

# Thinking About Bankruptcy?

## Things You Need to Know.

In this handout, you will:

- Learn about Chapter 7 Bankruptcy.
- Find out what help is available.



### IMPORTANT:

This handout is not legal advice. It is for you to learn about Chapter 7 Bankruptcy. Chapter 7 Bankruptcy is only one kind of bankruptcy. There are other kinds of bankruptcy.

This handout only explains Chapter 7 Bankruptcy.

Only you can decide whether to file bankruptcy. If you are not sure whether you should file bankruptcy, you should talk to a lawyer. If you are not sure what type of bankruptcy to file, you should talk to a lawyer.

## IMPORTANT BANKRUPTCY QUESTIONS

- [What is Chapter 7 Bankruptcy?](#)
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### What is Chapter 7 Bankruptcy?

Chapter 7 Bankruptcy is a legal process under federal law. It can help people or businesses who are overwhelmed with debt. Bankruptcy cases are filed with a Bankruptcy Court. It costs \$311 to file Chapter 7 Bankruptcy. You might qualify to have the fee waived, or make payments on it.

## What Can Chapter 7 Bankruptcy Do for Me?

A Chapter 7 Bankruptcy can stop creditors from collecting debts. This includes:

- Debt Collections
- Debt Lawsuits
- Wage or Bank Account Garnishment
- Car Repossession
- Utility Shut-Offs
- Eviction
- Foreclosure

Chapter 7 Bankruptcy can give a person time to sort out their finances. Some debts can be wiped out for good. Other debts can be brought current by a payment plan with the creditor.

## What Are the Drawbacks to Filing Chapter 7 Bankruptcy?

Bankruptcy is not a magic fix for all situations. It is important to remember that there are drawbacks to filing bankruptcy. These include:

- **Some debts do NOT go away with Chapter 7 Bankruptcy.** You will still have to pay these debts after bankruptcy. These include:
  - Child Support and Alimony
  - Student Loans
  - Tax Debts
  - Criminal Fines and Restitution

➤ **Chapter 7 Bankruptcy may not give you enough help if you have “secured” loans like home loans or car loans.** These loans can’t be wiped out if you want to keep the property. When you bought the home or car, you signed a contract that said the lender can take the property if you don’t make the payments. If you file Chapter 7 Bankruptcy, you have three choices:

1. Return the property to the lender. The debt will be wiped out.
2. Sign a new contract with the lender, saying you will keep making payments. This will let you keep the property. However, you have to be able to show that you can afford the payments once your other debts are wiped out.
3. Pay the lender what the property is worth. This will let you keep the property. However, this is only possible if you have the money to pay for the property.

However, if you file a Chapter 13 Bankruptcy, you may get more time to catch up on payments. You can get up to five years. This can make a big difference if you are behind on payments and need help getting caught up. However, you have to show that you have enough income to make the payments.

➤ **Bankruptcy will hurt your credit score.** If you file bankruptcy, your credit score will go down. However, if you are behind on bills, your credit score might already be low.

You may not be able to get any new loans or credit for a while after you file bankruptcy. When you do get a loan, the lender may charge you higher interest. Other people who can look at

your credit score include landlords, a new employer, and car insurance companies. However, your *current* employer cannot discriminate against you for filing bankruptcy.

- **Bankruptcy will *not* wipe out debts for your co-signers.** If you file bankruptcy, it will only wipe out the debt for you. If you have a co-signer on a debt, he or she will still have to pay the debt.

## Is Bankruptcy My Only Option?

This depends on what problems you want to fix by filing bankruptcy. You might have a problem that can be fixed without filing bankruptcy. For example:

### **Debt Collector Harassment**

Is your main problem that debt collectors are harassing you? You probably don't need to file bankruptcy just for this. The law says that if you ask them to leave you alone, they have to stop calling or writing you. You will still owe the debt, but they cannot harass you about it. If they still do not stop, they are breaking the law. You may be able to sue them. They also cannot call you at all hours, call other people about your debt, threaten you with jail or bodily harm, or use abusive language.

