

Bankruptcy Client Handouts

K.1 Introduction

This appendix contains three client handouts. The National Consumer Law Center provides copyright permission for individuals and organizations to copy or adapt these handouts for distribution without charge to consumers. No permission is granted to include these materials in other publications for sale.

To facilitate adaption of these materials, they are also found in both Microsoft Word and Adobe Acrobat (PDF) format on the CD-Rom accompanying this volume. Copy them into a word-processing program and edit them to meet individual needs.

K.2 Answers to Common Bankruptcy Questions

K.3 Your Legal Rights During and After Bankruptcy: Making the Most of Your Bankruptcy Discharge

K.4 Using Credit Wisely After Bankruptcy

Additional Client Resources

NCLC Guide to Surviving Debt is NCLC's most popular book, and a new edition was released in 2006. *NCLC Guide to Surviving Debt* provides precise, practical advice on how to deal with an overwhelming debt load, including such topics as:

- Bankruptcy rights;
- Dealing with debt collectors;
- What consumers need to know about their credit rating;
- Which debts to pay first;
- Refinancing do's and don'ts;
- Saving a home from foreclosure;
- Automobile repossessions;
- Evictions and utility shutoffs;
- Credit card debt;
- Student loans.

A number of bankruptcy practitioners and credit counselors purchase bulk-discounted quantities of this book to distribute to clients. Such purchases may be arranged by calling NCLC at (617) 542-9595. Consumers can also purchase individual copies by calling the same telephone number or by ordering securely on-line at www.consumerlaw.org.

The second and third handouts, Appendices K.3 and K.4, *infra*, are available in bulk in color, nicely designed, printed, and folded. While supplies last, there will be a modest charge for such bulk orders. Contact NCLC Publications at (617) 542-9595.

A large number of additional consumer education brochures are found on the CD-Rom accompanying this volume, and are also available free of charge at www.consumerlaw.org.

K.2 Answers to Common Bankruptcy Questions

A decision to file for bankruptcy should be made only after determining that bankruptcy is the best way to deal with your financial problems. This brochure can not explain every aspect of the bankruptcy process. If you still have questions after reading it, you should speak with an attorney familiar with bankruptcy.

There have been many news reports suggesting that changes to the bankruptcy law passed by Congress in 2005 prevent many individuals from filing bankruptcy. It is true that these changes have made the process more complicated. But the basic right to file bankruptcy and most of the benefits of bankruptcy remain the same for most individuals.

What Is Bankruptcy?

Bankruptcy is a legal proceeding in which a person who can not pay his or her bills can get a fresh financial start. The right to file for bankruptcy is provided by federal law, and all bankruptcy cases are handled in federal court. Filing bankruptcy immediately stops all of your creditors from seeking to collect debts from you, at least until your debts are sorted out according to the law.

What Can Bankruptcy Do for Me?

Bankruptcy may make it possible for you to:

- Eliminate the legal obligation to pay most or all of your debts. This is called a “discharge” of debts. It is designed to give you a fresh financial start.
- Stop foreclosure on your house or mobile home and allow you an opportunity to catch up on missed payments. (Bankruptcy does not, however, automatically eliminate mortgages and other liens on your property without payment.)
- Prevent repossession of a car or other property, or force

the creditor to return property even after it has been repossessed.

- Stop wage garnishment, debt collection harassment, and similar creditor actions to collect a debt.
- Restore or prevent termination of utility service.
- Allow you to challenge the claims of creditors who have committed fraud or who are otherwise trying to collect more than you really owe.

What Bankruptcy Can Not Do

Bankruptcy can not, however, cure every financial problem. Nor is it the right step for every individual. In bankruptcy, it is usually *not* possible to:

- Eliminate certain rights of “secured” creditors. A creditor is “secured” if it has taken a mortgage or other lien on property as collateral for a loan. Common examples are car loans and home mortgages. You *can* force secured creditors to take payments over time in the bankruptcy process and bankruptcy *can* eliminate your obligation to pay any additional money on the debt if you decide to give back the property. But you generally can not keep secured property unless you continue to pay the debt.
- Discharge types of debts singled out by the bankruptcy law for special treatment, such as child support, alimony, most student loans, court restitution orders, criminal fines, and most taxes.
- Protect cosigners on your debts. When a relative or friend has co-signed a loan, and the consumer discharges the loan in bankruptcy, the cosigner may still have to repay all or part of the loan.
- Discharge debts that arise after bankruptcy has been filed.

What Different Types of Bankruptcy Cases Should I Consider?

There are four types of bankruptcy cases provided under the law:

- *Chapter 7* is known as “straight” bankruptcy or “liquidation.” It requires an individual to give up property which is not “exempt” under the law, so the property can be sold to pay creditors. Generally, those who file chapter 7 keep all of their property except property which is very valuable or which is subject to a lien which they can not avoid or afford to pay.
- *Chapter 11*, known as “reorganization,” is used by businesses and a few individuals whose debts are very large.
- *Chapter 12* is reserved for family farmers and fishermen.
- *Chapter 13* is a type of “reorganization” used by individuals to pay all or a portion of their debts over a period of years using their current income.

Most people filing bankruptcy will want to file under either chapter 7 or chapter 13. Either type of case may be filed individually or by a married couple filing jointly.

