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# Frequently Asked Questions

All information contained here is general answers related solely to bankruptcy filings in the Tampa area. Anyone considering filing bankruptcy should consult with and employ a qualified attorney specializing in bankruptcy to get information on their specific case. The specific problems involved in your case may result in different strategies or answers than discussed here.



## What is bankruptcy?

Bankruptcy is a federal law permitting individuals, married couples, or incorporated or unincorporated businesses to reorganize or eliminate their debts. See the general information (<http://www.hillsboroughbankruptcy.com/bankinfo.htm>) page describing the different types of bankruptcy, and the property you can retain in them (in Florida cases).



## How should I choose an attorney?

While most cases are very routine, if a problem arises it can be very important to have a good attorney representing you. Chapter 13 cases are usually more complicated, and require more attention from the attorney than a typical chapter 7 case, although under the new law there is a greater risk of liability under a chapter 7. You should find out if the attorney you are meeting is the same attorney who will appear for you at court and will handle your case, and if not what are the qualifications of the other attorneys involved in your case. Also, beware of firms that advertise under a number of different names. They may have a bad reputation, and be trying to hide their real identity. If you call what appear to be different firms and get the same answering service, you should consider consulting a different firm.



## What are the fees for bankruptcy?

For filings after 17 October 2005:

The filing fee for a chapter 7 bankruptcy is \$274. The filing fee for chapter 13 is \$189. I charge an initial retainer under either case which varies according to how much work I anticipate to be involved in the case. If there were no recent charges on credit cards, and no other problems likely to lead to possible problems in the case my usual fee will range between \$1,250 and \$2,000 not including the filing fee for a chapter 7 case.

For chapter 13 most cases I will allow the majority of the fee to be paid through the chapter 13 repayment plan, and only \$1,700-2,500 would be paid directly to me by the client. The rest of the fee, usually about \$1,800-3,300 would be paid over 3-5 years by the trustee out of the monthly payment sent to him. This option helps insure that the client has funds they need immediately after the filing of the case to make mortgage or car payments, or pay living expenses.

We also now can order credit reports from all three credit reporting agencies to help insure that all creditors are listed. This is included without extra charge to the client in the fees described above. We also will order some type of asset search which is included in the fees above. If the case is a referral from a legal aid society for which we charge reduced fees, these costs will have to be paid separately by the client.

**Why not hire a bankruptcy petition preparer or paralegal?**

There are no standards or required qualifications for bankruptcy petition preparers or paralegals. Only attorneys are permitted to give you legal advice, and only attorneys can represent you in court and design and write legal documents on your behalf. There are many bankruptcy petition preparers in the Tampa area, which very often charge higher retainers than I do. The Courts are now entering orders requiring many of them to appear in court to justify their fees, but the preparers often close under one name and open in another name and at a new address and phone number before the Court and officials can catch them.

**What if I really can't afford an attorney?**

In Hillsborough and Pasco county you should contact Bay Area Legal Services (<http://www.bals.org>). In Polk or Hardee County contact Florida Rural Legal Services at: Florida Rural Legal Services - Lakeland, 963 East Memorial Boulevard, Lakeland, FL 33801, 863.688.7376. In Hernando county contact Withlacoochee Area Legal Services at Withlacoochee Area Legal Services Inc. 222 S.W. Broadway Street Ocala, FL 34474-4151, (352) 629-0105

**What if a lawsuit is filed against me for a credit card or other unsecured debt?**

Most of the time bankruptcy will get rid of these debts, even if they sue you, and may even if they get a judgment against you. Under a recent change in Florida law though, it is much more important to file before any judgment or garnishment is entered, since it may not be possible to eliminate a garnishment on your wages even through bankruptcy if the garnishment is entered before the bankruptcy is filed. Also, if the judgment makes some ruling regarding fraud or wrongful conduct; or if you own non-homestead property on which a judgment lien may attach the judgment may make it much more difficult or impossible to eliminate the debt in bankruptcy. However just the fact that you have a suit or judgment should not prevent you from seeing a bankruptcy attorney to discuss the options. Also, the sooner you file after a judgment, the better the chances of eliminating the debt.

