



LEGAL AID SOCIETY
OF MIDDLE TENNESSEE AND THE CUMBERLANDS

Successfully Navigating Home Retention Options: Bankruptcy and Other Tools

Presented by:

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Preventing Foreclosures in Tennessee

2025 THDA Housing Education Symposium



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OF MIDDLE TENNESSEE AND THE CUMBERLANDS

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LAS is committed to the principle that all citizens are due equal representation under the law. LAS takes a comprehensive approach to providing high quality, free, civil legal services and community education for people to protect their livelihoods, their health, and their families.



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LAS Foreclosure Assistance Screening

<https://applications.neotalogic.com/a/las-foreclosure-assistance>

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Today's Discussion

- Legal Basics of Foreclosure in Tennessee
- Preventing Foreclosures

Buying a Home in Tennessee:

Deed of Trust and Note

- 3 Parties
- Lender, Borrower and Trustee
- Power of Sale
 - Auction
 - No Court Action

Deed of Trust

- Secures property as collateral for payment
- Recorded in the county register of deed's office
- Specifies how payments are applied, the borrower's rights to notice of default, etc.
- Rules for foreclosure if the loan is not paid as agreed (default)

Note

- **Promise by the borrower to pay the lender.**
- **Note creates a debt.**
- **Note specifies the terms and conditions of loan;**
 - **such as interest rate,**
 - **payment term,**
 - **due dates,**
 - **late fees, etc.**

