

The September, 1998 Twelve Most Asked Questions Regarding Bankruptcy

1. Q: Will I lose my home if I file Bankruptcy?

A: You will not lose your home if you file the right type of Bankruptcy. If you file a Chapter 7, you will not lose your home if you're current on the mortgage, and your house has equity of under \$16,150 (\$32,300) for a married couple.

Example: If a married couple has a home worth \$100,000 and with a mortgage payoff of \$60,000 and they are current, they can keep their home. The formula is as follows-\$100,000 – 10% cost of sale (\$10,000) minus \$60,000 = \$30,000. Since there is a \$32,300 exemption for married couples, they would not lose their home.

If on the other hand, you are behind on your mortgage payments, you must do a Chapter 13 to stop the foreclosure and cure the arrears.

If your home has equity over \$32,300 you will not lose your home if you file a Chapter 13 and pay back unsecured creditors what they would receive in a liquidation under Chapter 7.

Please note, you must consider all the circumstances before deciding what bankruptcy is best for you.

2. Q: How can Bankruptcy help me if I'm a renter?

A: Chapter 13 Bankruptcy stays any eviction proceeding and allows you to catch up on back rent as long as it is done promptly (usually under 2 years, but there is no magic number).

However, Judges differ on this process after your landlord has obtained a Judgment of Possession. Some Judges allow the process a lease cure until the Client is actually locked out. Other Judges feel that once a Judgment of Possession is entered there is no lease to cure; however, that legal issue will only come up if you default on future rent payments and the landlord asks the Court to Lift the Bankruptcy Stay to allow the State Court eviction process to proceed.

If you comply with the plan, things should work out since most landlords only want to get paid.

If you want to move, but need time to get situated a Chapter 7 would allow you to stay in the dwelling for approximately 2 months, but you will be responsible for any rent due subsequent to the filing date.

Chapter 13 will allow you to save the dwelling while Chapter 7 will wipe out the debt and give you a fresh start.

3. Q. What can I do if a Creditor already obtained a judgment?

A. Several clients think that once a judgment is entered they cannot do anything to stop seizure of property or wage garnishment.

The only problem may be if you own real estate since a judgment affixes to real estate once it is docketed. However, under bankruptcy law, you may be able to wipe out the lien under certain circumstances.

Otherwise the bankruptcy immediately stays the judgment and stops wage garnishment or seizure of property even if the wage garnishment has been in effect for months.

4. Q. What can I do to restore my electricity since I can't afford to pay what I owe them?

A. Section 366 of the bankruptcy code allows you to get utilities restored so long as you provide the utility company adequate assurance within twenty (20) days of filing of the bankruptcy. Adequate assurance usually means a deposit which is equivalent to the average of the last 2 bills. However, this number isn't set in stone, Beware, if you fall behind in your utilities subsequent to the bankruptcy filing, you are responsible for that debt and the utility may be able to shut you off for non-payment of future utility bills.

5. Q. Can I get my license back if it is only suspended for surcharges or fines?

A. Presently, the Judges in the Trenton and Camden Vicinages will require one's license to be reinstated after filing a Chapter 13 Bankruptcy. However, the Division of Motor Vehicles is taking the position that if their debt isn't paid in full, they are not bound by the Bankruptcy Discharge and can suspend your license at a later point in time.

However, if you are before Judge Tuohey, in Newark, which is not likely for the huge majority of my clients; it is his position that the Bankruptcy Court has no jurisdiction to restore your license based on the doctrine of sovereign immunity; however, one can also use the bankruptcy law in State Court to get a State Judge to restore your license, if other Judges followed Judge Tuohey's opinion in In Re Burkhardt.

Please note that Chapter 7 will not help you get back your license since motor vehicle surcharges and fines are not dischargeable in Chapter 7 based on

In Re Kent, therefore my advise to you is to file Chapter 13 if you're license is suspended solely for motor vehicle surcharges or fines.

