



PETITION TO FILE FOR  
BANKRUPTCY

# **BANKRUPTCY IN ILLINOIS**

Problems, Solutions And  
The Way Forward

**Orlando Velazquez, Esq.**

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# **PREFACE**

I truly enjoy helping people in general and I am glad that I have been able to help thousands of people get out of debt and back on track in their lives. People come to see me when they are desperate and I enjoy seeing them happy when their case is over. I hope this book gives you some useful information on bankruptcy and urge you to contact an attorney if you are considering bankruptcy. Filing bankruptcy is not to be taken lightly and one small misstep can be the difference between getting out of debt or running into further trouble.

# DEDICATION

To my wife Betty for supporting me in all that I do and my son Julian, sorry for spending so much time at the office.

## **DISCLAIMER**

This publication is intended to be used for educational purposes only. No legal advice is being given, and no attorney-client relationship is intended to be created by reading this material. The author assumes no liability for any errors or omissions or for how this book or its contents are used or interpreted, or for any consequences resulting directly or indirectly from the use of this book. For legal or any other advice, please consult an experienced attorney or the appropriate expert, who is aware of the specific facts of your case and is knowledgeable in the law in your jurisdiction.

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# TESTIMONIALS

*“Orlando did an outstanding job with my case. He was reliable, he was always readily available to answer any of my concerns or questions. He went out of his way to address any issues that would arise. I had the utmost confidence in Orlando throughout my entire process. I would recommend Orlando to any of my friends or family.”*

**- A Satisfied Client**

\*\*\*\*\*

*“In such a difficult personal time, Orlando was extremely patient, knowledgeable and willing to help me to understand the process. He was great at explaining my options, giving recommendations and letting me make my own decisions. I would highly recommend him to anyone in need of a lawyer.”*

**- Tricia**

\*\*\*\*\*

*“My situation was clearly represented and promptly expedited in a concerned and gracious manner. I would not hesitate to call on Orlando Velazquez Consumer Law if the need arises.”*

**- Donald R.**

\*\*\*\*\*

*“Mr. Velazquez explained everything in great detail, laid out the plan for my situation and executed perfectly. I didn't think I needed a certified bankruptcy attorney but I am glad I found one!”*

***- A Satisfied Client***

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## ABOUT THE AUTHOR



My name is Orlando Velazquez and I have been a lawyer for over 27 years. For the past 26 years, I have concentrated on bankruptcy law and I have helped thousands of clients either eliminate their debts through Chapter 7 bankruptcy or reorganize their debts through Chapter 13 bankruptcy. I enjoy helping people get back on track with their financial life so that they have something to look forward to, whether that be a future for their children or their retirement.

## ***What Do You Want The Readers To Gain From This Book?***

I hope that this book will help people to better understand bankruptcy, eliminate their fear of bankruptcy, and know that there are still opportunities to obtain mortgages, car loans, personal loans, and credit cards after bankruptcy.

## CHAPTER 1

# WHAT DO I NEED TO DO BEFORE FILING FOR BANKRUPTCY?



Prior to filing for bankruptcy, an individual should consult with an attorney. An attorney will be able to advise them on whether or not filing for bankruptcy is a wise decision, and what they need to do in order to start the process. Sometimes people take steps that can derail their bankruptcy or even prevent them from filing bankruptcy, based on advice from friends and family and based on general information found on the internet. Each case is

different and only an experienced bankruptcy attorney can give you the proper advice.

### ***Questions that Clients Are Asked to Determine Whether or Not Bankruptcy Suits Them***

One of the first questions I will ask a client is why they feel the need to file for bankruptcy, as the answer to this question will help me determine which chapter of the bankruptcy code will provide the greatest benefit. I will also use an intake form to obtain basic financial information regarding income, household size, assets, and debts, as well as personal information that will help me to provide them with the proper advice.

