

THE
HOW TO FILE
BANKRUPTCY
WITHOUT LOSING
YOUR HOME
MANUAL

WITH FORECLOSURE, INCOME TAX, BUSINESS
BANKRUPTCY AND STUDENT LOANS SECTIONS

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BIOGRAPHY

Our purpose with every client is to prepare an accurate petition so your Chapter 7 or 13 can be easily reviewed and approved by the Trustee and the court. The petition should provide you a fresh start and budget you can live on. Your first moral obligation is to provide for your family financially. It is not to sacrifice your financial health for bank profits. Whether your case is a Chapter 7 or 13, at the end of the case our goal is to have you debt free. You may have a mortgage or car loan left over. However, your mortgage or car debt should be a loan you can afford. Your income must be greater than your expenses and it should include savings and retirement. The secured debts should be a good deal for you. This book will help you file bankruptcy, so you keep the maximum property, discharge the maximum debt, file correctly and efficiently.

“Success is how high you bounce after you hit bottom” – George Patton

My Father fought under George Patton all 4 years to the battle of the bulge this was his favorite quote

My name is Nick Thompson. My first job after college in 1977 was, representing a lender in bankruptcy court. I know how lenders operate. I began my law career as a bankruptcy and tax attorney in 1988. My ex-wife of more than 15 years was president, treasurer or vice president of the mortgage bankers’ association from 2001 to 2018. Bankruptcy and mortgages was all we talked about. I practice only bankruptcy and foreclosure. I have just one location, although I travel to most of southern Indiana and Kentucky and I only take 10-20 cases per month.

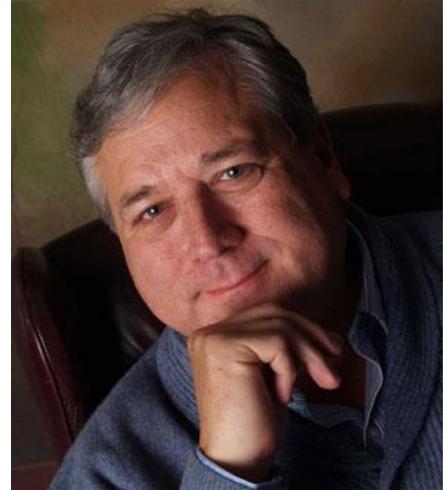
Studies show you will have more wealth if you file bankruptcy when you need to. You will have disasters in your life which may cause bankruptcy. You can’t erase a disaster. You can only learn from it and get a new budget to live on. Our goal is for clients to start life fresh with the knowledge they need for financial success. If you want a successful bankruptcy, read this book, or watch the videos which explain what clients should know before they file bankruptcy. If you spend the time to learn how bankruptcy operates, you should save money when you file, properly take advantage of the laws, and your case should go smoothly.

In 30+ years, almost every person who came into my office needed to file bankruptcy. It hasn’t changed. The mistake most people make is in waiting too long. Debtors often fail to understand rules and waste assets to pay debts. They cash in retirement and savings which are exempt from creditors and then have no money for retirement. Debtors transfer property they shouldn’t. They lose or sell property they could have kept. They sometimes sell or mortgage homes to pay off credit cards and are often still forced to file bankruptcy anyway. Sometimes they lose a home because of bad advice from friends, relatives, financial gurus and accountants which have little, poor or no training.

If bankruptcy is properly planned, people often come out of bankruptcy more profitable, or with more equity than when they went in. In most law offices, the attorney or the Debtor fails to plan the bankruptcy and end up repaying too much in their bankruptcy. By failing to understand the rules people may have to file twice or lose property they otherwise did not have to. One study showed the average person who carefully plans their bankruptcy will make \$10,000 more from their bankruptcy than the one that doesn’t. For the people who like to prepare, I wrote this book for you.

INTRODUCTION

Bankruptcy is the forgiveness of debt, which makes collecting most debts illegal after the bankruptcy is filed. It is a fresh start on a new budget. The debtor keeps what is necessary to start over. The debtor can lose luxury property and debts he does not need. But the debtor starts over fresh and reborn with a second chance at life. All is forgiven if the debtor obeys the basic rules. Notice the Christian concepts from Deutortomy 15. You are not supposed to be a slave to debt over seven years and you are to be given enough necessary and essential property to start over. If you obey the rules, you get the discharge. If you don't obey the rules, you don't get the forgiveness of debt. You are expected to take risks and make mistakes. If you have a disaster, you are granted forgiveness, and you get to go on. Shame, blame, guilt, manipulation, and fear have no place in making what is a financial decision for the best interest of your family, yourself and society.



Filing bankruptcy seems simple. A bankruptcy petition is primarily a cash flow statement (family budget of monthly income and expenses), a balance sheet (list of assets and liabilities) and a statement of your past transactions and financial affairs, supported by documentation.

However, bankruptcy is not like ordering a salad or pizza. A debtor shares jobs and responsibility for filing a case accurately with his attorney and for how the case turns out. The debtor must produce documents, make timely payments into the Chapter 13 plan, pay his mortgage and car, complete the debtor education class, prepare a budget, file taxes and testify to a trustee or judge. If you do not know what is coming, then you cannot plan or be prepared.

Without being prepared, bankruptcy in most law offices is something that happens to you like a train wreck. You become another victim. Bankruptcy should be like a tool in the hands of a master craftsman. If a bankruptcy petition is accurate, prepared and planned, the trustee and judge can understand your financial situation in minutes, give you a budget you can afford, and the case is over or at least started properly. The judge will also have respect if your plan includes how you will change finances and handle life better.

With a cheap attorney, a bankruptcy is not planned or prepared. He simply does not provide the time into preparing the petition. The attorney doesn't spend time on custom fitting the bankruptcy to your needs. There may be no way to undo this kind of damage. A great attorney is interested in your goals so you should let him know what your goals are in the bankruptcy. His primary job is properly preparing the bankruptcy petition and if he knows your goals, he will prepare a great one. The cheap attorney will prepare a petition which will keep the attorney out of trouble, or which will profit the attorney. The cheap attorney will go home to his TV dinner. The debtor may not have a house to go home to. If a petition is done improperly, it will:

1. Cause hours of work to correct causing unnecessary expense and wasted time.
2. Cause the debtor to lose property by failing to remove judicial liens, etc.
3. Cause the debtor to spend years following the wrong strategy to eliminate debt.
4. Fail to develop an affordable budget.
5. Fail or prevent the debtor from filing for years

The bargain the bankruptcy court makes with the deserving debtor is if you file an accurate well planned petition, take the classes, appear in court and uphold your responsibilities; then your debts will be eliminated or modified. Many [social studies show](#) (the electronic verions of this book has hyperlinks) if you do a good job of this, you will increase your retirement and wealth. Filing improperly will allow some debts to survive and prevent a fresh start. Often, second mortgages with no equity can be stripped in Chapter 13. Taxes, foreclosures and student loans can be managed, modified, discharged or eliminated in a Chapter 7 or 13.

A Debtor must have a budget they can manage with reasonable affordable home and car payments. You can be debt free from unsecured debts at the end of Chapter 7 or 13 and only keep the property you need and can afford. It is a time for making logical, unemotional decisions which may require you to buy, sell, convert or surrender some property. But be careful about doing this before you file, or you may have caused a fraudulent or preferential transfer. Fraudulent transfers are where you transfer property to someone often a relative for less than what it is worth. Preferential transfers can be a garnishment, large payment or lien where the creditor is given more than he would have gotten if the bankruptcy had been filed up to a year before it is filed. You should take advantage of exemptions that allow you to keep necessary property. If you have used up an exemption, you may need to sell excess property and buy other forms of property to take advantage of all the exemptions.

This manual will help you understand the issues and principals involved so you can work with your attorney to prepare and process a bankruptcy petition. The goal is to supply the family needs and to strip away the wants or debts which may be sucking the life out of your financial health. The law is a seamless web of rules, so please read the entire manual. You may turn to specific chapters such as the foreclosure, student loan or tax section for specific help. Each section will have lessons in it relating to and teaching principles of other sections. Read the first part of the book completely. The book is short enough to read it in half a day. The second part after the maps is a reference section. Whatever you do remember my favorite quote to the right. The only loser is someone who never attempted success.

