

# RESTART, REBUILD AND RECOVER

FILING BANKRUPTCY IN FLORIDA



**The Top 3 Dangers of Filing Without  
Experienced Legal Counsel**





# RESTART, REBUILD AND RECOVER

## A MUST-READ IF YOU ARE CONSIDERING FILING BANKRUPTCY IN FLORIDA

### WHAT THIS BOOK COVERS:

THE TOP 3 DANGERS OF FILING BANKRUPTCY WITHOUT EXPERIENCED LEGAL COUNSEL

DANGER 1: Beware of Filing Bankruptcy Pro Se

DANGER 2: Beware of "Do-It-Yourself" Bankruptcy Kits in Florida

DANGER 3: Without experienced legal counsel, you may not receive the best advice on which type of bankruptcy is best for your particular situation – Chapter 7 or Chapter 13?

HOW TO PAY?

We will show you how you can afford to hire experienced legal counsel and strategies to cover your legal fees.

CHARTING YOUR PATH TO A BRIGHTER FINANCIAL FUTURE

We discuss what happens after you file and the steps you can take to rebuild your credit, your savings and your peace of mind.



# INTRODUCTION



## BY TIMOTHY S. KINGCADE, ATTORNEY & CPA

If your bills continue to pile up along with your mounting anxiety, it may be time to consider filing bankruptcy. As you start to research your options on filing bankruptcy, you may encounter some of the following initial (and crucial) decisions you will need to make:

- Should I file pro se (meaning on my own without an experienced attorney)?
- Should I buy a form online?
- Should I use a non-lawyer debt relief service?
- Can I afford an experienced bankruptcy attorney?

**THE PURPOSE OF THIS E-BOOK IS TO HELP YOU MAKE THESE CRUCIAL UPFRONT DECISIONS. THIS ENSURES THAT YOU PROTECT YOUR ASSETS AND MOVE FORWARD WITH A CLEAR PATH TO A BETTER FINANCIAL FUTURE.**

We will also show you ways to structure your debt relief so that you can afford to hire an experienced bankruptcy attorney with knowledge, compassion and experience.

First, let's look at the dangers of trying to file bankruptcy without experienced counsel or by using online forms or a non-lawyer debt relief agency.



# DANGER 1: BEWARE OF FILING BANKRUPTCY PRO SE

The Internet has given average consumers the ability to Google everything from how to change a flat tire to how to replace a kitchen sink. However, there are certain tasks that should be left to the professionals. Filing for bankruptcy is one of them.

Bankruptcy laws significantly changed in 2005, making it more difficult to file. There are also crucial steps in the bankruptcy process, including appearing before a bankruptcy trustee and a meeting of creditors. These two steps can be intimidating for individuals not familiar with the process. Not to mention the complex legal forms involved with filing bankruptcy. A single mistake or oversight on one of these forms can cause you to lose your property and assets or your case to be dismissed.

Consulting with an experienced bankruptcy attorney will help you fully understand your legal options and avoid these pitfalls.

## WHAT IS 'PRO SE'?



Pro Se is a legal term used when someone initiates legal action on their own without the benefit of an attorney advising and representing them.



# DANGER 2: BEWARE OF “DO-IT-YOURSELF” BANKRUPTCY KITS IN FLORIDA

Long before the mortgage foreclosure crisis, Florida courts have warned against trying to save money by engaging non-attorney bankruptcy petition preparers when dealing with financial troubles.

A recent case shows how some predatory individuals take advantage of people struggling under debt and afraid of losing their homes by charging them illegal and excessive fees. In *re Falck*, the defendants solicited debtors through the mail, pitching their mortgage foreclosure defense scheme. These homeowners met with the defendants and started making monthly payments to them for mortgage foreclosure defense.

The defendants were not licensed as attorneys in Florida or any state and they did not file the correct disclosures, charged excessive fees and falsely claimed they received no fees from the debtor. In imposing sanctions on the bankruptcy petition preparation company, the court noted hundreds of debtors were victimized by this mortgage foreclosure protection scheme.

