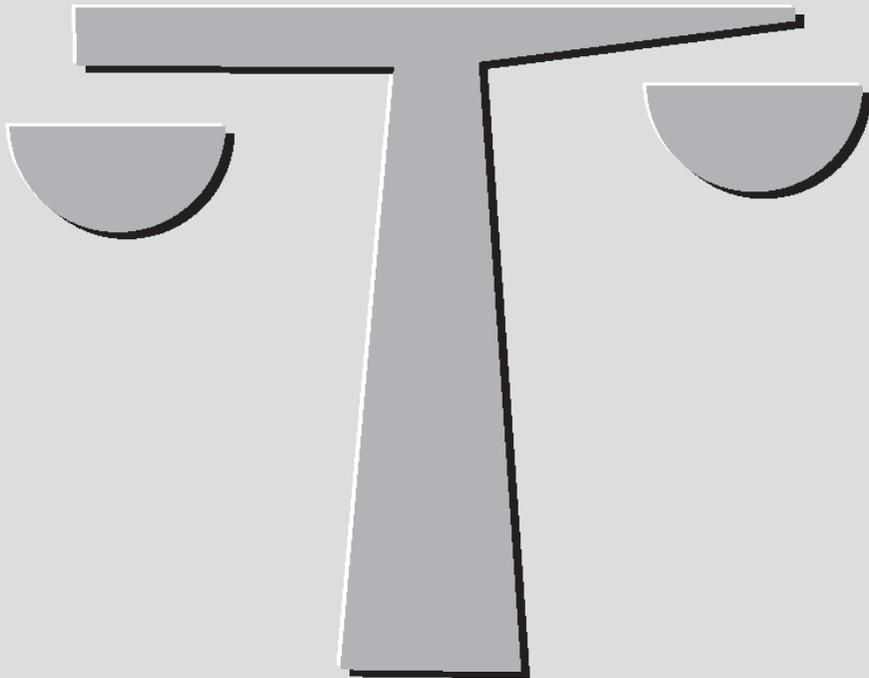


BANKRUPTCY



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This booklet is a general summary of the law. It is not meant to completely explain the subjects in this booklet. **IT IS NOT A SUBSTITUTE FOR LEGAL ADVICE.**

The information in this booklet was correct as of the date it was printed (see the back cover). The laws may have changed. **DO NOT ASSUME THAT THE INFORMATION IN THIS BOOKLET IS NOW CORRECT.**

You should see a lawyer to get complete, correct, and up-to-date legal advice. Do not rely on the general information in this booklet for your specific case.

If you need a lawyer but can't afford one, contact Iowa Legal Aid. You may be able to get free legal help. Call or write Iowa Legal Aid. The address and phone numbers are on the back cover.

AS YOU READ THIS BOOKLET, REMEMBER IT IS NOT A SUBSTITUTE FOR LEGAL ADVICE.

INTRODUCTION

Anyone who has ever been or who is now in deep financial trouble has probably thought about declaring bankruptcy. For many people this seems to be almost an admission they have done something wrong or something bad. It is important to think carefully about declaring bankruptcy. But you should remember what Congress said about the purpose of the bankruptcy laws. The purpose is to give people with financial problems a fresh start in life. Bankruptcy is not intended to punish anyone.

If you are thinking about declaring bankruptcy, you probably have a lot of questions. It is not possible to write a book or manual that would let you handle your own bankruptcy. This booklet is intended to answer some of your questions. The first section defines some words that are used in bankruptcy law. The next part describes the four (4) different types of bankruptcy. Finally, answers are given to the most commonly asked questions.

Note to farmers: Although much of the information in this booklet applies to farm bankruptcies, the area of farm bankruptcy law is extremely complex. Therefore, if you would like more specific information, you should contact an attorney who specifically practices in this area.

DEFINITIONS

AUTOMATIC STAY This is the protection that is given to you when you file a petition in bankruptcy. You are protected from being sued, from being threatened with a lawsuit, or from any other attempt by a creditor to collect a debt.

