



DAIGLE LAW OFFICE

QUIZ

DO I HAVE ENOUGH DEBT TO FILE FOR BANKRUPTCY?

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Bankruptcy laws do not require you to have a minimum amount of debt before you can file. But the decision to file requires more than just looking at a single number. The analysis can be complex.

This short quiz will help you determine if you should consider bankruptcy. If the results reveal that bankruptcy might make sense, you will want to discuss your case with a qualified bankruptcy attorney. If done incorrectly, bankruptcy can create more problems than it solves. Furthermore, you will need to determine if your family's income allows you to file for Chapter 7 bankruptcy, or if Chapter 13 is the better choice. A bankruptcy attorney can help with this assessment. A qualified bankruptcy attorney can also help you determine if your case presents hidden complexities that need further review.

1. Are you keeping up with your monthly bills, even though money is tight?

Monthly bills include living expenses (housing, food, transportation, medical insurance, etc.) and at least the required minimum payments on other debts (credit card debt, medical debt, student loans).

A. Yes

B. No

If you answered yes—You may want to explore alternatives before further considering bankruptcy. Even though you are keeping up with your bills, you may feel like you can never get out of debt. If you have sufficient, stable income and can meet your obligations each month, then bankruptcy may not offer the best solution to your financial pressures. Bankruptcy can affect your credit for years, even though you can take steps to mitigate the impact. If your income is stable and not likely to change, you may want to consider one or more of the following:

- A debt management program.
- Trimming your budget.
- Adjusting your lifestyle (E.g., can you rent a smaller apartment for less money?
- Or skip take out coffee for a year?). Increasing your income (for example, with a second job).

A good credit counseling agency or financial planner can assist in evaluating your current situation and making suggestions or enrolling you in a debt management program. However, there are many shady scam shops that advertise these services. Make sure to do your homework and if sounds too good to be true it probably is!

If you answered no—You could be a candidate for bankruptcy. Under most circumstances, bankruptcy wipes the slate clean of unsecured debts (credit card payments, old medical debt, personal loans, etc.). Without the burden of these monthly payments, more money will be available for current expenses allowing you to readjust your budget to live within your means.



Most people file for bankruptcy because they are overwhelmed by their unsecured debts and have no realistic chance of paying them off in the near future.

2. **Can you repay your unsecured debt (e.g. credit cards, medical debts, past due rent and utility payments) within 3 to 5 years while still keeping up with your ordinary living expenses and monthly bills?**
 - A. Yes
 - B. No

If you answered yes—Bankruptcy might not be the best choice for you. Most people file for bankruptcy because they are overwhelmed by their unsecured debts and have no realistic chance of paying them off in the near future. Individuals who can repay all their unsecured debt in 3 to 5 years typically find that the disadvantages of filing bankruptcy outweigh the benefits. Paying down your unsecured debts in 3 to 5 years (which will typically require you to make more than the minimum payments) is often the better alternative.

A note for those with student loans. If you have a lot of student loan debt, you may not be able to pay it off within 3 to 5 years. If you can pay off all your other unsecured debt within this time frame, the disadvantages of filing probably still outweigh the benefits, particularly since student loans can rarely be eliminated in bankruptcy. Once you have paid off your other unsecured debts, you can focus on the student loans.

If you answered no—Bankruptcy might be a good decision. If you have more than a few thousand in credit card debt or other unsecured debt and are barely making the minimum payments, bankruptcy could give you some breathing room. Are you one emergency away from financial disaster (e.g. a broken arm and you cannot afford the deductible, your furnace goes out and you cannot afford the repair)? Then bankruptcy might provide the relief you need. A bankruptcy attorney can help you determine what a new normal would look like without the credit card and other debt payments.

Regardless of how you answered Question 2: Keep in mind that bankruptcy may not eliminate all your debts. The bankruptcy laws carve out certain types of debts that are too important to be discharged in bankruptcy. These include:

- Domestic support obligations including child support and alimony.
- Certain tax debts.
- Debts incurred through fraud or false pretenses.
- Student loans.
- Obligations arising out of personal injury caused by drunk driving.



