

THE TACTICAL BANKRUPTCY MANUAL

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These Free Manuals are also available:

- **The Tactical Personal Injury including Workers Comp and Product Liability Manual**
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- **The Tactical Wills Manual**
- **The Tactical Divorce Manual**

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DISCLAIMER: THIS MANUAL PROVIDES GENERAL INFORMATION ABOUT BANKRUPTCY. IT WAS CURRENT WHEN IT WAS LAST EDITED. HOWEVER NOTHING IN THIS MANUAL SHOULD BE CONSTRUED AS LEGAL ADVICE. IF YOU HAVE SPECIFIC QUESTIONS ABOUT BANKRUPTCY, CONTACT A QUALIFIED LAWYER ABOUT YOUR PROBLEM. WE ASSUME NO LIABILITY FOR ANY ACTIONS THAT OCCUR AS A RESULT OF INFORMATION DERIVED FROM THIS MANUAL IF YOU DO NOT CONSULT US OR IF YOU DO YOUR OWN LEGAL WORK.

Bankruptcy law is constantly changing. The Louisville Bankruptcy Court now often requires you to submit all the same documents that the Eastern Court does. In our manual it states that the Eastern District (Lexington) requires copies of your paycheck stubs, the last six months of bank statements, copies of tax returns federal and state for the last three years, and copies of any auto titles, deeds, and mortgages. Your deed and mortgage must show the date and time they were recorded at the courthouse. In Lexington these documents must be supplied to your attorney and the trustee **before you file**. In the Eastern District your attorney must now bring the following documents to the hearing or your case may be dismissed. It is common that the attorney fails to bring these documents and the hearing is continued or dismissed so you need to also have a copy of the following documents when you appear in the Eastern District.

- A copy of your 2001 state and federal tax returns.
- Copies of your wage statements that cover the petition filing date.
- Bank statements for any and all financial institutions in which the debtor held an interest or signature authority on the date the petition was filed.
- Titles to all vehicles listed on the petition or owned and a time stamped copy of your deed and mortgage if you own or are buying a home.
- A picture ID. (Acceptable identification includes: drivers license, government issued pictured identification, passport, or permanent resident alien card.)
- Proof of Social Security Number. (Acceptable documents include Social Security card, current W-2 forms, or wage statements.)

It is the Trustees job to insure the accuracy of your bankruptcy petition and to take as much of your property from you as he can and give that property to your creditors.

It is you attorneys job to properly prepare your petition so that you maximize your exemptions and keep the maximum amount of property that you can keep and to prepare the petition properly.

It is your responsibility to provide the documentation when it is asked for and to co operate fully with the trustee and the court in following their orders. If you do you will have your debts discharged.

In Louisville your case may be dismissed if documents are asked for and you do not supply them within 15 days and they are more and more often asking for documentation in the Louisville area. You can't even get in the building or have a hearing without the picture id or proof and your social security number. You can get a new Social Security Card by calling 1-800-772-1213 or go to www.ssa.gov. Until 2002 these documents were not required to file in Louisville. Now the Trustees may ask for any or all of these documents at the 341 hearings or before the hearing. **You don't need them to file in the Western District. But the failure to provide these documents promptly in the Louisville District, if they are asked for, can be a basis for dismissing your case.** The failure to attend your hearing is a basis for dismissing your case and you must have these documents or your case/hearing will be continued or dismissed. You should also bring proof of insurance on your car.

We have changed to electronic filing which makes filing a little more difficult and expensive but faster. Changes will force some people to file Chapter 13 cases instead of Chapter 7 cases. In 1999 only about 9,000 cases were filed in Louisville, in 2001 this jumped up to over 12,000 as a result the court now has 341 hearings about 5 days a week. The Louisville Court hired a CPA in 2002 to look over cases and to force people to file more Chapter 13 cases. This requires more attorney work in attention to details and fees. What they are especially looking for is whether you make enough income to force Debtors into a Chapter 13 repayment plan and whether any assets can be taken. You may want to consider doing it as soon as possible because in the future will only get more difficult and laws are being proposed and passed that will make it more expensive and difficult.

1.1. Some Initial Advice

There are two tests for bankruptcy. The first is a balance sheet type of test. Do you have more liabilities or debts than you have assets. The second test is an income sheet type of approach. The second approach asks “Can you pay your debts as they become due”. If you qualify under either test you qualify for bankruptcy. Almost every person in America seems to qualify under one test or the other. But many people end up making terrible mistakes and losing property they never had to lose when they file because they fail to plan and anticipate what is going on and understand what is happening overall.

There are two purposes to the bankruptcy laws. The first is to stop creditor harassment and grabbing your assets. Most people are only interested in stopping the harassment. They forget the second purpose which is why the Trustee is there. The second purpose is to provide all of the creditors a chance to equally and fairly share in any assets that may be available in an orderly process of distributing what little the Debtor has. If you keep these two purposes in mind it is easy to see why we have certain bankruptcy rules and why the Trustee is asking for certain information.

Remember: It is the Trustees job to insure the accuracy of your bankruptcy petition and to take as much of your property from you as he can and give that property to your creditors. It is your responsibility to provide documentation to the Trustee when it is asked for and to co-operate fully with the Trustee and the Court in following Court orders. If you provide the information you will normally have your debts discharged and the process will be easy. Often the Trustee just wants the information and just wants to process the case. If you don't provide the requested information to the Trustee you will upset the Trustee and make him mad at you. He will dig and continue to dig until he gets the information because now he has become curious, has to know and suspects fraud. You will not get your case discharged until you do give him the information he wants. Even worse, your case will be thrown out if you try to play games. Do not make the judge or this person mad or curious about why you aren't giving him the information! You will only upset him or the judge if you waste their time and make them force you to turn over documents.

The Trustee is looking at bank records to grab whatever was in your account on the date your bankruptcy was filed. They also look to see if you had any large deposits or withdrawals just before filing and to whom did those checks go to? They try to catch preferential transfers or gifts to others that you may have made just before filing.

When he asks for tax documents he is looking at past income in an effort to make you file a Chapter 13 and he is looking for tax refunds to seize. Tax refunds that you get within 4-6 months after filing bankruptcy are often property of the Trustee but from April to November normally this isn't an issue. In late November the Trustee will start to look at income tax refunds as an asset he may want to take. Income tax refunds are often property that you have a right to at the time of filing but that you just haven't gotten yet. This is why you should always file your return and get your refund before filing. For instance if you file bankruptcy on Dec 23 and you get a refund on

February 25th that refund will belong to the Trustee unless you can exempt it with your 1000 dollar general exemption.

There is a silver lining. Within weeks after you file your mailbox will be stuffed with credit card applications. Within a year most people can buy a new car at average rates. Don't go back to poor spending habits and paying any interest rate just to get a car or home. If you keep good credit for 2 years you will qualify by federal guidelines for home mortgages after bankruptcy at prime rates. This is an opportunity for you to plan not just your bankruptcy but a better life.

A Quick Overview of This Manual

This manual covers the law about Kentucky Bankruptcy however bankruptcy law is generally the same for all of the other states. The major difference from state to state is that the property that can be kept in each state is different. For instance in Texas and Florida you can presently keep a million dollar home and file. However in Kentucky, you can only keep 5,000 in equity in a home or 10,000 if you are a couple (5000 per person on the deed). My Name is Nick Thompson, and I have been a licensed Attorney since 1988. I am a former West Virginia State Tax Department Attorney and a former Kentucky Assistant County Attorney. I practice statewide in all of Kentucky and Southern Indiana Counties. My office handles bankruptcy cases in Kentucky and Indiana.

I'd like to thank you for requesting our bankruptcy manual. I believe the information in this manual will answer many of your questions about bankruptcy and will explain exactly how to bankrupt your debts and still keep as much of your property as possible. Some banks and attorneys will be upset if they know we are sharing these secrets, but our aim is to help you to properly prepare and plan for your case as well as you can and to save you from unnecessary costs and problems. We have written this manual so you will know everything we believe that you should know when you file. Every year, people fail to follow directions, choose a good attorney, manual, or ask questions—and it always costs them money, property or, at least, their time.

Please **read** this manual very carefully and completely if you are considering filing for bankruptcy. Some people read it more than once. If you spend just a couple of hours learning, you should save hundreds or thousands of dollars when you file. If you do not understand anything in the manual, **please** call or email us, and we will answer your questions. Not only will you get the information you need, you will also let us know what needs to be added to future editions of this manual. Your questions will help others in the future and let us know what wasn't covered.

If you are going to file a bankruptcy, it is up to you to make sure it's done right. You should plan and prepare for your case as much as possible. If you don't plan your own lawsuit or financial affairs, you will pay for it in time, money and loss of property. To win your case—and not be a victim—you have to take the responsibility for filing it right. For example, you must get your financial records together. No Attorney can do that for you unless you pay him \$150

per hour to read and organize all of your receipts and records. The Attorney can't show up at your hearing with your insurance records for you. The Attorney can't be sure you have listed all your Creditors. If you don't do what you need to do, you will be the person that loses his or her home, car, or other property. Neither your Attorney nor your accountant will lose anything.

There is nothing wrong with planning your lemon auto, bankruptcy, or divorce case. Understanding what needs to be done makes it far more likely that you will win your case and stay out of trouble.

Our current bankruptcy law stems from the Biblical and Jewish law that prohibited Creditors from holding a man a slave for his debts for over 6 years. It is part of the United States Constitution. Bankruptcy is meant to give the unfortunate debtor relief and a fresh start when he has lost his job, been ill, has gone through a divorce or experienced some financial hardship. It wasn't designed for cunning crooks. If you plan to deceive you will get caught. But people that

1. plan their bankruptcy
2. know what to do
3. and properly claim their exemptions just like claiming the tax deductions

will save far more of their property. The law traps the person that attempts to defraud the court, the law rewards the person that claims these exemptions properly. If you obey the rules and properly plan you will do well (so read what to do). If you plan to lie or scheme you will get caught and you will lose what you perhaps could have kept if you had just done it properly.

The purpose of bankruptcy is to put you on a budget that you can afford and to give you a fresh start. Filing the wrong type of bankruptcy or listening to poor legal advice insures failure. It is sad but often other attorneys will give you poor advice knowing that you will lose money and property, just so that they will make more profit from you filing the wrong kind of bankruptcy. This manual is designed to inform you of the facts, help you keep your property, and to protect you from bad legal advice.

The Top 3 Secrets of Bankruptcy

If you are concerned about filing bankruptcy, it may be because you have heard myths that bankruptcy will destroy your credit, prevent you from finding employment, or prevent you from ever owning your own home. That information is entirely wrong. Bankruptcy will hurt your credit if you had good credit before you file. However it is often a tool to repair credit in the long run if you have bad credit and you have no other choice. Bankruptcy is designed to give people whose debts are driving them (or have already driven them) into serious financial trouble a fresh start. Here are the top three secrets you need to know.

ONE...

Most people can have their debts wiped out in Chapter 7 bankruptcy with little or no long-term bad effects within 2-3 years. There are even regulations that allow you to qualify for FHA HUD VA and Kentucky Housing Corporation loans at prime interest rates within 2-3 years after filing.

Within six months to a year, most people can get a car loan at the same interest rate as anyone else if you repay your debts that remain after bankruptcy on time. Within two years, FHA, VA, Kentucky Housing Corporation and other State and Federal government mortgage lenders **are required** by government regulations to lend to you at the same low rates as anyone else as long as you have paid debts on time after filing and no foreclosure was involved. If a government agency foreclosure was involved in the bankruptcy the time is about 3 years (2 years after the agency paid the foreclosure and it normally takes a year for a foreclosure to go through)

In a Chapter 7 Bankruptcy, most persons keep all their property and only pay the secured debts on property they want to keep. Every year about 2 million people bankrupt unnecessary debt with few, if any, problems by filing bankruptcy. Even if they file a Chapter 13 they normally pay no interest on their unsecured debts and in Kentucky they will now pay as little as 20% or less on the dollar for their unsecured debts and take up to 5 years to repay their debts. The Kentucky courts used to require debtors to pay back 70% but you can now repay as little as 20% in a Chapter 13.

The few problems that regularly occur are usually due to ignoring Attorney advice or not knowing what to do. However, if you read this manual, you will know exactly what to do.

TWO...

Filing bankruptcy can actually help clean up your credit.

Filing bankruptcy would make borrowing more difficult **if you have good credit when you file**; however, if you can't borrow money now because of bad credit, filing bankruptcy will normally actually make it easier to borrow (particularly if you currently owe large debts that are making it impossible for you to repay them off). **Bankruptcy is designed to give you a fresh start and to fairly give what you can give to your creditors not destroy you.**

Lending decisions are largely made on how you repay others and the percentage of your income and debt (your ability to repay). If you owe more than you can pay, lenders will never loan to you unless they are predatory lenders. If you file bankruptcy and suddenly you don't owe, you can now afford and will be offered credit.

THREE....

Aside from the people you tell, few people will know you filed bankruptcy.

Bankruptcy doesn't make headline news, and it is against the law to discriminate against you for

filing bankruptcy. For example, most employers cannot discriminate against people because you have previously filed bankruptcy. You can't be denied a law license due to a bankruptcy. In fact, it can help in some cases: You are able to get your driver's license back if you lost it because you were unable to pay for damages in an auto accident. It is true that lenders may turn down credit applications for prior bad credit. But most large lenders will allow you to borrow and rebuild your credit rating after bankruptcy. Small lenders like town banks and credit unions are more likely to discriminate.

THREE CREDIT SCAMS USE SOME COMMON SENSE & AVOID THEM

SCAM NUMBER ONE **Predatory lenders** often advertise that mortgaging your home is a good way to pay off your credit card debts. Normally predatory lenders such as the Money Store will lend to you based on you having 30% or more equity in your home. You sit down, sign the mortgage papers and they foreclose within a year or two taking their profit from the sale of your home. If you repay...you repay them at higher (10-21%) interest rates for a home mortgage while people with good credit have prime rate mortgages (currently 6% mortgages). **If you have bad credit it is never the time to refinance a mortgage because you will normally only be offered high rates.** Whether you pay or whether they foreclose predatory lenders make huge profits. Predatory lenders carry prepayment penalties and high broker and closing costs hidden in the loans (normal mortgage broker fees are about 2-3% of the loan for processing your loan application and \$1000 for a closing). Predatory lenders run about 5% or more.

SCAM NUMBER TWO The other common scam you hear about in bankruptcy is that you can **erase bad credit**. Every year someone claims that if you give them 3,000 dollars they can erase your bad credit. There are even laws against these businesses but like drug dealers they get busted and then reopen shop making the same false promises in another name over and over. Yes you can only erase untrue items on your credit report. But anyone who knows anything about credit knows you can't erase true, negative items from your credit report or invent a new credit history - without committing fraud. Do this in Kentucky and now there is a law called identity theft and you can go to prison. There's nothing a credit-repair clinic can do for you that you can't do for yourself.

SCAM NUMBER THREE is that you can **"Protect your credit by settling your debts!"** For every action there is an equal and opposite reaction, and nowhere is that more true than in the world of credit. Pay less than you owe, and your credit rating gets trashed. Yet, many debt-settlement companies insist they can pay your debts for you and pay only 50 cents on the dollar and that you will have good credit. And there are always people who believe it. If you want your credit to be just as bad as bankruptcy go ahead. The down side of this is that

1. you will take 2, 3 or 4 years to repay their 50% repayment plan when you could have repaid it with a 20-30% Chapter 13,
2. they will charge you for it with high fees,

3. the effect on your credit will be just as bad as bankruptcy and,
4. some companies won't take the reduced payments or will sue you anyway.
5. 90% of the people never finish these repayment plans that are set up.
6. These debt settlement companies often only pay themselves. They pay themselves first and sometimes only pay themselves until they go out of business. That's right sometimes and all too often they never pay the credit card companies and then they file bankruptcy themselves after telling you not to.

What Will It Cost to File a Bankruptcy?

If you choose us as your Attorney, we have a flat fee for an uncontested Chapter 7 bankruptcy. Almost all bankruptcies are uncontested. However, there can be additional fees under some circumstances.

Our flat fee requires that you tell us about all of your Creditors. You are required by law to list all of your debts. If you fail to advise us of all of your debts and you must later add Creditors, the Court will charge you an extra filing fee for amending the petition. We do charge for mailing the amendment to any Creditors you add (this is about \$5.00 per Creditor added because each creditor that you add requires us to mail several letters). You will lower your costs and save time by listing all your debts the first time. There are no additional Court costs or fees that we or the Court will ask you to pay for any other type of amendment.

Our flat fee is \$500 for doing a personal uncontested Chapter 7 bankruptcy. Court costs are \$200. Your total cost is \$700 but this can change. Chapter 13 Court costs are \$185. Attorney fees in a Chapter 13 are set by the Court and they are 1200 in Kentucky and 1600 in Indiana. Attorney fees in a Chapter 13 are paid as you pay your payments.

We DO charge for filing any adversary proceeding to discharge student loans or for avoiding a judicial lien if a lawsuit filed a lien on your property. Both of these problems are rare. But you should always check to make sure that you have not been sued and that you have no liens on your home.

We also charge different fees for business and contested bankruptcies. Contested bankruptcies are very rare and less than 1% of our bankruptcies are contested. If we believe your bankruptcy will be contested, we will tell you in the interview. The major reason for a contested bankruptcy is an attempt to bankrupt a non-dischargeable debt (see Section 5 for more information on non-dischargeable debts) or fraud. Business bankruptcies follow the same rules and procedures but take more attorney and staff time.

We also charge a small fee if you need to file motions or proceedings to redeem property or to avoid judicial liens on real property (such motions are not included in the

fees charged by us in filing an uncontested bankruptcy). Removing a judicial lien requires an additional hearing, motion and an appraisal which is more legal work than a standard bankruptcy. **You will have to get a real estate appraisal** in order to get rid of a judicial lien.

There are no Court costs for a motion to remove a lien. A bankruptcy can get rid of a judicial lien (such as a lien resulting from a lawsuit or tax lien), but you must ask us to remove any lien before the bankruptcy is discharged and give us a copy of any such lien, your deed, and an appraisal. If you don't tell us about it we can't remove it.

If you need to file a separate adversary proceeding to recover garnished wages or attached bank accounts, or to avoid liens, we charge 33% of what we recover. See Section 10.5 for more on Judicial Liens. If you have a lien on your household goods we can file a motion to avoid and destroy that lien!

If you file bankruptcy you should never have to pay a finance company for a lien on your household items but you have to tell us that you have a household goods lien or we won't know to do it! The liens finance companies most often put on furniture are called non purchase money security interest **NPMSI** and they are easily avoided due to Bankruptcy and Federal Trade Commission rules. Finance companies have been taking these liens since the 1940's although federal judges and the Federal Trade Commission have ruled them an unfair trade practice and illegal.

If the same place that sold you the furniture or stereo is the same place that financed it then the lien is called a purchase money security interest **PMSI** and the lien cannot be avoided but the property can be redeemed (purchased) for it's wholesale value (value it would bring at auction or at trade in). Examples of Credit cards that have liens on goods are Sears, Lowes, Circuit City, Radio Shack. These companies have liens on goods they finance. Visa, Master Card, and American Express don't.

I warn you to never go to the cheapest lawyer or brain surgeon in town. You get what you pay for. Don't overpay either, but attorney fees are 150 an hour. Your Chapter 7 bankruptcy shouldn't take more than 3-4 hours of your attorney's time, if you do your work, including going to court. In some cases it may take one or two more hours to redeem a car or remove a judicial lien. If you just pay for 1-2 hours that is all you will get and you may lose your car or home. If you pay for 3 hours don't expect him to weeks on your case. I will share a secret with you he won't.

The Most Common Mistakes You Can Make in Your Case

Before we begin a more in-depth explanation of bankruptcy, I'd like to point out three of the most common errors. **Regardless of how well you plan your case, if you make either of these mistakes, you will lose property, time, or spend hundreds of dollars you don't need to spend.**

1.2. Mistake Number One: Putting money in your checking account on the day you file.

You are required by the Court to list all of your assets. Under the bankruptcy code you are allowed to keep a certain amount of property. Most people who plan don't lose a cent. All of the rest of your property is turned over to the Bankruptcy Trustee as an asset to pay your creditors.

The most common property to lose are income tax refunds and checking account funds. If you have 5,000 dollars in your checking account or if you have an income tax refund and you don't spend it before you file you may lose this money or your refund to the Trustee. Therefore spend it or lose it. Don't put it into your checking account the day before you file. If you have a refund coming in a month or two get your refund and spend it first. Another common asset you can lose is your car in Kentucky. Kentucky allows you to keep 2500 in equity in one car. You can't use this exemption on 2 or more cars.

1.3. Mistake Number Two: Failure to List All Your Debts

You are required by the Court to list all your debts and all your assets. You do not want to miss a single Creditor when you prepare your bankruptcy, even if you wish to keep the debt or if someone is cosigned on that debt. If you want to keep your car, home, or a credit card, list it anyway. If you don't think the debt can be bankrupted, list it anyway. If you do not list the Creditor, he may be unaffected by the bankruptcy until you amend and add him. You are charged extra Court costs later to add any Creditor.

You can add a Creditor even after the bankruptcy is over (discharged) but you will have to reopen the case and pay a filing fee (about \$200) and an Attorney fee (\$250 to \$500 at 2003 prices) to add debts after a discharge. You are permitted to file an amendment to add a Creditor before the final discharge of your debts for 20 dollars plus a small attorney fee (we charge 5 per creditor other attorneys normally charge \$100-200) for adding creditors. This is a costly and time-consuming nuisance, so it is better to list debts the first time. You may add a debt **after** your case is discharged but **only** if the Creditor is not placed at an undue disadvantage because of your delay. Adding a debt after your case is closed will cost you at least 450 dollars in court costs and attorney fees so make certain you add any debts long before your case is discharged.

Adding a debt after your case is over is basically like starting the case from scratch. The only difference is that there is usually not a 341 hearing in a reopened case.

Bankruptcy is the nuclear bomb of lawsuits: It destroys almost every type of debt. It will sometimes even destroy debts that some Attorneys will tell you are not dischargeable. Even though some debts are supposedly not dischargeable they will be discharged anyway if the creditor forgets to object. If you have a doubt about whether or not to list the debt, list it. **You**

normally can't be harmed by listing a debt or hurt your co-signers by listing a debt. If you fail to list the debt before your case is over, you may have to reopen your case and pay a new filing fee and Attorney fee to list the debt later.

Many people do not wish to list a particular Creditor because they want to keep the property, or stay friends with a local lender—but all your creditors **MUST** be included.

You can normally reaffirm and pay a debt to retain property. A reaffirmation is a signed agreement to repay a Creditor even though you have filed bankruptcy. Normally, you keep property by listing the Creditor and then signing this reaffirmation agreement with them. By signing and repaying on time, you will also be working to rebuild your credit. **In rare cases if you fail to list the Creditor, you may actually cause yourself to lose the property because you may not be able to reaffirm a debt you haven't listed if the Creditor insists on a reaffirmation.** (NOTE: Often, Banks Mortgage Companies and Creditors will accept continued payments without a reaffirmation) Creditors cannot be forced to accept reaffirmations, but it is very rare for them to refuse and many do not require it. If your bank requires a reaffirmation, it must be signed before the case is discharged. Reaffirmation agreements can be filed after discharge, but they must be signed before discharge.

List your utility bills and every other imaginable debt. Your service will not be disconnected because you listed your utility bills. You may, at worst, have to pay a new deposit of one month's service, but the debt for your old utility bill on the day the case is filed will be discharged. You may not be able to get credit on these debts later. Telephone power and water are utilities. Cable TV is a luxury and it is not a utility and it is not regulated like the utilities and required to continue service to you if you bankrupt it.

If you choose us as your Attorney, we will need a list of your debts with CORRECT addresses for each and every Creditor. We highly recommend that you get a report that lists the addresses. Most credit Reports normally don't list the addresses of the Creditors. Bring a list of all of your debts with complete addresses with you when you come to your first appointment. **You may guess the amount of the debt but you must have a correct address for each debt.** Remember that credit reports do not usually have the addresses for the Creditors listed and to list a debt you need both the address and the amount. On our web site you can download a spreadsheet for listing your debts and a budget.

1.4. Mistake Number Three: Failure to Show up at Your 341 Hearing

Every year, people file for a bankruptcy and then fail to come to their hearing. Every year, these people have to pay twice for their bankruptcy. In any bankruptcy, you will have a 341 hearing (also called the Meeting of Creditors) in about four to six weeks after you file. Within seven to ten days after the Court gets your petition, you the creditors and your attorney will receive a notice in the mail specifying when and where this hearing will be held. A notice will be

sent to your attorney by email within 2 days. The Court mails out notices to Creditors, the Debtor (you), and the Attorney all at the same time. If you get a call from a creditor that claims they didn't get notice you know they are lying unless their address was incorrect but it always seems to happen. Be sure your Creditors' addresses are also correct so that they get noticed.

