

ELEMENTS OF BANKRUPTCY

A Guide for Florida's Consumers and Businesses



Individuals and families go through financial struggles from time to time. But if you are unable to manage your debts over a longer period of time, then filing for bankruptcy may be an option. The process of filing for bankruptcy in Florida can be intimidating to debtors who are unfamiliar with the system. The bankruptcy attorneys at the Coye Law Firm want to help you through the process and to a successful conclusion.

866-Wade-Coye | 800-648-4941

www.coyelaw.com

www.coyelawdisabilitycenter.com

What is Bankruptcy?

When a person or business is unable to repay the debts they owe, they may be able to file for bankruptcy. Filing for bankruptcy changes the legal status of the debtor; they then are considered to be "in bankruptcy."

A person might find that their debt is impossible to manage if they:

- ❖ experience a sudden and expensive event, such as sickness, injury, or an accident
- ❖ are financially impacted by personal issues, such as divorce
- ❖ are only earning enough income to afford the monthly minimum payments on their bills
- ❖ cannot develop a budget for debt repayment on their own
- ❖ are unable to afford their monthly mortgage payments and are experiencing foreclosure

Declaring bankruptcy has benefits and drawbacks. It can protect an individual from certain debt collection tactics, but it also has a negative impact on their credit rating.



The benefits of filing for bankruptcy include:

1. possible discharge of certain debts
2. protection from harassment related to debt collection
3. more time to fend off foreclosure proceedings

The disadvantages of bankruptcy can be:

1. serious and long-lasting effect on the debtor's credit rating
2. possible liquidation of property
3. difficulty securing loans or credit cards

Deciding to declare bankruptcy is an important decision that requires careful consideration and thorough investigation. Talk to an attorney at the Coye Law Firm to learn more about whether or not filing for bankruptcy is a solution for your unmanageable debt.

Types of Bankruptcy

Under the United States Bankruptcy Code, there are six different types of bankruptcy. The debtor may only be eligible to file for a certain type depending on if they are filing as an individual or on behalf of their business.

Individuals can file for:

- ❖ [Chapter 7](#) bankruptcy, in which the debtor's non-exempt assets are liquidated and the money resulting is used to pay off debts.
- ❖ [Chapter 13](#) bankruptcy, in which the debtor organizes a repayment plan to handle outstanding debts within three to five years.
- ❖ [Chapter 12](#) bankruptcy, which is similar to Chapter 13 bankruptcy, but is designed for farmers or fishermen and their families.

Businesses can file for:

- ❖ [Chapter 11](#) bankruptcy, in which businesses can repay creditors through a plan approved by the court while continuing to conduct day-to-day operations. Individuals may also be able to file for Chapter 11 bankruptcy.

- ❖ [Chapter 9](#) bankruptcy applies to cities, municipalities, and school districts. It is a lot like Chapter 11 bankruptcy and allows these entities to develop a reorganization plan for their debts.

[Chapter 15](#) bankruptcy is designed for debtors who are subject to more than one country's bankruptcy laws. These individuals or businesses may be based or do business in foreign countries, so their cases can be more complicated.

There are significant differences between these six types of bankruptcy. Each type has its own filing requirements, repayment plan, and resolution process. These concepts are complex and may best be understood by seeking legal advice.

Bankruptcy is type of federal claim. These cases are filed in federal court and subject to federal laws. Debtors in central Florida file their bankruptcy cases with the [United States Bankruptcy Court for the Middle District of Florida](#).

How to File Bankruptcy in Florida

Once an individual or business determines that their debt is unmanageable, they may want to start the bankruptcy process. There is an extensive amount of paperwork that a debtor must file. Although the forms vary between types of bankruptcy, there are a few standard things that the debtor must initially provide to the court.

Forms must be filed, including:

- ❖ [assets and liabilities](#)
- ❖ [current income](#) and [expenditures](#)
- ❖ [statement of financial affairs](#)
- ❖ [executory contracts and unexpired leases](#)

The court also requires:

- ❖ tax information and returns
- ❖ certificate of credit counseling
- ❖ copy of any repayment plan
- ❖ evidence of payment from employers

Once the court decides you are eligible for bankruptcy, they will ask for:

- ❖ [a list of creditors](#), the nature and amount of debt for which they are seeking repayment
- ❖ the amount, frequency, and source of your income
- ❖ [information about any property you own](#) (known as real property)
- ❖ a detailed list of your living expenses

B6A (Official Form 6A) (12/07)

In re _____ Debtor Case No. _____ (If known)

SCHEDULE A - REAL PROPERTY

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a tenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether the husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor holds no interest in real property, write "None" under "Description and Location of Property."

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. See Schedule D. If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim."

If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

DESCRIPTION AND LOCATION OF PROPERTY	NATURE OF DEBTOR'S INTEREST IN PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION	AMOUNT OF SECURED CLAIM
Total ▶				

(Report also on Summary of Schedules.)

Once a debtor files a petition for bankruptcy, most collection actions against them are stopped. In some cases, the court may also assign a trustee to oversee the debtor's finances during the course of their bankruptcy case.

The Means Test

If an individual is seeking financial relief by filing for bankruptcy, they have to meet certain requirements. A debtor's income is a big part of these requirements. If their income is above the average in their state, then they may have to go through a "means test" to determine if their financial state requires bankruptcy action.

The first part of the means test measures the debtor's yearly income against their [state's median income](#). The United States Department of Justice calculates this average frequently throughout the year, so this list is for bankruptcy claims filed after March 15th 2011. If the debtor's

income is below this number, then they immediately pass the means test for bankruptcy. If it is above that average, then the debtor's situation moves on to the second part of the test. This step involves a court evaluation of the debtor's necessary expenses, such as rent, food, insurance, and other necessary products or services. If the court finds that the debtor needs help managing their debt despite their higher income, then they may be granted bankruptcy filing.

As you can see, there is a lot of time and information needed to file a successful bankruptcy claim. The decision to file for bankruptcy in Florida should not be made quickly or without careful consideration on how this will affect your financial life.



A bankruptcy attorney at the Coye Law Firm wants to help you recover from financial strains. We understand that stress and anxiety from unmanageable debt can overwhelm individuals and their families. Ask our attorneys for help. Our bankruptcy lawyers are admitted to represent clients in U.S. Bankruptcy Court and guide them through other financial claims, such as tax issues, foreclosure, or contract disputes. Call our offices today at 800-648-4941. Visit us online at www.coyelaw.com.



Sometimes, you need justice. Sometimes, you need a lawyer.

The Coye Law Firm serves all of central Florida and has locations in Orlando, Tampa, Melbourne, Clermont, and Kissimmee to meet with clients at their convenience.