Trustee has the Power of Sale



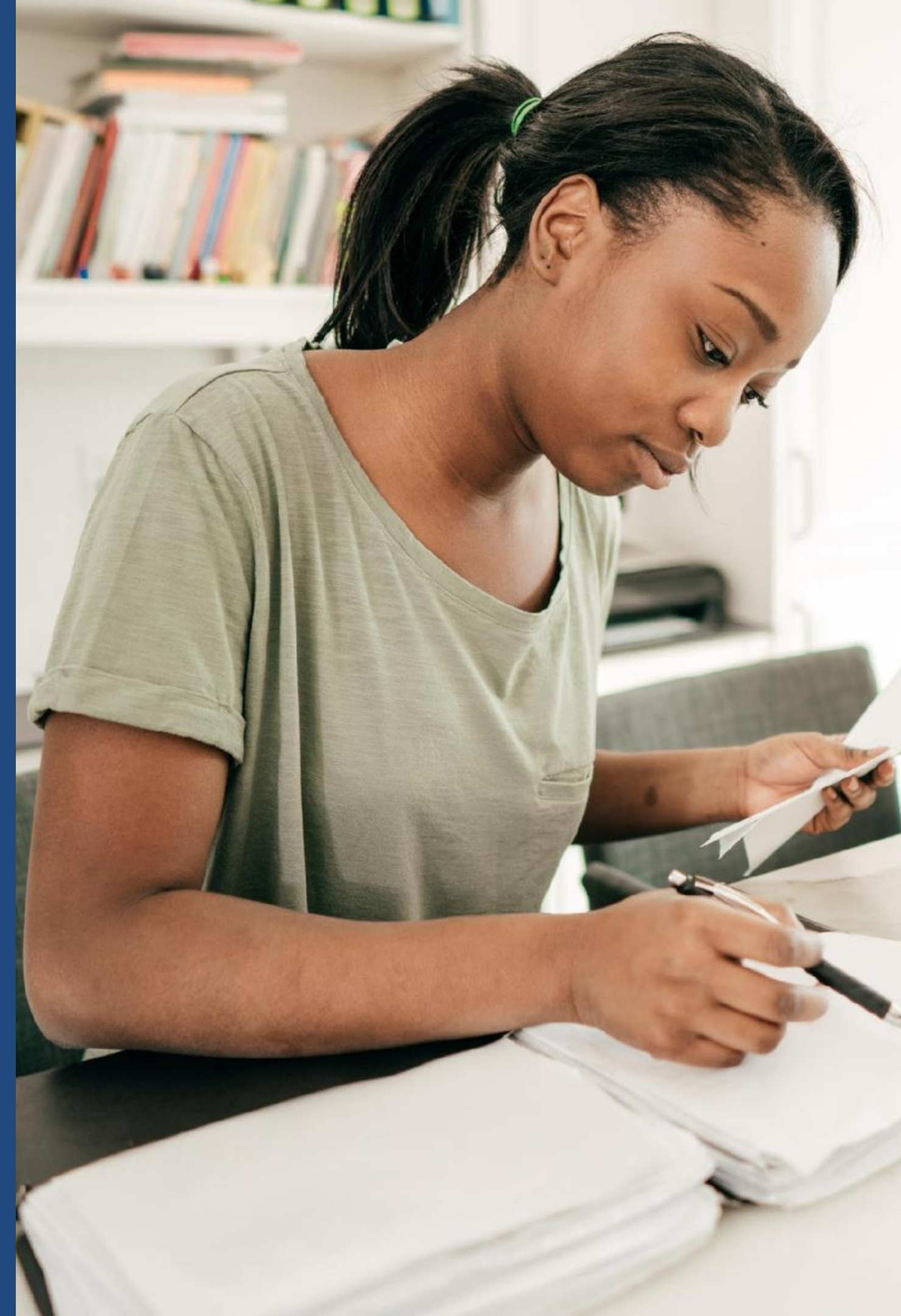
Foreclosure

NEXT EXIT



Notice of Foreclosure Sale

- Personal notice must be sent to the borrower if required by the Deed of Trust
- Mailing address of the property, by certified mail, return receipt requested that the newspaper notice of foreclosure is being published, on or before the first date of publication.



Notice by Newspaper Publication

- Advertisement of a foreclosure sale must be made three (3) different times in a newspaper published in the county where the sale is to be held.
- The first publication shall be at least twenty (20) days prior to the sale.



Reinstatement Before Sale

If Borrower pays the full amount due before the foreclosure sale, the sale should be cancelled.

Must be full amount by Deadline!

Foreclosure & Court Process



LAST RESORT



Filing Lawsuit to Stop Foreclosure

- Must File lawsuit and set preliminary hearing 5 DAYS BEFORE SALE!
- Lawsuit may last years.
- State Court v. Federal Court

Foreclosure & Court Process

- First hearing to determine whether the sale should proceed.
- Sale may occur with lawsuit pending



IS THERE AN END GAME?



Considerations

- Prior loss mitigation?
- Amount of arrearages?
- Hardship and resolution?

Loss Mitigation

- HOME PRESERVATION
Mortgage Modification or Forbearance
- CREDIT PRESERVATION (HOME LOSS)
Short Sale or Deed in Lieu of Foreclosure