We often hear that clients are still getting notices, letters, and phone calls from Creditors because the Creditors' collection departments claim they never got a copy of the hearing notice.

To prepare for this, we suggest you make several copies of your hearing notice. **If you get a bill after filing, send the Creditor a copy of your hearing notice. He probably did not get it in the mail.** If you still continue to get a bill, it may be because they can't stop the computer from sending out bills when they mail twice a month. If you continue to get calls after they have been noticed, tell them that you are recording the call and that you have filed. Give the Creditor the benefit of the doubt if he attempts collection action right after you've filed. But, if the Creditor persists or becomes abusive, gather proof by recording the call so you can take legal action against him.

Several people make this mistake every year. They oversleep, they get lost on the way to the Courthouse, or they simply forget the hearing. The Bankruptcy Court in Kentucky, like most federal Courts, rarely accepts excuses for missing a hearing. Miss your 341 hearing — or fall more than a month behind in your Chapter 13 payments—and your bankruptcy will be dismissed and you lose the money. The Courts have very little tolerance for missed hearings or missed payments.

The 341 hearing rules do vary in different districts. **If you miss the 341 hearing in Kentucky, your case will be dismissed. If your case is dismissed because you missed your hearing, you will have to pay another Attorney fee and filing fee.** If you miss your 341 hearing in Indiana, they normally have another hearing in about two or three months. Individual states have different rules on how they handle such matters.

If you choose us as your Attorney, we always give you a copy of your petition. **Be certain that the address on your petition is correct.** A common reason for missing the hearing is having your address misprinted on the petition, which causes the notice of the hearing go to the wrong address. **If your address is wrong on the petition, you won't get notice to appear, your notices and information from the court will go to the wrong address, you will fail to come to the hearing, and your case will be dismissed.**

The Seven Debts You Can't Bankrupt (and How To Bankrupt Some of them Anyway)

The most common reason for a bankruptcy to be contested is that the Debtor has attempted to bankrupt one of seven debts that, under 11 United States Code 523, usually cannot be bankrupted. These magical "non-bankruptable" debts are listed below:

1) Child Support and Alimony are usually not bankruptable, but there can be rare exceptions. **Past due child support amounts can be repaid in a Chapter 13**, and you are able to reduce the amount of your child support by having the Family Court review the amount if you have a substantial reduction in income. Child support is determined by a chart in every state. To calculate your amount, see our Divorce manual and website.

2) Taxes less than three years old. (Yes, income taxes over 3 years old are bankruptable!) To bankrupt income taxes, you have to have filed on time for the last 2 years. There must not have been an assessment within the last 240 days. You can also only bankrupt the unsecured amount. But you can avoid a tax lien on your home in some cases. There must be no fraud involved in the return. Any offer in compromise or bankruptcy will increase the time limits. If you want specific information on how to discharge taxes, see Section 20.3 in the appendix of this manual. **WHEN IN DOUBT LIST YOUR TAX DEBT IT MAY BE BANKRUPTED ANYWAY. If you owe taxes we may be able to negotiate a settlement if your taxes are less than 3 years old.**

3) Federally Guaranteed Student Loans are generally not bankruptable unless you qualify for a hardship discharge. **Before October 1998, Federally Guaranteed Student Loans over 7 years old were bankruptable!** The law was changed in October 1998 and, except for hardship discharges, government guaranteed student loans are no longer bankruptable no matter how old they are. The Court considers three factors in determining whether or not you should get a hardship discharge:

- Whether or not you tried to repay in good faith before you became unable to repay.
- Your present and future ability to repay.
- Whether or not it would create a hardship to your family if you had to repay.

It seems that Hardship Discharges are becoming easier to get. If this is an issue in your situation, please discuss it. **It may be worth a try.** The key is that repayment must be a real hardship—not just hard. The situation must hurt your ability to support yourself and your family. A perfect example of a real hardship is the nurse who has a child with a heart defect. The child is in need of constant care, preventing the nurse from working. Life at the poverty level pretty much **guarantees** a student loan hardship discharge.

Student loans that are not guaranteed by a governmental agency are just as bankruptable as any other debt. Ordinary Debts such as room rent to a college are generally just as bankruptable as any other debt. However, this may change in 2003, if the law is changed.

4) Debts due to theft or fraud. Certain Creditors may claim that you tried to defraud them by taking a loan when you knew you were in financial trouble, made false statements in your credit application, or withheld information from them. Most of us, of course, are always in financial trouble and this alone does not necessarily constitute fraud.

The fraud exception to discharge means that **actual criminal theft or actual fraud cannot be discharged or that you charged over 1000 dollars within 60 days of filing**. The fact that the credit card company failed to run a credit check or made a stupid loan is not a fraud. Only a proven, material, and intentional misrepresentation will be considered fraud. The burden of proof is on the lender not you, and it is very, very rare that fraud can be proven. However, as of June 1998, under 11 U.S.C. 523 2 (c), **a charge or cash advance of over \$1,000 or a purchase of a \$1,000 luxury item within 60 days before filing will be assumed to be fraudulent, and it will be assumed that you knew that you were in a bankrupt condition when you made those charges. So, don't charge \$1,000 or more on any one charge card just before filing**. However, if you do charge over \$1,000 within 60 days of filing, you can list the debt and, if the Creditor fails to object, it will be bankrupted anyway.

If you make a charge or cash advance of \$1000.01 59 days before you file bankruptcy, it is assumed to be fraud. If you borrow \$5,000,000.00 61 days before you file, it is presumed not to be fraud, according to this statute. Notice how a couple of days can make a big difference. But there are 12 factors altogether that are now considered and additional facts may allow a judge to come to a different conclusion. For instance, if you swear under oath that you knew you were bankrupt when you borrowed \$950, 70 days before filing, and that you never intended to pay it back, the judge would probably rule that the debt was covered by the fraud statute. This is rare, but if you are asked “when did you know you were bankrupt” by a Creditor at the 341 hearing, this is the trap in which he is trying to catch you. Every year, someone makes large charges too close to filing, and this question pops up. Taking a car or home mortgage loan just before filing and then paying for the car or home is not a problem. Making a \$1500 charge for a fur coat at Dillard's on your American Express the day before filing will be a problem. These 12 other factors that can be considered in a hearing to determine fraud include:

- The timing between making the charges and filing.
- A sudden change in conditions like unexpectedly losing a job after the loan
- The amount of the charges made.
- The financial condition of the Debtor at the time the charges were made.
- Whether or not the charges were above the credit limit of the account.
- The employment status of the Debtor.
- The Debtor's prospects for employment.
- The financial sophistication of the Debtor.
- Whether or not there was a sudden change in the Debtor's buying habits.

- Whether or not the purchases were made for luxuries or whether payments were made after charging on the account.

5) Criminal Acts: Criminal Restitution and Intentional Injuries

A. Intentional injuries. The Tonya Harding problem. You intentionally assault or injure a person and then try to file a bankruptcy to get out of paying for the medical damages. Obviously, you can't intentionally rob a bank or assault a person and then ask the Court to help you out of it. However, you can list the debt and, if the person fails to object, it will be bankrupted anyway.

B. Criminal Acts or Criminal Restitution. Same idea as 5A: The judge ordered you to pay restitution after you stole from or intentionally hurt someone, and you try to bankrupt the criminal Court order. It doesn't work. (Well, it usually doesn't work. You can list the debt and, if the person fails to object, it will be bankrupted anyway.) Also, if you were ordered to pay restitution in a criminal Court, a bankruptcy will not stop a criminal Court judge from ordering you to pay anyway.

6) No Insurance and Drunken Driving Accidents. Same idea as 5A and 5B: They closed this loophole in 1994. You can't get drunk, drive, cause an accident, and then bankrupt the damages. However, if you get drunk, drive, cause an accident, try to bankrupt the debt, AND the person fails to file an objection to the bankruptcy, it may be bankrupted anyway. **A bankruptcy can also allow you to get a license back if you lost it due to unpaid accident damages. You can fax a copy of the filing to the driver's license department and get your license the same day you file your bankruptcy. You should never fail to list a debt the person often will fail to object on time and it will be discharged anyway.**

7) Marital Property Settlement Agreements. The Bankruptcy Court may look into an existing marriage settlement and may alter that agreement. . . . rarely very rarely. It is very rare that the Bankruptcy Court will allow you to redo your marriage settlement agreement, but it has happened. Normally, it requires looking at three main factors: Your ability to honor the marriage settlement agreement, how reasonable that agreement is, and the hardship it would create to your family if you had to honor it. Often what happens is that both ex-husband and ex-wife realize they are mutually bankrupt and both file.

The fact that your ex-wife or ex-husband was ordered to pay a bill in a divorce action, and has the responsibility for paying it, does not mean that he or she will pay it or will be forced to pay it. The Divorce Court normally only orders jail time for failure to pay alimony or child support for an underage child. **If a person lists the debt and their ex-spouse as a Creditor in their bankruptcy, he or she will have normally bankrupted the debt and the debt or settlement agreement obligation to their ex-spouse.**

If you have any of these non-dischargeable debts, you should discuss the possibility of having them bankrupted anyway with your Attorney. There are several exceptions to almost every

rule. **If you list a non-dischargeable debt and the Creditor fails to object, it may be discharged anyway.** If you don't list it you may have to pay additional fees later to add it. When in doubt, list the debt. That is one of the wonderful things about filing bankruptcy and listing ALL of your debts. **Look at the bottom of your 341 hearing notice and you will see that, if a Creditor wishes to object to your filing a bankruptcy against his debt, he must file his objection by a certain date. If no objection is filed by that date, the debt is often bankrupted anyway.** The Creditor must file an objection by the deadline or he is forever barred.

Debts for child support, alimony and government debts are not subject to the objection deadline rule. **However, if any other Creditor fails to file an objection, the debt may be discharged even though it is a "non-dischargeable" debt (as long as it occurred prior to discharge).** This is just one more reason why, even if the debt is non-dischargeable, we require you to list all debts.

What is a Chapter 7 and Chapter 13?

There are two basic types of personal (non-business) bankruptcy: Chapter 7 and Chapter 13. This section explains each of them and compares them to each other. For your own protection, please read about both types. You may think you need to file a Chapter 13, when in fact you could file a Chapter 7 and save thousands of dollars.

1.5. Chapter 7

Chapter 7 is the liquidation bankruptcy that 90% of our clients file. **If you properly file a Chapter 7, you will no longer have to repay your debts and your debts will be "discharged".** A discharge in bankruptcy will mean that you no longer personally owe the debts. However, property that you have given as security may be repossessed if you don't pay for it or co-signers may be required to pay the debt. **Nearly 100% percent of all Chapter 7 bankruptcies are granted.** Your goal in a Chapter 7 bankruptcy should be to "exempt" all of your assets so that you can keep all of your property and still wipe out all of your debts.

In a Chapter 7, you are allowed to keep a certain amount of property that is called exempted property. The bankruptcy court and creditors cannot take exempted property from you unless they have a lien or mortgage on it. In Kentucky, you are allowed to keep \$2500 equity in a car, \$3000 in personal property, \$5000 in a home, and a \$1000 wildcard exemption in any property that you choose. **NOTE: The exemption in Kentucky for real estate is only for the home you live in. The car exemption is only for one car per debtor. The homestead exemption cannot be used to protect rental property or other property you own but do not live in and each Debtor may exempt only one car with his 2500 dollar exemption.** You can still keep other cars but they will have to be exempted under your wildcard exemption or have no equity in them. Several other exemptions exist, under Kentucky Revised Statute 427, that allow you to keep tools of the trade, pensions, part of the funds from

Car	-		2,500 per spouse must be on title	
Car	-		2,500 per spouse must be on title	
Personal Injury case			7,500 per person	
Household goods	-		3,000 per spouse	
Bank account or Tax refund	-		1,000 per spouse Wildcard applied on any property	
Any Chapter 13 must equal the amount due to the Trustee in a Chapter 7!				

Exemptions are doubled if you are married because each person has his/her exemption but the title must be in a persons name to declare the exemption. Exempted property cannot be touched by a Creditor or the Bankruptcy Court.

A Chapter 7 can get rid of judicial liens where you have been sued and the Creditor has attached your home but it generally does not get rid of consensual liens unless they are preferential transfers where someone was given a lien for less than what it was worth just before you filed bankruptcy. (NOTE: If you need to file a separate adversary proceeding to recover garnished wages or attached bank accounts, we charge 33% of what we recover on motions to redeem judicial liens we charge 250 for the motion to remove a judicial lien (Fall 2002 prices). These cases are separate lawsuits.) Preferential transfers include when a relative is given property or mortgage on property just before filing bankruptcy or when a bank converts an unsecured debt to a secured one.

Property may be valued by the Debtor in a bankruptcy at its appraised, taxed, PVA, or liquidation value (which is what property would bring at an auction). Normally you should value property at auction, liquidation or wholesale value. You can redeem or buy back **personal property** from a lienholder, at wholesale value, by redeeming it. You cant redeem real property (homes). **For redemption purposes, cars and other personal property are appraised at liquidation (auction) value under section 722 of the code.** Redemption allows you to get your property free and clear by filing a Chapter 7 bankruptcy and paying the bank the liquidation value or auction value of the item (more on redemptions in Section 10.1).

The principle of a Chapter 7 bankruptcy is that the Debtor is allowed to keep a small amount of exempted property to start over with and his creditors keep the rest of the property. The Debtor hands over all other assets including any excess funds in

1. a checking account,
2. tax refund,
3. inheritances etc.

and is no longer held responsible for his debts. It is rare that any real assets are ever handed over in a Chapter 7 if it is properly planned. Most people do not have any assets to hand over after they are allowed to keep their exempted property. Normally, all the property that the Debtor has is mortgaged or has liens on it or it is exempted.

Over 95% of those who file bankruptcy in our office have no equity left in any property for the Bankruptcy Court to take. All their significant property is owned by a bank and the bankruptcy does not normally affect the bank's mortgages or liens on cars. If you have property that is mortgaged, you will have three choices: reaffirmation, redemption, or surrender (giving it back).

These options are explained in detail in Section 10.1. **A Chapter 7 does not protect co-signers and only protects joint property belonging to the Debtor while the Chapter 7 stay is in effect.**

You may only get one Chapter 7 discharge every 6 years. This time period runs from the date of discharge (when your case is over) to the date of the new filing. Many people say you can file bankruptcy only once every 7 years, but they are technically wrong. You may file more than one bankruptcy in 6 years, but you can only get one Chapter 7 discharge every 6 years. Often people file a Chapter 7 to get rid of their unsecured debts and then pay back their secured debts or prevent a foreclosure in a Chapter 13 filed right after that. **(NOTE: Legislation pending may limit you to filing only one bankruptcy case of any type every 10 years. We don't know when it will change)**

1.6. Chapter 13 THE Advantages of a 13...

The second type of bankruptcy for individuals is a Chapter 13 repayment plan. **In a Chapter 13, you must pay back Creditors, within five years, in full or in part to the best of your ability and as much as a Chapter 7 would have paid if there would have been a liquidation.** Kentucky requires that most plans repay at least 20% to the unsecured Creditors.

Other states may have lower repayment rates—the rate in Indiana can be as little as 10% and I have seen a 1% plan. Kentucky used to require plans to repay as much as 70% this was changed drastically in 2002 to the court allowing 20% and 30% repayment plans because proposed legislation will allow repayment plans as low as 20%. When the repayment plans required 70% and more over 90% of the plans failed. **But**, any Chapter 13 must always pay back at least as much as a Chapter 7 would have regardless of what state you are in. Each local district has it's own rules.

Chapter 13 plans operate very much like a bill consolidation loan, in that debts are consolidated into one monthly payment which is paid to a Trustee. The Trustee then pays the

Creditors. Certain debts such as attorney fees are given super priority and are paid absolutely first. (Hmm wonder what attorney thought that up nice idea). Then taxes and child support are given priority and are paid before the secured debts. After priority debts, secured debts are paid. The last debts to be paid are unsecured debts. A Trustee is an attorney appointed by the Court. He is not a judge, although he runs the 341 hearing in both Chapter 7 and 13 cases and will ask questions at the 341 hearing like a judge but it is more these “hearings” are actually more like a deposition. The trustee does not work for you. The Trustee is not your friend. He represents the banks and the Creditors that you owe. **The Trustee’s major job is to take property from you if he can.** Although you are required to tell the truth at the hearing, this is not the time to brag about how much your property is worth if it is worthless.

The 5 major benefits to a Chapter 13 are:

- 1. A Chapter 13 can be used to repay certain debts that a Chapter 7 cannot, such as taxes less than 3 years old and student loans.**
- 2. If you can’t finish the plan but you have repaid the majority of the Chapter 13 payments you can get a “hardship” discharge for having made most of the repayments as long as you have repaid what a 7 would have repaid. If your Chapter 13 is dismissed voluntarily or due to a willful violation of a court order you cannot refile another Chapter 13 for 6 months. However you can often convert your Chapter 13 to a 7. If it was dismissed involuntarily due to no fault of your own you can refile at any time.**
- 3. If you can’t finish the repayment a Chapter 13 can also be converted to a Chapter 7.**
- 4. A Chapter 13 protects co-signers, as long as the Chapter 13 pays the debt in full, and it allows you to keep property that you might otherwise have to turn over in a Chapter 7 liquidation bankruptcy. (A Chapter 7 does not protect co-signers and only protects joint property belonging to the Debtor while the Chapter 7 stay is in effect.)**
- 5. Chapter 13 is often used to stop foreclosures. Remember that 2 year rule on home loans??? You only have to repay the default on your home mortgage within 2 years in a Chapter 13. After just one year agency lenders (VA FHA HUD KHC) can refinance or finance your home mortgage at the prime rates even while you are in a Chapter 13 if you repay on time while you are in the Chapter 13. After 1 year of repaying your Chapter 13 on time you can pay off the 13 and refinance your home at rates as low as 6% to finish the Chapter 13.**

A stay is a Court order that goes into effect when you file the case. The stay orders Creditors not to take further collection action. In order to foreclose or repossess a bank must get

permission to foreclose or repossess property. If you fail to pay the regular monthly payments on your home or the payments into the Chapter 13 your case will be dismissed or the creditor will be given permission to foreclose or repossess their property. If your case was involuntarily dismissed and it was not for a willful violation of the court orders you can refile a Chapter 13 immediately. If your case was dismissed for a willful violation of court orders you must wait 6 months under 109(g). You can also convert a 13 into a Chapter 7 or apply for a hardship discharge if you have made most of your payments. It is a common strategy to file a 13 and then convert to a 7 if you can't file a 7 because it has been less than 6 years since you last filed a 7.

Filing a Chapter 13 will be reported to the IRS. If you have not filed taxes or paid taxes over the last few years, any tax debt you have will be added to your Chapter 13 repayment plan. In a Chapter 7, if you filed taxes properly and promptly, any income tax over 3 years old that you owe will be discharged. You must file your taxes up to date in order to have a Chapter 13.

If you file a Chapter 13, you will lose your tax returns to the repayment plan but your plan will be credited. Also if your income goes up or down the payments may be adjusted.

If you have filed a Chapter 7 within the last six years, a Chapter 13 is your only option. But, Chapter 13 cases are often converted to a Chapter 7 after time, when the Debtor cannot make the payments to the repayment plan or if the Debtor later wishes.

If you have so much income that a Chapter 13 could repay off 20-30% of your bills within five years, you will be required to file a Chapter 13. Years ago when plans that had to repay 70% of your debt over 95% of these failed. Since this has dropped to 20-30% Chapter 13 has become more popular and repaying them early by refinancing a home at 6% is becoming common. Even if people have the income to repay a plan, events often occur before the 5 years is up that make repayment impossible because you are not allowed to miss any payments. Debtors that don't refinance a home to pay off a Chapter 13 are often forced to convert their Chapter 13 plans into Chapter 7 plans later. If the majority of the payments have been made in the Chapter 13 and the person is unable to continue the plan, a hardship discharge may be granted as long as it has repaid what a 7 would have.

In a Chapter 13 plan you may be able to lower the interest rates being charged to you on certain loans (such as car loans), stretch out your payments, and still keep your property. A Chapter 13 will stop foreclosures, garnishments, and Creditor harassment.

If you file a Chapter 13, you partially repay unsecured debts and with no interest. In the past over 90 % of all Chapter 13 cases failed because the Debtor couldn't afford the Chapter 13 payments. For every \$6000 of debt, you will pay about \$75 a month to the Trustee in a five-year plan. **Chapter 13 cases are limited to cases with about \$1,250,000 (1.25 million) in debt but this amount increases each year.**

You may have heard of filing a Chapter 20: This is filing a Chapter 7 and then filing a Chapter 13 four-six months later to get the benefits of both Chapters. Many persons will first file a Chapter 7 case to get rid of unsecured debt and then file a Chapter 13 to pay only their secured Creditors or to stop a foreclosure. If you only file a Chapter 13 you have to repay your unsecured creditors in the Chapter 13. By filing a Chapter 7 first you get rid of the unsecured debts and lower your future Chapter 13 payments. **A Chapter 13 may be filed after a Chapter 7 in order to force a mortgage holder to accept payments and to stop a foreclosure.** Filing a Chapter 7 will temporarily stop a foreclosure for 1-3 months but it won't permanently stop a foreclosure. **If you file a Chapter 13 to stop a foreclosure in Kentucky, you must correct or cure any default or arrearage on your mortgage within 2 years of filing.**

Chapter 13 cases may normally be filed as often as they are needed and they are very useful if you have so much property that the property cannot be kept with the exemptions that you have. One major advantage of the Chapter 13 is that a person will often keep all of his or her property, no matter what the property is or how much equity the Debtor has in that property as long as their plan repays what a Chapter 7 would have paid. A repossession or voluntary surrender of collateral (for instance returning a car) is normally worse in its effects than filing a bankruptcy and it increases the time you will have to wait to get another home.

If you have negative equity in a home or a bad mortgage rate you may want to allow the home to go back in a foreclosure and live in it rent free while it is in foreclosure. You can save those mortgage payments up and then use them as a down payment later when you can finance a home. **If you let a home go back in a Chapter 7, it will take about 6 months to 2 years before you will have to move (due to the length of time it takes to foreclose and sell the house). After bankruptcy this time is spent rent free in your home while the foreclosure happens and you owe no deficiency! Then 2 years after the sale you can purchase a home at the current prime interest rate! (On 10/2002 the rate was as low as 5.25% with Kentucky Housing Corporation)**

If you don't file bankruptcy and your home is sold in foreclosure and the sale does not pay the debt, you will be sued for any remaining amount (deficiency). A foreclosure is worse than filing bankruptcy and surrendering it. In a foreclosure you owe the deficiency. Judgments can be on your record permanently because every time they attempt to collect it will be on your credit report for an additional 7 years. This can become an endless loop. But 10 years after you file bankruptcy there isn't a record of it on your credit report. If they keep trying to collect the judgment your record may never go away and you will never get a mortgage at a reasonable rate.

However if you file either a Chapter 7 or Chapter 13, you will be able to refinance to a low rate home mortgage 2 years after filing if there is no foreclosure and about 3 years after you file bankruptcy if you allow the home to go back in foreclosure. **If you make your payments on time during a Chapter 13 bankruptcy you can refinance within just 1-2 years.** Many

people use this as a method to pay off the Chapter 13 plan. However you are rarely told about that.

Attorneys, Trustees, and Creditors may try to coerce you into filing a Chapter 13 because they are paid more if you file a Chapter 13. Your Attorney should advise you to file the bankruptcy that is best for you. If he wants to file a Chapter 13, he should be able to explain why either you are required to file it or why it is best for you to file it. The only acceptable answer is that it is in your best interests. Too often, the only reason a Chapter 13 was filed is because it made the Attorney more money.

Attorneys just love to file Chapter 13 bankruptcies: They will bill at \$150 an hour for any additional work has to be done during the next five years that you are in a Chapter 13 plan. In a Chapter 13, you need to ask permission of the Court to buy or refinance a car or house during the next 5 years. When you ask for that permission, the Attorney will have to file a motion and will charge for that. If you need your plan payments lowered or to be given additional time, that will also cost you extra for his extra work. **Don't be talked into a Chapter 13 unless:**

1. **you would lose property**
2. **you have so much more income than expenses that you must file a 13**
3. **or there is some other valid reason such as the protection of a co-maker.**

If an Attorney claims that you will lose property, double-check to make sure that you can't exempt your car or home and keep it in a Chapter 7.

It only costs the filing fee of \$185 to start a Chapter 13 at my office. But, a Chapter 13—which looks to be the cheapest bankruptcy at first—may cost you many thousands of dollars more if you don't first file a Chapter 7 to first get rid of your unsecured debts. Don't be told by any Attorney that you don't pay the Attorney fee in a Chapter 13 or that the Court pays the Attorney fees for you. The Attorney fees are included in your repayment plan that you pay to the Court.

