



LEGAL BRIEF BANKRUPTCY

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Bankruptcy is a legal process that gives debtors financial “fresh starts” from burdensome debts. It also involves a process in which debtors repay creditors in an orderly manner to the extent the debtor has any remaining available property.

The decision to file bankruptcy should be carefully considered. It is a federal court proceeding which can affect your legal right to keep or to use your property. Once you start a bankruptcy case, it may be impossible to stop. Generally, personal bankruptcy is considered the debt management tool of last resort because the results are long-lasting and far-reaching. A bankruptcy can potentially stay on your credit report for as much as 10 years, making it difficult to acquire credit, buy a home, get life insurance, or sometimes get a job. Filing for bankruptcy may be the only option for people who intend to pay their bills but simply cannot.

The filing of a petition causes an “automatic stay,” which prevents creditors from collecting debts. Most creditors cannot take any action during an open (unresolved) bankruptcy without the court’s permission. This means that, once a bankruptcy petition is filed, it will stop the following: bill collectors from calling, wages from being garnished, pending civil court proceedings, and, in some cases—at least temporarily, foreclosures and evictions.

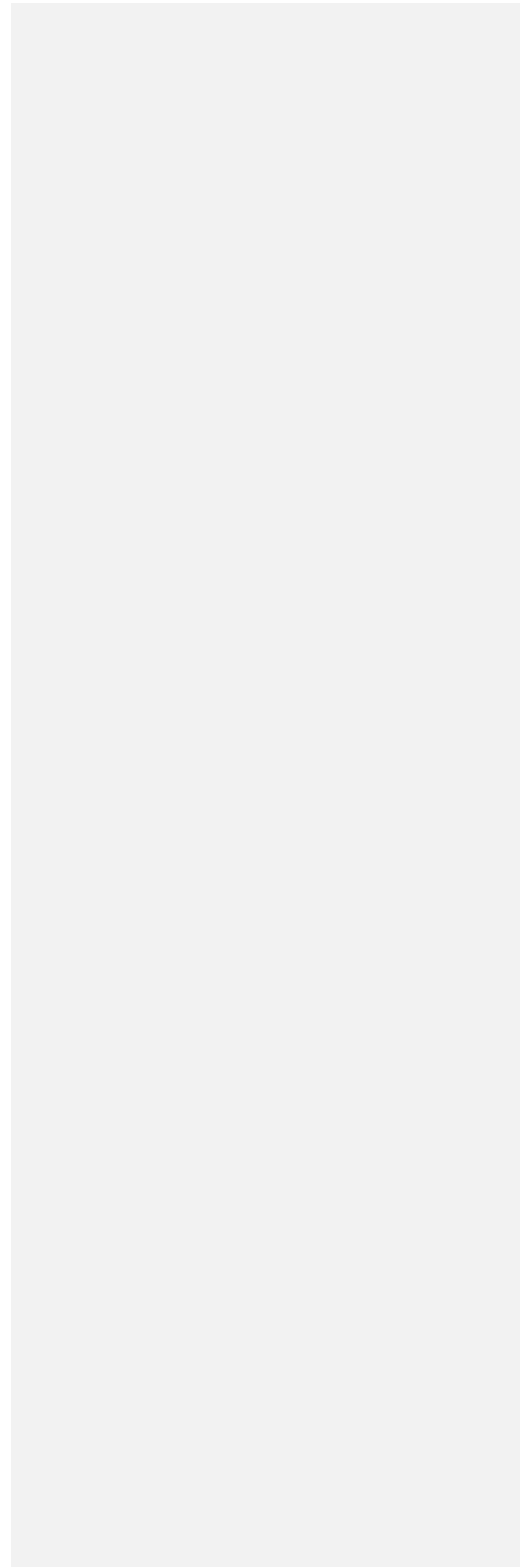
Once a bankruptcy petition is completed, **most** of an individual’s debt is permanently wiped, or “discharged,” which means that creditors cannot collect on the debt.

Legal Assistance attorneys provide limited advice and assistance on bankruptcy. Generally, they may explain what bankruptcy is and refer you to resources on the topic. Because of the limited scope legal assistance attorneys provide on this topic, ***it is strongly suggested that you seek the advice of a civilian bankruptcy attorney if you are contemplating filing for bankruptcy.***

I. PERSONAL BANKRUPTCY OVERVIEW

There are two primary types of personal bankruptcy: **Chapter 13** and **Chapter 7**. Each must be filed in federal bankruptcy court. The fee for filing bankruptcy relief is \$335 for Chapter 7 and \$310 for Chapter 13. Attorney fees are additional and can vary widely.