Credit Preservation / Home Loss

- Short Sale
- Deed in lieu of foreclosure
- Home values and terms of agreement



Loss Mitigation Request to Lender

LMA: Loss Mitigation Application

RMA: Request for Mortgage Assistance

AMA: Application for Mortgage Assistance

Request for Information Loss Mitigation Request

Contact Information:
Back of Monthly Statement
Servicer Website

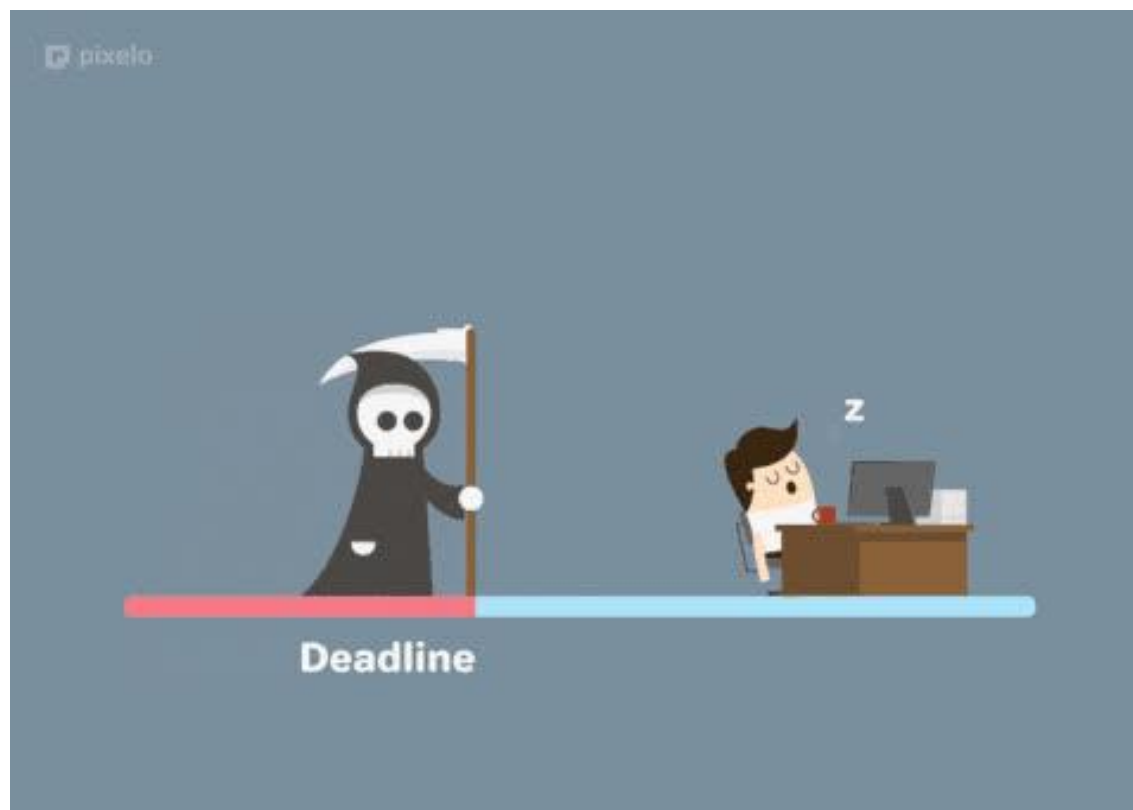
Forbearance

- Pause in Collecting Payments
- All Payments still owed
- Usually Need Additional Loss Mitigation

Modification of Mortgage

- Interest Rate, Payment, Date of Maturity
- Best Practice: Submit Application
- Include Account Number on all Documents

SUBMITTING REQUEST FOR MORTGAGE ASSISTANCE DEADLINE



- Complete Application Submitted 37 days prior to start of foreclosure process
- Servicer must review borrower's application for loss mitigation options before setting foreclosure sale.
- **MUST BE COMPLETE APPLICATION**



FEDERALLY BACKED MORTGAGES AND LOSS MITIGATION

Modification of Mortgage

- Interest rate, Payment, Date of Maturity
- Best practice: Submit application
- Include account number on all documents

How do I know if I have a federally backed mortgage?

Closing Documents Service Center



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HUD National Service Center FHA LOANS

Forbearance, **Partial Claims**, Modifications
and Payment Plans

1-877-622-8525

Partial Claim

- Mortgage Arrearages Placed in Zero (Low Interest) Subordinate Lien
- Partial Claim not Due Until Last Mortgage Payment Made
- Partial Claim Limits

Fannie Mae

Forbearance, Payment Deferral, Modifications,
Payment Plans

<https://www.knowyouroptions.com/loanlookup>

1-800-7FANNIE

USDA LOANS

1-800-414-1226

VA LOANS

VASP ENDED: No Partial Claims or Payment Deferrals

Less Loss Mitigation Tools than other Government Loans

Foreclosure Risk Increased for Veterans

1-844-698-2311

- Other options?
- Refinance?
- Home Equity Line of Credit?



What can YOU do to stop a foreclosure?



Have the Difficult Conversation!

- Banks will foreclose
- Foreclosures can happen quickly
- Be Realistic
- Housing Counselor Referral



Assist Borrower in Submitting a Request for Mortgage Assistance.

- Must be Complete and Submitted promptly.
- Must include all supporting documentation.
- Best to send via Certified Mail, Return Receipt Requested
- Make sure you send to the correct address.
- Keep a complete copy of packet submitted.



