

# BANKRUPTCY

## What These Words Mean

*Automatic Stay:* Filing a bankruptcy stops a debtor's creditors from calling them, writing them, repossessing, or foreclosing. All collection actions must stop. The stay may not be automatic for a repeat filer.

*Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA):* Act that added additional requirements for the filing of and/or successful completion of a bankruptcy.

*Credit:* Financial trustworthiness – a person with good credit will be able to get loans in the future; a person with bad credit will not be able to get loans.

*Credit Counseling Agency:* In order to file a bankruptcy under either a Chapter 7 or a Chapter 13, a person must first complete an approved credit counseling class from an approved credit counseling agency. The list of approved credit counseling agencies is available on the court's website. A person can use a certificate of completion from the class for six months.

*Credit Reporting Agency:* A company that tells people who are about to loan you money whether you have paid back loans in the past and whether you pay your bills on time.

*Creditor:* The person to whom you owe a debt.

*Debt:* The amount of money you owe to a creditor.

*Debtor:* A person who declares bankruptcy.

*Discharge:* A court order stating that debtors do not have to pay their dischargeable debts; a debt that is discharged in bankruptcy need not be paid.

*Equity:* The amount that your property is worth over the amount you owe on it; for example, if your car is worth \$5,000 and you owe the bank \$3,000 on it, your equity in the car is \$2,000.

*Exemptions:* Laws that allow a person to keep certain property even though he/she has declared bankruptcy. If a person has not lived in the state of Missouri for the last two years, that person may have to use other state's exemptions or federal exemptions.

*File:* To give a paper to the court. Filing may be done electronically, pursuant to court requirements.

*Financial Management Agency:* To obtain a discharge under either a Chapter 7 or a Chapter 13 bankruptcy, a person must complete an approved financial management class from an approved financial management agency. The list of approved financial management agencies is available on the court's website. A certificate of completion must be filed with the court timely to obtain a discharge.

*Lien:* If a creditor has a lien on a piece of your property and you do not pay off the loan, the creditor can take that property from you.

*Means Test:* To determine whether a person can file a Chapter 7 and how much a person must pay back in a Chapter 13 to unsecured creditors, a means test must be completed on Form B22A for Chapter 7 bankruptcies and Form B22C for Chapter 13 bankruptcies. A statutory formula is used to determine if the debtor's income is above or below the median income.

*Median Income:* Median income is the average monthly income for a household pursuant to Internal Revenue Service guidelines. The list of median family income is available on the court's website, and changes periodically.

*Meeting of Creditors:* Also known as the 341 meeting. The debtor will be examined at a meeting of creditors. Several days before the meeting, a debtor must supply documents to the trustee, including: the most recently filed federal and state income tax returns; 60 days of pay advices counting backwards from when the case was filed; and bank statements for the filing date.

*Plan:* The payment plan that a debtor files in bankruptcy.

*Schedules:* The debtor's list of property with the value of the property, current income, and a list of creditors.

*Trustee:* The person who handles your bankruptcy; the trustee may sell your property in a Chapter 7 proceeding or collect payments from you and pay your creditors in a Chapter 13 proceeding, and conduct the meeting of creditors.

*Venue:* A person cannot file in the Eastern District of Missouri or the Western District of Missouri unless that person has been living in that district for more than 90 days prior to the filing of their bankruptcy.

*Websites:* If you need to find information on credit counseling agencies, financial management agencies, median income, or the filing requirements for a Chapter 7, 11, 12, or 13 bankruptcy, and you are filing in the Western District of Missouri, go to [www.mow.uscourts.gov](http://www.mow.uscourts.gov); if you are filing in the Eastern District of Missouri, go to [www.moeb.uscourts.gov](http://www.moeb.uscourts.gov). Another good informational website is [www.justice.gov/ust/](http://www.justice.gov/ust/).