MLSA has a form letter you can send to debt collectors. It is on [www.montanalawhelp.org](http://www.montanalawhelp.org). Or you can [apply to MLSA](#) for help with debt collector harassment.

### **Collections, Lawsuits and Garnishment**

Is your main problem that you have debts that are going to collections or lawsuits? Collections and court judgments can be

very stressful. However, they are not always as bad as debt collectors make them seem. It is true that they are bad for your credit score, but bankruptcy is much worse.

**More importantly, sometimes a collector cannot take any money or property from you at all, even if they take you to court.** How can this be? Some income and property is “**exempt.**” This means a creditor can’t take it to pay a judgment. If you do not make much money, or own valuable property, ALL your money and property might be exempt. Many Montanans are totally exempt from collectors, especially if you are on a fixed income.

MLSA provides many self-help resources about collections problems, lawsuits, and garnishment. These are available on [www.montanalawhelp.org](http://www.montanalawhelp.org). Or you can [apply to MLSA](#) for more help.

## Will I Qualify to File Chapter 7 Bankruptcy?

If your income is less than the [national median family income](#), you probably qualify to file Chapter 7 Bankruptcy. However, you will still need to apply for the FYOB program at MLSA to see if you qualify for that program.

If your income is more than the [national median family income](#), the Bankruptcy Court might not let you use a Chapter 7 Bankruptcy. You can still *file* a Chapter 7 Bankruptcy. But the Court will look closely at your finances. If you have extra money to make some payments to creditors, the Court can make you change to a Chapter 13 Bankruptcy. Chapter 13 Bankruptcy is more complicated than Chapter 7. If you have to file a Chapter 13 Bankruptcy, you should talk to a lawyer.

## Would a “Chapter 13” Bankruptcy Be Better for Me?

This handout only covers Chapter 7 Bankruptcy. MLSA is generally not able to help with any other kinds of bankruptcy. You might want to talk to a bankruptcy lawyer if you think you should file a Chapter 13. You should discuss this option with an attorney if you:

- Have a motor vehicle worth more than \$2500 (\$5000 in two cars for a married couple) after any loans you owe on it.
- Have equity of more than \$250,000 in a house.
- Will not be able to catch up on house or vehicle payments within three months, even after other debts are wiped out.
- Have income more than the [national median family income](#) for your household size.

## When Is the Best Time to File Bankruptcy?

It is important to think about *when* you file bankruptcy. Certain times are better for filing bankruptcy than others. Think about the following things when planning to file bankruptcy:

- **Do not wait until the last minute if you might be facing garnishment, repossession, eviction, or foreclosure.** It takes some time to fill out your bankruptcy forms. You cannot file bankruptcy overnight. Plan on at least two months to fill out your forms. If you are very busy or have a lot of debts, it may take longer. Do not wait until your situation is an emergency.

- **You should not file bankruptcy yet if you expect more large debts to come along.** You can only file bankruptcy once every seven years. If you know that you will probably have more debts happening soon, you should wait to file bankruptcy. That way all those debts will be included. For example, maybe you know you have to have surgery in the next year. If you file bankruptcy now, you will not be able to include the hospital bill for the surgery. You will have to pay it.
  
- **If you are not facing garnishment, repossession, eviction, or foreclosure, you may not need to file bankruptcy.** If no one in your household has employment income, and you are not at risk of losing any assets, you might not need to file bankruptcy at this point. Remember, you can only file bankruptcy once every seven years. If there is a chance your financial situation might get worse, it is wise to wait and file bankruptcy then.
  
- **If you have been unemployed but you expect to get a job soon, you may want to file bankruptcy now.** Creditors can't garnish your income when you are only receiving public benefits. Once you start earning money, you might be garnished. Also, a good time to get a fresh start is when your financial situation is about to improve.
  
- **If you usually get an income tax refund, it is usually better to file early in the year.** This will save the most possible of your tax return the following year. If you file bankruptcy later in the year, more of your tax return will be taken the following spring. If your situation is not an emergency, you may wish to plan to file in January or February of the next coming year.