I will provide a checklist of documents that will be needed in order to file for bankruptcy. If a client is going to file for Chapter 7 bankruptcy, then they will need to provide tax returns for the past two years, and if they are going to file for Chapter 13 bankruptcy, then they will need to provide tax returns for the past four years. A client will also need to provide paystubs and proof of all income, bank statements, any correspondence from creditors, and statements regarding their investments and

retirement accounts. Most retirement accounts are protected, but they still need to be disclosed so that I can properly protect them.

### ***Common Reasons that Bankruptcy Becomes a Viable Option For People***

People find themselves in need of filing for bankruptcy due to life circumstances. For example, a person may get injured at work or terminated through no fault of their own, and suddenly find themselves without an income and without any way to pay their bills. Some of my clients have needed to file bankruptcy after being involved in an automobile accident and becoming unable to work, after finding themselves with significant medical bills, and after falling behind on credit card and loan payments.

### ***What Can I Expect to Happen Once I File for Bankruptcy?***

Once a bankruptcy case is filed, an automatic stay will go into effect, which means creditors must cease all collection activity, such as calling you or pursuing legal action. In addition, a meeting of creditors (341 hearing) will be

scheduled. The debtor and their attorney will be required to attend this meeting, and an order of discharge will be issued approximately 60 days later.

### ***Should I Sell Things or Give Away Money or Assets Before Filing for Bankruptcy?***

If someone plans on filing for bankruptcy, then it is imperative that they do not give away money or assets beforehand, as doing so may be considered fraud. When a person files for bankruptcy, they are required to disclose what assets they have transferred prior to filing bankruptcy and to whom they have transferred the assets. The bankruptcy trustee can recoup those assets from the persons to whom you gave the assets.

Transferring assets to friends or family prior to filing for bankruptcy is not advisable; not only will it make you look bad, but it will also cause stress for the recipients when they are being pursued by the bankruptcy trustee. That being said, an individual is allowed to sell assets at fair market value prior to filing for bankruptcy, but they must keep a paper trail of where the money went. If the money is used on something other than necessary and

reasonable expenses, then the bankruptcy trustee can object to the bankruptcy. The wisest decision would be to discuss these matters with an experienced bankruptcy attorney before doing anything so that you know what you can and cannot do.

### ***Is it Possible to Charge Up a Bunch of Debt Before Filing for Bankruptcy?***

The bankruptcy code has a provision that allows a creditor to object to the discharge of their debt if the debtor accrued significant amounts of debt prior to filing for bankruptcy. Additionally, the bankruptcy trustee could deny the discharge on the basis of bad faith. Finally, since the debtor has to disclose their assets when they file for bankruptcy, they may not be able to protect all their assets if they purchase many assets prior to filing.

### ***Should I Pay Back Any Family or Friends I Owe Before Filing for Bankruptcy?***

The bankruptcy court is a court of equity, which means that all creditors are supposed to be treated equally. In view of this, the bankruptcy code has a section that allows a bankruptcy trustee to recoup any payments

made to family members or friends so that they can distribute it equally to all of the creditors. The trustee can go back as far as 90 days to recoup payments made to friends, and as far back as one year for payments made to family members.

### ***Misconceptions People Have About Bankruptcy***

The biggest misconception people have about bankruptcy is that people who file for bankruptcy are failures or bad people. Nothing is further from the truth. Filing bankruptcy provides people with a fresh start and is a good financial choice for those who are deeply in debt. Multimillion-dollar corporations file bankruptcy because it is a good financial choice for them and allows them to stay in business, so people should not be embarrassed if they feel that they need to file for bankruptcy.

The second biggest misconception is that, after filing for bankruptcy, you will not be able to buy a house, buy a car, or otherwise obtain credit for at least seven years, however, this is totally false. Bankruptcy may put you in a better financial situation and may allow you to buy a house, buy a car, and obtain credit cards. With that said, a

person must take the necessary steps to improve their credit score post-bankruptcy and demonstrate to lenders that they are creditworthy.