COLLATERAL Property you pledge to give to a creditor if you can not pay your loan as agreed.

CREDITOR Any person, company, firm, etc. that you might owe money.

DISCHARGE Wiping out a legal obligation to pay a creditor money. In other words, when we say a bankruptcy discharges a debt, we mean you no longer have any legal obligation to pay.

EXEMPT PROPERTY Property you can keep no matter what. Neither your creditors nor the trustee in bankruptcy can force you to sell your exempt property. The only way you can be forced to sell exempt property is if you have given a lien against that property to one of your creditors.

LIEN The legal right your creditor has to your property if you can't pay as you agreed. Example: If you take out a loan to buy a car, you probably signed some papers which gave your creditor a lien against your car. This means you gave your creditor the right to take your car back if you can't pay your loan. The law sets forth very specific requirements for this sort of action. Types of liens or names for liens include: chattel mortgage, encumbrance, judicial lien, mortgage and security interest.

PETITION AND SCHEDULES The set of papers you sign to begin your bankruptcy proceedings. These papers include statements about the way you handle your finances, your income, the people you owe money to and the property you own. When you file a bankruptcy, you verify that these statements are correct and accurate.

TRUSTEE The person appointed by the court, generally an attorney, in a Chapter 7, 12 or 13 bankruptcy proceeding. The trustee has the obligation to take and sell your non-exempt property or get cash in return for its value. The trustee will use the money he or she gets to pay your creditors. However, in most cases the debtor's non-exempt property has a lien against it which exceeds the value of the property. Therefore the trustee does not sell that type of property. You can almost always keep non-exempt property by paying the trustee its fair market value.

VOIDING A LIEN This is the legal action you can take after you have filed a petition in bankruptcy in which you ask the bankruptcy court to wipe out a lien. This can only be done in a certain number of situations. Be sure to ask your attorney if any of your liens can be voided by the bankruptcy court. There are also procedures outside of bankruptcy that can be used to eliminate judgment liens on homesteads.

TYPES OF BANKRUPTCY

CHAPTER 7 - This is also known as a liquidation or discharge bankruptcy. A Chapter 7 bankruptcy is designed to completely wipe out your debts. Some types of debts are not discharged in bankruptcy and these will be described later. The Chapter 7 bankruptcy trustee is appointed by the court to get money in return for your non-exempt property to pay your creditors.

CHAPTER 11 - A Chapter 11 bankruptcy is also known as a reorganization bankruptcy. This type of bankruptcy allows a business or person who is in business to reorganize their financial affairs. They are protected from their creditors' debt collection actions for a period of time. The court orders what amount of money the creditors should accept from the debtor. Chapter 11 bankruptcy is extremely complex and extremely costly.

CHAPTER 12 - This form of bankruptcy is designed to give farmers a more workable option when using the bankruptcy laws. The goal in a Chapter 12 bankruptcy is to write the farm debt down to the fair market value of the collateral and restructure the debt to keep the debtor in farming. A plan is developed for the farmer to make payments on his or her financial obligations. Upon acceptance of the plan, the court will order the amount of money that the creditors are to accept from the farmer/debtor. The period of the plan is three to five years. After this period, the remaining debt may be discharged.

CHAPTER 13 - Also known as a wage earner bankruptcy, Chapter 13 bankruptcy is intended for the use of anyone who has a regular source of income who either can't qualify for a Chapter 7 because their income is too high or they need to file Chapter 13 to cure a default on a home mortgage or has nonexempt property that may be taken in a Chapter 7. In a Chapter 13 bankruptcy the debtor generally keeps paying his/her house payments and car payments and pays to a Chapter 13 trustee a specified amount of money per month to be distributed to creditors. These payments continue for a period of time, generally from three (3) to five (5) years. Payments are in amounts that are in proportion to the amount owed to those creditors. If your income is above the state's median income, you may have to file a Chapter 13 bankruptcy. In Iowa, for cases filed after November 1, 2011, the median family incomes are:

one-person household \$40,650

two-person household \$55,217

three-person household \$62,251

four-person household \$72,234

These numbers change periodically.

