
Consumer *Pro Se* Debtors Guide

United States Bankruptcy Court Middle District of Alabama

Frank M. Johnson, Jr., Federal Building and U.S. Courthouse
One Church Street
Montgomery, Alabama

Effective December 6, 2017



The mission of the Bankruptcy Clerk's Office for the Middle District of Alabama is to uphold the integrity of the bankruptcy process and inspire public confidence by providing professional, courteous, and efficient service.

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Preface

The *Consumer Pro Se¹ Debtors Guide* gives information about bankruptcy and bankruptcy filings to debtors who are filing without an attorney. From basic information on bankruptcy to frequently asked questions, this guide will aid *pro se* debtors throughout their bankruptcy cases.

Please note that this guide does not contain all of the information that a *pro se* debtor must know regarding bankruptcy filings. We recommend that you read Title 11, United States Code § 521 and the Middle District's local rules (located on our website) to know and understand all of your duties as a debtor. For further information, please see the Filing Without an Attorney link on our webpage (www.almb.uscourts.gov) under the tab Filing Information. If you have additional questions about your bankruptcy case, you should consult an attorney.

Clerk's Note

Federal statute prohibits anyone from the clerk's office from providing legal advice on any subject. Legal advice includes, but is not limited to, acting on a person's behalf in presenting a claim or defense to a court and advising a person on the benefits of a claim or defense. Clerk's office staff, therefore, will not provide information regarding the following:

- The application of laws and rules to individual claims or defenses
- The validity of jurisdiction in a particular court
- Whether a complaint properly represents a claim
- The best legal procedures to accomplish an objective in your case
- An interpretation of case law
- The probable result of taking or not taking action in a case
- Advice on who should receive proper notice or service

Privacy Act Requirements

The Judicial Conference of the United States adopted a policy in September 2001 regarding private and public access to electronic case files. This policy requires litigants in bankruptcy cases to modify or partially redact personal data identifiers contained in documents that will be made available electronically.

You should not include sensitive information in any document filed with the court unless such inclusion is required by the Federal Rules of Bankruptcy Procedure or an official form or the inclusion is otherwise necessary and relevant to the case. If sensitive information must be included, the following personal data identifiers **must be** partially redacted from the pleading:

- a. **Social Security numbers.** If an individual's social security number must be included in a pleading, only the last four digits of that number should be used.
- b. **Names of minor children.** If the involvement of a minor child must be

¹ *Pro se*: a Latin term meaning 'representing oneself'. Debtors are considered *pro se* if they choose to file bankruptcy without the help of an attorney.

mentioned, only the initials of that child should be used.

- c. **Dates of birth.** If an individual's date of birth must be included in a pleading, only the year should be used.
- d. **Financial account numbers.** If financial account numbers are relevant, only the last four digits of these numbers should be used.

In addition, exercise caution when filing documents that contain the following:

- 1. any personal identifying number, such as driver's license number;
- 2. medical records, treatment and diagnosis;
- 3. employment history;
- 4. individual financial information; and
- 5. proprietary or trade secret information.

Required Forms

For required forms, please see pages 5-8 of Instructions: Bankruptcy Forms for Individuals located under the Filing Without an Attorney link on our webpage under the tab Filing Information. For local forms, visit www.almb.uscourts.gov/local-forms.

Required Filing Fees

Chapter 7	\$335
Chapter 9	\$1,717
Chapter 11 non-railroad	\$1,717
Chapter 11 railroad	\$1,550
Chapter 12	\$275
Chapter 13	\$310
Chapter 15 Ancillary and Other Cross- Border Cases	\$1,717

Methods of Payment

We do not accept cash from anyone. There are no exceptions. Checks and money orders must be made out to U.S. Bankruptcy Court.

- 1. From debtors we will accept cashier's checks or money orders.
- 2. From debtors in possession we will accept cashier's checks, money orders, or business checks imprinted with the words Debtor in Possession or DIP.
- 3. Attorneys must settle charges through Pay.Gov using debit or credit cards. In the occasional instance when an attorney is unable to use a debit or credit card, we will accept a check drawn on the attorney's trust account.
- 4. From non-debtors we will accept credit cards, debit cards, cashier's checks, or money orders.

