



# LEGAL BRIEF BANKRUPTCY

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## PREPARED BY

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## Overview

Bankruptcy is a legal proceeding which helps some people who cannot pay their bills, get a fresh financial start by temporarily, or permanently, preventing creditors from collecting debts. Legal Assistance attorneys provide limited advice and assistance on bankruptcy. Generally, they may –

- explain bankruptcy,
- help you decide whether bankruptcy is right for you, and
- refer you to a bankruptcy attorney.

The decision to file bankruptcy should be carefully considered. It is a Federal court proceeding which can affect your legal right to keep or to use your property. Once you start a bankruptcy case, it may be impossible to stop. Generally, personal bankruptcy is considered the debt management tool of last resort because the results are long-lasting and far-reaching. A bankruptcy can potentially stay on your credit report for as much as 10 years, making it difficult to acquire credit, buy a home, get life insurance, or sometimes get a job. Filing for bankruptcy may be the only option for people who intend to pay their bills but simply cannot. **We strongly suggest you seek the advice of a civilian bankruptcy attorney if you are contemplating filing for bankruptcy.** This handout is intended to provide general guidance and is not a substitute for legal advice -- it should not be used as such.

There are two primary types of personal bankruptcy: **Chapter 13 and Chapter 7**. Each must be filed in federal bankruptcy court. As of November 21, 2012, the fee for filing bankruptcy relief is \$306 for Chapter 7 and \$281 for Chapter 13. Attorney fees are additional and can vary widely.

**Chapter 13** allows you to ‘reorganize’ your debts by either partially or fully repaying them through a three to five year payment plan. This type of filing is typically for a debtor who has a regular income and limited debt. Chapter 13 allows you to keep some or all of your property, but in exchange, you must pay the trustee all of your disposable monthly income for three to five years. The trustee will then pay your creditors. Your house or your car can be included in this protection as long as you continue to make payments toward your mortgage and/or car loan.

**Chapter 7**, known as ‘straight’ or ‘liquidating’ bankruptcy, involves the sale of all assets that are not exempt. Exempt property may include cars, work-related tools and basic household furnishings. Some property may be sold by a court-appointed official—a trustee—or turned over to creditors. You can receive a discharge of your debts under Chapter 7 only once every eight years; however, repeat filers may face additional hurdles.

**Foreclosure and Vehicle Repossessions** – A Chapter 7 bankruptcy will not permanently stop a pending foreclosure or car repossession. In order to keep either your house or your car, you must continue to make your regular payments.

## Bankruptcy for Air Force Members

The Air Force position concerning bankruptcy petitions filed by military personnel is one of strict neutrality. Air Force members, like other private citizens, have a statutory right to invoke the procedures of the Bankruptcy Act. Accordingly, no adverse action may be taken against a member of the Air Force either for filing a petition for bankruptcy, by reason of a discharge in bankruptcy, or as an individual seeking to pay his debts from future earnings under the Act.

Commanders may take adverse action against a member, however, if the underlying circumstances of a case involve mismanagement of personal affairs or dishonorable failure to pay just debts. However, neither the filing of a petition for bankruptcy nor a discharge in bankruptcy can by itself be considered “mismanagement” or “dishonorable.”

### *Will Bankruptcy Affect My Security Clearance?*

The status of your security clearance can be affected, but it is not automatic. The outcome depends on the circumstances that led up to the bankruptcy and a number of other factors, such as your job performance and relationship with your chain of command. The security section will weigh whether the bankruptcy was caused primarily by an unexpected event, such as medical bills following a serious accident, or by financial irresponsibility. The security section may also consider the recommendations and comments of your chain of command and co-workers. The amount of your unpaid debts, by itself, may jeopardize your clearance, even if you don't file bankruptcy. In that sense, not filing for bankruptcy may make you more of a security risk due to the size of your outstanding debts. By the same token, using a government-approved means of dealing with your debts may actually be viewed as an indication of your level of financial responsibility. There is no hard and fast answer here, with one exception: it never hurts to have a good reputation with your co-workers and your chain of command.

Portions of this information adapted from [The Judge Advocate General's School](#), US Army, [Publication JA 265](#), [Consumer Law Deskbook](#) (2000).

## Nevada Exemption Statute

Nevada residents who file bankruptcy generally use the Nevada exemptions; however, special rules apply as to which state or federal exemptions may be used if an individual's domicile has not been continuously located in Nevada for the two year period prior to filing a bankruptcy petition. Exempt property is not subject to the claims of unsecured creditors and may be kept by an individual, subject to the rights of secured creditors and lien holders. Please note that not all of an individual's property may have a matching exemption. Also, an individual must own an interest in the property to claim the property as exempt. See Nevada Revised Statutes Section 21.090 for property exempt from execution.

**THE INFORMATION CONTAINED IN THIS PAMPHLET IS OF A GENERAL NATURE AND IS PROVIDED FOR YOUR ASSISTANCE AND CONVENIENCE. IT IS NOT INTENDED AS LEGAL ADVICE AND IS NOT A SUBSTITUTE FOR LEGAL COUNSEL. IF YOU HAVE ANY QUESTIONS AS TO HOW THE LAW IN THIS AREA AFFECTS YOU OR YOUR LEGAL RIGHTS, CONTACT YOUR CIVILIAN ATTORNEY OR THE NELLIS AIR BASE LEGAL OFFICE FOR AN APPOINTMENT WITH A LICENSED ATTORNEY.**