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Bankruptcy Law
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WHAT HAPPENS TO MY ASSETS IF I FILE BANKRUPTCY IN UTAH?

A COMPREHENSIVE REPORT ON UTAH EXEMPTIONS

WHAT ARE UTAH'S BANKRUPTCY EXEMPTIONS?

It's an understatement to say bankruptcy is complicated, which is especially true when trying to determine which of your assets are protected from creditors. Utah's bankruptcy exemptions can mostly be found at [78B-5-5](#) of the Utah Code, and in addition, the United States Code lists certain "non-bankruptcy" exemptions which you are also allowed to keep if you file bankruptcy.

We have rearranged and categorized all of your exemptions here in a way we believe is easier to understand. We have also reworded these exemptions and added our own commentary to assist the layperson in understanding what each exemption means. Please refer to the Utah Code or U.S. Code for the exact description of each allowable exemption.

BUT, before we begin . . .

Can I even file a bankruptcy in Utah? You can file a federal bankruptcy case in the District of Utah if:

1. you have lived in Utah for the majority of the last 180 days (91 of the last 180 days), or
2. the majority of your physical assets (like a house) are located in Utah.

Chip Parker, Esquire

Blue Bee Bankruptcy Law

225 South 200 East, Ste. 140

Salt Lake City, Utah 84111

(801) 624-6767

BlueBeeLaw.com | cparker@b3.law

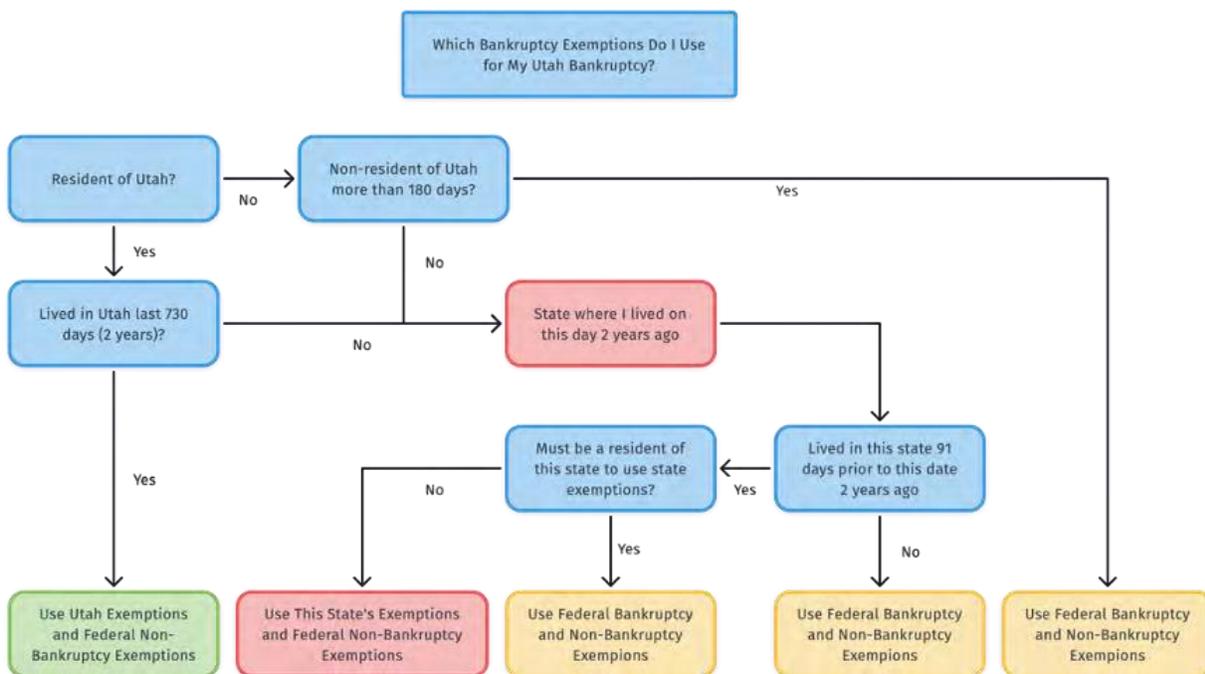
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If I can file bankruptcy in Utah, does that mean I can use Utah's bankruptcy exemptions?