Chapter 7 (Straight Bankruptcy)

In a bankruptcy case under chapter 7, you file a petition asking the court to discharge your debts. The basic idea in a chapter 7 bankruptcy is to wipe out (discharge) your debts in exchange for your giving up property, except for “exempt” property which the law allows you to keep. In most cases, all of your property will be exempt. But property which is not exempt is sold, with the money distributed to creditors.

If you want to keep property like a home or a car and are behind on the mortgage or car loan payments, a chapter 7 case probably will not be the right choice for you. That is because chapter 7 bankruptcy does not eliminate the right of mortgage holders or car loan creditors to take your property to cover your debt.

If your income is above the median family income in your state, you may have to file a chapter 13 case (the national median family income for a family of four in 2006 was approximately \$65,796—your state’s figures may be higher or lower). Higher-income consumers must fill out “means test” forms requiring detailed information about their income and expenses. If the forms show, based on standards in the law, that they have a certain amount left over that could be paid to unsecured creditors, the bankruptcy court may decide that they can not file a chapter 7 case, unless there are special extenuating circumstances.

Chapter 13 (Reorganization)

In a chapter 13 case you file a “plan” showing how you will pay off some of your past-due and current debts over three to five years. The most important thing about a chapter 13 case is that it will allow you to keep valuable property—especially your home and car—which might otherwise be

lost, if you can make the payments which the bankruptcy law requires to be made to your creditors. In most cases, these payments will be at least as much as your regular monthly payments on your mortgage or car loan, with some extra payment to get caught up on the amount you have fallen behind.

You should consider filing a chapter 13 plan if you:

- Own your home and are in danger of losing it because of money problems;
- Are behind on debt payments, but can catch up if given some time;
- Have valuable property which is not exempt, but you can afford to pay creditors from your income over time.

You will need to have enough income during your chapter 13 case to pay for your necessities and to keep up with the required payments as they come due.

What Does It Cost to File for Bankruptcy?

It now costs \$299 to file for bankruptcy under chapter 7 and \$274 to file for bankruptcy under chapter 13, whether for one person or a married couple. The court may allow you to pay this filing fee in installments if you can not pay it all at once. If you hire an attorney you will also have to pay the attorney fees you agree to.

If you are unable to pay the filing fee in installments in a chapter 7 case, and your household income is less than 150 percent of the official poverty guidelines (for example, the figures for 2007 are \$20,535 for a family of two and \$30,975 for a family of four), you may request that the court waive the chapter 7 filing fee. The filing fee can not be waived in a chapter 13 case, but it can be paid in installments.

What Must I Do Before Filing Bankruptcy?

You must receive budget and credit counseling from an approved credit counseling agency within 180 days **before** your bankruptcy case is filed. The agency will review possible options available to you in credit counseling and assist you in reviewing your budget. Different agencies provide the counseling in-person, by telephone, or over the Internet. If you decide to file bankruptcy, you must have a certificate from the agency showing that you received the counseling before your bankruptcy case was filed.

Most approved agencies charge between \$30–\$50 for the pre-filing counseling. However, the law requires approved agencies to provide bankruptcy counseling and the necessary certificates without considering an individual’s ability to pay. If you can not afford the fee, you should ask the agency to provide the counseling free of charge or at a reduced fee.

If you decide to go ahead with bankruptcy, you should be very careful in choosing an agency for the required counseling. It is extremely difficult to sort out the good counseling agencies from the bad ones. Many agencies are legitimate, but many are simply rip-offs. And being an “approved” agency for bankruptcy counseling is no guarantee that the agency is good. It is also important to understand that even good agencies won’t be able to help you much if you’re already too deep in financial trouble.

Some of the approved agencies offer debt management plans (also called DMPs). A DMP is a plan to repay some or all of your debts in which you send the counseling agency a monthly payment that it then distributes to your creditors. Debt management plans can be helpful for some consumers. For others, they are a terrible idea. The problem is that many counseling agencies will pressure you into a debt management plan as a way of avoiding bankruptcy whether it makes sense for you or not. You should not consider a debt management plan if making the monthly plan payment will mean you will not have money to pay your rent, mortgage, utilities, food, prescriptions, and other necessities. It is important to keep in mind these important points:

- Bankruptcy is not necessarily to be avoided at all costs. In many cases, bankruptcy may actually be the best choice for you.
- If you sign up for a debt management plan that you can’t afford, you may end up in bankruptcy anyway (and a copy of the plan must also be filed in your bankruptcy case).
- There are approved agencies for bankruptcy counseling that do not offer debt management plans.

It is usually a good idea for you to meet with an attorney before you receive the required credit counseling. Unlike a credit counselor, who can not give legal advice, an attorney can provide counseling on whether bankruptcy is the best option. If bankruptcy is not the right answer for you, a good attorney will offer a range of other suggestions. The attorney can also provide you with a list of approved credit counseling agencies, or you can check the website for the United States Trustee Program office at www.usdoj.gov/ust.

What Property Can I Keep?

