



Deciding Whether Bankruptcy is Right for You

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This packet provides general legal information for those residing in Washington. It is not a substitute for individualized legal advice.

1. What is Chapter 7 bankruptcy?

Personal bankruptcy is an opportunity for a fresh start if you are mired in debt you are unable to repay. When you file for bankruptcy, many (but not all) of your assets will be liquidated, or sold, to pay your creditors, and many of your remaining debts will be erased. There is a heavy stigma in the United States against filing for bankruptcy, but in many cases that stigma is undeserved; while bankruptcy will undoubtedly result in financial challenges in the short term, in the long term many filers are significantly better off. Many even see credit score increases or are able to purchase homes. Simply put, bankruptcy is a financial second chance if you owe more than you can afford to pay.

2. What kinds of debts are erased in bankruptcy?

Bankruptcy erases most types of debts, but not all. The following types of debts are typically erased, or discharged, during bankruptcy:

- Credit card debt
- Medical bills
- Personal loans
- Civil judgments (except for fraud)
- Past-due rent
- Past-due utility bills
- Business debts
- Some older tax debts

On the other hand, bankruptcy **does not** erase child support, recent tax debt, or student loans. If the majority of your debt is of a type that is not dischargeable in bankruptcy, you may want to consider other options. On the other hand, it may still be beneficial if erasing your

dischargeable debt will help you be more able to pay what remains. There are many exceptions to discharge that you should speak with an experienced attorney about.

3. Are there alternatives to bankruptcy that I should consider?

Before you decide to file, there are some alternatives you may want to consider.

Negotiate with Creditors

If you do have some assets and income, you could try to negotiate with your creditors and work out a payment plan that you can afford. This is an especially good option if you owe a lot of money to one creditor, like a large medical bill. In most cases, creditors would rather get the entire amount you owe them, even if it takes longer, than a smaller amount in a bankruptcy proceeding that they would have to share with other creditors.

Debt Settlement

If you have debts that are in **default**, meaning that you are no longer making any payments on them at all, your creditors may agree to a **debt settlement**. This is an agreement with your creditors to accept a partial payment in exchange for forgiving the remainder of the debt. This is because they know that if you are in default and file for bankruptcy, they face not getting anything at all. Debt settlements will impact your future credit; if your debt is settled and forgiven, the amount you failed to pay will be reported to credit rating agencies and may appear on your credit report for up to seven years. The amount that was forgiven will also count as income and must be reported on your next tax return, meaning that you will likely have to pay taxes on it.

Debt Consolidation

If you have many debts, you might also be able to **consolidate** them into one larger debt with a more favorable interest rate. To do this, you will need access to a loan or line of credit that will allow you to pay off all of your existing debts. The easiest way to do this is to borrow money against your house, although you may also be able to use a credit card or get a personal loan from a bank. **Bear in mind that if you borrow against your house and are unable to make your payments, you risk losing your house.** You should meet with a financial advisor or credit counselor before you decide to consolidate.

Sell Assets

If you own anything of value that you are willing to sell, you may be able to pay down your debt enough to avoid filing for bankruptcy. Remember that if you file most of your assets will be liquidated anyway, so if you can sell them yourself to pay what you owe, you can avoid the bankruptcy process and related implications.

Do Nothing

Though it may seem counter-intuitive, for some people, the best action is no action at all. If you have limited income and assets and don't anticipate that your circumstances will change, then you are considered **judgment-proof**, meaning that your creditors won't be able to get anything from you even if you do file for bankruptcy. In the vast majority of cases, you cannot be thrown in jail for failing to pay your debts. Your creditors also cannot take you're your basic living essentials such as clothing, household furnishings, personal effects, or Social Security, unemployment, or public assistance benefits. Bear in mind that if your debts are secured by collateral (for instance, if you have defaulted on your car loan), your creditor can repossess the collateral.

4. Besides discharging my debts, what are the other consequences of filing for bankruptcy?

Other than liquidating your property, the primary impact of filing for bankruptcy is damage to your credit. Bankruptcies are considered negative information on your credit report and may make lenders reluctant to extend loans to you in the future or to offer you hire interest rates or other unfavorable terms. This negative information can remain on your credit report for up to a decade, but the impact will lessen over time. If you ever want to take out a loan in the future, it is important to begin rebuilding your credit right away by paying your bills on time.