Other Common Issues

- Reverse Mortgages / Home Equity Conversion Mortgages
- Tax Sales – Redemption Period
- Successors in Interest – Join the Heirship Property

Presentation Tomorrow

QUESTIONS?



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The Who's Who of Bankruptcy

- **Bankruptcy** – Legal process outlined in federal law in which people can remove their obligation to pay their debts.
- **Debtor** – Person/entity who files for bankruptcy.
- **Petition** – Documents filed by Debtor that starts the bankruptcy proceedings.
- **Creditor** – Debtor owes money to this person/entity.
- **Trustee** – Person who administers the bankruptcy.

The Who's Who of Bankruptcy

- **Meeting of Creditors** – Trustee conducts MOC in every bankruptcy. Meeting where Trustee asks Debtor a lot of questions to investigate assets and whether they are eligible for a discharge.
- **Judge** – You can do an entire bankruptcy and never see a judge. However, motion hearings, adversary proceedings, and other hearings are conducted in front of a Judge. Typically, the Trustee is present (depending on the situation).
- **Discharge** – Order of Discharge is the paper that Debtor receives at the end of a completed bankruptcy. It says Debtor no longer has the obligation to pay their debts. The obligation is discharged.

The Who's Who of Bankruptcy

- **Unsecured creditor** – Creditor who loans money without collateral.

Examples: credit cards and payday loans.

- **Secured creditor** – Creditor who loaned money secured with collateral.

Examples: cars and household good (“HHG”) loans.

- **Collateral** – Physical thing (NOT real estate) giving in exchange for a loan.

- **Mortgage** – Specific type of loan. Creditor loans money to purchase real estate. In exchange, creditor has lien on real estate.

The Who's Who of Bankruptcy

- **Lien** – A legal claim that says a creditor can take the property if not paid back.
- **Lienholder** – Also known as a creditor. All lien holders are creditors, but not all creditors are lienholders.
- **Government creditor** – Debtor owes the government money. Examples include the IRS, SNAP overpayments, and student loans. These creditors may get special treatment. They are unsecured creditors, but *could* be nondischargeable and may have a higher priority (higher class) in a Chapter 13 plan.
- **Nondischargeable debts** – Debts that are NOT discharged after a bankruptcy. 11 U.S.C. § 523.
- Fraud, debts incurred right before filing, student loans, IRS debt, child support, and some criminal debts. The list is long and there are exceptions.

Bankruptcy Code and Bankruptcy Courts

- The federal bankruptcy law is known as the “Bankruptcy Code” and was enacted in 1978.
- The provisions of the Bankruptcy Code are codified as Title 11 of the United States Code.
- The Bankruptcy Code is supplemented by the Federal Rules of Bankruptcy Procedure, and by local rules.
- There is one bankruptcy court for each judicial district in the United States.

Bankruptcy Code and Bankruptcy Courts

Tennessee has 3 districts: Western, Middle, Eastern

- Western ☐ Jackson, Memphis
- Middle ☐ Nashville, Columbia, Cookeville
- Eastern ☐ Chattanooga, Greeneville, Knoxville, and Winchester
- Debtor's residence is where Debtor has been located for 180 days before filing. 28 U.S.C. § 1408.

Purpose of Bankruptcy

There are two purposes for bankruptcy:

- (1) a “fresh start” from debts through a discharge and
- (2) an automatic stay.

Purpose #1 of Bankruptcy is a “Fresh Start”

- The Supreme Court has said, repeatedly, that “[o]ne of the primary purposes of the Bankruptcy Act is to ‘relieve the honest debtor from the weight of oppressive indebtedness, and permit him to start afresh free from the obligations and responsibilities consequent upon business misfortunes.’”
- Williams v. U. S. Fidelity & Guaranty Co., 236 U. S. 549, 35 S. Ct. 289, 59 L. Ed. 713. See also Local Loan Co. v. Hunt, 292 U.S. 234, 244 (1934).
- A fundamental goal of the bankruptcy laws are to give Debtors a financial “fresh start” from burdensome debts.
- So, how do the courts do that? By issuing an Order of Discharge at the end of a completed bankruptcy.

