

The Law Office of Timothy Casey Theisen, PA



Bankruptcy for Beginners

Is Filing Bankruptcy right for you?

Tim Theisen, PA



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Bankruptcy for Beginners

What is Bankruptcy?

Bankruptcy is a process under the federal court system, whereby a person can get relieved of their obligations to pay debts, which is called a discharge. There are generally two options for personal bankruptcy:

- A chapter 7 bankruptcy is sometimes called liquidation, which is bit of a misnomer, because 95% of people don't have any assets that need to get liquidated.
- A chapter 13 is a repayment plan, which is sometimes necessary for high income debtors, homeowners who need to get caught up on mortgage arrears, debtors with nonexempt assets that they want to keep, or people who have filed chapter 7 within the last eight years and need to file again.
- (There is also a chapter 12 for farmers, and chapter 11 for corporations or individuals with over about \$1,000,000 in debt, but we don't handle those cases)

How do I find out if I qualify?

Most people initially want to know three things: First, do I qualify? Second, what are the drawbacks, and/or reasons I shouldn't file? And third, what is this going to cost? The quickest and easiest way to find this out, is to call me, and go through this over the phone, and if you'd prefer to schedule a time, I also offer free consultations by zoom or phone conference. In almost all cases, after I get a general idea of the extent of your debts and your income, as well as a brief discussion of your assets, I should be able to give you a good idea as to whether you will qualify for chapter 7, and any obstacles we may encounter. It usually doesn't take more than 10 minutes, and I can also explain the fees and payment options. From there, if you are ready to schedule an appointment, we can set it up, otherwise I send you some information including the forms that I would ultimately need filled out, and leave the ball in your court.

While I often answer the phone on evenings or weekends, if you would prefer to break the ice by electronic communication as opposed to the telephone, you can fill out the [60 second questionnaire](#) on my website, which usually gives me enough information to tell you whether you qualify, and explain the fee.

What is process for filing bankruptcy?

After the initial phone call, I send you more information including the checklist of information necessary to file and the invitation to our convenient online data entry (which can also be accessed [here](#)), explain the fees, and we can schedule an appointment whenever you are ready to start the process. In a chapter 7, the fee needs to be paid in full prior to filing, so the filing date is a function of how soon you can pay, although in some circumstances with a third party co-signor we can file right away without payment in full up front. In a chapter 13, while the fee is a bit

higher, the good news is that we can usually put most of the fee into the chapter 13 plan, so the down payment is smaller.

At the first appointment, we will go through the checklist of information that we need, and check off any information that you have provided (we really don't need any preparation before the first appointment) and then explain to you line by line everything that you need to get us, which is basically six months of pay stubs, car titles, credit report, last year's taxes, and a few other things if you are a homeowner.

Once everything is done and ready to go, we go through the petition with you and you sign it. There is a pre-filing credit counseling course that you need to go through as well. We then file your case, and about a month later we go to what is called a creditors meeting, which is not a real good term because your creditors don't show up. You don't actually go to court in bankruptcy; you meet a person called a trustee, who is an attorney appointed to oversee your case. In a chapter 7, the trustee's job is to liquidate nonexempt assets, and it is my job to make sure that you can protect all of your assets, although in certain circumstances, probably no more than 5% of the time, you might need to pay in a little bit in exchange for the discharge of your debts. With COVID-based social distancing, the creditor meeting is now done by phone or zoom. If that is your circumstance, we will discuss that in great detail prior to filing, and we will discuss legal means of prebankruptcy filing to minimize anything that might need to be turned over to the trustee.

When do my creditors stop calling me?

Once you have retained an attorney you can refer your creditors to us. Collection agencies and law firms are legally prohibited from calling you once they know you have an attorney.

What's the cost?

I am very up front about fees. But I can't just put that on my website, because individual circumstances may vary. I do have a set schedule of fees, so I don't make them up on the fly or anything like that. – Some lawyers won't tell you the fee until you actually come and meet with them. I can usually quote you a fee over the phone after a brief conversation, because that is one of the main things that people want to know.

Many attorneys require the entire fee upfront; we permit payment plans. Also, we can usually match other attorney's fees upon verification, so I can confidently say that you won't find a better attorney, and you won't find a cheaper attorney. Because we have the lowest fees in town, I haven't been asked to match a fee in over 5 years.

What are the disadvantages of filing bankruptcy?