"The greatest danger for most of us is not that our aim is too high and we miss it, but that it is too low and we reach it." --Michelangelo

Just because you do not have a home, do not skip the foreclosure section, which explains the same rules you should know about whether to keep a car. The section on how bankruptcy and foreclosure work also explain how to manage your car loan. Filing bankruptcy with a quality attorney is like following the directions for baking a cake. If you follow directions and use proper ingredients, it will turn out perfect like the one mom cooked, with a budget you can live with.

Whether you file as a Chapter 7 or Chapter 13, and when you file, is essential to getting back on a budget.

- a) Transfers to friends or family members are proper if the property is sold for a reasonable price. It may be a disastrous mistake if you attempt to sell or transfer items for a bargain to mom and dad or repay a loan to them before filing. Exemptions allow you to keep a car. But once you transfer the auto, you lose these exemptions. If mom and dad have put you on their checking account, car title or deed the transfer may need to be fixed or otherwise considered in planning your bankruptcy.
- b) Timing is often an issue. Was the mortgage or car lien properly filed by the bank, or is it possible the bankruptcy court will take it because the lien was filed too late or improperly? Will your attorney check this before he files? Does he just file the bankruptcy because he was not paid enough

to check it? That is what happens to hundreds of minorities who price shop for bankruptcy attorneys. They often file twice because it wasn't filed right the first time. In the electronic version you have this link to an article on [Discrimination and scamming the poor](#). Placing poor persons into a Chapter 13 when they should be in Chapter 7 is a problem in bankruptcy. A lot of advertising and marketing is done to sell Chapter 13 as a cheap alternative to Chapter 7 with no money down. Whether you file a 7 or 13 should be based on what is best for you. A 13 may cost you more or save you more based on the costs and benefits when you are able to choose which Chapter to file.

- c) What about property taken or attached before filing bankruptcy? Can you get it back? That is a matter of timing and dependent on whether you file as a 7 or 13.
- d) Is there a mortgage that needs to be modified in bankruptcy? You can modify a commercial mortgage or second mortgage on your residence or a vacation home mortgage. But you can't modify your primary residential mortgage. Bankruptcy or fighting a foreclosure will give you time sometimes to obtain a modification or to sell the home. But there are no free homes. The payments to the court in Chapter 13 and the mortgage after filing must be made on time or it will hurt and be very costly. A motion to terminate the stay because you are late will cost you over 1,000 dollars and may send you back to foreclosure just because of late payments.
- e) If you owe more for your auto than what it is worth, you can often purchase it for less than what you owe for it with a new loan in Chapter 7 as a redemption. In Chapter 13, you can modify the loan if you purchased your car more than 910 days ago, refinanced the car or used the auto commercially.

There are too many rules for you to learn to know all the answers. In 2005 when the code became much more complex half the attorneys gave up filing bankruptcy cases. A bankruptcy petition is normally 60-80 pages long and complex in the math. However, reading this manual will educate you enough so you can prepare a list of questions to discuss with your attorney. I start every session with a client by asking them, "What is your goal in filing bankruptcy?" Sometimes, a debtor wants to save a home. In other cases, the debtor wants to start life over on a new budget they can afford by getting rid of credit card and medical debts. We educate clients about all the parts of a bankruptcy petition. In the next 60 pages, you will learn how you can have a fresh start. We will explain how to safely file to keep the maximum property, pay out the least amount of money and do it with the least amount of effort.

UNETHICAL PRACTICES

If you can afford to repay some portion of your debt, you should and are required by law to file a Chapter 13. A NACBA study shows 97% of people qualify for a Chapter 7. Less than 3% of the population are too rich to file Chapter 7 and are forced into a Chapter 13. But some attorneys often tell clients they are too rich because in 2019 a Chapter 13 attorney fee is 3500-4,000 dollars. For a simple uncontested consumer Chapter 7, the attorney fee is 1200-1400 in 2019. If you need a 13, then you need it. But Chapter 13 shouldn't be filed if a Chapter 7 will do the job better.

If you are attempting to save a home from foreclosure or handling certain debt situations, Chapter 13 is the tool that will do it. Only a Chapter 13 allows you to force the mortgagor to accept the payments. It is unethical for an attorney to place a client in a Chapter 13 a debtor can't afford, just to earn a higher fee. If

you are eliminating a 50,000 second mortgage but paying 10,000 the Chapter 13 profited you 40,000. If Chapter 13 is required or better, it is a proper choice.

In one case, I found a Chapter 13 budget that only allowed \$50 per month per child for food so it could be filed as a Chapter 13. In another case, the debtor filed as a Chapter 13 three times. The client paid three times for bankruptcy and never got a discharge or case completed. Finally, the client came to me and filed as a Chapter 7. The system encourages attorneys to put debtors into Chapter 13 and does not catch attorneys who put people into 13s improperly. Attorneys can be sanctioned if they incorrectly place a client into a Chapter 7. Attorneys are rarely or never punished for incorrectly putting a client into a 13. In 2005, banks paid millions lobbying congress to pass a law which punishes minorities pushing them into Chapter 13 and making bankruptcy far more expensive and difficult for consumers.

You must file a Chapter 13 if:

- A. You have filed a Chapter 7 within the last 8 years.
- B. You have a high income and can afford to repay.
- C. You have a cosigner you wish to protect.
- D. You have tax, student loan or foreclosure problems and need to manage them.

You probably need a Chapter 7 if you have:

- 1. No or little assets to lose, and
- 2. little or no disposable income and ability to repay.

An attorney should be able to explain why he is placing you into a Chapter 13. Some offices pay staff bonuses for filing you as a 13 because it triples an attorney's income to file the case as a Chapter 13.

Bankruptcy is meant to effectively give the unfortunate debtor relief and a fresh start when he has lost his job, become ill, gone through a divorce or experienced other financial hardship. There is nothing wrong with a deserving honest debtor planning bankruptcy to ensure debts are discharged and property is kept for a proper fresh start. This requires understanding the law, preparing a petition properly and cooperating with the court. You cannot start over successfully without income, property and a little planning. Understanding what you can legally do makes it far more likely you will successfully discharge debts. Hiding assets or transferring property to family or friends for less than its value can be a crime. The system will catch it.

Unethical Lender Practices

Mortgage officers and lenders had little or no licensing or ethical requirements prior to 2008 and the 2008-2014 foreclosure crisis. Bank mortgage officers are exempt from the licensing and educational requirements because of internal bank training. Now there are fiduciary duties, licensing and required training for mortgage bankers. These regulations cover taking a mortgage application and lending to a customer because the debtor is placing his trust in the bank.

Know Who the Parties Are

The **original lender** makes the loan. A **holder** of the note purchases the loan, or the loan is transferred to a holder after the loan is made. **Servicers** make money from collecting the mortgage loan. Servicers are often not controlled by the fair debt collection practices act unless the debt is in default. Servicers rarely care for you. The more you are in default, the more money they make. They often keep about 40% of the late fees

they charge and collect. The **attorney for the bank** also makes a profit from the time he spends foreclosing on the loan; typically, \$250-350 per hour. The longer you let him foreclose, the higher the attorney fees you pay to get the home out of foreclosure. File your Chapter 13 early and catch the mortgage up early if your goal is to save a home. Defend the foreclosure to obtain time to find another home, sell the home, or obtain a mortgage modification.

Servicing companies do not own the loan. Servicing companies make their profits from every letter and phone call they make. They make money from the late fees they collect and applications for modifications they process. They may pretend to work with you, but they make their money from your being in default. The more the debtor is in default, the more the servicing company and attorney for the bank earn from making collection calls, collecting late fees and processing mortgage modifications that do not get approved. If you think they accidentally lost your documents during the mortgage modification process, think again. If they process an application twice or file a foreclosure twice, they get to charge twice.