Purpose #1 of Bankruptcy is a “Fresh Start”

- What is an Order of Discharge?
- An Order of Discharge releases Debtor from the obligation to pay to their debts.
- A common misconception: Bankruptcy gets rid of debts.
- This is FALSE. The Order of Discharge removes the obligation to pay the debts. The debts are still there, but Debtor no longer has a legal obligation to pay it.
- Debtor must complete a credit counseling course and a financial management class to receive a discharge.
- Debtor must pay a filing fee to receive a discharge (unless waived by the Court).

However, not quite a “fresh start” in certain circumstances...

- Some debts may survive a Chapter 7 or a Chapter 13 bankruptcy.
- A valid lien against real property or collateral that has not been avoided as part of the bankruptcy (through a Motion to Avoid Lien pursuant to 11 U.S.C. § 522(f)), may remain after the bankruptcy, depending if it's a Chapter 7 or Chapter 13.
- This means that secured debts *may* survive a bankruptcy.
- In most cases, mortgages will survive a Chapter 7 and a Chapter 13 (there are exceptions to this rule).
- There are exceptions to discharge. 11 U.S.C. § 523. These are nondischargeable debts that require an adversary proceeding to determine dischargeability.
 - Example: student loans.

Purpose #2 of Bankruptcy: The Automatic Stay

- “a petition[...] operates as a stay, application to all entities, of –”
- “(1) the commencement or continuation [...] of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of this case[.]”
- “(6) any act to collect, assess or recover a claim against the debtor that arose before the commencement of the case[.]”
- 11 U.S. Code § 362
- What does that mean and why do we care?
- Stops MOST actions against the Debtor (*evictions, garnishments, repossessions, foreclosure, collections lawsuits, harassing phone calls).
- There are exceptions to the stay. 11 U.S.C. § 362(b). Examples: actions establishing paternity or domestic violence.
- Bankruptcy can stop an eviction if possession has not yet been granted. Relief is temporary because landlord will likely file a motion for relief from the stay. 11 U.S.C. § 362(22).

The Automatic Stay – Motion for Relief from Stay

- Motion for Relief is filed by the creditor. The creditor asks to be released from automatic stay to pursue their claim.
- Court will grant motion for relief:
 - (1) For cause, OR
 - (2) if stay is against property
- If debtor does not have equity in such property AND
- Property is not necessary to reorganization.
- For Cause: nonpayment of rent, lease violations, etc.
- Property: real or personal
- Practice Note: Reverse mortgage creditors (“HECM”) may file these MFRs in Chapter 13 bankruptcies when the Debtor does not pay property taxes or insurance. Taxes and insurance are typically not escrowed in reverse mortgages.

True or False? Common Misconceptions

- If you know you are filing bankruptcy, you can rack up your debt and do not have to pay it back.
 - False. There are several questions on the Statement of Financial Affairs that ask about recent spending. Debt incurred as a result of fraud is nondischargeable.

Story time: attorney fees in Chapter 7 case.

True or False? Common Misconceptions

- It's easy to file for bankruptcy.
 - True, but also false. You can get the forms online, fill them out, and file them.
 - However, there are MANY deadlines, rules, laws, local rules, and other pitfalls that may result in a motion to dismiss if they are not met.
 - Discharge does NOT equal success. You may receive a discharge in a Chapter 7, but the Trustee may take your home to sell it if you do not know the law.
 - 2 of every 100 pro se Chapter 13 cases receive a discharge.
 - <https://www.abi.org/feed-item/can-i-file-my-own-bankruptcy-case#:~:text=Even%20many%20attorneys%20who%20represent,in%20a%20Chapter%2013%20case>.
 - If you mess up your petition, a voluntary dismissal may not be available in a Chapter 7 due to bad faith, and a conversion to a Chapter 13 may not be feasible. *In re Allman*, No. 3:17-bk-03085 (Bankr. M.D. Tenn. Mar. 13, 2018).



