

A black and white photograph of a house with a white door and a car in the foreground. The car is a dark-colored SUV, and the house has a white door with a small window. The car is parked on a driveway, and the house is in the background.

RICHARD L. COLLINS

SECRETS TO FILING BANKRUPTCY AND KEEPING YOUR STUFF THAT CREDITORS DON'T WANT YOU TO KNOW

**From the author of "The Alabama Bankruptcy Book" and
"Rebuilding Your Life After Bankruptcy"**

An easy-to-follow guide written by a bankruptcy attorney with tips on how not to lose your house and car and other property when filing for bankruptcy.

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Why You Should Listen to Me -- Listen to Others First

Cindy G.



"Mr. Collins was very professional and caring. He listened and gave me excellent advice on my situation. He was always available for questions and any concerns that I had! I would not hesitate to use Mr. Richard Collins for any of my legal problems!"

Shawn S.



"He is very helpful and knows what he's doing."

Don W.



"Richard Collins and his office made a difficult and stressful situation in my life a pleasant one. He was caring and compassionate. I highly recommend Richard Collins Attorney."

Janett M.



"Had a very personal problem. Richard Collins listened and it was resolved in under 2 weeks. Lifted a very stressful worry from my mind...I will use him going forward."

How to File Bankruptcy and Keep Your Stuff

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Why I Wrote This Guide

Most people are terrified when they think of bankruptcy.

A big reason people are terrified of the thought of bankruptcy is that they are afraid they are going to lose everything they have worked hard to obtain and pay for over the years. Most bankruptcy filers have nothing to worry about. For the great majority of cases – 80% to 90% -- bankruptcy filers can keep what they want to keep.

The work done to keep your stuff in bankruptcy can be divided into two parts. What needs to be done before you file bankruptcy and what needs to be done after your bankruptcy is filed and beyond. The before bankruptcy portion is almost always going to involve working with your attorney to investigate and research the real and personal property assets you own. Unfortunately, a lot of firms or attorneys filing bankruptcies fall into one of two categories.

First, you have the mega filers. These firms file hundreds of cases per month and often the client does not meet with an attorney or, if so, only briefly. Second, you have the infrequent filers. These attorneys may have good intentions, but because bankruptcy is not their main focus, they are unable to keep up with the latest laws and legal trends and strategies that are so prevalent in the bankruptcy field. We feel your property that you and your family have worked so hard and sacrificed so much for is too important to not take the time and conduct the really important pre-filing analysis to determine how the Bankruptcy Court and the Trustee will treat your assets.

The pre-filing analysis we perform during the free consultation we provide may result in the decision that bankruptcy is not the answer to your financial situation, but you can rest assured that we will not push you toward a bankruptcy just to get a fee and risk you losing your stuff. Unfortunately, I have witnessed numerous times at bankruptcy Meetings of Creditors attorneys being surprised that their client's have property that they did not know about and/or that attorney's client being surprised that the Trustee is interested in taking it. We will not let that happen to you, because we do our research.

I wrote this guide in order to give individuals considering bankruptcy a glimpse of the analysis we perform. This is not an exhaustive guide, but should give you an idea of the basics of what goes into the analysis. At the very least it should give you some ideas about what to ask about and to be thinking about when you discuss your case with your attorney. You should not have worry about checking up behind your attorney, you have enough to worry about, but, unfortunately, some attorneys are just worried about getting their fees. I believe by informing yourself, you can relieve yourself of some of the anxiety about filing for bankruptcy on the front end and know the right questions to ask to ensure that your attorney knows what he or she is doing.

The only thing related to keeping your stuff you should be worried about after the bankruptcy is making your required payments and maintaining any required insurance. The after bankruptcy filing portion is normally going to be you keeping up with making your payments on time to the creditor and/or, in a Chapter 13, making your bankruptcy payments, as well as your post-petition house payments; and maintaining insurance on

your house, vehicle, or other property, if required. There are a few things your attorney may be able to help you with if you get behind after your bankruptcy is filed, but for the most part, you really need to keep your payments and insurance up to date.

The tips contained in this guide are general in nature, but if followed they will eliminate the great majority of the issues that lead to bankruptcy filers losing stuff they want to keep.

Tip #1: Know Your Numbers

You must know the important numbers regarding your house, vehicle or other property you want to keep. The important numbers are the following:

1. Fair Market Value of the Property

Houses / Real Property:

For a house and/or real property the county tax appraisal is the normal determination of Fair Market Value. You should have received your counties appraisal of your home and real property in the mail at some point, but if you cannot find it, most counties have a website where you can look your property's tax appraisal.

