

### **Should I file chapter 7 or chapter 13?**

There are two main kinds of bankruptcy cases that people dealing with debt usually consider. They may file a chapter 7 case, to wipe out debts quickly, or a chapter 13 case, which involves setting up a payment plan where you pay some of your debt off over 3 to 5 years and the rest is discharged.

Since a chapter 13 bankruptcy involves a long commitment and a payment plan, it makes sense to file that kind of bankruptcy case in limited circumstances, such as the following:

- You own a home with more than \$21,500.00 in equity (\$43,000.00 if you and your spouse are filing a joint bankruptcy case)
- You have received a discharge in a chapter 7 case within 8 years of needing to file again
- You have too much income to file a chapter 7 case
- Your main debts are ones that cannot be discharged, but can be spread out over time to give you relief on a monthly basis

When deciding what type of bankruptcy to file, you should consult an experienced bankruptcy attorney. It is usually a bad idea to file for bankruptcy on your own. Most cases filed without a lawyer end up being dismissed. You will have a much better chance of successfully discharging your debts if you retain a lawyer to represent you in a bankruptcy case. You may be able to qualify for free legal assistance by contacting some of the offices listed on the back of this brochure.

Within 180 days before filing a bankruptcy, you must participate in pre-bankruptcy credit counseling provided by an approved group. A list of approved credit counseling agencies is available here: [http://www.justice.gov/ust/eo/bapcpa/ccde/cc\\_approved.htm](http://www.justice.gov/ust/eo/bapcpa/ccde/cc_approved.htm).

### **Need Help?**

Contact Atlanta Legal Aid in your county or one of the other programs listed below.

#### **Fulton County**

54 Ellis Street  
Atlanta, GA 30303  
(404) 524-5811

#### **DeKalb County**

246 Sycamore Street  
Decatur, GA 30030-3434  
(404) 377-0701

#### **Cobb County**

30 South Park Square  
Marietta, GA 30090  
(770) 528-2565

#### **Gwinnett County**

324 West Pike Street  
Lawrenceville, GA 30046  
(678) 376-4545

#### **South Fulton and Clayton Counties**

777 Cleveland Avenue, Suite 410  
Atlanta, GA 30315  
(404) 669-0233

#### **Georgia Senior Legal Hotline**

(404) 657-9915

#### **Atlanta Volunteer Lawyers Foundation**

(404) 521-0790

#### **Georgia Legal Services Program**

(404) 206-5175

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# **Can Bankruptcy Help Me If I've Been Sued or Garnished?**



*Information for Georgia consumers about the automatic stay, the difference between chapter 7 and chapter 13, and how to protect your income from garnishment.*

**Atlanta Legal Aid Society, Inc.**

[www.atlantalegalaid.org](http://www.atlantalegalaid.org)

## Bankruptcy and Garnishment

If you have been sued by a creditor, or are being garnished by one, a bankruptcy can usually help to stop this process. Here's what you need to know about the protections of bankruptcy, if you have been sued or are being garnished.

### The automatic stay

One of the most important protections a person gets from filing bankruptcy is something called the automatic stay. The stay is like a protective shield that goes up around the debtor at the moment the bankruptcy case is filed. While the stay is in place, creditors are not allowed to attempt to collect against the debtor or take the debtor's property unless they first get permission from the bankruptcy court. If you've been sued or garnished, this means that any action being taken against you has to stop, unless the creditor gets permission from the bankruptcy court (by filing what is called a "motion for relief from the stay") to go forward.

In order to get the fastest protection from the automatic stay, it is important for you or your attorney to file a document called a Notice of Bankruptcy Filing in the court where the lawsuit or garnishment action is filed. This document can be very short; it simply needs to state that you have filed for bankruptcy, and include your case number. This puts the creditor and the other court on notice that you have entered the protection of bankruptcy.

### If you've been sued, but the creditor does not have a judgment

If you file for bankruptcy while a lawsuit against you is still going on, the creditor will not

be able to get a judgment against you without asking the permission of the bankruptcy court. If the lawsuit against you is an ordinary collection lawsuit—filed by a credit card company, a medical provider, or other collector—it is very unlikely that the creditor will continue to go forward. The debt will be considered "unsecured," because there will not be a judgment locking it into place. This means that as long as it is listed in your bankruptcy schedules and proper notice is given to the creditor, the debt will be discharged without you or your lawyer having to take further action, as long as it is a debt that can be discharged. There are a few categories of debt that are not allowed to be discharged, which is explained further below.

### If the creditor has a judgment, but there is no garnishment

If you have one or more judgments against you, there is an extra step that will need to be taken before the debt is completely eliminated through the bankruptcy. This extra step is called a Motion to Avoid Judicial Lien. When a creditor gets a judgment against you, a lien is created against your property and earnings. To get rid of that lien, the bankruptcy court needs to issue an order stating that nothing you earn or own is subject to that lien anymore. That is what the Motion to Avoid Judicial Lien asks the court to do. Usually, creditors do not object to these Motions, as long as the debtor has listed all their property as exempt (which means the value of it is below a certain amount).

### If the creditor has started a garnishment

If you are being garnished by a creditor before you file for bankruptcy, this should stop as

soon as the case is filed and the creditor receives notice. If it does not stop, this is a violation of the Automatic Stay, and the bankruptcy court should be made aware of this immediately.

In some cases, you will be able to get back some of the money that has been taken. If more than \$600.00 has been garnished from you within 90 days of filing your bankruptcy case, you can recover that money. This will not happen automatically. Your lawyer will have to take steps, such as marking your garnished wages "exempt" in your bankruptcy schedules and contacting the creditor, to be sure that you get the money back. A Motion to Avoid Judicial Lien will also have to be filed, since most creditors must have a judgment in order to get a garnishment.

### What debts are not dischargeable?

To know whether a bankruptcy will help you if you are being sued or garnished, it is important to know if the debt in question is dischargeable, which is the term used by the bankruptcy court to refer to debts that are eliminated by the successful completion of the bankruptcy case.

The good news is that most regular debts can be discharged. This includes most credit card debt, medical debts, and debts owed to former landlords. However, there are certain debts that cannot be discharged in bankruptcy, such as:

- Student loans (usually, unless the debtor is disabled or proves undue hardship)
- Most tax debt (depending how old)
- Child support or alimony
- Debts resulting from drunk driving
- Debts resulting from fraud of the debtor