The average fee for a Chapter 7 is about \$500. The average fee for a Chapter 13 is about \$1200-1600 and there is very little additional work. A majority of all Chapter 13 bankruptcies fail simply because they are not properly planned or because people later become disabled or otherwise can't finish the repayment plans. Many are converted to Chapter 7 bankruptcies. With such high failure rates, even the judges and Attorneys didn't expect you to finish the payment plans when the plans required a 70% repayment. However now these 20% and 30% plans are often realistic and offer a cheaper repayment option than debt counseling.

The most common problems associated with Chapter 13's are:

- 1 Showing sufficient income to pay the Chapter 13 payments,

- 2 Proposing a plan that must pay an amount at least equal to what a Chapter 7 would have
- 3 It's high failure from later becoming ill or disabled and not being able to complete the repayment
- 4 The time it takes, 3-5 years to complete and how it will be on your credit record for up to 5 years while you finish the bankruptcy repayment plan when a Chapter 7 is over in 4 months. However with people commonly paying off Chapter 13 plans now with home mortgages at 6% this is becoming more popular.
- 5 Higher costs including attorney fees and loss of income tax refunds
- 6 Having the court involved in your life. If you need to buy a car or home or financing one within the next 5 years you will need your attorney to apply for permission.

When Should I not File a 13?

In most cases, you want to file a Chapter 7 because it immediately eliminates your debts and you get the bankruptcy over with in 3-4 months with less cost. Because a Chapter 13 bankruptcy lasts up to 5 years and requires repayment, it will be more of a burden to you. During this time, if you want to buy a car or a home or apply for additional debt you have to ask permission from the Court. **You will lose your tax refunds to pay the Chapter 13 plan... but it is credited to your repayment.** If you are unable to pay your debts presently, it is unlikely that you can pay a Chapter 13 plan. A majority of all Chapter 13 cases do fail and are converted to Chapter 7 cases. But, in a few situations, a Chapter 13 is a good solution. For instance, Chapter 13 can protect co-signers better, stop foreclosures as long as the arrearage is paid within 2 years and it can be used to repay and discharge many debts that otherwise would be non dischargeable such as: 1) child support arrearages 2) non dischargeable taxes 3) student loans.

Chain filing is the abuse of filing a Chapter 13 to save a house or car and making just a few payments and having the Chapter 13 eventually dismissed (which takes about a year) and then filing another chapter 13 shortly after the first one is dismissed. In one case I saw one man keep a home for 7 years from foreclosure repeatedly filing one Chapter 13 after another. Although you have to wait 6 years after a Chapter 7 discharge to file another Chapter 7 you can file Chapter 13 cases one after another with little or no time limits. Chain filing can keep a home or car out of repossession or foreclosure for 3, 4, 5, 6 or 7 even 10 years nearly rent free simply for the cost of a couple of Chapter 13 payments. Chain filing is not having the intention of making the full repayment in a Chapter 13 but stalling a foreclosure for about a year by just

filing and making a couple of payments. Eventually the Court and the bank realize what you are doing after 3 or 4 or 5 filings and refuse to let you file any further. This can be a sweet revenge on the Debtor's part against a predatory mortgage creditor so that the Debtor can have several years of free rent. Eventually this loophole will be closed by future legislation.

There are times to use a Chapter 13 as a tool to stop a foreclosure or to protect a co-maker. But it is important that if you are going to file a Chapter 13, you should at least think about first filing a Chapter 7 to get rid of those unsecured debts that may make it impossible to afford a Chapter 13 debt repayment plan. Since Kentucky changed Chapter 13 plans to allow 20-30% plans more Chapter 13's are being filed and there is less need to resort to first filing a 13. In the past over 95% of the Chapter 13 cases failed after a few years of the Debtor struggling to repay high 70% repayments but this has changed.

You will have to ask the Court for permission to borrow or purchase any major items while you are in a Chapter 13. This will earn your attorney additional fees. You will be required to turn over your tax refunds to pay Creditors and if you fall more than two payments behind, your case will be dismissed.

A Chapter 7 may do less damage to your credit than a Chapter 13, not more, and it normally repairs your credit more quickly. However a Chapter 7 will only temporarily stop a foreclosure. A person that finishes a Chapter 7 bankruptcy will spend about 2-3 years to reestablish his credit before he can buy a home from FHA or other prime lenders. If the same person files a Chapter 13 he may now be able to buy or refinance a home within 1 year after he files if he pays his Chapter 13 on time perfectly.

There are times that filing a Chapter 13 is right for you and times that it isn't. Never file a Chapter 13 just to make your Attorney the extra money. Your credit will generally be much better, much sooner, with less effort and less costs, if you file a Chapter 7. If an Attorney says that it is your moral duty, or that your credit will be better if you file a Chapter 13 than if you file a Chapter 7, neither of these things is true. Chances are he is thinking of his higher fees, not your best interests.

Legislation that may be passed in 2003 may require that anyone who makes much more than minimum wage to file a Chapter 13. There are many other changes that may happen to the bankruptcy law in 2002. That is why there was a rush to file in 2001. However the basic law will not change.

Questions I should ask and other debt Tactics?

These are just a few questions that you may want to ask yourself so that you can properly plan your bankruptcy along with a few of the answers to the questions.

1. **Do you expect an inheritance within the next year or could I get a tax refund within a couple of months?** Bankruptcy property includes not only the property you

have at the time of filing but sometimes property that you may acquire or get later. You are allowed enough property to start over but no more. Inheritances, tax refunds, lottery tickets and personal injury lawsuits are especially property that the court looks at although you don't have the money the day of filing.

2. **Do you expect to have major medical expenses within the next year?** Maybe you want to wait until after you have these expenses to file or if they were from an auto accident you may want to reconsider filing this may be an asset if you have a lawsuit pending against the doctor or person that hit you.
3. **Have you paid a creditor more than the normal monthly payment or paid someone close to you anything within the last year?** This is a preferential transfer which may be avoided by the court and that person may have to pay the court back. Preferential transfers are when anyone gets something for less than its fair market value just before filing. **This includes giving a mortgage to an unsecured creditor or paying him off just before filing. DON'T DO IT!**
4. **Do you have child support alimony or is there a pending dissolution of marriage?** You may be able to avoid paying your marital debts or a marriage settlement agreement. However overdue alimony and child support can only be repaid in a Chapter 13.
5. **Do you owe student loans taxes or did you go crazy and charge up your credit cards just before filing?** Some debts like taxes are dischargeable if you wait the proper period of time. Student loans may be dischargeable under a hardship discharge. Also if you charged up your credit cards just before filing they won't be dischargeable unless you wait 90 or more days and such charges are looked at as fraud.
6. **Are you unable to keep payments current on secured property?** If so a Chapter 13 is never the long term answer you will eventually lose property you can't keep up the payments on. You will eventually have to file a Chapter 7 or repay the deficiency.
7. **Do you have regular income or valuable non exempt assets?** If you have regular income you may have to file a Chapter 13 unless your expenses exceed your income. If you have valuable assets that you cant exempt you may have to file a Chapter 13 or lose them.
8. **Are you able to produce a list of your debts and financial records?** You need to know who you owe how much you owe and the addresses of your debts. Fail to list a debt or tell your attorney about it and you may have to pay it. You may also have to provide bank and tax records and copies of deeds mortgages and titles.
9. **Have you filed bankruptcy within the last 6 years or had a prior bankruptcy discharge denied.** OOOOPS you may not be able to file a Chapter 7 just yet then.

10. **Have you sold property and not paid the lender or obtained a loan by fraud such as overvaluing assets or giving property as security that you don't own?** If so you may not be able to obtain a discharge but such a lawsuit against you is hard to prove and win.

There are other Debt elimination tactics!

Debt Consolidation Debt Consolidation for Homeowners and Home Equity Loans

If you have good credit (the last 12 months on time) you might get a low rate debt consolidation loan or refinance a mortgage at the prime interest rate (11/02 under 6%). If you can refinance at a lower rate you might even lower your house payment. If you have good or perfect credit and you want to see if you can get a Kentucky Housing Loan or a prime rate mortgage [GO HERE!](#)

However, most Debt Consolidation programs are scams by predatory lenders to get you to sign for high rate loans. If you have been turned down and some company claims that they can get even bad credit applicants approved you are probably dealing with a crook or a sub prime lender that is a predatory lender. **Never refinance a home to consolidate debt unless you go to a lower interest rate or you will lose your house. Period!**

Debt Negotiation

It is possible to pay off your debts at 50-60 cents on the dollar! However debt negotiation and “counseling programs” normally keep about 20% of the 50% for themselves and you still have bad credit at least as bad as a bankruptcy. Yecch! Some people have paid “counseling programs” and nothing was paid to the credit cards but the counseling program filed bankruptcy.

Documents You Need To File a Bankruptcy

This information applies if you choose us as your Attorney. Other Attorneys may request other documentation.

When you come to your initial bankruptcy consultation session with us, please bring **at least** a list of your bills with complete and accurate addresses and amounts for each and every debt. Also, please bring a paycheck stub with your correct name, address, and social security number to help us prepare an accurate budget. If you want, we can send you a questionnaire—or you can download it from the “Court forms” page of our website. It will speed up your bankruptcy filing, and save you time and trouble, if you e-mail or fax the questionnaire (and a paycheck stub) to us before you come for your appointment. If you can't send the questionnaire first, that is not a problem: but, if you can, we will have almost all your bankruptcy paperwork prepared when you come.

If your bankruptcy is to be filed in the Eastern District of Kentucky which is the Lexington or Frankfort area, the Trustee demands a copy of your last six months of bank statements, a copy of your tax returns for this and the last 2 years, copies of any titles deeds and mortgages, and a copy of any car or vehicle titles. You must supply a copy of the mortgage and deed time stamped at the court house. We have to have these documents before we can file your bankruptcy. If your bankruptcy is in Louisville or Indiana, you are not required to submit these documents to the court to file but the Trustee may ask for any of these documents later and your case will be dismissed if you don't supply them

NOTE: Please bring proof of full coverage insurance on your car to your 341 hearing also you will need a photo ID and a social security card or proof of your social security number such as a W-2 or a pay stub to get into the building and prove your identity at the hearing.

How to Keep Property Your EXEMPTIONS

There are only a few ways you can keep property when you file a Chapter 7 bankruptcy. The type of property is very important: For example, you can't keep \$5000 dollars in a bank account, but you can buy a house and have \$5000 in equity in that home.

In order to keep property in a Chapter 7 bankruptcy, you have to apply exemptions against it. (Information on exemptions and what property you can keep is provided in later on in Section 10.) To reduce your equity in the property to a lower amount you can use several methods:

- Sell or spend part or all of the property that can't be saved. (Withdraw 2500 from an account and purchase a 2500 car or use the proceeds to take a vacation).
- Mortgage property (borrow against an asset to use up equity). (However the problem is that the money you borrow is now an asset and that may become a preferential transfer or an asset if that money is not used or changed into an exempted asset)
- Exempt the property (find and use an exemption to protect property from the Court).
- Convert non-exempted property into exempted property (change the type of property, such as selling your second car and investing the proceeds into a retirement fund that is 100% exempt and much later file bankruptcy).

There are many ways to plan your bankruptcy so that you can keep or convert assets and destroy debts. That planning includes timing issues. For instance, filing on time and waiting until your income tax debts are 3 years old allows you to bankrupt your income tax debts. There is nothing wrong with making these plans for your taxes or bankruptcy. Almost the only mistake you can make is not disclosing and truthfully telling about all of your assets debts and transactions. You can tell a Trustee yes I spent it, but you can go to prison for lying and failing to disclose an asset.

It is illegal not to list assets or to give assets away just before filing and then not disclose a transfer. In order to keep your assets, we are happy to work with you to plan your bankruptcy so that you discharge the maximum amount of your debts and keep most of your property. However, in some very rare cases it may be required that some small assets are turned over to the Court to avoid thousands of dollars in debt. In 2001 the only assets our clients ever had to turn over to the court were a couple of income tax refunds.

The Bankruptcy Court in Kentucky has hired attorneys and CPA's to look over the accuracy of your petition and **if your house is valued lower than 80% percent of the PVA (property tax evaluation) of your home the value may be questioned.** In Louisville you can obtain your PVA value at www.pvalouky.org or you will find it on your tax bill. Your car should be valued at the Kelly Blue Book trade in value listed at (<http://www.kbb.com/>) and **if it is valued at less than 80% of it's trade in value it may also be questioned.** Normally you should value your house at it's PVA value but a lower quick sale value can be used. There is a Black Book Value for auto auction value.

This doesn't mean that you can't value a car at less than the Kelly Blue book value or homes at less than PVA value it only means that you may be asked why it is so low in value and that you should explain the low value in your petition. You should explain that the car has excess mileage or a blown engine or that the house has termite or other damages which lowers its value below 80% of the PVA value. In valuing your property you should value it at the price it would bring for a quick sale or auction and not the fair market value where you would take months to sell an item. There is a range for a fair valuation of property and if the Trustee had to sell any item he would normally not get the highest retail value and he would normally only get the value an item would get at a quick sale such as the trade in or auction value. It is important to not under or over value property above what the Trustee would get so that the Trustee can have an accurate picture of what the property will bring in a quick sale.

Here are the Kentucky and Indiana Exemptions most of the other state exemptions are in the appendix:

In general, a debtor may keep his property by claiming exemptions of his homestead and certain personal property from attachment and execution of a judgment, or in a bankruptcy proceeding. The Kentucky statutes permit exemption of a debtor's real and personal property **which are used by the debtor and his family as a residence** in the aggregate value of \$5,000.00. In other words the bankruptcy court will not touch your home if you have less than 5,000 in equity (10,000 if married and both are on the deed). Items of personal property which may be exempt include clothing, household furniture and furnishings not to exceed \$3,000.00 in value. You may also exempt tools, equipment and livestock not exceeding \$3,000.00 in value. You may exempt up to 2,500 in equity in a car or motor vehicle and its necessary accessories not exceeding in aggregate \$2,500.00 in value. (KRS 427.010) In addition, a debtor may be entitled to exemption of awards under a crime victim's reparation law, and a certain portion of recovery from wrongful death or personal injury actions up to 7,5000 and 15,000 per couple if both are injured. You may exempt and keep pensions, retirement benefits, (KRS 427.150) up

to an unlimited amount. And you have a general exemption not to exceed \$1,000.00 in value to be applied toward any property (normally this exemption is used for taxes wages due to the debtor or bank accounts) when you file for bankruptcy. (KRS 427.160) If you plan your bankruptcy it is unusual to lose anything because the exemptions permit you to keep almost everything in a Chapter 7 that most people have.

There are both state and federal exemptions but in Kentucky a debtor must use the state exemptions and he is not permitted to use the federal exemptions, (KRS 427.170.) (K.S.A. 60-2312) even though the federal exemptions may be more beneficial in his situation.

Indiana has a 7,500 limit on the property that can be kept but it can be in any form.

1.7. Can YOU KEEP THE MONEY FROM Lawsuits and other property?

If you have a personal injury lawsuit you are allowed to keep up to 7,500 of the proceeds from that lawsuit for your bodily injuries. However you are not allowed to keep any recovery for pain and suffering or mental distress. In order to keep 7,500 it must be for your actual losses (disability or future wage earning ability) not emotional suffering. **You must also list the lawsuit in your petition or you lose the asset and perhaps your bankruptcy may be dismissed for fraud.** You only have the right to keep property that you list in your bankruptcy schedules. What happens is that you list the lawsuit as an asset and then you exempt it so that you can keep your 7,500 interest in the lawsuit. The Trustee gets the rest of any interest in the lawsuit to pay your debts. If there is anything above the amount to pay your debts you will normally receive it.

Technically the Trustee can take over a personal injury case and the case belongs to him after you file a Chapter 7 bankruptcy. However if you have listed the case in your schedules and if your personal injury attorney contacts him and asks the Trustee properly for permission to finish a case your attorney may easily still be able to finish the case collect his fee and still provide for you 7,500 of the final settlement.

By statute you cannot keep the proceeds of a personal injury case or any other asset unless you list the property. If you don't list ityou can't claim it and if you don't list it you technically may not even own it even if the Trustee abandons it. If you don't list the lawsuit you don't even have the right (standing) to file the lawsuit or collect later. But if you do list it and the trustee abandons the asset you keep the entire lawsuit proceeds. If your lawsuit is for a workers compensation or social security claim you are allowed to keep all of the proceeds but you must still list it as an asset.

When you have any asset you are required to declare it and list it in your schedules and the penalties for not listing it can include:

1. a denial of your discharge (you continue to owe everyone),
2. a denial of the exemption (you lose the property even though you may have had an exemption that allowed you to keep it) or
3. Perjury (criminal charges 1-5 in prison for fraud).

1.8. What about Mortgaged Property?

If you have property that is mortgaged, or that has a consensual lien on it, you have three alternatives:

1) Surrender. In a Chapter 7 bankruptcy you can often give the property back and owe nothing. This is a good option when

- the payment is unaffordable,
- you owe more for the property than it is worth, or
- The property is in poor condition or is worthless and you want to return it.

2) Reaffirmation. You may sign a reaffirmation agreement to pay all or part of the amount owed for the property. You can negotiate the reaffirmation with some Creditors: You may be able to get lower payments, reduced interest, reduced overall amount or a longer term to repay. This is a good option when you owe less than the property is worth and the property is in good operating condition. You may have to catch up your payments in order to reaffirm, and a credit union may not agree to allow you to keep the property unless you also reaffirm with other loans. In such cases, you may want to consider redemption (see number 3).

In negotiating a reaffirmation agreement, you should consider whether you really need the item and what it is really worth. Establish a maximum value that you would pay for the property, and then offer that amount or less to the Creditor in reaffirmation. You may want to bargain for the value of the property, the total amount to repay, or the monthly payment amount in a reaffirmation or redemption. Home mortgage companies and banks negotiate very little. Finance companies negotiate a lot. If you do reaffirm a debt and you find that you are unable to make the payments, you may revoke your reaffirmation. You have 60 days after you sign the agreement, but no later than your discharge date, to back out of your reaffirmation. You must communicate your revocation before that date and it is best to send your revocation by certified mail and file a revocation with the court.

We rarely advise a client to reaffirm a note or unsecured loan, and we almost always advise against reaffirming an unsecured debt unless it is co-signed.

3) Redemption. You may redeem the property and pay the liquidation value of the item. In 1978, the Bankruptcy Code was revised and included section 722, the right to redeem from a

lien Creditor tangible, personal property intended to be used by the Debtor primarily for family, household, or personal purposes. Under prior law if a Debtor wanted to keep items, he or she would be at the mercy of the lien Creditor and he could only reaffirm or surrender. By enacting section 722, Congress intended to give the Debtors a way to avoid the high replacement costs they would otherwise suffer from repossession. To exercise the right, the Debtor pays the lien Creditor the fair value (the auction or liquidation value) of the item. Case law now says that this is the liquidation value the Creditor would have gotten at auction. Kelly Blue Book gives the trade in value and the Auction value is in a secret book called the black book value on the internet.

This is a very good option when you owe more than the property is worth and the property is in good condition. The problem with redemption is that you must pay the liquidation value of the property in a single lump cash payment, which can be difficult for people who are in bankruptcy. Redemption can be used for a mobile home, auto, or any item of personal property. You cannot redeem real estate. With real estate you can let it go into foreclosure and then purchase it at the foreclosure sale. It often takes 6 months to 2 years for a foreclosure sale to happen. People often live in their home for up to a year rent free until the date it is sold saving up for their next home.

Doing a redemption in the Eastern District of Kentucky can require a hearing. If it requires a hearing the Eastern District requires you to hire an expert witness to value the car. This makes redemptions far more expensive and difficult in that part of Kentucky. Doing redemptions in the Western District is much easier and normally doesn't require an expert witness. Every Bankruptcy District has individual rules and the rules are strict in the Eastern District. This is why it costs much more to file in the Eastern District if you claim you live there. At times the added costs and work will cause you to lose your case or property. That is why some people come to Louisville and file here.

If the property is a vehicle, a company called 722 Redemption Funding may be able to help you finance the redemption or purchase a new car. See the next section for more information.

1.9. How 722 Redemption Funding Can Help You Keep Your Car or Find a New One

722 Redemption Funding may help you to redeem if it is less than 7 years old and has less than 100,000 miles. They also finance vehicles for people that have filed bankruptcy. Their phone number is 1-888-721-2800. This can be useful to you if

- You are behind on payments and the bank requires you to catch up or surrender,
- Your payments are too high or need to be on a different date,
- You owe more than the car's value,

- You would owe the Trustee, or
- You have second mortgages or loans on the vehicle.

If any of these 5 conditions apply to you, you might want to consider contacting 722 Redemption Funding. You will need a stable job, stable residence history, enough income, and no (or very few) prior repossessions. A repo makes borrowing very difficult. Even 722 with their 21% rate and liberal lending will deny a person that has a couple of repossessions. Normally 722 will lend if you have a stable job or residence. Also doing a redemption in the Eastern District of Kentucky is much harder

Some people purchase a car home or refinance just before filing bankruptcy if their credit is still good at the time that they file. If you want to borrow for a home or a car and you have good credit presently you can borrow and purchase a car prior to filing and then reaffirm and pay the debt.

For those with very poor credit the best thing is to pay on a secured debt on time after you have filed for 2 years and then you will be able to buy a car with a good price and rate after the bankruptcy is old news. As time goes on old credit history will drop off and your new good repayment habits will create a good credit file.

As an example of redemption, if you owe \$15,000 on a car worth \$10,000 at retail and 6,000 at wholesale, you do have the choice of paying \$6,000 in cash and redeeming it or buying a car on the lot at 10,000. Since you probably don't have the \$6,000, 722 Redemption Funding will lend you money to redeem the car. By redeeming the car you saved \$9000. However, 722 will charge about 21% in interest (about the same as some bank rates to high-risk individuals). If this interest rate is about what your old rate was, you would still save about \$7000 dollars. You can still save money with a higher interest rate if you save enough on the principle.

Of course, you may not want to keep your old car if it is a lemon or a clunker and about to die. Want a better car? 722 Redemption Funding may also be able to arrange with local car dealers to sell you a car at wholesale and help you finance the car. They offer a better alternative than a "buy here-pay here" lot, and, through them, you will rebuild your credit with FirstStar Bank. Most "buy here-pay here" lots purchase the cars for 1/3 to 1/5 of the sticker price, and the down payment they charge you is equal to the amount they paid for the car, and the interest rate is about 30%. The cars that 722 finances are generally less than 5 years old, will be sold to you at the wholesale book price, and will have low miles to meet their standards for financing.

The benefits to using 722 Redemption Funding includes:

- The ability to redeem a vehicle and pay the liquidation value only—not what you owe for it.
- No car payments for a couple of months. In a reaffirmation, the bank may ask you to

catch up payments. It can leave you short on cash when you're paying for the bankruptcy and paying to catch up car payments.

- The opportunity to reestablish your credit with the 13th largest bank in America and to have bank credit.
- If you have a lemon auto and use their services to buy a new car, the ability to buy a late model car at wholesale.
- In some cases, the ability to lower your car payments or the number of payments.

1.10. What If You No Longer Have the Property?

You may no longer possess the property that has a lien. It may have worn out, been stolen, been destroyed by fire, or no longer exist due to some other cause that is no fault of your own. If it no longer exists, and it is not your fault, you are not responsible for it. **If you have sold, pawned, or given the property away, you will be liable for the amount you received for the property or what it is worth.** Creditors at the 341 hearing may try to get you to say that you sold, pawned, or gave away property in order to make you responsible for the debt.

1.11. Judicial Liens, Wage and Bank Garnishments, and Repos Foreclosures and Preferential Transfers

If you have been sued, you may have judicial liens on your real property that we can avoid. We cannot know if you have these judicial liens unless you have a title check done and/or tell us about the liens. We can get rid of these judicial liens if and only if you tell us about them: If you do not tell us about them, we will not be able to avoid them. If we do not get rid of them, you will still have these liens on your home after you have filed your bankruptcy. If you choose to take this risk, you may be forced to pay for the judicial lien in order to keep your property. If you wish to check for these

judicial liens on your property, you may have a title check done through Pioneer Title for \$100.

You should do a title check if you have any reason to believe you may have a judgment against you and you own real property that may have a judicial lien on it.