The websites for my primary practice areas are the following:

Cullman County <https://cullmanrevenue.us/TaxPayments/Property/Search>

Morgan County https://morgan.capturecama.com/CA_ParcelSearch.aspx

Blount County https://altags.com/Blount_License/property.aspx

Madison County <http://www.deltacomputersystems.com/AL/AL47/pappraisala.html>

Winston County <https://www.alabamagis.com/winston/Frameset.cfm>

Walker County <https://www.alabamagis.com/Walker/Frameset.cfm>

Marshall County <https://marshall.countygovservices.com/Property/Property/Search>

If you do not feel the tax appraisal is correct, i.e. you believe it is too high, you may hire an appraisal of your own performed by a certified appraiser. The Bankruptcy Court will accept a certified appraisal.

Vehicles:

For vehicles most bankruptcy courts require the use of the NADA guide's clean retail value. If you have clear evidence that your vehicle is not "clean retail", then you may be able to deviate down from the clean retail amount.

Personal Property:

There are not appraisals or guides for most personal property. If there is a guide (sometimes available for collectibles or firearms) or you have an appraisal (maybe for jewelry), you may use that value. For other personal property, you may have to make your best estimate based on finding similar items in sales papers or Facebook Marketplace or Craigslist or similar sales marketplace.

2. Amount of Mortgage and/or Vehicle Loans and/or Liens

For each house/parcel of real estate, vehicle, or other high value personal property, you need to know the payoff amount owed on that particular property.

3. Payment Amount

Again, for each house/parcel of real estate, vehicle, or other high value personal property, you need to know the payment amount on any debt owed on each particular property.

4. Arrearage Amount

For any of the loans against any house, land, vehicle, or other property you are wanting to keep, you need to know how far behind on payments you are (also called “arrearage”) and include late fees and accrued interest, i.e., how much would it take to bring the loan current.

You have to know these numbers before you can make an educated decision regarding how bankruptcy is going to affect your assets. So, look through your paperwork, login to your online accounts, and/or call the banks or loan companies and get these numbers together before you make a decision or even consult with an attorney. It would actually be good to have

these numbers before you read on to the remainder of the tips because most of them are going to relate back to these numbers.

Tip #2: Figure Out the Equity

Equity is the value of your property minus any outstanding mortgages and loan/lien balances. So, we need at least two of the important numbers referenced above, the Fair Market Value and the Amount of Mortgage and/or Vehicle Loans and/or Liens. Here is how to use them.

Example 1:

The tax appraisal on a house is \$155,000.00. The mortgage payoff on the house is \$143,000.00. The equity would be calculated as follows:

$$\$155,000.00 - \$143,000.00 = \$12,000.00$$

So, in this example the equity in the house would be \$12,000.00.

The calculation for a vehicle and other personal property is similar:

Example 2:

A car is worth \$15,000.00, but \$13,000.00 is owed on it.

$$\$15,000.00 - \$13,000.00 = \$2,000.00.$$

The equity in the car is \$2,000.00.

Why is the calculation of equity so important? When you file for bankruptcy, the bankruptcy court appoints a person to in effect be in charge of your case. This person is called the Trustee. The Trustee's main job is to make sure that the assets of the bankruptcy estate (your assets) go to who they are supposed to go to. If that is back to you, great. If that is to your creditors, then that is what will happen.

The Trustee bases his or her determination of what assets go where primarily on Equity. They analyze your case by asking a theoretical question: “If I took all this debtor’s assets and sold them and paid off any mortgages or liens, how much would I have left to pay to unsecured creditors. Luckily, however, as discussed in the next tip, equity is not the only number the Trustee must consider.

Tip #3: Know Your Exemptions

Individuals are allowed to have a certain amount of equity in their houses and property. The amount of equity you are allowed to have in your house and property is called your exemptions. In Alabama, the bankruptcy court, even though it is a federal court, is required to follow the State of Alabama’s laws regarding exemptions. Currently, in Alabama individuals are allowed \$15,500.00 of equity in their real estate homestead, commonly referred to as your “Homestead Exemption”, and \$7,750.00 of equity in personal property, commonly referred to as your “Wildcard Exemption” (because it covers almost all property other than real estate). Joint debtors (husband and wife filers) may double that amount to \$31,000.00 for their Homestead Exemption and \$15,500 for their Wildcard Exemption.

Therefore, even if the Trustee took your property and sold it and paid off any liens, he or she would not be able to appropriate all of the remaining equity. The Trustee would first have to give you your exempt amount of the proceeds.

