

# WAKE UP DEBT FREE

How To Get A Fresh  
Start With Bankruptcy

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## How To Get A Fresh Start With Bankruptcy

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# Introduction

As a bankruptcy attorney, I've helped hundreds of people get out of debt and get a fresh start. Most of the people I've worked with were good people who just had a stroke of bad luck.

I know how overwhelming and humiliating it can be to deal with mounting bills and daily harassment from debt collectors. I also know that you are probably a little nervous about even considering the possibility of bankruptcy.

Let's face it. For many years bankruptcy has carried with it a stigma that most people don't want to be associated with. The good news is that the traditional stigma associated with bankruptcy no longer exist.

**The truth is the bankruptcy laws were created to help people just like you push the reset button for financial fresh start.**

And that is **why I care so much** about telling people the truth about bankruptcy. I don't want any one to miss out on the fresh start they may be entitled to. I've created this ebook to answer some of the most common questions about bankruptcy. If you have other questions, please contact my office at (972) 612-3621.

Sincerely,

*Christopher Migliaccio*



# How Bankruptcy Gives You A Fresh Start

The bankruptcy laws were created to give debtors a fresh start by providing partial or complete relief from debts they cannot pay. When you file the bankruptcy, the Court orders an automatic stay, and all collection activities of creditors stop immediately.

Depending on the type of bankruptcy, and your individual situation, bankruptcy may wipe out the debts you owe, or allow you to file a plan with bankruptcy court proposing how you will repay your creditors.

In most cases **bankruptcy will protect** your money and property. Bankruptcy is not what it used to be. Creditors spend millions of dollars to spread the propaganda that only bums and fraudsters file bankruptcy. The truth is very different! Bankruptcy is a very powerful consumer protection law and financial tool, and it is an intricate part of our American economic system.

# Benefits of Filing for Bankruptcy

**There are several benefits of filing for bankruptcy:**

- 1. Keep your property.** In most cases, you keep all your property including your house, car, retirement, and all your household goods and furnishings
- 2. Stops creditor harassment**
- 3. Stops paycheck garnishments** from the Internal Revenue Service
- 4. Stops bank account levies**
- 5. Stops most civil lawsuits immediately**
- 6. Rebuilds your credit.** Yes! Filing bankruptcy can help you reestablish your ability to borrow money

Bankruptcy can give you a chance for a fresh financial start!



# Types of Personal Bankruptcy

There are primarily two types of personal bankruptcy. Federal bankruptcy code names them Chapter 7 and Chapter 13.

**Chapter 7 bankruptcy** provides one of the fastest means of getting a fresh financial start. It is designed to eliminate your debt in just a few months, typically four to six months.

**Chapter 13 bankruptcy**, also known as reorganization bankruptcy, is a repayment plan that is calculated based on your budget. It is ideal for people who wish to keep all their non-exempt property, and it gives them the opportunity to pay back some of their debts, but with the protection of the bankruptcy court.

Generally, to determine if you are eligible for Chapter 7 bankruptcy, you would have to pass a **Means Test** which would review your debts, income and assets. If you fail the Means Test because the court determines that you would be able to repay some of your debts, you would file for Chapter 13 bankruptcy instead of Chapter 7. We will talk more about the Means Test in the next section

## Chapter 7 Bankruptcy

Chapter 7 bankruptcy is very effective at completely wiping out common debts, such as:

- Credit cards
- Most personal loans
- Money owed resulting from repossessed cars deficiencies
- Money owed resulting from foreclosed homes deficiencies
- Pay day loans
- Utility bills
- Medical bills
- Some taxes (consult with an experienced bankruptcy attorney to determine which taxes are eligible to be eliminated)

# How Chapter 7 Bankruptcy Works

Chapter 7 bankruptcy involves the sale (liquidation) of the debtor's non-exempt assets. The proceeds are distributed to the debtor's various creditors according to the priorities established in the Federal Bankruptcy Code.

Most Texas Chapter 7 debtors tend to have little non-exempt property due to Texas's liberal exemption laws. In the vast majority of cases, the debtor has no assets he or she will lose in a Chapter 7 bankruptcy.