Questions and Answers

Can I handle my own bankruptcy?

Yes, although it is generally not a good idea to handle your own bankruptcy because the bankruptcy laws are extremely complex. Often there are questions about what rights your creditors may have to your property, such as whether they have a valid lien. It is extremely doubtful whether you would be able to protect yourself to the same extent that a bankruptcy attorney can.

Do I have to list all of my debts?

Yes. Bankruptcy law requires you to list all your debts. Often there are debts people would prefer not to list, such as to a relative, family doctor, or a business they feel has been very good to them. Nevertheless, you are required to list all of your debts. However, even if the debt to this person or company is discharged in bankruptcy, that only means you have wiped out the legal obligation to that person or company. If you still feel as though you want to pay them, you are of course free to make such arrangements after your bankruptcy is final.

Can I sell or give away some of my property before I file bankruptcy?

Generally this is not a good idea. Before you do anything like this you should talk with your bankruptcy attorney to make sure you do not commit fraud. Property that has been given away or sold for less than its fair value prior to your filing of bankruptcy can be recovered by the trustee. In other words, a trustee may be able to force whomever you gave the property to turn the property over to him/her. Also, you would want to be sure that none of the property that you are giving away or selling has a lien against it.

What is the effect of my bankruptcy on someone who has co-signed a note for me?

Usually the person who co-signed the note is left with the full responsibility for the debt. However, you should know about some very specific requirements a creditor must have met when the person co-signed the note. You should have your bankruptcy attorney review the papers to see if the co-signer is actually liable to the creditor. Also, in a few cases the co-signer can be protected from the creditor if you file a Chapter 12 or 13 bankruptcy.

What property is considered exempt?

See the Table of Exempt Property on pages 10 and 11.

I gave a Finance Company a lien on my living room and bedroom furniture, my stove, and my refrigerator. What happens if I file bankruptcy?

If you have given a creditor a lien on your household goods, and that creditor did not give you the money to buy those goods, generally speaking in a Chapter 7 bankruptcy that lien can be voided or wiped out by the bankruptcy court. However, you would want to be sure to bring this matter to the attention of your bankruptcy attorney.

How often can I file bankruptcy?

If you got a Chapter 7 discharge in bankruptcy at any time during the last eight (8) years, you are prohibited from receiving another Chapter 7 discharge in a bankruptcy at this time. You may be able to file a Chapter 13 bankruptcy and receive a discharge, however. Talk with your bankruptcy attorney about the discharge rules if you've filed bankruptcy previously.

What happens to my credit rating if I file bankruptcy?

Filing a bankruptcy petition has a negative effect on your credit rating. However, it does not have the bad effect as in years past. More and more creditors are becoming aware of the fact that some people have to file bankruptcy. The fact that you filed a Chapter 7 bankruptcy petition can be listed on your credit rating report for ten (10) years. If very unusual reasons lead to you filing a bankruptcy petition, (such as a serious illness, a failed business, etc.) you will be free, of course, to explain that to potential creditors. Furthermore, some creditors look at your situation after you have declared bankruptcy and realize you may now be in a better position to handle your money. Many, if not all, of your debts will have been discharged. Creditors also realize that you cannot file another Chapter 7 bankruptcy petition for at least eight (8) years. The bottom line is your ability to obtain credit will depend on how your creditor looks at you, what you can explain about why you had to file bankruptcy and how you manage your money after you file bankruptcy.

Which debts may be discharged in a bankruptcy?