6. Q. I'm 2 payments behind on my car payments and the bank has threatened to repossess the vehicle any minute. What can I do to save my car?

A. Chapter 13 will allow you to save the car and prevent repossession. (My office would fax the bankruptcy papers to the creditor immediately after filing).

Under the bankruptcy code, you can cure the 2 payments you are behind in the bankruptcy and resume car payments the month following the filing of the petition.

Or you can avoid making car payments to the bank directly by paying off the balance of the vehicle plus interest over the life of the bankruptcy plan which can go 3 to 5 years.

Finally, the Bankruptcy Code allows you to cram down or pay the replacement value of the vehicle plus interest over the life of the plan.

Currently there is a dispute whether replacement value is retail or wholesale values. Therefore, I advise my clients if they are attempting to cram down the vehicle to get some type of detailed appraisal of the value of the vehicle or the bank will win and get retail value based on the NADA book value.

Please note, even if you're vehicle is repossessed you can get back the vehicle after filing Chapter 13. However, this is the harder way to go since some banks make you go to Court to get back the vehicle.

Please note, in any case dealing with a vehicle that is financed, you must have complete insurance coverage and get me the name of the auto insurance agent, policy number and phone number of the agent to verify the vehicle is insured.

Finally, if you are behind on a leased vehicle, you must file the bankruptcy petition before the vehicle is repossessed or else you will not be able to cure the lease arrears.

Also, with a lease you can only put the arrears through the Chapter 13 plan since you can't pay off the balance of a lease or cram down a leased vehicle under the bankruptcy code.

7. Q. My boyfriend and I live together and have some joint bills. I don't work and have no property except for a new model car which the creditor is threatening to seize after he gets a judgment. How can I protect myself and my boyfriend from having his wages garnished?

A. If you were married you could file a joint petition, but unmarried people cannot file a joint petition. However, Section 1301 creates a co-debtor stay for consumer debt. Thus, if your boyfriend files a Chapter 13 Bankruptcy and pays 100% of the joint debt then creditors cannot come after you.

This provision also applies to joint debts with any friend or relative so that any cosigner is protected by Section 1301 of the bankruptcy code.

Finally, the bankruptcy filing protects your boyfriend from having his wages garnished and stays any subsequent legal proceedings against you or your boyfriend. *Please note, the co-debtor stay is limited solely to consumer loans. Thus, if you have joint business loans Section 1301 will not help you.

8. Q. I just got paid last Friday and saw that the IRS seized \$500 from my paycheck which has now set me behind on both mortgage and car payments. What can I do?

A. Chapter 13 will do several beneficial things for you:

It will stop the IRS from seizing any other property. My office would immediately fax a copy of the petition to IRS Special Procedures so the IRS is on notice of the bankruptcy stay.

If the tax liability is over 3 years, the general rule of thumb is that said tax debt is dischargeable. However, if the IRS has a secured debt on real estate or other personal property that could change the analysis.

On many occasions after reviewing the Internal Revenue Services claim, I file a Motion to Reclassify the claim to fix the IRS' claim and to save money for my clients.

Please note, certain taxes such as trust taxes or personal responsibility taxes can never be discharged in bankruptcy even if they are over 3 years old.

Therefore, each case with tax liability must be examined on a case by case basis.

However, the main reason to file bankruptcy is to stop the IRS from seizing your property.

In addition since the IRS put you behind on your mortgage and car

payment, the Chapter 13 helps you reorganize those back bills.

9. Q. Will I lose any property if I file Bankruptcy?

A. To answer this question, you must understand that Congress provides exemptions for all types of property. Only if you are way over the allowed exemptions and file Chapter 7 would you lose property. If you have too much equity in your home or car and have substantial personal property, Chapter 13 will protect all your property.

