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However, a chapter 13 case also has important limitations. For a chapter 13 case to work, you have to show that you make enough income to make the payments in your payment plan. These payments will include monthly fees to the bankruptcy trustee. The court will dismiss your chapter 13 case if you cannot show that you have the ability to make your payments going forward (or if you start to make the payments but later fall behind).

### **What else should I know about filing bankruptcy?**

Filing a chapter 13 bankruptcy case on your own, without a lawyer representing you, is very difficult. Most cases filed without a lawyer end up being dismissed. You will have a much better chance of saving your car if you retain a lawyer to represent you in a chapter 13 case. You may be able to qualify for free legal assistance by contacting some of the offices listed on the back of this brochure. Also, if you hire a private lawyer to handle your chapter 13 case, usually their fees are paid through the bankruptcy payment plan, meaning that you have to pay only a very small amount up front (sometimes as low as \$300).

Within 180 days before filing a bankruptcy, you must participate in pre-bankruptcy credit counseling provided by an approved group.

Finally, if you are filing bankruptcy purely to save a car, you may want to consider whether your car is worth it. This decision will usually depend on what your bankruptcy options are. If you cannot afford a payment plan under a chapter 13, you probably do not want to file a chapter 7 to reaffirm the expensive car loan. Or, if your car is too new to do a cramdown, you may not get very much benefit from a chapter 13 anyway. Sometimes it is better to let the car go and make other arrangements for transportation.

### **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 Save My Car?



*Information for Georgia consumers about the automatic stay, the difference between chapter 7 and chapter 13, and whether bankruptcy will help you save your car.*

**Atlanta Legal Aid Society, Inc.**

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

## Bankruptcy and Your Car

For many people, their car is their most important asset. Without a car, it can be difficult to make it to and from work, school, or the doctor's office. Because it is so important to have transportation, it can be stressful if you are at the point where you start falling behind on your payments.

Many Georgia consumers are surprised to learn that there is no grace period for car payments before the lender can repossess the car. A payment that is a day late, or a dollar short, is sufficient to put the loan in default and give the lender the right to repossess. Once your car has been repossessed, it can be expensive to get it back. Sometimes, if you are facing difficulties with your car payments, a bankruptcy petition may offer some relief to avoid repossession, or even undo a recent one.

### 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 collect from the debtor or take the debtor's property unless they first get permission from the bankruptcy court. This means that if someone files bankruptcy before repossession, the lender will not be allowed to go forward with the repossession until getting permission from the bankruptcy court (by filing what is called a motion for relief from the stay).

If you have filed a previous bankruptcy case within the past year, the automatic stay may be limited – seek advice from a lawyer to find out if you will be protected. If this will be your first bankruptcy filing (or your only case in the past year), filing a bankruptcy case before repossession should allow you to stop the repossession and figure out whether you can protect your car in bankruptcy.

### 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.

If your goal is to save your car, a chapter 7 case is usually not very helpful. First, if you are already behind on the car payments, a chapter 7 does not give you a chance to catch back up. In those cases, the lender will typically ask the bankruptcy court for relief from the stay in order to repossess the vehicle, or just wait for the case to end, and then repossess.

If you are not behind on the payments, then you have two options to keep the vehicle in a chapter 7. One option is to reaffirm the loan. A reaffirmation allows you to keep the car, and continue making payments under the loan. However, this option is not going to make the loan any more affordable than it was before you filed bankruptcy. A second option is redemption, which allows you to pay off the loan by paying only the value of the vehicle (rather than the loan balance). The redemption option can be useful if you owe more money on your car than it is worth, but

it is often difficult to come up with the sum of money necessary to redeem.

A chapter 13 case often offers more options if you need some help saving your car. For instance, if you have already fallen behind on your payments, you can catch back up on your car note through the chapter 13 payment plan. This ability to catch back up sometimes works even if your car was already repossessed. In order to get the car back from repossession (called a "turnover"), the repossession must have occurred within 90 days of the bankruptcy filing, and you will need to make "adequate protection" payments to the lender until the court finalizes your chapter 13 payment plan.

Another powerful tool in a chapter 13 case is called the "cramdown." If you owe more money on the car than it is worth, and you purchased it more than 2 ½ years before your bankruptcy filing, you may be eligible for a cramdown. With a cramdown, you can pay the lender only the value of the vehicle, rather than the full loan balance, through the payment plan. Under a cramdown, you can also sometimes reduce the interest rate to make the remaining balance more affordable. For example, let's say you purchased your car 3 years ago, you owe \$20,000 on the note, there is an interest rate of 28%, and the car is worth \$10,000. A cramdown would allow you to pay only the \$10,000 that the car is worth, rather than the entire loan balance, in your payment plan, and you could reduce the interest rate from 28% to somewhere closer to the single digits.