Please mail payments to U.S. Bankruptcy Court, One Church Street, Montgomery, AL 36104.

Frequently Asked Questions

The following questions contain terms that are frequently used in bankruptcy. This guide cannot define all legal terms. Please visit the United States Courts website, www.uscourts.gov/glossary, to see more bankruptcy terms and their definitions.

How do I find out what I need to file my bankruptcy petition?

A petition is the document that initiates the filing of a bankruptcy case. A debtor must file with the court a petition that lists his name, address, estimated amount of assets and liabilities, and other information needed to begin a bankruptcy case. All of the forms required can be found at www.uscourts.gov. For help filling out forms, please see Instructions: Bankruptcy Forms for Individuals under the Filing Without an Attorney link on our webpage under the tab Filing Information.

Do I need an attorney to file bankruptcy?

While you do not need an attorney to file bankruptcy, it is extremely difficult to successfully file as a *pro se* debtor. We recommend hiring a competent attorney to ease the bankruptcy process.

What if I cannot afford an attorney?

If you cannot afford an attorney, the Alabama Bar Association may be able to recommend an attorney who will take your case for a reduced fee or may dismiss the fee, depending on your financial circumstances. You may reach the Alabama Bar Association at these numbers: 334-269-1515 or toll free at 800-354-6154.

May I speak directly with a bankruptcy judge?

No. To preserve the impartiality of the court and to prevent the appearance of preferential treatment of a party, federal law prohibits any contact with the judge outside of the courtroom.

What are the consequences of filing for bankruptcy?

Depending on a debtor's financial situation and reasons for filing, the consequences of filing for bankruptcy protection may outweigh the benefits. Those considering bankruptcy should be aware of the following:

- Filing for bankruptcy protection is not free.

- Not all debts are dischargeable, which means that some debts will still have to be paid by the debtor. Secured creditors retain some rights which may permit them to seize property even after a discharge is granted. Alimony, child support obligations, and most tax debts are not dischargeable.
- Within fourteen days of filing a bankruptcy petition, schedules of the debtor's assets and liabilities must be filed. Failure to promptly file the appropriate schedules will result in dismissal of the bankruptcy.
- If a case is not dismissed and a discharge is entered by the court, the debtor is prohibited from being granted another discharge in chapter 13 cases for two years and in chapter 7, 11, and 12 cases for four years.
- Fraudulent information given or unlawful acts performed by the debtor are grounds for denial of a discharge and may be punishable as criminal offenses.

Will an eviction be stopped if I file for bankruptcy?

The automatic stay goes into effect once you have filed a petition for bankruptcy, so your eviction will be stopped until the proceedings have been completed.

How do I obtain bankruptcy forms?

You can obtain bankruptcy forms from any legal stationery store or law library. All bankruptcy forms can also be downloaded from the United States Court's website, www.uscourts.gov. Local bankruptcy forms can be found on our website, www.almb.uscourts.gov.

What are assets? Exempt assets? Non-exempt assets?

Assets include property of any kind owned by the debtor, including real and personal property and tangible and intangible property.

The Bankruptcy Code allows an individual debtor to hold back certain property from the bankruptcy process. Such property is called an exempt asset. Exempt assets are protected by state law from distribution to creditors. Examples of exempt assets include vehicles and home equity up to a certain value, and tools of your trade. In Alabama, a debtor may claim homestead exemptions of up to \$15,000 (See AL Code Title 6. Civil Practice § 6-10-2) and personal property exemptions of up to \$7,500 (See AL Code Title 6. Civil Practice § 6-10-6). Exemptions must be claimed on Schedule C or they are lost. If no one objects to the claimed exemptions within a specified time, those exemptions will not be included as part of your bankruptcy estate.

Deciding which assets are exempt can be one of the more important and complex parts of your bankruptcy case, often requiring legal judgment as to your particular circumstances. Failure to list all possibly exempt property and properly claim an exemption may result in the loss of the right to claim the exemption. If you have any questions, consult an attorney for help.

Non-exempt assets are property of a debtor that can be sold to satisfy claims of creditors.