As we said before, the purpose of a bankruptcy is to discharge or wipe out your debts. However, Congress has said that certain debts should not be discharged. Before discussing these, it should be noted that there are certain grounds on which you can be denied a discharge of all of your debts. The grounds include: filing of a bankruptcy within eight (8) years after a previous Chapter 7 discharge in bankruptcy was granted; dishonesty or intentional omission of facts in the bankruptcy petition; failure to obey an order of the bankruptcy court; and failure to explain your financial affairs as required by the bankruptcy court. Generally speaking, if you approach the bankruptcy court in good faith and act honestly with the court, you will receive a discharge of all your debts.

The debts that the bankruptcy court cannot discharge include: some taxes; debts where you obtain money through false pretenses, fraud or false financial statements; a debt incurred because you committed fraud, embezzlement or larceny to obtain someone else's money; alimony, maintenance, support, or property settlement debts owed to a spouse, former spouse or child; a debt incurred because you willfully or maliciously injured someone; fines or penalties imposed by a court; most student loans; and debts incurred as a result of drunk driving. You should be aware that each one of these exceptions to discharge is very complicated. It is impossible to describe briefly each of the exceptions to discharge and whether it applies to your case. For example, we stated that most of the time student loans cannot be discharged. However, in limited circumstances some student loans can be discharged. You must be able to prove undue hardship and/or total and permanent disability. Carefully review this list of exceptions to discharge. Be prepared to discuss any of your debts that may fall into one of these categories with your bankruptcy attorney.

I own my own home. Will I be able to keep it after I file bankruptcy?

If you own the home you live in and you live in Iowa, your home will probably be considered a homestead and will be exempt property. That means the trustee cannot take your home.

However, most people owe money on their home to a bank, credit union, etc. This means the creditor probably has a mortgage against that home. The mortgage itself is not wiped out by the bankruptcy proceedings.

To take an example, suppose you own a home worth \$70,000. If you live in it, then it is your homestead. If you did not owe any money on the home, you would be able to keep the home even if you filed bankruptcy. However, suppose you owe \$60,000 on the home to a bank. Even after you have gone through bankruptcy, the bank's lien or mortgage will still be binding. This means if you cannot make your payments on the mortgage, the bank will have the right to foreclose on the home by proceeding through the state court.

However, suppose you owe \$75,000 to the bank on your \$60,000 home. Again, the bank's mortgage would not be wiped out by the bankruptcy proceedings. The bank would have the right to foreclose on your home and take it back by proceeding through state court if you default on the mortgage payments. If the bank could only get \$60,000 through a forced sale of your home, that would be all they would be entitled to. They would not be able to get a judgment against you for the \$15,000 which remains unpaid. In either case, whether you owe more to your mortgage holder than your home is worth or whether you owe less, you have the option during the bankruptcy proceedings to approach the bank or credit union or other mortgage holder. You can suggest the possibility of what is

known as a “reaffirmation.” This is a procedure by which the bank and you agree that you will continue to make payments on your mortgage and your creditor will accept those payments. Basically what you do is re-write the original note and mortgage.

The disadvantage with a reaffirmation is that you create a new debt. Go back to our second example where you owe \$75,000 on your \$60,000 home. Suppose you reaffirmed your debt and agreed to pay the bank \$75,000 by monthly payments of so much per month at a specified interest rate. Then you would be liable to pay the \$75,000 to the bank no matter what. If you couldn’t make the payments and the house turned out to be worth only \$60,000, the bank could obtain a court judgment against you for the \$15,000 they could not collect from the sale of the home. Most lenders in Iowa do not require you to sign a reaffirmation agreement in order to keep your home. You can simply continue to make the payments and stay in the home until it’s paid or you decide to sell it. You just need to remain current on the payments. Be sure to talk with your attorney about whether a reaffirmation agreement is necessary.

For homes with equity greater than \$125,000, there may be some limits that should be discussed with an attorney.

I own a car. What will happen to it if I file for bankruptcy?