Chapter 7 provides the debtor the opportunity to give up all nonexempt property in exchange for receiving a discharge on most of his or her debts.

This means that you no longer are liable to pay those debts. However, some debts, like student loans and past-due child support payments, are not dischargeable. Moreover, a bankruptcy discharge does not extinguish a lien on property.

# Who Can File For Chapter 7 Bankruptcy?

There is a **Means Test** that must be passed to qualify for a Chapter 7 bankruptcy. In other words, do you have the means (income and assets) to pay some of your debt? The Means Test looks at your debts, income and assets to determine if you qualify. Debtors who fail the Means Test have to file Chapter 13 bankruptcy, or may consider another avenue outside bankruptcy. The fastest way to determine if you pass the Means Test is to talk with an attorney, and provide the attorney with some basic financial information.

# Chapter 13 Bankruptcy

Chapter 13 bankruptcy, known as reorganization bankruptcy, is a repayment plan calculated to fit your budget.

## **Benefits to Chapter 13 bankruptcy if you qualify:**

- Stops home foreclosure
- Allows you to keep your home even if you are behind on the mortgage, and gives you three to five years to catch up on your mortgage default
- Stops repossessions
- Allows you to keep your car even if you are behind on payments; in some cases, you can pay the market value rather than the actual amount you owe on the car loan
- Allows you to pay your non-dischargeable tax debts with no further interest or penalties
- Allows you to consolidate your debts into one manageable and affordable payment, with no direct contact with creditors while under Chapter 13 protection
- Allows you to keep your valuable non-exempt property
- Allows interest rates on certain loans to be reduced and payment terms on most debts to be extended during the bankruptcy plan, generally three to five years

# How Chapter 13 Bankruptcy Works

After filing a petition with the bankruptcy court, the debtor proposes a payment plan to pay the Trust any money that is left over each month, after reasonable

expenses (approved by trustee and court) are deducted from the debtor's income. This money is paid towards your debts over a period of three to five years.

Once the repayment plan is complete, the debtor is no longer personally liable for any remaining unsecured debt that is dischargeable (no longer legally enforceable).

## Who Can File For Chapter 13

Chapter 13 is ideal for individuals with a predictable, steady income, who are behind on their house or car payments. Your unsecured debts must be less than

\$360,475, and your secured debts must be less than \$1,081,400. In some cases, a Chapter 13 bankruptcy is a great alternative for an individual who fails the Means Test, and is not able to file a Chapter 7 bankruptcy

Many people who are thinking about filing bankruptcy are concerned about whether they will be able to keep their home and car after filing bankruptcy. Most of the times as long as you continue to make payments and continue making the insurance payment you most likely have the option of keeping your home or vehicle.

Unless you are surrendering the house or car, just filing either a Chapter 7 or Chapter 13 Bankruptcy will not cause you to lose it.

## **HOUSE**

There are ways to keep your home in bankruptcy. One of the first advantages of bankruptcy is an automatic stay, which will prevent creditors from taking collection action against a person in bankruptcy.



# Will I Lose My House and Car?

Many people who are thinking about filing bankruptcy are concerned about whether they will be able to keep their home and car after filing bankruptcy. Most of the times as long as you continue to make payments and continue making the insurance payment you most likely have the option of keeping your home or vehicle.

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## HOUSE

There are ways to keep your home in bankruptcy. One of the first advantages of bankruptcy is an automatic stay, which will prevent creditors from taking collection action against a person in bankruptcy.

In a Chapter 7 case, you can either formally reaffirm the mortgage loan or, in some judicial districts, just keep making payments. If you fall behind on payments, and have some equity in your home, Chapter 13 bankruptcy may be a better choice for you because it allows you to pay off the arrearages (mortgage) over time and therefore face less risk to losing your home to the trustee. A critical consideration in a Chapter 13 case is whether a debtor whose home loan is in default can make the larger mortgage payments (the missed payments plus resuming the original payments) over the repayment period.

## CAR

Your car loan and the type of bankruptcy you file will determine which options you can choose. The first factor to consider is how much you owe on your car. If you own your car free and clear, you can claim it as exempt property and it will be protected in the bankruptcy process.