We do charge small fees if you need to file motions or proceedings to redeem property or to avoid liens on real property (such motions are not included in the fees charged by us in filing an uncontested bankruptcy). Removing judicial liens requires an additional motion and involves more legal work than a standard uncontested bankruptcy. There are no Court costs for this motion. A bankruptcy can get rid of a judicial lien (such as a lien resulting from a lawsuit or a tax lien), but you must ask us to remove any lien before the bankruptcy is discharged and give us a copy of any such lien, your deed, and an appraisal. (NOTE: If you need to file a separate adversary proceeding to recover garnished wages or attached bank accounts, we charge 33% of what we recover. On motions to redeem judicial liens we charge 250 for the motion to remove a judicial lien (Fall 2002 prices). These cases are separate lawsuits from your

bankruptcy.).

Often finance companies take out liens on your furniture. If you read the start of this book you read something about a **non purchase money security interest**. When a finance company takes out a loan and secures it with your household goods (furniture and personal items) it is called a non purchase money security interest. You can avoid these **NPMSI** liens under the bankruptcy code **if you have not taken out the loan within 90 days of filing bankruptcy or if you have not gotten additional funds from the finance company or refinanced the household goods loan within 90 days of filing bankruptcy.** If you have refinanced these goods you may want to wait a few days. . Household good liens should be avoided in your bankruptcy. But you have to tell us about it for us to know about it and to avoid the lien. Even if you do not file a motion to avoid a household goods lien it is rare and almost unheard of that a company will repossess household goods if you tell them they must get a court order first. Of course they will repossess household goods if you voluntarily give it to them, but if they have to pay attorney fees and court costs to get the furniture they will almost always give up and let you keep it.

Most of the threats of repossession of household goods are bluffs and illegal threats. In order to legally repossess a car or other property **a creditor can not breach the peace**. This means that if they really want to get the property you can force them to get a court order. You can call the police and have them ordered off you land and even put in jail if they fail to leave. If a creditor (or repo man) uses threats to attempt to get property you should record it, get witnesses and call the police. They have no legal right to get property unless they can do it without breaching the peace. Sneaking and stealing the car in the middle of the night from where you parked it in the street is legal. Threatening you or forcing themselves inside a home or garage is a lawsuit against the repo man and the bank.

You must file a motion to avoid a lien before the bankruptcy is final and discharged or the lien will remain. If the bankruptcy is final, you will have additional Court costs and Attorney fees to refile or reopen your case to avoid any lien if it can be done. If you file a motion to avoid a real estate lien, you may need to have an appraisal of the property done.

A bankruptcy will also stop garnishments of bank accounts and wages. But, if you wait so long that a wage attachment takes money out of your paycheck, it is tough or impossible to get the money back.

A bankruptcy does not normally get rid of consensual liens (mortgages and car title loans where you agreed to give someone a lien), but a consensual lien on a car or mobile home can be removed by redeeming the property (see Section 10.1). The reason that a household goods lien can be avoided in Bankruptcy court is because it is an illegal and unfair trade practice that was outlawed by the government over 20 years ago but finance companies still use it as a tactic to scare people into paying. See *In Re Raymond* 103 B.R. 846 (Baker W.D. Ky 1989) see also FTC regulation 16 849 CFR ch 1 § 444

In a Chapter 7, the lender is entitled to apply to the Court for permission to go forward with the foreclosure. So, in a Chapter 7, although your debt may be discharged, a secured lender will be able to get collateral back if you don't pay for it. A Chapter 7 only removes your responsibility for a debt: It normally doesn't remove a lien or mortgage unless it is a judicial lien.

In a Chapter 13, however, you will be able to keep the house and stop a foreclosure, just by catching up the payments within 2 years. Often people file a Chapter 7 and then file a Chapter 13 to get rid of the unsecured debt first and then file quickly enough to avoid foreclosure but to not have to pay any of the unsecured debts in their Chapter 13.

The purpose of the bankruptcy is not just to protect you. Its purpose is also to stop the grabbing of the debtor's assets and property by creditors. It is inherently unfair for MasterCard to get paid in full but child support claims to be paid nothing simply because MasterCard grabbed your assets first. It is also unfair for you to give property away to a relative or friend and then claim bankruptcy and later perhaps have it given back to you.

This type of transfer is a **fraudulent transfer**. Remember that at the moment of filing a bankruptcy the Trustee owns all of the debtor's property that is not exempt. A fraudulent transfer is any transfer made with the intent to hinder delay or defraud the trustee or where the debtor received less than the reasonably equal value while he was insolvent. The Court may go back up to one year to undo a fraudulent transfer. The court has the power to get property back or deny a bankruptcy for a fraudulent transfer and for preferential transfers. You may spend property or you may convert property in the normal course of business but you must not hide or transfer assets for less than "fair market value".

Transfers to an insider within a year or a creditor for less than "fair market value" within 90 days before filing are called "**preferential transfers**". A Chapter 7 can normally get rid of a judicial lien and sometimes even a consensual lien such as a mortgage, if the lien was not given for fair market value or if it was a preferential transfer. Preferential transfers include granting an unsecured Creditor a lien or mortgage on property shortly before filing. It also includes attachments, garnishments, or gifts done up to 90 days before filing because of a presumption that you were bankruptcy 90 days before filing. Preferential transfers can only be recovered if it is more than \$600. Examples of preferential transfers are:

- 1 Giving a car to mom before filing
- 2 Paying off a creditor just before filing
- 3 A creditor that garnishes over 600 dollars in wages or from a bank account
- 4 Selling a car worth 5000 to a friend for 500

The debtor's property is assumed to be all of his property at the time of filing. In addition it includes any inheritance or tax refund due to him at the time of filing or received within 180 days after filing. Tax refunds and money in your bank account are the two most common assets that

you normally lose. It doesn't matter that you had checks outstanding. The trustee owns what you have in the bank at the time of filing. (Of course you may use the 1000 dollar wild card exemption to keep some money or some of a tax refund. But if you have 10,000 in the bank when you file it doesn't matter that you had a 10,000 dollar check outstanding). The debtor is allowed to keep most of his property through legal exemptions. However the remainder belongs to the court and the trustee who will divide that remaining property to the debtors in an "orderly distribution". In a Chapter 7 bankruptcy, it is very rare for there to be property left over for division.

The debtor is assumed to be bankrupt for 90 day before filing and any attachment or gift over 600 dollars by him during that time is avoidable by the court or the trustee. The Trustee rarely looks back more than 6 months and normally not more than 90 days. Gifts to family, friends and business associates are preferential transfers to an insider. Insider transfers have an up to one year rule. If you give property to an insider for less than its fair market value within one year before filing the bankruptcy court may go back after that property. A single gift from a father to a daughter of \$5,000 is an avoidable preferential transfer. However, 10 gifts of \$500, done in 10 separate transactions to 10 children, are completely legal. If a transfer of the Debtor's assets is more than \$600, a 506 motion, 522 (f) motion, cram-down motion, or adversary lawsuit may be filed to avoid that preferential transfer.

An Example of Bankruptcy Strategy

This is a fictional example of bankruptcy planning and strategy taken from two true stories. James X had a 150,000 dollar house. He used to be able to afford his credit cards but his wife became disabled and now he is close to losing his home. The home has a 100,000 dollar mortgage and James has 100,000 in credit card debt. However at this point James was still up to date on all of his debts. The interest rates on the cards are close to 21% and he can barely pay the interest on the cards. At 21% they double every 3 years. Because he has 50,000 in equity he can't file a Chapter 7 bankruptcy without losing his home. His only initial choices are to file a Chapter 7 and let his home go to the bankruptcy court or to file a chapter 13 and repay at least 70,000 dollars to the bankruptcy court over the next 5 years at over 1300 per month. If he misses one payment in his 13 he will be tossed out of court.

James also owes 20,000 on his 2000 GMC Truck to Ford Motor Credit, but it is only worth 10,000. James also has two old junk cars a 1992 Firebird and a 1990 Jeep Cherokee that barely run. Both are worth only 200 but he owes 3000 on each to his bank.

However, with a little planning he refinances his 9% mortgage and gets a 6% mortgage with 40,000 dollars for home repairs. He replaces his roof, driveway, furnace and purchases siding for his home doing only overdue maintenance on his possessions. He also replaces the air conditioner, seats, carpet, engine, transmission and tires on his 12 year old Firebird and Jeep Grand Cherokee with the 40,000 making them like new. Three months later he files bankruptcy and he keeps his house and he redeems his car for 200 dollars and his Jeep for 200 dollars

which is the wholesale book value. The 100,000 in credit card debt is gone with no monthly payments and no Chapter 13. The GMC truck goes back.

James no longer has any car payments. He lowered his monthly house payment and may even owe less in the long run on his home. There was nothing illegal about any of what he did. James simply planned his bankruptcy instead of letting it happen to him. An even better example is in our next section on mortgages

Mortgages and Getting a low rate loan

Let a bad home go back but make money off it

Even if you think this section doesn't apply to you..... if you are buying your home or plan to buy a home at some time read this section completely. If you don't plan on ever buying a home skip this section and go on. Bad mortgages and credit cards are the two most common reasons for filing bankruptcy.

There are two types of mortgage lenders: Prime banks and Sub-Prime banks. Prime banks are banks that lend to you because you have the ability to repay. They lend at low interest rates as class A loans. Prime mortgages are presently (in 2003) at about 6% for home loans. Included with this are government programs such as first time homebuyers which can have even lower rates or special terms such as assisting you with up to 20,000 down on your home.

Prime lenders will lend to you at the lowest rates within 2 years after filing a bankruptcy **if you have paid your payments for the last year on time** because government regulations require them to ignore the bankruptcy and lend to at their normal rates 2 years after filing a bankruptcy if a foreclosure was involved it becomes 3 years. If you have a history of making your payments on time for the last 2 years you can even obtain these loans while you are in a Chapter 13 bankruptcy. My wife Nancy is a prime lender for these government loans. We often work together to either get clients a low rate mortgage and avoid bankruptcy or get a low rate loan after you have filed.

Sub-Prime banks are called equity lenders. They often offer to "help" to keep you from filing bankruptcy by paying off and consolidating your debts. They actually steal your home. They lend at 9, 10, 11% interest or more. **Some of these equity loans are at as high as 26% interest.** They charge high origination closing and broker fees that become part of the loans. These lenders often use unfair trade practices, like flipping and packing, over insuring to increase their income. They also charge higher points, upfront fees, prepayment penalties and charges. Predatory lenders normally don't keep the loan. Instead predatory lenders sell it to other lenders. They lend to you based only on the equity in your home not your ability to repay. They intend to repo your home in order to be repaid. They also often inflate appraisals. If you borrow from them after you file bankruptcy they will claim to you that since you filed bankruptcy that you have to pay their higher rates. They "forget" to tell you that if you will just

wait 2 years after your bankruptcy discharge and pay on time that you can save thousands and get lower rates.

If you can't pay your debts, getting a high rate second mortgage is not the answer. If you borrow from one of these predatory lenders and you can't pay your mortgage and debts after refinancing you will normally lose your home and still have to file bankruptcy. **Never refinance while your credit is poor** you will normally go from owning on a Class A home mortgage rate at 6-7% to owing on home at 11% and as high as 26% mortgage rates for B and C mortgages. Predatory lenders make thousands off you by promising a "solution to bankruptcy" while the lender steals your home equity with hidden packing costs, prepayment penalties, flipping, high closing costs or other fees that are hidden in the loan and other items.

Some mortgage brokers may be honestly trying to offer help but a lot of predatory lenders offer "help" to debtors and end up stealing the Debtor's home. Generally a debtor that is considering bankruptcy needs to talk to an attorney to see if they would lose their house in bankruptcy and seek proper financial advice not from a mortgage broker but from an attorney or CPA. The average Class A lender mortgage broker will make 2% of the amount financed from refinancing your home. So a 100,000 home will have about a 2,000 fee. A 400,000 dollar home will have an 8,000 fee. The Class B and C lenders will make 4 to 16% or more. Their fee will be from \$5,000 to as much as \$20,000 from refinancing an 80,000 dollar home. More expensive homes will have even higher broker costs. Refinancing while your credit is poor just makes the mortgage broker money. You must have one year or more of on time rent or mortgage payments before you apply for a mortgage or you won't get a prime rate loan. Also your income to debt ratio must be good.

The sub-prime lenders don't care whether you make payments or not. Their goal is to steal your home's equity at loan closing and to collect it in foreclosure if the payments are not made. They target the uneducated and financially-troubled borrower. Sub prime lenders do not advertise to sophisticated borrowers who normally shop for lower rates. They often advertise that it is a good idea to mortgage your home while your credit is poor to pay off credit cards or solve other problems. One sub prime broker once made the comment to me that if God didn't want sheep sheared he wouldn't make them sheep. Predatory lenders are an example of pure greed that is legal.

In congressional hearings, companies like the Money Store and others have been labeled as predatory lenders. The business has become so profitable that most of the sub-prime lenders are now owned by respectable prime lender banks. For instance, the Money Store was owned by First Union—a prime lender. (First Union refuses to be known as a predatory sub-prime lender, so it simply does its dirty business under another name.) Similarly, Equicredit was owned by Nations Credit.

Often, home improvement companies will also use predatory lenders. They promise to repair your home, the bank pays for the repair, and the repairman heads for Miami. These lenders make loans knowing there is a high probability that the bank will eventually repossess the home

and take it from you or that it will overcharge you and make money at higher rates. If you have gone to one of these lenders, and the loan is properly closed, it is difficult to do much about it: You have simply given away your home.

Do not use the sub-prime lenders! Your best strategy is to refinance before filing bankruptcy if your credit is good **or** wait the full 2 years it takes to clean up your credit after you file bankruptcy and then deal only with a prime lender so that you can get a 6-7% rate (or whatever the prime rate is at that time). If your credit isn't good with at least 12 months of on time payments you won't be approved by a prime mortgage lender.

Sometimes, it may be difficult to tell if you are dealing with a prime lender or not: Most sub-prime lenders try to pretend that they are prime lenders. They will use names like "Equitable Mortgage" or "Respectable Mortgage" to make them look official, proper, or like other banks. They often promise you a 6% loan but at closing it turns into 12%.

Prime lenders have strict lending rules and they are more likely to follow the legal guidelines. Sub-prime lenders are far more likely to make "Truth in Lending" and other lending errors. The Truth in Lending act makes the loan invalid if the fees were not properly reported. Sub-prime lenders often "keep the change" if you have overpaid fees for credit reports or inspections. They overcharge items and understate fees and interest.

You do have choices in getting a low rate mortgage and filing bankruptcy. **First, you may be able to refinance a mortgage** to a lower rate before filing bankruptcy. That might save you from having to file bankruptcy. If you go from a home mortgage at 10% on a 100,000 dollar home to a 6% mortgage you will reduce your monthly payment from about 1,000 dollars to 600. Just refinancing to a lower interest rate may make you enough money that you can avoid bankruptcy. However you can only do this if your credit history is perfect prior to filing (paid on time for the last 12 months) and you have made the last year of payments on time and you don't have too high a debt to income ratio. If you refinance you can use the money for an expense such as home repairs, surgery or a trip and then file bankruptcy after you have no excess equity.

Second, you might consider filing bankruptcy even if you have a considerable amount of equity in your home. You may be able to file and still keep your home. Remember that you value your home at the wholesale or quick sale value of your home when you file. This may be much lower than the PVA or your last appraisal. The idea of bankruptcy should be to get rid of the unsecured debt and the high interest rates but to keep your home. This could also get you a fresh start and allow you to keep the home.

Third, if you have gone to one of those high interest rate mortgage companies and you have a lemon home or mortgage, you might want to file bankruptcy, let it go back and get a different home and mortgage. It takes at least 6 months to 1 year to finish a foreclosure. In some cases, I have seen people sit in the home for 2 and 3 years if you file an

answer to the foreclosure. This means that you can file bankruptcy and sit in the home for 1-2 years rent free and in some cases longer. At the end of 2 years after your discharge in bankruptcy you can then purchase a new home with the money you have saved up over the prior 2 years because the statutes, regulations and guidelines under FHA, VA and the other government programs require them to ignore the bankruptcy and to lend to you at the normal rates which at the time of this writing (fall 2002) are about 6.00%. Their credit decision will solely be made on your financial affairs during the two years after bankruptcy.

Nancy is an expert in that area. She worked for years with Kentucky Housing Corporation to get low interest loans for people and she has been a loan officer for over 25 years. She has worked with housing for the disabled, single parent programs, minority housing programs etc. Most lenders just want to lend you the loan that makes them the most money. But Nancy deals with programs like Kentucky Housing Corporation's first time homebuyer program and other government supported loan programs that normally have lower rates.

Remember: **Just because you have filed bankruptcy does not mean that your hopes of becoming a homeowner are gone.** There are many commercial and government low-rate programs for low-income individuals and first time homebuyers, if your mortgage banker will work for you to get them. You do have to have perfect credit and a good income to debt ratio.

Sadly, most home mortgage brokers work to push on you whatever loan makes them the most money.

To apply for a mortgage after you file bankruptcy you will need a copy of your bankruptcy file and the documents that were filed with the Court when you apply for a mortgage. You will also need to keep your payments up-to-date so you do not have any poor credit after you file. Keep your bankruptcy records just like you keep your tax records, especially if you are considering purchasing a home. If you do not have a copy of your bankruptcy, you may have to get it from the Bankruptcy records stored in Atlanta, GA or your local depository for Federal Court records. Getting them from Atlanta or from the federal storage is costly and time-consuming. **If we handle your bankruptcy, we will give you a copy of your petition and all other documents. Please keep it in a safe place. We only keep these records for 3 years after that we will destroy it.**

The FHA official policy and administrative regulation is that a bankruptcy gives the potential borrower a clean slate. They only look at how you handle your financial affairs after the bankruptcy. Establishing credit with FHA is simple: You only have to pay your landlord and utilities on time after filing bankruptcy. FHA does have very lenient guidelines, and their interest rates will be as low for you after bankruptcy as it is for the best borrowers. Special financing, at under 6%, is presently available through some programs for home mortgages and that will save you thousands. FHA, however, does require that you wait two years after the bankruptcy before you can apply. There are other government programs that offer similar low interest loans. Single-parent families, the disabled, first time homebuyers, and some can obtain even 1% mortgages and grants of up to \$15,000 dollars to help with the down payment on your home

allowing you to buy a 100,000 dollar home for 80,000. **If you have good credit after your bankruptcy**, we can help you get these mortgages.

You can qualify for a home purchase. **However this requires that you pay on time and that you not get back into debt after you file bankruptcy.** Some mortgage companies will take the extra time to work with you, some won't. Some work only to make as much of a profit as they can from you. Some work to give you the lowest rates. Some don't. The federal and state-funded government programs often lend at rates one or two percent lower than most of the best commercial rates. Most mortgage companies are only interested in charging higher rates and loan origination fees and will not offer you these lower rate loans or tell you about them. They make thousands more by selling you the higher rate loans. Nancy does handle the major government lenders and she knows these programs if you want one.

Why Bill Collectors Can't Harass You after You File Bankruptcy

When you file a bankruptcy, a Federal Court Order, called a "stay", goes into effect. The stay orders Creditors not to contact the Debtor to collect the debt. From the moment you file, all your Creditors (anyone to whom you owe money) will automatically be stopped by the Automatic Bankruptcy Stay from commencing or continuing any legal proceedings against you. They may not harass you, garnish your wages, or take your property. If a Creditor violates this Order you are allowed to sue them for punitive damages, actual damages, and Attorney fees. (Notice that the bank you sue for violating your rights will be required to pay your Attorney fees if it is proven that they did in fact violate the stay.) Filing a bankruptcy does not mean that a Creditor will never call again, but they will not have the right to call and ask you personally for the payment of the debt. Often, bills may continue to come in the mail to you after you file, due to a computer continuing to mail past due notices or other items. If this happens, mail a copy of your 341 hearing notice to the Creditor.

Co-Debtors and co-signers are only protected by the stay in a Chapter 13. Co-signers may enjoy some protection while the Chapter 7 case is open but, when it is over and the discharge is ordered, they will become targets again.

Secured Creditors often call for the limited purpose of getting a reaffirmation agreement signed or for arranging to pick up the property. If you wish to keep the security, you will have to pay for it. If you choose us as your Attorney, we will never agree to allow a Creditor to call and ask for payment unless you have signed a reaffirmation. We will often agree to allow a bank to send us a reaffirmation agreement to keep your home or car. We sign and forward these on to you. In some rare cases we may agree to allow a secured creditor to call you in order to file or negotiate a reaffirmation. We NEVER agree to have an unsecured Creditor contact you.

IF YOU ARE REPEATEDLY CALLED ABOUT PAYMENT OF A BILL AFTER YOU FILE BANKRUPTCY, PLEASE TRY TO RECORD THE PHONE CALL OR CALLS. YOU DO NOT HAVE TO GET THE PERSON'S PERMISSION OR EVEN LET THEM KNOW YOU ARE RECORDING THE CALL. IT CAN BE USED IN

COURT AGAINST THEM. IF YOU HAVE PROOF THAT THE PERSON KNOWS YOU FILED, AND THEY CONTINUE TO CONTACT YOU ANYWAY, THEY CAN BE SUED. A RECORDING WILL PROVE HIM A LIAR AND MAKE THE CREDITOR LIABLE FOR A MUCH LARGER JUDGMENT IN YOUR FAVOR.

The collector who calls after receiving notice knows that what he is doing is illegal. Normally, if he is dragged into Court, he may deny he ever called or may at least make up an excuse for the call. You must remember that the employee fears that if he does not collect the account he will be fired. If he collects, he will get a commission, bonus or a promotion. However, if he is caught committing an illegal act, he will be fired. Often he is told by his supervisor to violate the law but, once he is caught, the employer will fire him even though his boss told him to call. Often, you can stop harassment just by telling the collector you are recording the call—he knows if it goes to Court, he will lose his job.

Other Laws That Protect you

Under the 1972 Privacy Act, collectors are forbidden from contacting third parties such as teachers, employers, neighbors, and family about the fact that you owe them a debt.

Under the Fair Credit Reporting Act, Credit Reporting Companies must correct incorrect information in a Credit Bureau Report. If you have incorrect credit information you may write a credit reporting agency and that agency must investigate whether or not any information is correct. The investigation is done by writing a letter to the company that furnished the information and if that company does not respond the information is deleted automatically. Companies that charge you up to 2,000 dollars for “cleaning up your credit file” simply write a letter to every person in your file. Of course correct and true information cannot be deleted. The way to clean up your credit file is simply to pay on time those debts that you owe.

Under the Fair Credit Billing Act, credit card companies must investigate improper billing and overcharges if you complain.

Under the Truth in Lending Act, all charges must be accurately stated to you in the lending documents (see Section 12 for more information).

Under the Fair Debt Collection Practices Act, you may advise a Creditor not to contact you at work or at unreasonable times and they must make certain disclosures to you. Statements that this is an effort to collect a debt are required now. Attorneys themselves are required to use the FDCPA statement that this is an action to collect a debt in evictions.

Also under the FDCPA, it is improper for a Creditor to

- call without giving their identity;
- use obscene language;

- threaten arrest, violence, or lawsuits unless it is a legitimate possibility;
- pretend to be Attorneys or law officers;
- misrepresent government affiliation or the character amount or status of the debt;
- use postcards;
- repeatedly call;
- or remain on your property if you ask them to leave.

If you have recently (within the last 60 days) been denied credit, you may receive a free copy of your credit report. You also have the right to an annual copy of your report. If your report contains inaccurate information, you may file a written complaint. The report must be investigated and corrected within 30 days.

Under the UCC code, any repossession of any property must be done in a commercially reasonable manner and with notice to the Debtor. If a car lot fails to sell the car in a reasonable manner or if it fails to give you notice, you may not be liable for the deficiency. If the sale is not commercially reasonable, or if proper notice is not given, you may sue a bank for conversion (theft). Auto sales and financing are full of consumer law violations including fraud and high-rate home secured loans that strip equity from senior citizens. A common scam from lenders has been to finance home improvements and to take away any equity in the person's home. Another has been to pretend to lend at a lower rate but instead to strip the equity from the home.

Getting Credit after a Bankruptcy

There are three major factors that are taken into consideration when granting credit: Your income, credit history, and character. Filing a Chapter 7 bankruptcy will normally improve your ability to repay and, eventually, will repair your credit—especially if you reaffirm some of your secured debts and pay those debts on time. If you show an improved history of timely repayment after filing, bankruptcy can help you improve your chances of getting credit. In essence, it is better to have a past bankruptcy and a clean slate than it is to have a stack of Creditors on your back that you still owe.

Imagine being so poor that you can't repay your bills. Keeping all that debt that can't be repaid, and constantly being overdue on your bills, will often only keep your credit poor until you do file a bankruptcy. Filing a bankruptcy can allow a person a fresh start. It is not the end of getting credit, and we often help persons to buy homes after they have filed. A bankruptcy should be considered or filed when your credit is already harmed, when the bills are never going to be paid with the income that is available, and when your family is going to suffer unless that debt is cleared up.

