

## **Hiring a Bankruptcy Attorney vs. Pro Se Bankruptcy**

*Whether you should file for bankruptcy without an attorney ("pro se") depends on the type of bankruptcy and the complexity of your case.*

You are not required to have an attorney in order to file for bankruptcy. In some simple Chapter 7 cases, you can file on your own (it's called filing "pro se," meaning that you represent yourself) if you are willing to put in some time and research. However, in many cases, it's a good idea to have a bankruptcy attorney. The importance of an attorney depends on the complexity of your case and whether you are filing a Chapter 7 or Chapter 13 bankruptcy.

### *When Is it Feasible to File Without an Attorney?*

The general rule is the simpler your bankruptcy, the better your chances are to successfully complete it and receive a discharge on your own. So it's usually more feasible to file without an attorney if you are filing a simple Chapter 7 bankruptcy. If your household income is less than the state median, you own little or no assets, and you don't have any priority debts or creditors alleging fraud against you, then your case is likely simple enough for you to handle without an attorney. However, keep in mind that even the simplest Chapter 7 requires you to fill out extensive paperwork, gather financial documentation, research bankruptcy and exemption laws, and follow the local rules and procedures.

### *When Is it a Bad Idea to File Bankruptcy Without an Attorney?*

In certain situations, it is almost always a good idea to hire an attorney to represent you in bankruptcy.

### *If You Need to File Chapter 13 Bankruptcy*

There are many reasons to file a Chapter 13 bankruptcy instead of a Chapter 7. You may want to file a Chapter 13 because you wish to catch up on mortgage arrears, get rid of your second mortgage, cram down your car loans, or pay back non-dischargeable priority debts. Or maybe you simply make too much money to qualify for a Chapter 7. No matter what your reason is, it generally means that your case may be too difficult to file on your own.

Chapter 13 bankruptcies are a lot more complicated than Chapter 7s. In addition to filing the official bankruptcy forms (and perhaps some local forms), you must also design a proposed repayment plan, something that is very difficult to do without the expensive software that most attorneys use. Also, certain actions such as stripping your second mortgage or cramming down a car loan will usually require filing additional motions and paperwork with the court.

As a result, even some attorneys will limit their bankruptcy practice to Chapter 7 cases because they feel they are not qualified to handle a Chapter 13. In fact, an overwhelming majority of Chapter 13 cases filed without an attorney get dismissed by the court. So if you are planning to file a Chapter 13, it is a good idea to hire a qualified attorney.

### *If You Have a Complicated Chapter 7 Case*

Certain Chapter 7 cases are more complicated than others. Your Chapter 7 will usually be more complex if you own a business, have income above the median level of your state, have a significant amount of assets, or have creditors who can make claims against you based on fraud. If any of the above applies to you, you risk having your case dismissed, your assets being taken and sold, or facing a lawsuit in your bankruptcy to determine that certain debts should not be discharged. In that case, it is advisable to hire an attorney to handle your bankruptcy.

### *If You Are Not Comfortable Doing it on Your Own*

Even if you have a simple Chapter 7 case, bankruptcy can be an intimidating and time consuming process. You will need to accurately fill out many forms, research the law, and attend hearings. If you are not comfortable with any aspect of the bankruptcy process, you should consider hiring an attorney who will prepare the forms, attend the hearings with you, and guide you through the process.

## **Tips for Finding and Working With a Bankruptcy Lawyer**

### *Do I Need a Lawyer to File for Bankruptcy?*

Before you start looking for a bankruptcy lawyer, figure out if you need one. There is no law requiring that you hire an attorney in order to file for bankruptcy – you are free to fill out the paperwork and file on your own. But before you jump at the chance to save on attorney fees, carefully consider whether this is a good path for you.

### *Where Should I Look for Bankruptcy Attorneys?*

First off, limit your search to lawyers who specialize in bankruptcy. Avoid lawyers whose practice consists of everything but the kitchen sink. Aim to get the names of at least three lawyers. Here's where to look:

- referrals from family, friends, other lawyers who have helped you (this is always the best place to start)
- employer sponsored group legal plan, if you have one
- King County Bar Association Lawyer Referral Service 206-267-7010, and
- Internet directories (look for directories that provide lots of information about each attorney).

### *How to Choose the Best Bankruptcy Lawyer for My Case?*

Once you get a few names of recommended bankruptcy lawyers, meet with each one. You want to find out if he or she has enough experience for your particular case, is familiar with local court rules and bankruptcy trustees, how much he or she charges and what services those fees will cover, and how the attorney or his or her staff will communicate with you.

### *How Much Will I Have to Pay My Bankruptcy Attorney?*

Average bankruptcy attorney fees vary by region. For Chapter 7 bankruptcy, fees range from about \$1,000 to \$2,500 nationwide.

