Filing Bankruptcy: General Information

The Big Picture

The Big Picture when it comes to Bankruptcy is this: the person or entity that owes money and needs relief from creditors (the "debtor") is making a deal of sorts with the Federal Government for protection. In this deal, the debtor gives up certain assets and information, and in return the Federal Government steps in to offer protection like no other. In essence, Bankruptcy is that simple: you, the debtor, give your information to your Attorney, and the system set up by the U.S. Bankruptcy Code ("Code") does the rest. With that said, let's take a look at some other aspects of Bankruptcy with which you may or may not already be familiar.

Chapters

Bankruptcy wipes out most, but not necessarily all, of the obligations identified by the debtor. The various types of Bankruptcy relief available are contained in various chapters of the Code. There are 2 main kinds of protection available to individuals:

Chapter 7	liquidation
Chapter 13	reorganization

While individuals may also be able to file Chapter 11, due to the complexity and expense of that type of Bankruptcy it is generally used only by businesses or by individuals whose debts are excessive. Individuals engaged in farming may also be eligible for relief under Chapter 12.

Creditors

There are 2 kinds of creditors in Bankruptcy:

- secured
- unsecured

A **secured** creditor has the right to repossess specific property if not paid. Examples of assets that are usually subject to secured loans are:

- Cars
- Furniture
- Appliances
- Jewelry
- Homes

Even in Bankruptcy these creditors are entitled to the return of their property if they have not been paid.

An **unsecured** creditor has no right to the return of specific property, no matter how much is owed. Examples of unsecured creditors include

- Visa/MasterCard/American Express/Discover
- Medical bills
- Utility bills
- Most (not all) department store charge cards

Debts

Debts fall into one of 2 additional categories;

- Dischargeable
- Non-dischargeable

A **dischargeable** debt is one that can be eliminated in Chapter 7. This would include most unsecured debts.

A **non-dischargeable** debt is generally one that is secured by property or is entitled to special treatment, such as alimony, child support, certain kinds of taxes, and student loans. While they cannot be discharged in most cases, these debts must still be listed in a debtor's Bankruptcy petition and schedules.

NOTE: Even dischargeable debts can be rendered non-dischargeable if you fail to disclose them on your petition and schedules. At the request of a creditor, the Court may also exclude from your discharge debts resulting from loans you received by giving a lender a false financial statement or those arising from fraud, embezzlement, driving under the influence, larceny, or certain other willful or malicious acts.

Exemptions

Bankruptcy requires a debtor to list not only what he owes, but also what he owns; the reason for this is that one can only keep certain things in Chapter 7. The things that one is allowed to keep are called **exemptions**. The most common exemptions in Illinois include:

- Up to $7,500 worth of equity in a piece of real estate in which the debtor lives. Equity is the difference between what something is presently worth and what is owed on it
- Up to $1,200 worth of equity in one motor vehicle
- Necessary wearing apparel
- Up to $2,000 worth of personal property of any kind
- Up to $7,500 recovery for a personal injury

If a debtor has assets (owns anything) above the exemptions allowed, those assets may be taken, sold, and the money used to pay creditors.

How long will Bankruptcy stay on my credit?

The fact that you filed Bankruptcy can stay on your credit history for up to 10 years.

Will I lose my home if I file Bankruptcy?

The answer depends on many factors. Many people who file Bankruptcy do not lose their homes. In general, Chapter 13 preserves assets such as a home while Chapter 7 requires that you surrender assets.

Does my spouse have to file Bankruptcy too?

No, but your spouse may be a co-debtor with respect to many obligations and filing may be the only way for them to avoid becoming the sole target for those creditors.

Can I discharge my student loans in Bankruptcy?

As a rule student loans are not dischargeable in Bankruptcy except in cases of "undue hardship." However, with respect to future student loans the Federal government is explicitly prohibited from discriminating against you based on a prior Bankruptcy.

How will Bankruptcy affect my credit and my job?

Different people have different experiences obtaining credit after they file Bankruptcy. Some find it more difficult. Others find it easier because they have relieved themselves of their prior debts or because their creditors know they cannot file another Bankruptcy case for a certain period. Some people find that obtaining credit is easier if they file Chapter 13 and repay some of their debts, rather than pursuing Chapter 7 and making no effort to repay. Finally, note that Bankruptcy laws prohibit employers from discharging or discriminating against you solely because you filed Bankruptcy.