Not exactly. To use Utah bankruptcy exemptions, you must be a Utah resident for at least 730 days before filing the bankruptcy petition. This means that, if you permanently moved to Utah within the last 730 days, you must use the exemptions of the state where you lived on the same date 2 years prior, *as long as you lived in that same place* the 91 days before the same date 2 years prior. If this is true, you must then determine whether that state requires you to be a citizen of that state to use its exemptions.

Yes, this is confusing. So confusing in fact that even bankruptcy lawyers often get this wrong. Here's a flow chart which may help you determine which exemptions you must use:



The Chapter 7 lawyers at Blue Bee Bankruptcy Law can help you determine which state or federal exemptions you can use.

Whether you are a resident of Utah or not, the United States Code lists certain other property which you are also allowed to keep if you file bankruptcy. Collectively, these are referred to as "federal non-bankruptcy exemptions." The federal non-bankruptcy exemptions protect property such as federal retirement accounts and veterans' benefits. Individuals filing bankruptcy in Utah **can use both** the federal non-bankruptcy exemptions and the Utah exemptions.

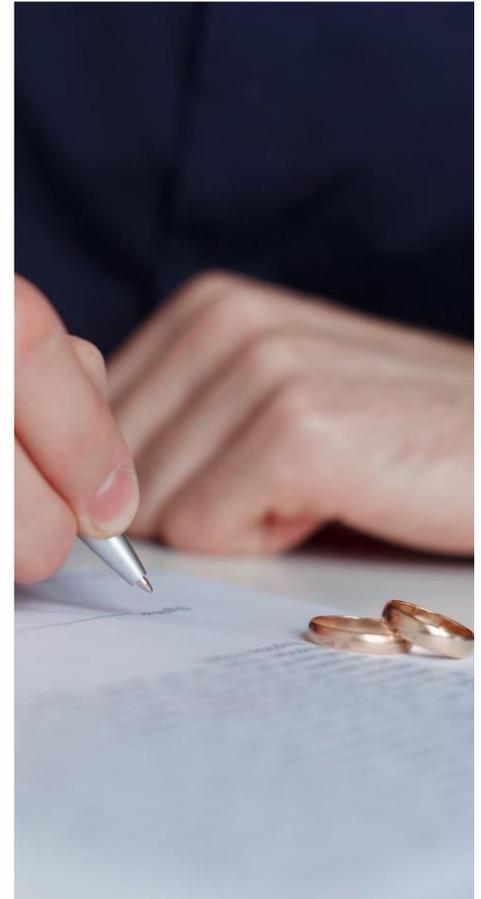


Doubling Exemptions for Joint Debtors

If you are married and filing a joint bankruptcy petition, you can double the amount of the Utah bankruptcy exemptions **if you both own the property**. If personal property was acquired during the marriage, it is presumed to be owned by both spouses, unless there is a title that reflects only one spouse (like a house or car title). If a title reflects both spouses, both can claim the exemption.

Can I file bankruptcy without my spouse?

Yes, you can. If only one spouse is filing bankruptcy, the non-filing spouse's equity is not part of the bankruptcy estate and is therefore protected from creditors and the trustee in bankruptcy.



COMBINED LIST OF BANKRUPTCY EXEMPTIONS

- 1. Homestead Equity.** As a resident of Utah, you can exempt up to \$45,100 of the equity in your primary residence, including a mobile home, and you can exempt up to \$5,400 in real estate that is not your primary residence. Remember, these exemptions double if you are filing with your spouse, as explained above.
- 2. Motor Vehicles.** Each debtor can exempt up to \$3,000 of equity in a motor vehicle, as long as the debtor's name appears on the title. This means that joint debtors can each apply their \$3,000 exemption to the same vehicle, or they can each apply their exemption to their own vehicle. The vehicle must not be primarily a recreational vehicle, like an OHV, ORV, UTV, ATV or OHM, **UNLESS** it is "street legal" **and is the debtor's primary vehicle.** *What if there is loan on my car?* That's fine. The exemption is applied to the equity. *What if I use my car or truck in my business?* See Tools of the Trade below.



