

# BANKRUPTCY IN PLAIN ENGLISH

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## Misconceptions about Bankruptcy

Know the Facts and Your Rights Under Bankruptcy Law

By Richard Fonfrias

It's important to understand what your rights are under the law governing bankruptcy. In an attempt to clarify the subject, the following article addresses the 11 most common misconceptions about bankruptcy.

**MISCONCEPTION #1: Bankruptcy is dishonest.**

Not true. Most people honestly want to pay their bills, but sometimes things happen that make it impossible. These things include an unexpected lawsuit, judgment or income tax bill, a fine that was considered excessive or in dispute, and more.

Bankruptcy is a legal right that is provided for in the United States Constitution.

Bankruptcy is a right that protects honest people from harassment, lawsuits, wage garnishment and other creditor actions. Bankruptcy allows a fresh start.

Bankruptcy has been used by many of our nation's largest companies, including Texaco and America West Airlines, as well as famous people like Jerry Lewis, Kim Basinger, David Bowie and Anita Bryant. The same laws that are routinely used by corporate America, and the rich and famous, protect you, your family and your business, too.

**MISCONCEPTION #2: I will lose all my property in a bankruptcy case.**

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Not so. The bankruptcy laws are designed to allow a fresh start. A fresh start would be impossible if you would lose all your property. The fact is that most people don't lose anything in their bankruptcy. The bankruptcy law allows the state government to decide what property is protected for bankruptcy cases filed in the state. In Illinois, you are allowed to keep most personal and household property, equity in your home up to \$15,000 per person, some equity in a car, most retirement plans, and many tools of the trade.

**MISCONCEPTION #3:** I can't own anything after bankruptcy.

Not true. In Chapter 7 you can keep the property that is protected in the bankruptcy. A Chapter 13 or Chapter 11 allows you to keep your property and repay debts over time. Many people buy and refinance cars and homes after filing a bankruptcy.

**MISCONCEPTION #4:** I will never be able to establish credit after a bankruptcy.

Not true. Today, many stores and banks actively market to people who have filed bankruptcy. Mortgage companies do help applicants get new mortgages with a bankruptcy after two to three years. As a practical matter, you only file a bankruptcy when you can't pay your bills. Because of that, your credit is probably already bad. A bankruptcy won't make it any worse. Bankruptcy puts you in a better position to pay current bills and that should improve your chances of getting new credit.

**MISCONCEPTION #5:** Bankruptcy gets rid of all debts.

Not so. Although most consumer and business debts are wiped out in bankruptcy, some debts are not affected. Certain debts can't be eliminated in bankruptcy. They include child support, alimony, fines, restitution, some taxes, loans obtained by fraud, student loans, debts due to a DUI, and debts resulting from "willful and malicious" harm. Some of these can be handled effectively in a Chapter 13 bankruptcy.

**MISCONCEPTION #6:** I can protect my property by hiding it or giving it away before I

file bankruptcy.

No. It's a crime to hide property. It's also a crime to give property away without telling the Court in the bankruptcy filing. The trustee will seek to recover any property you wrongfully transferred prior to a bankruptcy filing. You could end up in jail by attempting to illegally hide or transfer property.

**MISCONCEPTION #7:** I will lose my job if I file bankruptcy.

Not true. The bankruptcy code prohibits an employer from discriminating based on a bankruptcy filing. In nearly 10 years of helping people in bankruptcy cases, I have never even heard of someone losing a job because of a bankruptcy filing.

**MISCONCEPTION #8:** I filed a bankruptcy before, so I can't file again.

Incorrect. The law prohibits getting a Chapter 7 discharge within eight years of a previous Chapter 7 discharge. But, even within the eight-year time period, a Chapter 13 bankruptcy may be filed. Don't hesitate to call me if you have filed a previous bankruptcy. You still have many options.

**MISCONCEPTION #9:** I am not allowed to have a checking account if I file bankruptcy.

Incorrect. No rule stops you from keeping or opening a bank account. Most people keep the account that they had and continue to use it without interruption. In other cases, it may be smart to close an existing account prior to filing bankruptcy. That's because the bank involved may be a creditor in the bankruptcy. In general, if you do not owe any money to the bank where your account is, there is no reason to close the account.

**MISCONCEPTION #10:** Taxes cannot be eliminated in bankruptcy.

Wrong. Many taxes are eliminated in bankruptcy. There are several complex rules that apply. Eliminating taxes depends on how old the taxes are, when the returns were filed, and whether the taxes have been assessed, and the type of taxes. Both federal and state income taxes can be eliminated in bankruptcy. And even in cases

where the taxes cannot be eliminated, it's often possible to force a payment plan on the IRS and stop interest and penalties from being added.

MISCONCEPTION #11: I must be broke to file bankruptcy.

Not really. Although it would not make much sense to file bankruptcy when you are not in financial trouble, there is no requirement that a person be destitute. The bankruptcy code doesn't require that you be unemployed, homeless, or own no property. In fact, you are able to file bankruptcy without losing your job, giving up your home, or having your property taken away.

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