The rules for how a car is treated in a bankruptcy proceeding are about the same as the rules for a house. If the car qualifies as exempt property, you can keep it. If you owe money on it to a creditor who helped you buy a car and now has a lien on it, you may be able to keep it either by reaffirming the debt or just staying current on the payments. Talk with your attorney about your options. You may have other options also like “redeeming” the car for its current value or purchasing a replacement vehicle.

Is credit counseling necessary?

Credit counseling is now required before filing for bankruptcy. No more than six months before filing bankruptcy, a debtor must receive credit counseling from an “approved, non-profit budget or credit counseling agency.” The agency must be approved by the U.S. Trustee, and provision has been made for free or reduced fees for clients who cannot afford the cost of the counseling programs.

What happens after I file my petition and schedules in bankruptcy?

Immediately upon filing a petition in bankruptcy, an “automatic stay” goes into effect. This means your creditors are prevented from taking any action against you, whether by means of lawsuit, threats to commence a lawsuit or otherwise. Shortly after you have filed your petition in bankruptcy the clerk of the bankruptcy court sends a notice out to all the creditors you listed. The notice states you have filed a petition in bankruptcy.

It schedules what is known as the first meeting of creditors. This is a chance for your bankruptcy trustee and creditors to sit down and review your bankruptcy petition. They can ask you questions about your financial affairs. Generally most creditors don't make a practice of showing up for the meeting of creditors.

What happens after the first meeting of creditors varies depending on the type of bankruptcy petition you filed. Therefore, you should carefully review the procedures with your bankruptcy attorney. Make sure you understand exactly what is expected of you after you start a bankruptcy proceeding.

How will I know when my bankruptcy proceedings are ended?

Again, this varies with the type of bankruptcy you filed. If you filed a Chapter 7 bankruptcy proceeding, you and your creditors will receive a Discharge Order. The discharge order lists some of the common types of debts which are not discharged in Chapter 7 Bankruptcy. You should contact your bankruptcy attorney if a creditor improperly tries to collect a debt owed to them after your discharge order is entered.

What can a creditor do to collect a debt I have discharged in bankruptcy?

If you have discharged a debt in bankruptcy a creditor can do virtually nothing to try to collect that debt. If you got a discharge in bankruptcy and a creditor approaches you about a debt, you should contact your bankruptcy attorney immediately. That action by the creditor may be viewed as a violation of the orders of a bankruptcy court and may be punishable.

Are there options other than filing bankruptcy?

Frequently it is possible to work with your creditors to make payments on the debts you owe them. Sometimes this allows you to avoid filing a petition for bankruptcy. However, this can be done only if just about all of your creditors are willing to cooperate. If you try to reach a compromise agreement with all your creditors, it is a good idea to talk with a bankruptcy attorney first. Find out what your rights and duties are. Be sure to understand just how far you have to go with each creditor. Know what steps they can take to force you to pay a debt.

It is also important to communicate openly and honestly with your creditors. Advise them as early as possible of any problems you will have paying the debt. Once you have a clear understanding of your rights and duties, you may be in a position to reach an agreement with all of your creditors by which they agree to accept payments. These agreements should be in writing and signed by both the creditors and you. However, before turning back any collateral to a creditor, you should consult with a bankruptcy

attorney. Be sure it is necessary and will not have any bad effects on you. If you are successful in having a creditor forgive some of your debt, tax problems may be created. This is another area you should explore with an attorney or CPA.

Many Iowa State University Extension Offices have a staff consumer specialist who may be willing to sit down to discuss your financial problems and work on a budget. Call your local area Extension Office to see if they offer this service. There is also a special program for farmers to develop cash flows and long term financial planning.

How do I know if some of my property has a lien against it?

The area of liens and security interest is one of the most complicated in the law. It is difficult for you to find out if any of your creditors has a valid lien against your property. Do not make the mistake many people do and assume a creditor has a lien against your property just because you listed that property on a financial statement you gave to the creditor. Liens and security interests must be created in very specific ways. Only an experienced attorney can determine whether you have given a creditor a lien. When you see a bankruptcy attorney it is a good idea to bring all the papers that you have signed for all of your creditors. This includes all notes, security agreements, mortgages, etc.

