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ARIZONA BANKRUPTCY REPORT

A decision to file for bankruptcy should be made only after careful consideration of your financial situation and determining that bankruptcy is the best way to deal with your financial problems. This brochure cannot explain every aspect of the bankruptcy process. If you want to discuss your specific situation, you can schedule a free consultation with my office.

There have been many news reports suggesting that changes to the bankruptcy law passed by Congress in 2005 prevent people from filing bankruptcy. It is true that these changes have made the process more complicated. But the basic right to file bankruptcy and most benefits of bankruptcy remain the same for most people.

What Is Bankruptcy?

Bankruptcy is a legal proceeding 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 by federal law, and all bankruptcy cases are handled in federal court. Filing bankruptcy immediately stops all creditors from seeking to collect debts from you, at least until your debts are sorted out according to the law.

What Can Bankruptcy Do for Me?

Bankruptcy may make it possible for you to:

- Eliminate the legal obligation to pay most or all of your debts. This is called a “discharge” of debts. It is designed to give you a fresh financial start.
- Stop wage garnishment.
- Stop debt collection harassment and other similar creditor actions to collect a debt.
- Stop foreclosure on your house or mobile home and allow you an opportunity to catch up on missed payments. (Bankruptcy does not, however, automatically eliminate mortgages and other liens on your property without payment.)
- Prevent repossession of a car or other property, or force the creditor to return property even after it has been repossessed.
- Prevent seizure of your bank accounts.
- Restore or prevent termination of utility service.
- Allow you to challenge the claims of creditors who have committed fraud or who are otherwise trying to collect more than you really owe.

What Bankruptcy Cannot Do

Bankruptcy cannot, however, cure every financial problem, and may not be the right step for every individual. In bankruptcy, it is usually *not* possible to:

- Eliminate certain rights of “secured” creditors. A “secured” creditor has taken a mortgage or other lien on property as collateral for the loan. Common examples are car loans and home mortgages. Bankruptcy *can* eliminate your obligation to pay any additional money if your property is taken or surrendered. However, you generally cannot keep the collateral unless you continue to pay the debt.
- Discharge types of debts singled out by the bankruptcy law for special treatment, such as child support, alimony, certain other debts related to divorce, most student loans, court restitution orders, DUI related debts, criminal fines, and most taxes.
- Protect cosigners on your debts. When a relative or friend has co-signed a loan and you discharge the loan in bankruptcy, your cosigner may still have to repay all or part of the loan.
- Discharge debts that arise after bankruptcy has been filed.

What Different Types of Bankruptcy Cases Should I Consider?

There are several types of bankruptcy cases provided under the law but only two are generally appropriate for consumers:

- *Chapter 7* is known as “straight” bankruptcy or “liquidation.” It requires a debtor to give up property that exceeds certain limits called “exemptions,” so the property can be sold to pay creditors.
- *Chapter 11*, known as “reorganization,” is used by businesses and a few individuals with very large debts.
- *Chapter 12* is reserved for family farmers and fisherman.
- *Chapter 13* is called “debt adjustment.” It requires a debtor to file a plan to pay debts (or a portion of their debts) from current income.

Most people filing bankruptcy will want to file under either chapter 7 or chapter 13. Either type of case may be filed individually or jointly by a married couple.

Chapter 7 (Fresh Start or Straight Bankruptcy)

In a bankruptcy case under Chapter 7, you file a petition asking the court to discharge your debts. The basic idea is to wipe out (discharge) your debts in exchange for giving up property, except for “exempt” property which the laws allows you to keep. In many cases, all of your property will be protected. But the non-exempt (unprotected) property can be sold, with the money distributed to creditors.

If you want to keep property like a home or a car and are behind on the mortgage or car loan payments, a chapter 7 probably will not be the right choice. A chapter 7 bankruptcy does not eliminate the right of mortgage holders or car lenders to take your property to cover your debt.

To qualify to file for the chapter 7 bankruptcy you must pass an income test. If your income falls below the Arizona average income based on your household size (see chart below), you can file a simpler chapter 7 case.

ARIZONA MEDIAN INCOME BY HOUSEHOLD SIZE

<u>Household Size</u>	<u>Yearly Income</u>	<u>Monthly Income</u>	
1 Person	\$41,915	\$3,493	
2 Persons	\$54,510	\$4,543	<i>For each additional person, you can add \$7,500 per year \$625 per month</i>
3 Persons	\$58,696	\$4,893	
4 Persons	\$66,030	\$5,503	
5 Persons	\$73,530	\$6,128	
6 Persons	\$81,030	\$6,753	
7 Persons	\$88,530	\$7,378	

If your income exceeds the income guidelines listed above, you must fill out “means test” forms requiring detailed information about income and expenses. If you are found to have a certain amount left over that could be paid to unsecured creditors, the bankruptcy court may decide that you cannot file a chapter 7 case, unless there are special circumstances. This is a very complex area of law and calculations, and generally requires the assistance of an experienced attorney.