Handling Collections

In general, both Federal and State laws govern collections. Every effort to collect a debt must comply with the Fair Debt Collection Practices Act as well as your State Consumer Fraud laws and other applicable consumer-protection statutes. Under these laws you have the right …

(1) To be notified that a letter from a creditor is an attempt to collect a debt and that any information obtained as a result will be used for that purpose.

(2) To dispute the validity of the claimed debt, or portions thereof, within 30-days of receipt of a demand letter -- otherwise the debt will be assumed to be valid.

(3) To notify the collecting agency or creditor in writing within 30-days following receipt of a demand letter, informing them that the debt, or a portion thereof, is disputed, and to obtain verification of the debt or, if applicable, a copy of the judgment against you, as well as to have that verification or judgment mailed.

(4) To be provided with the name and address of the original creditor, if different from the current creditor, if you make that request in writing within the 30-day period after you receive the demand.

What happens to my creditors when I file Bankruptcy?

Once you file Bankruptcy, the Bankruptcy Court Clerk will notify all of your listed creditors in writing. Those creditors will be instructed when, where, and how to follow up. In any event however, creditors that receive notice of a Bankruptcy must cease their efforts to collect a debt, evict a tenant, repossess or execute upon an asset, foreclose on real estate, or communicate with you, the debtor, in any way.

NOTE: not all creditors comply with this requirement, despite their legal obligation to do so. Any violation of this rule should be brought to the attention of your Attorney along with the name, address, and telephone number of the creditor in question.

OUR APPROACH: **MH+A** has experience working with Clients to minimize exposure to creditors, defend collection actions, and where necessary, to declare Bankruptcy. Since you may have both Bankruptcy and non-Bankruptcy options available to you, we encourage you to contact us to discuss your situation confidentially..

OUR FEES: **MH+A** charges a flat fee that includes the most common tasks and expenses in a Bankruptcy case. We are also comfortable conducting Bankruptcy litigation and handling disputes with creditors after filing; that additional time and expense is charged separately at prevailing rates.

For a free telephone consultation, or to learn more about our bankruptcy and debtor/creditor services, call MH+A at (630) 378-2200 or fill out our online contact form.

Chapter 7

What is the purpose of Chapter 7?

The purpose of **Chapter 7** is to discharge (wipe out) most debts and allow for a "fresh start."

How does Chapter 7 work?

The essence of Chapter 7 is that you turn over all non-exempt property in which there is equity to a person known as the "Trustee," who is generally, but not necessarily, an Attorney. The Trustee's responsibility is to sell your assets and distribute the proceeds to your creditors in the order required by the Code. In exchange, unless you have committed certain wrongful or fraudulent acts before or during the Bankruptcy, or unless there are other unusual circumstances, you will be absolved (that is, receive a discharge) of all of your dischargeable debts. This is your "fresh start."

How often can I get a discharge?

Debtors can be discharged in Chapter 7 every 6 years (every 10 years under the new Bankruptcy Law taking effect October 14, 2005).

What happens when my Chapter 7 case is filed?

Once you file Bankruptcy your creditors are prohibited from taking steps to collect any money you owe without having first obtained approval of the Court. To the extent that there are outstanding evictions, foreclosures or repossessions taking place at that time, the Bankruptcy filing stops them all. If your creditor fails to stop when demand is made by your Attorney, that creditor can be made to pay sanctions before the Court, including your Attorneys' fees.

What property can I keep if I file Chapter 7?

As of January 1, 1996, Illinois law permits you to retain as "exempt" up to $7,500 of equity in your residence and up to $1,200 in value in your car. In addition, you may keep up to $2,000 in personal property such as cash and furniture and all your necessary clothing, books and family pictures. You may also keep up to $750 in any implements, professional books or tools of the trade as well as all professionally prescribed health aids for you or your family. Additional exemptions are available and the amounts of these exemptions may change from time to time. However, to avail yourself of these "exemptions" you must properly request them in your bankruptcy petition. These exemptions are available to each individual so if both you and your spouse file a bankruptcy case each of you would be entitled to these exemptions.