Example 3:

The tax appraisal on a home is \$155,000.00. There is a mortgage of \$125,000.00. Therefore, the equity is \$30,000.00. The Homestead Exemption would work as follows:

If there is an individual owner of the home who files bankruptcy:

\$30,000.00 equity - \$15,500.00 exemption = \$14,500.00 of non-exempt equity.

If there are joint owners of the home who files bankruptcy:

\$30,000.00 equity - \$31,000.00 exemption = \$0 of non-exempt equity.

Taking a simplistic approach without taking into account other factors, in these two situations in the example above, the individual homeowner has \$14,500.00 “too much equity” and would need to take that into consideration when determining which type of bankruptcy to file and the amount of the payment in a Chapter 13 bankruptcy. Meanwhile, if the same property was owned by joint debtors, there would be no non-exempt equity and there would be nothing to worry about with regards to the Trustee possibly liquidating the property. (Without getting too deep in the woods, the individual owner probably does not have to worry about liquidation either, once liquidation costs, risk of low sales amount, attorney fees, and Trustee fees are considered; i.e. there would not be enough leftover to make it worthwhile to the Trustee).

So, with regards to equity and exemptions and the Trustee, in simple terms the question for possible bankruptcy filers becomes do I own something that is worth enough money that when it is sold and any mortgages or liens against it are paid off, will there still be a big pot of money left after I get my exempt part. How we work with the answer to that question is in the next tip.

Tip #4: Choose the Right Chapter

For most individuals there are two types of bankruptcy to consider – Chapter 7 or Chapter 13. The type of bankruptcy you choose to file can have an affect on whether or not you can keep your stuff.

First, we will look at a Chapter 7. A Chapter 7 bankruptcy is also called a liquidation bankruptcy. This does not mean you are going to lose or have to liquidate your property. The Trustee in a Chapter 7, for the most part, does not care how many houses or how much land or how many vehicles you keep as long as there is little to no non-exempt equity available in them. The Trustee will only want to liquidate if there is enough non-exempt equity (see how to calculate this above) to make it worthwhile to pursue. So, if you have a lot of non-exempt equity in your home or personal property and you want to keep your home and/or your personal property, a Chapter 7 is NOT the right answer for you.

In addition, a Chapter 7 has no provision which helps you catch up any arrearage (see important numbers above). In most cases, if you file a Chapter 7, you must be current or really close to current on your payments or have the ability to catch up your payments within about 30 days to be able to keep any property that you owe on. So, if you are behind on payments on your house or personal property to a point that you will not be able to catch up on your own quickly and you want to keep your house and/or personal property, a Chapter 7 bankruptcy is NOT the right answer for you.

Now let's look at a Chapter 13 Bankruptcy. A Chapter 13 Bankruptcy will let you make monthly payments to the Trustee to cover any non-exempt

equity in your property. You will normally only be required to pay whichever is less, the non-exempt equity or the amount of unsecured debt you have.

Example 4:

Debtor's non-exempt equity (amount after reduced by liens and exemptions) is \$14,500.00. Debtor has unsecured debt, such as credit card debt and medical bills, of \$30,000.00. Debtor will only be required to pay \$14,500.00, not the full \$30,000.00, through his or her Chapter 13 Plan toward the unsecured debt and this will normally be a monthly payment over a 5-year (60 month) plan. This will let the Debtor file bankruptcy and stop lawsuits, garnishments, foreclosures, and/or repossessions and still keep his or her property, even though he or she may have significant equity in the property.

Example 5:

Debtor's non-exempt equity (amount after reduced by liens and exemptions) is \$50,00.00. Debtor has unsecured debt, such as credit card debt and medical bills, of \$30,000.00. Since the Debtor's non-exempt equity exceeds the amount of Debtor's unsecured debt, the Debtor will be required to pay the full \$30,000.00 of unsecured debt through his or her Chapter 13 Plan. However, this will be will normally be with no interest and through a monthly payment over a 5-year (60 month) plan. Again, this will let the Debtor file bankruptcy and stop lawsuits, garnishments, foreclosures, and/or repossessions; make a reasonable payment with little to no interest, and still keep his or her property, even though he or she may have significant equity in the property.

There are some situations where a Chapter 13 can have a negative effect on your ability to keep your property. Unlike a Chapter 7, a Chapter 13 Trustee not only at equity, but also takes a hard look at a debtor's budget and things that could affect the debtor's budget. Therefore, if a debtor owns land

that is not his or her home or adjacent to it, or, if an individual debtor owns more than one vehicle or joint debtors own more than two vehicles, the Chapter 13 Trustee may require any “extra” land or vehicles to be surrendered.