3. Unpaid Wages. Most debtors will be due some sort of wages for work performed but not yet paid by their employer. This is where it gets confusing, and as a practical matter, it isn't usually that much. Unpaid earnings of **the household** of the debtor due as of the date of the filing of a bankruptcy petition are exempt in the amount of 1/24 of the median Utah annual income if paid more than once per month and 1/12 if paid monthly.

» **EXAMPLE:** A single debtor with a household size of 1 files bankruptcy on a Monday morning. His bi-weekly pay period ended the previous Friday, but his payday is the following Friday. He has two weeks of unpaid wages. If the annual median income for a household size of 1 is \$61,044, he can exempt up to 1/24th of that, or \$2,543.50 of his unpaid wages.

4. Tools of the Trade. You can protect up to \$5,000 of equity in "tools of the trade," which are things you use in your business. An obvious example would be a lawn mower in a landscaping business, but tools of the trade are sometimes not so easy to identify, and sometimes something that might seem like a tool of the trade is actually not. A not-so-obvious example could be your car or SUV if you are a driver for Uber or Lyft. You cannot "double dip," applying both the motor vehicle exemption with the Tools of the Trade exemption for a single vehicle. A car used to commute to work every day is generally NOT a tool of the trade. This is both a tricky and a useful exemption.

5. Personal Property. Personal property exemptions can be found in various areas of the Utah Code.

a. Each Utah debtor is entitled to exempt personal property, up to an aggregate value of \$1,000 for each of the following categories:

- » sofas, chairs, and related furnishings reasonably necessary for one household;
- » dining and kitchen tables and chairs reasonably necessary for one household;
- » animals, books, and musical instruments, if reasonably held for the personal use of the individual or the individual's dependents; and
- » heirlooms or other items of particular sentimental value to the individual.

b. One clothes washer, one dryer, one refrigerator, one freezer, one stove, one microwave oven and one sewing machine.

c. All carpets in use by the debtor.

d. Provisions sufficient for 12 months actually provided for individual or family use.

e. All wearing apparel of every individual and dependent, not including jewelry or furs.

f. All beds and bedding for every individual or dependent.

g. Works of art depicting the debtor or the debtor and the debtor's resident family or produced by the debtor or the debtor and the debtor's resident family, **UNLESS** they are held by the debtor as part of a trade or business.

h. A burial plot for the individual and the individual's family.

i. Health aids reasonably necessary to enable the individual or a dependent to work or sustain health.