A bankruptcy stays on your record with credit reporting companies for 10 years after filing. Other kinds of "bad credit", like "slow pay" or "no pay" or repossessions, stay on your record until 7 years after the last collection activity—which means it may be on your credit much longer than a bankruptcy. For instance, your car may be repossessed 4 years after the loan is taken out, and you may be sued 7 years later. In that case, the record of non-payment would be on your credit record for 18 years (4+7+7), but a bankruptcy would have been on there for only 10 years. Slow payment will give you the same kind of credit problems that a bankruptcy filing will give you, even if you pay all the money back. Normally, credit or loan officers do not consider credit history that is more than two or three years old. It will take you about 6 months to 2 years of repaying your debts on time to overcome most of the negative effects of a bankruptcy.

What Things Should You Do Before Filing?

Do not make any additional charges, including cash withdrawals, on any charge cards or loans just before filing. If you charge or withdraw over \$1000 on any one credit card within 60 days before filing, statute 11 U.S.C. 523 (a) (2) will presume you made this extra charge in order to defraud the credit card company. If you know you are in a bankrupt condition, you should not incur any additional debt just before filing. The closer to the filing date, the larger the amount, or the more the item can be considered a "luxury item"—the more likely it is to be seen as fraudulent. Charge \$100 the day before you file and usually nothing will be said. Charge \$5000 for a weekend at a gambling casino the week before you file, and it will probably be considered a fraudulent transaction—and you will have to repay it. If you have made any charges within the last 60 days, we ask you to talk with your Attorney about it. You may wish to wait before filing to insure the statute has run out.

If you have a checking account in a bank that you also have a loan with, you should close out that account. The bank may offset the funds in that account to pay any debt you owe them. In Kentucky, you may have up to \$1000 in a checking account if you don't use the \$1,000 general exemption for an income tax refund or other piece of property. **Don't have any substantial funds in any account until after you get your hearing notice.**

If you file a bankruptcy around the first of the year, and you have a tax refund that is still due to you, we can exempt up to \$1000 of that refund using the \$1000 general exemption. **If you are considering filing bankruptcy in November, December or January, and you expect a refund of more than \$1000, you may wish to file a rapid tax refund beforehand to avoid losing any of the excess.** If you have a refund more than \$1000, the Trustee will be owed the excess amount. (If you are married, remember that the exemptions are doubled. We can save \$2000 of your refund if you are married.) We will not have to use the general exemption or be concerned with the excess if you get your tax refund before filing. Since you have gotten it and spent it, you won't have to exempt it.

What Things Should You Do After Filing?

Your Attorney may have different advice but, if we represent you, please do the following:

- Save up enough money for the payments on the debts you know you will reaffirm, so you will be able to “catch up” when you are offered a reaffirmation.
- Do not release any property to a Creditor until you are told to (usually, at the 341 meeting).
- If a secured Creditor calls, you may wish to negotiate a reaffirmation or redemption, or you may wish to advise him when and where to pick up his security (if you have been told by us to do so). You are better off negotiating any reaffirmation with a secured Creditor yourself, because you know better than we do what your property is worth. Secured Creditors may appear at the 341 hearing to negotiate reaffirmations.
- It is best that you negotiate a reaffirmation at the 341 hearing because you make the decision while your Attorney is present to give advice. The better Creditors will appear at the 341 meeting if they can. Some very intelligent secured collectors may have even advised you to file a Chapter 7 because they knew that you would be better able to repay them after discharge of your other debts. **Any call from a secured Creditor should be a friendly call just to find out whether or not you wish to reaffirm. If the collector becomes abusive, you should ask him to work out the reaffirmation through your Attorney.**
- An innocent unsecured Creditor may call because he failed to get notice. Often the bankruptcy notice goes to one branch, but the collection department never gets the notice. However, there are also a few unsecured Creditors that have no respect for the intent of the Court order. Please tell any unsecured Creditor that continues to call you to call our office. If they continue to call you, you should record the call so we can take them to Court. Just telling them that you are recording the call will normally stop the calls forever. Remember, we depend on you to gather the proof that they are calling you and intentionally violating the order: The same person or company that does not respect the law and Court orders will normally lie and claim that they never made the call. You have the burden of proof, and it is not illegal for you to record his conversation and later use it against him. We do not wish to sue any Creditor that just makes a minor or honest mistake, but we do wish to nail any company or person that ignores the law. Creditors may even go so far as to call your work and claim there was a death in the family, just to get you to call him back. **We never advise you to sign a reaffirmation with a credit card company or an unsecured Creditor.** For any reaffirmation agreement to be valid, your Attorney must sign it.
- **Show up at your 341 hearing.** Tell us of any change of address or phone number.

Call us if you don't receive notice of when and where your hearing is within 2 weeks of filing your case. If you fail to show up, your case will be dismissed, and you will have to pay all over again to file a new case.

- Obey all orders from the Court and the Trustee and fill out your paperwork honestly.

What Questions Will They Ask at my Hearing?

Your 341 hearing will be about five to six weeks after you file, and you will receive a notice, by mail, with the date and time of this hearing about 10 days after you file. You will have a hearing on a Tuesday or Friday if you live in the Louisville area. All persons are required to attend the 341 hearing if they file a bankruptcy. **If you miss this hearing and your bankruptcy is dismissed, you will have to repay the filing and Attorney fees to file again.**

You will want to get there a little early to listen to the questions that are asked and prepare for your turn. Normally, the Trustee will ask you the following questions:

- What is your name?
- What is your address?
- What is your social security number?
- Did you list all your assets and all your debts?
- Do you understand what a reaffirmation is?
- Do you understand what the effects of a bankruptcy are?
- Have you given any property to the Trustee?
- Have you recently won the lottery or inherited property?
- Have you given away or transferred any property within the last year?
- Why did you file bankruptcy or what caused your bankruptcy?
- Do you understand what a Chapter 13 is and did you consider it?
- Do you understand what a discharge is?
- When did you know that you were bankrupt?
- Do you have proof of full coverage insurance on your car? (Please bring proof of insurance with you to the hearing.)
- How much is your home worth? (Answer this question honestly, but don't brag about how you think it is worth a million if you want to keep it.)
- Have you recently inherited anything?

The Trustee is there not only to insure the paperwork is properly done, but also to collect any asset that is not exempt. Your 341 hearing is not the time to brag about how your property is

worth a lot of money: It is the time to be completely truthful, poor and not have any assets. You are under oath. You must be truthful and you must reveal all your assets if you are questioned about them.

Creditors may appear and ask questions at the 341 hearing, but normally the only question they normally ask is whether or not you wish to reaffirm. **Never reaffirm credit cards, doctor bills, and other unsecured debts.** Please don't ask us to agree to it unless you have a very good reason. Your Attorney has to sign any reaffirmation and certify to the Court that the reaffirmation is in your best interest. Reaffirming an unsecured debt is rarely in your best interest.

You may wish to give a better reaffirmation offer to a bank or finance company that you will have a long-term relationship with than one you will probably never deal with again. With these one-shot lenders that have secured debts, you may wish to offer a partial reaffirmation if the property is worth less than the debt. **You may also ask for a lower interest rate or a lower payment amount for a longer period of time, if you cannot afford the current payments. You do not want to sign a reaffirmation for any debt you cannot afford.** The smarter lenders will negotiate with you to keep you off their delinquent accounts, and they will renegotiate repayment terms. Finance companies are much more willing than banks to accept renegotiation for lower interest rates or lower payments over a longer period of time. Banks are more likely to have a "take it or leave it" policy. One of the better aspects of finance companies is that some of them have been flexible in reaffirmations and redemptions. As long as the payments are caught up, and the car is insured, it is rare for even a bank to refuse a reaffirmation. However, again, banks will rarely change the terms of the note, and finance companies often will. Banks are in the business of lending money and collecting it. Creditors are not in the business of selling furniture, homes, and cars, and they do not want to be in this business.

In Kentucky, not having your car insured automatically allows the Creditor to repossess it within 10 days without a hearing. If a creditor asks for proof of insurance you have 10 days to reply.

1.12. What You Should Bring to the 341 Hearing

In Lexington, the Trustee will ask for copies of your paycheck stubs, the last six months of bank statements, copies of taxes for the last three years, and copies of any auto titles, deeds, and mortgages. The deed and mortgage must show the date and time they were recorded at the courthouse. **These documents must be given to the Trustee weeks before the hearing. You must give these documents to us before we file the bankruptcy. Failure to provide all the documents to the Trustee in the Eastern District means that your case will be dismissed. PERIOD. Attorneys are not supposed to file until you get these papers to them**

In Louisville this is not usually required to file, but Louisville Trustees can ask for any or all of these documents at the 341 hearings or before the hearing. **The failure to provide these documents promptly in the Louisville District if they are asked for is also a basis for dismissing your case.** In Louisville Chapter 13 cases, you will have an appraiser make an appointment and stop by to value your home and personal belongings. **This is not normally done in Louisville Chapter 7 cases.** Every local Court has different rules, and there are different rules for different cases. In Louisville, you should bring proof of full-coverage insurance on your car, a photo ID (drivers license, passport, etc.), and proof of your social security number (social security card, recent W-2, etc.).

If you have a Chapter 13 hearing, you will also be asked for your first month's payment for the proposed repayment plan and/or those payments that have become due since the initial filing.

FAQ AND APPENDIX SECTIONS

1.13. Where Is the 341 Hearing? (Kentucky Residents only)

Your hearing will be in one of eight cities, depending on which county you live in.

The Below Counties are in the Western District. File in these counties and your bankruptcy will cost less, be over quickly (normally it will take 4 months) and you will have less paperwork.

Louisville Hearings	Bowling Green Hearings	Owensboro Hearings	Paducah Hearings
Breckinridge	Adair, Allen	Daviess	Ballard
Bullitt	Barren, Butler	Grayson	Caldwell
Hardin	Casey, Clinton	Hancock	Calloway
Jefferson	Cumberland	Henderson	Carlisle
Larue	Edmonson	Hopkins	Christian
Marion	Green, Hart	McLean	Crittenden
Meade	Logan, Metcalfe	Muhlenberg	Fulton
Nelson	Monroe, Russell	Ohio	Graves
Oldham	Simpson, Taylor	Union	Hickman
Spencer	Todd, Warren	Webster	Livingston
Washington			Lyon
			Marshall
			McCracken
			Trigg

The Below Counties are in the Eastern District. File in these counties and your bankruptcy will cost more, take more time (it will normally take 6-8 months) and you will have more paperwork. For instance if you do a Redemption the court will require you to hire an expert witness but the court in Louisville doesn't. I know that some people shop around for the best court to file in but as an attorney I can't tell you to do that.

Frankfort Hearings	Lexington Hearings	Covington Hearings	Ashland Hearings
Anderson	Bath, Bourbon	Boone	Boyd
Carroll	Boyle, Clark	Bracken	Carter
Franklin	Estill, Fayette	Campbell	Elliot
Henry	Fleming, Garrard	Gallatin	Greenup
Owen	Harrison, Jessamine	Grant	Lawrence
Shelby	Lee, Lincoln	Kenton	Lewis
Trimble	Madison, Menifee	Mason	Morgan
	Mercer, Montgomery	Pendleton	Rowan
	Nicholas, Powell	Robertson	
	Scott, Wolf		
	Woodford		

1.14. The Top 70+ Frequently Asked Questions at Our Office

This is not legal advice. Each individual case is different, but these are the “standard” answers to these questions. If you have a question about your case, you need to ask your Attorney for an answer based on the facts and particular circumstances of your case.

The Top 6 Questions:

Q1: It's great that you got our bankruptcy over this soon. We were not expecting to be discharged until sometime around November or December. Now, how soon can we begin to look at ways of refinancing our two home loans? You told us that your wife does some business in this arena. We owe about \$38,000 (@ 13.9%) on the second mortgage and \$40,000 on the first (@ 8.0%). At last appraisal in November 1999, the house was worth \$69,500. Our payments are 1000 a month!

Nancy is at Compass Mortgage. If you want to consult with her she can tell you exactly what to do and how long it will take. Her number is 1-502-339-9303 and any consultation is free. However, if you plan this right you could make over 25,000 dollars instead of losing money every month to a 13.9% loan and paying over 78,000 for a 69,000 dollar home.

Why refinance a house when you owe 125% of what it is worth. You are far better off letting their home go back in foreclosure!!!! It takes about 1-2 years to do a foreclosure and you can sit in the house rent free during the foreclosure. You can also see me and just by filing a simple answer in your foreclosure you can probably extend the foreclosure by at least 6 months and in some cases up to 2-3 years before it will reach a foreclosure sale and you have to move. It normally takes 2 years after a bankruptcy before you can buy a home if you want a prime lending rate.

If a foreclosure is part of your bankruptcy and it is listed in the schedules it will take 3 years before you qualify for a prime mortgage. It is essential that you use an attorney that knows and plans with you what to do. In 2002 the rate was about 5% for a 15 year loan and 6% for a 30. Higher rate mortgage companies will lend to you before 2 years but you should wait the two-three years to get the lowest rate which is called a prime rate. There are B market mortgages but these are much higher rates and it will cost you more in the long run.

Your bankruptcy can not be used to deny you a prime mortgage under FHA VA and other federal and state guidelines after 2 years again if you have a foreclosure this becomes 3 years. The myth that you can't buy a home after a bankruptcy isn't true. During that year or two you can save up the 1000 a month you would have spent on house payments and apply it directly to the principle for a new home. When just a year is over you would have saved up 12,000 dollars as a down payment if it takes 2 years to foreclose the home you would have saved up 24,000 as a down payment on a different 69,500 dollar home and it would be almost half paid

for.

Q2: Are there any changes coming to the Bankruptcy Code? They have threatened drastic changes since 1998, and there are proposed bills, but they have all had similar provisions. If it passes before you file, you won't like it. The changes require you to file a Chapter 13 instead of a 7 and attend a class where they tell you how bad you were for filing. There are also other provisions that are designed to cut back Chapter 7 bankruptcy filing for middle- and lower-class Americans by making it more expensive and difficult to file. For upper-class Americans, it will only be a little more expensive.

In general, the credit card companies have spent over \$120 million each year lobbying for these changes over the last 4 years: That equals over \$1 million spent on each Senator and Representative. A copy of proposed bills are available at www.abiworld.org. Two of the more popular changes proposed to the Bankruptcy Code are requirements to pay back more in a Chapter 13 and to force filings of Chapter 13's instead of Chapter 7.

Q3: Should I file Bankruptcy? A person should file a bankruptcy if, and only if, he or she can't pay bills as they come due or is about to lose property or have property attached by the Court. Very few people lose any property when they file bankruptcy. In Kentucky, you are allowed to keep \$2500 equity in a car, \$3000 in personal property, \$5000 in a home, and \$1000 in any property that you choose in a general exemption. For married couples, filing jointly, these exemptions are doubled. In a Chapter 13, the property that can be kept is just about unlimited as long as the debts for the property are fully repaid within 5 years. To partially repay your plan, it needs only to pay as much as a Chapter 7 would have paid. To stop a foreclosure in Kentucky with a Chapter 13, you only need to cure the arrearage within 2 years.

Filing a bankruptcy is generally better than having a repossession on your credit record. A person will often be able to rebuild credit and buy a house within 2 years after a bankruptcy. A repossession can do more damage to your credit, and it may take much, much longer to recover. Government regulations may forever keep you from financing a home with the VA or FHA if you have a repossession for a home, but allows financing 2 years after bankruptcy. Only 7 magical items may not be bankrupted: Child Support and Alimony; taxes less than 3 years old; federally guaranteed student loans; debts due to fraud; debts due to drunk driving; debts due to intentional injuries; and criminal restitution. There are many exceptions to even these. A driver's license can be reinstated by filing, if you lost your license because of unpaid damages for an auto accident. When in doubt, always list the debt when filing: It may be bankruptable due to an exception. If you have other questions about filing a Kentucky Bankruptcy, e-mail us

Q4: What does it cost to file bankruptcy? Currently, Court costs are \$200 for a Chapter 7 and \$185 for a Chapter 13. Chapter 7 fees at our office run about 500 areas of rural Kentucky often run 700. Most law offices in Louisville charge a starting rate of about \$500 to 800 with

an hourly rate of \$125 to \$150 for any additional work.

Chapter 13 Attorney fees are set by the Court, and the Court is presently paying \$1200 in Western Kentucky for Chapter 13's. Most districts pay about 1600. This is paid to the Attorney by installments as you pay the Court.

Q5: What happens when I file? When you file a bankruptcy, a Court order goes into effect immediately stopping all collection activity. This includes stopping foreclosures, attachments, garnishments, and Creditors calling you. The sooner you come in to the law office, the sooner you can get relief—and the more you can save from Creditors. You will have a 341 hearing within about 4 to 6 weeks after the bankruptcy is filed. When the bankruptcy is finally over, a discharge is issued. This is a final and permanent order to stop all collection activity. Bankruptcy does not normally get rid of a security interest that you gave to a Creditor such as a mortgage or a standard car lien, but it can get rid of personal property liens on household goods and cars to the extent that they impair your exemption and equity in the property. For example: Your furniture worth is worth \$5000, your exemption is \$2500, and your Creditor has a lien of \$12,500. Any lien over the \$2500 exemption is voidable. See us, and we will show you how. If your home has been attached, you can get rid of the lien if it impairs your equity. Normally, people will keep their cars and homes by redemption or reaffirming and keeping those debts.

Q6: I live in Pikeville (Eastern District) can I file in Louisville (Western District)? A lot of this answer depends on whether or not you have real property and if you are living here at the time of filing. We understand not wanting to file in the Eastern District. It is more expensive, and more trouble to do bankruptcies there. First, in the Eastern District, you have to provide a lot more financial records than you do in the Western District. If you file in the Eastern District, you need your last 2 or 3 years of federal and state records, your last 6 months of bank records, and copies of your car title and your deed and mortgage. Second, your case can easily be thrown out if you do not provide these records completely. Third, it costs \$500 to file bankruptcy here and \$700 or more there. Fourth, it is a lot more trouble...period.

There is a way to file here, but not if you have over \$1000 in equity in a home in the Eastern District. If you have a home or real property, you can only claim the \$5000 dollar Kentucky homestead exemption but only if you live in the home. So, if you have over \$1000 dollars of equity in real estate in Pikeville, you can't file in Louisville by claiming you live here and still keep the home. In other words, you can't say you live here to file here and also claim that you live in the home in Pikeville to qualify for the homestead exemption—you would probably lose that home if it had any substantial equity.

If you have no real estate, you may be able to file here. Jurisdiction and Residence is often based on your intent to live in a place—so, if you say you live here and you have substantial contacts here, you probably do reside here. Many people temporarily live here just long enough to file, by moving in with a relative etc. But if you file here, you are supposed to live here.

The Other 70 Questions:

1) Can I plan my bankruptcy? Of course! Good planning is why you read this manual and hire a good Attorney.

2) Which bankruptcy is right for me: Chapter 13 or Chapter 7? Many people file both—a Chapter 7 to get rid of unsecured debts and then a Chapter 13 to stop a foreclosure or repossession. A Chapter 13 is like a bill consolidation loan, and you normally file it to keep property. A Chapter 7 is used to completely wipe out unsecured debts and to get rid of secured debts for property you don't want to keep. Both will stop garnishments and Creditor harassment. By filing a Chapter 7 first, you get rid of the unsecured debts and make your Chapter 13 repayment less.

But Chapter 13 cases are becoming more popular. Over 90% of all Chapter 13 cases used to fail because they became unaffordable. But now 20 and 30% repayment plans are being approved in Chapter 13 cases and they are now much more successful. Often an attorney may want to file a Chapter 13 because he will earn more than he would in a Chapter 7, but you will usually profit far more from filing a Chapter 7. Usually, the only times you will want to file a Chapter 13 are 1) when you have already filed a Chapter 7 and can't file another one or 2) if you have so much property and equity that a Chapter 13 is necessary to keep that property.

You may also have to file a Chapter 13 if you have so much income (after you pay your normal monthly living expenses) that you can repay your debts within 5 years. A Chapter 13 may also be used for special purposes, such as to bankrupt special tax debts, repay child support, repay student loans, or protect a co-signer. The fortunate thing about virtually all Chapter 7 cases is that the Debtor's assets are normally exempt, so there are rarely any assets to liquidate. Married couples with valuable assets, such as over \$10,000 equity for a home or over \$5000 equity in a car (these amounts are for Kentucky), may want to choose Chapter 13. Each state has different rules for what property can be kept.

3) Why file a Chapter 7? If you have substantial unsecured debts you may want to file a Chapter 7. You may also want to file a Chapter 7 if you want to surrender property and not owe for it. You can usually keep all your property in a Chapter 7, because you won't have enough equity in any property to exceed the exemptions allowed.

4) Why file a Chapter 13? You may want to file a Chapter 13 if you have secured debts and are threatened with foreclosure or repossession, if you filed a Chapter 7 less than 6 years ago, if you wish to protect your cosigner, or if you have debts that are not dischargeable in a Chapter 7 but are payable in a Chapter 13.

5) Can I convert from a Chapter 13 to a 7 or from a 7 to a 13? Few people convert from a 7 to a 13. You have a good chance that you will have to convert from a 13 to a 7. Over 5 years, you are very likely to miss payments and have the Chapter 13 dismissed (or have to refile). Some Chapter 13 cases are never finished and are converted into Chapter 7 cases. If

you are close to completing the plan, you may be granted a hardship discharge.

6) What is a Chapter 20? What is a Chapter 26? Some people file a Chapter 7 to wipe out unsecured debts and then file a Chapter 13 to keep their property. This is jokingly referred to as a “Chapter 20”. Filing a “Chapter 20” can be the intelligent and affordable way to file a Chapter 13 later. Filing a Chapter 7 and then a Chapter 13 to obtain the benefits of both is very effective.

A “Chapter 26” refers to filing back-to-back Chapter 13 cases. You would do this to pay debts that can’t be paid in 5 years by just one Chapter 13. In a sense, you are “extending” your repayment time by filing two Chapter 13s.

If a Chapter 7 or Chapter 13 alone won’t work for you, a 20 or 26 normally will.

7) How long will bankruptcy take? It will take about 3 to 4 months for a Chapter 7 to be final. (You will get a letter within 10 days of filing, telling you the time and date of the 341 hearing. This hearing will be held about 4 to 6 weeks after you file.) A Chapter 13 will take as long as the repayment plan takes.

8) What are the most common mistakes I can make when filing? Not showing up for your hearing and not listing all of your debts. Fail to show up at the hearing, and your case is dismissed. Fail to list a debt, and you continue to owe it. Also people often have too much in a checking account when they file or a tax refund coming. The best policy is to list all your debts and assets. Always list every debt, even if you think it is non-dischargeable, it may be discharged anyway. Even include last month’s utilities.

9) How do I qualify for bankruptcy? Can I not be approved? You qualify for bankruptcy if either your outgo exceeds your income or your liabilities exceed your assets. If you don’t qualify, we will tell you when we type up the bankruptcy. It is very rare not to qualify I had one case in my first 15 years of practice not qualify for his 7. You basically have to be a US citizen, reside in the state you file in, and not have filed within certain time periods (you can’t file two Chapter 7s within 6 years of each other).

10) What if the Court does not approve my Chapter 13 or Chapter 7? If there is anything wrong with your Chapter 13 or Chapter 7 bankruptcy it will usually be changed and amended. Of course, it is less costly and time-consuming to do it right the first time. If you earn so much money that you can afford a Chapter 13, you will be forced to change it from a Chapter 7 to a Chapter 13.

11) How often can I file? You can file a Chapter 7 six years after your last discharge from a Chapter 7. The time is measured from the time of discharge of your first case to the time of filing of your second case. You can file Chapter 13s as often as needed, but you must be finished with any prior case. You can only have one bankruptcy going on at a time.

12) If I file does it mean my old bad debts are erased from my credit report? NO!

What is reported is that you had a debt and that a bankruptcy was filed. Bankruptcy does not give you a good credit record or “repair” your credit record automatically. You repair your credit by paying your debts on time after the bankruptcy.

13) Can I file without an Attorney? Yes. You can file a bankruptcy yourself, and this is called “filing pro se”. You can also do dentistry on yourself, but we wouldn’t recommend it. Doing your own case is a very bad idea. This book alone won’t give you the knowledge you need to do it, but it will help you educate yourself so you can prepare for it, protect yourself from bad legal advice or an incompetent Attorney.

As an example, if you file a reaffirmation and represent yourself, it must be approved in a hearing by the Judge, and that will mean extra hearings and time for you. Considering the time and risk involved, we highly recommend you use an Attorney. You may lose far more in Court than what the Attorney would have cost—plus there is the extra time and effort on your part doing the work.