## CHAPTER 2

# WHAT IS A CHAPTER 7 BANKRUPTCY?



Chapter 7 bankruptcy is the chapter that most people think of when they think of bankruptcy. It allows a person to eliminate most forms of debt, including credit card debt, personal loans, medical bills, car repossession deficiencies, and some taxes. However, some debts, such as child support, are never dischargeable.

In order to file for Chapter 7 bankruptcy, an individual must “pass” the means test. The means test is

the calculation that determines whether Chapter 7 bankruptcy is presumptively abusive, which can lead to the dismissal of the case. The means test sets a maximum annual gross income that an individual can have in order to qualify for Chapter 7 bankruptcy. If someone initially “fails” the means test, then they will proceed with a second set of calculations in order to determine if they can still file for Chapter 7 bankruptcy. If they “fail” the second set of calculations, then there is a presumption of abuse and the U.S. trustee can request that the case be dismissed or that it be converted to a Chapter 13 case.

Prior to filing for bankruptcy, an individual is required to complete a credit counseling class, which can be done online. Prior to receiving a discharge, an individual will need to attend a meeting of creditors (341 hearing) wherein the trustee confirms that the information contained in the bankruptcy paperwork is correct. Creditors have the option of attending this meeting, but they very rarely do.

A person who files bankruptcy will also have to complete a financial management class, sometimes referred to as a debtor education class, which can also be done online.

## ***When Will I Have the Meeting of Creditors (341 Hearing) in Chapter 7 Bankruptcy?***

The meeting of creditors (341 hearing) will be held approximately 30 to 45 days after the case has been filed. The debtor must bring valid identification, such as a driver's license or state ID card. They will also need to bring their original Social Security card and should expect to be asked the same types of questions that they were asked during their initial meeting with their attorney, such as those regarding income, assets, expenses, and pre-filing transactions. The bankruptcy trustee will want to confirm that all of the information contained in the bankruptcy paperwork is correct.

## ***What Assets Will I Be Able to Keep After Completing Chapter 7 Bankruptcy?***

Chapter 7 bankruptcy is meant to eliminate a person's debt and provide them with a fresh start. Since it would be very difficult for a person to have a fresh start if they were to lose all of their possessions, certain assets are allowed to be kept in Chapter 7 bankruptcy, such as a house, car, and household goods. This is achieved

through the use of exemptions, which are determined by state or federal law, and allow you to protect certain amounts of equity in certain property. A debtor can keep their assets so long as the equity in those assets is equal to or less than the exemptions. If someone has a significant amount of possessions that exceeds the exemptions, then they should consider Chapter 13 bankruptcy in order to protect their property.

# **CHAPTER 3**

## **WHAT IS A CHAPTER 13 BANKRUPTCY?**



A Chapter 13 bankruptcy allows a debtor to pay their debt over the course of 36 to 60 months. Secured creditors are paid in full, with some interest, and the general unsecured creditors are generally paid a fraction of the amount owed to them, depending on the debtor's income, expenses, and assets. Chapter 13 bankruptcy is typically used to save a house that is in foreclosure and to protect a car from repossession. Many people have used Chapter 13 bankruptcy to stop municipalities from

impounding their cars or suspending their licenses due to municipal fines such as parking tickets. The typical Chapter 13 bankruptcy scenario involves an individual who experienced a temporary decrease in their income from something like unemployment, and then returned to work but was unable to catch up their mortgage or car loan.

### ***Requirements to File for a Chapter 13 Bankruptcy***

In order to qualify for Chapter 13 bankruptcy, an individual must have no more than \$1,257,850.00 in secured debt, and no more than \$419,275.00 in unsecured debt. These debt limits were revised on April 1, 2019, and are revised every three years. A debtor must also have sufficient income to fund a Chapter 13 payment plan. In Chapter 13 bankruptcy, the means test determines the minimum amount that the debtor must repay to the general unsecured creditors, as well as the length of the Chapter 13 plan. If a debtor “passes” the means test, then the payment period can be as little as 36 months and the amount that will need to be paid back to the general unsecured creditors will be determined by the amount of their disposable income, which is the amount of income

that is left over at the end of the month after the deduction of reasonable expenses. If a debtor “fails” the means test, then the payment period must be 60 months and the minimum amount that will need to be paid back to the general unsecured creditors will be determined by the means test.