The court in the 1973 case of *The Florida Bar v. American Legal & Business Forms, Inc.* ruled that non-attorneys selling package forms or “kits” for performing legal services as the unauthorized practice of law if any instructions or advice on their preparation is included.

The court further warned against looking at these documents and filings as mere forms, since the selection of a particular document involves research and choices made after evaluation of alternatives.

**YOU DO NOT KNOW WHAT YOU DO NOT KNOW. IF YOU ARE NOT AWARE OF ALL THE TYPES OF FORMS, HOW DO YOU KNOW YOU ARE USING THE CORRECT ONE?**

Printed forms which do not reflect these choices are often relied upon by people who are trying to save money and the results are sometimes costly and unfair.

## KNOW YOUR RIGHTS

The federal Bankruptcy Code was amended in 1994 to regulate the powers and role of bankruptcy petition preparers. Written notice must be provided on an official form to the debtor client that the preparer is not an attorney and cannot practice law or give any legal advice before any documents are filed or fees are charged.

This leaves a limited amount of services that can legally be performed by the petition preparers, but over the years there have been many attempts by non-attorney document preparation companies to skirt the requirements. Hefty fines and other sanctions have been increased for violations of the Code or fraudulent, deceptive or unfair conduct. Statutory damages of \$2,000 or twice the amount of fees paid to the preparer, plus attorney fees and costs could be assessed.

# DANGER 3: FILING THE RIGHT TYPE OF BANKRUPTCY, CHAPTER 7 OR CHAPTER 13?

The main difference is that in Chapter 7 Bankruptcy you do not pay back your creditors, while in Chapter 13 you make payments over a 3-5 year period.

Keep in mind that not everyone qualifies to file Chapter 7 because there are strict income restrictions.

To qualify for Chapter 7 Bankruptcy your income cannot exceed the state's median income for a household of your size. Even with Chapter 7 bankruptcy, not all debt gets wiped out. Some nondischargeable debt includes income taxes, child and spousal support obligations, and student loans.

If your income exceeds the qualification for Chapter 7 Bankruptcy, then you may get some relief by filing a Chapter 13 Bankruptcy. This establishes a repayment plan with your creditors over a 3-5 month period.

The more property you have (real and personal), the higher your monthly payment will be under the repayment plan. After successful completion of your repayment plan, any outstanding balances on your unsecured debts (credit cards, etc.) will be discharged.

**IT IS IMPORTANT THAT YOU  
KNOW THE PERSONAL  
EXEMPTIONS AVAILABLE  
IN FLORIDA**



There are also several common Florida bankruptcy exemptions that we will need to discuss and determine if any of them apply to your situation. If you are filing for Chapter 7 bankruptcy in Florida, you can use Florida bankruptcy exemptions to protect your property.

In addition, residents are provided unlimited exemptions for homestead, annuities, and the cash surrender value of a life insurance policy.

Florida has one of the most generous homestead exemptions in the country. To use Florida's exemptions, you must have resided in Florida for at least 730 days before filing your bankruptcy petition.

To claim the full value of the homestead exemption in Florida, you must have owned the property for at least 1,215 days before the bankruptcy filing.





# PERSONAL PROPERTY EXEMPTIONS

## Personal Property Exemptions:

- Personal property up to \$1,000. Personal property can include such items as furniture, art, and electronics. (Art. 10 Sec. 4, Fl. Constitution)
- Education savings, health savings, and hurricane savings. (Fla. Stat. Ann. § 222.22)
- Prescribed health aids. (Fla. Stat. Ann. § 222.25)
- Prepaid medical savings account and health savings account deposits (Fla. Stat. Ann. § 222.22(2))
- Tax credits and refunds (Fla. Stat. Ann. § 222.25(3))
- Funeral costs per Florida's Preneed Funeral Contract Consumer Protection Trust Fund (Fla. Stat. Ann. § 497.456)
- Particular partnership property (Fla. Stat. Ann. §§ 620.153, 620.8307)