TABLE OF EXEMPT PROPERTY

A list of exempt property is on the next page. It is not a complete list, but includes most of the important exemptions. Additionally, some of the exemptions on the list are provided for each debtor. If a husband and wife are both liable on a debt and own property jointly, they may each claim a full exemption.

Debtors may elect state exemptions in the state in which they have lived for 730 days prior to filing. If they move during the period, then they are entitled to the exemptions of the state where they lived during the greater part of the 730 days.

PROPERTY (AS OF JULY 1, 2011)	DOLLAR (\$) LIMITATION (AS OF JULY 1, 2011)
Homestead (house and surrounding land used and occupied by the debtor and his/her family) NOTE: This exemption does not apply if you have given a voluntary mortgage of the house to a bank, credit union, or other party and the bank, credit union, or other party holding the mortgage is foreclosing	Not to exceed one-half acre within a city or 40 acres outside a city no dollar limit imposed. Also not more than \$125,000 acquired in past 3 years and 4 months.
All clothing and suitcases of the debtor or debtor's dependents kept for actual use, household furnishings, musical instruments and household goods which include cameras, tvs and compact disc players	\$7,000
Books, portraits, and paintings.	\$1,000
Burial plot not exceeding one acre.	None
Professionally prescribed health aids for the debtor or a dependent of the debtor.	None
One motor vehicle	Not to exceed \$7,000 in value (Use current resale value, in other words, not what you paid but what you would get by selling the property now.)
If not a farmer, the tools of trade of the debtor or dependent.	\$10,000
If a farmer, any combination of implement, equipment, livestock, and feed for livestock.	\$10,000
A wedding or engagement ring owned and received by the debtor on or before the date of marriage.	None
Cash, bank deposits or any other personal property.	\$1,000
In a bankruptcy, accrued wages or state and federal tax refunds.	\$1,000 (plus 75% of disposable earnings)

PROPERTY (AS OF JULY 1, 2011)	DOLLAR (\$) LIMITATION (AS OF JULY 1, 2011)
Cash value of a life insurance policy if beneficiary is spouse or dependent.	\$10,000 if purchased within 2 years of the bankruptcy. Unlimited if purchased more than 2 years before the bankruptcy.
Social Security, unemployment, public assistance, veterans, or disability benefits.	None
Alimony and support.	To the extent reasonably necessary for support of debtor and dependents.

Iowa Legal Aid offices are normally open Monday through Friday from 8:30 a.m. to 4:30 p.m. Offices are closed on holidays. To apply for help, call Iowa Legal Aid at 1-800-532-1275 during intake hours. Intake hours at the time of this booklet's printing are 9:00 to 11:00 a.m. and 1:30 to 3:30 p.m. (subject to change). Emergencies are taken during regular office hours. You may also come to the regional office listed below serving your county but it is helpful to first call for an appointment.

IOWA LEGAL AID
1111 9th Street, Suite 230
Des Moines, Iowa 50314-2527
Toll-Free Phone: 1-800-532-1275 or call (515) 243-2151

Information on Iowa Legal Aid Offices is also available on the Web at:
iowalegalaid.org

CEDAR RAPIDS REGIONAL OFFICE

317 7th Avenue, Suite 404
Cedar Rapids, Iowa 52401-1407
SERVING: Benton, Iowa, Linn, Marshall, Poweshiek and Tama Counties

SOUTHWEST IOWA REGIONAL OFFICE

532 1st Avenue, Suite 300
Council Bluffs, Iowa 51503-0803
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1700 South 1st Avenue, Suite 10
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Davenport, Iowa 52803-5723
(563) 322-6216
SERVING: Scott and Clinton Counties

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by
IOWA LEGAL AID

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