5. I'm getting a lot of phone calls from debt collectors. Is bankruptcy my only option?

Even if you have debts that have been referred to collection agencies, there are rules that debt collectors must follow when they are attempting to collect on your debt. If you are getting lots of calls from debt collectors, there may be ways to get them to stop without filing for bankruptcy.

When a debt collector first receives your debt, **before** they call you on the phone, they must send you a written notice stating the collection agency's name and address, the amount and breakdown of the debt, and the name of the creditor you owe. It will also contain information about your 30-day window to dispute the debt (see below for more information). If a debt collector calls you before you receive this written notice, you should insist they contact you in writing. **Every communication from a debt collector must clearly state that they are trying to collect a debt, and that all information obtained will be used for that purpose.**

If you don't think the debt is valid, you have 30 days to notify the collection agency in writing. Some reasons to dispute the debt might be if you don't think you actually owe it, you already paid it, you believe collection is **time-barred** (see below for more information), or you were hospitalized and told the hospital you could not pay, in which case they should have considered payment under their charitable care policy. If you dispute the debt, the collection agency is

required to send you written verification of the debt. If you do not respond within 30 days, the agency will assume the debt is valid.

6. When is a debt time-barred?

When a credit agency receives a debt, they have a limited window of time (called the statute of limitations) during which they can start a legal claim against you. The specific amount of time varies based on the type of debt, but most claims based on written contracts in Washington must be started within six years of the date of default (the date you stopped paying). If the collection agency does not open their claim within that window, it is time-barred. They have missed their chance and cannot bring the claim.

However: if you make a payment on the account within the statute of limitations, the time period restarts. For example, suppose you defaulted on your credit card. Your first missed payment was five years ago, on November 11, 2016, and you haven't made a payment since. The statute of limitations on credit card debt is six years, so the collection agency has until November 11, 2022 to begin a legal claim. Now suppose that you make a payment on this debt on December 1, 2021. **If you do this, the six-year clock will reset.** Now the collection agency has six years from the date of the **next** default to file their suit.

Once the statute of limitations is expired, collection agencies can still attempt to collect the debt, but they cannot sue you to collect it. Agencies know this, and occasionally they will attempt to deliberately restart the statute of limitations on a debt by encouraging you to make a payment on an old debt. For this reason, it is very important to be aware of the statute of limitations on your debts. If it's been several years since you made a payment, make sure the statute of limitations has not expired. If it hasn't, and you are still unable to regularly make payments on your debt, you probably should not make one now, even if you feel like it's the right thing to do.

7. What are debt collectors allowed to do while they are attempting to collect a debt from me?

There are laws governing the behavior of debt collectors even while they are attempting to collect a valid debt. State and federal law both prohibit debt collectors from harassing you or misleading you with false statements. Here are some examples of things debt collectors **may not** do while attempting to collect a debt:

- Threaten to tell your neighbors or employers about the debt
- Call you between 9 p.m. and 7:30 a.m.
- Threaten you with illegal action, such as taking your Social Security check or other exempt property, or threatening you with arrest or jail time
- Harass or intimidate you or anyone in your family
- Communicate with you or your spouse more than three times in one week

- Send you notices that are deliberately made to look like government documents
- Ask for a post-dated check or threaten you with criminal prosecution

Keep records of all of the communications you receive from debt collector. If a debt collector is engaging in behavior that you think is illegal, or attempts to sue you on a time-barred debt, you should contact a lawyer.

8. Can I make a collection agency stop contacting me?

Usually, yes. Under the Fair Debt Collection Practices Act (FDCPA) you can notify the collection agency in writing to stop contacting you even about a valid debt. To do this, you must send them a written letter via the U.S. Postal Service including the following information:

- Your name and address
- The date
- The account number on the agency's collection statement, if you have it
- A statement that you are exercising your rights under the FDCPA
- A statement that you want the agency to stop calling or writing or both

After receiving this letter, the agency can only communicate with you again to tell you that they are going to stop attempting to collect your debt or that they are taking action against you, such as filing a lawsuit. If they contact you again, they have violated the FDCPA. You can sue the agency for money damages and attorney's fees.

Note that this will not stop the agency from attempting to collect your debt. Your debt is still valid, and you are still responsible for it as long as it is not time-barred. This only stops the agency from calling you and sending you letters about it.