- 6. Firearms.** Yes, firearms are personal property, but hey, this is Utah. So, firearms are given “special” status. Each debtor can claim any THREE of the following: handgun, shotgun, shoulder arm. Curio and Relic firearms, as defined by Utah Code 76-10-501, DO NOT qualify for this exemption. In addition, Utahns can exempt 1000 rounds of ammunition for each exempt firearm.
- 7. Money.** Money in possession of the debtor at the time of filing bankruptcy filing is presumed to be estate property, unless an exempt applies. Money in the possession of the debtor at the time of filing the bankruptcy that would otherwise be exempt can become property of a bankruptcy estate if it is comingled (mixed) with other, non-exempt money. If identifiable (not comingled), the following types of money are exempt:
- a. Benefits that the debtor or a dependent has received or is entitled to receive from any source because of illness or unemployment.
 - b. Benefits payable under Utah’s Employment Support Act. [[Chapter 35A-3 of the Utah Code](#)]
 - c. Benefits paid by fraternal benefit societies, also known as fraternal orders [[31A-9-603 of Utah Code](#)]
 - d. Benefits paid or payable for medical, surgical, or hospital care to the extent that the benefits are used by the debtor or a dependent to pay for that care.
 - e. Child support.
 - f. Alimony, spousal support or separate maintenance, to the extent reasonably necessary for the support of the debtor and dependents.
- 8. Disability and Veterans benefits.** Disability benefits and veteran benefits are exempt unless the debtor has been (a) convicted of a felony sex offense against a child and (b) ordered by the convicting court to pay restitution to the child victim. The exemption is reinstated upon full payment of the restitution. This is a curiously specific statutory exception.
- 9. Workers Compensation.** Benefits not yet paid pursuant to Utah’s Workers Compensation Act and Utah Occupational Disease Act are exempt, but benefits received before filing bankruptcy are not exempt, even if not comingled with other funds. [[34A-3-107](#) and [4A-2-422\(2\) of Utah Code](#)]
- 10. Life Insurance.** Unless pledged as collateral to a secured creditor:
- a. Proceeds of a life insurance policy paid or payable to the debtor or any trust of which the debtor is a beneficiary upon the death of the spouse or children of the debtor, if the policy has been owned by the debtor for one year.
 - b. Proceeds of a life insurance policy paid or payable to the spouse or children of the debtor or any trust of which the spouse or children are beneficiaries upon the death of the debtor, if the policy has been in existence for one year.
 - c. Cash surrender value of a whole life insurance policy, excluding any payments made within one year prior to filing bankruptcy. [[78B-5-505\(1\)\(a\)\(xiii\) of Utah Code](#)]



11. Pensions and retirement accounts. All pensions and qualified, tax-exempt retirement accounts, and ERISA-qualified benefits are generally exempt, subject to three limitations:

a. The exemption **does not apply to** amounts contributed or benefits accrued by or on behalf of a debtor **within one year** before the debtor files for bankruptcy.

» **EXCEPTION TO THIS EXCEPTION.** Any otherwise exempt funds “rolled over” from one account into another exempt account within the one year prior to bankruptcy ARE exempt. This would be true of exempt retirement funds transferred from one ex-spouse to another via a Qualified Domestic Relations Order (QDRO).

b. The maximum exemption for IRAs and Roth-IRAs is adjusted every three years. Currently, the maximum total amount in all accounts is \$1,362,800 per debtor. The latest adjustment occurred in April of 2019, and the next adjustment will occur in April of 2022.

c. **Retirement funds awarded in a divorce proceeding.** There is a bankruptcy landmine here that most bankruptcy attorneys have NO IDEA exists. If a debtor was awarded part of the ex-spouse’s retirement in a divorce proceeding, it is **NOT EXEMPT UNLESS** a Qualified Domestic Relations Order (QDRO) was entered by the family law judge BEFORE the bankruptcy was filed. Furthermore, the QDRO must expressly require the retirement funds to be “rolled over” into the debtor’s own ERISA retirement account. To be safe, the receiving spouse should have the retirement funds transfer completed before filing bankruptcy. See In re Kiley, 595 B.R. 595 (Bankr. D. Utah 2018).

12. College Tuition Savings Account (a/k/a 529 Plan). Each debtor can exempt money in a tax-advantaged higher-education tuition account, subject to the following limitations:

a. The amount cannot exceed \$200,000 in the aggregate, and

b. Any deposits made into such accounts within **18 months** of filing bankruptcy are **not exempt**.

