Exempt Property You Can Keep in a Chapter 7 Bankruptcy

In many cases, you will be able to keep all of your property. Under bankruptcy law, you are allowed to "exempt" or keep certain property from claims of your creditors.

Exact exemption values vary and can change. You should consult a lawyer to confirm the exact amount you can protect.

Here are some examples of what you may keep in Ohio:

- Equity in your home
- Equity in your car
- A certain amount of household goods
- Money received as Social Security, Veterans benefits, public assistance, pensions and some similar types of income
- Money received as Earned Income Credit and Additional Child Tax Credit
- Retirement funds

If a husband and wife file bankruptcy together, the amounts may double.

The value of property is not the amount you paid for it, but what it is worth now. Especially for furniture and cars, the current value may be a lot less than what you paid or what it would cost to replace them.

Property that is not exempt may be sold and the money from the sale is distributed to your creditors.

Why You Might Not Have to File Bankruptcy

You may not have to file, if:

- You have only a few debts and have strong defenses to each. That means that you have a good legal reason **not** to pay the debt. For instance, you borrowed money to buy a car and it is a lemon. Instead of filing a bankruptcy petition, you can raise your claims and defenses against the manufacturer, dealer and your creditor if you are sued or try to reach an agreement with them.
- Your after-tax pay is so low that your wages legally cannot be garnished.
- You do not own your home.
- You can afford to pay all of your current debts or bills without hardship.
- All of your income or assets are from Social Security, Veterans benefits, public assistance or unemployment compensation or, in some instances, a pension, alimony or child support.
- You owe only for medical bills. Medical creditors who get a judgment against you cannot force the sale of your house. Any court orders to pay them will have no effect until your house is sold or transferred. (But if your wages are garnished for medical bills, then filing may be wise.)

The Legal Aid Society of Cleveland
Since 1905

This brochure was prepared by Legal Aid which serves low-income residents of Ashtabula, Cuyahoga, Geauga, Lake and Lorain Counties in Northeast Ohio.

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Learn more about Legal Aid and upcoming brief advice clinics:
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Legal Aid Offices:

Cleveland & Administrative Offices
1223 West Sixth Street, Cleveland, OH 44113

Elyria Office
1530 West River Road, Suite 301, Elyria, Ohio 44035

Jefferson Office
121 East Walnut Street, Jefferson, OH 44047

Painesville Office
8 North State Street, Suite 300, Painesville, OH 44077

If you have a communications limitation, contact Legal Aid through the Ohio Relay Service at 800.750.0750.

Legal Aid offers interpretation and translation services so those with limited English proficiency can communicate with Legal Aid staff in their dominant and/or preferred language.

The information in this brochure cannot take the place of advice from a lawyer. Each case is different and needs individual legal advice. You should contact a lawyer if you need representation or if you have questions.

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Bankruptcy for Low-Income Persons

The Legal Aid Society of Cleveland
Since 1905

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What is Bankruptcy?

Bankruptcy is a Federal Court action that may allow people who cannot pay their bills to get a fresh financial start. Filing bankruptcy stops all creditors (people to whom you owe money) from trying to collect debts from you, at least until your debts are sorted out by law.

The decision to file for bankruptcy should be made only after careful thought, **after you have talked with an attorney** and after you determine it is the best way to deal with your financial problems.

What It Costs and Some New Rules

There is a fee for filing a bankruptcy petition in Federal Bankruptcy Court. However, prepayment of the fee may not be required for low-income persons.

Under the 2005 amendments to the Bankruptcy Law, you must receive a briefing from an organization approved by the court before you file.

The 90-minute briefing may be in-person, on the telephone or through the internet. It must outline opportunities for credit counseling and assist you in performing a budget analysis. The counseling must be provided to you even if you cannot pay for it. You also must complete a personal financial management course later in the bankruptcy process.

Types of Consumer Bankruptcy

Chapter 7 and Chapter 13 are sections of the Federal Bankruptcy Law that are used for different circumstances.

Chapter 7

Chapter 7 bankruptcy eliminates or "discharges" debts. Whether you can file under Chapter 7 depends on your income. If your income is above the limit set by the new law, you will have to file under Chapter 13 and pay at least a part of your debts. If you qualify for Legal Aid's services, you probably will qualify for a Chapter 7.

Under Chapter 7, if you have property, you may have to give it up. However, there are ways you may be able to keep your property.

Many low-income debtors have no property that they would lose because what they have is exempt. The law allows you to keep exempt property. **Exempt property is explained on Page 5.**

Non-exempt property may be sold by the Chapter 7 trustee who will distribute the money to your creditors. The rest of your debts–the ones for exempt property and debts not connected with property—will be "discharged" so you never have to pay them.

Chapter 13

Chapter 13 allows you to pay your debts from your current income over three to five years. The big advantage of Chapter 13 is that it gives you a chance to keep your home or car by letting you catch up on certain past due amounts while making current payments.

To file under Chapter 13, you need a regular source of income that is enough to support the payment plan which the court must approve.

While paying into the plan for past debts, you also must keep up payments to secured creditors. A "secured" creditor is one for whom you have put up property as collateral for a mortgage, lien or a loan.

The most common examples of collateral are cars for car loans, houses for home mortgages and furniture for time payments or loans.

In Chapter 13, you normally pay only a percentage of what you owe to unsecured creditors. At the end of the plan, any part of the unsecured debt that wasn't paid will be "discharged."

Under the new 2005 bankruptcy law, more people will have to file under Chapter 13. That is because their income is more than the median income for the state in which they live.

What Bankruptcy Can Do

This is what bankruptcy can do for you:

- It can eliminate most or all of your debts in a Chapter 7 bankruptcy which is explained on Page 2. This is called a "discharge" and is meant to give you a fresh start.
- It can stop wage garnishment, debt collection and harassment.
- It can restore your phone, electric or gas service after payment of a security deposit or stop utilities from turning off your service.
- It can allow you to get back your drivers license if it was suspended because you did not pay a debt related to an uninsured accident, and/or BMV reinstatement fees, but only if you get insurance.
- **It can fully or partially discharge some student loans, but only if you can prove you will suffer undue hardship if you are required to pay.**

What Bankruptcy Cannot Do

This is what bankruptcy <u>cannot</u> do:

- It cannot eliminate child support, alimony, court restitution orders, criminal fines, debts for personal injuries resulting from driving under the influence (DUI), certain taxes, debts obtained by fraud and debts for causing willful and malicious injury and for certain intentional acts.
- It cannot protect cosigners on your debts. When someone has cosigned for a debt, the cosigner still may have to repay all or part of the debt even though you have discharged it in bankruptcy.
- It cannot discharge debts you get after your bankruptcy petition has been filed.
- It cannot eliminate certain rights of secured creditors. For instance, if a creditor has a secured interest such as a house mortgage or car or furniture lien, it can take back your house, car or furniture unless you can make the payments set up by the bankruptcy court. In general, you cannot keep the collateral (for example; the car, house or furniture) unless you continue to make payments.