

Alternatives to Bankruptcy

If you find yourself facing bankruptcy, there may be alternatives available to you. The alternatives depend on:

- The type of debts you have, and
- Your specific circumstances

DEBTS: Secured and Unsecured

There are two types of debts: secured and unsecured.

Secured Debts

- Secured debts are debts created to buy property, such as a home loan, auto loan, or money borrowed to buy a TV, furniture or other property.
- The borrower pledges a piece of property to the lender, as collateral, to secure the loan. In other words, the lender agrees to advance money to buy the item, and you agree that if you do not pay back the loan, the lender can take the item and sell it to repay the loan.
 - Collateral is the asset (thing) that can be repossessed to satisfy the amount owed if the borrower does not repay the loan.
- Example: Home Mortgage
 - Ms. Doe goes to Main Street Bank for a loan to help her buy a house. The bank gives her a mortgage loan on set terms. The house itself is the collateral. If Ms. Doe defaults (does not pay) on the mortgage loan, the bank can take the house, through foreclosure, and then sell it to try to make up for their losses.

Unsecured Debts

 Unsecured debts are all other debts, such as credit card debts, payday loans, medical bills, etc.

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- These types of debts are **not** secured by a specific piece of property acting as collateral.
- Example: Credit Cards
 - Ms. Doe uses her credit card, and, in the past, has been able to pay off the debt. Currently, she has not been able to pay the debt. The credit card company will likely take actions to collect on this unpaid debt, but cannot repossess (take) a specific piece of property to make up for their losses. This is because there is not a specific piece of property acting as collateral, for the credit card debt.

Different Options Depending on Different Circumstances

What can I do if I am behind on a secured loan, like a house or auto payment?

1. **Work with your lender.** If you are behind on your payments for any kind of secured loan, try and work with your lender to pay off the payments you have missed.

Most lenders will cooperate with you because it helps them get paid. The lender will probably give you a certain amount of time to pay what you owe.



Make sure to get any payment plan agreement in writing, and make sure that the plan is one that you can stick to considering your monthly income and your regular monthly bills.

2. **Review other options.** If you CANNOT come to an agreement that both you and the lender can live with, you will have to look at other options. (See the next question.)

What if I cannot pay my secured loan debt back as quickly as the lender wants?

If you cannot pay the lender back in the time frame demanded, you have a few other alternatives before you file for bankruptcy.

- **Explore your other options**. Depending on the type of secured loan and property you may have other options available to you. For example, in foreclosure, there are ways to avoid foreclosure. Please see the link, below, for a listing of these options.
 - o http://portal.hud.gov/hudportal/HUD?src=/topics/avoiding foreclosure
- **Do nothing.** By doing nothing, **you will eventually lose the property.** By doing nothing, you are forcing the lender to foreclose or repossess the property. This gives you the benefit of using the property until the lender is able to take the property from you. But, it also means you risk getting additional unsecured debt. This happens if the property is sold for less than you owed. You also risk being ordered to pay the lender's attorneys fees. If the amount of the unsecured debt is large enough, the lender may decide to collect the unsecured debt, too.

o **Note:** Credit Report

- By doing nothing and having the property foreclosed on or repossessed your credit report will be harmed, and your credit score will go down. The lower your credit score, the harder it is to get credit of any kind, and obtain good (low) interest rates for the credit you do get.
- Surrender (give up) the property. You can give the property back to the lender. This will usually stop the amount of the debt from growing while you cannot pay it, and the lender will not have to file a lawsuit against you. However, you will lose everything that you put into the property.
 - o **Note:** Your credit score will go down

What alternatives do I have if I cannot pay my unsecured debts?

You have options with unsecured debts. Your options include:

- **Do nothing.** Doing nothing is an option, but it is not the best option. If you know that you cannot afford to pay **anything** to your creditors, it is better to send your creditors a "Cease and Desist" letter. (See #3 below.)
- Negotiate with your creditors. You can try to negotiate with your creditors. When a creditor contacts you about your debt, ask if you can set up a payment plan. If the creditors have not contacted you yet, call their Customer Service phone number and ask to speak to someone about a payment plan. (Look for their Customer Service number on your statements or your credit card.) Tell them how much you can afford to pay each month and see if your creditor will allow you to pay something close to that amount. Before you agree, make sure you understand how much more you will have to pay, including the interest. Also, get the agreement in writing.
- Send the creditors a "Cease and Desist" letter. If debt collectors are constantly contacting you, you can make them stop by sending a Cease and Desist letter. The letter tells the debt collector to stop all direct communications with you. After a debt collector receives this letter, they are not allowed to communicate directly with you about the debt, except to tell you that:
 - a. Their further efforts against you are being stopped. OR
 - **b.** To tell you that they reserve the right to file a lawsuit against you or intend to file a lawsuit against you. [15 U.S.C.A. § 1692c]

What should I do if a creditor sues me?

Do Nothing. Doing nothing is an option, but it should not be considered lightly. By doing nothing the court will enter a judgment against you that will usually include the amount that the creditor says is owing on the debt plus the costs the creditor paid to file the

lawsuit plus the creditor's attorneys' fees. Please see the next section, on what may happen as a result of this.