In a chapter 7 case, you can keep all property which the law says is “exempt” from the claims of creditors. It is important to check the exemptions that are available in the state where you live. (If you moved to your current state from a different state within two years before your bankruptcy filing, you may be required to use the exemptions from the state where you lived just before the two-year period.) In some states, you are given a choice when you file bankruptcy between using either the state exemptions or using the federal bankruptcy exemptions. If your state has

“opted” out of the federal bankruptcy exemptions, you will be required to choose exemptions mostly under your state law. However, even in an “opt-out” state, you may use a special federal bankruptcy exemption that protects retirement funds in pension plans and individual retirement accounts (IRAs).

If you are allowed to use the federal bankruptcy exemptions, they include:

- \$20,200 in equity in your home;
- \$3,225 in equity in your car;
- \$525 per item in any household goods up to a total of \$10,775;
- \$2025 in things you need for your job (tools, books, etc.);
- \$1075 in any property, plus part of the unused exemption in your home, up to \$10,125;
- Your right to receive certain benefits such as Social Security, unemployment compensation, veteran’s benefits, public assistance, and pensions—regardless of the amount.

The amounts of the exemptions are doubled when a married couple files together. Again, you may be required to use state exemptions which may be more or less generous than the federal exemptions.

In determining whether property is exempt, you must keep a few things in mind. The value of property is not the amount you paid for it, but what it is worth when your bankruptcy case is filed. Especially for furniture and cars, this may be a lot less than what you paid or what it would cost to buy a replacement.

You also only need to look at your equity in property. That means you count your exemptions against the full value minus any money that you owe on mortgages or liens. For example, if you own a \$50,000 house with a \$40,000 mortgage, you have only \$10,000 in equity. You can fully protect the \$50,000 home with a \$10,000 exemption.

While your exemptions allow you to keep property even in a chapter 7 case, your exemptions do not make any difference to the right of a mortgage holder or car loan creditor to take the property to cover the debt if you are behind. In a chapter 13 case, you can keep all of your property if your plan meets the requirements of the bankruptcy law. In most cases you will have to pay the mortgages or liens as you would if you didn’t file bankruptcy.

What Will Happen to My Home and Car If I File Bankruptcy?

In most cases you will not lose your home or car during your bankruptcy case as long as your equity in the property is fully exempt. Even if your property is not fully exempt, you will be able to keep it, if you pay its non-exempt value to creditors in chapter 13.

However, some of your creditors may have a “security interest” in your home, automobile, or other personal property. This means that you gave that creditor a mortgage on the home or put your other property up as collateral for the debt. Bankruptcy does not make these security interests go away. If you don’t make your payments on that debt, the creditor may be able to take and sell the home or the property, during or after the bankruptcy case.

In a chapter 13 case, you may be able to keep certain secured property by paying the creditor the value of the property rather than the full amount owed on the debt. Or you can use chapter 13 to catch up on back payments and get current on the loan.

There are also several ways that you can keep collateral or mortgaged property after you file a chapter 7 bankruptcy. You can agree to keep making your payments on the debt until it is paid in full. Or you can pay the creditor the amount that the property you want to keep is worth. In some cases involving fraud or other improper conduct by the creditor, you may be able to challenge the debt. If you put up your household goods as collateral for a loan (other than a loan to purchase the goods), you can usually keep your property without making any more payments on that debt.

Can I Own Anything After Bankruptcy?

Yes! Many people believe they can not own anything for a period of time after filing for bankruptcy. This is not true. You can keep your exempt property and anything you obtain after the bankruptcy is filed. However, if you receive an inheritance, a property settlement, or life insurance benefits within 180 days after filing for bankruptcy, that money or property may have to be paid to your creditors if the property or money is not exempt.

Will Bankruptcy Wipe Out All My Debts?

Yes, with some exceptions. Bankruptcy will not normally wipe out:

- Money owed for child support or alimony;
- Most fines and penalties owed to government agencies;
- Most taxes and debts incurred to pay taxes which can not be discharged;
- Student loans, unless you can prove to the court that repaying them will be an “undue hardship”;
- Debts not listed on your bankruptcy petition;
- Loans you got by knowingly giving false information to a creditor, who reasonably relied on it in making you the loan;
- Debts resulting from “willful and malicious” harm;
- Debts incurred by driving while intoxicated;
- Mortgages and other liens which are not paid in the bankruptcy case (but bankruptcy will wipe out your

obligation to pay any additional money if the property is sold by the creditor).

Will I Have to Go to Court?

In most bankruptcy cases, you only have to go to a proceeding called the “meeting of creditors” to meet with the bankruptcy trustee and any creditor who chooses to come. Most of the time, this meeting will be a short and simple procedure where you are asked a few questions about your bankruptcy forms and your financial situation.

Occasionally, if complications arise, or if you choose to dispute a debt, you may have to appear at a hearing. In a chapter 13 case, you may also have to appear at a hearing when the judge decides whether your plan should be approved. If you need to go to court, you will receive notice of the court date and time from the court and/or from your attorney.

What Else Must I Do to Complete My Case?

After your case is filed, you must complete an approved course in personal finances. This course will take approximately two hours to complete. Many of the course providers give you a choice to take the course in-person at a designated location, over the Internet (usually by watching a video), or over the telephone. Your attorney can give you a list of organizations that provide approved courses, or you can check the website for the United States Trustee Program office at www.usdoj.gov/ust. If you can not afford the fee, you should ask the agency to provide the course free of charge or at a reduced fee. In a chapter 7 case, you should sign up for the course soon after your case is filed. If you file a chapter 13 case, you should ask your attorney when you should take the course.