## **What is Bankruptcy?**

In bankruptcy, a person may restructure or discharge debts. There are two basic types of bankruptcies. In one type, the debtor pays either part or all of the debts under a payment plan over time. In another type, the majority of debtors will receive a discharge without paying creditors or losing property. If the debtor has assets that are not exempt, those assets may be sold, with the money from that sale paid to the creditors and the debts are discharged.

As soon as the debtor files bankruptcy, most creditors must stop trying to collect the money owed to them. An automatic stay goes into effect. The creditor will have to go through the bankruptcy court.

A person is allowed to keep some property and still go through bankruptcy. A person is allowed to keep property pursuant to his or her “exemptions.” In Missouri, the major exemptions are: \$15,000 worth of equity in a house, \$3,000 worth of equity per person in vehicles, \$3,000 worth of equity per person in household goods and furnishings, \$3,000 worth of equity in tools of the trade, 100 percent of unmaturing life insurance policies, \$150,000 in cash surrender in life insurance, and all of certain pensions and retirement benefits.

There are four major forms of bankruptcy. Chapter 7 bankruptcy is a “liquidation,” with non-exempt assets sold and debts discharged. Chapter 13 bankruptcy is a “wage earner payment plan,” with debts paid off over time. Chapter 12 bankruptcy is a payment plan for farmers. Chapter 11 is a payment plan or liquidation for businesses.

It is sometimes possible to avoid bankruptcy through workout arrangements. Usually, both debtors and creditors want to avoid bankruptcy. Debtors and creditors can work together to avoid bankruptcy. Workout arrangements are often handled by your lawyer or groups providing debt counseling.

Bankruptcy will likely have a significant impact on your credit. This means you may not be able to get loans in the future. Credit reporting agencies usually list a Chapter 7 bankruptcy for 10 years and a Chapter 13 bankruptcy for seven years after the payment plan is finished. You have certain rights as to what information is included on your credit report.

## **What is the Bankruptcy Court System?**

The bankruptcy court handles bankruptcy cases. Certain bankruptcy cases also have a trustee. If you have a trustee, the trustee will supervise your case. The trustees are in turn supervised by the Office of the United States Trustee (OUST). Your lawyer will help you complete the paperwork and give you valuable advice in dealing with both the court and the OUST.

## **What is Chapter 7 Bankruptcy?**

Chapter 7 bankruptcy is designed to discharge debt. The trustee will collect all of the property that is not exempt and sell it to pay creditors. After this is done, the debtor will no longer owe the creditors any money. There is a fee to declare Chapter 7 bankruptcy.

Debtors usually keep their houses and cars in Chapter 7, but they must declare their intentions as to the property. 1) A debtor may reaffirm the debt by signing a reaffirmation agreement and continuing to pay the debt as if the bankruptcy had not occurred. A vehicle must be reaffirmed if it is to be kept. 2) A debtor may redeem the debt by paying what the property is worth, not how much is owed against it, in a lump sum one-time payment. Redemption is usually used for household goods, such as computers and furniture. 3) A debtor may surrender the property by returning it to the creditor. If the property is surrendered, the creditor cannot pursue the debtor for any deficiency after a sale of said collateral.

Sometimes, creditors take liens on furniture or household goods to make sure the debtor pays the debt on some other property. The debtor may have these liens removed in bankruptcy so long as they meet the exact definitions of what can be removed. Your lawyer will have to consult current case law to determine whether property falls within the definitions.

Some debts will not be discharged even in bankruptcy. These include debts involving fraud, accidents involving drunken driving, student loans in most situations, certain taxes, alimony and child support. Certain credit card transactions made within 70-90 days of bankruptcy may not be dis-

charged. Also, a person who has enough money to pay back all or most of his debts may not be able to declare Chapter 7 bankruptcy.

## **What is Chapter 13 Bankruptcy?**

Corporations or partnerships may not declare Chapter 13 bankruptcy. The debtor must have a regular source of income, such as wages or salary from employment. A person with debts of more than \$1.1 million secured or \$360,000 unsecured may not file Chapter 13 bankruptcy. These numbers change periodically. There is a fee to declare Chapter 13 bankruptcy.