What are liabilities?

A liability is money that is owed to others, specifically debt.

What is an automatic stay?

When a petition to open a bankruptcy case is filed, it automatically stops most creditor actions against the debtor or the debtor's property. This automatic stop is called an automatic stay.

What is default?

Default is failure to fulfill financial obligations, specifically paying debts owed to creditors.

What can I do if a creditor tries to collect money after I have filed bankruptcy?

A creditor that continues to try collecting a debt after the bankruptcy has been filed is in violation of the automatic stay. You should immediately notify the creditor in writing that you have filed bankruptcy and provide them with the case number and filing date or a copy of the petition that shows that bankruptcy was filed. If the creditor does not stop trying to collect the debt, you may need to take legal action against the creditor by obtaining an order from the court. This order prohibits the creditor from taking further collection action. If the creditor is willfully violating the automatic stay, the court can hold the creditor in contempt of court and punish him by fine or incarceration. Any such legal action brought against the creditor will be complex and will normally require representation by a qualified bankruptcy attorney.

Also, see the Fair Debt Collection Practices Act, 15 U.S.C. § 1692(c), which applies to collection agencies.

What is the Fair Credit Reporting Act?

The Fair Credit Reporting Act, 15 U.S.C. § 1681, is the law that controls credit reporting agencies. It states that credit reporting agencies may not report a bankruptcy case on a person's credit report after ten years from the date the bankruptcy case is filed. Other credit information is removed after seven years. The larger credit reporting agencies belong to an organization called the Associated Credit Bureaus. The policy of the Associated Credit Bureau is to remove chapter 11 and chapter 13 cases from the credit report after seven years to encourage debtors to file under these chapters.

For more information, contact the Federal Trade Commission, Bureau of Consumer Protection, Education Division, Washington, D.C. 20580, or telephone them at (202) 326-2222 and request the publications "How to Dispute Credit Reporting Errors" and "Fair Credit Reporting."

What is a Certificate of Service?

When you file a motion or pleading with the court, you must file a written statement explaining that you have mailed or delivered a copy of the motion to all interested parties. This is called a certificate of service. You must list the name and address of each person and attorney being served with the motion and the name of the party each attorney represents. You must then sign and file the certificate with your pleadings. You must file this certificate before the court may grant relief.

What is a chapter 13 plan and how do I serve it?

A plan using Local Form 3 is required in all chapter 13 cases. This form tells creditors how you will pay your debts. If you file a plan when you submit your application for bankruptcy with the court, the clerk's office will send out notices to all of the creditors you have listed. If you file the plan after you submit your application or you modify the plan while your case is in progress, you must send notices out to your creditors.

If you check box 1.1.1, requesting the court reduce a secured claim to the value of the property, or 1.1.2, requesting the release of a lien, on Local Form 3, you must serve the affected creditor by following the rules in Rule 7004, Federal Rules of Bankruptcy Procedure.

What is a 341 Meeting of Creditors?

The 341 meeting of creditors is a hearing all debtors must attend in any bankruptcy proceeding. It usually occurs between 20 to 50 days after the filing of the petition.

At this meeting, the trustee or bankruptcy administrator will review your petition and schedules with you. You are required to answer questions under penalty of perjury (swearing or affirming to tell the truth) about your conduct, property, liabilities, financial condition, and any other matter that may affect the administration of the case or your right to discharge. The trustee or bankruptcy administrator will also ask questions to ensure you understand the bankruptcy process.

The meeting is referred to as a "meeting of creditors" because creditors are notified that they may attend and ask you questions pertaining to your assets or any other matter important to the administration of the case. It is also referred to as a "341 meeting" because it is required by section 341 of the Bankruptcy Code. It is not necessary for creditors to attend this meeting, and they do not waive any rights if they choose not to attend. The meeting usually lasts ten to fifteen minutes and may be continued if the trustee or bankruptcy administrator is not satisfied with the information presented.

If you fail to appear or provide the information requested, the trustee or bankruptcy administrator may request that the case be dismissed, or they may seek other relief against you for failure to cooperate.

What is the difference between secured, unsecured, and priority debt?

