

BANKRUPTCY

General Information for Hurricane Victims

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In the wake of Hurricane Katrina, many Mississippians will find themselves jobless, with significantly less property than they had before the storm, and in debt. Fortunately, the bankruptcy process is available to provide relief to those who are unable to pay their debts. This information is intended to answer simple questions about bankruptcy. It is not intended to substitute for consultation with a qualified bankruptcy lawyer.

What is bankruptcy?

Generally speaking, bankruptcy is a process in which you (1) are relieved of most or all of your debts, and (2) arrange for repayment to creditors by reorganizing your finances or liquidating your assets. A debt that has been discharged in a bankruptcy proceeding does not have to be repaid.

When you file bankruptcy, you gain immediate protection from your creditors. This is an important benefit for people who experience sudden financial devastation, as happened to many of the victims of Hurricane Katrina.

The right to file bankruptcy is provided in Title 11 of the U.S. Code. You may have heard people refer to “Chapter 7” or “Chapter 13”; these are chapters of Title 11 and describe different forms of bankruptcy. If you have Internet access, you can view the bankruptcy laws at <http://caselaw.lp.findlaw.com/cascode/uscodes/11/toc.html>.

What type of bankruptcy should I file?

The most common types of personal bankruptcy filed by individuals are Chapter 7 and Chapter 13. Which type you file depends on your specific situation.

Chapter 7

Under Chapter 7 (“straight” bankruptcy or “liquidation”) you file a petition to the court, in which you ask the court to discharge your debts. A trustee collects your property and sells (or “liquidates”) the property that is not exempted by state law (see below), then distributes the proceeds to your creditors. When your debts are discharged, you are no longer legally obligated to repay them.

The advantage to Chapter 7 is the complete discharge of your debt; the disadvantage is the liquidation of your non-exempt property. You may choose to reaffirm some or all of your secured debts, in which case you can keep the property (car, house, furniture, etc.) that secures the debt. Payments must be up-to-date on any debt you choose to reaffirm.

Chapter 7 bankruptcy may be filed only once every six years. There is no minimum debt required.

Chapter 7 is typically utilized by people whose debt is largely unsecured (that is, for which there is no collateral) and who have little non-exempt property. People with valuable, non-exempt property, high income, and/or non-dischargeable debt may prefer Chapter 13.

Chapter 13

Under Chapter 13 (or “debt adjustment” or “reorganization”) your creditors agree to allow you to pay off all or part of your debts over a period of three to five years, out of income you receive during that time. After that time your remaining debt is discharged.

You must have a regular source of income to file Chapter 13, because you will be making payments under your repayment plan.

Chapter 13 is typically utilized by people who have non-exempt property that they wish to keep. Such property may include a home or car in which your equity (the amount you have paid on the loan, if any) is greater than the amount exempted by statute. For example, in Mississippi tangible personal property (which includes motor vehicles, clothes, household goods, and other items) is exempt only up to a value of \$10,000. The homestead exemption is \$75,000. If the value of your tangible personal property or home exceeds these limits, Chapter 13 may be a better choice than Chapter 7.

Others

Other bankruptcy provisions include Chapters 11 and 12, but they are less commonly utilized than Chapters 7 and 13. Chapter 11 is more useful to businesses and individuals with very large debts, and Chapter 12 applies only to family farmers.

If I file bankruptcy, will I have to repay my debts?

Under Chapter 7, no. Your debts will be discharged, except for any secured debts that you have chosen to reaffirm. Under Chapter 13, you will repay your debt as specified in your repayment plan.

What debts cannot be discharged?

Although the right to declare bankruptcy is created by federal law, under state law there are some debts that cannot be discharged. In Mississippi, the following debts cannot be discharged in Chapter 7 or Chapter 13 bankruptcy:

- Back child support, alimony obligations and other debts dedicated to family support.
- Debts for personal injury or death caused by driving while intoxicated.
- Student loans, unless it would be an undue hardship for you to repay.
- Fines and penalties for violating the law, including traffic tickets and criminal restitution.
- Recent income tax debts (within three years) and all other tax debts.
- Debts you forget to list in your bankruptcy papers, unless the creditor learns of your bankruptcy case.

In addition, under Chapter 7 (but not Chapter 13) the court *may* declare the following debts non-dischargeable if the creditors challenge your petition:

- Debts you incurred on the basis of fraud.
- Credit purchases of \$1,150 or more for luxury goods or services made within 60 days of filing.
- Loans or cash advances of \$1,150 or more taken within 60 days of filing.
- Debts from willful or malicious injury to another person or another person's property.
- Debts from embezzlement, larceny or breach of trust.
- Debts you owe under a divorce decree or settlement unless after bankruptcy you would still not be able to afford to pay them or the benefit you'd receive by the discharge outweighs any detriment to your ex-spouse (who would have to pay them if you discharge them in bankruptcy).

Will I lose my property?

Under Chapter 7, you will lose property that is not protected by the exemptions, except for property that is security for a debt that you choose to reaffirm. Under Chapter 13, you may keep as much property as you can afford to under your repayment plan.