In Chapter 13 bankruptcy, if a debtor has an income less than the median income for a household of his or her size, then the debtor may propose a payment plan of only 36 months. If a debtor has an income greater than the median income for a household of his or her size, then the debtor must propose a payment plan of 60 months. The amount paid within the plan must be figured: 1) by completing the means test; 2) by making sure the plan pays the debtor's creditors at least as much as the creditors would receive in a Chapter 7 bankruptcy; and 3) by examining the debtor's net income minus the debtor's current monthly expenses to make sure the debtor is using "best efforts" to pay back creditors.

The bankruptcy court must approve the debtor's payment plan. A trustee looks at the debtor's schedules and payment plan. If the court approves the plan, the trustee collects payments from the debtor and pays the creditors. In Chapter 13, the debtor may keep all of his or her property, and may not have to pay their debt in full.

The debtor is not discharged from the debts until the payment plan is finished. More types of debt can be discharged in Chapter 13 than in Chapter 7, but debts for crimes, accidents involving drunken driving and student loans may not be discharged in Chapter 13.

## **What is Chapter 12 Bankruptcy?**

Chapter 12 bankruptcy is a special chapter for "family farmers" with regular income. A "family farmer" is generally a person or business that receives at least half of its income from farming. A family farmer may declare Chapter 12 bankruptcy if the family farmer meets statutory eligibility requirements, subject to then-applicable debt requirements and limits.

Under Chapter 12 bankruptcy, the debtor gives a payment plan to the court and its creditors that shows how it will pay its debts over time. The debtor must pay its creditors at least as much as they would receive in a Chapter 7 bankruptcy.

The payment plan must be approved by the bankruptcy court. A trustee reviews the debtor's schedules and payment plan. If the court approves the debtor's plan, the trustee collects payments from the debtor and pays the

creditors. The debtor will be discharged from the debts when the plan is finished.

## **What is Chapter 11 Bankruptcy?**

Chapter 11 bankruptcy is available to any individual, husband and wife, partnership or corporation. There is a fee to declare Chapter 11 bankruptcy. The debtor is allowed to continue to operate his or her business while working on a plan to restructure debts or sell assets to pay creditors. A Chapter 11 debtor must pay its creditors more than they would receive under a Chapter 7 bankruptcy.

A Chapter 11 plan must be approved by the bankruptcy court. The creditors will have a chance to vote on whether the court should approve the plan.

## **For Legal Advice, See Your Lawyer**

The Missouri Bar offers a free Lawyer Search function, located at [MissouriLawyersHelp.org](http://MissouriLawyersHelp.org). Those seeking representation can use the tool to locate lawyers by practice area, geographic location, and spoken language.

The Missouri Bar or the Office of Chief Disciplinary Counsel cannot provide legal advice or refer you to an attorney. If you would like a referral to an attorney in the Springfield or Greene County area, call (417) 831-2783. The Office of Chief Disciplinary Counsel does not screen the attorneys who are affiliated with this lawyer referral service, and OCDC does not have information on their credentials or abilities.

Hiring a legal professional can be costly, but it is important to remember that you are paying for expertise. If you are unable to afford a lawyer, it might be possible to be represented at a lower rate or on a pro bono basis. In these situations, your quality of representation should not decrease, but your out-of-pocket costs will. The Missouri Bar does not match members of the public with pro bono lawyers, but it maintains a list of available discounted services, which is available at [MissouriLawyersHelp.org](http://MissouriLawyersHelp.org).

Additionally, some matters, such as an uncontested divorce or traffic ticket, may not call for a lawyer at all. The Missouri Bar produces numerous brochures and blog posts – all available at [MissouriLawyersHelp.org](http://MissouriLawyersHelp.org) – that address general legal questions. While they are not a substitute for a hired lawyer, they are helpful for background information on matters and can help you decide if you need to seek representation.

For more information, go to [MissouriLawyersHelp.org](http://MissouriLawyersHelp.org) or call 573-635-4128.