

PROTECTING ASSETS IN BANKRUPTCY

*The Main Reason to File Bankruptcy Has More to Do
with Protecting Assets than Getting Rid of Debt*



Musselwhite Meinhart & Staples, PSC

When most people consider filing bankruptcy, they are mainly concerned with resolving their financial problems. While they may not understand the entire bankruptcy process, most people do know that bankruptcy erases debt and provides debtors with a fresh start. Therefore, if you ask most people they will say the number one reason to file bankruptcy is to get rid of debt. However, the other reason to file bankruptcy has more to do with protecting assets than getting rid of debt.

PROTECTING ASSETS BY STOPPING FORECLOSURES, REPOSSESSIONS AND GARNISHMENTS

Filing a Chapter 13 Bankruptcy Case



The automatic stay that goes into effect as soon as a debtor files a Chapter 13 bankruptcy case protects assets from creditors by preventing creditors from taking actions to collect a debt without court approval. In other words, creditors may not repossess, foreclose, garnish, levy or attach any asset without first petitioning the court for modification

of the automatic stay. For a debtor that is struggling to repay debts and needs assistance reorganizing his or her debts, the automatic stay provides protection against creditors while the debtor proposes a plan to repay his or her debts.

While the goal of filing a bankruptcy is to give the debtor a fresh start free from the burden of debt, protecting assets of the debtor is also an objective. For example, if the debtor is facing losing his home through a foreclosure sale, he can file a Chapter 13 bankruptcy to save the home. He will repay the past due mortgage payments through his bankruptcy plan while resuming regular monthly payments to the mortgage lender.

The same applies if the debtor is about to lose his vehicle by repossession. He may be able to file a Chapter 13 plan to pay the balance owed on the car through his bankruptcy plan at a lower interest rate and keep his car. Filing Chapter 13 stops levies and garnishments allowing the debtor to use that income to repay debts through the bankruptcy plan while keeping his or her assets. Many debtors file Chapter 13 to protect assets from creditors.

Filing a Chapter 7 Bankruptcy Case

The same automatic stay that goes into effect when a debtor files a Chapter 13 bankruptcy case applies when a debtor files a bankruptcy under Chapter 7. Creditors cannot take any actions to seize assets without first petitioning the court to modify the automatic stay. However, the Chapter 7 trustee has a duty to liquidate any assets that are non-exempt and use those proceeds to pay



creditors. Fortunately, because very few individuals have assets that are non-exempt, most Chapter 7 cases are no-asset cases; meaning that the debtor gets a fresh start while keeping all of his or her property.

Unfortunately, if a debtor is behind on a mortgage or car loan, filing a Chapter 7 case will only delay the creditor from taking the asset unless the debtor can catch up the payments or come to some type of agreement with the lender. Filing a Chapter 7 will delay a repossession or foreclosure but it will not prevent it if the debtor cannot afford to continue making the payments to the lender.

A filing under Chapter 7 does protect some assets from unsecured creditors. When you complete your Chapter 7 case and receive your bankruptcy discharge, creditors are prohibited from attempting to collect discharged debts including attaching or seizing assets. Therefore, by filing a Chapter 7 case, you can protect your assets and resolve your debt through the same process.

FINDING THE BEST SOLUTION TO YOUR FINANCIAL PROBLEMS

When you are dealing with financial problems, the worry and stress takes a toll on every aspect of your life. In addition to worrying about how you will pay your bills and support your family, you are worried about protecting your assets from creditors. You have worked hard to build a good home for you and for your family; therefore, it is only natural to worry about protecting your assets. There is nothing criminal, selfish or dishonest to need help during a financial crisis.

Congress enacted our bankruptcy laws to help individuals just like you when they need assistance to overcome a financial crisis to begin rebuilding their finances.

When you meet with our attorneys, we will discuss your assets, debts, income



and expenses as well as your overall financial history. We will discuss what brought you to this point and what legal options you have for resolving your debt. That may include filing a bankruptcy or other bankruptcy alternatives.

The main goal is to protect your assets while giving you the fresh start that Congress intended. According to the Supreme Court in the case of *Local Loan*

Co. v. Hunt, 292 U.S. 234, 244 (1934), bankruptcy “gives to the honest but unfortunate debtor...a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt.”

EXPERIENCED BANKRUPTCY ATTORNEYS SERVING KENTUCKY FAMILIES SINCE 1982

The bankruptcy lawyers at Musselwhite Meinhart & Staples have been helping individuals just like you since 1982. Our attorneys understand how stressful it can be for someone who is dealing with overwhelming debt problems. We offer real solutions to your financial problems that provide you with a fresh start to begin rebuilding your finances for your future.

Call our office as **270-351-6032 or 502-964-1968** to schedule a free consultation with one of our experienced bankruptcy lawyers. If you prefer, you can send a secure message through our [online contact form](#) and one of our helpful staff members will contact you to answer your questions about bankruptcy. We have offices in Radcliff and Louisville for your convenience.

About the Author

Paul Musselwhite, Carol Blakeley Meinhart, Kimberly Musselwhite Staples, and Robert D. McIntosh are the experienced and knowledgeable attorneys that make up Musselwhite, Meinhart & Staples. With over 50 years of combined experience, they have been serving the legal needs of individuals, individuals in the military and families in Hardin county and all of central Kentucky with pride and dignity. Practicing in bankruptcy cases in Hardin county, central Kentucky and beyond, they are experienced in all types of law.

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