

# WHEN IS IT APPROPRIATE FOR ME TO FILE FOR BANKRUPTCY?

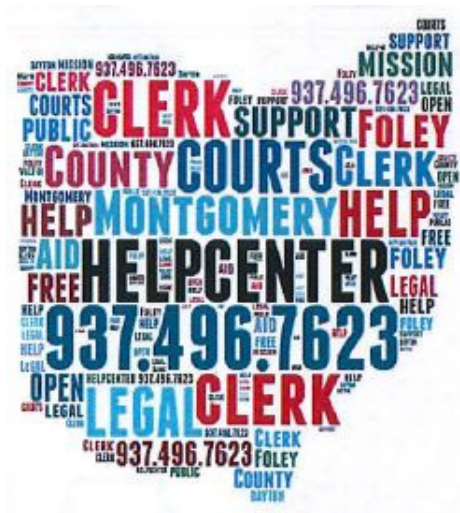
The decision whether to file for bankruptcy is based upon each debtor's unique situation. If you are considering bankruptcy, whether individually or for a business, you should consult with an experienced bankruptcy lawyer who can determine whether you should explore such an option and when it would be most beneficial to file. Generally speaking, it may be appropriate to file for Chapter 7 bankruptcy when you are unable to pay your debts and regular living expenses and when all of your property is exempt. Your income or your assets might make a Chapter 13 bankruptcy more appropriate.

Before filing, consider:

- Changing the terms of a loan (duration, balance due, interest, monthly payments), but beware of the potential impact the forgiveness of debt might have on your taxes and your credit score;
- Surrendering your property to fully satisfy the debt (a "short sale"), while taking into account the potential impact the short sale may have on your taxes and your credit score;
- Determining whether you may be eligible for certain entitlement programs that may exempt your property from seizure;
- Discussing the financial impact of your decisions with an accountant; and
- Entering a state court trusteeship or consulting with a reputable debt relief adviser. Be sure to do your research before signing an agreement.

## MONTGOMERY COUNTY CONTACT INFORMATION

Montgomery County Bankruptcy Court  
120 W Third St #100  
Dayton, Ohio 45402  
(937) 225-2516



## "TAKING THE COURTHOUSE TO THE COMMUNITY!"

## CONTACT US

### ADDRESS:

41 N. Perry St., Dayton, OH 45402

### PHONE:

The Help Center: 937-496-3038

Civil: 937-225-4512

Domestic Relations: 937-225-4562

Criminal: 937-225-4536

Records: 937-496-7762

**EMAIL:** [clerkhelpcenter@mcohio.org](mailto:clerkhelpcenter@mcohio.org)

**WEBSITE:** [www.courthouse toyou.com](http://www.courthouse toyou.com)

# BANKRUPTCY



**MIKE FOLEY, CLERK**  
MONTGOMERY  
COUNTY CLERK OF  
COURTS

# BANKRUPTCY

---

Individuals and businesses use bankruptcy as a way to obtain relief from debts owed to creditors.

The United States Constitution authorizes Congress to pass uniform laws on bankruptcy. Laws governing bankruptcy have existed since the early 1800s. The Bankruptcy Code (Title 11 of the United States Code), enacted in 1978, has been amended several times, most recently with the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. While there is no constitutional right to relief from debts, relief granted by the bankruptcy courts is available to the extent Congress provides.

The Bankruptcy Code provides for relief from debts either through liquidation (Chapter 7) or reorganization (Chapters 11, 12, or 13). This pamphlet discusses some of the issues to consider before filing for bankruptcy and the differences between a liquidation and a reorganization case. Before deciding whether to seek bankruptcy protection, one should consult a qualified bankruptcy lawyer.

## WHAT TYPE OF BANKRUPTCY RELIEF ARE AVAILABLE?

---

Individuals are eligible to file for bankruptcy under Chapter 7, Chapter 11, Chapter 12 or Chapter 13 of the Bankruptcy Code.

Chapter 7 bankruptcy is known as liquidation, or “fresh start” bankruptcy. In a Chapter 7 case, a trustee (assigned by the U.S. Trustee’s Office or chosen by the debtor’s creditors) may liquidate, or sell, the debtor’s non-exempt assets to pay all or a portion of the debts owed to creditors. As a practical matter, you, as a debtor, typically can protect all of your assets by using state or federal exemptions. Many Chapter 7 trustees find that more than 80 percent of their cases are Resolved as “no asset” cases, meaning that all assets are exempt or encumbered with liens.

State law, and in some states federal law, protects you from having certain property taken. This property is

“exempt” from liquidation during bankruptcy, and may include, for example, a certain amount of equity in a home, a vehicle, furniture, clothes, certain retirement accounts, life insurance policies, etc.

When estimating the amount of money that can be made from selling a particular non-exempt item in a Chapter 7 liquidation bankruptcy, a bankruptcy trustee typically will subtract your exemption from your property’s “fair market value” (what a ready, willing and able buyer will pay for the property in “as is” condition). The trustee also will subtract whatever you may owe for any liens or mortgages that may be on your property.

The trustee will only liquidate assets that will net cash to pay your creditors. The trustee also must deduct the fees and expenses paid to any professionals (such as Realtors or auctioneers) assisting in the liquidation of your property. Through this liquidation process, any debts the trustee does not pay (with certain exceptions) will be discharged (eliminated), and creditors will not be able to force you to pay any remaining amount owed.

**Chapter 13** bankruptcy, or individual reorganization, is an alternative to Chapter 7 that allows you to keep your property. In a Chapter 13 bankruptcy (unlike a Chapter 7 bankruptcy), you must pay a portion or all of the debt back. If you are filing bankruptcy under Chapter 13, you must be able to fund a payback plan and meet certain debt and asset limits. You can also use a Chapter 13 bankruptcy to bring your mortgage arrears and taxes current.

Effective October 17, 2005 under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, if you earn more than the median income (based on family size) in the state where you lived before filing bankruptcy, you probably will not qualify for relief under Chapter 7. Whether you are over the median income is determined by the mean’s test. The mean’s test takes an average of your last six months of income, excluding certain forms, and multiplies that number by twelve. If the result of that calculation is over the applicable median income rate, you might qualify for a Chapter 7 bankruptcy. Sometimes, the deduction of certain standard and actual monthly expenses can allow an above-median debtor to qualify for a Chapter 7 bankruptcy.

Chapter 13 debtors must repay all or part of their creditors over time through a Chapter 13 plan. Under Chapter 13, you would submit a plan detailing how all your debts will be paid from disposable monthly income (income after providing for ordinary living expenses) over a period of time of up to five years. The plan of reorganization is monitored by a Chapter 13 trustee and supervised by the bankruptcy court. Upon the successful conclusion of payments under the plan, the bankruptcy court enters a discharge order. As a Chapter 13 debtor, you must pay the creditors at least as much as they would receive if the assets were liquidated in a Chapter 7 case.

A Chapter 13 bankruptcy is typically voluntary and you can choose to dismiss or convert the case into a Chapter 7 bankruptcy. You must otherwise qualify for a Chapter 7 bankruptcy in order to convert.

**Chapter 11** “reorganization” is typically used by corporations or businesses, or individuals whose debts exceed the Chapter 13 debt limits, as an alternative to Chapter 7 liquidation. Since a reorganization under Chapter 11 can be a very expensive process, it is not frequently used by individuals. In a Chapter 11 reorganization, as in a Chapter 13 reorganization, the business debtor keeps business assets and must pay creditors with future earnings according to a reorganization plan.

**Chapter 12** is a special reorganization for family farmers. To qualify, a family farmer must earn most of his or her income from family farming operations.