Hiring an attorney for a few hours to handle settlement or creditor negotiations is often well worth the expense.

3. **Are you interested in trying to negotiate a better deal with your creditors and, if you do, do you have funds with which to pay them?**
- A. Yes
 - B. No

If you answered yes—You might have an alternative to bankruptcy. By negotiating with creditors sometimes you can (1) reduce your principal balance or interest rate; (2) settle your debts for less than you owe; (3) enter a payment plan to get caught up or be allowed extra time to cure a default. If you are going to enter into an agreement with a creditor, make sure you understand the terms, have the means to make good on your end of the bargain, and, most important, follow through. Don't enter a settlement without having the means to pay it off. Hiring an attorney for a few hours to handle settlement or creditor negotiations is often well worth the expense. Creditors like to give non-attorneys the run around and too frequently play games. Furthermore, there can be tax consequences on forgiven debt. Make sure you fully understand the terms of any settlement and get everything in writing!

If you answered no—Bankruptcy may still provide a way of getting rid of your unsecured debt and reducing your financial obligations.

4. Is your situation temporary?

- A. Yes, my situation is temporary.
- B. No, I cannot make ends meet and my situation is not likely to change any time soon.

If you answered yes—You should consider riding out the temporary situation to see if it improves. Holding off bankruptcy is the better choice, assuming you can pay for the basic necessities (shelter, food, clothing, etc.) and can scrimp together enough to make your minimum payments on other debt or persuade your creditors to defer the payments. Requesting a deferment from your creditors because you have a temporary financial crisis is worth a try, although there is no guarantee creditors will agree. If needed, you can reevaluate after several months.

If you answered no—If you can see that your financial crisis is not likely to improve and may even get worse, bankruptcy may provide the best solution. It will allow you to discharge your unsecured debt and gain a fresh start.

Whether bankruptcy makes sense will depend on numerous other factors including the amount of the debt, your wages, how long it will take to repay the debt, and the type of debt.

5. Are you being garnished or sued for a large debt?

- A. Yes
- B. No

If you answered yes—Bankruptcy might be the only way to get rid of the garnishment. You should discuss your case with a bankruptcy attorney. In most cases, unless you are garnishment proof (which is defined by state law and varies from state to state), garnishments will continue until the debt has been paid in full. Whether bankruptcy makes sense will depend on numerous other factors including the amount of the debt, your wages, how long it will take to repay the debt, and the type of debt (e.g., is it IRS debt or a credit card). The intricacies of each of these situations are too complex to explain here, but a qualified attorney can help you make an educated decision.

If you answered no—The other answers you have given in this quiz still apply.

6. **Have you taken or are you considering taking money from retirement accounts to pay debt?**

A. Yes

B. No

If you answered yes—Stop now and talk with a bankruptcy attorney before you take any money out of retirement (or any more if you already have). Retirement money that you saved (often tax-deferred) is for your future. If you pull this money out, not only are you taking money from your future self, but you might also incur more debt with taxes and withdrawal penalties. Most retirement accounts, with a few exceptions, are protected in bankruptcy.

If you answered no—You have done the right thing by not taking any money or considering taking money from your retirement accounts. Bankruptcy might still be a good choice for you based on other factors, but you have continued to protect your retirement accounts which you will need in the future. That is a good thing!

SUMMING UP: WHEN IS MY DEBT HIGH ENOUGH TO FILE FOR BANKRUPTCY?

As you can see from these questions, it is not so much the amount of debt that you have that may determine if you should file for bankruptcy, but rather your unique situation. For example, a person making minimum wage may file bankruptcy with as little as \$8,000 in credit card debt because it would take her 15 or more years to pay it off after accounting for general living expenses. On the other hand, a married couple making \$150,000 a year with the same debt of \$8,000 might want to consider other options. If that same couple making \$150,000 a year has \$110,000 in credit card and medical debt and has to support four children, now the story is different. There can be viable alternatives to bankruptcy depending on your circumstances. In other situations, bankruptcy is the best method for getting your financial situation once again in order.