**What if a foreclosure is filed against my home before I file?**

In Florida we can usually stop a foreclosure and give you an opportunity to catch up the mortgage payments through a chapter 13 bankruptcy so long as we file the bankruptcy before the foreclosure sale. If a summary judgment is entered before we file, this may limit our ability to fight the amount owed, so it is best to file as early as possible in the foreclosure process, or before any foreclosure is filed. Once a summary judgment is entered, we usually will no longer be able to fight over the amount you were behind in payments, or the fees and costs charged by the mortgage company. Still, if you are behind on mortgage payments, you should see an attorney as soon as possible to reduce the total fees that will end up being paid to the mortgage company attorneys if they file a foreclosure. If there is a balloon mortgage, ie a mortgage where the final payment is a very large payment due within five years from the day you file bankruptcy, be sure to bring in the mortgage papers and point this out to the attorney as this affects what options you have. However, balloon mortgages are still fairly rare.

**What if my car is repossessed before I file?**

Based on a decision issued June 7, 2002, if a car is repossessed before the case is filed, we may not be able to get it back. Therefore, if you think there is a risk of the creditors repossessing the car, you need to see an attorney as soon as possible.

### **Can I file even if I own a business?**

Yes. If the business is incorporated, then the business is a separate entity, and it can file without you filing, or you can file without it filing. Often, for instance if many corporate debts are personally guaranteed, both may have to file. Generally, if the business is incorporated and wished to keep operating, it would need to file chapter 11.

If the business is not incorporated, then it is not a separate entity and only one bankruptcy would be filed. If there is substantial assets or value to the business I will generally recommend filing a chapter 13 bankruptcy, which will usually allow you to keep control of the business and keep operating it even while you reorganize your debts in bankruptcy.

### **What should I do before the initial appointment?**

Before you first meet with me or any other bankruptcy attorney you should prepare a list of who they owe and how much they owe to this meeting. You may wish to download and fill out my new client sheet (<http://www.hillsboroughbankruptcy.com/ncs.htm>) and my budget form (<http://www.hillsboroughbankruptcy.com/budget.htm>). You will be asked to review and sign the Debt Relief Agency disclosure (<http://www.hillsboroughbankruptcy.com/DRA.not.htm>), the Debt Relief Agency contract (<http://www.hillsboroughbankruptcy.com/DRA.contract.htm>), and the Information disclosure (<http://www.hillsboroughbankruptcy.com/Information.not.htm>) at the first appointment, so you should download, review, and sign those before the appointment. These forms are all required by the new bankruptcy law now in effect. You should also know the make, model, and year of your car and should bring a copy of the car loan papers if they have them. If you refinanced any real estate within the last 3 months, bring a copy of the mortgage loan documents. Finally, you should bring a copy of your most recent paystub. While you do not have to bring anything, all of this information will assist in making a recommendation in your case. You should make out a list of questions you have to ask at the appointment. You also should attempt to obtain the following information, if you can, and bring it to the meeting:

#### **Information Needed:**

The client should attempt to obtain the following information which counsel will require to determine what type of bankruptcy to file, and what payments, if any, will be required to creditors.

- 1). Bills and other statements from creditors and collection agents for the last 3 months.
- 2). Income records for the last 6 months (or some way to determine the average income for the last six months).
- 3). If the client had moved within the last 1215 (3 1/3 years), the client should show where they were living during that time and the date they moved for each time they moved. A copy of the last 4 years of tax returns may assist in showing this.
- 4). If the client had purchased their homestead within the last 10 years, or in the last 10 years either paid more than the regular monthly mortgage payment, or put other money into the home, then the client should be able to show where that money came from and the date of such actions.
- 5). As is the case under prior law, the client should bring in copies of any lawsuit documents and copies of current bills as well as a list of creditors and amounts owed.

