



New Mexico Legal Aid, Inc.

www.newmexicolegalaid.org

301 Gold Avenue SW, Albuquerque, NM 87102
P.O. Box 25486, Albuquerque, NM 87125-5486

Office number: 505 243-7871
Fax: (505) 227-8712

SOME BASIC INFORMATION ABOUT BANKRUPTCY IN NEW MEXICO

The following is a brief introduction to some basic bankruptcy concepts in New Mexico. It is not intended to be relied upon as legal advice and you should consult with an attorney about your individual situation.

How can bankruptcy help?

Filing for bankruptcy can help if you are at risk of your income or assets being taken to pay debts that you can't afford to pay. It can also help if you can afford to pay some debts but not others. Keep in mind that certain assets and income are exempt in New Mexico as a matter of law and creditors and debt collectors cannot take them from you anyway. For example, social security and disability benefits, retirement benefits, wages equivalent to the federal minimum wage, your home (up to a certain cap) and one vehicle (up to a cap). If your income and assets are already protected from collection, you may not need to file bankruptcy.

However, if your wages or bank account are being garnished to pay a debt, you should consult with a bankruptcy attorney to see if bankruptcy would benefit you. If your home is in foreclosure and you can afford to make reasonable payments to catch up but your mortgage company refuses to accept payments, you should consult with a bankruptcy attorney.

There are 2 types of bankruptcy cases

- Chapter 7 = "A fresh start." Most, but not all, debts can be wiped out if you can't afford to pay them.
- Chapter 13 = reorganization of debts. If you can afford to pay some of your debt, you can use a Chapter 13 bankruptcy to modify the terms of your debts or wipe some out and pay others.

Limits on how often you can file bankruptcy

- Must wait 8 years between Chapter 7 filings
- 6 years to file a Chapter 7 following a Chapter 13

[Type here]

- 4 years to file a Chapter 13 following a Chapter 7
- 2 years between Chapter 13 filings
- Bankruptcy stays on credit report for 10 years

CANNOT DISCHARGE THE FOLLOWING TYPES OF DEBTS:

- Overdue child support or alimony
- Debts for personal injury or death caused by drunk driving
- Student loans in some cases
- Traffic fines or criminal restitution
- Income tax debt less than 3 years old
- Certain purchases, loans or cash advances exceeding \$1,150 within 60 days prior to filing
- Debts due to fraud, embezzlement or larceny
- Willful or malicious injury to another person or property
- Certain debts owed due to a divorce decree

Bankrupt doesn't mean you lose everything. You can keep:

- Up to \$60,000 for your homestead
- Pension or retirement accounts
- Motor vehicle up to \$4,000
- "Tools of trade" up to \$1,500
- Most public benefits and unemployment compensation
- 75% of earned but unpaid wages
- Clothes and basic household goods
- Jewelry up to \$2,500
- Double these amounts for married couple filing jointly

Secured debts like a mortgage, mobile home loan, car or title loan

- You can keep your principal residence if you remain current on the mortgage or the court approves a payment plan
- You can keep your vehicle if you remain current on the payments or the court approves a payment plan

Automatic stay

- Takes effect immediately upon filing of bankruptcy petition
- Debt collection efforts, including garnishments, must stop
- Stay can be challenged by secured creditors

Chapter 13

- Creditors can request Chapter 7 be converted to Chapter 13 if debtor's income exceeds the state median
- Chapter 13 payment plans cannot unreasonably favor one creditor over another
- Advantages: can potentially keep more assets
- Disadvantages: debtor stays under court scrutiny until payment plan is completed; can still be forced to liquidate if payments are missed

Effects of the “Bankruptcy ABUSE” Reform Act of 2005

- Requires pre-filing credit counseling with a court-approved counseling agency. Exception for active military duty in a combat zone.
- Case can be dismissed if counseling is not done
- Evictions can still proceed despite automatic stay
- Must be current with federal income tax filings and income tax payments from prior year
- Does not stay divorce or child support actions

Do I need a lawyer to file bankruptcy?

Although you can file bankruptcy without a lawyer, it is complex and difficult so it's not recommended. However, there are no free bankruptcy lawyers in New Mexico (generally). Lawyers charge different fees, so you should shop around. Some lawyers may accept payment plans or be able to have their fees paid through the bankruptcy payment plan.

- State Bar of New Mexico offers a free monthly Consumer Debt and Bankruptcy workshop The workshop is held at 6 pm on the fourth Wednesday of every month except November, at the State Bar Center, 5121 Masthead NE in Albuquerque. Please call (505) 797-6094 to register for the next available workshop.
- Many resources are available through the bankruptcy court:
<http://www.nmb.uscourts.gov/self-rep/understanding-bankruptcy>

Bankruptcy Alternatives

- Try to negotiate a payment plan or short payoff directly with the creditor or the creditor's attorney. Only agree to a realistic payment plan you can afford.
- Most mortgage companies offer modifications for homeowners who are struggling to make payments.
- What not to do: It's generally not a good idea to take out a loan to pay off other debt, unless the interest or other terms on the new loan are much better than the old ones. Also beware of credit-repair or debt consolidation plans. These often have high fees and do not improve your credit because they don't pay off any debts until you've made many payments. Generally these services do not provide a service you could not do yourself by negotiating directly with each creditor.