The biggest thing, is that your [credit may take a hit](#). But how is your credit right now? Most of my clients have already gotten to the point where their credit is poor, particularly if there has been a repossession or judgment etc., and a bankruptcy is actually the best way to start rebuilding. It's

sort of like hitting the reset button on your credit, just like being 18 all over; a financial baptism, if you will.

If your credit is good now (but your debt load is bad) you will find that it takes 2 to 3 years to start rebuilding your credit and get to the point of qualifying for mortgages, etc. There are many [tips readily accessible online](#) to assist in the process of rebuilding your credit.

What debts get discharged, and which ones don't?

The most typical debts that we discharge are credit cards, medical bills, car repossession deficiencies, and utilities. The most typical debt that is not discharged is student loans.

Taxes can be discharged if they meet three tests: it needs to be three years since the tax was due (for example, your 2017 taxes were due April 15, 2018, unless you got an extension to the following October, so the due date is what is important); second, if the taxes filed late, it needs to have been at least two years, and third, if you are audited and assessed an additional tax, it needs to have been at least 240 days since that assessment. The IRS has recently been denying discharge for any late-filed taxes. We will help do the research to ensure that your taxes can get discharged, because sometimes filing too early, even if it is only a few days or a few weeks, can end up costing you thousand dollars in otherwise dischargeable taxes.

Unemployment overpayment typically arises from having collected unemployment while you are working. If that's the case, the Department of Economic Security can and usually will object to the dischargeability of that debt, because one condition of receiving unemployment is that you truthfully tell them that you're not working. Sometimes unemployment overpayments arise from a person who was collecting unemployment in good faith, and then the employer objected to whether they should collecting unemployment, and there is a hearing and the employee/debtor loses. In that factual scenario, the Department of Economic Security usually won't object to the discharge.

Do I have to file on my house and car?

Technically, yes. You need to list all creditors. And your obligations to unsecured creditors, such as mortgages and car loans, will get discharged unless you reaffirm the debt.

On secured debts, you need to declare your intention, which is either to give it back, or to keep paying. If you are going to keep paying, there are basically three options (all of which begin with the letter "R"): retain and pay, which just means that you are going to continue paying but have technically filed bankruptcy on them, which is what most people do; reaffirm, which is a legal document saying that you are not filing on them, and requires an additional court hearing; and redeem, which is typically for a vehicle that is way upside down, whereby you would come up with the value of the vehicle, and then they release the lien. Most people can't come up with the money to pay off their car within three months, so redemptions are actually pretty rare.

The nice thing about the so-called [retain and pay option](#), is that if at any point in the future you decide to walk away from the car or house, you are covered by the bankruptcy. The downside is that payment that you are making, may not get reported on your credit report. Also, you may or may not receive ongoing statements, online access, or be permitted to pay by phone.

How will my life be after bankruptcy?

Let me put it this way: I've been doing this for over 30 years, and I have never had a client contact me after the bankruptcy and tell me that they regretted filing. As far as rental housing, some places may not accept tenants with a bankruptcy in the prior one to two years; just ask before paying an application fee, and if they tell you that's their standard, find a ma-and-pa landlord with more discretion. I've never had a former client tell me they had trouble finding housing following a bankruptcy.

Granted, nobody's really happy when they're in this situation, and I don't see my goal as trying to make the process fun, but we do try to make it painless. The worst part is having it in front of you. Once you make the decision to hire us, the anxiety will go away, and we will seamlessly walk you through the process from there.

Will I be able to get credit again, if so how long?

Believe it or not, shortly after you file bankruptcy you will start getting preapproved for credit cards, because the creditors know two things: first, you that you can't file bankruptcy for another eight years, and second, you don't have all of that other debt. You're actually a better risk after you file bankruptcy than you are beforehand. You can get a car loan shortly after bankruptcy, but may have to pay a higher rate of interest, in which case the key is to try to pay it off sooner. With a co-signor, you should be able to get a car loan at market rates. While of course you need to reestablish credit by paying your bills after filing bankruptcy, in general you can qualify for different mortgages within [2 to 3 years after filing](#), subject of course to having sufficient income. While the bankruptcy is on your credit for 10 years, after 3 years it's a virtual non-issue, and your post-bankruptcy credit history is what becomes most important.

Will I lose assets in bankruptcy?

Over 95% of our clients keep all of their assets because we are able to protect them under the exemption laws. For the 5% who need to pay something in, it is usually no more than \$1-\$2000. That is something we would discuss prior to filing so you would know whether you have any risk whatsoever of falling within that 5% category.