The exemptions are as follows:

Real estate	\$16,150
Jewelry	\$ 1,075
Automobile	\$ 2,575
Personal Injury Claim	\$16,150
Household Goods Supplies Furnishings	
Wild Card Exemptions	\$

For example if you bought a house in 1950 for \$10,000 and its worth \$60,000 today, free and clear, you do not want to file Chapter 7 Bankruptcy since you would lose the home plus your \$11,000 certificate of deposit.

The following is a Chapter 7 Trustees liquidation analysis which creditors would have to received in Chapter 13.

FMV \$60,000 - \$6,000 Cost of Sale - \$10,120 Capital Gains - \$16, 150 exemptions = \$27,730. In addition, you can exempt the Certificate of Deposit which leave you with non-exempt equity in the CD and \$27,730 non-exempt equity in the home.

Therefore, creditors would have to get a minimum of \$700.10 per month for 5 years in Chapter 13 or else the Trustee would sell the home and Certificate of Deposit in Chapter 7 assuming you had at least \$37,805 in unsecured debt. If you only have \$10,000 in debt then your payment would be reduced to anywhere from \$309 for 3 years to \$186 for 5 years depending on your income and expenses,

Please note, Chapter 7's goal is to help honest people get a fresh start; however if you have too much property which is non-exempt you want to file Chapter 13 so you don't lose any property.

10. Q. In 1994, I filed a Chapter 7 and got a discharge. Now, I'm behind on my mortgage. Can I file bankruptcy again?

A. Currently, unless the new bankruptcy bill changes the law, one is only prevented from filing 2 Chapter 7 within 6 years of the discharge.

However, there is no prohibition on filing a Chapter 13 after a discharge in Chapter 7 or a dismissal for a previous Chapter 13 as long as there is change of circumstances.

Thus, if you are behind on your mortgage payment, you can file a Chapter 13 and get 3 to 5 years to cure the arrears.

11.Q. I filed bankruptcy 2 years ago and now find that my house is listed for sheriff sale next week. However, I have been paying the Trustee regularly and don't know what to do?

A. Evidently, in order for the bank to proceed with sheriff's sale, the automatic stay must have been lifted due to failure to pay post petition mortgage payments.

In light of the fact that you currently are in Chapter 13, you are prohibited from filing another case since you have a bankruptcy case pending.

However, if you have a relative who is a cosigner on the mortgage or deed, they could file a Chapter 13 to stop the sheriff sale and save the house.

Also, even if your spouse isn't on the deed or mortgage, he can file Chapter 13 to stop the sheriff sale.

12.Q. Can I still file bankruptcy if my sheriff sale is two days from now?

A. Yes, Chapter 13 will definitely allow you to stop the sheriff sale if your bankruptcy petition is filed before the sheriff sale.

Currently, 3 out of 8 Judges in New Jersey will allow you to reinstate the mortgage even if you file after the sheriff sale as long as the deed has not been delivered to the bidder.

Please note, that if you file the Chapter 13 within ten (10) days of the sheriff sale, Section 108 of the bankruptcy code allows you to redeem or payoff the mortgage within sixty days of the bankruptcy filing.

Thus, to protect yourself you should definitely file before the sale.

If you file after the sheriff sale, before the transfer of the deed, you may be able to cure the arrears and reinstate the mortgage if you get 3 Judges: if you get the Judges that do not allow you to cure subsequent to sheriff sale, then you have a 60 day redemption period to payoff the mortgage balance.

If you have any questions on these lifestyle issues always feel free to call.

LET ME ANSWER ALL YOUR LEGAL QUESTIONS

As my law practice continues to grow, I hope to help you in all areas of the law where I have helped my other clients. Remember, even if I am not familiar with a specific area of the law, I work with other lawyers who are well qualified to handle these matters. Therefore, if you have any question on any legal matter whatsoever, please ask me about it.

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I sincerely appreciate all the referrals from so many of you over the past several years. Thank you for your continued confidence and good will.

If you would like me to speak at your organization or place of worship, feel free to contact me.