A secured debt is a debt backed by a mortgage or other pledge of collateral. It is a debt for which the creditor has the right to pursue upon default. Typically, items like a car or a

house are used as collateral to secure consumer loans.

An unsecured debt is a debt that is not backed by any collateral. For example, if you have promised to pay someone a sum of money by a particular time and have not pledged any property, the money you owe is an unsecured debt.

A priority debt is a debt that must be paid before other debts. Section 507 of the Bankruptcy Code lists certain debts that are entitled to be paid ahead of most other unsecured debts. Priority debts include some taxes; wage claims of employees; and alimony or support of a spouse, former spouse, or child. Administrative debt is a type of priority debt. It occurs when someone provides goods or services to the bankruptcy estate during the bankruptcy case. Attorney's fees are an example of administrative debt, as are trustee's fees and costs.

What is a reaffirmation agreement?

A reaffirmation agreement is a contract with a creditor by which a debtor becomes legally obligated to pay all or a portion of an otherwise dischargeable debt. Such an agreement must be filed before the discharge is entered. Debtors entering into a reaffirmation agreement without legal representation will need to attend a hearing before a judge to determine if the agreement will be valid. Since a reaffirmation agreement takes away some of the effectiveness of your discharge, you are strongly advised to consult legal counsel before agreeing to a reaffirmation of a debt.

What is a redemption?

Bankruptcy redemption is an option in a chapter 7 bankruptcy case that may allow you to keep a vehicle or other asset that is acting as collateral for secured debt. However, redemption may not be an option for all chapter 7 debtors because it requires you to produce cash up front. It essentially means that you will pay a secured creditor the current value of the property securing a debt. Bankruptcy redemption is only an option if you actually owe consumer secured debt.

What is a discharge?

A discharge releases a debtor from personal liability for certain debts, known as dischargeable debts that were incurred before the bankruptcy filing. It also prevents the creditors owed those debts from taking any action against the debtor to collect the debts. Additionally, the discharge prohibits creditors from communicating with the debtor, including telephone calls, letters, and personal contact, regarding the debt.

The discharge does not prevent secured creditors from seizing collateral if payments are not kept up, nor does it prevent collection of debts that are made after the filing of the bankruptcy. If a valid lien, such as a mortgage, was not eliminated in the bankruptcy case, a creditor may have the right to enforce it against the debtor's property after the bankruptcy has been discharged.

It is also important to realize that some debts are not dischargeable, and others are not

dischargeable under certain circumstances. A debtor may voluntarily pay any debt that has been discharged.

If you have questions about your discharge, you should consult with an attorney.

Debts That Are Discharged:

The chapter 7 discharge order eliminates a debtor's legal obligation to pay a debt that has been discharged. Most, but not all, types of debts are discharged if the debt existed on the date the bankruptcy case was filed. (If this case was begun under a different chapter of the Bankruptcy Code and converted to chapter 7, the discharge applies to debts owed when the bankruptcy case was converted.)

Debts That Are Not Discharged:

- 1) Debts for most taxes
- 2) Debts that are in the nature of alimony, maintenance, or support
- 3) Debts for most student loans
- 4) Debts for most fines, penalties, forfeitures, or criminal restitution obligations
- 5) Debts for personal injuries or death caused by the debtor's operation of a motor vehicle while intoxicated
- 6) Some debts which were not properly listed by the debtor
- 7) Debts that the bankruptcy court specifically rules are not discharged
- 8) Debts for which the debtor has given up the discharge protections by signing a reaffirmation agreement in compliance with the Bankruptcy Code requirements for reaffirmation of debts

Can creditors be added after I file my bankruptcy?

Yes, you may add creditors at any time during your bankruptcy case. You must file, pay the required filing fee, and serve a motion to add creditors.

What if a creditor tries to collect money after I get a discharge?

You will want to make sure the creditor is aware of your discharge by mailing a copy of the discharge order to the creditor. Further actions will depend upon the specific facts of your case. In general, if a creditor does not cease collection efforts after you have provided notice of discharge, or if the creditor has commenced legal proceeding against you, you will likely need the assistance of an attorney to enforce the protection that a bankruptcy discharge gives.