You can always keep your house, household goods and clothing, and retirement accounts. While there are limits, they are very high for those assets. Depending on the equity in your house, you may be entitled to a miscellaneous exemption of up to \$13,000 (double that for a married couple) which is usually more than enough to protect all assets.

How do I choose an attorney?

I would recommend that you call around. If the attorney is too busy to talk to you over the phone, or if they shield themselves from you with staff, think of how hard it is going to be to get ahold of that attorney after they have received your money. I encourage my clients to call around, because the resounding feedback that I always get, is that people say that other attorneys are rude, vague, or simply don't answer calls. I treat my clients the way I would want to be treated, with dignity and respect. I have an unblemished reputation with the board of professional responsibility, have never been sanctioned by a court, and have never had a malpractice claim made against me. Few attorneys with 30 years of experience can say all of this. Plus we have a real bricks & mortar office, fully staffed so there is always someone to help if I am in court or with a client, and believe it or not, many attorneys cannot provide this level of service.

Also check testimonials, and social media. And see how willing the attorney is about giving you telling you what the fee will be – one of the most unwelcome surprises, is an attorney who just assumes that you don't care about the fee, and then you find out what the actual fee is later.

Why would a person choose chapter 13 over chapter 7?

First of all, not everybody has a willy-nilly choice to just do a chapter 7 or a chapter 13 – it's supposed to be a function of your disposable income. If you can't afford to pay your creditors, you should probably do a chapter 7, and if you can afford to pay your creditors, you might need to do a chapter 13. But many people are on the bubble where they could be able to do one or the other.

I usually start with the premise that if we can get you into a chapter 7, that's what we should do. We start out by ensuring that you are under the median income for your household size, and if so, you should be pretty much automatically qualified for chapter 7. If you are over the median income, then we go through the means test, which is a governmental formula, to see if you qualify for a chapter 7. That typically requires a two hour initial appointment, and requires some advance homework on your part. I am creative and experienced at helping high income debtors beat the means test to qualify for a chapter 7 – I have had many people tell me that they met with an attorney and flunked the means test, only to find out that I have figured out a way to make it happen.

One of the most typical examples of why we would do a chapter 13, is for a homeowner facing foreclosure. In that instance, as long as we file prior to the Sheriff sale, the arrearages can be cured through a chapter 13 plan, by spreading it out over 3 to 5 years. We can also still wipe out some or most of your unsecured debt in a chapter 13. And in chapter 13, we can pay off nondischargeable taxes.

Other advantages to chapter 13 include stripping second mortgage liens, and cramming down car loans. If your house is worth less than what you all on the first mortgage, the second mortgage can be stripped, i.e. removed from the property records by paying just pennies on the dollar, in

exchange for committing your disposable income in a chapter 13 plan. If your vehicle is upside down, you can do what is called a “cramdown,” i.e., you only pay for the value of the vehicle, plus a reasonable rate of interest, typically under 5%. A vehicle cramdown can only be done under limited situations if you have had the vehicle less than 2 ½ years.

One of the rules in chapter 13 is what is called the “best interests of the creditors” test, which means that you need to pay your unsecured creditors at least as much as they would have received, had we filed the chapter 7. So sometimes debtors with nonexempt assets that they want to keep (for instance, late-model vehicles that were gifted or purchased with a home equity loan or through other means), or who want to protect relatives who have received preferential payments, will choose to spread that out over time in a chapter 13.

In a chapter 7, you cannot get a discharge if you have filed another chapter 7 within the last eight years. But after four years, you can still file a chapter 13 and get the discharge. So many debtors in that timeslot of at least four, but not quite eight years since the last chapter 7, choose to file chapter 13. My general thought is that if you are 18 to 24 months away from qualifying for a chapter 7 and are not getting garnished, you are probably better off waiting, but individual circumstances vary.

Is bankruptcy ethical and moral?