This means you get to keep your car when you file. If you still have a minimal amount to pay, you may try to pay off the car and save it during the bankruptcy process. If you have a substantial amount to pay, and you do want to keep the car, your options will depend on whether you file a Chapter 13 or 7 bankruptcies.



Under Chapter 13, debtors must repay the entire car loan if they bought a car within 910 days (two and half years) of the bankruptcy filing. For example, if you had an outstanding balance of \$5000 on a car loan whose blue book value was only \$3000, you would be required to pay the entire \$5000 balance (assuming you want to keep the car) if the car was purchased less than 30 months of filing. In short, debtors who want to keep their cars must pay the full loan amount, rather than “strip down” the debt to just the value of the car.

If your car note is more than 910 days old, you may qualify for a “cram down” procedure where you only pay the current value of the car instead of the full amount of the loan. Even though this doesn’t discharge the debt, it could significantly reduce the amount you owe on the note.

Cars are harder to redeem in Chapter 7 cases, since the law now requires paying the lender the retail replacement value of the car. That value is generally higher than the private sale value that was commonly used under prior law. It remains possible and sometimes favorable for a debtor to surrender a car when keeping up the payments will be impossible. You may also be able to “reaffirm” the debt on the car loan, but you will still be subject to your car being repossessed if you miss payments later. Before you decide to “redeem” or “reaffirm” your car note, review you options and consequences with a bankruptcy attorney to make sure that you continue moving in the right direction for your financial recovery.

Please keep in mind, regardless of which option you elect to make concerning your house or car, you must continue to make payments and stay current on the loan.



## What is Dischargeable in Bankruptcy?

Bankruptcy discharge is a forgiveness of debts. In a very real sense, your “fresh start” is the first step on your journey back to fiscal solvency.

According to Harvard Law School Bankruptcy Professor Elizabeth Warren,

*“Bankruptcy is . . . financial death and financial rebirth.*

Bankruptcy laws literally make debts vanish. When a judge signs a paper entitled, ‘Discharge,’ debts legally disappear.”

Bankruptcy is a safety valve. If you are in way over your head with burdensome debts, you can pull the plug and start over. You can admit your mistakes, and begin anew with a clean financial slate.

Dischargeable Debts are debts that you can get rid of by filing for bankruptcy. Examples include:

Chapter 7 Dischargeable Debts: Loans, credit card debts, judgments, medical bills, old income taxes are dischargeable under Chapter 7.

Chapter 13 dischargeable Debts: In Chapter 13, only family support, fines, student loans, some taxes, and drunken driving judgments are non-dischargeable; while the rest are dischargeable. Debts incurred by fraud or intentional wrongdoing may be discharged if the debtor can demonstrate the plan is proposed in “good faith”.

**Below are given a list of debts, which can be stated as Dischargeable Debts.**

- Personal loans
- Credit cards
- Repossession deficiencies
- Auto accident claims
- Judgments
- Business debts
- Leases
- Guaranties
- Negligence claims
- Tax penalties over 3 years old Income taxes that aren't priority taxes

**Self-Executing Debts:** These debts are automatically accepted from discharge. These creditors do not have to object to discharge, in order to collect on their debts:

### a) Dischargeable Taxes

The personal income tax returns, which were filed on time, more than two or three years ago, and not assessed within 240 days, might be dischargeable. Even with dischargeable taxes, the IRS generally claims secured status and you are generally not allowed to claim exemptions against the IRS.

### b) Non-Dischargeable Taxes

Most other forms of taxes are not dischargeable, meaning after you file for bankruptcy, you will still be liable for your tax liabilities. If you did not file tax returns, then those debts are basically never dischargeable. If you filed a fraudulent return, those debts are generally not dischargeable. If the tax was assessed within 240 days, it is probably not dischargeable. Debts incurred to pay non-dischargeable taxes probably will not be dischargeable.