- 6). A copy of the most recent tax return filed by the client.
- 7). Photos of the rooms in the home showing furniture in the house.
- 8.) Copies of any car loan papers and the payment terms on any mortgage or lease.
- 9.) Some document showing the annual property taxes and insurance on the home, if you own a home.

#### What shouldn't I do before the initial appointment?

Do not transfer assets out of your name before you see the attorney. This almost never does any good, and can often cause you to lose property you otherwise would have been able to keep. Do not pay any relatives or friends before you file, or make substantial payments to any creditors, other than regular payments on secured creditors before you see the attorney.

#### What shouldn't I do at the appointment?

For attorneys, time is money. While we like children, if you are spending your time chasing after the children or trying to quiet babies instead of listening or answering the counsel's questions, you are wasting everyone's time. If the children will sit and draw quietly, bring them. If they will be running about, screaming, and constantly interrupting, find a babysitter. Do not take cell phone calls during the middle of the appointment. Do not come and spend 10 minutes trying to remember who you owe. The Free consultation is limited to 30 minutes.

#### Can I bring friends/relatives with me to the appointment?

Due to confidentiality concerns, and to insure that the client is not being influenced by others, we will only meet with the individual considering filing bankruptcy at the initial meeting unless they consent otherwise. If that person is mentally incompetent, and a guardian has been appointed, we can meet with the legal guardian. Otherwise, only the client will initially be permitted to discuss the situation with the attorney. If a married couple is considering filing together, both may meet with the attorney for the initial consultation.

#### What should I expect at the appointment?

All clients will be asked to review and sign the following three forms at the commencement of the consultation. You may wish to download and sign them before the appointment.

##### Debt Relief Agency disclosure


<http://www.hillsboroughbankruptcy.com/DRA.not.htm>

##### Debt Relief Agency contract

<http://www.hillsboroughbankruptcy.com/DRA.contract.htm>

##### Information disclosure

<http://www.hillsboroughbankruptcy.com/Information.not.htm>

 I will spend 15-20 minutes initially getting a lot of information from you about your finances. I will then explain what options you have and what option I recommend. You should never feel pressured to decide what to do at the initial consultation, but should feel welcome to go home and think about it before you employ the attorney. If you have questions or don't understand something, you should ask questions. I understand that you have probably not had to employ an attorney before, and bankruptcy can be quite complicated. I expect to take the time to explain it so that you understand the options and what you will need to do.

### **What will counsel not give advise on?**

I practice bankruptcy. I will not give advise on other areas of law, other than as they relate to the bankruptcy, at the free consultation. While most cases may involve some degree of pre-bankruptcy financial planning, I will not give advise for extensive pre-bankruptcy financial planning. If you have substantial assets that are not protected in bankruptcy, and you want to set up an investment or asset protection scheme to protect these assets, you should employ an attorney (usually from a large law firm) specializing in such financial planning.

### **Do I have to list all my creditors?**

Everyone you owe money to on the date the bankruptcy is filed must be listed as a creditor. You may not leave any creditors off the list if you are liable on the debt. This includes corporate credit cards on which the person filing is also liable. This includes debts co-signed for others. This includes all debts of any nature. On the other hand, if you do not owe money to a company (for instance a credit card this is paid off), that company does not have to be listed.

### **What is the procedure for filing?**

I insist on personally meeting each potential client before I agree to take the case. This appointment will usually take 1/2 hour. If I agree to take the case there will be a retainer to employ me, at which time you can start referring creditors to our office. I will give the clients a questionnaire to fill out at this time, which requires listing all debts, assets, creditor addresses, and a budget as well as some other information. When this is returned with the balance of the fee, it will take our office 1-2 weeks to type the petition. The clients will need to come in once more to sign the petition. The chapter 13 cases are generally filed the next business day, chapter 7's filed within 1-2 weeks. There will be a meeting of creditors at the Federal Building about 30 days after the case is filed, which the clients must attend. At this meeting the trustee will ask the same sort of questions as I asked at the initial appointment, but the meeting usually only takes about 5 minutes. In a chapter 7, this is usually the only meeting. In a chapter 13, procedures after this are dependent on the individual case, but will involve at least one more court hearing after the initial meeting.