# Can MLSA Help Me File a Chapter 7 Bankruptcy?

**MLSA provides three types of help for money problems:**

## **1. Information to File Your Own Bankruptcy**

**(Available to everyone)**

MLSA has information to help you file your own bankruptcy available online. It has three parts:

- 1) [Thinking About Bankruptcy](#) (this handout) – helps you learn about bankruptcy and what help is available.
  - 2) [Where to Start](#) – a checklist to help you get together all the information you will need to fill out your bankruptcy forms.
  - 3) [Chapter 7 Toolkit](#) – a packet of all the forms you need to file Chapter 7 Bankruptcy and a workbook that tells you how to fill them out.
- This information is available online for anyone to use. We recommend going through each step one at a time, in order.

**This information is for educational purposes only. It does not tell you whether you should file bankruptcy. If you are unsure, you should talk to a lawyer. You can also see if you qualify for more help through MLSA (see below).**

## 2. Legal Advice about Money or Housing Problems

**If you have low income and qualify for MLSA services, you may be able to talk to an MLSA advocate about your money problems or housing problems. They can tell you what your legal options are.** We have staff and attorneys who may be able to help you deal with debts, garnishments, and eviction or foreclosure. They can help you look for other options besides filing bankruptcy.

- You generally must have income and expenses less than [125% of the national poverty level for your household size](#). MLSA staff can figure this out for you when you apply for services.
- You must apply for MLSA services. You can call 1 (800) 666-6899 or [apply online](#).
- **MLSA does not do debt counseling. If you need help with budgeting or debt counseling, please contact Consumer Credit Counseling Services by going to the [CCCS website](#) or calling 406-563-7389.** You can always contact MLSA later if CCCS says you need legal help.

## 3. Help with Filling out Your Bankruptcy Forms

**If you have low income and qualify for MLSA's FYOB program (File your own Bankruptcy), you can get help filling out your bankruptcy forms.** A trained Bankruptcy Advocate can answer your questions regarding the forms.

- You must first go through [Number 2](#), above, to qualify for MLSA services.

- If MLSA staff cannot help you with other legal options, they can refer you to the FYOB Program. The FYOB Program has certain requirements. You must meet ONE of the following requirements:

**1. You must earn income that is garnish-able.** This means:

- ✓ you must have income from a job (or you are going to soon), and
- ✓ your gross pay must be more than \$217.50 per week.

OR

**2. You must be facing eviction or foreclosure and Chapter 7 Bankruptcy could fix your housing problem.**

This means:

- ✓ you can afford your monthly housing payment after your other debts are wiped out through bankruptcy, and
- ✓ if you owe back payments, your landlord or lender must be willing to talk about a payment plan to let you catch up.

If neither requirement applies to you, you might not be eligible for the FYOB program.

## What If MLSA Can't Help Me?

1. You can take a financial education class. You will learn how to budget, lower expenses, and manage debt. You may find that this information helps you to fix money problems without filing

bankruptcy. [Click here for a list of financial education classes around the state.](#)

2. Get started on steps you must take before filing bankruptcy by using MLSA's [Where to Start](#) Checklist.
3. File bankruptcy on your own using MLSA's [Chapter 7 Toolkit](#). (Go through the Where to Start Checklist first.)
4. MLSA can refer you to a program called Montana Modest Means. This program has attorneys who can help you file bankruptcy at a reduced rate of \$600 plus court filing costs.
5. Talk to a private attorney; many do initial consultations for free.

## What if My Situation is Urgent?

Your situation might be more urgent if:

- You have received notice of a foreclosure sale date;
- You have received a notice of eviction or court papers for an eviction;
- You are being garnished or are about to start being garnished, and your garnishment puts your housing, transportation, or other basic necessities at risk.

**Please note – MLSA cannot provide “emergency” bankruptcy assistance. If you believe you need to file bankruptcy within the next 30 days, please see the options listed above under [“What if MLSA Can’t Help Me?”](#)**

However, MLSA may be able to help you find other legal options. You might find a solution that helps your situation without filing bankruptcy. [Contact MLSA to apply for services.](#)