

Q&A: Can Back Rent Be Included In Bankruptcy?

Food and shelter are perhaps the two most important necessities that we pay for. Air, another necessity, is free for now. It is arguable that paying for the family shelter is more important than food. Obtaining food through charitable avenues is much easier than finding healthy shelter for yourself and your family.

With the current economic climate and the mortgage crisis of the past few years, more and more people are renting. Many rent out of necessity and others do so because it is [sometimes the smartest economic decision](#). With more people renting apartments or homes, more people are defaulting on their lease agreements. Bankruptcy can certainly help in these situations.

So, can back rent be included in bankruptcy? The simple answer is yes, but this question deserves a more detailed answer to understand how back rent and lease agreements are handled.



Back Rent Is Just Like Any Other Debt

People are always surprised to find out that back rent owed to a current or previous landlord is simply unsecured debt. This means that it is treated exactly the same as credit cards, medical bills, personal loans, etc. and can be included in bankruptcy. It is very rare that you will see a residential rent agreement treated any differently. So, since back rent is no different than your other unsecured debts, not only can it be included, [it must be included](#).

When you file bankruptcy, you are obligated to provide an accurate list of all creditors. Every creditor must be included in your petition when the case is filed, or by amendment subsequent to the filing date. You cannot pick and choose which creditors will be included. So, your landlord is no different than Capital One and it is required that you list back rent on your bankruptcy petition to protect both your rights and the rights of the creditor.

Delaying Eviction

If you have back rent payments due and are facing eviction, bankruptcy will delay the eviction proceeding for a short period of time. The [automatic stay](#) goes into effect immediately upon filing of the case and all creditor action (including eviction) must cease.

If the landlord is proactive, he will hire an attorney and file a motion for relief from the automatic stay. Unless you can provide evidence to oppose the landlord's motion, the Bankruptcy Judge will likely grant the motion allowing the landlord to proceed with the eviction proceeding. Assuming the landlord does this immediately, you should still buy yourself a few weeks to gather things and find a new place to live.

If the landlord is not proactive and does nothing, the automatic stay remains in effect for the duration of your bankruptcy case. This would buy you approximately four months and the landlord would not be able to proceed with the eviction until the case is closed.

Breaking The Lease

Besides being able to wipe out back rent in bankruptcy, you can also wipe out a current lease

obligation. A residential lease is an [executory contract](#). This means that you have an obligation to continue to do something under that contract, in this case, pay rent.

The bankruptcy law allows you to break contracts like this by “rejecting” the lease. If you decide to reject the lease agreement through the bankruptcy process, you are no longer obligated to make payments on that rental agreement. On the flip side, the landlord now has the legal right to move forward with an eviction proceeding. Rejecting the lease is a breach of contract so even if you were current on your rent on the date the bankruptcy was filed, the eviction can proceed.

Breaking a lease in bankruptcy is not always a wise decision and the timing could impact your ability to sign a favorable residential lease in the future. It is usually advisable to move out and sign a new lease prior to filing bankruptcy to avoid the [credit impact of the bankruptcy](#).

So, bankruptcy can be a very effective way of dealing with back rent and/or dealing with an unattractive lease agreement with a landlord. Every situation is different and sometimes personal relationships with a landlord factor in as well.

With that said, I know that our homes are more than just shelters to protect us from the elements. We develop strong attachments with our living environments and breaking away is sometimes painful, difficult and our better judgment becomes clouded. When it comes to these difficult financial decisions relating to our homes, it is very important to seek the advice of an experienced [bankruptcy lawyer](#) to make sure the decisions you make are objective and proper.