Chapter 13 (Reorganization)

In a chapter 13 case you file a “plan” showing how you will pay off some of your past-due and current debts over three to five years. The most important thing about a chapter 13 case is that it will allow you to keep valuable property--especially your home and car—which otherwise would be lost, if you can make payments the bankruptcy law requires you to make. In most cases, these payments will be at least as much as your regular monthly payments on your mortgage or car loan, with some extra payment to get caught up on the amount you have fallen behind.

You should consider filing a chapter 13 plan if you:

1. own your home and are in danger of losing it because of money problems;
2. are behind on debt payments, but can catch up if given some time;
3. have valuable property which is not exempt, but you can afford to pay creditors from your income over time.

To successfully complete a chapter 13 plan, you must have enough income to pay for your normal living expenses and also keep up with the monthly plan payments.

What Property Can I Keep?

In a chapter 7 case, if you have resided in Arizona for more than 2 years, you can keep all property that the law says is “exempt” or protected from the claims of creditors. In Arizona, these exemptions include:

RESIDENCE

Homeowner	Renter
Real property; house, condo, apartment or mobile home you occupy with up to \$150,000 in equity (unless recently moved to Arizona)	Prepaid rent or security deposit to \$1,000 or 1-1/2 times your rent, whichever is less, in lieu of homestead

FINANCIAL ACCOUNTS

Bank balance up to \$150 in one account (or \$300 for married couple)

Most pension and retirement plans, IRA’s and 401K accounts

PERSONAL PROPERTY

Motor vehicle up to \$5,000 (\$10,000, if disabled) (2 vehicles for married couple)

Household goods up to \$4,000 in value for single filer (\$8,000 for married) that includes:

2 beds per person	kitchen table
1 dresser, table, lamp and bedding per bed	refrigerator and stove
1 couch and 3 lamps and 3 coffee or end tables	dining room table and 4 chairs -1 more / person
1 living room chair per person	1 television
1 living room carpet or rug	1 radio or stereo
pictures, paintings, drawings created by debtor	1 alarm clock
family portraits	washer, dryer and vacuum cleaner

and

Clothing up to \$500	Musical instruments up to \$250
1 watch up to \$100	Pets up to \$500
Wedding/engagement rings to \$1,000	Books up to \$250
Arms and uniforms required for work	Employment tools and equipment up to \$2,500

and

The following personal property up to \$500 in combined value (or \$1,000 for married couple):

1 typewriter	1 bicycle
1 sewing machine	A lot in any burial ground
1 family bible	One shotgun or one rifle or one pistol

As indicated above, the personal property exemptions are doubled when a married couple files together.

In determining whether property is exempt, you must keep a few things in mind. The value of property is not the amount you paid for it, but what it is worth now. Especially for furniture and cars, this may be a lot less than what you paid or what it would cost to buy a replacement.

You also only need to look at your equity in property. This means that you count your exemptions against the full value minus any money that you owe on mortgages or liens. For example, if you own a \$50,000 house with a \$40,000 mortgage, you have \$10,000 in equity that is applied against your exemption.

While your exemptions allow you to keep property even in a chapter 7 case, your exemptions do not make any difference to the right of a mortgage holder or car loan creditor to take the property to cover the debt if you are behind.

In a chapter 13 case, you can keep all of your property if your plan meets the requirements of the bankruptcy law. In most cases you will have to pay the mortgages or liens as you would if you didn't file bankruptcy.

What Will Happen to My Home and Car If I File Bankruptcy?

In most cases you will not lose your home or car in your bankruptcy as long as your equity in the property is fully exempt. Even if your property is not fully exempt, you will be able to keep it if you pay its non-exempt value to creditors in chapter 13.

However, some of your creditors may have a "security interest" in your home, automobile or other personal property. This means that you gave that creditor a mortgage on the home or put your other property up as collateral for the debt. Bankruptcy does not make these security interests go away. If you don't make your payments on that debt, the creditor may be able to take and sell the home or the property during or after the bankruptcy case.

There are several ways that you can keep collateral or mortgaged property after you file bankruptcy. You can agree to keep making your payments on the debt until it is paid in full, or you can pay the creditor the amount that the property you want to keep is worth. In some cases involving fraud or other improper conduct by the creditor, you may be able to challenge the debt. If you put up your household goods as collateral for a loan (other than a loan to purchase the goods), you can usually keep your property without making any more payments on that debt.

Can I Own Anything After Bankruptcy?

Yes! Many people believe they cannot own anything for a period of time after filing for bankruptcy. This is not true. You can keep your exempt property and anything you obtain after the bankruptcy is filed. However, if you receive an inheritance, a property settlement, or life insurance benefits within 180 days after filing for bankruptcy, that money or property may have to be paid to your creditors if the property or money is not exempt.

Will Bankruptcy Wipe Out All My Debts?

Most debts can be discharged but not all. Bankruptcy will not normally wipe out:

1. Child support or Alimony;
2. Taxes and government fines;
3. Student loans;
4. Debts not listed on your bankruptcy petition;
5. Loans obtained by knowingly giving false information to a creditor who reasonably relied on it in making you the loan (fraud);
6. Debts resulting from “willful and malicious” harm;
7. Debts related to driving while intoxicated;
8. Secured debts (home or car loans) on property you plan to keep.