Form **1040** Department of the Treasury  
**U.S. Individual**  
For the year Jan. 1-Dec. 31, 2015, or other tax year  
Your first name and initial  
If a joint return, spouse's first name and initial  
Home address (number and street). If you  
City, town or post office, state, and ZIP code  
Foreign country name  
Filing Status 1 ☐  
2 ☐  
Check only one box. 3 ☐  
Exemptions 6a  
If more than four dependents, see instructions and check here ☐  
Income  
Attach Form W-2 here, attach Form W-2G and 1099-R was w  
If you get se  
RECEIVED  
DELIVER

## **c) Chapter 13 and Taxes**

Taxes not paid by the plan are generally not dischargeable. A Chapter 13 Bankruptcy arguably freezes penalties and interest as of the date of filing. If the entire debt is not paid by the plan, the IRS may try and recapture penalties and interest from the date of filing.

## **d) Student Loans**

Since 2005, bankruptcy generally does not discharge student loans. This is true whether you file Chapter 7 or 13. You will still be liable on student loans after you file for bankruptcy. In many cases, student loan creditors will wait until after your Chapter 13 Bankruptcy is finished, and then they will tack on interest and start collecting on your student loans.

**Hardship Discharge:** The main exception is if you file an adversary proceeding known as a student loan hardship discharge. If you are going to prevail on a hardship discharge, you need to prove that you are unable to pay back your student loans, not merely that repayment is difficult.

## **e) Government Fines, Penalties, Traffic Fines, Criminal Actions, Criminal Restitution**

Most government fines, penalties, motor vehicle, traffic fines, and parking tickets, criminal actions (including criminal bad check lawsuits), prisoner fees, and criminal restitution are not dischargeable, unless they are for pecuniary loss. After you file for Bankruptcy, you probably will still be liable for these types of debts.

## **f) Child Support**

Child support, alimony, maintenance, property settlements, and/or debt divisions (the last two are not dischargeable under Chapter 7). The last two are arguably dischargeable under Chapter 13.

## **g) HOA Fees**

Most homeowner and condominium fees incurred after the date of filing and prior to foreclosure are not dischargeable. An alternative is to quitclaim the property back to the secured creditor, in an attempt to reduce your post-filing liability on these types of claims or assessments. These debts often run with the land, and Congress has provided special protections for them in the Bankruptcy Code.

## **h) Intoxicated Injury or Death**

Death or personal injury caused by the debtor's operation of a motor vehicle, vessel, or aircraft if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance.

A man in a light-colored long-sleeved shirt and jeans is hanging from a thick rope, suspended in the air. The background is a dramatic sky with clouds and a bright light source, possibly the sun or moon, creating a silhouette effect. The man is looking up at the rope.

# How To Deal With Creditor Calls

At one time or another, all of us have been contacted by a bill collector. We forget to pay or fall behind on payments on credit cards, mortgages, cars, medical bills, or other situations involving bills.

Then we get a letter or telephone call.

When you are not able to pay your debts, you are unable to work out an agreement to repay or settle the debt, or you set up a repayment schedule but fail to make the payments, then you are going to start getting phone calls from creditors and their representative collectors.

## Creditor Calls

These calls, which can be harassing and threatening, are one of the worst things about being in debt. They can come at very inconvenient times. These calls can become a terror attack in your mind, and can cause mental, physical and emotional strain on the person and the family by creditors and their representative collectors.

Unwanted phone calls can be a real nuisance to your daily life. The phone calls arrive at inconvenient times and places. The collectors often call at work and embarrass you in front of your co-workers. Often the collector has an obnoxious attitude and manner, acting like you are somehow a criminal. They can disturb your peace of mind. Harassing collection calls can be a horrible nightmare.

These calls do not make the situation better; they only make it worse.

A ringing phone can become a significant source of stress while you're having financial problems. One call after another from creditors only adds to your stress. Their harassing collection tactics do little to resolve your financial problems. They have a right to call you, but they must abide by collection laws.

## **Texas Law on Debt Collection Practices**

Texas law protects its residents by restricting bill collector behavior. In debt collection, a debt collector may not oppress, harass, or abuse a person. Examples of prohibited behavior are using profane or obscene language; placing calls without disclosing their name and with the intent to annoy and harass the person at the called number; causing a person to incur a toll or fee without first disclosing their name; and harassing a person by letting the telephone ring continuously or making repeated calls.

### **Bankruptcy Can Stop Creditor Calls**

To obtain relief from creditor harassment, you must file for bankruptcy to stop creditor calls. Telling a creditor you are going to do it is not enough. Creditors know this, and will not stop bothering you until they receive the order from the court.