### **Does it really make a difference which attorney I employ?**

Lets take the example of a chapter 13 case being used to catch up on house payments. First, most chapter 13 cases are ultimately dismissed due to the client not being able to continue payments each month for three to five years. How can this be helped? First, the client needs to try to set aside a little money each month, even when it doesn't seem any is available, so that they have money for unexpected problems like car repairs. However, the attorney also can often help. It is often possible to have the court rule that the payments to the trustee may be decreased temporarily until the unexpected problem is cured. It might be possible to change payments to other creditors depending on the situation. .

What about when a case has been completed, all payments have been made for the three to five years, is this always the end of the matter? Not necessarily. I have seen a number of cases where even after the client did everything they were supposed to, the mortgage company claims they still owe thousands of dollars and threaten to start foreclosure all over again. Usually this is based on attorneys fees not paid in the bankruptcy which the mortgage company claims it is entitled to.



## **What problems can arise in the bankruptcy?**

In chapter 7, it is rare to have any substantial problems, but when problems arise they can be complicated. Some minor issues that arise fairly commonly: some creditors will request that you sign a reaffirmation agreement: that you still owe them money despite the filing of the case. These may be credit cards offering to let you keep using the card if you keep paying on it; or may be car or mortgage loans requesting that you sign to remain liable on the debt whether or not you keep the car or house. I very strongly recommend against reaffirming on unsecured credit cards. Generally the reaffirmation gives them the right to cancel the credit later and still sue you for the balance owed. I may sign reaffirmations on car or mortgage loans.

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Another fairly common issue in chapter 7 is if you are behind on house or car payments, the creditor will usually file a motion with the court requesting permission to foreclose or repossess the car. If you wish to keep the house and vehicles, you should remain current on payments when you file chapter 7 and continually through the case. If you get behind, the creditor may get permission to repossess or foreclose; or you may be required to not only catch up the payments but also pay the creditors attorney's fees.

If the client has more assets than they are allowed in chapter 7, the Chapter 7 Trustee will either want to take and sell them, or sell them back to the debtor. If you are filing before you receive your tax refund, or toward the end of the year and are likely to receive a substantial refund the following year, the trustee may have the right to a portion of this refund.

In chapter 13 cases the most common issues are motions by the mortgage or car companies complaining if the house or car payments are not current. In cases filed under the new law (after October 16, 2005), the car and house payments will be paid by the trustee out of funds you pay to the trustee each month.

The usual rule is that the mortgage payments must be cured through the chapter 13 plan over three years. If the plan takes longer than that to catch up the arrearage, we may ask the mortgage company to consent to an extended time to make the cure.

If a claim is filed for more than we think is owed, we can object to the claim. We often object to claims of the mortgage companies requesting a reduction in the attorneys fees they are requesting.

The budget filed when the case is filed may have to be updated if the client's financial situation changes after the filing.

If the client is unable to make the payments required, we may be able to amend the plan to temporarily reduce the payments until the problem is resolved.

In all cases, the information you list on the bankruptcy schedules and statements; as well as

**the information you disclose at the meeting after filing is under penalty of perjury. If you lie on the forms there is a very good chance that you will have the bankruptcy denied and will be criminally prosecuted; and very well may go to jail. It is absolutely critical that you are honest with me and disclose everything required on the bankruptcy forms. It is much better to put unnecessary information on the forms than to omit required information.**



**These are just examples of some of the issues that may arise in the bankruptcy, and reasons to hire a competent attorney to help you in the case.**