What Must I Do Before Filing Bankruptcy?

You must receive budget and credit counseling from an approved credit-counseling agency within 180 days before your bankruptcy case is filed. The agency will review possible options available to you in credit counseling and assist you in reviewing your budget. Different agencies provide the counseling in-person, by telephone, or over the Internet. If you decide to file bankruptcy, you will need to file the certificate from the agency stating that you received the counseling.

You should be careful in choosing a credit counseling agency. It is extremely difficult to sort out the good agencies from the bad ones. Being an “approved” agency for bankruptcy counseling is no guarantee that the agency is good. It is also important to understand that even good agencies won’t be able to help you much if you’re already too deep in financial trouble.

Some of the approved agencies offer debt management plans (also called DMPs). This is a plan to repay some or all of your debts in which you send the counseling agency a monthly payment that it then distributes to your creditors. Debt management plans can be helpful for some consumers, but for others, they are a terrible idea. The problem is that many counseling agencies will pressure you into a debt management plan as a way of avoiding bankruptcy whether it makes sense for you or not. It is important to keep in mind these important points:

- bankruptcy is not necessarily to be avoided at all costs. In many cases, bankruptcy may actually be the best choice for you.
- if you sign up for a debt management plan that you can’t afford, you may end up in bankruptcy anyway.
- there are approved agencies for bankruptcy counseling that do not offer debt management plans.

It is usually a good idea for you to meet with our office before you receive the required credit counseling since we can provide you with a list of approved credit counseling agencies. We can also give you legal advice and counsel on whether bankruptcy is the best option unlike a credit counselor who cannot give legal advice.

Will I Have to Go to Court?

In most bankruptcy cases, you only have to go to a “meeting of creditors” to meet with the bankruptcy trustee and any creditor who chooses to come. In most cases, no creditors show up. Generally, the meeting will be a short and simple procedure where you are asked a few questions about your bankruptcy forms and your financial situation. Your attorney will also attend to assist you if there are any complications.

Occasionally, if complications arise, or if you choose to dispute a debt, you may have to appear before a judge at a hearing. If you need to go to court, you will receive notice of the court date and time from the court.

What Else Must I Do to Complete My Case?

After your case is filed, you must complete an approved course in personal finances. This course will take approximately two hours to complete. We can give you a list of organizations that provide approved courses. In a chapter 7 case, you should sign up for the course soon after your case is filed. If you file a chapter 13 case, we will let you know when you should take the course.

Will Bankruptcy Affect My Credit?

There is no clear answer to this question. Unfortunately, if you are behind on your bills, your credit may already be bad. Bankruptcy will probably not make things any worse.

The fact that you’ve filed a bankruptcy can appear on your credit record for ten years. But because bankruptcy wipes out your old debts, you are likely to be in a better position to pay your current bills, and you may be able to get new credit.

If you decide to file bankruptcy, remember the debts discharged should be listed on your credit report as having a zero balance, meaning you do not owe anything on that debt. Debts incorrectly reported as having a balance owed will negatively affect your credit score and make it more difficult or costly to get credit. You should check your credit report with all three major credit bureaus after your bankruptcy discharge and file a dispute if the information is not correct.

What Else Should I Know?

Utility services--Public utilities, such as the electric company, cannot refuse or cut off service because you have filed for bankruptcy. However, the utility can require a deposit for future service and you do have to pay bills that arise after bankruptcy is filed.

Discrimination--An employer or government agency cannot discriminate against you because you have filed for bankruptcy.

Driver’s license--If you lost your license solely because you couldn’t pay court-ordered damages caused in an accident, bankruptcy will allow you to get your license back.

Co-signers--If someone has co-signed a loan with you and you file for bankruptcy, the co-signer may have to pay your debt. If you file a chapter 13, you may be able to protect co-signers, depending upon the terms of your chapter 13 plan.

Can I File Bankruptcy without an Attorney?

Although it may be possible for some people to file a bankruptcy case without an attorney, it is not a step to be taken lightly. The process is difficult and you may lose property or other rights if you do not know the law. It takes patience and careful preparation. Chapter 7 (straight bankruptcy) cases are easier. Very few people have been able to successfully file chapter 13 (debt adjustment) cases on their own.

Document preparation services also known as “typing services” or “paralegal services” involve non-lawyers who offer to prepare bankruptcy forms for a fee. Problems with these services often arise because non-lawyers cannot offer advice on difficult bankruptcy cases and they offer no services once a bankruptcy case has begun. There are also many shady operators in this field who give bad advice and defraud consumers.

In life, cheaper often does not mean better. This is particularly true in a complex and technical area of law like bankruptcy.

What Does It Cost to File for Bankruptcy?

Bankruptcy Court charges a \$299 filing fee for bankruptcy protection under chapter 7 and \$274 for protection under chapter 13, whether single or married.

The attorney fees for a simple chapter 7 case start at \$1,800 but can go higher depending on the complexity of the case. In most chapter 7 cases, the total cost is \$2,100 for both attorney fees and court costs.

Remember: The law often changes. Each case is different. This report is meant to give you general information and not to give you specific legal advice.