Because the servicer of the note makes money from collection fees, conflicts of interest develop. A lender or company that services the loan may not live up to ethical standards and may overcharge fees that can be challenged in court. Rules went into effect on 10-2016 under 12 CFR 1024, requiring servicers to reasonably process mortgage modifications, forced placed insurance and interest rate increases. These are some common unfair practices that cause problems:

Flipping or Rewriting: Flipping a loan is when a lender refinances a loan which is delinquent. If the Debtor could not repay the first loan, he can rarely repay the refinanced loan, which is often at a higher rate. Flipping a delinquent loan increases the total amount due. Flipping collects interest from the first loan and finances it into the new loan, increasing the payments. Flipping is done to inflate the profitability of the office on the books and often allows the lender to charge a second insurance premium, etc. Never refinance a home or car loan unless you are going to a lower interest rate or there is another financial benefit to you. To flip a loan, subprime lenders often pressure people to refinance and threaten repossession or foreclosure. It gets the overdue account out of a delinquent status temporarily and makes the books look better for a lender — but it places the debtor into a much worse situation.

Servicers are paid commissions for rewriting loans. Flipping student loans and mortgages has become common, which is why the Department of Education now has about a 35% to 40% cohort (default) rate for its student loans. Many student loan debt collectors earned over 100,000 per year working for Sallie Mae in 2012 when the average salary was 35,000 by pressuring students to refinance loans. Loans are refinanced and the amount owed increases, but the debtor is no better able to repay. It is estimated the mortgage modifications under HOPE through 2013 had a 75% to 80% foreclosure rate within 5 years after modifications. Often these modifications promised lower rates but gave higher rates to minorities. The modification program merely delayed many foreclosures and inflated the balances.

Flipping is an unethical practice engaged in by some mortgage bankers to merely earn an additional mortgage origination fee. Example: Banker calls up a client offering a 0.25% drop in the mortgage rate if they refinance. The new mortgage does not offer enough of a reduction to justify the new fees in refinancing, but the consumer assumes a 0.25% lower rate saves money. The loan is being made only to generate additional fees for the mortgage officer.

Packing: Loading the loan up with additional fees for insurance increases profits for the bank or finance company. These are often overpriced insurance policies, non-paying warranty policies and other items which increase profit for the lender but have little benefit to the borrower.

Prepayment Penalties: Loans with prepayment penalties punish the debtor for switching to better rates and often increase the amount needed to pay off the old loan so much that a loan can't be refinanced.

There are too many ways to make money from predatory loans to list in this limited manual. The only advice I give is to use a mortgage banker you can trust after your credit allows you to obtain a low rate mortgage or car loan. Many untrustworthy mortgage companies are out of business after the 2008 mortgage meltdown, but most executives just found work elsewhere in mortgage lending.

An Example of Bankruptcy Strategy

This is a fictional example of bankruptcy planning and strategy. Federal law prevents any attorney from advising you to borrow before filing bankruptcy. However:

1. if you have a 10-year-old car, and
2. you must file a 5-year Chapter 13, and
3. the car will not last 5 years. and
4. your credit is still good...

you probably should obtain a car prior to filing the bankruptcy to make the Chapter 13 work. You can obtain a car with court approval after you file a Chapter 13. But why buy at a higher cost after you file a Chapter 13. A loan will normally have higher payments if you borrow after you file. It will have a higher interest rate. You spend a month to get the loan approved. You must file a motion to get the car loan approved after you file a 13. You may have to take off from work to appear at the motion to explain why you need the loan. You get less of a car. Buying a car after you file the Chapter 13 causes additional work, costs and time.

The 2005 changes to the bankruptcy code forbids attorneys from advising clients to incur debt. You must obtain approval from the court to purchase an auto after you file. If your car is old, it may be necessary or best to purchase a car before filing. But even if it is common sense and in the client's best interest to get a car before filing, the attorney cannot advise him to. Even he needs to refinance a mortgage to a lower rate we can't advise him to incur debt before filing. So, we will not give that advice to you. But this is an example of borrowing so there is no equity left for the trustee to take a home. Nothing in this example is illegal or improper.

Example of Proper Planning

It is 2019. James X has a \$140,000 house with a \$900 house payment. His family makes \$50,000 a year. He used to afford his credit cards, but his wife has become disabled, the home flooded and now he is close to losing his home. He kept debts current, but his wife had a stroke last month and they have now lost her income. The home has a \$50,000 mortgage and James has \$100,000 in credit card debt. At this point, James is still current, but the interest rates on the cards are close to 21%, and he can't repay. Debt management will allow him to repay 50%, if he can get the creditors to accept such an offer. But a Chapter 13 will force

a 10% repayment plan on the creditors whether they like it or not. Either way his credit will suffer about the same damage.

At 21%, credit card debt doubles every 3 to 4 years. Because he has \$90,000 in equity, he can't file a Chapter 7 Bankruptcy without losing his home. He may keep about \$25,000 in equity for himself and \$25,000 for his wife if both are on the deed, but the mortgage and exemptions equal \$100,000 — not \$140,000. He has too much equity to file a Chapter 7 bankruptcy without losing his home. His only choices seem to be filing a Chapter 7 and let his home go to the bankruptcy court or file a chapter 13 and repay \$47,000 to the Bankruptcy court over the next five years at more than \$800 per month, which he can't afford.

If he misses payments in a Debt management plan or a Chapter 13, he will be tossed back to the creditors. James owes \$30,000 on his 5-year-old F150 Truck to Ford Motor Credit, but it is only worth \$15,000. James also has two old cars, a 10-year-old Camry and a 10-year-old Jeep Wrangler; neither car has a good motor or transmission. Both are each worth less than the \$3500 exemption so they can keep them.

He refinances his 9% mortgage and gets a 5% mortgage with \$50,000 cash back. His payment is now \$700 per month. He does \$15,000 in auto repairs and \$35,000 in home repairs. He replaces his carpets, roof, driveway, furnace and purchases windows and siding for his home, doing only necessary and overdue maintenance on his possessions. He also replaces the air conditioner, seats, carpet, engine, transmission and tires on his Camry and Jeep with about \$15,000, making them like new. Two months later, he files bankruptcy. He keeps his house and exempts his cars, paying the court nothing. The \$100,000 in credit card debt is gone and no Chapter 13. The F150 truck goes back. He could have also redeemed his truck (purchased it from the bank) for \$15,000, which is the value of the truck.

James no longer has a car payment. He lowered his monthly house payment. There was nothing illegal about anything James did. James just planned his bankruptcy instead of letting it happen to him. Most people can't refinance if they are late, but boats, motorcycles and other items can be sold so needs can be met. Instead of keeping luxury items, a new budget can be designed.

Example of Improper Planning

Susan owns a house free and clear. She sells it for \$300,000 one month before filing and packs all of it into a retirement fund to prevent creditors and the bankruptcy court from getting it. That won't work. It is a transfer within a year prior to filing, meant to prevent the creditors and bankruptcy court from reaching it while she is insolvent. Yes, there is an unlimited exemption for retirement, so retirement funds can be protected — but only regular contributions are allowed. This is a fraudulent transfer that can be reversed. If she had just kept the home, she could have kept about \$25,000 of the home's equity. As soon as she sold it, she lost a \$25,000 home exemption.

Clyde sells his \$12,000 car to his mom for \$500 just before filing. Same result. The trustee now gets the car from mom or the money as a fraudulent transfer. He may have been able to use his wildcard exemption to keep the auto but after he transferred the auto he lost that option. You can only exempt your auto not mom's

DEBT SETTLEMENT VS BANKRUPTCY

Debt Settlement Companies

Debt settlement is not a bargain and will do just as much damage to your credit scores as bankruptcy. I do not remember ever meeting anyone with a good debt settlement company experience. In the 30 years debt settlement has been around, I have never met anyone who completed a plan successfully, out of hundreds who filed it. People complete Chapter 7 cases nearly 100% of the time. They complete Chapter 13 cases about 70% of the time. When a Chapter 13 fails the debtor normally just converts to a Chapter 7. Of the 30% of the Chapter 13 cases which “fail” many are dismissed because the debtor caught up the home. The debtor is no longer in foreclosure because he sold the home, got a modification or cured the default and no longer needs the Chapter 13. Debt settlement plans fail over 90% of the time.