Will Bankruptcy Affect My Credit?

There is no clear answer to this question. Unfortunately, if you are behind on your bills, your credit may already be bad. Bankruptcy will probably not make things any worse.

The fact that you’ve filed a bankruptcy can appear on your credit record for ten years from the date your case was filed. But because bankruptcy wipes out your old debts, you are likely to be in a better position to pay your current bills, and you may be able to get new credit.

If you decide to file bankruptcy, remember that debts discharged in your bankruptcy should be listed on your credit report as having a **zero balance**, meaning you do not own anything on the debt. Debts incorrectly reported as having a balance owed will negatively affect your credit score and make it more difficult or costly to get credit. You

should check your credit report after your bankruptcy discharge and file a dispute with credit reporting agencies if this information is not correct.

What Else Should I Know?

Utility services—Public utilities, such as the electric company, can not refuse or cut off service because you have filed for bankruptcy. However, the utility can require a deposit for future service and you do have to pay bills which arise after bankruptcy is filed.

Discrimination—An employer or government agency can not discriminate against you because you have filed for bankruptcy. Government agencies and private entities involved in student loan programs also can not discriminate against you based on a bankruptcy filing.

Driver's license—If you lost your license solely because you couldn't pay court-ordered damages caused in an accident, bankruptcy will allow you to get your license back.

Co-signers—If someone has co-signed a loan with you and you file for bankruptcy, the co-signer may have to pay your debt. If you file under chapter 13, you may be able to protect co-signers, depending upon the terms of your chapter 13 plan.

How Do I Find a Bankruptcy Attorney?

As with any area of the law, it is important to carefully select an attorney who will respond to your personal situation. The attorney should not be too busy to meet you individually and to answer questions as necessary.

The best way to find a trustworthy bankruptcy attorney is to seek recommendations from family, friends or other members of the community, especially any attorney you know and respect. You should carefully read retainers and other documents the attorney asks you to sign. You should not hire an attorney unless he or she agrees to represent you throughout the case.

In bankruptcy, as in all areas of life, remember that the person advertising the cheapest rate is not necessarily the best. Many of the best bankruptcy lawyers do not advertise at all.

Document preparation services also known as “typing services” or “paralegal services” involve non-lawyers who offer to prepare bankruptcy forms for a fee. Problems with these services often arise because non-lawyers can not offer advice on difficult bankruptcy cases and they offer no services once a bankruptcy case has begun. There are also many shady operators in this field, who give bad advice and defraud consumers.

When first meeting a bankruptcy attorney, you should be prepared to answer the following questions:

- What types of debt are causing you the most trouble?
- What are your significant assets?
- How did your debts arise and are they secured?
- Is any action about to occur to foreclose or repossess property, to attach your wages or bank account, or to shut off utility service?
- What are your goals in filing the case?

Can I File Bankruptcy Without an Attorney?

Although it may be possible for some people to file a bankruptcy case without an attorney, it is not a step to be taken lightly. The process is difficult and you may lose property or other rights if you do not know the law. It takes patience and careful preparation. Chapter 7 (straight bankruptcy) cases are somewhat easier. Very few people have been able to successfully file chapter 13 (reorganization) cases on their own.

Remember: The law often changes. Each case is different. This pamphlet is meant to give you general information and not to give you specific legal advice.

K.3 Your Legal Rights During and After Bankruptcy: Making the Most of Your Bankruptcy Discharge

About Bankruptcy

Bankruptcy is a choice that may help if you are facing serious financial problems. You may be able to cancel your debts, stop collection calls, and get a fresh financial start. Bankruptcy can help with some financial problems, but does not guarantee you will avoid financial problems in the future. If you choose bankruptcy, you should take advantage of the fresh start it offers and then make careful decisions about future borrowing and credit, so you won't ever need to file bankruptcy again!

How Long Will Bankruptcy Stay on My Credit Report?

The results of your bankruptcy case will be part of your credit record for **ten (10) years**. The ten years are counted from the date you filed your bankruptcy.

This does not mean you can't get a house, a car, a loan, or a credit card for ten years. In fact, you can probably get credit even before your bankruptcy is over! The question is, how much interest and fees will you have to pay? And, can you afford your monthly payments, so you don't begin a new cycle of painful financial problems.

Debts discharged in your bankruptcy should be listed on your credit report as having a **zero balance**, meaning you do not own anything on the debt. Debts incorrectly reported as having a balance owed will negatively affect your credit score and make it more difficult to get credit. You should check your credit report after your bankruptcy discharge and file a dispute with the credit reporting agency if this information is not correct.

Which Debts Do I Still Owe After Bankruptcy?

When your bankruptcy is completed, many of your debts are "discharged." This means they are canceled and you are no longer legally obligated to pay them.