They know that once you file for bankruptcy protection, they will probably be unable to collect all of the debt.

## Here are the procedures by which a bankruptcy filing will stop creditor calls:

- Immediately upon the filing of your bankruptcy case, the bankruptcy court issues an order that stops all collection efforts against you. The order issued by the bankruptcy court is called the “Automatic Stay.”



- After you file the bankruptcy petition, the court mails a notice to all the creditors listed in your bankruptcy schedules. Creditors will also stop calling if you inform them that you filed the bankruptcy petition, and supply them with case number. If a creditor continues to call you or contact your employer, the court may impose fines, punitive damages and even jail time because of the court order violation.
- If your case is discharged, then creditors and their collection companies are permanently enjoined from contacting you unless they have received special permission from the Bankruptcy Court, or your debt is one that is excepted from your discharge.

**Filing of a bankruptcy case really does give you a fresh start. Eliminating the debt allows you to start over, rebuild your credit, remove the stress and threat, and move on with your life.**



# When Is The Right Time To File For Bankruptcy?

The answer to this question varies significantly depending on your individual circumstances.

Sometimes, the best answer is “as soon as possible.”

It is often easier to file sooner rather than later. With that being said, many factors come into play in deciding when is the best time to get your case filed.

If you are facing a lawsuit, wage garnishment, or sheriff sale on your home, you will most likely need to get your case filed immediately.

- **Phone calls**

If the primary force driving you to file for bankruptcy is harassing phone calls, letters, and e-mails from your creditors, then chances are the sooner you can file the better. Filing for bankruptcy invokes the automatic stay which instantly prohibits any creditor from contacting you during the pending bankruptcy case. If all goes well, at the end of your case you will receive a discharge of those debts and the temporary benefits of the automatic stay will become permanent.

- **Wage Garnishment**

If the IRS or a creditor is garnishing your paycheck or bank account, then you will probably benefit from filing your bankruptcy case as soon as possible. If you file for Chapter 7 bankruptcy, the automatic stay will stop all lawsuits and wage garnishments, effective immediately from the time that you file your petition. And, on top of potentially getting your full paycheck, if your debt is dischargeable, you will likely be able to eliminate the entire outstanding debt in bankruptcy.

- **Foreclosure**

If you are in pre-foreclosure or early in the foreclosure process, it may benefit you to delay the filing of your bankruptcy petition. Many things can happen in the time it takes for a foreclosure case to move from initial filing to the actual foreclosure sale.

You may decide that you want to keep the house with a loan modification, sell the house in a short sale, or you may need Chapter 7 bankruptcy offers tremendous financial relief and provides a wonderful opportunity for you to get a fresh financial start. If you are in a situation where Chapter 7 bankruptcy is needed, you should try to file when you have a positive budget on your life necessities. What does positive budget mean? Simply put, after your monthly living necessities are subtracted from your monthly income; you should have money left over; or at least break even.

One of the common errors people make when doing their budget is they include the expenses that should not, and cannot, be included as part of your budget in bankruptcy. This is illustrated below, though these two lists are not complete.

**Necessary Expenses include the following when determining a monthly budget:**

- Rent or Mortgage
- Car Payments
- Food
- Gas
- Insurance including medical, car, and property
- Current Utilities
- Taxes

**Necessary Expenses DO NOT include the following when determining monthly:**

- Credit Card payments
- Past Medical Debts
- Line of Credit payments not secured by collateral (i.e. auto loans, etc.)
- Repossession deficiencies
- Luxurious spending. Example - Trips to Hawaii

If your monthly expenses exceed your monthly income, bankruptcy may be only a band aid. You will need to cut your monthly expenses or increase your monthly income to avoid future financial debt.

While it is recommended to have a positive budget before filing for Chapter 7, there are also times when filing a Chapter 7 is needed regardless of whether you have more money coming in than going out each month.