"A ship in harbor is safer, but that is not what ships are for."
--John A. Shedd

1) Chapter 13 has a much higher success rate than Debt management. With a Chapter 13, you can suspend payment, modify the plan, convert to a Chapter 7, lower your payment temporarily or get an early discharge if you can't complete the plan due to a problem. It is common for a debtor to go through a divorce or become disabled, causing the Chapter 13 or debt settlement plan to fail. Just like it is normal to reinjure a broken leg, persons in financial trouble often continue to have health, family or work problems. If you complete most of a Chapter 13 plan and have problems, you may get an early hardship discharge. Converting to a Chapter 7 or suspending plan payments is an option. But there are no options with debt settlement. You *must* complete settlement agreements, or you return to owing the full amount. If you need to protect a co-signer or property, Chapter 13 is a good option.

2) Many debt settlement companies file bankruptcy themselves after starting up, and your money is lost. They often advertise themselves as nonprofit or charity agencies. Ameridebt and other “nonprofit” agencies have filed bankruptcy themselves after paying millions to corporate officers who ran the “charity,” and very little or nothing to the debts they were supposed to pay. Almost everything that is operated to “help” the poor is a scam, including foreclosure rescue and credit repair companies.

3) If you do not pay debts on time your credit suffers whether you repay through debt management or a Chapter 13. In either situation (bankruptcy or settlement) you will need to sweep your credit file afterwards.

4) You can't force a creditor to accept partial payments through debt settlement. Creditors can be forced to accept a court approved (confirmed) Chapter 7 or 13 bankruptcy plan. Bankruptcy has the power of a federal judge, as well as other court orders to force creditors. These orders can strip a second mortgage or order the lender to release the lien from your car if you pay the value of the car through redemption, whether the bank likes it or not. Only bankruptcy has the power to force a restructure. Some states allow the credit card company to take the debt settlement payment and sue anyway due to a “lack of consideration”.

5) A Chapter 13 plan only requires you to pay your disposable income. This may repay less than 10% to unsecured creditors. Most debt management or debt settlement plans require at least a 50% repayment, whether you can afford it or not. Over 99% of our Chapter 7 cases repay 0%. Bankruptcy costs less than debt management and take less time than debt management. For persons that earn less than the average

income, their Chapter 13 plans are often short, 3-year plans. If you want to know if you are likely to lose property, consult an attorney and prepare a Chapter 7 or 13 to see if it is better. If bankruptcy does not offer you an advantage simply decide not to file and go do debt management.

6) Debt settlement is taxed as income for the amount of the debt “cancelled”. Banks turn in a 1099 to the IRS for the amount “forgiven”. If a bank agrees to charge off \$100,000, you will repay about \$40,000 in taxes for the \$100,000 of debt forgiveness, just as if you earned the \$100,000 in ordinary income. Bankruptcy doesn’t cause a tax problem. Ask H&R Block or any tax professional. The only guaranteed method to avoid tax from a short sale, debt charge off, foreclosure or debt settlement from the 1099 is to file bankruptcy. Even if the mortgage company agrees to dismiss the debt as a settled debt, they will a 1099 for the loss to get the tax advantage and to comply with accounting and IRS rules. The IRS will issue an assessment anyway. Real estate agents want the short sale income. They may forget to explain this tax problem.

7) Debt settlement companies pay themselves high fees from the first dollars paid. These fees are normally non-refundable and paid before they do any work. If the debt settlement plan fails within the first year, the debt settlement company is often the only person that gets paid. I get paid my attorney fees upfront in a Chapter 7, too. However, my office runs a 99% success rate at getting Chapter 7 cases a discharge. Debt Settlement has over a 90% failure rate which is in the high 90s.

8) Many debt settlement companies are owned by banks. Some lenders will only accept your debt settlement if you go to their company. Check how long a debt settlement company has been licensed in your state. If they aren’t licensed by the Secretary of State as a corporation for at least five years, don’t do business with them. Often the company that claims it is 15 years old just started last month or is not even licensed.

9) The person managing your debt management plan may have no training or education. Many attorneys in the bankruptcy area are CPAs, certified financial planners or have training in tax and accounting. I managed an accounting division of an oil company, sat for the CPA exam and was a tax prosecutor in charge of state tax auditors. Often the only training a debt settlement employee has is training to sell you on debt settlement.

If you feel you must morally repay your debts, consider a Chapter 13 instead of using debt settlement. Often, the work of “debt management experts” cannot be verified. Bankruptcy is more workable solution. An attorney/CPA is far more qualified and often costs less than someone who is great at closing sales over the phone. The foreclosure rescue scam or debt settlement sales person will allow you to feel good for 2 hours, cost you \$30,000 and your home. The CPA will make you \$50,000 richer but may have poor social skills.

Discharging taxes and other debts is a complex subject requiring a knowledge of tax law, financing, investments, banking and credit. Foreclosure rescue and Debt settlement companies are often just boiler rooms who sell dreams to people. They file bankruptcy themselves or disappear when sued for illegal business practices. When they are sued, they close shop and start up somewhere else under another name.

A Chapter 13 Bankruptcy attorney is normally better for the job of controlling one's debt because:

1. His fees are audited and approved by the court.

2. His training often includes a college background in accounting and goes beyond the typical training provided to individuals in a debt settlement company.
3. He is both screened and regulated by a state bar association and normally has 20 to 30 years of practice.

I often get clients who want me to somehow fix a petition they filed themselves or had filed by a lawyer fresh out of law school. Sometimes I can fix it, sometimes I can't. Become serious in handling the problem of restructuring your budget by using the professional services of a skilled attorney. If you choose debt settlement and you want to attempt to settle debts yourself, always settle and deal with the original creditor or bank if you can. Never pay collection agencies. After they report the debt as delinquent, they have done the maximum damage they tend to do. They rarely sue and have a poor track record in court if you fight back. Paying a collection company does little or nothing for your FICO score.

Collectors will lie and use blame, shame, guilt and fear to collect. Normally, collectors do not have the authority to make substantial deals and attempt to settle at about 80%. If they make a deal to settle for part of the debt, they will rarely put offers or deals on paper and may sue for the balance of the debt later if you can't prove the settlement. Sometimes the debt is resold and collected a second time. If you settle the debt, you must get proof of the deal on paper. Whether you pay them or not, they will leave a poor credit record — so why pay at all? Collection agencies rarely sue. Your credit record will show an I-9 whether you pay them or not. If you do settle a debt, insist on an agreement in writing. Collectors will even pretend to be an attorney and send out false letters acting as if they are a law firm. We have had multiple collection agencies claim they owed a debt and multiple firms suing a client for the same debt.

Home Equity Loans and Cashing in Retirement

Paying unsecured debts from your retirement or home equity loan is a bad idea. Some financial advisers advise you to refinance a home or cash in retirements to pay debt. I don't. It creates a worse problem you must deal with later because you lacked courage to deal with it today. If you have more expenses than income, you must increase income, decrease expenses or modify debt to avoid losing homes and cars. Bankruptcy is a perfect tool to modify expenses and create a budget you can live on. Mortgaging your home to pay monthly expenses or unsecured debt eats up equity and increases your monthly mortgage debt, making your budget worse not better. Cashing in retirement does not increase income or decrease expenses. It creates a non-dischargeable tax debt to replace a credit card debt which could be discharged in bankruptcy. Increasing the mortgage debt or creating a tax debt from cashing in your retirement just makes a worse problem you must deal with later.

A negative cash flow causes a family to lose assets unless they change their budget. Changing spending habits is hard. Mortgaging a home or cashing in retirement makes a family more emotionally desperate and broken. To cure a cash flow problem, you must restructure and live within your budget (cash flow). You must adjust a budget by either increasing income or eliminating debt. You can become debt free in four months with a Chapter 7, or 3 to 5 years with a Chapter 13. You should receive a discharge at the end of your bankruptcy, forever protecting you from unsecured debt. It may modify or eliminate some liens such as a judicial lien, commercial or residential second mortgage.