# PENSION AND RETIREMENT FUND EXEMPTIONS

- ERISA qualified retirement plans and pensions (including 401(k)'s, 403(b)'s, profit sharing and money purchase plans, SEP and SIMPLE IRA's, and other defined benefit plans) are fully exempt. (11 U.S.C. Section 522; Fla. Stat. Ann. § 222.21.)
- IRA's and Roth IRA's are exempt up to \$1,171,650. (11 U.S.C. Section 522(b)(3)(C)(n).)
- Public employee retirement benefits. (Fla. Stat. Ann. §§ 121.131, 121.055(6)(e).)
- State and County officers and employees retirement system benefits. (Fla. Stat. Ann. § 122.15.)
- Firefighter pensions. (Fla. Stat. Ann. § 175.241.)
- Municipal police pensions. (Fla. Stat. Ann. § 185.25.)
- Teachers' retirement benefits. (Fla. Stat. Ann. § 238.15.)





# INSURANCE AND ANNUITY EXEMPTIONS

- The proceeds of a life insurance policy payable to a specific beneficiary are fully exempt. (Fla. Stat. Ann. § 222.13.)
- The cash surrender value of a life insurance policy and the proceeds of an annuity contract are fully exempt.

However, annuity proceeds resulting from lottery winnings are not exempt. (Fla. Stat. Ann. § 222.14.)

- Disability income benefits are exempt. (Fla. Stat. Ann. § 222.18.)
- Fraternal benefit society benefits are exempt. (Fla. Stat. Ann. § 632.619.)

# MISCELLANEOUS EXEMPTIONS

## Florida Motor Vehicle Exemption:

- Bankruptcy filers can exempt up to \$1,000 in motor vehicle equity, more if you are married and filing jointly.

## Exemptions for Wages in Florida:

- Wages of a head of the family are entirely exempt up to \$750 per week, or the greater of 75% or 30 times the federal minimum wage.

## Alimony and Child Support Exemptions:

Alimony and child support, to the extent reasonably necessary for the support of the debtor (the bankruptcy filer) and any dependent of the Debtor, are exempt. (Fla. Stat. Ann. § 222.201.)



**WE WILL DISCUSS THESE  
DIFFERENT EXEMPTIONS AND  
APPLY THEM TO YOUR SPECIFIC  
SITUATION DURING OUR FIRST  
CONSULTATION.**





The background of the entire page is a collage of various US dollar bills, including \$100, \$50, and \$20 bills, featuring portraits of Abraham Lincoln and other figures. The bills are overlapping and slightly tilted, creating a textured, financial theme.

# HOW TO PAY?

THE U.S. FEDERAL BANKRUPTCY LAWS WERE DESIGNED TO GIVE YOU A FRESH START AND A SECOND CHANCE WHEN IT COMES TO YOUR FINANCES.



# STRATEGIES TO PAY LEGAL FEES IN BANKRUPTCY

It may be hard to imagine being able to afford an experienced bankruptcy attorney when you struggle to make your payments each month. Many people think they cannot afford to file for bankruptcy. However, bankruptcy laws allow you to eliminate some debts and lower payments on others.

This now “freed-up” money, oftentimes hundreds of dollars a month, can be used to cover the cost of your bankruptcy attorney and filing fees.

When it comes to the cost of bankruptcy, you will face two expenses: the court filing fees to handle your case and the attorney fees for your bankruptcy lawyer who files your case and represents you in court.

There are several types of bankruptcies to choose from, but the most common consumer bankruptcies we have already discussed are Chapter 7 (where most of your debts are forgiven) and Chapter 13 (where your debt is reorganized and restructured into a payment plan).

**\*FILING FEES REMAIN THE SAME NATIONWIDE, BUT YOUR ATTORNEY FEES CAN VARY GREATLY, DEPENDING ON LOCATION, THE COMPLEXITIES OF YOUR CASE AND YOUR ATTORNEY.**

	Chapter 7	Chapter 13
Filing fees	\$335	\$310
Attorney fees*	\$500 – \$3,500	\$1,500 – \$6,000
Total	\$835 – \$3,835	\$1,810 – \$6,310



## HERE ARE SOME TIPS ON HOW TO PAY FOR YOUR BANKRUPTCY:

- Work out a payment plan with your attorney. Payment plans can vary. Some lawyers allow you to spread the payments over six months, others over three months. Most will want payment in full before filing your case. The simple reason: Chapter 7 bankruptcy eliminates most of your debts, so you would not be legally obligated to pay your attorney any outstanding fees after filing.