I certainly have respect for the notion of holding up to your end of the bargain. In fact, I personally pride myself on carrying through on things that I say I'm going to do, professionally as well as personally. You need to remember a couple of things. If you borrowed money on a credit card, the creditor lends it to you not because they liked you, or wanted to do you a favor, or wanted you to be able to purchase the item that day, but rather, because they wanted you to pay the money back, plus interest. That's how they make money, that's their business model. And credit card companies charge a high rate of interest because they know that lending to unsecured debtors can be a risky business, and risk is relative to return. Credit card companies are run by highly paid professionals with MBAs, who have already factored in the chances that some of the people to whom they lend money may get sick, laid-off, pass away, or otherwise be unable to pay the debts, regardless of whether they file bankruptcy. In other words, even though at the time you incurred the debt, you absolutely intended to pay it back, there is usually a precipitating event, whether that is illness, loss of job, divorce, disability, caring for loved one, in fact often two or more of these, a person often finds themselves in a position where they can't pay their debts. The credit card companies just take it on the chin and move on to the next borrower. The fact that some people can't pay them back is preprogrammed into the formula when they decided to lend you the money, whether you had considered that or not. They were certainly aware, whether you were or not, that the Constitution provides that Congress is required to have bankruptcy laws.

And on the topic of morality, the concept of bankruptcy may have its original roots in the Bible:

At the end of every seven years you shall grant a release of debts. And this is the form of the release: Every creditor who has lent anything to his neighbor shall release it; he shall not require it of his neighbor or his brother, because it is called the LORD's release (Deuteronomy 15:1-2).

It usually doesn't feel right to be filing bankruptcy, and maybe it shouldn't. But once the decision has been made, you can simply look at this as an economic decision. Having a bankruptcy in front of you doesn't feel so good, but having a bankruptcy behind you is a huge relief and I have never had a client second-guess the decision.

What are the alternatives to bankruptcy?

- *Debt negotiation.* This is rarely cost-effective. The general rule is that old, bad debt will settle for \$.50 on the dollar, and that is with a cash settlement. If you just have one or two large creditors, sometimes you can make an offer. The offer usually carries a bit more credence if it comes from a bankruptcy attorney, who can threaten bankruptcy is a backup plan if they don't accept the offer. We do offer debt settlement as a service that can be an alternative to bankruptcy, and we charge hourly on that. A typical debts ends up taking 2 to 4 hours of my time to settle, with it being closer to four hours if we are unsuccessful, i.e. they either don't reply, or will not give a very large discount for settlement. You should be aware that if you are able to settle debts, the creditor can send you a 1099, which is a tax documents, because the IRS considers forgiving or cancelled debt to be a form of income.
- *Letters to creditors for insolvent debtors.* Debtors who are on Social Security and not likely to return to the workforce have some pretty good protection outside of bankruptcy. In that situation, we sometimes do what I refer to as a pauper's bankruptcy, (which really is not a bankruptcy at all) whereby we buy letters to their creditors, informing the creditor that the person is insolvent, and asking that they charge off the debt, and that all correspondence go through our office.
- *Statute of limitations and other legal defenses.* Sometimes debts are simply disputed. It may have been paid off years ago, or there may be some other sort of bona fide dispute. I don't like to file bankruptcy if a person has only one debt for which there is a bona fide defense, because you can defend the lawsuit, and then have bankruptcy is a backup plan if you lose. But sometimes the complexity of the case requires litigation fees that far exceed the cost of simply filing bankruptcy. And most of the time, my clients have so many other debts that they need to file bankruptcy anyway.

- *Do nothing.* Eventually, one by one, your creditors will start suing you. Once they sue you, they will eventually get a judgment, and then they can levy upon your bank account and garnish 25% of your wages. Keeping your money out of the bank may not be that hard, but garnishment is typically going to be inevitable, although some people are harder to garnish if for instance they are self-employed or an independent contractor.

While I say that eventually the creditors will sue you, a lot of times smaller creditors, i.e. less than \$1,000, will decide it is not worth their time and effort to pursue a judgment, and they will eventually go away. The problem with this tactic, as well as all of these alternatives to bankruptcy, is that you end up wallowing in bad credit for usually a longer time frame, whereas with the bankruptcy, you get your fresh start and can rebuild your financial life. Sometimes I will advise the “do nothing” (or as I call it, creditor dodgeball) approach for someone who is on the verge of retirement, and may make too much for a chapter 7 now, but doesn’t expect to be working for five years so as to justify a chapter 13.

- *Debt Resolution services* Places like Freedom Debt Relief advertise heavily, as a bankruptcy alternative. What they do, at least in my experience, is they put a heavy sell job on you, and insulate you from your creditors for a year or two while you pay them huge fees, and ultimately the creditors do an end round run around them, and will sue you. I have had too many clients that thought they were doing the right thing, only to realize they had been ripped off and wasted a year or two, when bankruptcy was an inevitable option all along.