What property is exempt?

Federal and state law provide for exemptions of some property. Exempt property is protected from your creditors. This means that you may keep this property if you declare bankruptcy.

Property exempted by federal law includes:

- Certain retirement benefits, including civil service employees, military service employees, veteran's benefits, and Social Security.
- Certain death and disability benefits.
- Certain survivor's benefits.

- Miscellaneous exemptions, including military deposits in savings accounts while on permanent duty outside the continental U.S., military group life insurance, seaman's wages pursuant to a written contract, and 75% of earned but unpaid wages.

Property exempted by Mississippi law includes:

- Occupied homestead up to \$75,000. The homestead need not be occupied if the owner is over 60 and married, a widow, or a widower.
- Certain insurance benefits, including disability.
- Certain pension benefits.
- Tangible personal property up to \$10,000.
- Certain public benefits, including assistance to the aged, blind, and disabled; Social Security; unemployment; and worker's compensation.
- Earned but unpaid wages owed for 30 days.

Where do I file?

You must file in Mississippi Bankruptcy Court. There are two court districts, Southern and Northern. You must file in the proper district.

The Southern District courts are located in Biloxi, Gulfport, Hattiesburg, Jackson, Meriden, Natchez, and Vicksburg. You should file in one of these courts if you live in one of the following counties: Adams, Amite, Clarke, Copiah, Covington, Davis, Forrest, Franklin, George, Greene, Hancock, Harrison, Hinds, Holmes, Issaquena, Jackson, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lamar, Lauderdale, Lawrence, Leake, Lincoln, Madison, Marion, Neshoba, Newton, Noxubee, Pearl River, Perry, Pike, Rankin, Scott, Sharkey, Simpson, Smith, Stone, Walthall, Warren, Wilkinson, or Yazoo.

The Northern District courts are located in Aberdeen, Greenville, and Oxford. You should file in one of these courts if you live in one of the following counties: Alcorn, Attala, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Clay, Coahoma, De Soto, Grenada, Humphreys, Itawamba, Lafayette, Lee, Leflore, Lowndes, Marshall, Monroe, Montgomery, Oktibbeha, Panola, Pontotoc, Prentiss, Quitman, Sunflower, Tallahtchie, Tate, Tippah, Tishomingo, Tunica, Union, Washington, Webster, Winston, or Yalobusha.

How do I file?

You file a petition, along with other forms, at the Mississippi Bankruptcy Court in your region. Before you file, you should try to gather as much of the following information as you can:

- Your current sources of income.
- Your major financial transactions for the last two years.
- Your debts, including documentation of loans.

- A list of your property, both real and personal.
- Your monthly living expenses.
- Your tax returns for the last two years.
- Deeds and titles.

If you are filing under Chapter 13, you must file a repayment plan. The plan describes how your income (minus your monthly living expenses) will be portioned out to your creditors.

What does it cost to file?

It costs \$200 to file under Chapter 7. It costs \$185 to file under Chapter 13. The fee may be paid in installments.

Do I need a lawyer?

You are not required by law to hire a lawyer to file for bankruptcy. However, depending on the complexity of your situation it may be wise for you to consult a knowledgeable attorney. Chapter 13 bankruptcy is generally more complicated than Chapter 7 and is more likely to require legal assistance; for instance, in the preparation of your repayment plan.

How can I find a bankruptcy lawyer?

If you already have a relationship with an attorney, he or she may be able to do the work for you or recommend a bankruptcy attorney.

The Young Lawyers Division of the Mississippi Bar is operating a Hurricane Katrina Disaster Legal Assistance Hotline at 1-866-255-4495, and may be able to offer assistance.

If you have Internet access, the Mississippi Bar website has a directory at <http://www.msbar.org/lawyerdirectory.php>. Unfortunately, the directory is not categorized by practice area.

You can consult your local Yellow Pages for bankruptcy attorneys in your area.

When should I file for bankruptcy?

Because of changes in federal bankruptcy law that take effect on October 17, 2005, it may be to your advantage to file before that date. The new law is not friendly to debtors.

What effects will the new bankruptcy law have?

The new law (commonly referred to in the media as “the bankruptcy bill”) will restrict the availability of discharge under Chapter 7 and reduce the amount of relief available under Chapter 13. Among the specific changes:

- People whose household incomes are above the median income for a household of their size may be forced to file Chapter 13 instead of Chapter 7.
- The length of the automatic stay (during which time you are protected from your creditors) will probably decrease.
- Debtors will be required to obtain approved credit counseling before filing. There is currently no such requirement.
- Filing fees will increase. Because of the new law’s complexity, it is anticipated that attorney fees will increase as well.
- Car loan debt will be non-dischargeable if the car was purchased in the past two years and is now worth markedly less than the loan balance.
- Certain debts arising from divorce will be non-dischargeable under Chapter 7.
- Some kinds of student loans will become non-dischargeable.
- The required period of time that must pass between Chapter 7 filings increases from six years to eight years.