### ***What Happens if I Fall Behind in Making Chapter 13 Payments?***

Chapter 13 bankruptcy is a repayment plan, so it is imperative that the payments be made on time. If a debtor fails to make the plan payments, the Chapter 13 trustee can file a motion to have the case dismissed for failure to comply with the terms of the plan. However, sometimes emergencies do come up, and a debtor who has agreed to a Chapter 13 repayment plan might find themselves unemployed. If this were to happen, the debtor should notify their attorney right away. If the debtor’s income decreased or their reasonable expenses increased, then the debtor’s attorney can request a reduction in their payments and a deferment of their past due plan payments.

## *Differences Between a Chapter 7 and Chapter 13 Bankruptcy*

The major difference between a Chapter 7 bankruptcy and a Chapter 13 bankruptcy is that Chapter 7 bankruptcy eliminates debt, while Chapter 13 bankruptcy requires the debtor to pay back all or a portion of their debt. Each chapter of the bankruptcy code has its purpose. If a debtor is overburdened with debt and their assets do not exceed the allowed exemptions, then Chapter 7 bankruptcy would be best. If a debtor is trying to save their house from foreclosure or save their car from being repossessed, then Chapter 13 bankruptcy would be best. Chapter 13 bankruptcy can also be a good option for someone who makes a significant amount of money but is struggling to make the monthly minimum payments, or is making the payments but is not significantly reducing the amount of the debt owed because only a small portion of the monthly payment is going to the payment of the principal amount owed. Chapter 13 allows them to pay their unsecured debt interest-free, usually at a lower monthly amount, within three to five years.

## *Which Bankruptcy Is Right For Me?*

The best way to determine which chapter of the bankruptcy code is the best for a particular set of circumstances is by consulting with an experienced bankruptcy attorney who can review the pros and cons of each type of bankruptcy.

## CHAPTER 4

# WHAT COURSES TO TAKE AFTER COMPLETING A BANKRUPTCY?



A bankruptcy case is considered complete once a discharge order has been issued. In order to receive a discharge order, the debtor must take a financial management course, which is also known as a debtor education course. If they fail to take the course, then their case will be closed without a discharge and creditors will be allowed to resume collection efforts. If this were to happen, then the debtor's attorney would have to file a motion with the court to request leave to reopen the case in

order to file the proper course certificate with the court. It is imperative that a debtor take this course as soon as possible in order to avoid having to pay the extra costs associated with reopening the case.

### ***When to Complete the Pre-Bankruptcy Credit Counseling Courses?***

The pre-bankruptcy credit counseling course must be completed no later than the date of the bankruptcy filing, before the case is actually filed. Failure to take this class prior to filing for bankruptcy will result in the dismissal of the case.

## CHAPTER 5

# HOW LONG AFTER FILING FOR A BANKRUPTCY DO CREDITORS STOP CALLING?



Creditors are required to stop calling immediately upon the filing of bankruptcy. However, they may not receive notice of the bankruptcy filing right away. For this reason, someone who has filed for bankruptcy should keep their court case number on hand to provide to any creditor who calls. If a creditor continues to call or harass a debtor after they have provided their bankruptcy case information, then the creditor is in violation of the law

and the debtor should call their bankruptcy attorney so that the appropriate action can be taken against the creditor who is violating the automatic stay.

### ***How Many Years Does a Bankruptcy Stay on Someone's Record?***

Chapter 7 bankruptcy stays on a credit report for ten years, and Chapter 13 bankruptcy stays on a credit report for seven years. However, they are not always removed automatically, which means it's important for a debtor to check all three credit reports after the appropriate period of time in order to ensure that they have been removed.