This book alone won’t give you the knowledge you need to file on your own. Use this manual to educate yourself, so you can find a good Attorney. By asking the questions this manual has explained, you should be able to judge the Attorney’s competence and skill level.

14) What about a Bankruptcy Mill? Filing a bankruptcy through a Bankruptcy Mill or paralegal may be even worse than doing it yourself and they may charge as much as the attorney. Many people have lost thousands of dollars with these businesses—through intentional scams or just plain bad work. Non-Attorney bankruptcy petition preparers are barred by law from providing you with any legal advice. In enacting legislation governing bankruptcy petition preparers, Congress stated: “These preparers lack the necessary legal training and ethics regulation to provide [legal advice and legal services] in an adequate and appropriate manner. These services may take unfair advantage of persons who are ignorant of their rights both inside and outside the bankruptcy system.”

The bankruptcy petition preparer's role is limited by law solely to typing. Unlike an Attorney, a bankruptcy petition preparer can not help you understand the law, advise you on how to answer questions, assist you in planning, or assist you in Court. Federal law requires that bankruptcy petition preparers sign any documents they prepare; print on the document their name, address, and social security number; and furnish you with a copy of the document. A bankruptcy petition preparer may not sign any document on your behalf, may not use the word “legal” or any similar term in any advertisement, and may not receive any payment from you for Court fees. The bankruptcy petition preparer is also required to disclose to the Court the amount of any fee you pay. Beware of any bankruptcy petition preparer who does not comply with these requirements.

15) Are you a real Attorney? Yes. Our office is a law office and we are staffed by Attorneys.

16) How much do you charge? We charge a flat fee of \$500 for doing a personal uncontested Chapter 7 bankruptcy. Court costs are \$200. Your total cost is \$700 Chapter 13 Court costs are \$185. Attorney fees in a Chapter 13 are set by the Court. Generally, there is no shopping around for a low fee in a Chapter 13. Since the Court sets the fee, it will be the same for whatever Attorney you use.

17) Can I pay you in payments? For a Chapter 7, our Attorney fee of \$500 and the filing fee of \$200 must be paid before we file the petition. You may pay half one week and half next week, or in a couple of weeks. We will hold post-dated checks. We also have an automatic service that will deduct the fees from your checking account in 3 months of installments. We will work with you to make this affordable. For a Chapter 13, you only need to pay the filing fee before we file the petition—sometimes, in an emergency, even the filing fee can be paid in payments to the Court.

18) How do I get to your office? Do you have an office in Lexington? No, we don't have an office in Lexington, but we are only about an hour away from Lexington and Covington and 2 hours from Bowling Green or Owensboro. Take I-64 to Louisville, and then the Hurstbourne Exit. At that exit you will find a McDonalds. We are at 1230 Hurstbourne Lane in the Liberty Suite II Suite 111 next to the McDonalds.

19) What paperwork do I need to bring to my Attorney? Bring the names, amounts, and proper addresses of all of your Creditors. You may estimate the amounts. It also helps to have the account numbers, but we must at least have perfect addresses to give notice to the Creditors. Credit bureau reports normally don't have the addresses on them. If you have gotten a Credit bureau report before filing, you will still have to get the addresses.

20) How can I get a copy of my credit report? You can get a free credit report if you have been denied credit, are unemployed, are a victim of fraud, or are on welfare (or if you live in Colorado, Georgia, Massachusetts, Maryland, New Jersey or Vermont). To get one free (if you qualify) or for a small fee (if you don't) without going through a "middle man" just contact any of the 3 major reporting services below. They will charge you between \$3.00 and \$8.50 depending on your state of residence.

1. Experian (TRW) at 1 888 EXPERIAN (1 888 397 3742) allows you to charge your credit report to your Visa or MasterCard over the phone.

2. Trans Union at 1-800-888-4213 or write to: Trans Union Corporation Consumer Disclosure Center, P.O. Box 390, Springfield, PA 19064-0390

3. Equifax at 1-800-685-1111 or write to: Equifax Information Service Center P.O. Box 740241 Atlanta, GA 30374-0241. For \$8, you can get an immediate report online from Equifax at: http://equifax.com/resources/fcra_info_rights.html

If you decide to write to any of these services, be sure to include your: name, address, phone

number, previous addresses for the past two years, social security number, birth date, employer, signature—and be sure to include your payment. (You'll have to call to get the payment amount.) Proof of identity such as a photo copy of your driver's license will also be required. For your convenience, there is a credit report request form in Section 20.14 of this manual.

21) Can I file jointly with my spouse? Does my spouse have to file or sign if I want to file individually? Yes, you can file jointly. No, your spouse doesn't have to file but, if most of your debts are joint debts, he or she may want to. In some cases, where only one spouse has debts or one spouse has debts that are not dischargeable, it might be advisable to have only one spouse file. There is no need for a spouse to file if the debts are not in his or her name. If you are filing a Chapter 7, and the bills are also in your spouse's name, he or she generally should file to be protected. (Co-signers are protected in a 13, but are not in a Chapter 7.) There should be no additional charge for a spouse filing, but some firms do charge extra. The only extra work to do in a joint filing is adding an additional name and social security number to the petition. There is no reason we can think of for your spouse to file a separate petition—it will only cost you a second Court filing fee and Attorney fee.

22) Will it affect my spouse's credit? Is he/she responsible for my credit cards if he/she is an authorized user? No, filing will not affect your spouse's individual credit, but if he or she is a co-signer on any debt that is not paid that will affect him or her. The fact that you filed bankruptcy does not appear on a spouse's credit report unless he or she also files bankruptcy.

Unless your wife has signed to be legally responsible, she is not responsible. However, many credit card companies will argue that she is responsible. They may even put a "no pay" on her credit report if the amount is unpaid; however, she may ask any reporting service to correct that. If she does so, the credit card company will have to show that she signed for it. If they can't, it will be removed from her credit report file. In other words, the credit card collectors may try to collect from her by claiming she is liable, but she really is not. If they damage her credit record, it may be grounds for a lawsuit. Credit is normally granted based on a score from your past payment history, the amount of debt that you owe, the length of time you have been repaying present credit, if you have opened credit recently, and the types of credit accounts you have.

23) Will my co-signers be protected? Co-signers are protected only in a Chapter 13 to the extent that the plan pays the full amount of the co-signed debt. If the plan pays the debt completely, the co-signer is protected, but it will be listed in his or her credit record as being paid late. The Creditor may ask the cosigner for any remaining portion of the debt if it not paid completely. In a Chapter 7, the co-signer will have some small protection regarding the collateral during the proceeding, but only because the Creditor can't go against the property of the estate. After a Chapter 7 is over, the Creditor will proceed against the co-signer personally.

24) Can I file a personal bankruptcy and not have it affect my business? If you own

your own business, the business is a part of your assets. If it is worth very much, it may be property of the Court. If your business files bankruptcy, it won't affect you because the business does not own you.

25) Can Bankruptcy stop foreclosures, wage assignments, help me get my license back from an uninsured accident, stop evictions, a judgment, and remove a lien? Yes.

26) What will happen to my bills? When you file a bankruptcy, a Court order goes into effect that keeps Creditors from legally collecting from you. When you are discharged (i.e., the bankruptcy is final), the Creditor "charges off" the debt and gets a tax deduction for the loss. The bill is not paid, and the debt shows up as a bankruptcy charge-off on your credit report. Some Creditors will attempt to get around the law and will continue attempts to collect after the bankruptcy is filed. They can be sued for this, but you need to prove they did it. One of the best methods is to record their call and then surprise them in Court with it when they deny ever making the call. Most Creditors that ignore the law will never send you letters or anything on paper after you file, but they may make phone calls hoping that you will pay anyway.

27) What if I keep getting bills? You will continue to get some bills from bankrupted debts after you file. What happens is that the Bankruptcy Court sends out notices to the addresses that you give to them (that is why correct addresses are so important), but some Creditors never get these notices and continue to bill you. You should make copies of your hearing notice. If you get a bill from a Creditor, send them a copy of the bill and the notice. Some Creditors will continue to send bills even if they receive notice. It may be that their computer can't stop sending out the bills, or they may simply be ignoring the stay hoping that you will pay anyway. If this becomes a problem, and you have proof that a Creditor is doing this on purpose, contact us. We can file a motion for contempt with the judge, and we may also be able to sue for a violation of the Fair Debt Collections Practices Act.

28) Do I have to pay my bills during the Chapter 7 or 13? No. Don't pay any bill until after you file a reaffirmation in a Chapter 7. Don't pay any payment in a Chapter 13 unless it is the regular monthly mortgage payment or car payment, and the 13 was filed to catch up the arrearage. A stay is a federal Court order to stop. If the item is secured, your overdue payments will continue to add up while you don't pay on the item. However, the Creditor can't proceed against the collateral until the stay is terminated. Often, the Creditor will file a motion to terminate the stay after the bankruptcy is filed. Bankruptcy stops your obligation to pay, but the Creditor may still have a lien and rights in the property. You often quit paying for items when you file so that you have time to decide if you want to reaffirm, redeem, or surrender. I have rarely ever had a bank refuse to reaffirm a debt, but you don't want to make payments if they aren't going to reaffirm with you and they only want the property. In some rare cases, with people who are never going to repay, the bank may refuse to reaffirm. In these cases, the bank only wants the property back. Also, some credit unions may refuse to reaffirm a car or mortgage unless you also reaffirm their credit cards. In cases like this, you may want to redeem property instead. That is why you don't want to make any more payments just before or after you file. You can take the time to negotiate your options. You don't have to be caught up on

your payments to reaffirm, but some banks may request it—and all of them want it.

29) Who notifies the Creditors and bill collectors? After the bankruptcy petition is filed, the Court mails a notice to all the Creditors listed in the schedules. This usually takes 1-2 weeks.

30) Do I have to go to Court? Not exactly, but you will have to attend a hearing presided over by the bankruptcy Trustee. This hearing is called the 341 Hearing (Meeting of Creditors). At this hearing, the Trustee (who is an Attorney) will ask questions, under oath, regarding the content of your bankruptcy papers, assets, debts, and other matters. It is very much like a deposition, not like a trial. If you can't attend (example: if you are in the service overseas), you can answer the questions by Affidavit. **The Trustee is not the judge. He is there to take any assets from you, if he can, and to check the accuracy of your paperwork.** The Trustee represents the banks—not you.

31) Where is my 341 hearing? Your 341 hearing is always at the Federal Court closest to you.

In Louisville, your hearing will be on the 5th floor of the Federal Gene Snyder Courthouse at 6th and Broadway. Use the elevator on the 6th street side, next to the Courier Journal newspaper building. (Do not use the elevators next to Moby Dick seafood, and do not park in the Moby Dick parking lot.) Hearings are on Tuesdays and Fridays, and the hearings only last about 5 minutes each. If your paperwork is done correctly, the hearing will be very short. Just bring your warm body, proof of insurance on your car, a picture ID, and proof of your social security number (social security card, W-2, etc.) to the hearing.

In Lexington, the hearings are at 100 Vine St. In Frankfort, they are at the Federal Courthouse. Some Courts, such as the Eastern District, require records of your last 2 years of taxes; copies of any titles for cars, real property, and mortgages; and the last 6 months of bank statements.

32) What do I wear to the hearing? Don't wear cut-offs or jeans with holes in them and don't wear sandals. Suits are not required, but dress properly for a hearing in Federal Court. **Children are not supposed to be in the hearing room.** Do not borrow and wear flashy jewelry. This is not the time to brag about how rich you are or how much you own. **The Trustee is looking for assets to take from you.** He is not your friend. He represents the persons that you owe. You must report what you own and it's real value, but don't brag about your income and how much your car is worth—especially if you don't have any. Save that for when you want to impress the opposite sex in bars.

33) Do you show up with me at the hearing? Of course! We take care of you, and hold your hand through the process. We don't just file the paperwork. However, there is some work that you must do on your own and, if you read this manual thoroughly, you should be able to make the most of your bankruptcy without too much help from us.

34) When should I file tax returns if I am going to file bankruptcy? If I file in December do I keep my refund?

If you are considering filing a bankruptcy, you should file your tax return as early as possible. Get your refund before you file. If you do, you will keep your refund no matter how much it is. You have a general exemption of \$1000 (in Kentucky) that can protect up to \$1000 of a refund. If you get your refund after you file bankruptcy, and the refund is over \$1000 (or \$2000 for a married couple), you may lose part of your refund. File a quick refund if you have to or apply any refund amount to next year's tax debt. If you are considering filing in the later part of the year, file before December 31. If you file in January, you may have to wait for some time after you get your refund back. You will be asked when you got your refund and how you spent it if you got a large refund. We strongly suggest filing long before December 31, rather than filing in December or January. Some trustees start claiming tax refunds in November.

35) What will happen to my house and car? Usually, you keep them. If your equity is less than or equal to your exemption, you keep the property. You are allowed to keep a certain amount of equity and property in bankruptcy. In Kentucky, you may keep \$5000 equity in a home and \$2500 equity in a car. Married couples can keep up to \$10,000 in a home, \$5000 in a car, and \$6000 in household goods they jointly own. There is a \$1000 general exemption (or a \$2000 dollar general exemption for a married couple) that can be added to save even more of a car or house. When we prepare your bankruptcy we will tell you if you are at risk of losing property. At the time of filing, all your property that is not exempt belongs to the Court. The idea is to exempt it all so that you keep it all. Of course, the law concerning what property you can keep varies from state-to-state. See the state exemptions in Section 20.6. We can provide you with the exemptions for your state if they are not listed.

36) Do I have to keep up the insurance on my vehicle? Will my rates be affected or will I be dropped?

If you fail to keep full coverage insurance on your vehicle paid for three months, the Creditor may automatically pick up your vehicle according to the local rules in the Western District of Kentucky. Other jurisdictions have similar rules. An insurance company can use this as a basis to raise rates or cancel. In 1998, the Insurance Financial Responsibility act was passed: It allows insurance companies to raise rates if a person files bankruptcy. Only half the states use this law. Most companies are happy to keep you if you simply pay on time and have few claims. We can generally say that if you pay your premiums on time and keep the same company, probably nothing will happen. However, this may be a good time to compare rates with other companies—especially if you fear you may be dropped or raised because you listed your insurance company as a debt (or if you are bankrupting an accident claim).

37) Can a Creditor be forced into a reaffirmation? Can a Creditor be forced into redemption? No, a Creditor can't be forced into a reaffirmation. Yes, a Creditor can be forced into redemption.

A reaffirmation is an agreement to pay the payments on the loan, and it is very rare for the Creditor to refuse a reaffirmation. If the bank does not agree to a reaffirmation, it will usually take a large loss from selling the vehicle at an auction, or the house in a foreclosure. It may even

violate federal lending rules by refusing to reaffirm on a home mortgage. A bank may be able foreclose or repossess, regardless of whether you are in a bankruptcy. If they have started a foreclosure, the filing of the bankruptcy stops the foreclosure but, in a Chapter 7, the bank may file a motion with the Bankruptcy Court and ask to foreclose anyway. If a Chapter 13 offers a good repayment plan, the Court will not approve any foreclosure. If the bank is adamant that it wants the house or car back, it may do so in a Chapter 7 and take a loss. Normally, the bank will rethink their decision and give you one more chance through reaffirmation, but no one can force them to reaffirm.

A redemption is an agreement to pay the bank what the security is worth in one lump sum. They cannot refuse the redemption after the judge orders it.

38) Can I choose which Creditors I repay? Yes, you can reaffirm to pay one Creditor, but not another, after the bankruptcy. By doing this, you can keep one car, but not another, or keep a credit card, but let a lemon auto go back. A Creditor will have to agree to the reaffirmation, but few refuse. Of course, we highly recommend you don't reaffirm unsecured debts.

39) Can I revoke my reaffirmation? Yes, but it must be revoked within 60 days of the 341 hearing or before discharge, whichever comes first. It should be revoked in writing and sent by certified mail so you have proof.

40) I want my house or car to go back. Will I lose it immediately? No. You will normally have until the 341 hearing to return your car and owe nothing until then. Use that period of time to look for another vehicle you can afford.

If you choose to let your house go back, you will normally have about a year to live in it rent free. The shortest period for a foreclosure is about 6 months, and we have seen it take up to 2 years. Remember, a repossession will normally do a lot more damage to your credit than a bankruptcy. Filing a Chapter 13 to catch up on your payments (within 2 years) is one way to keep your home. The only good reasons to let your house go back are that you have a large amount of negative equity in it or that it is an overwhelming burden.

41) Will I lose my 401(k) or retirement fund? No, your retirement is completely exempt and protected under Kentucky law. Other states have other exemptions to protect retirement plans. However, you should talk to a qualified Attorney to get his opinion. The United States Supreme Court has held that pension plans, 401(k) plans, and other "ERISA-qualified plans" are generally excluded from the Bankruptcy Estate under 11 U.S.C. sec. 541(c)(2). Unlike 401(k) plans, IRA accounts are not ERISA-qualified plans. However, in Kentucky and most other states, an IRA may be excluded from the Bankruptcy Estate or otherwise exempt because of a state statute. Some Bankruptcy Court judges have held that an IRA may be partially exempt under 11 U.S.C. sec. 522(d)(10)(E).

42) I have a personal injury lawsuit—will I lose those funds? In Kentucky, you can keep

up to about \$7,500 as an exempted amount of a personal injury lawsuit that you have pending if both are injured you may keep 15,000. Other states have different rules.

43) XYZ finance company took my Household Goods as collateral. Do I have to turn them over? Well, it is possible that you may be able to avoid such liens, if they are old enough and if you have not borrowed within a certain time before filing bankruptcy

44) I was just sued and they have just attached my paycheck or bank account what can I do? If property was taken from you just before filing bankruptcy, and it was over \$600, it can normally be gotten back. Liens on property that were from a lawsuit can be removed. Garnishments and foreclosures can be stopped. The sooner you seek help, the sooner you can stop the procedure. It is important to seek help as quickly as possible.

45) Am I liable for the taxes on items gave up in Bankruptcy Court? No. People often give up cars and then the new owner fails to pay the tax on the car and licenses it in another state. In such cases, the tax bills will continue to be sent to the Debtor even though he gave up the property. To correct this in Kentucky, we file an affidavit with the County Clerk's office to correct the matter, attaching the discharge as proof that the Debtor did not have the car after the date of the discharge. In one Court case, a Chapter 13 Debtor, who was the former operator of a pizza business, was not liable for any Ohio sales tax arising from the operation of the business after the date that he sold the business to another individual. The Debtor had "well-founded" beliefs that his liquor permit had been transferred to the purchaser and that his vendor's license had been cancelled. In re Coultrap, 2000 WL 518203 (Bkrcty S.D. Ohio)

46) If the Trustee doesn't want the property, can I have it? Yes—sometimes even if you forgot to tell the trustee about it. In one Court case, the Chapter 13 Debtor was found to have the right and standing to pursue a cause of action against a mobile home retailer in state Court in what was like a lemon auto case for a repair or refund of the purchase price, even though that cause of action belonged to the bankruptcy estate. His failure to disclose his cause of action against the retailer during the Chapter 13 bankruptcy proceedings did not judicially stop him from making claims against the retailer. There was no evidence that the Debtor would benefit from his omission or that the retailer was prejudiced by the omission. (This decision is not yet released for publication.) Ex Parte Moore, 2000 WL 432433 (Ala). However, this was because the lawsuit wasn't an asset. If you hide an asset you have committed fraud and you would lose that.

47) How long do I have to repay in a Chapter13? You can s-t-r-e-t-c-h out your payments and take up to 5 years, but no longer than 60 months, to repay in a Chapter 13. Kentucky local rules, however, require that you can only take up to 2 years to catch up overdue payments to stop a foreclosure or repossession.

48) What happens if I quit making my payments in a Chapter 13? Your Chapter 13 will be dismissed from Court, and you will go back to owing the original debt and being unprotected. However you should be able to refile.

49) Can I reduce my monthly payments in a Chapter 13? Yes, a Chapter 13 can reduce your monthly payments. It can also reduce your interest rates to 12%, 10%, or even 0% on tax, secured, and unsecured debts.

50) Do I have to pay back 100% of what I owe in a Chapter 13? No. You can usually repay as little as 20% to your Creditors in a Chapter 13. Your Chapter 13 must pay at least what a Chapter 7 would have paid. In some states certain plans may pay much less than 20% if that is all you can afford.

51) Can I pay some Creditors and not others in a Chapter 13? In a Chapter 13, you can pay the secured Creditors more than the unsecured Creditors and the priority debts differently than the secured Creditors. You can't (shouldn't) discriminate and pay one unsecured Creditor class differently than other unsecured Creditors in that class.

52) Should I try a Debt Counseling Service instead of filing bankruptcy? How do Debt Counseling services work? "Debt Counseling Services" are often high-interest loan companies. Other times, they are agencies that pocket 10-40% of the monthly money that you pay to them as fees for their "counseling". Most of these services will combine your bills and send a partial payment to each bill that you owe. Your credit will be listed by the credit card companies as delinquent for sending in partial payments, and the reduced amounts sent in may not even cover the interest that a debt charges. These "Counseling Services" are often simply rip-offs that pretend to be charities or helping agencies.

If you pay a debt counseling service \$100 a month, what happens is that they take up to \$40 for themselves and then send your Creditors \$60. Your bills fall even farther behind. Eventually, Creditors file lawsuits and you are forced into bankruptcy anyway. Very few of these "repayment plans" work and over 90% fail, leaving you worse off. Another scam is that some debt counseling companies will charge thousands of dollars by promising to find you a consolidation loan as a loan broker or mortgage broker. These loans end up being at a high-interest rate or they pocket your money and never give you the loan. Others strip the equity from your home. Whatever method used, "Debt Counseling Services" are often scams meant to take your money when you are already in trouble.

Also be wary of using services that claim to "repair" your credit file. Some may attempt to create a new credit file by getting a new social security number. Changing your identity is a felony, especially if you steal another person's identity. Creating a false identity and using it may also be a felony.

53) How long should I keep a copy of my Bankruptcy?

You should keep a copy of your bankruptcy, with your tax papers, for at least 7 years. You will need them for any mortgage application but they are now filed electronically and available for download at any bankruptcy attorney's office if you filed after October 2002. You are only required to keep receipts 3 years by the tax department—after 3 years they have the burden of

proof—but keep tax and bankruptcy records for 7 years anyway.

54) When will I be able to get credit again? Normally, you will qualify for a home mortgage at normal rates within 2 years if you let your home go back in foreclosure you will qualify in 3 years after the discharge of your bankruptcy. You will be able to get other credit within 6 months to a year. Your ability to get credit is based on your income and your history of repayment, as well as the security you offer. You should be able to purchase a car or house if you reaffirm one or two debts and pay for them on time after your discharge. You always have to be able to afford what you are buying on credit or meet credit standards. You will have to reestablish your credit by paying on time after your filing. In Kentucky, we will be happy to talk to you and recommend home mortgage bankers and other services that will assist you in cleaning up your credit file so that you can qualify for a home—or that work specifically with bankrupt Debtors. There are also companies that lend to you while you are in bankruptcy and just after bankruptcy. 722 Redemption Funding will sell you a car at wholesale price (at about 21% interest), and they will also finance the redemption of some cars at the wholesale book value.

55) Will my employer and landlord find out about my bankruptcy? Bankruptcy petitions are public records; however, under normal circumstances, no one will know you filed a bankruptcy petition unless you tell them. Chapter 13 Debtors are often required to make payments through wage garnishment, which means the employer will learn about the bankruptcy.

56) Will this affect my getting an apartment? Many of the larger apartment complexes are owned by banks, and banks tend to grant leases according to credit bureau reports. This may affect you. Small landlords will call former landlords and may not check credit reports.

57) Can employers discriminate or fire me? No. There is an anti-discrimination section of the Bankruptcy Code that prevents employers and the state of Kentucky from denying you licenses or discriminating against you when hiring. But do yourself a favor: Keep it to yourself. They generally won't know unless you tell them.

58) Are there bankruptcy crimes? Yes. Criminal statutes related to bankruptcy can be found at 18 U.S.C. sections 151 to 157. Examples of bankruptcy crimes are knowingly and fraudulently concealing assets, lying under oath or on bankruptcy schedules, and knowingly and fraudulently filing a false proof of claim. Bankruptcy fraud can also be used to support a RICO claim. Bankruptcy crimes are often the result of claiming that you don't own property that you do own or that has been transferred to conceal it from the Court.

59) Do I have to disclose all of my assets? Yes. If you knowingly and fraudulently conceal an asset from the Court, you have committed a felony and you can be fined up to \$5000, imprisoned for up to five years, or both. However, this is rare and normally comes up in only the worst cases. In addition, the Court can deny discharge, or dismiss or convert your bankruptcy proceeding.