Two types of Consumer Bankruptcies



Chapter 7

Liquidation Chapter



Chapter 13

Repayment Plan

Chapter 7 and 13 Process

- Chapter 7

- Credit counseling complete → Bankruptcy petition filed → MOC automatically scheduled with Chapter 7 Trustee → Debtor attends MOC → Chapter 7 Trustee issues no asset report → US Trustee issues income under median and BIOC met → Financial Management class completed → filing fee paid → Discharge Order

- Chapter 13:

- Credit counseling complete → Bankruptcy petition filed → MOC scheduled with Chapter 13 Trustee → Plan confirmed at MOC or confirmation hearing → Debtor makes payments to Trustee → Debtor completes Plan → Financial Management Course completed → Discharge Order

<https://www.uscourts.gov/court-programs/bankruptcy/bankruptcy-basics/process-bankruptcy-basics>

Chapter 7

- 11 U.S. Code Chapter 7 - Liquidation
- Trustee will sell assets that are not exempted (protected).
- The Trustee uses the funds to pay creditors.
- In most Chapter 7 cases, there are no assets to sell, also known as “no asset cases.”
- Debtors who have lived in Tennessee for 2 years must use Tennessee's exemptions. TN does not allow Debtors to use federal exemptions. Some states do allow you to choose between state and federal exemptions.
- If the Debtor has lived in Tennessee for less than 2 years, then will have to use prior state's exemptions or the state where you lived the longest during the 180 days prior to the 2 years.
 - Confusing? Very. Luckily, we live in 2025, and the bankruptcy software calculates that for you. 😊
 - Bankruptcy attorneys have been using AI via bankruptcy filing software for YEARS.

Chapter 7 Exemptions

- Debtors can exempt up to an aggregate value of \$10,000 for personal property. This includes cars, furniture, household goods, and bank accounts. T.C.A. § 26-2-103.
- Homestead exemption is \$35K for an individual. T.C.A. § 26-2-301.
- Joint RP owners can exempt up to \$52,500. \$26,250 each if in the same proceeding.
- Other exemptions for pensions, public benefits, tools of the trade, wages, and more.
- Any asset that is not protected by an exemption will be sold by the Trustee. The Trustee, or an auditor that the Trustee hires, will come and inspect the property and determine its value and whether it would be beneficial for the estate to sell it and pay to creditors.

Chapter 7 (continued)

- You are “discharging” unsecured debt in a Chapter 7.
- Discharge means the debtor no longer owes the unsecured debt.
- The “means test” determines whether a Debtor can file a Chapter 7.
- The Debtor’s income must be below the median income for their household size:

■ STATE	1 EARNER	2 PEOPLE	3 PEOPLE	4 PEOPLE *
■ Tennessee	\$61,951	\$78,250	\$92,789	\$109,852

- Case filed on or after 5/15/2025.

Chapter 7 (continued)

- If a Debtor's income exceeds the median income, then they are not eligible for a Chapter 7 but can file a Chapter 13.
- A debtor might still be eligible for a Chapter 7 based on specific calculations under 11 U.S.C. § 707(b)(2).
- A Chapter 7 bankruptcy typically lasts from 3-6 months, from filing to discharge. This could be longer if there is litigation involving objections to discharge from creditors or other adversary proceedings.

What Happens to Other Debts?

- What happens with other debts?
- Form 108: Statement of Intentions
- Mortgages
 - Surrender, redeem, or reaffirmation agreement
 - *Reaffirmation agreements not advisable in my opinion, but other attorneys have different opinions.*
- Cars
 - Title loans versus PMSI loans
 - PMSI – purchase money security interest loans. Typical car loan.
 - Surrender, redeem, or reaffirmation agreement.
 - Must be current and have insurance!
- HHG Loans
 - Avoid lien, surrender, redeem, or reaffirmation agreement.