FEES, COSTS AND TIMING YOUR FILING

In 2018 Court costs for a Chapter 7 were \$335 for either a joint or individual petition. The average attorney fee in 2018 for an individual, **uncontested** Chapter 7 Bankruptcy was \$1,200 in Louisville, Kentucky. For a couple, it was \$1,400 because married couples have more property and debts. We expect the fees to rise by about \$200 by late 2019 or 2020. We expected them to increase in 2017 and they haven't increased in 5 years. Rural areas have slightly higher fees.

There can be additional expenses for additional work such as filing a motion to redeem a car, remove a judicial lien or recover assets taken prior to filing bankruptcy. These additional expenses for additional motions that need to be filed occur in less than 10% of the cases. Our office does not charge to prepare reaffirmation agreements and items that are normal with processing of the case.

Motions require additional trips to court and additional time. If you have been sued and your home has been attached, be sure to tell your attorney about it and to schedule to have the judicial lien removed. If you don't, years later when you sell, buy or refinance a home, you will have to reopen your case to file that motion to strip the loan. It will cost more and delay financing your dream home.

Additional fees at any attorney office will be charged for adversary proceedings, discharging student loans, handling tax issues, and defending claims of fraud, contempt and dischargeability. Motions are much cheaper than adversary proceedings. But to get the undue hardship for a student loan a separate lawsuit must be filed. Motions to redeem, remove liens, or motions to continue, value or recover property are much easier than an adversary proceeding. Additional motions are needed in less than 5% of our cases. Adversary proceedings happen in less than 1%. When they do happen, they cost, and it is most often something which makes money for the client in the long run by stripping and destroying a second mortgage.

"Far better is it to dare mighty things, to win glorious triumphs - even though checkered by failure - than to rank with those poor spirits who neither enjoy much nor suffer much, because they live in a gray twilight that knows not victory nor defeat." -- Theodore Roosevelt

We say to clients that the court costs are 335 for both. The court costs for a Chapter 13 are \$310. We charge an additional \$25 because we must send a copy of the 13 plan to every creditor by mail. 25.00 is cheap to lick the envelopes and pay for stamps. In Chapter 13, you pay the court and that money is paid first to attorney fees and court expenses as administrative claims. Claims are paid in this order:

- A. **Administrative claims:** Trustee, attorney fees and court costs.
- B. **Priority claims:** Taxes less than three years old and child support claims.
- C. **Secured claims:** Car and home. (Normally, second auto, boat, motorcycle and four wheelers are viewed as a luxury and not allowed; small balances may be allowed.)
- D. **Unsecured debt:** Student loans are not normally dischargeable, but they are unsecured claims — not priority claims. They are normally paid pennies on the dollar in a Chapter 13 and paid last, which requires special planning for these debts. (Medical bills and credit cards are unsecured claims.)

Always hire the best, most experienced attorney you can find, especially in a Chapter 13. As of 2019, attorneys in a Chapter 13 case are paid a flat fee of \$3,750 by the court in the Western District of Kentucky. In Southern Indiana, it is \$4,000; in Eastern Kentucky it is \$3,500. If you shop for a cheap Chapter 13

attorney, you simply get a less experienced and knowledgeable attorney and pay the unsecured creditors more.

If you forget to list a creditor, you can always reopen a case later and add a creditor but adding on a creditor after filing is \$130 (a \$30 court cost plus a minor fee for drafting and filing the amendment, about \$100). Adding on a creditor after the case has closed is about \$665 (\$365 in court costs plus \$300 in attorney fees). It is always best to prepare the petition properly and list all your debts when you file.

THE ROLE OF THE PANEL AND U.S. TRUSTEE

There are two purposes to the bankruptcy law. **The first is to stop the creditor harassment** and give deserving debtors a fresh start with a new budget they can live with. This allows debtors to become debt free. Most debtors are interested in stopping the harassment and getting a fresh start.

They forget the second purpose, which is why the trustee is there. **The second purpose is to provide all the creditors a chance to equally and fairly share in any assets** or repayment that may exist in an orderly process of distributing what little the debtor has, *if anything* (there are rarely any assets). Watching the creditors collect is like watching puppies feeding. There is always one hog who gets to the food first and a small one who is left nothing. Bankruptcy treats all the creditors in each class equally and fairly in a system which is designed for that.

If you keep these two principles in mind, it is easy to see why we have certain rules and why the trustee is asking for certain information and looking for assets in his effort to review the petition and do his job. Normally, there is nothing left for the trustee to take. It is rare that a person has assets that exceed the exemptions, if the case was prepared properly. But far too many attorneys just file the case with little planning. This causes lost property or increased debt that could have been eliminated.

DO NOT MAKE A TRUSTEE'S JOB DIFFICULT! If you don't provide the requested information to the trustee, you create additional work for him. If you make the petition messy and hard to understand you will suffer. He will dig and continue to dig until he gets the information to do his job. He will become curious and suspect fraud. You will not discharge your case until you give him the information. Worse, your case may be thrown out, fully audited, and you may lose property or be prevented from filing for years. Do not make the judge or trustee angry or curious. If you waste their time, file messy petitions or make them force you to turn over documents, you will upset them.

There are two Trustees

1. The Chapter 7 or Chapter 13 panel trustee who will manage your 341 hearing, and
2. The U.S. Trustee.

You will normally never see the U.S. Trustee unless something terribly wrong happens; for example, if you are suspected of fraud or your petition was improperly prepared. Let me explain who these players are.

IT IS THE PANEL TRUSTEE'S JOB TO insure the accuracy of your bankruptcy petition and to take as much of your property as he can and give that property to your creditors. He represents the creditors and steps into the shoes of someone who has sued you and obtained a judgment against you at the moment of your bankruptcy filing. The panel trustee is paid about \$70 to review your petition and then move on to the next one. Make sure this is all he does. He can't do his job without a clear, accurate petition and records. A

panel trustee is an attorney or CPA appointed by the court. He is not a judge, although he runs the 341 hearing in both Chapter 7 and 13 cases, and he will ask questions at the 341 hearing. These “hearings” are more a deposition, where the debtor is asked questions under oath, and the hearing rarely lasts more than five minutes if the petition is accurate and complete. The common questions you will be asked are on our website under the bankruptcy tab.

I like all the Trustees. I have learned a lot from them. The Chapter 13 Trustee in my district is very helpful in making sure plans are completed. **But the panel Trustee does not work for you.** The Trustee is not your friend. He represents the banks and creditors you owe. **The panel trustees earn a sliding scale fee by taking property from you. This starts at about 25%. If the mortgage company did not file its mortgage or the car lien properly filed, he will take the car or home if it has substantial value above the exemption.** This only happens in about less than 1 of 1,000 cases, but it does happen.

You are required to tell the truth at the hearing, but this is not the time to brag about your income or how much your property is worth. Normally, you value property at its liquidation or quick sale value in your petition, not its replacement, sentimental or retail value.

This is the time to make sure mortgages and car liens are properly recorded. Every trustee I know has a pleasant personality and is just trying to do his job. Many of them can be helpful, but remember it is his job to sell your assets if he can. I guarantee he enjoys receiving 25% of a \$200,000 home.

IT IS THE U.S. TRUSTEE’S JOB to put you into a Chapter 13 or 11 if you are too rich for a Chapter 7, by filing a 707 (b) motion to convert the case. Seeing the U.S. trustee show up at your 341 hearing should be just like having the FBI or U.S. Marshalls appear. He investigates sloppy petitions and bankruptcy fraud. Incomplete information is just as bad as lying under oath or supplying false documentation. Never make a false statement or hide property.

You may plan your bankruptcy to an extent. You can spend your tax return before you file to avoid losing it or sell assets for their fair market value. This is planning. Bankruptcy planning should be just like taking the right tax deductions on time. We can help you plan and claim exemptions to keep property and remove judicial liens if you tell us about the asset or judicial lien. If you fail to list a car in your petition, you may not be able to claim the exemption later. You can’t sell it to a relative or “friend” without getting back the fair market value for it. The government already has your IRS, bank, real estate and car title records. They know what you own. The U.S. trustee monitors every petition filed with auditors and government records at his disposal. Hopefully you never see him.

