

Cossitt Law: Consumer Bankruptcy Guide

Bankruptcy can be a complex legal process. Don't allow yourself to get overwhelmed. We will do our best to provide clear solutions to even the most complicated debt issues. Our goal is to make the bankruptcy process as painless as possible so you can get on with your life.

This guide was developed to give our clients an overview of the bankruptcy process, so they can be better prepared to deal with the issues that might arise.

Getting Started: The Initial Consultation

During the initial consultation our total focus for a full hour is on your specific situation. In order to come up with the best plan, we need to understand the unique circumstances of your case.

We do our best to find the most appropriate solution to meet your needs. That may be filing a Chapter 7 bankruptcy, a Chapter 13 bankruptcy, not filing any bankruptcy, or a combination of these and other options.

To prepare for the initial consultation, you will need to fill out the **Initial Consultation** package of forms and bring the completed forms to the meeting. These forms are integral to helping us get an understanding of your case. You can download the forms from our website (www.cossittlaw.com/consumer_center.html), or contact our office and we will send them to you.

We offer a comprehensive initial consultation for a reduced or special flat "consultation rate" that includes a meeting of up to one full hour. The purpose of the initial consultation is to:

- * Review your asset (property) and liability (debts) structure, your income and expenses
- * Discuss your **problems, concerns and goals**
- * Explain the possible solutions to your problems, and discuss the costs and the pros and cons of your options

Without reasonably accurate information, it will be difficult to answer your questions and advise you. If you take the time to properly prepare for a comprehensive, in-depth and detailed discussion of your situation and options, you will obtain the most benefit from the consultation and be able to make informed decisions with confidence. An initial consultation with a board certified bankruptcy lawyer is much like an initial consult with a board certified doctor: proper diagnosis is based on the results of various tests and analysis of the information the tests provide.

Anything you tell us during the initial consultation is confidential under the attorney/client privilege. We assure you that you will be treated with the utmost respect. It is important that you are honest and frank when sharing the details of your financial situation. Please remember that we do not represent you until you hire us and we sign a written fee agreement.

What to Expect

In general, this is how the Chapter 7 bankruptcy process works:

1. Client signs fee agreement, pays retainer and meets with lawyer for 1-2 hours for an in depth review and instructions on how to complete the [Bankruptcy Worksheets](#) complete.
2. Client compiles the following information:
 - ✓ List of creditors and the amount and nature of their claims
 - ✓ Source amount and frequency of debtor's income
 - ✓ List of all the debtor's property
 - ✓ Detailed list of debtor's monthly living expenses (food, clothing, shelter, utilities, medical, etc.)
3. Client drops off completed Worksheets.
4. We try to mail a rough draft of the bankruptcy papers back to the client within three weeks of receiving the completed worksheets.
5. Over the next few weeks we meet with the client, make revisions to the papers in an attempt to provide the most accurate data possible prior to the actual filing of the case. We prepare the case papers consistent with the applicable legal and ethical requirements for thoroughness and accuracy.
6. Most consumer Chapter 7 cases are filed within 6-12 weeks of the date the fee agreement is signed.
7. The automatic stay takes effect only when the case is actually filed with the bankruptcy clerk — the stay stops all collection activity, lawsuits, garnishments, trustee sales, phone calls and any other creditor conduct outside of the bankruptcy court system.
8. The bankruptcy clerk will mail a notice of your case to all creditors advising them of the case filing, the date of filing, the case number and the time, date and location of the hearing. This notice is mailed about 2-4 days after filing (with out-of-state creditors, it can take up to 2-4 weeks for them to cease contacting you).
9. The meeting of creditors (hearing) is held approximately 20 - 40 days after filing in Missoula.
10. A discharge is granted approximately 90 days after filing, releasing the debtor from personal liability and prohibiting creditors from taking any action to collect the debt as a personal liability. However, creditors who have liens on property (home and car loans) can still enforce the liens against the asset even after the discharge

Creditor Harassment

Once you retain our firm, you can ask us to send a "letter of representation" to creditors on your behalf. Once a creditor receives such correspondence they are prohibited from contacting you to collect the debt.

When a bankruptcy case petition is filed on your behalf, the automatic stay stops or prohibits, all collection activities. Creditors and collection agents are no longer allowed to make any calls or other attempts to collect the debt. If you are being unduly harassed, you may have a valid claim against creditors who abuse the Fair Debt Collection Practices Act.