Attorney fees for a Chapter 13 bankruptcy are higher – usually ranging from about \$2,500 to \$5,500. Many courts have local rules or fee guidelines which set fee amounts that are deemed to be “reasonable.” Bankruptcy attorneys usually don't stray far from these fees unless your case will require more work than usual.

Once you've selected an attorney and agreed on the fees, you and the attorney should sign a contract (called a retainer agreement) that clearly states the fees and what services the attorney will provide.

### *Can I Fire My Bankruptcy Lawyer?*

Even the best laid plans can go wrong. If you have a minor complaint (or sometimes even a major complaint), it's usually best to talk to your lawyer. You may be able to clear up the issue and move on.

But sometimes the problem is too serious to fix or the attorney fails to address the issue after you confront him or her. Examples might include: your attorney fails to communicate with you about your case, your attorney doesn't have the skill or experience to handle your particular case, or your attorney fails to show up for court hearings or misses court deadlines. In such a situation you may have to fire your bankruptcy lawyer.

If you fire your lawyer, you may be entitled to a refund of fees you already paid. It will depend on what your retainer agreement says, how much work the lawyer has done, and sometimes whether the fee was unreasonable

## **Pitfalls of Filing for Chapter 7 Bankruptcy Without an Attorney**

While filing a successful Chapter 7 bankruptcy on your own is possible, it's not wise in every case. And even if you have a straightforward Chapter 7 case, you still may do better (keep more property and discharge more debts), if you get expert help from a knowledgeable bankruptcy attorney.

But the fact remains, many people have filed, and will continue to file, Chapter 7 bankruptcy without an attorney. If you plan to do this, take the time to learn about the pitfalls that come with self-representation in Chapter 7 cases. By knowing what the most common problems are you can (1) make a more informed decision about going it alone or hiring an attorney, or (2) work hard to avoid those pitfalls if you file on your own.

### **Pitfalls to Avoid if Filing for Bankruptcy on Your Own**

Some of the most common problems the court sees in bankruptcy cases where the debtor does not have an attorney:

#### **Pre-bankruptcy Considerations**

In many cases, problems arise even before the consumer files for bankruptcy.

#### **Not needing to file for bankruptcy in the first place**

Some people file for bankruptcy because they don't understand what bankruptcy can and cannot do, and what their alternatives are.

#### **Filing under the wrong chapter.**

For most consumers, the logical choices are Chapter 7 bankruptcy and Chapter 13 bankruptcy. There are important differences between the two: not everyone qualifies for either or both, and each treats property and debt differently. For example, if you want to save your home from foreclosure, Chapter 13 might be your best bet. If you have low income and no assets, Chapter 7 may be the way to go. If you file for the wrong chapter, you might lose valuable property, or end up not discharging certain debts.

#### **Filling Out and Filing the Petition, Schedules, and Other Documents**

Even if the debtor chooses the correct chapter to file under, pitfalls abound in the paperwork phase of bankruptcy.

#### **Failure to file required documents**

Many self-represented bankruptcy debtors do not file all of the required bankruptcy documents. You can find copies of the official bankruptcy forms on the website of the United States Courts [www.uscourts.gov/FormsAndFees/Forms/BankruptcyForms.aspx](http://www.uscourts.gov/FormsAndFees/Forms/BankruptcyForms.aspx). From the website, you can print out blank copies of the forms. Or you can fill them in online and print the completed forms. But many courts also have local rules and forms. If you are filing on your own, it may be worth a visit to your local bankruptcy court or its website to find out what your court requires. To find your local bankruptcy court's website, go to [www.justice.gov/courtlinks](http://www.justice.gov/courtlinks) for a list of links to local courts.

#### **Choosing incorrect property exemptions.**

Property exemptions play a key role in both Chapter 7 and Chapter 13 bankruptcy. You can find the most common state and federal exemptions on the Internet. But it's imperative that you double-check these with current state law – exemptions do change periodically. If you're filing on your own, it's up to you to make sure you have the correct law and statute citation. If you're unclear how to list or value a particular item of property, can't figure out your equity in the property, own property with someone else, or stand to lose valuable property (like your home or car) or property you care about (like a family heirloom), a visit to an attorney may be well worth the money.

**Not understanding the difference between credit counseling and financial management.** In Chapter 7 and Chapter 13 bankruptcy you must receive credit counseling from an approved provider before you file for bankruptcy, and take a financial management course before you get a discharge. Many pro se debtors are confused about these requirements, and fail to file the proper certificate. Failing to comply with these requirements can result in dismissal of your petition or not getting a discharge.

#### **Motions or Adversary Actions**

In some Chapter 7 cases, you file for bankruptcy, attend the meeting of creditors, and then get your discharge. But in others, a creditor may challenge the dischargeability of a debt, or the trustee may allege that you have committed fraud. In these situations, you may find yourself on the receiving end of a complaint or motion, or perhaps you want to file a motion (for example, to get student loans discharged). In these types of actions, often an attorney is essential to your success.