- Raise the money. Try to earn some additional income. Consider having a garage sale, selling items on consignment, on Ebay or Craigslist (i.e. – think old electronics, hand bags, etc.) or taking on a part-time job to earn some fast cash.

Consumers who owe debt know the fear associated with going to the mailbox and answering the phone when it is an unknown number. This fear is eliminated once hiring an experienced bankruptcy attorney.

Debt collectors must stop contacting you immediately and communicate only with your attorney- thanks to the protections in the Fair Debt Collection Practices Act (FDCPA).



**Avvo**  
**Clients' Choice Award 2018**  
 Timothy S. Kingcade  
 ★ ★ ★ ★ ★

**Congratulations to Attorney Timothy S. Kingcade**  
 Who has been selected as a recipient of the coveted AVVO Clients' Choice Award for 2018.  
 Top Rated Bankruptcy Attorney in Miami, FL.



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# CHARTING YOUR NEW PATH TO A BRIGHTER FINANCIAL FUTURE

Once you work with us to file bankruptcy, we continue to help you chart your path to a better financial future. It is important consumers know that immediately after filing for bankruptcy they can begin improving their credit score.

## HERE ARE SEVEN STEPS YOU CAN TAKE TO BEGIN REBUILDING YOUR CREDIT AFTER FILING FOR BANKRUPTCY.

# 1

Know your credit score. Go to [annualcreditreport.com](https://annualcreditreport.com) and pull your three credit reports (Experian, Equifax and TransUnion). Make sure all of the debts affected by the bankruptcy are listed. Also confirm all information is accurate on each of the reports.





# 2

Pay bills on time and in full. Raising your credit score after bankruptcy is all about getting back to basics. Set calendar reminders or set bills on auto-pay so you are not late on a payment. Do not spend more than you can afford each month and pay your cards off in full so you do not incur any interest charges.



# 3

**OPEN A NEW BANK ACCOUNT. WHEN YOU OPEN A NEW CHECKING OR SAVINGS ACCOUNT YOU ARE DEMONSTRATING FINANCIAL STABILITY. THIS CAN ALSO PROVIDE YOU WITH A CLEAN SLATE TO PRACTICE GOOD FINANCIAL HABITS.**

# 4

Apply for a secured credit card. These cards are one of the easiest ways to build credit and improve your credit score. Secured credit cards borrow money against a deposit the consumer has already made. Compare interest rates and select a card with the best rate and low annual fee.



5

**CREATE AND STICK TO A BUDGET. THIS SHOULD BE BASED ON YOUR INCOME MINUS EXPENSES FOR RENT, UTILITIES, GROCERIES AND OTHER EXPENSES.**

6

Start a savings account. Having an emergency savings means you will be less likely to have to access credit when an unexpected expense occurs. Research shows that having as little as \$250 saved up for an unexpected expense can protect you from having to resort to pay day loans and credit cards.

7

Be patient with yourself. If you made mistakes, learn from them. You should not feel ashamed after filing for bankruptcy. The more active of a role you take in rebuilding your credit, the sooner you can bounce back after bankruptcy.



# RESTART, REBUILD AND RECOVER

## LET US HELP

As an experienced CPA as well as a proven bankruptcy lawyer, Timothy Kingcade knows how to help clients take full advantage of the bankruptcy laws to protect their assets and get successful results. Since 1996 Kingcade & Garcia, P.A. has been helping people from all walks of life build a better tomorrow.

Our attorneys' help thousands of people every year take advantage of their rights under bankruptcy protection to restart, rebuild and recover.

The day you hire our firm, we will contact your creditors to stop the harassment. You can also find useful consumer information on the Kingcade & Garcia website at [www.miamibankruptcy.com](http://www.miamibankruptcy.com).

Set up a consultation today to learn more about your options and start charting your path to a brighter financial future. Weekend appointments are available.

  
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