60) Can I run up charges on my credit cards just before filing? The official answer is “No”. Many people do make some minor charges on their charge cards just before filing. (Read between the lines here.) Charges of over \$1000 on any one card within 60 days before filing are presumed to be fraudulent and non-dischargeable. Cash advances totaling \$1000 or more within 60 days of filing are non-dischargeable. Charges to an account more than 60 days before filing are presumed proper regardless of the amount. But the rule that you can't charge within 60 days of filing over 1000 isn't written in stone there are 12 factors that the judge will use to determine if it is fraudulent or not.

There is no reason to pay any further on debts that you are planning to avoid in bankruptcy. Normally, you should file as soon as you can, but it won't matter if you pay the bills or not before you file. It doesn't matter if you owed \$10,000 or \$10,000,000 before you filed or whether or not you paid on time before you file bankruptcy.

We suggest to clients that they not charge over \$1000 on any one credit card or loan within 60 days before filing, but you certainly don't want to pay any more on the cards, and you may want to take one last small, reasonable trip to the mall. If you charge more than \$1000 within that 60 day period, the credit card company may require you to pay the full amount owed to them. So, the safe and simple answer is not to charge anything for 60 days before you file. We have had clients charge over \$5000 dollars, and wait 90 days before filing, with no problem. But “fraud” is open to judicial discretion. The anti-fraud statute also looks at whether or not the charges were for luxury items or normal purchases: A fur coat or jewelry would be more likely to be seen as fraudulent than school clothes for the children, gas, and groceries.

61) Can I give property away just before filing? Gifts of property over \$600 just before filing are improper, and the Court can go after that property and the person you gave it to. Gifts under \$600 are not improper. For example, give one gift of \$900 to your child, and that is improper. But, give two separate gifts of a \$450 computer and a 450 car to go to college—even minutes apart—and that should be proper.

62) Can student loans or taxes be bankrupted? (YES, in certain cases) If someone tells you it can't be done, it often means that he doesn't know how to do it—or that he doesn't want to do it. Your income taxes can be bankrupted if they are over 3 years old. Student loans over 7 years old were dischargeable until October 1998, but are no longer bankruptable in a Chapter 7 unless you get a hardship discharge. Bankruptcy happens to us all. I had a divorce in 1998 and went broke. I was granted a hardship discharge for over \$100,000 in student loans in 2000, even though I had a law degree and was training for the CPA exam. Opposing the discharge was one of the largest firms in town and the US Attorney. There are hardship discharges for student loans, and there are ways to get them; however, it may take some work to get it done. A student loan that is not governmentally guaranteed is bankruptable.

63) Can I bankrupt my utility bill? Yes, but they may make you pay a deposit equal to one month's service to keep service with them. But cable TV is the exception because it is a luxury not a utility. Cable TV can discontinue service if you bankrupt their bill. You won't have to pay

it but they don't have to turn it back on until you do.

If you include utilities in your bankruptcy, you need to immediately advise your utility phone water gas and electric company that you have filed and tell them your case number and the date you filed. If you simply file a Chapter 7, don't pay, and don't contact them, you may end up having your service turned off. It may be a month before the utility finds out that you have filed, so if you list a utility advise them immediately.

64) Can bankruptcy stop a lawsuit? Yes, but it will not stop criminal cases or criminal restitution. Criminal restitution is not bankruptable.

65) Can I get my drivers license back? If you have lost your license due involvement in an accident where you had no or too little insurance, filing bankruptcy will restore your license.

We have the forms!

66) Can bankruptcy help with tax matters or high rates and penalties? Yes, bankruptcy can get rid of or reduce interests and penalties in a cram-down Chapter 13. You can include taxes and student loans in a Chapter 13 repayment plan. Filing a Chapter 7 can also get rid of a tax lien if it impairs your equity in a property to the amount that your exemption is impaired. For instance, let's say you have a \$50,000 house, a \$20,000 tax lien, and the mortgage is \$42,000. Your exemption is \$5000, so the IRS's lien could be reduced to \$3000. If the house is worth \$45,000, the government would have no lien at all on the house. A lien can be reduced to only the equity left in the home after your exemption.

67) What are predatory lenders? Certain Lenders don't care if you ever repay them not: They lend not on your ability to repay, but instead based on the equity that they can steal from your home or in their ability to overcharge you and then sell the very profitable loan to another lender. When you fail to pay, they foreclose to collect. They charge prepayment penalties, higher interest, and upfront loan costs to get you the loan. They often use unfair lending tactics, like flipping and packing, to increase income and then don't keep the loan but sell it to another company. They target poor, elderly, minorities, and the uneducated in advertising and overcharge heavily so that the loan can never be paid off. Home improvement companies will sometimes use these mortgage companies to process loans for home improvements that are poorly made (if they are made at all), and the result is that you have signed away your home for second-class home improvements. Predatory Lenders often overcharge for filing fees, reporting costs, and closing fees, and then fail to report the charges. If you are lucky, you will be able to sue them for truth-in-lending violations and, perhaps, have a free home. The more they steal or overcharge you, the more proud they are of doing it to you.

68) What if my question isn't answered here? Send your question to the Law Offices of Nick C. Thompson, and we will try to help you. Make sure you tell us where you live. Please keep in mind that we can not provide legal advice over the Internet or answer questions about state law (other than in Kentucky, Indiana, and West Virginia, where we are licensed). This book is for informational purposes only. It will give you ideas for questions to ask to your

Attorney and help you to save thousands of dollars. You must ask your Attorney about the issues specific to your case. Most bankruptcy Attorneys, such as us, do provide free initial consultations and can provide you with the guidance you need to decide whether or not to file a bankruptcy petition and what you, specifically, need to do.

69) I have a small retirement accounts is it exempt? My regular stock brokerage cash account on the day of filing will only have a minimal amount (if any) of cash and some shares of companies who are bankrupt and as of the moment, the stock is worthless.

Normally retirement accounts can't be taken by creditors or the bankruptcy court. The question is whether or not this is a retirement account just calling it a retirement Account does not make it one. Real retirement accounts cant be assigned or attached. If it can be spent by you, assigned, or attached it isn't a retirement account for purposes of the exemption. If the stock is worthless you can list it and if the trustee (which is what the trustee normally does with worthless property) abandons it then it will belong to you. However at the moment of filing your Chapter 7 bankruptcy all your property technically belongs to the Trustee.

70) I notice that you have a few more creditors such as the IRS and utilities listed on my bankruptcy that I don't owe. This is just me covering all the bases and insuring that you bankrupt every possible person.

1.15. An Example of How to Bankrupt Non-Bankruptable Debts: Bankrupting Taxes

(THIS IS WHY YOU LIST ALL OF YOUR DEBTS—SOMETIMES YOU GET AWAY WITH IT ANYWAY)

So you didn't think you could bankrupt taxes? Filing a petition under Chapter 7 can often erase your tax debt. Income taxes can be discharged in a Chapter 7 bankruptcy, but only if all of the following tax code rules are met:

- The tax return on which the tax debt arises must have been due at least three years before you file for bankruptcy. The tax return must have been filed at least two years ago for a tax year at least three years ago—this usually means April 15 of the year the return was due. If an extension was filed, then it means August 15 or October 15 of that year, or beyond to the actual filing date. If the 15th falls on a Saturday or Sunday, the return wasn't due until the following Monday. The tax return must also have been filed at least two years before the bankruptcy. (If the IRS files a substitute for a return it doesn't count.)
- Taxes other than income, such as payroll taxes, a 100% penalty, Trust Fund Recovery penalty, fraud penalties, or several other unusual types of taxes are by law excepted from bankruptcy discharge.
- The tax must have been assessed over 240 days ago.
- The tax claim must be unsecured or there must be no equity in the property to take (this is explained later).
- If the tax return was fraudulent, or shows a willful evasion of payment, forget about a discharge.
- Any limitation on the time allowed to the IRS to collect, such as non-filing of the return or an offer in compromise or bankruptcy, "tolls" or extends the "3-Year Rule" past April 15th of the third year after the return was due. Other events can delay the bankruptcy filing date to discharge taxes, including prior bankruptcies. The time rules (3-Year, 2-Year and 240-Day) are all delayed by the period in the prior bankruptcy proceeding, plus an additional 6 months. If you file an Offer in Compromise, the 240-Day period is extended by the period it is under IRS consideration, plus 30 days.

The idea behind a Chapter 7 is that you turn over all your assets to the Court, which in turn pays your Creditors from that property. In most cases, there is no property to turn over after you are allowed to keep the minimum allowed to "start over" (your exemptions). In Kentucky, you are allowed to keep \$2500 equity in a car, \$3000 in personal property, \$5000 in a home, and \$1000 in any property that you choose in a general exemption. For married couple, filing

jointly, these exemptions are doubled. Property is valued at what it would have brought at auction or liquidation.

In a Chapter 7, the immediate impact of filing bankruptcy is that all collection efforts are stopped by a federal Court order called a stay. The IRS is included in this stay. The only way a collector can overcome the automatic stay while your bankruptcy case is still open is to apply to the Bankruptcy Court. Judges will rarely lift a stay for the IRS, unless the IRS can prove some kind of fraud is being perpetrated by the bankrupt taxpayer. Unfortunately, the statute of limitations for collections runs only while a person is not in bankruptcy. If the bankruptcy is not finished (discharged), the tax bill will not age for purposes of the statutes of limitations. If you go into bankruptcy and emerge from the process still owing the IRS, it gives the IRS extra time to collect the balance. This often happens if the Taxpayer has some, but not all, of their taxes erased in a Chapter 7. As a result, many taxpayers end up filing a “Chapter 20”, wherein they first file a Chapter 7 to eliminate what tax can be eliminated and then file a Chapter 13 to deal with what is left. The IRS can have a total of ten years to collect taxes, penalties, and interest. Once a bankruptcy case is over, the IRS gets whatever time remained on the original ten years, plus the time the bankruptcy case was pending—plus an additional six months to collect the remaining debt (if any). Chapter 7 cases will add about 4 months to this.

If you want to eventually have a home, and a life, you may need to get a bankruptcy done and over so that you can start over. Timing is important. If you file too early, and the 3 years has not passed, you will owe for the tax years that are not discharged in the Chapter 7. If you file too late, you have allowed the IRS to collect from you and wasted valuable time. Filing extensions for your taxes will extend the time you have to wait to file and discharge your tax bill.

CHAPTER 13 AND TAXES

Filing under any of the reorganization provisions (Chapter 11, 12, or 13) can buy time and force a repayment plan on the IRS. Filing a petition under any Chapter, means that the IRS will no longer talk to you and negotiate. Reorganization Plans force the IRS to accept a payment plan for any kind of taxes. It is sometimes possible to reduce tax bills in a Chapter 12 or 13 plans, similar to an Offer in Compromise. However a Chapter 13 must offer as much as the IRS would receive in a Chapter 7.

The Tax rules about Chapter 13 follow:

- Taxes do not necessarily have to be paid in full, but this is up to the discretion of the bankruptcy judge. The debts and the plan to repay them can be “crammed down”. To be discounted, the taxes must be (a) income taxes; with (b) returns due more than three years before filing and (c) assessed by the IRS at least 240 days ago. To be crammed down, the IRS must not have recorded a valid lien or there is no property for that lien to attach. If you attempt to bankrupt taxes, the IRS will normally no longer negotiate; however, don’t be afraid to litigate and file a Chapter 7 or 13 to discharge your taxes.

The IRS only does this to psychologically discourage you from filing, and as an unfair tactic.

- If a tax return was due less than three years ago, or the taxes were assessed less than 240 days ago, or the taxes are not income taxes (such as for payroll), they are “priority” taxes. Priority taxes and Chapter 11 taxes must be paid off in full through the plan. However, a Chapter 13 stops interest and penalties the moment it is filed. Under IRS Installment Agreements (IA), interest and penalties continue to run. So, paying \$1,000 per month under an IA for a \$60,000 tax bill leaves a balance of at least \$30,000 after five years. The same payment in a Chapter 13 plan pays off the tax debt in full! Chapter 13 forces the repayment plan on the IRS. The IRS cannot get anything more than the bankruptcy judge approves. The IRS cannot restart collection activities or seizures of property or wages as long as a Chapter 13 plan is underway. This is a powerful way to get around an unreasonable Revenue Officer who won't agree to a fair IA. In most Chapter 13 plans, the monthly amount paid to the IRS is far less than IA proposals that the IRS rejects.
- Tax interest penalties may be greatly reduced by the Court. Even fraud penalties, never dischargeable in Chapter 7, can be reduced in a Chapter 13.
- Unfiled income taxes may be paid as a fraction on the dollar. Though actual filing of tax returns is a requirement to discharge taxes in a Chapter 7, there is no "2- Year Rule" in Chapter 13.
- Tax Liens and the liability for the taxes are extinguished when a Chapter 13 is completed.

To qualify for Chapter 13, the Debtor only needs to have a steady stream of income. It need not be wages: Social Security, pension payments, and receipts of an independent contractor all qualify. Unsecured debts should be discharged in a Chapter 7, if it is possible, and the debts cannot exceed \$1,250,000. If the debts are greater than that, a Chapter 11 may have to be filed. The Chapter 13 plan is submitted to the bankruptcy judge and the IRS rarely objects. The judge may make adjustments to the plan before approving it. Then monthly payments are made to the Court-appointed Trustee, who in turn pays the IRS.

COMBINING BANKRUPTCY CHAPTERS: “CHAPTER 20” & “CHAPTER 26”

The law allows a tax Debtor to file under more than one chapter in bankruptcy. Why would someone do that? Suppose you file a Chapter 7 to wipe out all your dischargeable taxes and unsecured debts. When the Chapter 7 is completed, some non-dischargeable taxes may remain. You can then simply file Chapter 13 for a repayment plan to deal with the balance. This strategy is often called a “Chapter 20” (7 + 13). This stops all the interest and penalties.

Likewise, a “Chapter 26” may be a way to spread paying a student loan or tax debt over a longer period—perhaps up to ten years. This means filing one Chapter 13 and completing it, and then filing a second Chapter 13 for the remaining debts. If timed right, this can be accomplished before the IRS starts up collection again. However, if you drop out of a Chapter 13, all payments under a Chapter 13, interest, and penalties on taxes are revived retroactively—as if they had never been in a Chapter 13. While revived penalties can be paid at a discount in a subsequent Chapter 13, the old interest charges remain.

The rules are the same for state income taxes as they are for federal ones. The Bankruptcy Code only talks about “taxes” meeting the 3-year rule, 2-year rule, etc. There are three traps for the unwary:

- Some states send out preliminary notices of state tax deficiencies. In California, for example, the final date of assessment is 60 days or more after the proposed additional assessment. This extends the waiting time to discharge California state income taxes to 300 days. So, 60 days can be added to the 240 day federal rule for qualifying state taxes for bankruptcy.
- Some states require filing an Amended Return after an IRS audit assessment. The 3-Year Rule qualification for bankruptcy is measured from when this Amended Return was due, and the 2-Year Rule from when it was filed.
- Most state sales taxes are not dischargeable in Chapter 7. In Chapter 13, they are treated as priority taxes to be paid in full. However, due to a quirk in some state laws, sales tax can be imposed on the merchant, not the customer. Consequently, the tax doesn't fit the Bankruptcy Code definition of a “sales tax” and can be discharged! As with income taxes, the taxes must meet the 3-Year and 2-Year Rules.

A FINAL WORD TO THE WISE

The Bankruptcy Courts are filled with folks who filed cases too early and too late, or that didn't meet the various strict time rules. For instance, if your tax returns were filed two years and 11 months before filing Chapter 7, or if your taxes were assessed 239 days ago, the taxes will not be discharged. Since you can only file a new Chapter 7 for six more years, you will have a problem. It is not as bad with a Chapter 13, as you can simply drop out and refile after the waiting periods have run. But, in addition to the period spent in a prior bankruptcy, there is an additional six-month waiting period. When in doubt, list all your debts. Find out how you can discharge debts anyway and invest in an adversary lawsuit if it will allow you to bankrupt a debt that is not usually dischargeable.

1.16. Strange Dumb Things That Have Been Said at the 341 Hearing

- You are not going to check how much my house is worth are you? (The Trustee did just that after that strange statement.)
- Why did I file? Well I guess I really didn't need to, I make enough money. (That response caused a lot of questions to be asked.)
- I really earn twice that, but I didn't want my wife to know what I really earn because it would increase my child support.
- I thought you'd ask me to turn that stuff over to you, so I gave it to my Mom. (Mom got hauled in and had to give it back.)
- Yes, I won the million dollar lottery, but I bought that winning lottery ticket the day before I filed, and I did not know I won until after that. (He owned the ticket before he filed. His bankruptcy was voluntarily dismissed and he had to pay his bills. I actually had someone that won!)
- Do we have to consider the rent that I get from my home? I really don't live in my home, I just rent it out to my brother. (In Kentucky, you have to live in your own home to exempt it. This guy almost lost his home.)
- Dad only put the 23-meter boat in my name just so he could get insurance on it. He lives in Chicago and someone locally had to have it in his name to get insurance. (This person actually filed the bankruptcy and kept the boat, free-and-clear, because it was his Dad's. I was very lucky in that case)
- My Attorney warned me to list all my assets.
- Yes, I'm interested in real estate. (Answered to "Do you have any interest in Real Estate?")

1.17. More Strange Things That Have Been Said at the Meeting of Creditors

- I pawned (sold or gave away) the secured item just before I filed. (He had to pay for it.)
- Yeah, I got over \$1000 as a cash advance on my credit card just before I filed because I knew it would be my last chance to grab some. (He had to pay it back. If he had waited 10 more days to file, he would have been within the rule and would have kept the money.)
- I knew Mom was dying, and I was going to inherit all the big dough, so I charged it up,

rushed out, and filed just before she died. (No, that one did not go through.)

- That student loan would have been 7 years old the week after I filed. Is that good enough? (This was a sad case, and she had to pay the loan because she filed 10 days too early. Timing is everything. [Student loans were dischargeable before 10/1998 if they were 7 years old.])
- Sure, I understand what a discharge is. The wife had one last month, but aren't you getting a little personal? (Yes, it was actually said in Court. One person was that ***)
- That loan that I took out just before I filed? Yeah, I knew I was filing bankruptcy when I took it out. (He had to repay it.)
- My house is worth at least \$80,000! (She bragged about how much her house was worth when she did not know what it was worth. She had to pay for an appraisal to keep it after that.)
- This spot is reserved for the next person that does not read this manual. This will be the same person that calls me 20 times a day with questions when the answers are right here in the book, then wonders why he has to pay twice for filing his bankruptcy a second time after he fails to show for Court...and the person always asks me or someone else to do his thinking for him.

1.18. Different State Exemptions

Alaska Exemptions

The homestead exemption has a \$27,000 limitation of value. Personal property and tools of the trade can be exempted to a total value of \$1500. Wearing apparel, household goods, books, musical instruments, family heirlooms and portraits, jewelry to a value of \$500, pets to a value of \$500, a motor vehicle to a value of \$1500 (if its full value does not exceed \$10,000), and a burial plot may be exempted. Tools of trade, implements and professional books may be exempt to a value of \$1400. Weekly net earnings to a value of \$175 are exempt. (Alaska Statutes Sec. 9.38.010; Sec. 9.30.020; Sec. 9.30.15; Sec. 9.38.030.)

Alabama Exemptions

The homestead exemption has a \$5000 limitation of value and cannot be more than 160 acres in size. If the homestead exemption is not claimed, the Debtor may claim up to \$5000 in value in a mobile home. Personal property may be exempted to a value of \$3000. All necessary wearing apparel, family portraits or pictures, and books may be exempted, as well as a burial place and church pew. 75% of wages earned but unpaid is exempt. (Alabama Code Title 6 Sec. 10-2; Sec. 10-5; Sec. 10-6; Sec. 10-7. Alabama Constitution, Article X Sec. 204.)

California Exemptions

Either state exemption system may be used; both husband and wife must pick the same exemption system.

Exemption System #1:

A person who is 65 or older or who is disabled and therefore unable to engage in substantial gainful employment, may claim a homestead exemption to a \$55,000 limitation of value for a house, mobile home, boat or condominium in which he actually lives. A member of a family unit may claim such property to a value of \$45,000. Others may claim this property to a value of \$30,000.

Personal property exemptions may include: motor vehicle(s) to a value of \$1200; household furnishings and provisions, wearing apparel and personal effects necessary and personally used by the Debtor; materials about to be applied to repair or improve the Debtor's residence, to a value of \$1000; jewelry, art and heirlooms to a value of \$2500; health aids; \$500 deposit in account in which Social Security payments are deposited directly; \$1000 in an inmate's trust account; wrongful death and personal injury causes of action and recoveries necessary to support the Debtor and family; cash and bank accounts that can be traced to an exempt asset; family burial plot. Exemptions to a value of \$2500 may be taken for various books, tools, equipment and personal property necessary for the Debtor to earn a livelihood. Also exempt is 75% of earnings paid in the preceding 30 days (100% if subject to earnings withholding or

wage assignment for support), a minimum of 75% of earned but unpaid wages (higher amount for low-income Debtors), and public employee's vacation credits. (California Code of Civil Procedure Sec. 703.080; Sec. 704.010; Sec. 704.020; Sec. 704.030; Sec. 704.040; Sec. 704.050; Sec. 704.060; Sec. 704.070; Sec. 704.080; Sec. 704.090; Sec. 704.113; Sec. 704.140; Sec. 704.150; Sec. 704.200; Sec. 704.730; Sec. 706.050.)

Exemption System #2 (Modified Federal System):

A homestead exemption to a value of \$7500 may be taken for a residence.

Personal property exemptions may include: motor vehicle to a value of \$1200; household goods and furnishings, wearing apparel, appliances, books, animals, crops and musical instruments to a value of \$200 per item; jewelry to a total value of \$500; personal injury recoveries to a value of \$7500; wrongful death recoveries; other property to a value of \$400 (\$7900 if the homestead exemption is not claimed). Books and tools of trade are exempt to a value of \$750. (California Code of Civil Procedure Sec. 703.140.)

Florida Exemptions

The homestead exemption is limited to 2 acres within a municipality or 160 acres elsewhere, or to a modular or mobile home. Personal property is exempt to a value of \$1000. A head of family may exempt 100% of earned but unpaid wages. (Florida Statutes Annotated Sec. 222.05; Sec. 222-11. Florida Constitution Article 10 Sec. 4.)

Indiana Exemptions

The homestead exemption has a \$7500 limit of value for real estate or personal property that is the personal or family residence of Debtor. Personal property that may be exempted includes tangible property to a value of \$4000 and intangible property to a value of \$100; total value of all exempted property (homestead, real and personal) cannot exceed \$10,000. 75% of earned but unpaid wages is exempt (may be higher for low-income Debtors). (Indiana Statutes Annotated Sec. 24-4.5-5-1 Os; Sec. 34-2~28-1.)

Illinois Exemptions

The homestead exemption has a \$7500 limit of value.

Personal property that may be exempted includes: necessary wearing apparel, school books, bible and family pictures; motor vehicle to a value of \$1200; other property to a value of \$2000; wrongful death recoveries and life insurance proceeds (if necessary to support the Debtor) and personal injury recoveries to a value of \$7500. Professional books and tools of trade are exempt to a value of \$750. Eighty-five percent of earned but unpaid wages may be exempted (may be more for low-income Debtors). (Illinois Code of Civil Procedure Sec. 12-803; Sec. 12-901; Sec. 12-1001.)

Kentucky Exemptions

The homestead exemption has a \$5000 limitation of value. Personal property exemptions include: household furnishings, clothing and jewelry to a value of \$3000; motor vehicle to a value of \$2500; other property to a value of \$1000; personal injury recoveries to a value of \$7500. Exemptions may be claimed for: a mechanic's or artisan's tools to a value of \$300; a farmer's tools, equipment, and livestock to a value of \$3,000; various professionals' libraries, instruments, and office equipment to a value of \$1000. 75% of earned but unpaid wages is exempt (may be higher for low-income Debtors). These exemptions are doubled for a married couple in that each person has his or her own exemptions. (Kentucky Revised Statutes Sec. 427.010; Sec. 427.030; Sec. 427.040; Sec. 427.060; Sec. 427.150; Sec. 427.160.)

Louisiana Exemptions

The homestead limitation of value is \$15,000. Personal property exemptions include clothing, wedding and engagement rings, various household furnishings and equipment, family portraits, some military equipment, musical instruments, certain livestock and income from a dowry to a value of \$5000. Trade or professional tools, instruments, books, truck or non-luxury automobile and utility trailer are exempt. 75% of earned but unpaid wages is exempt (may be higher for low-income Debtors). (Louisiana Revised Statutes Sec. 13:3881; Sec. 20:1.)

Michigan Exemptions

The homestead limitations are: value, \$3500; area, one lot in a town or city or 40 acres elsewhere.