2005 CODE CHANGES REQUIRE ACCURACY AND DOCUMENTATION

Laws took effect in October 2005, making over 217 changes to the bankruptcy code. There were 21 major changes to improve the accuracy of the petitions and to force more people into Chapter 13. It decreased the ability of poor and minorities to file by increasing the cost. In 2004, about 30% of cases were Chapter 13 cases. In 2019 it remains at about 30-40% with a slight increase. Bankruptcy has become a tool to increase individual wealth according to two government studies. In 2002, the bankruptcy court changed to electronic filing, which makes filing a little faster. This provides a permanent record, which can be looked up instantly. In 2016, the state courts in Kentucky and many other states changed to a similar filing system which can be looked up on line.

Summary of major 2005 changes:

1. The petition must be accurate and documented.
2. You must now take a credit counseling class before you file and a debtor education class which teaches budgeting after you file. Classes should only take about 1 to 2 hours and cost between \$10 to \$50. Classes are online. You get what you pay for.
3. Chapter 13 filings are encouraged by the court and sometimes required if you have the income to repay some part of your debts, or if you have filed a Chapter 7 within the last 8 years.
4. The non-dischargeability of private student loans is now the same for government and private student loans. This may change, and it has been a constant fight to make discharging student loans easier and to make private loans dischargeable. Prior to 2005 private student loans were dischargeable. A common suggested amendment to the code is to bring back private student loan discharges because of the common abuse within the private student loan system.
5. If you moved to a state with higher exemptions within the last two years, you must use the lower rate of the two states for your exemptions. For example, if within the past two years you have lived in three states with property exemptions of \$20,000/\$10,000/\$5,000 for a personal vehicle, you can only exempt \$5,000.
6. Kentucky and many other states now use the federal exemptions. About half the states use the federal exemptions. For Kentucky, this substantially increased the amount of property you keep. Indiana and other states kept their state exemptions, which means you keep less property in those states. States with high limits, such as Florida and Texas, had limits placed on their exemptions for bankruptcy.
7. Major advantages were given to business debtors by:
 - A. Requiring consumers to take the means test to qualify for Chapter 7, but excusing businessmen that owe more than 50% of their debt to business debts.
 - B. Requiring consumers to repay debts if they have the ability, but excusing persons that have more than 50% of their debt as business debt from repayment.
 - C. Requiring consumers to take credit counseling but excusing the business debtor from counseling.
 - D. Allowing business debtors to modify commercial first mortgages in bankruptcy but preventing consumers from modifying home mortgages.
 - E. Allowing cars used for commercial purposes to have their loans modified but punishing consumers by not allowing them to modify their car loans in Chapter 13 under the 910 rule.
 - a. The 910 rule says if your car loan is over 910 days old,
 - b. or the auto is a commercial vehicle
 - c. or the loan was not used to solely purchase the auto (refinanced or you purchased a car and an additional item) then it may be stripped in Chapter 13.

How Often I Can File and the benefits of a Chapter 20 or 26

The changes made in 2005 were supposed to eliminate repeat filings or filing in bad faith. You can only file and get one Chapter 7 discharge every eight years. This is calculated from the date the first Chapter 7 is filed until the date the second Chapter 7 is filed. But you may want to file a Chapter 13 to stop a foreclosure after you file a Chapter 7. In some situations, you may want to file a second

Chapter 20

The Chapter 7 discharges all the unsecured debt. Then you have only the mortgage to catch up in a Chapter 13. This strategy of filing a Chapter 20 is common when the person had a large amount of unsecured debt which can be eliminated completely before he has to file a Chapter 13 to stop a foreclosure.

By eliminating the debt in a Chapter 7 first he can get the benefit of a 70% or 100% Chapter 13. A Chapter 13 at 70% is presumed to be filed in good faith and is not even reviewed by the US Trustee or Judge. With some judges a 50% plan gets no review. A 100% plan requires no annual reports or loss of income tax refund.

Chapter 26

This is when there is a non-dischargeable debt like a private student loan debt which is out of control and much be managed over a long period of time. Imagine being a doctor who has lost his license due to catching hepatitis. He has a 1,000,000-dollar student loan and no doctor income. He lives in Chapter 13 forever with a 200 dollar a month Chapter 13 plan payment for a 1,000,000 student loan debt.

Waiting Periods

You can file and get a second discharge in a Chapter 13 two to six years after getting a Chapter 7 discharge. You can file a Chapter 13 immediately after a Chapter 7 to stop a foreclosure and save a home, but without a discharge. Chain filing to stop the collection of non-dischargeable debts like student loans is still possible. Instead of discouraging repeat filings, the changes seem to allow the opposite effect. Minorities and the poor now file more often, not less often. Filing was just made more expensive and difficult. If debtors face non-dischargeable debts like some private student loans, they may want to chain-file Chapter 13 cases to avoid collections with very small monthly payments.

For instance, a person who knows he will be disabled in 10 years and living on social security may face a garnishment of his current wages. If he files a Chapter 13, he can avoid the seizure of wages by filing two five-year Chapter 13 cases with a minor \$100 per month payment. At the end of 10 years, he merely files for a disability discharge of student loans. These are the limits for how often you must wait to get a discharge after filing a prior bankruptcy.

Type of Original Discharge	Next Case is a:	Waiting period	Statute
Chapter 7 discharge	Next Chapter 7	8 years	11 USC 727 (8)
Chapter 7 discharge	Next Chapter 13	4 years	11 USC 1328 f
Chapter 13, paying more than 70%	Next Chapter 7	no waiting	
Chapter 13, paying less than 70%	Next Chapter 7	6 years	11 USC 727 (9)
Chapter 13, discharge	Next Chapter 13	2 years	11 USC 1328 f

The most important change to the 2005 law was that cases are now audited for accuracy and require documentation to prove income, assets and liabilities. When you prepare a petition, it is now important to make sure your petition is accurate. All the income, expenses, property, debt and business interests and transactions must be included. If you withhold information, you file an inaccurate petition. People commonly forget to list homes, mortgages, cars, transfers of property, repossessions and liens. Failing to list property and transfers could cause you to lose it when you could have kept it. Persons who fail to list property can't claim the exemption which would have allowed you to keep the auto.

Income, Expenses

Income

You are required by law to list all your income, expenses, debts and assets. Every year, someone lists their home but fails to list their mortgage because they are afraid the mortgage company will find out they filed bankruptcy. However, if you fail to list the mortgage, it appears your home has no mortgage and that it can be sold to repay your debts. When the trustee eventually discovers there is a mortgage, he thinks you are attempting to hide the mortgage and the attorney who prepared the petition is filing sloppy petitions that are not being reviewed.

The bankruptcy will almost always go well if the incomes and expenses balance out and explain each other. If there is a home, then there is probably a mortgage payment and the income to pay for that mortgage, which explains how the debtor owns a home. If you don't include all your income, you appear to be too poor to keep a home or auto. All of this can cause questions or worse an audit or 2004 examination which is just as much fun as an IRS audit.

Your income for the means test is the prior six months of income from all sources (excluding social security) divided by six and multiplied by 12 to determine the annual income. When income is calculated on Schedule I, it is your present and future income. The income from the means test and Schedule I should match. If it is different, the increase or decrease should be explained. A debtor may have worked at a job that made \$100,000 for the last 6 months and just last week became permanently disabled or retired. In that case, the attorney can ignore the means test and still file a bankruptcy as a Chapter 7. By adjusting income and expenses up or down, you may qualify for a Chapter 7 or Chapter 13. A person who knows he will soon become unemployed or will go back to school may wait and file two months after he becomes unemployed to ensure he qualifies for a Chapter 7. A debtor may also take on a second job to increase income and show he can afford a Chapter 13 to save a home.