Respond and Take Steps to Protect your Rights

- If you are sued by a debt collector you have the right to answer the lawsuit, and move to protect your rights.
- At this time, it is a very good idea to find a lawyer to help you. Please see the following link for information on legal aid in your area.
 - http://www.texaslawhelp.org/find-legal-help
- Please see the following link for information on what to do if you are sued for a debt that you owe.
 - http://www.texaslawhelp.org/resource/if-you-are-sued-for-a-debt-that-you-owe?ref=iCm2Y
- File for bankruptcy before judgment. If you are planning on filing for bankruptcy, do not put it off. You need to file the bankruptcy before the creditor gets a judgment and places a lien on your property.
 - o A lien is an official claim against property to secure the payment of a debt.
 - A creditor with a lien on property has greater rights than the creditor of an unsecured debt that does not have a lien.
 - Please see the following link for more information about bankruptcy, from the U.S. Bankruptcy Court for the Northern District of Texas.
 - http://www.txnb.uscourts.gov/useful-information-debtors-without-attorney-representation-pro-se

What if a creditor sued me and got a judgment against me?

Can I Go to Jail?

NO. In Texas, there is no debtor's prison. You **cannot** be put into prison for owing a **consumer** debt. [Tex. Const. Art. I, § 18]

Can the Creditor garnish (take money directly from the paycheck) my current wages?

NO. Generally, a creditor cannot garnish your current wages to enforce a judgment against you for a consumer debt. Also, your current wages for personal services, except for the enforcement

Last Updated: 4/16/2013 Texas Partnership for Legal Access www.texaslawhelp.org of court ordered child support payments, is exempt from the personal property cumulative value discussed below. [Tex. Prop. Code Ann. § 42.001 (b)(1)]

Note: The creditor can go after other accounts and assets, just not your current wages.

What property is exempt from creditors and what does exempt property mean?

In Texas, certain property is exempt from seizure by creditors. This means a creditor cannot take the property as payment of a debt. But the creditor you borrowed money from to purchase the property **can** take that property.

In Texas, property that *cannot* be taken by creditors includes:

- The house and land where you live (called homestead) (Except that your mortgage company can take the house through foreclosure if you have not paid your mortgage payments, and the county where the property is located can take the property through foreclosure if you have not paid your property taxes.) [Tex. Prop. Code Ann. § 41.001]
- One or more cemetery plots [Tex. Prop. Code Ann. § 41.001]
- Personal property with a value of less than \$60,000 for a family or \$30,000 for a single adult. This amount is exclusive of the amount of any liens, security interests, or other charges encumbering the property. The amount is cumulative meaning how much the property will sell for all together. It includes, but is not limited to:
 - home furnishings, including family heirlooms
 - food and household supplies
 - farming or ranching vehicles and tools
 - o tools, equipment, books, and vehicles used in your trade or profession
 - clothing
 - jewelry (maximum of \$7,500 for single adult or \$15,000 for a family)
 - two firearms
 - o athletic and sporting equipment, including bicycles
 - One motor vehicle (2-, 3- or 4-wheeled) for each member of the family or single adult who holds a driver's license or who does not hold a driver's license but who relies on another person to operate the vehicle for the benefit of the non-licensed person.
 - Household pets [Tex. Prop. Code Ann § 42.002]

What if I only get money from Social Security?

Social Security benefits cannot be taken by debt collectors for consumer debts. [42 USCS § 407] It is a good idea to set up a bank account that only contains the benefits you gets from social security to prevent any future problems.

Bankruptcy Reform and You

Congress passed and President George W. Bush signed, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), making substantial changes to the United States Bankruptcy Code.

Important changes include, but are not limited to:

Procedure

- Before filing either a Chapter 7 or Chapter 13 Bankruptcy, individuals are required to receive an approved credit counseling briefing to be able to file a bankruptcy case.
- Before any debts are discharged you are now required to attend money management classes.

• Chapter 7 Bankruptcy VS. Chapter 13 Bankruptcy

- It is now harder to get a Chapter 7 Bankruptcy.
 - Chapter 7 Bankruptcy (Liquidation): Generally, your assets are liquidated (minus exempt assets) and the value is given to your creditors to pay off your debts. Generally, debts that cannot be paid off this way are cancelled. This is what most people think of as a traditional bankruptcy.
 - Chapter 13 Bankruptcy (Wage-Earner Repayment Plan): In contrast, under a Chapter 13 Bankruptcy, you are put on a repayment plan of three to five years, to pay off all or part of your debts. Under this type of bankruptcy, you would be able to discharge debts provided for by the plan or disallowed with limited exceptions, upon the completion of all payments.
- To qualify for a Chapter 7 Bankruptcy, you will be subjected to a means test.
 Please see the following link for more information on Chapter 7 Bankruptcy and the means test.
 - <a href="http://www.uscourts.gov/FederalCourts/Bankruptcy/Bankru

Bankruptcy and Exemptions

- Property exemptions in a bankruptcy case are **not** a simple matter, and are more complicated than just looking at the state law already mentioned.
- Generally, Texas allows debtors to choose either the federal exemptions or state exemptions.
 - Note: Most chose to use the state exemptions in Texas because they are more favorable.

• Bankruptcy and Fraud

- If you run up large credit card bills before filing for bankruptcy, these can be considered a form of fraud and this debt would **not** be dischargeable in bankruptcy.
- Also, giving away assets to a third party, before filing for bankruptcy to evade creditors can be considered a **fraudulent transfer** and put you on the wrong side of the law
- o Please click the following link for more information on these subjects:
 - http://www.uscourts.gov/FederalCourts/Bankruptcy/BankruptcyBasics/DischargeInBankruptcy.aspx

Conclusion

If you find yourself facing bankruptcy because you have several debts you owe, remember that there are other options available to you. It is up to you to explore these options, and take steps to protect your rights.