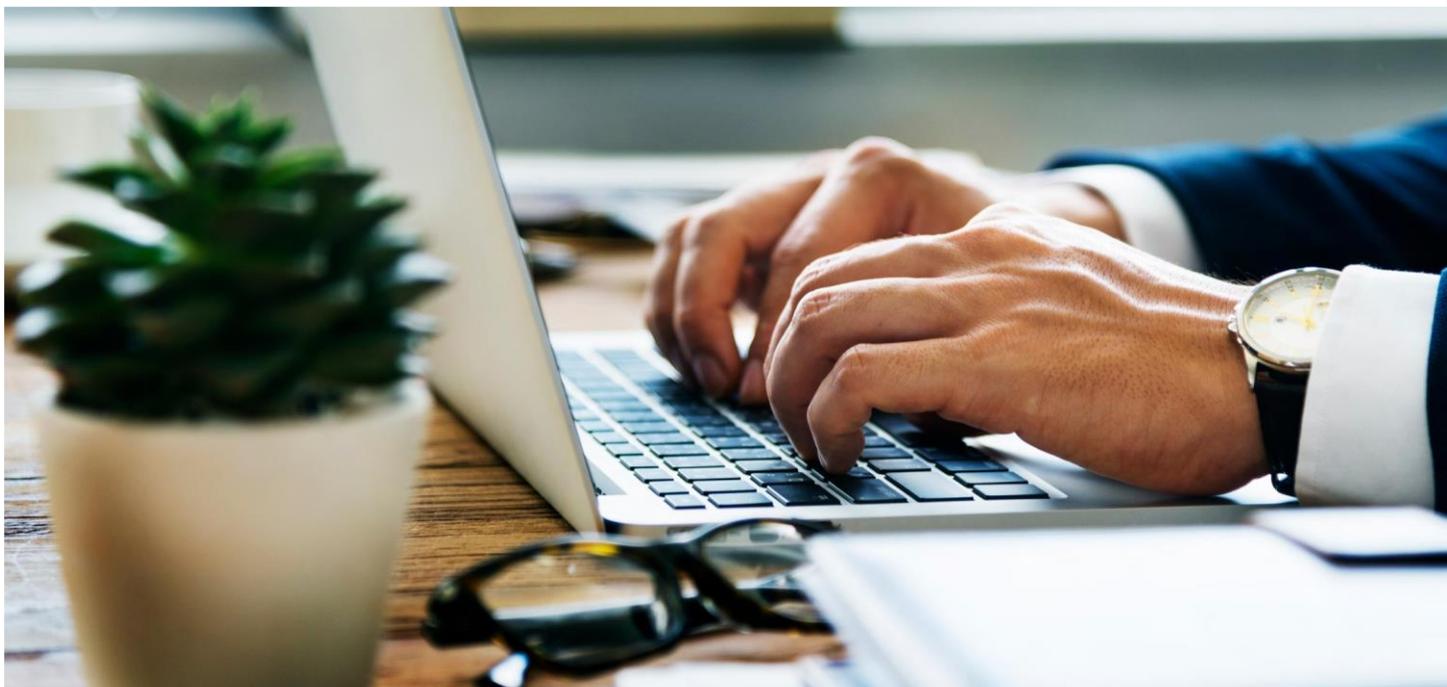


13. Victim compensation. Debtors are sometimes the victim of negligent, intentional or criminal conduct. These proceeds are exempt:

a. Civil awards. Proceeds of insurance, a judgment, or a settlement, or other rights accruing as a result of bodily injury of the individual or of the wrongful death or bodily injury of another individual of whom the individual was or is a dependent to the extent that those proceeds are compensatory. *This means that an award of punitive damages would not exempt from creditors.*

b. Criminal awards. Victims of crime can be awarded both restitution and reparations. Generally, restitution is paid directly by the perpetrator of crime and reparations are paid directly by the State of Utah.

- » Reparation awards owed by the [Utah Office for Victims of Crime](#) are exempt from creditors, unless a creditor provided products, services, or accommodations, the costs of which are included in the reparations award. [\[63M-7-521\(4\) of the Utah Code\]](#)
- » Restitution awards owed by the perpetrator to the debtor seem like they should be exempt, but there is no definitive answer. This is so rare that there is no case law on the subject.



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Office

311 South State Street, Ste. 260,
Salt Lake City, Utah 84111

Contact

Phone: (801) 624-6767
BlueBeeBankruptcy.com
cparker@b3law.com