However, certain types of debts are NOT discharged in bankruptcy. The following debts are among the debts that generally may not be canceled by bankruptcy:

- **Alimony, maintenance, or support for a spouse or children.**

- **Student loans.** Almost no student loans are canceled by bankruptcy. But you can ask the court to discharge the loans if you can prove that paying them is an "undue hardship." Occasionally, student loans can be canceled for reasons not related to your bankruptcy when, for example, the school closed before you completed the program or if you have become disabled. There are also many options for reducing your monthly payments on student loans, even if you can't discharge them. For more information, look at the *NCLC Guide to Surviving Debt*.
- **Money borrowed by fraud or false pretenses.** A creditor may try to prove in court during your bankruptcy case that you lied or defrauded them, so that your debt cannot be discharged. A few creditors (mainly credit card companies) accuse debtors of fraud even when they have done nothing wrong. Their goal is to scare honest families so that they agree to reaffirm the debt. You should never agree to reaffirm a debt if you have done nothing wrong. If the company files a fraud case and you win, the court may order the company to pay your lawyer's fees.
- **Most taxes.** The vast majority of tax debts can not be discharged. However, this can be a complicated issue. If you have tax debts you will need to discuss them with your lawyer.
- **Most criminal fines, penalties and restitution orders.** This exception includes even minor fines, including traffic tickets.
- **Drunk driving injury claims.**

Do I Still Owe Secured Debts (Mortgages, Car Loans) After Bankruptcy?

Yes and No. The term "secured debt" applies when you give the lender a mortgage, deed of trust, or lien on property as collateral for a loan. The most common types of secured debts are home mortgages and car loans. The treatment of secured debts after bankruptcy can be confusing.

Bankruptcy cancels your personal legal obligation to pay a debt, even a secured debt. This means the secured creditor can't sue you after a bankruptcy to collect the money you owe.

But, and this is a big "but," the creditor can still take back their collateral if you don't pay the debt. For example, if you are behind on a car loan or home mortgage, the creditor can ask the bankruptcy court for permission to repossess your car or foreclose on your home. Or the creditor can just wait until your bankruptcy is over and then do so. Although a secured creditor can't sue you if you don't pay, that creditor can usually take back the collateral.

For this reason, if you want to keep property that is collateral for a secured debt, you will need to catch up on the

payments and continue to make them during and after bankruptcy, keep any required insurance, and you may have to reaffirm the loan.

What Is Reaffirmation?

Although you filed bankruptcy to cancel your debts, you have the option to sign a written agreement to “reaffirm” a debt. If you choose to reaffirm, you agree to be **legally obligated** to pay the debt despite bankruptcy. If you reaffirm, the debt is not canceled by bankruptcy. If you fall behind on a reaffirmed debt, you can get collection calls, be sued, and possibly have your pay attached or other property taken.

Reaffirming a debt is a serious matter. You should never agree to a reaffirmation without a very good reason.

Do I Have to Reaffirm Any Debts?

No. Reaffirmation is always optional. It is not required by bankruptcy law or any other law. If a creditor tries to pressure you to reaffirm, remember you can always say no.

Can I Change My Mind After I Reaffirm a Debt?

Yes. You can cancel any reaffirmation agreement for **sixty days** after it is filed with the court. You can also cancel at any time before your discharge order. To cancel a reaffirmation agreement, you must notify the creditor in writing. You do not have to give a reason. Once you have canceled, the creditor must return any payments you made on the agreement.

Also, remember that a reaffirmation agreement has to be in writing, has to be signed by your lawyer or approved by the judge, and has to be made before your bankruptcy is over. Any other reaffirmation agreement is not valid.

Do I Have to Reaffirm on the Same Terms?

No. A reaffirmation is a new contract between you and the lender. You should try to get the creditor to agree to better terms such as a lower monthly payment or interest rate. You can also try to negotiate a reduction in the amount you owe. The lender may refuse but it is always worth a try. The lender must give you disclosures on the reaffirmation agreement about the original credit terms, and any new terms you and the lender agree on must also be listed.

Should I Reaffirm?

If you are thinking about reaffirming, **the first question should always be whether you can afford the monthly**

payments. Reaffirming any debt means that you are agreeing to make the payments every month, and to face the consequences if you don't. The reaffirmation agreement must include information about your income and expenses and your signed statement that you can afford the payments.

If you have any doubts whether you can afford the payments, do not reaffirm. Caution is always a good idea when you are giving up your right to have a debt canceled.

Before reaffirming, **always consider your other options.** For example, instead of reaffirming a car loan you can't afford, can you get by with a less costly used car for a while?

Do I Have Other Options for Secured Debts?

You may be able to keep the collateral on a secured debt by paying the creditor in a lump sum the amount the item is worth rather than what you owe on the loan. This is your right under the bankruptcy law to “**redeem**” the collateral.

Redeeming collateral can save you hundreds of dollars. Because furniture, appliances, and other household goods go down in value quickly once they are used, you may redeem them for less than their original cost or what you owe on the account.

You may have another option if the creditor did not loan you the money to buy the collateral, like when a creditor takes a lien on household goods you already have. You may be able to ask the court to “avoid” this kind of lien. This will make the debt unsecured.

Do I Have to Reaffirm Car Loans, Home Mortgages?