The end of the month is a popular time to file for bankruptcy because it can reduce the amount of paperwork you have to gather. Changes to bankruptcy laws adopted in 2005, require that anyone who files for bankruptcy must furnish 60 days of pay stubs and submit to a “means test,” which is based on income, to confirm eligibility for a Chapter 7 bankruptcy filing. If you can’t file by the end of the month, you don’t have to wait until the end of the next month, but you will have to document another month of income information.

# The #1 Mistake That Can Jeopardize Your Ability To Get Out Of Debt And Get A Fresh Start

When you are drowning in debt, creditors are calling, and overdue notices begin to fill your mailbox...

it can be **overwhelming**.

Evictions, bankruptcies, foreclosures, wage garnishment and more, along with possible relationship issues like divorce, and even health issues like a complete **nervous breakdown**, come to mind when you owe big debts.

When you are under that kind of stress it can be **hard to think clearly** and make rational decisions. And that is not just my opinion. It is a fact.

When we are under tremendous stress our blood pressure rises, heartbeat speeds up, and cortisol floods the bloodstream. This can cause the cognitive centers of the brain to go offline for a period of time. Some studies have suggested a substantial temporary drop in I.Q. of 30 points or more when under considerable stress. <sup>1</sup>

So, if you are **overwhelmed** by your financial situation you are not alone.

It's OK that you don't know what to do. And that is why it is so **important that you avoid making mistakes** that could

jeopardize your ability to get debt relief from bankruptcy if you decide at some point that is what you want to do.

The bankruptcy laws were created to give people a fresh start. It can be life changing. Unfortunately, under pressure from debt collectors, some people make mistakes that could potentially result in their bankruptcy case being dismissed and even criminal charges that include costly fines and jail time. If you are considering bankruptcy, it is important to avoid the #1 mistake people make that can sabotage their ability to get bankruptcy relief. The #1 mistake people make is waiting too long to talk with a bankruptcy attorney.

Deciding to file bankruptcy is not a decision to be taken lightly. It is also not a decision you should make without a thorough understanding of your options.

At Warren & Migliaccio, our goal is to protect you and your family so that you can take the necessary steps to plan proactively for your future.

We will answer your questions and guide you through your options so you can make an informed decision based on what is best for your family.

Contact us today to schedule a consultation.

Call (972) 612-3621.

# About The Author

Christopher (Chris) Migliaccio is a native of New Jersey and landed in Texas after graduating from law school.

A graduate of the Thomas M. Cooley School of Law in Lansing, Michigan, Chris focuses on what is best for your financial situation – Chapter 7 versus Chapter 13 bankruptcy in Texas.



When financial crises and life situations occur that make avoiding debt nearly impossible, Chris helps clients throughout North Texas navigate federal bankruptcy rules in efforts to find solutions that work for them. “I find satisfaction in helping others find a fresh start.” – Chris Migliaccio

Chris may be a transplant to Texas, but it’s not the only state he’s called home. As a result of his father’s U.S. Secret Service career, Chris has lived in many areas of the United States, including California, New Jersey, Washington, D.C. and Michigan. He graduated from Wheeling Jesuit University with a B.A. in Accountancy in 2001 and obtained his law degree in 2005.

Chris interned with the Dallas County District Attorney’s office and with Skadden, Arps, Slate, Meagher & Flom, L.L.P. located in Washington, D.C.

In 2006, he and Gary Warren formed Warren & Associates, L.L.P., which provides full legal services to individuals and families in Dallas, Rockwall, Hunt and Collin Counties.

In 2008, he became a partner with Warren & Associates, and the law firm was renamed Warren & Migliaccio, L.L.P. It's here where Chris provides legal advice in regards to helping clients understand the intricacies of Chapter 7 versus Chapter 13 bankruptcy options. He says he "selfishly" enjoys practicing law involving federal bankruptcy rules in Texas because he likes helping others. After several years of practicing this area of law, Chris understands that when avoiding debt is not possible, clients are most concerned with repeated calls from creditors and fears they will be sued; helping clients choose between Chapter 7 versus Chapter 13 bankruptcy in Texas addresses these worries.

Unlike his colleague Gary, Chris has stayed proudly loyal to the New York Giants and has not become a Cowboys convert fan. He enjoys spending time with his wife and two daughters. The four will often go on long walks and bicycle rides with their two dogs: a golden retriever and chocolate lab.

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