Income for a petition is household income. If a couple is separated, the other spouse's income may be ignored, or they may be added together to file jointly. Here is an example. Bill and Sue have separated. Sue has never worked. If they lived together, their income would be calculated as joint for bankruptcy purposes. Bill just lost a fantastic job at Ford making \$200,000, which he can't replace, and he is going back to school with no income. If a foreclosure must be stopped, Sue may file one Chapter 7 today to delay the foreclosure for 6 months, since she is unemployed with no income. Bill can't file today due to the means test, because he earned \$100,000 during the last six months. If he filed immediately, he would have to file as a Chapter 13, but there is no income to fund a Chapter 13. He must file after Sue's case finishes, which will delay the foreclosure for another six months while the couple looks for a new place for the family to live. His filing will delay the foreclosure for about an additional six months. Much of the attorney's job with a client is planning. However, an accurate petition and making sure the deserving debtor obtains a new budget that is feasible cannot be a crafty plan that overreaches and takes too much advantage.

Assume Bill didn't just lose his job and instead he suddenly became permanently disabled. He can file by explaining to the court why he should file, although he violates the means test. The means test is only a presumption you are filing a Chapter 7 in bad faith. In Bill's case, he may still want to file later, to stretch out the time the family can live in the home without having to make mortgage payments.

Expenses

Expenses you can deduct include secured, normal and necessary expenses. Your Chapter 13 will fail if you don't include reasonable and necessary expenses. Expenses include your property taxes, school lunches, insurance, health costs and may include your monthly church tithes, 401k, or 401k loan repayment. It can include private school tuition if the child is disabled and the school is necessary for the disability. If the expenses include large private school tuition, church tithe and 401k, you must document a history of these expenses. You can't put your child in school the week before filing and expect to take the expenses to get out of filing Chapter 13. Expenses for children are more understood and tolerated than expenses for luxury items like a motorcycle payment. Expenses are allowed for church tithe and reasonable 401k, when there is a history of prior contribution. There is a list of often overlooked expenses on our website.

An attorney who fails to include necessary expenses will place a client into a Chapter 13 plan that cannot be repaid. Your budget averages utility bills, which fluctuate. Unusual expenses like an \$800 monthly medical prescription needs documentation and proof, even if it is a necessary expense.

Take the example of Jim, who is a 25-year-old single man, earning \$150,000 a year salary plus bonus. He has a luxury lifestyle buying a \$150,000 600SL Mercedes Turbo and \$300,000 playboy condo. He wants to file a Chapter 7 Bankruptcy because he can't afford to repay the credit cards and own the 600sl. He doesn't want to repay even 10% to his \$50,000 credit card debt in a Chapter 13 at 0% interest. The U.S. trustee and the judge normally drive seven-year-old Buicks and live in \$150,000 homes. The trustee and the judge are trying to help people that can't even afford their own crippled child's heart medicine. This may be a family of four living on \$60,000 per year. Their reaction will probably be that if he wants to file a bankruptcy, he may let the condo and the 600sl go back and file as a Chapter 13 or not file at all. A debtor's expenses must be reasonable and necessary. If a debtor expects the credit card companies to tighten their belts, the debtor must also tighten his belt.

Note: My clients normally fill out their expenses, income, debts and assets online; we personally review the income and expenses for accuracy and reasonableness. Often, people don't know what they spend on groceries or clothes. We help by explaining what the average expenses are and review your budget. We feel filling out your information online increases accuracy, reduces stress and allows you to take time to completely review the information. By speeding up the data entry process, it also allows us to spend as much time with you in the office as possible on education and planning.

Debts, Assets and How to Value Property

Debts

If you don't include all your debts, then you may not discharge those debts. In our district a case called IN RE Madj says in a no asset case debts are discharged whether or not they are listed. This means if debts were paid back in a Chapter 13 or 7 then you better completely list your debts, or you will have to pay them later.

You may appear to be filing a fraudulent petition or lose property if you fail to list a debt or lien. If you have a judicial lien, tell your attorney about it so it can be removed. If you don't, you may have to pay that lien later when you sell the home, or you may have to wait months and pay additional fees, losing the ability to buy, sell or refinance a home. If you have a home but you fail to list the mortgage, then it appears as if your home is free and clear and can be sold for the benefit of creditors. Listing the mortgage or car loan explains to the trustee the bank owns the home or auto and you do not have a home or auto that can be sold.

Be certain to include all your debt, especially any child support or alimony payments which will allow you to deduct for that expense. If you write a check for it or it is payroll deducted, it must be in your budget as a debt or expense. Some debts are easy to forget such as your annual property taxes. That doesn't mean they are not necessary. Leaving them out makes your budget unaffordable. Replacing furniture, cars and property maintenance such as a roof or furnace must be in the budget or Chapter 13 plan.

Assets

The trustee will look over the accuracy of your petition. If your house is valued at less than 80% percent of the Property Valuation Administration (PVA) value, your valuation may be questioned, and they may ask why it is so low. The trustee checks the property records for homes, cars and boats. In Louisville, you can obtain your PVA value at www.pvalouky.org, or you will find it on your tax bill. They also check with www.Zillow.com for the property value. Your car should be valued at the Kelly Blue Book trade-in value at www.kbb.com. If it is valued at less than 80% of its trade in value, it may also be questioned. In 2013, homes in the Louisville area were selling for about 20% less than PVA. However, when the mortgage foreclosure crisis was over, valuations slowly returned to normal values.

You can value a car at less than the Kelly Blue Book value or a home at less than PVA value. It only means you may be asked why it is so low in value and need to explain a low value in your petition. Explain if the property is damaged, or the car has excess mileage, a blown engine, or the house has termite or other damages. Do not make up facts. You will be questioned four weeks after you file the petition at your 341 hearing. Don't forget why you valued it low. In valuing your property, state value at a price that comparable properties are selling for and what it would bring for a quick sale or auction. Normally, you do not use the replacement, retail or fair market value, which may take months or years to sell. There is a range for a fair valuation of property. If the trustee had to sell an item, he would normally only get a quick sale or auction value. It is important to not under or over value property above what the trustee would get; the trustee needs to have an accurate picture of what the property will bring. Kelly Blue Book, NADA and the Black Book Value all give auto auction and trade-in values.

Means Testing Retirement Accounts and Charities

The means test requires Debtors **who earn above the average income** for their household size to file a Chapter 13, *unless* they can show and prove they cannot afford about \$130 per month as a Chapter 13 payment, which would pay back at least 10% of the unsecured debt. (This increases with the cost of living annually). Household does not just mean married persons. It includes "domestic partners." Over 97% of debtors qualify for a Chapter 7. What normally forces people to file Chapter 13 cases is they have a special debt such as a foreclosure, student loan or tax problem that needs special tools which only exist in a Chapter 13. You may be forced to file as a Chapter 13 if you want a bankruptcy and you filed a Chapter 7 less than 8 years ago and can't refile yet. Often, these people may need to be in a Chapter 13 until they can refile as a Chapter 7, or they may be able to make a Chapter 13 work as a Chapter 7. The ability of an experienced attorney to draft a bankruptcy petition to meet the client's needs is why you use a good attorney that takes the time to do it right.

The means test has two parts. The first part compares your income to the average income to other households of the same size. If your income is below the average, you automatically qualify for Chapter 7. If your income is above average, you can still qualify if you pass the second part of the means test. The second part of the means test allows you to take your average income for the prior six months and deduct

for average and necessary expenses such as medical, insurance, utility, communication, transportation day care, support and secured debts, such as a reasonable and necessary mortgages or car loans. If the disposable income won't pay 10% of the unsecured debt, then it is presumed you can file a Chapter 7 in "good faith". However, it is possible to pass the means test and still be forced to repay your debts in a Chapter 13.

Example: Mr. and Ms. Smith passed the means test after deducting for expenses, but their autos have 50,000 miles on them and are almost paid for. They drive about 12,000 miles a year and the cars will last another 80,000 miles. Their auto payments are \$800 per month, with just \$8,000 owed on both autos. They could place the amount they on car payments and pay into a Chapter 13 plan for the next five years and repay their unsecured debts. Also, Mr. Smith just got a better job but won't begin work until next month. If this case were filed as a Chapter 7, the debtors would normally be forced to file as a Chapter 13. If they filed as a Chapter 7, the trustee would look at the "totality of the circumstances" and determine the case was filed in bad faith. The trustee can look ahead at future income to determine if you are filing in good faith (see the US Supreme Court case **Lanning** if you want more information).