If you are behind on a car loan or a home mortgage and you can afford to catch up, you can reaffirm and possibly keep your car or home. If the lender agrees to give you the time you need to get caught up on a default, this may be a good reason to reaffirm. But if you were having trouble staying current with your payments before bankruptcy and your situation has not improved, reaffirmation may be a mistake. The collateral is likely to be repossessed or foreclosed anyway after bankruptcy, because your obligation to make payments continues. If you have reaffirmed, you could then be required to pay the difference between what the collateral is sold for and what you owe.

If you are up to date on your loan, you may not need to reaffirm to keep your car or home. Some lenders will let you keep your property without signing a reaffirmation as long as you continue to make your payments. Sometimes lenders will do so if they think the bankruptcy court will not approve the reaffirmation agreement.

And What About Credit Cards and Department Store Cards?

It is almost never a good idea to reaffirm a credit card. Reaffirming means you will pay bills that your bankruptcy would normally wipe out. That can be a very high price to pay for the convenience of a credit card. Try paying cash. Then in a few years, you can probably get a new credit card, that won't come with a **large unpaid balance!**

If you do reaffirm, try to get something in return, like a lower balance, no interest on the balance, or a reasonable interest rate on any new credit. Don't be stuck paying 18–21% or higher!

Some department store credit cards may be secured. The things you buy with the credit card may be collateral. The store might tell you that they will repossess what you bought, such as a TV, washer, or sofa, if you do not reaffirm the debt. Most of the time, stores will not repossess used merchandise. So, after a bankruptcy, it is much less likely that a department store would repossess “collateral” than a car lender.

However, repossession is possible. You have to decide how important the item is to you or your family. If you can replace it cheaply or live without it, then you should not reaffirm. You can still shop at the store by paying cash, and the store may offer you a new credit card even if you don't reaffirm. (Just make sure that your old balance is not added into the new account.)

For Example

Some offers to reaffirm may seem attractive at first. Let's say a department store lets you keep your credit card if you reaffirm \$1000 out of the \$2000 you owed before bankruptcy. They say it will cost you only \$25 per month and they will also give you a \$500 line of credit for new purchases. What they might not tell you is that they will give you a new credit card in a few months even if you do not reaffirm. More importantly, though, you should understand that you are agreeing to repay \$1000 plus interest that the law says you can have legally canceled. That is a big price to pay for \$500 in new credit.

K.4 Using Credit Wisely After Bankruptcy

Beware of Credit Offers Aimed at Recent Bankruptcy Filers

“Disguised” Reaffirmation Agreement

Carefully read any credit card or other credit offer from a company that claims to represent a lender you listed in your bankruptcy or own a debt you discharged. This may be from a debt collection company that is trying to trick you into reaffirming a debt. The fine print of the credit offer or agreement will likely say that you will get new credit, but only if some or all of the balance from the discharged debt is added to the new account.

“Secured” Credit Card

Another type of credit marketed to recent bankruptcy filers as a good way to reestablish credit involves “secured” credit cards. These are cards where the balances are secured by a bank deposit. The card allows you a credit limit up to the amount you have on deposit in a particular bank account. If you can’t make the payments, you lose the money in the account. They may be useful to establish that you can make regular monthly payments on a credit card after you have had trouble in the past. But since almost everyone now gets unsecured credit card offers even after previous financial problems, there is less reason to consider allowing a creditor to use your bank deposits as collateral. It is preferable not to tie up your bank account.

Credit Repair Companies

Beware of companies that claim: “We can erase bad credit.” These companies rarely offer valuable services for what they charge, and are often an outright scam. The truth is that no one can erase bad credit information from your report if it is accurate. And if there is old or inaccurate information on your credit report, you can correct it yourself for free.

Avoid High Cost Predatory Lenders

Don’t assume that because you filed bankruptcy you will have to get credit on the worst terms. If you can’t get credit on decent terms right after bankruptcy, it may be better to wait. Most lenders will not hold the bankruptcy against you if after a few years you can show that you have avoided problems and can manage your debts.

Be wary of auto dealers, mortgage brokers and lenders who advertise: “Bankruptcy? Bad Credit? No Credit? No Problem!” They may give you a loan after bankruptcy, but at a very high cost. The extra costs and fees on these loans can make it impossible for you to keep up the loan payments. Getting this kind of loan can ruin your chances to rebuild your credit.

Mortgage Loans

If you own your home, some home improvement contractors, loan brokers and mortgage lenders may offer to give you a home equity loan despite your credit history. These loans can be very costly and can lead to serious financial problems and even the loss of your home. Avoid mortgage lenders that:

- Charge excessive interest rates, “points,” brokers’ fees and other closing costs;
- Require that you refinance your current lower interest mortgage or pay off other debts;
- Add on unnecessary and costly products, like credit insurance;
- Make false claims of low monthly payments based on a “teaser” variable interest rate;
- Include a “balloon” payment term that requires you to pay all or most of the loan amount in a lump sum as the last payment;
- Charge a prepayment penalty if you pay off the loan early;
- Change the terms at closing;
- Make false promises that the rate will be reduced later if you make timely payments;
- Pressure you to keep refinancing the loan for no good reason once you get it.