Pre-Bankruptcy Planning Do's and Don'ts

- ▶ **Do** continue making payments on vehicles or real estate that you plan to retain post bankruptcy. If you are not sure about post bankruptcy retention, keep making the payments until you make a final decision.
- ▶ **Do** reduce the amount of future income tax refunds. Federal and state tax refunds are routinely taken in Chapter 7 cases, and may affect plan payments in Chapter 13. If you expect to get an income tax refund, reduce your withholding so that you do not get a refund. If much of the refund is due to an Earned Income Tax Credit, apply to get that refund as a part of your regular pay. It may be prudent for you to wait until after you receive your tax refund before you file your case. Any questions, ask us.
- ▶ **Don't** reduce the withholding tax so much that you will have a big tax bill to pay.
- ▶ **Don't** put property you own into someone else's name to avoid repossession by creditors or the trustee. This kind of transfer is considered fraudulent and will negatively affect a possible discharge.
- ▶ **Don't** pay back money (over \$600) lent by relatives or business associates. Payment of \$600 or more to an "insider" within one year before you file bankruptcy is considered a preference and may be recovered and used to pay your creditors.
- ▶ **Don't** borrow money on your home to pay bills.
- ▶ **Don't** borrow from or withdraw from your 401k, IRA, and ERISA qualified savings and retirement plans to pay bills. These types of funds may be exempt from bankruptcy. If you don't deplete these funds you may be able to draw on them after bankruptcy.

Documents

You will soon discover that the bankruptcy process requires piles of paperwork. Having the required documents is so important to the success of your case that we won't file your case until we have them.

You'll be given a list of documents we need to prepare your case for filing — we refer to these as the [Bankruptcy Worksheets](#). It is critically important that the paperwork be filled out **completely and accurately**. Any errors, omissions or misrepresentations may seriously affect the discharge of your debts (meaning that you may need to pay them despite your having filed for bankruptcy).

We prefer that you provide us with more information rather than less. Bankruptcy law has become more complicated and much more document-intensive since the changes in the law in 2005. Without proper documentation, your case could be dismissed or other adverse consequences could occur.

The instructions we provide to you during the 1-2 hour meeting when we give you the bankruptcy worksheets should answer most of your questions. Where terms are used that we feel might be unfamiliar to you, clear definitions are provided. If you find any questions unclear, please go through the entire worksheets from top to bottom and call us once with all your questions, as accuracy at this stage is of utmost importance.

Remember, each of these questions *must* be answered fully and accurately. If you absolutely cannot remember, find out, or guess with reasonable accuracy, or answer "Unknown." If the question does not apply, state "N/A". The effort you expend now will help determine how quickly your bankruptcy can be filed and how complete your discharge will be.

CMI

Prior to filing bankruptcy, we must calculate your "current monthly income" or CMI. The term "current monthly income" is not necessarily what it sounds like. CMI includes virtually any payments received by you, whether taxable or not, during the six months prior to the month in which you file bankruptcy. This includes recurring gifts.

Calculating CMI is tricky, because the numbers change each month. It's somewhat like shooting at a moving target. You must stay out in front of it. If your filing date gets pushed back, you need to provide another month of payment stubs (or another profit and loss statement if you are self-employed).

Pay Stubs

You must provide all your pay stubs for the previous six months prior to filing. We will then take that information and calculate your CMI. To calculate your CMI, six months' payments are annualized (averaged by 6 then divided by 12) to come up with a final CMI figure. We realize that your income in the six months prior to your bankruptcy filing may be radically different from what your income is at the time you file. We must also list your actual current monthly income--what you really earn--at the time of filing, so we can use this number to show the court an accurate financial figure.

You must also file with the court all paycheck stubs and other documents relating to all income you have received within the 60 days prior to your bankruptcy filing. The bottom line for you is to keep collecting those documents and get them to us in a timely manner.

Self-Employed

If you are self-employed, you may not have “pay check stubs.” Instead, you may take profit distributions or draws from your business. For us to calculate your CMI, we need to look at that same six-month period. However, since you have no pay stubs, we’ll need a year-to-date profit and loss statement. We strongly prefer that you have an accountant or bookkeeper assemble this information. Also note, we cannot count “soft costs” like depreciation. We need income *less* actual expenses and we will show you any adjustments and calculations we make . While we have the final say as to what information goes into the bankruptcy papers, consistent with our legal and ethical obligations, you have the final say as to whether a case is filed or not.