What Happens to Other Debts? (continued)

- Nondischargeable debts
 - IRS Debt: Depending on length of time, a portion may be discharged.
 - Offer in compromise, installment payments, currently non-collectable, 10-year statute of limitations.
 - Student loans*
 - *Process may change under new administration.
 - In 2022, a new system was created in connection with Department of Education to simplify discharging student loan in a bankruptcy.
 - Before, Debtor must file an adversary proceeding and prove a very high standard of undue hardship.
 - Under new process, Debtors can file an adversary proceeding, fill out an attestation form, explain current and future ability to pay loan, and good faith attempt to pay. Assistant U.S. Attorney may offer partial or full discharge.
 - <https://library.nclc.org/article/new-process-discharge-student-loans-bankruptcy#content-0>

Any Questions?

Moving on to Chapter 13.

Chapter 13

- Chapter 13s are repayment plans designed for Debtors with a regular source of income.
- In certain situations, could be more helpful financially to a Debtor who qualifies for a Chapter 7.
 - Example: 910-day rule and interest rates. Lower loan and interest rate.
- 36-60 months*
 - *CARES Act allowed plans up to 84 months from 2020 to 2022.
- Purpose of Chapter 13 is to keep Debtor's assets while paying out any equity to unsecured creditors, while also maintaining payments and/or paying in full to secured creditors.
- Chapter 13 plans pay between 0% to 100% plus interest to unsecured creditors.
- Chapter 13 plans are calculated using an equation called the best interest of creditors test.
- Example of Forms: <https://www.uscourts.gov/forms-rules/forms/bankruptcy-forms>

Chapter 13 (continued)

- Chapter 13 does have a debt limit.
- Debtors over the debt limit must file a Chapter 11.
- Current limit until March 31, 2025:
 - \$526,700 = unsecured debt
 - \$1,580,125 = secured debt

Example of Chapter 13

Debtor has a mortgage payment of \$500/month. No equity, it's a mobile home on rural land. Current on mortgage. Car is working, car payments are \$300 month. Credit card debt and pay day loans. They owe about \$40,000 in unsecured creditors. Interest rates range between 25% to 300%. Also, owes the IRS \$15,000 (\$5k secured and \$10k unsecured). It's older IRS debt. IRS has been keeping refunds. Debtor has not been able to make IRS payments. Creditors are calling and starting to file lawsuits. Most will not settle for less than \$300 monthly payment plans EACH. Interest accruing daily.

Example of Chapter 13 Plan Payment

- Mortgage = \$500/month
- Mortgage arrears = \$0
- Car = \$82.08 = \$83/mo (this is a good reason to file in my opinion)
 - \$300/month before bk
 - \$10,000 k balance
 - Purchased outside of 910 days (910 rule) versus within 910 days (K balance)
 - Value of car = \$4,000
 - Current interest rate = 15%
 - Current prime interest rate = 8.5% (as of 12/27/2023)
 - Calc for car: $P = 1 - (1+r)^{-nr} \cdot PV$
 - 2nd P/Y 12 Enter 4000 PV 8.5 I/Y 60 N CPT PMT
- IRS Debt: \$5,000 total = \$83.33 = \$85/mo
- Total Unsecured debt: \$50,000 in credit cards and unsecured portion of IRS debt @ 20% (keeping tax returns) = \$166.67 = \$170/mo
- Other fees: Attorney fees, Trustee fees, etc. = \$5,000 ish total = \$100/mo
- Total Chapter 13 plan payment: **\$938/month (60 month at 20% dividend)**

Example of Chapter 13 (continued)

- Includes ALL debt payments.
- Paying mortgage payment on time.
- Paying off car loan at cheaper interest rate and secured loan balance.
- Paying off IRS debt.
- Debtor previously did not receive tax refunds because of IRS debt, but now in bankruptcy, will get tax refunds.
- Paying off portion of unsecured debt without accruing interest. No “moving target”.
- Paying your attorney.
- At the end, the mortgage is current, you get the title to your car, IRS is paid, and unsecured debt is discharged.

How to Spot Chapter 7 v. Chapter 13

- 4 Questions to spot a Chapter 13 versus a Chapter 7
 - (1) Do you own any real property?
 - (2) What is your income?
 - (3) Have you filed for a bankruptcy before?
 - (4) Do you have a boat, airplane, luxury items, or large collections?