### ***Do I Have to Pay Income Taxes on Debts Discharged in My Bankruptcy?***

The internal revenue code requires that a creditor report debt that is canceled by a creditor, which can result in a tax liability. However, the Internal Revenue Service (IRS) does not tax the debt that is discharged in bankruptcy. Some people who settle their debts instead of filing for bankruptcy do not realize that the cancellation of the debt may be taxable and that they might end up with a

tax bill from the IRS. This is why filing bankruptcy may be more beneficial than settling your debts.

### ***When Will I Be Able to Buy a Home or a Car?***

Many people are able to get back on their feet and buy a car or house after successfully completing a bankruptcy. There are a few automobile lenders that will approve a debtor for a car loan as soon as they file for Chapter 7 bankruptcy. However, the majority of lenders will make a debtor wait until they receive their discharge order.

In order to be approved for a mortgage, a debtor will typically have to wait for approximately two to two and a half years after a Chapter 7 bankruptcy is completed, as well as take the necessary steps to increase their credit scores.

You may qualify for a mortgage while in a Chapter 13 bankruptcy after making a certain number of timely trustee payments and may qualify for a car loan after making a few timely trustee payments. Please note that, in order to incur debt in a Chapter 13 bankruptcy, a debtor

must request court approval by having their attorney file the appropriate motion with the court.

***Will Having a Bankruptcy on my Record Affect My Job Application?***

The Bankruptcy Code provides protection against discriminatory treatment by an employer or prospective employer. However, some jobs that require security clearance or require you to be bonded will not hire you based on the fact that you have bad credit. This applies whether or not you have filed for bankruptcy.

## CHAPTER 6

# LOAN MODIFICATION AND ITS RELATION WITH BANKRUPTCY



A loan modification is a process whereby a lender will modify the terms of a loan, such as by reducing the interest or the amount of each payment. Some modifications involve extending the length of time for repayment. Loan modification requests may be denied if you owe a significant amount of debt. In such cases, filing for bankruptcy may be a good option for eliminating debt and getting approved for a loan modification. I have had clients that were denied a loan

modification and, after filing bankruptcy, reapplied and were approved.

### ***Can a Loan Modification Stop Foreclosure?***

A loan modification may stop a foreclosure. During the time that a lender is considering a loan modification application, they typically pause the foreclosure process.

### ***Is Loan Modification Right for My Situation?***

In order for a person to determine whether a loan modification or bankruptcy is better for their particular situation, they should speak with an attorney.

### ***Will the Bank Stop Pursuing My Home if I File for Bankruptcy?***

During a Chapter 13 bankruptcy, the bank will stop pursuing a home because the debtor will resume paying the regular monthly mortgage and will also be paying back the past due amount via the Chapter 13. Chapter 7 bankruptcy will stop the bank from pursuing a home for about one to four months.

## *How Would You Advise Someone Who Wants to File for Bankruptcy Without an Attorney?*

Bankruptcy is a very detailed process that involves a lot of paperwork, has specific requirements, requires adherence to the code and rules, and requires certain disclosures. Many people don't realize that the failure to disclose assets or provide certain information can lead to the dismissal of their case and possible sanctions against them. Anyone who is serious about filing for bankruptcy should talk to an attorney who has experience with bankruptcy and can guide them through the process.

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# NOTES



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### Orlando Velazquez, Esq.

My name is Orlando Velazquez and I have been a lawyer for over 27 years. For the past 26 years, I have concentrated on bankruptcy law and I have helped thousands of clients either eliminate their debts through Chapter 7 bankruptcy or reorganize their debts through Chapter 13 bankruptcy. I enjoy helping people get back on track with their financial life so that they have something to look forward to, whether that be a future for their children or their retirement.

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— Tricia

*"Mr. Velazquez explained everything in great detail, laid out the plan for my situation and executed perfectly. I didn't think I needed a certified bankruptcy attorney but I am glad I found one!"*

— A Satisfied Client

*"My situation was clearly represented and promptly expedited in a concerned and gracious manner. I would not hesitate to call on Orlando Velazquez Consumer Law if the need arises."*

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