

Frequently Asked Questions

1. Will I lose my property if I file bankruptcy?

Although you may have heard of people losing property because they filed bankruptcy, in most cases the individual filing bankruptcy loses no property at all. This is because state Exemption laws protect a person's basic property, and other property like homes and vehicles are typically have a bank lien on them and there is little equity in the asset. Exemption laws protect your basic property such as clothing, furniture, vehicles, homes, etc., to a certain limit. So, unless you have more property than the state exemption laws allow, your property is protected. One of the first duties of the bankruptcy attorney is to review a list of the property you own to determine if any of the property is at risk. The value of a lawyer's experience in this area of bankruptcy law is absolutely essential.

Now, if you own too much property you may indeed lose some of your property. If you have more property than the court protects the loss of property is a reality and a bankruptcy Trustee may in fact sell some of your property to repay creditors. However, this is a fact that must be determined before you ever file the case. In most instances where a person loses property in a bankruptcy case, that fact is understood and thoroughly discussed with an attorney before the case is filed. Yes, you can lose some property when you file bankruptcy. This is why is extremely important to give your attorney a complete list of the property you own so that a proper evaluation of the risk to your property may be prepared.

Of course, you may be more at risk of losing property if you don't file bankruptcy since creditors can obtain court judgments and garnish your bank accounts and wages or have the Sheriff seize your property. The whole idea of bankruptcy is to protect property.

2. When does creditor harassment stop?

Immediately upon filing the bankruptcy petition with the Bankruptcy Court. In addition, as soon as you retain our firm to represent your legal interests you will able to refer all future creditor calls to your bankruptcy attorney.

3. Does my spouse have to file?

No. Being married does not mean your spouse has to file bankruptcy too. The better question is whether your spouse should file the case with you. This largely depends on whether your spouse is jointly liable for the debts. If your spouse is a co-signer on the majority of your debts, then it may make sense for both spouses to file a joint case. However, if your spouse is not on any significant portion of your debts then there is no reason to ruin their credit in bankruptcy and your spouse should not file. At Sam Turco Law Offices, there is no additional charge for a joint case versus an individual case.

4. Who knows about my bankruptcy case?

The only parties that receive notice of the bankruptcy are your creditors, the bankruptcy court, your co-signers, and the IRS. Your employer will not be notified of the bankruptcy unless your employer is also a creditor or your Chapter 13 payment is garnished from a paycheck. However, the bankruptcy is public record, so anyone who wants to find out could determine that you had filed.

5. Will I be able to rent after I file bankruptcy?

Bankruptcy is a part of your credit report, and some landlords will refuse to rent to you if a bankruptcy appears on your report. Most landlords, however, will permit you to lease a home or apartment if the bankruptcy has been discharged. Larger leasing companies tend to have stricter policies regarding leasing to individuals with poor credit. Probably the single biggest factor in leasing is whether you defaulted on prior lease agreements with other landlords or whether you were ever evicted.

6. How do I know if I should file bankruptcy?

*Are you being sued?

A bankruptcy will stop a lawsuit immediately and prevent your creditors from placing a lien on your home or garnishing your wages and bank accounts.

*Is your mortgage company foreclosing or is your car being repossessed?

Chapter 13 bankruptcy may prevent the foreclosure action or repossession from proceeding and allow you to consolidate your mortgage arrears or automobile balance and make payments on those debts over time through a payment plan.

*Do you see light at the end of the tunnel?

Without bankruptcy, do you really see yourself getting out of debt? Not just making the regular payment and being “current” on your bills, but really becoming debt free. One of

the most important things you need to do before filing bankruptcy is to figure out how much per month (and how much per paycheck) you must pay to become debt free in the next 5 to 7 years. If the payment is too much, then bankruptcy might be the better choice. Fortunately, before you are allowed to file bankruptcy you are required to take a Credit Counseling course to help you determine how much you must pay to avoid bankruptcy.

Some people can avoid bankruptcy by selling assets or downsizing their house or vehicles. If you have, for example, \$30,000 of credit card debt and you could reduce the monthly housing expense from \$2,000 per month to \$1,200 per month, then it appears that you have a non-bankruptcy alternative. We believe in making honest assessments of your bankruptcy and non-bankruptcy alternatives so you can make better decisions about your financial situation.

8. How do I choose a bankruptcy attorney?

Whether you are seeking a good bankruptcy attorney, carpenter, dentist, doctor, or mechanic, there simply is no substitute for experience. You want to be advised by someone who has handled cases just like yours over and over again. Bankruptcy law is a highly specialized area of law with many complicated rules and even its own court system. You do not want your advice from an attorney who knows a little bit about a lot of different areas of law, but not a lot about bankruptcy. When you call a bankruptcy attorney for information regarding bankruptcy, ask them exactly how many bankruptcies their firm has done. Sam Turco Law Offices has represented thousands of clients in Chapter 7 and 13 cases—we've seen your case before, over and over again.

