



LEGAL SERVICES
of Eastern Michigan



Debt Collection and Bankruptcy Clinic

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Debt Collection Practices

Pre-Judgement:

- Debt Collection Calls, Letters, Emails
- Seizure of Secured Property
 - Auto loans, Furniture rent-to-own
 - Must be a peaceful seizure
- Mortgage Foreclosure

Post Judgement Collection

- **Wage Garnishment**
 - Can stop with a motion for installment payments
- **Tax Returns**
- **Bank Accounts**
- **Seizure of Assets**
 - Vehicles
 - Other Personal Property
 - Real Estate
- **Judgment Liens**

Am I Collectible?

Some sources of income are protected from debt collection including:

- Take home wages under \$217.50 a week
- Social Security (RSDI, SSD)
- Supplemental Security Income (SSI)
- Veteran's Benefits
- Pensions
- Unemployment

Other than Social Security benefits, most of these sources of income are not protected in your bank account.

The account where social security is deposited is protected up to 2X your monthly deposit.

- Example – A bank account that receives \$1,000 per month in social security is protected up to \$2,000.00

Questions on Debt Collection?

Bankruptcy Overview

Chapter 7 - Liquidation

- Generally, debts are discharged with a few months
- May be required to sell property
- 8-year limitation

Chapter 13 - Repayment Plan

- Debts discharged only after completion of 3 -5 year repayment plan
- Must pay creditors at least what they would have gotten in a Chapter 7, plus interest
- 4-year limitation

In either case, bankruptcy petitions require a full disclosure of your income, assets, and monthly budget.

Preparing for Bankruptcy

- **Credit Reports**
 - annualcreditreport.com
- **Tax Returns for past two (2) years** (4 years for Ch. 13)
 - Copies from your preparer
 - Can get transcripts from irs.gov and etreas.michigan.gov
- **Income for past six (6) months**
 - All paystubs
 - Social Security Award letter
- **Account Statements for past four (4) months**
 - All bank statements
 - CashApp, Venmo, Paypal statements
- **Title Documents**
 - Deeds, Vehicle Titles, Land Contracts, Leases
- **Review Full Document Checklist**

Preparing for Bankruptcy (Cont.)

- **Credit Counseling Requirement**
 - Must complete two classes, one before filing, and another after filing
 - Costs vary from \$10 to \$50 per class
- **Filing Fees**
 - \$338 for Ch. 7
 - \$313 for Ch. 13
 - Fees can be paid in installments
- **Fee waivers for classes and filing fees**
 - Must be below 150% poverty
 - Cannot make installment payments

Failure to timely take classes or pay fees can result in dismissal without discharge.

Automatic Stay

- As soon as bankruptcy is filed, debt collectors are prohibited from continuing debt collection efforts.
- This will generally stop all forms of collection including:
 - Debt Collection notices and calls
 - Evictions
 - Foreclosures
 - Garnishments
 - Repossessions
 - Active Divorces
- If a debtor has had a dismissal within last year, the stay last only 30 days, unless court orders otherwise.
- A debt collector that willfully violates an automatic stay is liable for damages and attorney's fees.

Bankruptcy Exemptions

Property you can protect in Bankruptcy

Property	Federal exemption value	Michigan exemption value
Household—one item	\$800	\$700
Household—aggregate	\$16,850	\$4,625
Seat, pew, slip, burial plot	N/A	\$800
Crops, farm animals, feed	N/A	\$3,075
Household pets	N/A	\$800
Motor vehicle	\$5,025	\$4,250
Computer	N/A	\$800
Tools of the trade	\$3,175	\$3,075
Homestead	\$31,575	\$46,125
Homestead—tenancies by the entirety (husband and wife)	N/A	Unlimited*
Homestead—65 or older	N/A	\$69,200
Wild card	\$15,800 + \$1,675***	N/A
Jewelry	\$2,125	N/A
Life insurance	\$16,850	N/A

* But subject to the claims of joint creditors and limitations set forth under 11 USC 522(p) and (b)(3)(A).

** [This amount is available only to the extent that there remains unused residential exemption under 11 USC 522\(d\)\(1\) and may not exceed one-half of the exemption \\$15,800 \(effective April 1, 2025\).](#)

Bankruptcy Exemptions Cont.

Note: There is not an exemption for cash or bank accounts

- **In a Ch. 7, property that is not exempt, must generally be liquidated and paid to creditors.**
- **Exemptions are doubled for married couples filing together.**
- **There is typically some room for negotiating with the Trustee.**
- **It is not a violation of the Bankruptcy Code to turn unexempt property into exempt property**
 - **Ask an attorney first**

Chapter 13 - Pros and Cons

Pros

- **Can save property that would be lost**
 - Homes
 - Vehicles
- **Can modify the terms of debts**
 - Reduce Interest
 - Extend payment timeline
 - Reduce principle

Cons

- **Have to pay all of your disposable income during term of the plan**
 - Including tax returns
- **Have to pay trustee to pay your bills for you**
 - Generally 8 -10%
- **Do not get a discharge until after completion of the plan**
- **Plan must be feasible and be approved by the court**

Means Test

- If monthly income is greater than median income, will have to complete a means test form.
- Requires a more detailed explanation of monthly income and expenses to determine if there is income available for payments
- Will determine if eligible for Ch. 7, or be required to file Ch. 13
- Will also determine minimum plan length in Chapter 13.
 - Above median – 5-year plan
 - Below median – 3-year plan

Statement of Financial Affairs

- Portion of the bankruptcy petition that asks about your financial transactions over the past 2 -4 years.
- Primarily looking for typical bankruptcy pitfalls
 - Actual Fraud
 - Constructive Fraud
 - Preferential Transfers
- Examples of Transfers that could be voidable
 - Garnishments
 - Gifts to family members or friends
 - Transferring home or vehicle title to spouse

Reaffirming Debts, Keeping Contracts

- Sometimes it may make sense to keep a debt or a contract in bankruptcy.
- To reaffirm a debt, need to have income available in budget for payments
- Can also choose to keep or reject “executory contracts”
- In some cases, you may choose to cancel a debt or contract, but continue to make payments

341 Hearing – Meeting of Creditors

- In most bankruptcies, this is the only hearing that the debtor is required to attend.
- Meeting with the Bankruptcy Trustee – the person appointed by the Court to represent the creditors
- Documents used to prepare petitions must be given to the Trustee to review at least 1 week before the hearing.
- Creditors are also allowed to attend, but they are not required to.
- After Covid, most 341 hearings are conducted via zoom

Discharge

- A discharge is a permanent court order prohibiting creditors from taking any form of collection action on discharged debts.
- Prohibition includes legal action, communication with the debtor, and
- Does not get rid of valid liens like mortgages and vehicle liens.
- Can seek sanctions against creditor that willfully violates a discharge.

Debts Exempt from Discharge

- Debts associated with Fraud
- Student Loans
 - Undue Hardship Exception
- Child or Spousal Support
- “Willful or Malicious” injuries to persons or property
- Most tax debts

Is Bankruptcy Right for You?

Having an understanding of the exemptions and whether you can do a Ch. 7 or Ch. 13 will help to guide this analysis

Examples

- Homeowner with \$50,000 in unexempt equity who owes \$30,000.00 in debts.
 - Would be required to sell home in a Ch. 7, or pay 100% of creditors in a Ch. 13
- Renter with no real estate, a vehicle worth approx. \$4,000, and only receives social security.
 - Likely can do a Ch. 7 and protect all their property
 - That said, they may be uncollectible

Questions?