What does it mean if a case is dismissed?

When a case is dismissed, or ended, filings can no longer be made on that case. Upon dismissal, the automatic stay ends allowing creditors to begin collecting on debts that were not discharged before the dismissal. Be aware that an order of dismissal itself will not free the debtor from any debt.

Often, a case is dismissed when the debtor fails to do something he must do (such as show up for the creditors' meeting, answer the trustee's questions honestly, produce books and records the trustee requests), or if it is in the best interests of the creditors. Unless the debtor appeals the order or seeks reconsideration of the order within ten days after entry of the order, the clerk will automatically close the case.

What should I do if I cannot make my chapter 13 payment?

If you cannot make a chapter 13 payment on time according to the terms of the confirmed plan, you should contact the trustee by phone and by letter advising the trustee of the problem and whether it is temporary or permanent. If it is a temporary problem and the payments can be made up, you should advise the trustee of the time and manner in which the payments will be made. Significant changes in your circumstances may require that the plan be formally modified. If the problem is permanent and you are no longer able to make payments to the plan, the trustee will request that the case be dismissed or converted to another chapter. The determination of whether to modify, dismiss, or convert a case requires the same kind of analysis that is needed for the initial decision of whether to file bankruptcy and under what chapter. Therefore, you should seek counsel from a qualified bankruptcy attorney before attempting to make such a decision. If you delay making a voluntary decision and cannot make the plan payments, the court may dismiss the case.

What is a Motion for Relief from Stay?

Under certain circumstances, a creditor or a party seeking to continue an action outside of the bankruptcy will file a motion for relief from stay. Typically, the creditor is seeking to foreclose on property, sell it, and apply the proceeds to the debt in cases where there is no value in the property for the bankruptcy trustee to administer in excess of valid liens and claims of exemption. If a motion for relief from stay is filed in your case, you should contact a bankruptcy attorney. If you want to object to a motion for relief from stay, you must do so in writing by filing your objection with the Court on or before the objection date listed in the notice sent to you and appearing at the preliminary hearing scheduled in that notice. Do not simply appear on the hearing date to state your objection, because relief will be granted and the hearing will not be held unless an objection has been filed.

What is an adversary proceeding?

An adversary proceeding is a lawsuit arising in or related to a particular bankruptcy case. It is commenced by filing a Complaint with the Court, and it is given a separate case number.

An adversary proceeding is the bankruptcy court's version of a civil complaint to:

- 1) Recover money or property.
- 2) Determine the validity, priority, or extent of a lien or other interest in property.
- 3) Obtain approval to the sale of both the interest of the estate and of a co-owner in property.
- 4) Object to or revoke a discharge.
- 5) Revoke an order of confirmation of a chapter 11, chapter 12, or chapter 13 plan.
- 6) Determine the dischargeability of a debt.
- 7) Obtain an injunction or other equitable relief.
- 8) Subordinate any allowed claim or interest.
- 9) Obtain a declaratory judgment relating to any of the foregoing in points 1 through 8.

My ex-spouse filed bankruptcy and listed me as a co-signer on a scheduled debt. What can I do? Does my divorce decree protect me?

You should seek legal advice for a thorough explanation of your rights and obligations in this area as soon as you find out that your ex-spouse has filed bankruptcy.

How can I get a case reopened?

To reopen a case, you must file a Motion to Reopen and pay the appropriate filing fee in full (a filing fee is not required when the purpose of reopening the case is to enforce a discharge). The judge determines whether the case should be reopened. If necessary, he may hold a hearing to inform his decision.

How do I get a certified copy of a document?

To get a certified copy of a document, you must send a written request to the clerk's office. The request must include the case number, the filing date, and title of the document you want to have certified. Please include your name and a daytime phone number with the request. We will contact you regarding payment once the request has been received.

How do I retrieve documents from a case that has already been archived?

To retrieve copies of documents from the National Archives and Records Administration, you must obtain the case number, transfer number, location, and box number from the clerk's office.

Who do I notify about a possible fraudulent filing?

You should notify the trustee of the case and call or write to the bankruptcy administrators' office if you suspect a fraudulent filing.