Question 1: Do you own any real property?

- Why is this question important?
 - Equity
 - Equity → Yes → Chapter 13
 - Equity → No → next question
- What is equity?
 - Fair market value – mortgage and any other encumbrances – homestead exemption = Equity
- Questions to Ask:
 - Do you own any real estate? Do you own your home? Do you have a mortgage payment? Are you renting? Do you own any land? Do you own any burial plots? Did you inherit any land or property?
- Homestead exemptions: T.C.A. § 26-2-301
 - Individual: \$35,000
 - Jointly owned and in same proceeding: \$52,500 (\$26,500 each)
- Land Sale Contracts and reverse mortgages → Tread carefully.
- Example: Debtor owns a home with a mortgage balance of \$50K. Purchased 15 years ago. House is worth \$300K now (according to very recent property accessor).
 - \$300K FMV - \$50k Mtg - \$35k homestead = \$215K of equity

Question 2: What is your income?

- Why is this question important?
 - Income determines Chapter 7 eligibility.
 - Over-income? → Yes → Chapter 13
 - Over-income → No → may qualify for Chapter 7
- The Debtor's income must be below the median income for their household size: (Cases filed on or after 5/15/2025):

STATE	1 EARNER	2 PEOPLE	3 PEOPLE	4 PEOPLE*
Tennessee	\$61,951	\$78,250	\$92,789	\$109,852

- Questions to Ask:
 - Are you employed? How long have you been employed? How often are you paid? How much is your paycheck? Are taxes and insurance taken out? Do you receive SSI, VA Disability, Food stamps, or any other income? Any pensions or retirement?
 - Be careful: Twice a month (semimonthly) versus every other week (biweekly).
 - Semimonthly = 24 pay periods per year
 - Biweekly = 26 pay periods per year (March and September)
 - Some income is exempt from the calculation → SSI and VA disability are exempt from the income calculation. There are other exemptions.
- If a Debtor is over-income, they may still qualify for a Chapter 7 if they pass the means test. See form for calculation.

Question 3: Have you ever filed a bankruptcy before?

- Why is this question important?
- Prior DISCHARGED (completed) bankruptcies can limit future bankruptcies.
 - 7 to 7 = 8 years between FILING dates
 - 7 to 13 = 4 years between FILING dates
 - 13 to 13 = 2 years between FILING dates
 - 13 to 7 = 6 years with exceptions*
 - *Exception: Debtor paid 100% to your creditors in your Chapter 13 (paid creditors in full), then Debtor may file sooner. Or, if Debtor paid at least 70% during previous 13, proposed a plan in good faith, then may be able to file sooner.

Question 3: Have you ever filed a bankruptcy before?

- Dismissals are not a completed bankruptcy. A dismissal is where a bankruptcy has been dismissed for a reason.
- Debtors might be able immediately file after a dismissal, but depends on the situation (in a 7) and there will be issues (in a 13, there needs to be a motion to extend/impose the stay).

Question 4: Do you have a boat, airplane, luxury items, or large collections?

- Why is this question important?
- A debtor may be eligible for a Chapter 7, but if they are trying to keep an asset , then may need to file a Chapter 13.
- See Form 107 Statement of Financial Affairs. These questions may highlight other issues where a Chapter 13 may be more appropriate See Insider payments/gifts or recent real property transfers and proceeds.

Client #1

- Debtor says creditors will not stop calling. Debtor is 65, renting, receiving only Social Security Disability. Debtor does not work. Debtor says she owes about \$50,000 in credit cards and payday loans.
- Thoughts on Chapter 7?

Client #2

- Debtor says she owns a home. She thinks the home is worth about \$100K.
Mortgage is \$50k. She has a car payment, student loans, IRS debt, and \$4k in credit cards. Car was repossessed and a garnishment recently issued.
- Thoughts on Chapter 7?

Alternatives to Bankruptcy

- Motions for Installment Payments (slow pay)
- Negotiating with Collections
- Credit Disputes
- Debt Consolidation – I do not recommend.



Questions?