Case Preparation

Once we receive your paperwork, we will take the information you've provided and use it to draft your initial bankruptcy paperwork. This process varies from case to case. During this process, we'll contact you if we need more information or clarification regarding the information you've provided.

In order to best serve you, we need to fully understand the big picture. If you receive an email or phone call from either me or my staff, be sure to respond promptly so we can continue preparing your case.

Once the case is ready, we will send a draft for your review. Our office is committed to accurate and thorough preparation of your case consistent with the applicable legal and ethical standards before it is filed. Over the years, we have found that thorough preparation and intensive scrutiny, in the privacy of my office when we can address and deal with matters privately, is far preferable to haphazard, sloppy case preparation combined with information that comes to light at the 341 meeting, followed by lots of questions from the trustee and creditors. Our approach to cases may cost a bit more in some cases, but the cost of thorough preparation is worth it.

Communicating With My Office

Make sure to update our office on any changes of physical or mailing address, email address and phone numbers. We will need to stay in contact during the bankruptcy process. It's critically important that you respond to our questions or requests for information. When you receive something from our office, don't ignore it!

We return all phone calls as promptly as possible, but prefer to communicate via email. When you email or call, please provide us with a detailed message or explanation of why you are calling or your specific questions. If it is something you believe a staff member can assist you with, please discuss your question with my staff.

Credit Counseling

Credit counseling is required by law. Prior to filing your case, you must complete a credit counseling briefing. You may do this in person, online, or by phone. There are several agencies approved by the United States Trustee's Office. Most agencies charge for the counseling.

The process usually takes 20-30 minutes. The counselor will ask you about your debts, your income, and your expenses. The counselor cannot stop you from filing bankruptcy; this session is just another step in the bankruptcy process. You are simply required to give the information to the counselor and complete the session.

The approved credit counseling agencies for Montana can be found at:

https://www.justice.gov/ust/eo/bapcpa/ccde/CC_Files/CC_Approved_Agencies_HTML/cc_montana/cc_montana.htm

Signing Appointment

After we prepare a draft of your bankruptcy paperwork, review and revise it with you, we'll schedule a signing appointment and email you a copy of the papers before the meeting. We ask that, prior to this meeting, you thoroughly review a fairly thick stack of documents we've prepared. We will not discuss all of the documents, but only those you identify, as well as any modifications, revisions or concerns you may suggest.

In order to file your case, all of the information and documents must be in order. To do this, we'll spend time reviewing the documents and making necessary changes. We will make the effort to explain, in plain English, every document you will sign so you understand the process completely.

Once we get your paperwork in proper format to be filed, we'll do so electronically through the court's Electronic Case Filing system. The court will then issue a case number and assign a Trustee and first hearing date to your case, so you know when you will be schedule for court.

The Meeting of Creditors

Your bankruptcy hearing is called the "Meeting of Creditors" or "341 hearing." It's called a 341 hearing because section 341 of the Bankruptcy Code requires it. It will be held approximately four to six weeks after we file your case.

There will be no judge at the hearing. Your bankruptcy Trustee (both in a Chapter 7 case and a Chapter 13 case) will preside over the hearing. You will be asked to swear or affirm to tell the truth and will testify under penalty of perjury. You should always answer questions honestly. To do otherwise is perjury and bankruptcy fraud, which are both felonies. The meeting will be recorded.

The Trustee will verify your identity by reviewing your driver's license or other acceptable forms of identification such as a passport or military identification. The Trustee will also verify your social security number by reviewing your original social security card. **BE SURE TO BRING YOUR PHOTO IDENTIFICATION AND SOCIAL SECURITY CARD TO THE HEARING.** If you do not bring acceptable photo identification and your social security card, the Trustee cannot hold your hearing.

Most Trustees are attorneys who represent debtors in their practices. Rest assured that you will be treated with respect.