If you can find a law firm with the same level of experience then compare their legal fees to ours. Do they quote you one simple flat fee in Chapter 7, or is it a complicated system of extra fees. One of our local competitors was charging more for cases with numerous creditors, an extra \$100 for each lawsuit you had, and an extra \$100 for each loan you reaffirmed. So, even though their 'base fee' was similar, in reality their customers were paying about \$300 to \$500 more for the same service. We consider this deceptive pricing and that is why **our firm is committed to an uncompromised Flat Fee in Chapter 7 cases.**

We insist on obtaining a credit bureau report on every case we file, and our bankruptcy software pulls a report designed especially for bankruptcy cases. Quite honestly, if your attorney does not pull a report that is automatically incorporated into the bankruptcy petition, they simply don't know or care about what they are doing. There are always items on your credit report that you are unaware of, and it is necessary to pull reports to ensure that all possible creditors are listed. How can you get better credit if you do not even know what is on the report. Quality in every step is a standard we strive to achieve.

Our attorneys will provide you with an estimated price quote right over the phone. Beware of any attorney who refuses to give you a fee quote. Ask them if there is an extra

charge for each lawsuit filed against you and each Reaffirmation Agreement you sign with creditors. Ask them if the court fee is included in their quote (\$299 for Chapter 7 and \$274 in Chapter 13). Does their fee include a credit report?

Some attorneys charge fees of \$2,000 or more for an uncomplicated Chapter 7 bankruptcy. Our Chapter 7 fees, including the \$299 court costs, credit reports, judgment searches, reaffirmation agreements—in short, including everything—begin at \$1,100.

9. Can I discharge student loans or tax debts?

Until October 1998, student loans were discharged through Chapter 7 bankruptcy if the loan was in “repayment status” for more than seven years prior to the date of filing bankruptcy. In October 1998, a new law into effect that prevented student loans from being discharge unless the bankruptcy court finds an undue hardship exists. Generally speaking, it is very difficult to discharge student loans in bankruptcy and a special petition must be filed in the bankruptcy case to request such relief. It does happen, but not very often. There must be some substantial long-term change—like a personal injury or death in the family—to qualify for such relief.

Tax debts are dischargeable in some cases. This is very tricky. Individual income tax debts are generally subject to discharge only if you file bankruptcy more than three years after you file an individual tax return. Payroll taxes are not dischargeable. If your return is filed late, the taxes are generally discharged only if you file bankruptcy more than two years after filing an individual income tax return. This area is very, very complicated, and this is where you need a very experienced bankruptcy professional to carefully review the facts of the tax debt. Filing bankruptcy one day too soon can result in none of the tax debt being discharged. It is advisable that you obtain a written tax transcript of your tax debts from the IRS by filing Form 4506 (available at IRS.gov and on this website as well) to obtain the date of assessment for each tax.

10. Can I get credit after filing bankruptcy?

The whole idea of bankruptcy is to provide a fresh start so that you can rebuild your credit and purchase homes, cars, or finance a college education. The idea is to do more good than harm. Very frequently a person’s credit is already destroyed and bankruptcy actually helps them to “clean up” the credit woes so they can get a loan. Bankruptcy will be reported to your credit report for up to 10 years, you can begin to reestablish your credit immediately. The term “credit” is or “credit score” is really a statement of your ability to repay a loan. If you are better able to repay a loan after bankruptcy, doesn’t it make sense that bankruptcy actually may improve your credit?

Banks consider many factors while determining whether to loan you money, but a key factor is your debt-to-income ratio. We suggest you visit a website called MyFico.com to learn more about how your credit score is determined. About one-third of your score has

to do with your income-to-debt ratio. Since bankruptcy eliminates debt, it actually helps this item of the credit score.

Obviously, bankruptcy does damage to a person's credit, and it should not be filed for a small amount of debt. Common sense tells you that by filing bankruptcy you are hurting your credit. But if you have a debt situation that is not improving then sometimes it makes sense to "take the hit" of bankruptcy so that you can begin a time of building positive credit history. When a doctor performs surgery he or she is cutting your body and hurting the body with the goal of fixing the underlying cause of a greater ailment. Bankruptcy is somewhat similar.

Ask yourself this question. If you were a banker, would you make a loan to someone behind on their bills, who is being sued and maybe their wages are being garnished, or would you rather make a loan to someone who finished bankruptcy and is completely debt free?

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