO INCLUDE IT, YOU SHOULD WRITE A BRIEF STATEMENT EXPLAINING YOUR SITUATION)

I was laid off from work two months ago, and cannot pay this bill at this time. I am enrolled in a training program, which I will complete in March, and hope to find work that will allow me to resume payments soon after that. Please note that your letters mistakenly list the balance on the account at \$245.00. My records indicate that the balance is less than that.

Your cooperation will be appreciated.

Very Truly Yours,

Name: \_\_\_\_\_

Address: \_\_\_\_\_ (ADDRESS IS OPTIONAL)

## COLORADO EXEMPTIONS

| <u>TYPES OF PROPERTY</u>   | <u>AMOUNT OF EXEMPTION</u> |           | <u>STATUTE CREATING EXEMPTION</u> |
|--|----------------------------|-----------|-----------------------------------|
|  | INDIVIDUAL                 | JOINT     |                                   |
| Homestead, manufactured home, mobile home, trailers occupied as home by owner or owner's family, or personal property that is used as a residence  | \$250,000                  | \$250,000 | C.R.S. §38-41-201, 205, 201.7 25  |
| Homestead of mobile home occupied as home by an elderly or disabled owner, spouse, or dependent  | \$350,000                  | \$350,000 | C.R.S. §38-41-201, 201.5          |
| Necessary Wearing Apparel  | \$2,000                    | \$4,000   | C.R.S. §13-54-102(1)(a)           |
| Watches, jewelry, and articles of abandonment  | \$2,500                    | \$5,000   | C.R.S. §13-54-102(1)(b)           |
| Personal library, family pictures, and schoolbooks   | \$2,000                    | \$4,000   | C.R.S. §13-54-102(1)(c)           |
| Burial sites for debtor and dependents   | 100%                       | 100%      | C.R.S. §13-54-102(1)(d)           |
| Firearms, Hunting, and Fishing Equipment for personal use  | \$1,000                    | \$2,000   | C.R.S. §13-54-102(1)(x)           |
| Household goods (includes furniture, dishes, appliances, televisions, stereos, computers, exercise equipment, musical instruments, toys, and more) | \$6,000                    | \$12,000  | C.R.S. §13-54-102(1)(e)           |
| Provisions and Fuel  | \$600.00                   | \$1,200   | C.R.S. §13-54-102(1)(f)           |
| Livestock & Poultry of farmer <sup>7</sup> ;<br>Machinery & Tools of farmer  | \$100,000                  | \$100,000 | C.R.S. §13-54-102(1)(g)           |
| Tools of trade, equipment, & tools   | \$60,000                   | \$60,000  | C.R.S. §13-54-102(1)(i)           |

<sup>7</sup> You may use either the exemption in C.R.S. §13-54-102(1)(g) or C.R.S. §13-54-102(1)(i), BUT NOT BOTH

|  |  |                        |  |
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| used in occupation <sup>8</sup>  |  |                        |  |
| Armed Force Pension  | 100%   | 100%                   | C.R.S. §13-54-102(1)(h)                                  |
| Up to two motor vehicles or bicycles   | \$15,000   | \$30,000               | C.R.S. §13-54-102(1)(j)(I)                               |
| Motor vehicle exemption if debtor is elderly <sup>9</sup> or disabled, or has a spouse or child that is elderly or disabled          | \$25,000   | \$50,000               | C.R.S. §13-54-102(1)(j)(II)(A)                           |
| Library of professional <sup>10</sup>  | \$3,000  | \$6,000                | C.R.S. §13-54-102(1)(k)                                  |
| Avails of life insurance policies  | \$5,000  | \$10,000               | C.R.S. §13-54-102(1)(l)                                  |
| Proceeds of claims & avails of insurance policies covering loss or destruction of exemption given for the property lost or destroyed | Extent of exemption  | Extent of exemption    | C.R.S. §13-54-102(1)(m)                                  |
| Proceeds of claim for personal injuries, except for obligations incurred for treatment or collection of claim                        | 100%   | 100%                   | C.R.S. §13-54-102(1)(n)                                  |
| Claim for public or private disability benefits due, or any proceeds thereof   | \$5,000 / month  |                        | C.R.S. §13-54-102(1)(v)                                  |
| Professionally prescribed health aids  | 100%   | 100%                   | C.R.S. §13-54-102(1)(p)                                  |
| Crime victims reparation law awards  | 100%   | 100%                   | C.R.S. §13-54-102(1)(q)                                  |
| Homestead sale proceeds (cannot be comingled/ 3-year time period)  | \$250,000 or \$350,000   | \$250,000 or \$350,000 | C.R.S. §38-41-207  |
| Disposable Earnings  | 80% of disposable earnings after deductions required by law and cost of employer provided health insurance |                        | C.R.S. §5-5-106 / 13-54-104<br><br>Debtor may be able to |

<sup>8</sup> OR \$20,000 for tools used for any other gainful occupation

<sup>9</sup> Aged 60 or older

<sup>10</sup> You may use either the exemption in C.R.S. §13-54-102(1)(i) or C.R.S. §13-54-102(1)(k), BUT NOT BOTH

|  |  |   |   |
|--|--|---|---|
|  | OR 40x the federal minimum hourly wage/week or 40x the state minimum hourly wage/week - WHICHEVER IS GREATER |   | claim a hardship exemption.                 |
| Insurance proceeds from loss of homestead  | Same as homestead exemption  | Same as homestead exemption                       | C.R.S. §38-41-209                           |
| Unemployment Compensation Benefits   | 100% (with some litigations and if not comingled)  | 100% (with some litigations and if not comingled) | C.R.S. §8-80-103                            |
| Proceeds of group life insurance policies  | 100%   | 100%  | C.R.S. §10-7-205                            |
| Earned Income Credit   | 100%   | 100%  | C.R.S. §13-54-102(1)(o)                     |
| Child Tax Credit   | 100%   | 100%  | C.R.S. §13-54-102(1)(o)                     |
| Teacher Retirement Benefits  | 100%   | 100%  | C.R.S. §22-64-120                           |
| Funds held in or payable form pension or retirement plans, deferred compensation plans, and health savings accounts that qualify under ERISA, etc. | 100%   | 100%  | C.R.S. §13-54-102(1)(s)                     |
| Public assistance payments - TANF, SNAP, OAP, Police Pension Benefits, etc.  | 100%   | 100%  | C.R.S. §26-2-131<br>C.R.S. §13-54-102(1)(s) |
| Fireman's Pension Benefits   | 100%   | 100%  | C.R.S. §13-54-102(1)(s)                     |
| Specific partnership property  | 100% of partner's interest   |   | C.R.S. §7-60-125                            |
| Security deposit for rent  | 100%   | 100%  | C.R.S. §13-54-102(1)(r)                     |
| Deposit for utilities  | 100%   | 100%  | C.R.S. §13-54-102(1)(r)                     |
| Social Security/SSI  | 100%   | 100%  | 42 U.S.C. §407                              |

|   |         |         |                         |
|---|---------|---------|-------------------------|
| Child Support and Maintenance   | 100%    | 100%    | C.R.S. §13-54-102(1)(u) |
| Up to \$2,500 cumulative in depository account or accounts in debtor's name | \$2,500 | \$5,000 | C.R.S. §13-54-401(1)(w) |

**THE ABOVE EXEMPTIONS MAY NOT APPLY IF DEBT IS FOR CHILD SUPPORT, IRS TAXES, OR STUDENT LOANS.**

**C.R.S. §13-54-102.5**

There may be additional exemptions.