Questions the Trustee Will Ask at Your Hearing

- ▶ Did you sign the petition, schedules, statements and related documents and is the signature your own?
- ▶ Did you read the petition, schedules, statements, and related documents before you signed them?
- ▶ Are you personally familiar with the information contained in the petition, schedules, statements and related documents?
- ▶ To the best of your knowledge, is the information contained in the petition, schedules, statements, and related documents true and correct? Are there any errors or omissions to bring to my attention at this time? Are all of your assets identified on the schedules? Have you listed all of your creditors on the schedules?
- ▶ Are any changes or corrections needed?
- ▶ Have you previously filed bankruptcy? (If so, the trustee must verify the prior case number, which should already be listed on your bankruptcy petition.)
- ▶ Is the copy of the tax return you provided a true copy of the most recent tax return you filed?
- ▶ Do you have a domestic support obligation? (This means child support or alimony.) To whom? If you do have a support obligation, this should have been listed on your schedules. The Trustee must also obtain the phone number of the domestic support obligation payee (the person who gets the money).
- ▶ Have you read the *Bankruptcy Information Sheet* provided by the United States Trustee?
- ▶ Have you made any transfers of any property or given gifts of any property worth more than \$5,000 in the last 4 years? If yes: What did you transfer? To whom was it transferred? What did you receive in exchange? What did you do with the funds you received?

You may also be asked:

- ▶ Do you own or have any interest whatsoever in any real estate?
- ▶ If so, when did you purchase the property? How much did the property cost? What are the mortgages encumbering it? What do you estimate to be the present value of the property? Is that the whole value or just your share? How did you arrive at that value?
- ▶ If renting: Have you ever owned the property in which you live and/or is its owner in any way related to you?
- ▶ Does anyone hold property belonging to you? If yes, who holds the property and what is it? What is its value?
- ▶ There are other questions that may be asked — additional questions depend on the individual facts of your case. We recommend that you arrive at your hearing an hour early so you can watch the Trustee ask questions in other cases. Doing this will calm you down and help you prepare for your own hearing by giving you a better idea of the information the Trustee may seek from you.

The 60-Day Period After the Hearing

The Bankruptcy Code gives creditors 60 days from the hearing date to object to your discharge or to ask the court to deny you the ability to discharge a particular debt. Creditors rarely take such extraordinary steps unless there is fraud involved (for example, if you lied about your income or intentionally ran up your credit cards shortly before filing bankruptcy).

The United States Trustee's office, a division of the Department of Justice, also has 60 days to file a motion to dismiss your Chapter 7 case for "abuse." Usually, this is only done if the United States Trustee believes you have enough income to fund a Chapter 13 plan with monthly payments, and repay your creditors at least some of what you owe them. If the United States Trustee can show that you have the ability to make Chapter 13 payments, the court may agree to dismiss your case.

At that point you would have the option of allowing the case to be dismissed, or converting the case to Chapter 13 and making payments to the Chapter 13 Trustee for three to five years. All Chapter 7 cases are subject to dismissal for abuse based on the totality of circumstances of your case. My goal as your attorney is to help you select the appropriate Chapter for your case. If this is even remotely a concern in your case, we will have discussed it extensively long before your case is ever filed.

In deciding whether you should file a Chapter 7 or 13 case, the fundamental distinction is whether you want to use your income over the next 3-5 years to pay your creditors (Chapter 13) or whether you want to keep your income for you and your family, liquidate your assets, and get on with your fresh start now (Chapter 7). In a Chapter 13 case, your financial affairs will be under the scrutiny of the Chapter 13 trustee and bankruptcy court for the life of the plan (3-5 years). You cannot incur secured debt without court approval during the life of the plan. While it is fairly easy to get a Chapter 13 plan confirmed, it is estimated that between one-half and two-thirds of all Chapter 13 plans fail.

If you filed Chapter 7, you are eligible to receive your discharge (the court order saying you no longer owe your debts) once the 60-day period ends. If you filed a Chapter 13, you'll still need to complete your plan payments over a three to five-year period, before you will be eligible to request a bankruptcy discharge.

Credit After Bankruptcy

There are lenders who will extend unsecured and secured credit after bankruptcy. Some credit card companies will solicit you to keep your credit card and reaffirm your debt with them. This may or may not be a good idea—it often depends on the particulars of your situation. We can help you consider your options and discuss what types of credit best fit your post-bankruptcy lifestyle.

Congratulations — You are now on the road to a fresh financial start!