Small Loans

It is always best to save some money to cover unexpected expenses so you can avoid borrowing. But if you are in need of a small loan, avoid the following high cost loans:

Payday loans

Some “check cashers” and finance companies offer to take a personal check from you and hold it without cashing it for one or two weeks. In return, they will give you an amount of cash that is less than the amount of your check. The difference between the amount of your check and the cash you get back in return is interest that the lender is charging you. These payday loans are very costly. For example, if you write a \$256 check and the lender gives you \$200 back as a loan for two weeks, the \$56 you pay equals

a 728-percent interest rate! And if you don't have the money to cover the check, the lender will either sue you or try to get you to write another check in a larger amount. If you choose to write another check, the lender gets more money from you and you get further into debt.

Auto title loans

For many years, pawn shops have made small high-interest loans in exchange for property. A new type of "pawn" is being made by title lenders who will give you a small loan at very high-interest rates (from 200 percent to 800 percent) if you let them hold your car title as collateral for the loan. If you fall behind on the payments, the lender can repossess your car and sell it.

Rent-to-own

By renting a TV, furniture or appliance from a rent-to-own company, you will often pay three or four times more than what it would cost to buy. The company may make even more profit on you because the item you are buying may be previously used and returned. And if you miss a payment, the company may repossess the item leaving with you no credit for the payments you made.

Tax refund anticipation loans

Some tax return preparers offer to provide an "instant" tax refund by arranging for loans based on the expected refund. The loan is for a very short period of time between when the return is filed and when you would expect to get your refund. Like other short-term loans, the fees may seem small but amount to an annual interest rate of 200 percent or more. It is best to patient and wait for the refund.

What You Can Do to Avoid Problems

- *If you don't want it, don't get it.* If you have doubts about whether you really need the loan or service, or whether you can afford it, don't let yourself get talked into it by a salesperson using high-pressure tactics. You can always walk away from a bad deal, even at the last minute.
- *Shop around.* You may qualify for a loan with normal rates from a reputable bank or credit union. Don't forget that high-cost lenders are counting on your belief that you cannot get credit on better terms elsewhere. Do not let feelings of embarrassment about your past problems stop you from shopping around for the best credit terms.
- *Compare credit terms.* Do not consider just the monthly payment. Compare the interest rate by looking at the

"annual percentage rate," as this takes into account other fees and finance charges added on the loan. Make sure you know exactly what fees are being charged for credit and why.

- *Read before you sign.* If you have questions, get help from a qualified professional to review the paperwork. A lender that will not let you get outside help should not be trusted.
- *If you give a lender a mortgage in a refinancing deal, remember your cancellation rights.* In home mortgage refinancings, federal law gives you a right to cancel for three days after you sign the papers. Exercise these rights if you feel you signed loan papers and got a bad deal. Don't let the lender talk you out of cancelling.
- *Get help early.* If you begin to have financial problems, or you are thinking of consolidating unmanageable debts, get help first from a local non-profit housing or debt counseling agency.

Ten Things to Think About Before Getting a New Credit Card

1. Don't apply for a credit card until you are ready.

Unfortunately, bankruptcy may not have permanently resolved all of your financial problems. It is a bad idea to apply for new credit before you can afford it.

2. Avoid accepting too many offers.

There is rarely a good reason to have more than one or two credit cards. Having too much credit can lead to bad decisions and unmanageable debts, and it will lower your credit rating. This can make it harder for you to get other lower interest rate loans. Avoid accepting a credit card just to get a discount at a store or a "free" gift.

3. Remember that lenders are looking for people who run up big balances, because those consumers pay the most interest.

You may find that credit card companies are pursuing you aggressively by mail and phone even though you filed bankruptcy. Do not view this as a sign that you can afford more credit. The lender may have a marketing profile telling them you are someone who is likely to carry a big credit card balance and pay a good deal of interest. Or they may see you as a good credit risk because you cannot file a Chapter 7 bankruptcy again for quite a few years.

4. Interest rate is important in choosing a card but not the only consideration.

You should always try to get a card with an interest rate as low as possible. But it is rarely a good idea to take a new card just because of a low rate. The rate only matters if you carry a balance from month to month. Also, the rate can easily change, with or without a reason. Remember that even the best credit cards are expensive unless you pay your balance in full every month. And other credit terms can add to your cost, like annual fees, late charges, over-the-limit fees, account set-up fees, cash advance fees, and the method of calculating balances. Sometimes a credit card that appears cheaper is actually more expensive.

5. Beware of temporary “teaser” rates. A teaser rate is an artificially low initial rate that applies only for a limited time.

Most teaser rates are good only for six months or less. After that, the rate automatically goes up. Remember that, if you build up a balance under the teaser rate, the much higher permanent rate will apply when you repay the bill. This means that the permanent long-term rate on the card is much more important than the temporary rate.

6. If your rate is variable, understand how it may change.

Variable interest rates can be very confusing. Some variable rate terms can make your rate go up steeply over time. Read the credit contract to understand how and when your rate may change. And don't be misled by advertisements that claim “fixed rate,” as this may mean the rate is fixed only until the lender decides to change it again.

7. Check terms related to late payment charges and penalty rates of interest.

Most credit card contracts have terms in the small print for late charges or penalty interest rates that increase if you make even a single late payment. Try to avoid cards with late fees as high as \$25–\$35 or penalty interest rates of 21–24 percent or higher. Even if you are not having financial problems, these terms may become important, because they apply equally to accidental late payments.