I have witnessed very surprised debtors hearing of this for the first time at their meeting of creditors when this possibility should have been discussed with them before they filed their bankruptcy. We will not let this happen to you. We will know and understand your full financial situation and will discuss all possibilities with you so that you may make an informed decision of how to proceed.

Tip #5: Ability to Make Future Payments

Neither Chapter 7 nor Chapter 13 Bankruptcy allows you to keep mortgaged property and not pay for it. In a Chapter 7, debtors continue to make payments on houses and vehicles that they owe on just like they had never filed bankruptcy. In addition, most of the time the lender requires a debtor to sign a reaffirmation agreement which puts the debtor back on the hook for the debt if the debtor were to default on the loan in the future. So, before filing a Chapter 7 Bankruptcy, if you want to keep your property, you should create a realistic budget and make sure that you can afford to make the payments on the property you want to keep. The good thing is that most of your other debt should be wiped out and this will hopefully leave you with more than enough to make the payments on your house and/or vehicle.

It is a similar situation with regards to your house in a Chapter 13 Bankruptcy. Your Chapter 13 Plan will take care of any arrearage (late payments) on your house but starting the month after you file your bankruptcy you must resume making your regular monthly mortgage payments. And remember, you will also have a payment to the Chapter 13 Trustee, as well. So, you will need to have a budget that will allow you to pay all your monthly living expenses, your mortgage payment, and the Chapter 13 Plan payment in order to keep your home.

Regarding your vehicle, you will no longer pay the lender directly. The principle balance of any vehicle loan is normally part of the Chapter 13 Plan. The debtor will pay the Chapter 13 Trustee and the Trustee will pay the vehicle. Usually, by paying this way, your vehicle payment is spread out over a longer period of time and the interest rate is reduced which combines for a lower payment related to your vehicle. Therefore, your overall monthly debt service is normally much lower through a Chapter 13 Plan than what you were paying prior to filing.

The key is planning ahead and creating an in-depth realistic budget. Then see if following that budget you can afford to maintain the required payments on your property and/or a Chapter 13 Plan payment if you go that route. If you can create a budget that works and stick to it, you should not have any issues in keeping your property after filing for bankruptcy.

Tip #6: Have Insurance

Almost all mortgages and vehicle loans require insurance. This does not change once you file bankruptcy. You must maintain insurance on your house

and vehicles if you desire to keep them. If your insurance has lapsed, get it reinstated prior to filing. Even if the bank has obtained its own insurance, “force-placed insurance” and you have been paying extra on top of your monthly payment to cover it, you still need to obtain your own insurance as you agreed to in your loan documents. Not maintaining insurance on your property, if required by your lender, is one of the quickest and surest ways of losing it.

Tip # 7: Beware of Recent Prior Bankruptcies

If you are refiling a bankruptcy after having had one or more bankruptcies dismissed within the past year, you will, by law, lose your bankruptcy protection for your property very quickly. This may be remedied by filing a specific motion – Motion to Extend Automatic Stay – soon after your bankruptcy is filed. This is especially important in a Chapter 13 Bankruptcy involving mortgage arrearage or a vehicle with arrearage. In these two situations, if the automatic stay is not extended, it will terminate and your home and/or your vehicle will be ripe for repossession.

Tip #8: Disclose All to Your Attorney

Surviving your bankruptcy with all your property intact is almost solely dependent on making a full disclosure of your assets and debts to your attorney before your bankruptcy is filed. When filling out bankruptcy questionnaires and forms, potential bankruptcy filers often leave off assets

because they say, “I don’t want that involved in the bankruptcy” or “I don’t want to file bankruptcy on that”.

Bankruptcy just does not work that way. All assets and all debts must be listed whether you plan on keeping and paying for your stuff or not. When we ask for questionnaires to be filled and we go over those and ask more questions regarding your property, it is not for our benefit, but yours. We must know the good, the bad, and the ugly to be able to fully evaluate your case and provide the best advice possible for you to be able to achieve the result you want.

Conclusion

Bankruptcy can be scary, but with full knowledge of the circumstances and a lot of planning, it does not have to result in a loss of property. The tips contained in this guide should arm you with the knowledge to ensure you are making the right decision with regards to your assets. In addition, the information in this guide should help you make the right choice when deciding on an attorney, because you will know the correct questions to ask and if the attorney is asking you the correct questions.



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