Chapter 7, often referred to as “liquidating” bankruptcy, cancels most ordinary consumer debt but allows the debtor to keep certain exempt property. (What constitutes exempt property can be found in 11 U.S.C. § 522(b).) This is generally filed by those who are ~~low-~~
~~income~~
~~low-income~~ earners with few assets to protect. Chapter 7 is designed primarily to help eliminate overwhelming debt. If you filed a Chapter 7 petition in the past and received a discharge, you must wait eight years to file another Chapter 7 and four years to file a Chapter



Chapter 13, often referred to as “reorganization” bankruptcy, allows an individual with a regular income to develop a plan to repay all or part of their debts, through a ~~3-5 year~~ 3-5-year repayment plan. Chapter 13 allows the debtor to keep some or all of his/her property, but the debtor must make regular payments to the trustee over the designated time period, thus requiring a fixed budget for a lengthy amount of time. From the payments the debtor makes to the trustee, the trustee will then pay the debtor’s creditors. The property that the debtor is allowed to keep is protected as long as the debtor continues to make payments in accordance with the repayment plan. If you filed a Chapter 13 petition in the past and received a discharge, you must wait six years to file a Chapter 7 and two years to file another Chapter 13.

Foreclosure and Vehicle Repossessions: A Chapter 7 bankruptcy will not permanently stop a pending foreclosure or car repossession. In order to keep either your house or your car, you must continue to make your regular payments. Chapter 7 can be helpful to car owners who want to stop paying a car loan and surrender the car and helps homeowners by eliminating the deficiency balance due on their mortgages after foreclosure.

Types of Debts: Bankruptcy does not discharge all debts. There are several types of debts that are protected by law and will not be discharged in bankruptcy.

Dischargeable debts:

- Credit card balances
- Medical bills
- Payday loans
- Personal loans
- Mortgages (*You must keep paying if you want to keep the house)
- Car loans (*You must keep paying if you want to keep the car)
- Most court judgments (i.e. lawsuits)

Non-dischargeable debts:

- Child support
- Spousal support
- Most IRS taxes
- Student loans
- Court-ordered restitution
- Court judgments for injury or death as a result of a DUI
- Debts incurred by fraud

II. BANKRUPTCY FOR AIR FORCE MEMBERS

The Air Force position concerning bankruptcy petitions filed by military personnel is one of strict neutrality. Air Force members, like other private citizens, have a statutory right to invoke the procedures of the Bankruptcy Act. Accordingly, no adverse action may be taken against a member of the Air Force either for filing a petition for bankruptcy, by reason of a discharge in bankruptcy, or as an individual seeking to pay his debts from future earnings under the Act.

Commanders may take adverse action against a member, however, if the underlying circumstances of a case involve mismanagement of personal affairs or dishonorable failure to

pay just debts. However, neither the filing of a petition for bankruptcy nor a discharge in bankruptcy can, by itself, be considered “mismanagement” or “dishonorable.”

Will Bankruptcy Affect My Security Clearance?

The status of your security clearance can be affected, but it is not automatic. The outcome depends on the circumstances that led up to the bankruptcy and a number of other factors, such as your job performance and relationship with your chain of command. The security section will weigh whether the bankruptcy was caused primarily by an unexpected event, such as medical bills following a serious accident, or by financial irresponsibility. The security section may also consider the recommendations and comments of your chain of command and co-workers. The amount of your unpaid debts, by itself, may jeopardize your clearance, even if you don’t file bankruptcy. In that sense, not filing for bankruptcy may make you more of a security risk due to the size of your outstanding debts. By the same token, using a government-approved means of dealing with your debts may actually be viewed as an indication of your level of financial responsibility. There is no hard and fast answer here, with one exception: it never hurts to have a good reputation with your co-workers and your chain of command.

III. NEVADA EXEMPTION STATUTE

Nevada residents who file bankruptcy generally use the Nevada exemptions; however, special rules apply as to which state or federal exemptions may be used if an individual’s domicile has not been continuously located in Nevada for the two-year period prior to filing a bankruptcy petition. Exempt property is not subject to the claims of unsecured creditors and may be kept by an individual, subject to the rights of secured creditors and lien holders. Please note that not all of an individual’s property may have a matching exemption. Also, an individual must own an interest in the property to claim the property as exempt. [See Nevada Revised Statutes Section 21.090](#) for property exempt from execution.

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IV. REFERENCES

- *Bankruptcy*, United States Courts, <http://www.uscourts.gov/services-forms/bankruptcy>.
- *Bankruptcy Basics*, United States Courts, <http://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics>.
- *Bankruptcy Basics and Resources*, United States Bankruptcy Court District of Nevada, <http://www.nvb.uscourts.gov/filing/bankruptcy-basics>.
- *Bankruptcy Resources*, Legal Aid Center of Southern Nevada, <https://www.lacsn.org/practice-areas/consumer-rights-project/bankruptcy/23-considering-bankruptcy>.
- The Judge Advocate General’s School, US Army, Publication JA 265, *Deskbook: Consumer Law* (2015)

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