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Chapter 13

What is the purpose of Chapter 13?

Chapter 13, also known as a **Wage Earner Plan**, is used by debtors that either wish to pay their creditors back for certain reasons or who cannot file Chapter 7 because they would lose their house, car, etc. Chapter 13 cases are heard by the same Judges, and in the same Courtrooms, as Chapter 7 cases. However, the Chapter 13 Trustees differ from those that oversee Chapter 7 cases.

Comparing Chapter 7 and Chapter 13

While there are several differences between Chapter 13 and Chapter 7, the most prominent are:

Repayment: the debtor attempts to repay creditors based on what the debtor can afford after paying living expenses. Generally a secured creditor is entitled to payments totaling 100% of the present value of their secured property. Unsecured creditors may receive less than 100% of what is owed to them, depending on the circumstances.

Assets (Debtor In Possession): Unlike the exemptions that are permitted in Chapter 7, there are no limits as to what a debtor can keep in Chapter 13. However, a creditor cannot receive less in a Chapter 13 than he would have received from the sale of the non-exempt assets in Chapter 7.

The Plan: In Chapter 13 the debtor must propose a payment plan to the Court. Payments under the plan are made to the Trustee (who charges a percentage of funds collected as their fee). The Trustee then distributes that money to creditors. In order to present a plan, the debtor must first show the Court that they are able to meet monthly living expenses such as:

- Rent or Mortgage
- Food
- Clothing
- Utilities
- Transportation
- Insurance
- Etc.

The source of the debtor's income does not matter, as long as it is stable and regular. The debtor must then still have sufficient funds left over to make payments on his/her proposed plan to off his/her debts.

Almost all debts can be included in a Chapter 13, even those that cannot be discharged in a Chapter 7. However, many of these debts will have to be paid off at 100% of the amount owed. A Chapter 13 plan can be extended for up to 60 months (5 years). A debtor can go into a Chapter 13 as often as necessary. There is no 6-year limitation as in a Chapter 7.

What Happens When I File A Chapter 13 Case?

Normally in Chapter 13 you keep all or most of your property and propose a plan to repay all or some of your debts. While the plan is in effect, which can be as long as 5years, you make regular payments (typically once a month) to a Chapter 13 Trustee who in turn distributes that money to your creditors. Certain debts not dischargeable in Chapter 7 such as those based on fraud may still be discharged if you successfully complete your Chapter 13 plan. In order to be eligible to file a Chapter 13 case you must have regular income and owe less than $330,000 in unsecured debts and $750,000 in secured debts.

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QUICK REFERENCE GUIDE: BANKRUPTCY FILING FEES
(SUBJECT TO CHANGE WITHOUT NOTICE)

Chapter 7	$ 209
Chapter 13	$ 194
Chapter 11	$ 839
Chapter 12	$ 239

Revised October, 2003

QUICK REFERENCE GUIDE:
ILLINOIS BANKRUPTCY EXEMPTIONS

Homestead• Up to $7,500 in residence/farm/lot and buildings/condo/co-op; co-owners cannot multiply exemption amount. Proceeds from sale exempt 1 year from date of sale

Insurance• Health or disability benefits• Homeowners' proceeds for destroyed home, to $7,500 Annuity proceeds or cash value if beneficiary is insured's child, parent, spouse or other dependent. • Fraternal society benefits • Life insurance proceeds if cannot be used to pay beneficiary's creditors • Life insurance proceeds needed for support

Miscellaneous• Alimony• Child support • Business partnership property

Pensions and Retirement Benefits • Civil service employees
County employees'
Disabled firefighters
Widows & children of firefighters
ERISA
General assembly members
Municipal employees
Police officers and firefighters
State university employees
Teachers
Certain other plans also exempt.

Personal Property • Family pictures
School books
Clothing; vehicles to $1,200
Personal injury recoveries to $7,500
Exempt property proceeds
Wrongful death recoveries needed for support

Public Benefits • Exempt Veterans' benefits Workers' compensation Aid to aged, blind, disabled, AFDC Crime victims' compensation Social Security Unemployment Compensation

Tools of trade • $750 exempt.

Wages • Minimum 85% of earned but unpaid wages

Wild Card • $2,000 of any personal property