Personal property exemptions include: all family pictures, arms, all wearing apparel of every person or family, and provisions and fuel for comfortable subsistence of each householder and his or her family for 6 months; all household goods, furniture, utensils, books and appliances to a value of \$1000; a church pew; a burial plot. Householders may also exempt: family provisions and fuel for six months, various farm animals and six months' feed; \$1000 par value of building and loan association shares if the homestead exemption has not been claimed. Certain tools, materials, vehicle and other things necessary for the Debtor's profession or business are exempt to a value of \$1000. (Michigan Compiled Laws Annotated Sec. 600.6023.)

Mississippi Exemptions

The homestead exemption limitations are 160 acres in size and \$75,000 in value.

Personal property exemptions include: wearing apparel, sewing machine, family portraits; library, pictures and paintings to a value of \$9000; household furniture to a value of \$5000; various farm produce, animals and feed, and farm equipment. Other exemptions are: mechanic's tools of trade; farmer's agricultural equipment; student's textbooks; militia member's arms and equipment; teacher's educational materials; surgeon's or dentist's professional instruments to a value of \$5000. Personal injury settlements are exempt to a value of \$10,000.

75% of earned but unpaid wages is exempt (may be higher for low-income Debtors). In lieu of tools of trade and personal property exemptions, tangible property of any kind may be exempted to a value of \$6500. (Mississippi Code Sec. 85-3-1; Sec. 85-3-4; Sec. 85-3-17; Sec. 85-3-21.)

Montana Exemptions

Homestead exemption limitations are: value, \$40,000; area, 1/4 acre in city or town and one acre elsewhere (320 acres if used for agriculture). Personal property exemptions for head of family or person over 60 include: wearing apparel; desks, tables, chairs and books to a value of \$200; specified household furniture and equipment; family pictures; clock; gun; fuel and provisions for three months; horse, saddle and bridle, various farm animals and feed for three months; truck or automobile to a value of \$1000. All other Debtors may exempt only wearing apparel. Tools of trade exemptions for heads of families or persons over 60 are diverse and specific to categories of professions or occupations; all other Debtors may exempt only arms and uniforms required by law. 100% of earned but unpaid wages is exempt if needed for support of Debtor's family. (Montana Code Annotated Sec. 25-13-611; Sec. 25-13-612; Sec. 25-13-613; Sec. 25-13-614; Sec. 25-13-617; Sec. 70-32-104.)

New York Exemptions

The homestead exemption is real property, a mobile home or an interest in a condominium or cooperative apartment to a value of \$10,000. Personal property exemptions include: wearing apparel; household furniture and various appliances, stoves and fuel for 60 days; church pew; motor vehicle not exceeding \$2400 above liens and encumbrances of Debtor; wedding ring and watch to a value of \$35; school books, family pictures and bible, other books to a value of \$50; family food for 60 days; domestic animals and 60 days' food to a value of \$450; security deposits to utilities and landlord; principal of a trust fund and 90 percent of the income or other payments; personal injury recoveries to a value of \$7500 and wrongful death recoveries. Total personal property exemptions are limited to a value of \$5000; to the extent that this limit is not exceeded, the Debtor may exempt up to \$2500 in cash in lieu of the homestead exemption. Various tools of trade, professional library and furniture are exempt to a value of \$600. 90% of earned but unpaid wages are exempt (100 percent for some military members). (New York Civil Practice Law and Rules Sec. 5205; Sec. 5206. New York Debtor and Creditor Law Sec. 282-284.)

Ohio Exemptions

The homestead exemption limitation of value is \$5000 of real or personal property used as a residence. Personal property exemptions include: wearing apparel, household goods and furnishings, appliances, books, musical instruments, firearms, fishing and hunting equipment, crops and animals to a value of \$200 per item; refrigerator and stove to a value of \$300 each; jewelry to a value of \$400 (one item) and \$200 (all other items); motor vehicle to a value of \$1000; burial plot; wrongful death recoveries; personal injury recoveries to a value of \$5000;

cash, tax refunds, money payable, money on deposit with public utilities, landlord and various savings institutions to a value of \$400; any other property to a value of \$400. The total exemption for jewelry and household furnishings, etc., is \$1500; if the homestead exemption is not claimed, the total is \$2000. Professional books and tools of trade are exempt to a value of \$750. 75% of earned but unpaid wages is exempt (may be higher for low-income Debtors). (Ohio Revised Code Sec. 2329.66.)

Pennsylvania Exemptions

Personal property exemptions include: wearing apparel, sewing machine, bibles, school books, uniforms; other real or personal property to a value of \$300. 100% of earned but unpaid wages is exempt. (Pennsylvania Consolidated Statutes Annotated Title 42 Sec. 8123, 8124 & 8127.)

Tennessee Exemptions

The homestead exemption value limitation is \$5000 (\$7500 for a married couple).

Personal property exemptions include: wearing apparel, family bible, family pictures, school books; burial plot; wrongful death recoveries to a value of \$10,000; personal injury recoveries to a value of \$7500; other personal property to a value of \$4000. Professional books and tools of trade are exempt to a value of \$750. 75% of earned but unpaid wages is exempt (may be higher for low-income Debtors). (Tennessee Code Annotated Sec. 26-2-102; Sec. 26-2-103; Sec. 26-2-106; Sec. 26-2-111; Sec. 26-2-301; Sec. 26-2-305.)

Texas Exemptions

The homestead exemption is limited in area to one acre within a town or city or to 200 acres elsewhere (100 acres if Debtor is single). Personal property exemptions include: wearing apparel, household furnishings, family heirlooms, sporting and athletic equipment, two firearms, pets, provisions; specified livestock and their feed; cars and light trucks not used for income production and choice of two other animals or vehicles. Books, equipment and tools of trade and implements for ranching or farming are exempt. The total value of these exemptions and certain insurance exemptions may not exceed \$60,000 for a married couple (\$30,000 for a single Debtor). 100% of earned but unpaid wages is exempt. (Texas Property Code Annotated Sec. 41.001; Sec. 42.002.)

West Virginia Exemptions

The homestead exemption has a value limitation of \$25,000. Personal property exemptions include: wearing apparel, household goods and furnishings, appliances, books, musical instruments, animals and crops to a total value of \$1000 (limit of \$200 per item); jewelry to a value of \$500; motor vehicle to a value of \$1200; wrongful death recoveries; personal injury recoveries to a value of \$7500; other property to a value of \$400 (\$7900 in lieu of homestead exemption). Professional books and tools of trade are exempt to a value of \$750. (West Virginia Code Sec. 38-10-4.)

1.19. Glossary

Automatic Stay: Immediately upon filing the bankruptcy petition there goes into effect a Court order that prohibits all collection and foreclosure efforts against a Debtor including lawsuits. Creditors are barred from calling or writing a Debtor for the duration of the bankruptcy unless the automatic stay is otherwise modified or terminated by Court order.

Bankruptcy: A legal procedure filed in federal Bankruptcy Court that allows an entity or individual that is unable to pay its debt when due to reduce, reorganize, or cancel those debts.

Bar Date: The last day the Court allows filing a proof of claim in a bankruptcy case. For Chapter 7 cases, this is 90 days after the 341 meeting. (No, this is not the last day to order beer.)

Chapter 7: Also known as "straight bankruptcy" or liquidation bankruptcy. This form of bankruptcy is the most common form of personal bankruptcy. It eliminates most debt completely. If you have property that is not protected by state or federal exemptions, the Trustee will sell those assets and distribute the proceeds to your Creditors in the order of priority of the debt. (see **priority**)

Confirmation: Approval by the Bankruptcy Court of a Chapter 13 plan of reorganization that has met the many requirements of Code section 1129. Once approval is given, all the Debtors' pre-petition debts are discharged (eliminated) as provided by the plan.

Consumer Debt: Debt created primarily for household, personal or family purposes.

Creditor: A person or entity that has a claim against the Debtor at the time of or before the petition was filed. A Creditor may be secured or unsecured. (see **secured** and **unsecured**)

Creditor Meeting (341 hearing): The meeting that takes place 4-6 weeks after the bankruptcy petition is filed, at which the Debtor may be questioned about the information provided by the Debtor on the bankruptcy petition by the Court appointed Trustee and the Debtor's Creditors.

Contingent Claim: A claim that only becomes a claim if a specified, predetermined event occurs.

Debtor: The person who owes money and who is the subject of the bankruptcy proceeding.

Discharge: The official elimination of all debt (except debts exempt from discharge).

Disputed Claim: A dispute about the amount of a debt, or whether or not the debt is due at all.

Distribution: The act of distributing non-exempt assets among the Debtor's Creditors.

Executory Contracts: Contracts where both parties have yet to fulfill the terms and obligations of the contract. For example: an unexpired lease.

Exemptions: Federal and state laws protecting property of the Debtor from being taken in a bankruptcy.

Exempt Property: Property of the Debtor that is protected by law from being taken in a bankruptcy.

Fraudulent Transfers (Conveyances): A transfer of property or an obligation made within one year before the filing date of the bankruptcy petition that was made with the intent to hinder, delay, or defraud Creditor(s).

Garnishment: An action where the Court orders a third person to turn over money or property of the Debtor that is in the third person's possession as a means of satisfying the Debtor's debt.

Insider: (As defined by Code section 101(31)) A person who is a close working associate of the Debtor or a relative. If the Debtor is a corporation, an insider is an officer, director, manager, or a relative of a director, officer of manager. If the Debtor is a partnership, an insider includes a general partner in the Debtor or a relative of such person.

Modification: Changes made in the terms of the bankruptcy plan of reorganization.

Nonexempt Property: Property that is not protected from being taken to satisfy debts in a bankruptcy.

Nonpossessory Security Interest: A security interest in property where the property that is the subject of the security interest is in the possession of the Debtor.

Nonpurchase-money security interest: A security interest (collateral) given to secure a loan where the loan was not used to purchase the collateral

Postpetition debt/liabilities: Debt or liabilities incurred after the filing date of the petition.

Preferential Transfer: (As defined in code section 547(b)) A transfer of property made for less than its value and made within 90 days before the filing date or within 1 year if transfer is made to an insider and it causes the Creditor to receive more than he would have in a liquidation case. This kind of transfer is voidable by the Trustee (in other words, the person you gave the property to must return it).

Priority: Debt is classified into 3 levels. Priority debts are paid before secured debts and, after that, unsecured debt is paid. Priority Debts may not be able to be wiped out in bankruptcy. For example, all taxes are priority claims, but taxes over 3 years old can be discharged in a Chapter 7.

Proof of Claim: A document filed with the Bankruptcy Court by a Creditor stating the amount and nature of the claim that the Creditor believes that the Debtor owes to him. Creditors have a certain time period to file this claim after which they are barred. (see **bar date**)

Pro se: A non-lawyer who represents himself in a Court proceeding. In the Western District, if you wish to file pro se and reaffirm a debt, pro se filers must have the agreement of the judge to such agreements.

Purchase money security interest: A lien placed on the property being purchased by the seller who also finances the property. In other words, the collateral is the property being purchased. A very common example is a dryer sold by Sears, which finances it. Such liens do not have to be filed.

Reaffirmation agreement: An agreement between a Creditor and a Debtor where the Debtor agrees to continue making payments in return for keeping a piece of property. A common example is where a Debtor owes money to a car dealership for a car that the Debtor wants to keep. If the car dealer and the Debtor enter into a reaffirmation agreement, the Debtor may continue to make scheduled payments and thereby keep the car. The Court will not want to make sure that the agreement is fair to the Debtor before it approves it. The agreement requires the signature of the Debtor's Attorney and must be signed before the case is discharged.

Redemption: A Debtor may keep exempt secured property even though they owe money on it by paying the Creditor the collateral value of the property, rather than the amount of the debt. Note that in some cases the "value" of the collateral may be less than the amount owed on it. In these cases, it may be advantageous for the Debtor to redeem the property. Redemptions must be filed before the case is discharged.

Reorganization Plan: A Chapter 13 or 11 plan describing the terms by which the Debtor intends to repay his debts, usually over a three to five year period.

Secured Debt (Creditor): A debt that is secured by a lien on the Debtor's property, which may be taken by the Creditor in case of nonpayment by the Debtor. Common examples are a car or mortgage loan.

Trustee: An individual appointed by the Bankruptcy Court that is responsible for the distribution and liquidation of the estate's assets. The Trustee usually plays a key role in many bankruptcies, including reviewing the plan of reorganization in a Chapter 13 and recommending approval or changes to the Bankruptcy Court. It is also the Trustee who conducts the Meeting of Creditors (341 hearing) and may ask the Debtor questions about his or her petition and schedules. Upon filing the Chapter 7, all the property that is not exempted belongs to him and is sold for the benefit of the Creditors.

Unsecured claim/Creditor: A claim that is not secured by collateral. It also includes a secured debt that is more than the value of the collateral.

Unliquidated claim/debt: A debt that exists, but the amount is still in question. For example, a judgment made in a lawsuit wherein the exact amount of damages has not yet been set.

Voidable Preference: A transfer of property that is voidable by the Trustee. Normally, a transfer of over \$600 of the Debtor's property to relatives within 1 year of filing. However, it may arise whenever the Debtor gives away property or property of the Debtor is taken away just before filing. This may include garnishments, seizures, and judicial liens on property.

1.20. Positive and Negative Aspects of Chapter 13 and Chapter 7

Positive Aspects of Chapter 13:

- The power of the automatic stay keeps Creditors off your back. Payments and interest rates can be reduced, and you can modify the rights of most secured Creditors.
- A Chapter 13 usually allows you to keep all of your non-exempt property. Remember, however, that judges are wary of letting you keep what they consider to be luxury items on which you still owe unless you are paying 100% of your debts.
- A Chapter 13 wipes out more types of debts than a Chapter 7, including some debts that are normally not bankruptable.
- A Chapter 13 consolidates your bills and gives you up to five years to repay money you owe for taxes and up to two years (in Louisville) to catch up mortgage payments that are in arrears. Your monthly expenses may be reduced.
- If you are behind on your mortgage payments, a Chapter 13 gives you up to 2 years (in Louisville) to catch up the payments. In other jurisdictions the time is longer or shorter, according to their local rules.
- Some percentage of your unsecured debts may be forgiven, although you are expected to pay as much as you can afford. Plans that pay only 20-30 cents on the dollar are now common but 70% used to be required.
- A Chapter 13 allows you to pay unsecured Creditors only what you can afford to pay them over the three to five years of your bankruptcy. However, you cannot pay less than what a Creditor would have received if you had filed a Chapter 7 bankruptcy and your property were liquidated and the proceeds used to pay Creditors.
- A Chapter 13 may be your only choice if you have filed within the last 6 years. A Chapter 13 is best if you have large secured debts, like a house, a car and furniture, and a lot of equity in your property. If you are having trouble paying for these items, a Chapter 13 could lower the payments and interest rates enough so that you may be able to keep them. If you are behind on your bills, you may also be behind on making your house payments. A Chapter 13 is an especially effective way to keep your house if you are about to lose it. Usually, your house is most important to you. You may also decrease interest rates and payment amounts. In the Louisville area, you must cure any arrearage within 2 years.

Negative Aspects of Chapter 13:

- A Chapter 13 will tend to hurt your credit more than a Chapter 7, if your credit rating was good when you filed.
- A Chapter 13 requires a long period of involvement with the Court. During this time, you may fall farther behind on unsecured accounts while secured accounts are being paid. Or, your secured accounts may fall behind while taxes and priority claims are being paid. Your credit rating may not improve, it may actually worsen. This may continue for 5 years, whereas a Chapter 7 would have given you a fresh start within about 90 days.

Positive Aspects of Chapter 7:

- Immediately upon filing your petition with the Court, an automatic stay is invoked and Creditors must stop their collection actions against you. This means they cannot call or write you, or repossess or foreclose on your property. In addition, the automatic stay will stop a lawsuit if one has been filed against you. It will also reinstate your drivers license if you have lost it due to involvement in an accident with too little or no insurance. This immediate action by the Court relieves the pressure on you and your family.
- With some exceptions, such as child support, most of your debts are wiped out.
- The Chapter 7 process is quick, and it is the cheapest bankruptcy. It also offers you almost all the benefits of bankruptcy. It usually takes about 120 days.

Negative Aspects of Chapter 7:

- Filing Chapter 7 may damage your credit rating, if you had good credit before you filed. But, more often, it allows you to repair a poor credit rating and purchase houses and cars shortly after filing. Repairing your credit is done by making prompt payments on accounts after you file. If you had bad credit before you filed a bankruptcy, a Chapter 7 is a chance to repair your credit. A Chapter 7 bankruptcy can be reported for 10 years, but your present bad credit will be reported for 7 years after the last collection action (which can make it last far longer than 10 years). Most people who file bankruptcy already have damaged credit, so a Chapter 7 bankruptcy is unlikely to harm it very much further.
- Chapter 7 does not discharge all debts. Some debts, such as child support, are non-dischargeable. It also does not discharge as many types of debts as a Chapter 13. Taxes and student loans are more likely to be discharged in a Chapter 13.
- The rights of secured Creditors may not be modified in a Chapter 7. These rights may be modified in a Chapter 13. An exception is that judicial liens and liens on household goods may be destroyed and avoided if you tell your Attorney about them.
- In a Chapter 7, your only options when you want to keep an asset that is collateral for a debt are to either 1) Make contractual payments promptly and reaffirm the debt with the same or different terms and possibly make up missed payments (the Creditor may not wish to reaffirm the debt if the contract is in default); or 2) Redeem the property by paying its value in a lump sum; or 3) Give up the asset to satisfy the debt.

SUMMARY

You want to file a Chapter 7 if you have little or no equity in property or little or no secured debts. Ask your Attorney.

Most of our clients choose a Chapter 7 bankruptcy. You can only lose property if you have so much money or property that it is not exempted. This is very rare, and it happens less than 1% of the time in our office. If there is a problem with this, we will tell you before we accept your money for filing the bankruptcy. A Chapter 7 is a good option for Debtors that owe so much that, given their income, they have no hope of paying off what they owe by filing a Chapter 13 bankruptcy. It is also a good option for Debtors who do not own a lot of property.

Debts That Are Not Dischargeable in Bankruptcy

- Creditors (bills) or debts that you fail to list in your petition. However you can normally reopen cases and add debts on.
- Student loans are no longer legally dischargeable after October 1998, except for hardship cases which are getting easier to get.
- Income Taxes: Taxes over 3 years old are normally bankruptable if they have been properly reported. Here is the rule: Federal, state or local—any less than 3 years old, or any that have not been filed are not. Also, if the tax is 3 years old, it must not have been assessed within the last 240 days (due to a recent audit) and the debt must not be fraudulent or be a result of willful evasion. If you make an offer in compromise, then the 240-day rule is delayed by the time the offer is made until the IRS accepts or rejects it, or you withdraw it. If collections were suspended by Taxpayer assistance, the 240-day rule is extended for that period of time collections were suspended.
- Maintenance (alimony) or child support.
- Any criminal imposition from the government such as penalties, fines, Court costs, or restitution.
- DUI debts (personal injury or death).
- Debts non-dischargeable from a previous bankruptcy due to fraud or improper acts.

Other debts will be dischargeable, unless the Creditor objects and proves one of the following:

- a) Debt from fraud, including \$1000 or more to one Creditor for luxury items incurred within 60 days before filing, or cash advances in excess of \$1000 within 60 days of filing.
- b) Debts from malicious acts.
- c) Debts due to larceny, embezzlement, etc.
- d) Debts from divorce or marital settlement, if you have the ability to pay the debt or discharging the debt would result in a detriment to your former spouse that would outweigh the benefit to you.

1.21. The Bankruptcy Timetable

STEP IN PROCESS/PROBLEM	PROCEDURE/SOLUTION	WHEN
<p>Notifying Creditors of your bankruptcy filing. The Court automatically sends out the notices by mail, but the notice often goes to a mail room and is lost.</p>	<p>Call or Send out your own copy of the notice to any bill collector that you want to stop harassing you, or if you want to continue utility service.</p>	<p>Whenever you are contacted by a creditor.</p>
<p>A Trustee is appointed. A Trustee is another Attorney that will overlook your paperwork for accuracy, and who will look for assets that could be used to pay debts.</p>	<p>The Court proclaims a Trustee that will go over your paperwork and manage or take any property that is not yours to keep (exempted property) at the 341 hearing and during the case.</p>	<p>Within a week to ten days after filing.</p>
<p>Meeting of Creditors is scheduled</p>	<p>The Court schedules a 341 meeting, and the Court informs the Creditors using the names and addresses listed in your bankruptcy</p>	<p>Normally, within a week to ten days after filing. This can be done the day of filing</p>
<p>You are present at the Meeting of Creditors. Secured Creditors are reaffirmed or redeemed, or property is surrendered to them. The Trustee and Creditors may ask questions about your filing and case.</p>	<p>This is the only time most people have to go to Court. Usually, only the Trustee is present and few, if any, Creditors show up. The Trustee and Creditors can ask questions about the information you supplied</p>	<p>Approximately a month after you file. This could be up to 2 or 3 months after filing, though.</p>
<p>The Trustee and you manage the nonexempt property.</p>	<p>The Trustee gathers your nonexempt property and sells it to pay the bills, You may keep it if you pay the Court and any Secured party the market value in cash, or give up exempt property of equal value. (In 10 years and over 1000 cases, I have only had about 10 people turn over property to the Court.)</p>	<p>Soon after the meeting of the Creditors.</p>

STEP IN PROCESS/PROBLEM	PROCEDURE/SOLUTION	WHEN
You manage the secured property, keeping it insured.	On the Statement of Intention, if you stated you would redeem, reaffirm a debt, or surrender property, this is the time it is done. If you are to reaffirm or redeem the property, it must be done before the discharge	Filed in the initial paperwork. Should be done within 45 days.
You are discharged.	The Court will rarely, but on occasion, schedule a discharge hearing in case there are assets to distribute, but you don't need to do anything or attend. Over 99% of the time, you will just get a letter of discharge	About 4 months after you file.
Case closed.	Trustee gives any property to Creditors that remain.	About a week after you are discharged.

1.22. Directions to Our Office and the Courthouses

We are presently in the Liberty Square Office Building II next to the McDonalds on Hurstbourne Lane where I-64 crosses Hurstbourne Lane.

DIRECTIONS TO THE LOUISVILLE COURTHOUSE

If your Court appearance is in Louisville, the Courthouse is at 6th and Broadway in the Gene Snyder Courthouse in Louisville, Kentucky. This is the old Post Office building, and the Social Security office is on the first floor. (It also used to be the old IRS office.) If you are coming from south Louisville, travel north on I-65, take the Broadway exit, and head west.

The Federal Courthouse stands between the what used to be Moby Dick and the Courier-Journal Newspaper building. Use the elevators on the side next to Courier-Journal. Do not park in the Moby Dick parking lot—you will be towed—and do not use the elevators on the Moby Dick side of the building. Do not park in front of the Courthouse—you will be towed. Arrive a few minutes early and listen to others be asked the same questions you will be asked, and you will be prepared for your hearing. The most common questions are listed in this manual in Section 19. **Please bring along a copy of your full coverage auto insurance, a picture ID, and proof of your social security number (a W-2 will do)!**

Do not go to the County Courthouse at 7th and Jefferson where you have divorce and traffic Court. Every year, people go to the wrong Courthouse.

DIRECTIONS TO THE FRANKFORT COURTHOUSE

If you have your hearing in Frankfort, you will go to the top floor of the Federal Building, which is next to the Civic Center, which is next to the Kentucky River in downtown Frankfort.

The twin towers of the civic center are easy to recognize. **YOU MUST HAVE YOUR DOCUMENTS IN TO THE TRUSTEE BEFORE YOU APPEAR AT THE HEARING. PLEASE CALL THE TRUSTEE AND MAKE CERTAIN HE HAS ALL OF YOUR DOCUMENTS. IF YOU FAIL TO HAVE YOUR DOCUMENTS TO HIM YOUR CASE MAY BE DISMISSED OR, AT LEAST, CONTINUED.**

1.23. Credit Reporting Services

So far, the fastest and best reporting we have been able find is AAA. You want a report that has all three credit bureau reports on them with the addresses that you need for a bankruptcy filing. There are many services on the web and I don't know at this time if AAA is still in business. What I did like about AAA was that they did combine the three reports into one report and listed the addresses for the creditors. For filing purposes I must have the addresses of the places you owe.

AAA is found at:

**AAA CREDIT REPORTING SERVICES
6314 MONARCH DRIVE
INDPLS IN 46224
1-317-297-0035
FAX 1-317-297-0260**

The Major Reporting Services are

**Equifax
P.O. Box 740241
Atlanta, GA 30374-0241

1-800-685-1111**

**TransUnion
760 West Sproul Rd.
Springfield, PA 10964-0390

1-800-888-4213**

**Experian (TRW)

1-888-397-3742
(phone and charge to
card)**

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