8. Get a card with a grace period and learn the billing method.

It is important to understand how you will be billed. Look for a card with a grace period that lets you pay off the balance each month without interest. If the card does not

have a grace period and interest will apply from the date of your purchase, a low interest rate may actually be higher than it looks. The terms of the grace period are also important, as it may not apply to balance transfers and cash advances. And look out for different interest rates that may apply depending upon the type of charge: these usually include a higher rate for cash advances.

9. Don't accept a card just because you qualify for a high credit limit.

It is easy to assume that because a card offer includes a high credit limit, this means the lender thinks you can afford more credit. In fact, the opposite may be true. Lenders often give high credit limits to consumers hoping that they think will carry a bigger balance and pay more interest. You must evaluate whether you can afford more credit based on your individual circumstances.

10. Always read both the disclosures and the credit contract.

You will find disclosures about the terms of a credit card offer, usually in small print on the reverse or at the bottom of the offer. Review these carefully. However, the law does not require that all relevant information be disclosed. For this reason, you must also read your credit contract, which comes with the card. This will include terms such as late payment fees, default rates of interest, and a description of the billing method. Since these terms are not easy to understand, you may want to call the lender for an explanation. Or better yet, refuse credit with too many complex provisions, because those terms are likely to work to your disadvantage.

Ten Things to Think About Before Using Your Credit Card**1. Establish a realistic budget.**

Before using a credit card after bankruptcy, try paying cash for a while. This will help you learn how much money you need each month to pay the basic necessities. Don't forget to budget for the payments on any debts you reaffirmed in your bankruptcy.

2. It is important not to use credit cards to make up for a budget shortfall.

Credit card debt is expensive. Sometimes credit cards are so easy to use that people forget they are loans. Be sure to charge only things you really need and plan to pay the balance off in full each month. If you find you are constantly

using your card without being able to pay the bill in full each month, you need to consider that you are using cards to finance an unaffordable lifestyle.

3. If you get into financial trouble, do not make it worse by using credit cards to make ends meet.

If you find that you are using credit cards to get through a period of financial difficulty, it is likely that additional credit will only make things worse. For example, if you use cash advances on your credit card to pay bills, the interest due will only add to your debt burden sooner rather than later.

4. Don't get hooked on minimum payments.

Credit card lenders usually offer an optional "minimum payment" in their monthly billing. These are usually set very low (usually 2 percent of the balance), barely covering the monthly interest charge. If you pay only the minimum, chances are that you will be paying your debt very slowly or not at all, and you may think you are managing the debt when you are really getting in over your head. For example, if you make only the monthly minimum payments to pay off a \$1000 balance at a 17 percent interest rate, it will take over 7 years to pay your debt! If you are also making new purchases every month while making minimum payments, your debt will grow and take even longer to pay off. This means that your monthly interest obligations will increase and you will have less money in the monthly budget for necessities.

5. Don't run up the balance based on a temporary "teaser" interest rate.

Money borrowed during a temporary rate period of 6 percent is likely to be paid back at a much higher permanent rate of 15 percent or more. Also be careful about juggling cards to take advantage of teaser rates and balance transfer options. It takes a great deal of time and effort to take advantage of terms designed to be temporary. Remember that all teaser rate offers are designed to get you locked into the higher rate for the long term, because that is how the lender makes the most money.

6. Avoid the special services and programs credit card lenders offer to bill to your card.

You are likely to get many mail offers and telemarketer calls from your credit card lender about special services such as credit card fraud protection plans, credit report

protection, travel clubs, life and unemployment insurance, and other similar offers. These products are generally overpriced. It is best to throw out and refuse these offers, or at a minimum, treat them with a high degree of caution. And avoid "free trial" offers as you will be billed automatically if you forget to cancel the service.

7. If you can afford to do so, always make your credit card payments on time.

Be careful to avoid late payment charges and penalty rates if you can do so while still paying higher priority debts. Bad problems get worse fast when you have a new higher interest rate and late charge to pay during a time of financial difficulty. Most lenders will waive a late charge or default interest rate one time only. It is worth calling to ask for a waiver if you make a late payment accidentally or with a good excuse.

8. Know exactly when the grace period ends.

The grace period usually ends on the payment "due date," which may change every month. Many lenders do not mail bills until late in the grace period, so your payment may be due quite soon after you receive the bill. This also means that the grace period may be less than a full month, usually about 20-25 days. Some lenders are slow in posting payments or have strange rules about deadlines (like payments received after 10:00 a.m. on the due date are considered late). Try to mail your payment well before the due date so there will be no question it gets there on time. Paying credit cards on time not only saves you interest and late fees but is a good way to improve your credit rating after bankruptcy.

9. Beware of unsolicited increases by a credit card lender to your credit card limit.

Some lenders increase your credit limit even when you have not asked for more credit. Avoid using the full credit line as your debt can easily spiral out of control. And going over the credit limit even by a few dollars can be very costly as you will likely be charged an over-the-limit fee and a higher penalty interest rate.

10. If you do take a credit card and discover terms you do not like: cancel!

You can always cancel any credit card at any time. Although you will be responsible for any balance due at the time of cancellation, you should not keep using a card after you discover that its terms are unfavorable.