IF THE MAJORITY OF YOUR DEBTS ARE BUSINESS DEBTS, or your debt is above the maximum level for a Chapter 13 (about \$1,010,650 in secured debt, and \$336,900 in unsecured debt for 2011) YOU SKIP THE MEANS TEST AND AUTOMATICALLY QUALIFY FOR CHAPTER 7 or 11 BANKRUPTCY. The new bankruptcy code gives a strong advantage to middle- and upper-income debtors who operate a business. Small businesses often have high mortgage, car and operating expenses. Apartment leases cannot use high residential lease costs and must use the average IRS rental costs data for their area.

To calculate whether you have below- or above-average income, you must supply the prior six months of pay advices (normally pay subs or other proof of income). The link to means data is: <http://www.justice.gov/ust/eo/bapcpa/meanstesting.htm>. The means test is a long calculation to arrive at average income minus expenses, and only your attorney should do this. Every bankruptcy attorney has the software. Your attorney has probably done it hundreds of times if he specializes in bankruptcies. You automatically qualify, if your income is below this chart. The amounts change with the cost of living. If your income is above these amounts you need to do the extra math and may still qualify.

11/2018 DATA

(2019 and later will be higher. Please check present data. Notice Kentucky has higher exemptions, allowing you to keep more property than Indiana. In Indiana, you can make more income and file Chapter 7, but you keep less property.

State	1 person	2 people	3 people	4 people	5 people
Kentucky	\$44,552	\$53,528	\$64,577	\$77,069	Add about \$9,000 for Each person over 4
Indiana	\$48,243	\$60,452	\$71,090	\$85,368	

Counseling

Credit counseling must be taken before you file bankruptcy. Debtor education must be taken after you file to get the discharge. A temporary court order called a stay protects you from even non-dischargeable debt while the case is going on. The discharge is a permanent court order which protects you after the case is closed if you earn it. But the discharge does not protect you from the non-dischargeable debts.

The checklist on our website of the documents we want you to have when you come into our office includes the names of counseling agencies, we recommend for your credit counseling and debtor education. There

are several agencies on our website, www.Bankruptcy-divorce.com. The best is <https://www.bkcert.com>, with live 24/7 credit counseling normally answered within two rings, in English or Spanish. We normally get the certificate from them within the hour after you complete it. Be aware of companies that go in and out of business. My assistant will often recommend who it cheapest.

Classes range in cost from less than \$10 to \$50. However, you get what you pay for. Some services do not send legible certifications to us in a file format easily useable. Some don't send electronic certificates at all or send them late. **This can delay filing your bankruptcy**, and we have seen it cause a bankruptcy to be dismissed without a discharge. Pay for your filing fee in cash to your attorney. You don't want him waiting for your check or charge card to clear.

Your credit counseling class (the first class) must be taken within six months prior to filing. Your case cannot be filed unless you take this class. Credit counseling is an evaluation of whether you should file and takes about 1 to 2 hours to complete.

Debtor education is an educational course to help budget. Debtor education should be taken immediately after filing and before your 341 hearing. However, you may take it any time prior to closing the case. Debtor education takes about two hours. **Be sure your debtor education certificate is sent to the court. The provider normally files it; not the attorney.** You will not get a discharge if the debtor education certificate is not filed before the case closes. Creditors will call and garnish wages again if you don't get the discharge.

You can complete the second class after a bankruptcy case closes, but it requires paying another filing fee to reopen the case (about \$335 in 2018), plus an attorney fee (\$300) to reopen the case and get this filed. Every year, some company will fax the debtor education certificate to us upside down, so all we get is a blank page with no information. The debtor will not have their certificate filed and the case closes without a discharge because no debtor education certificate was filed. Always follow up and make sure the certificate was filed.

The Dave Ramsey course on our website is not a debtor education course. Dave Ramsey did have a debtor education course for debtor education certification, but it was discontinued in 2015. We have a version of his financial peace university course, which normally costs hundreds of dollars, available for free on our website. At some time, we expect it to be discontinued.

PRIORITY OF DEBTS

When the Chapter 13 or Chapter 7 trustee repays debts, he pays the debts in this order:

1. Administrative claims (attorney and trustee fees) are paid first, normally within a year or two of filing the Chapter 13.
2. This is followed by any priority debts, including child support, alimony or income taxes less than three years old.)
3. Secured debts, including mortgages, taxes and car liens are paid next.
4. Unsecured debts are paid last; they are often paid less than 10%.

If a plan pays 70%, the plan is presumed to be filed in good faith and is generally not reviewed or challenged. If a debtor files a 100% plan the court does not require the debtor to file an annual budget or turn over any income tax refund or inheritance. (They pay the amounts owed in full so there is no need for additional

funding.) It may be that you don't need to stay in a Chapter 13 after the mortgage is caught up. There is no requirement to stay in the Chapter 13 and you can dismiss a 13 at any time. You may not need the discharge.

You can't dismiss or convert a Chapter 7 unless the trustee agrees to it; he won't if he is selling your property. He gets a commission from selling your property. More than 90% of the people who file a Chapter 7 case have nothing to lose and nothing for the Chapter 7 trustee to sell.

Careful planning allows debts to drop from priority to secured or, even better, to unsecured debt, so less is repaid. For instance, income taxes are priority debts until they are three years old and returns have been filed for at least two years. If you wait, income taxes almost always eventually become unsecured dischargeable debt. That is an example how a debt can change from one category to another.

You may want to make some co-signed debts into secured debts to ensure they are paid higher amounts or are paid in full. This protects the co-signer. You may want to classify student loans used to obtain a job or career license as a business expense. They can then be paid off within the five years at the expense of unsecured debts.

It may also be possible to pay student loans directly, as long-term debts outside the plan. Or if you wish to pay student loans zero simply characterize them as long-term debts being paid outside the plan and pay them zero. If the debts are private student loans, you may not want them paid at all. After private student loans are charged off, they are less collectible. Check to see if your student loans are private or government loans and whether the school was approved. Only approved schools have non-dischargeable debts.

If you went to a flight school or cake-decorating school, it was probably an unapproved school. Check the information on our website about student loans and which loans and schools are non-dischargeable. Planning how debt will be repaid may begin a year or more before bankruptcy is filed to ensure timing is right. Whether or not a plan succeeds often includes planning a budget, classifying debts, justifying expenses and aging transfers. Give mom the Mercedes the day before you file — the Trustee takes it. Wait one or two years — she keeps it. Most debtors (and attorneys) fail to plan their case. As a result, minorities and the poor who look for cheap, quick fixes pay far more than people who plan their case. And they get horrible results. The statistics prove it and the changes in the code made in 2005 insure it.

CHAPTER 7

Chapter 7 and Chapter 13 are different tools for different purposes. A Chapter 7 is the bankruptcy that most of our clients file. It pays an attorney far less than a Chapter 13. It is perfect for someone who has little or no equity in their home or auto, primarily unsecured debts, average income and no co-signers. It is the best choice for 70% of clients who need a bankruptcy. It has one problem. Your attorney is also a creditor. At the minute you file bankruptcy, you no longer legally owe him a dime. You must pay him prior to filing; he cannot ask to be paid post-filing. It has a large up-front cost, but it is much cheaper in the long run.

Many attorneys attempt to put you into a 13 not because it is the best solution for you, but because it makes him the highest fee. Poor people looking for a fast, cheap bankruptcy and they can immediately afford may choose to file a Chapter 13. Often emotional arguments making them feel guilty for not repaying something to creditors are made to talk them into it. The attorney makes triple the fees in a Chapter 13. Chapter 13 cases the debtor cannot afford fail 70% of the time because it was never the proper bankruptcy for these clients. Some attorneys advertise no money down Chapter 13 cases and offer bonuses to their staff to sell you on filing a 13.

If you own a home and have more than the amount you may exempt in real property, consider Chapter 13. In Kentucky, this is about \$25,000 in equity for a single person or \$50,000 if both husband and wife are on the deed. Each person who is on the deed and shares the property is allowed about 25,000 as an exemption in 2018. Federal exemptions are increased annually. In states such as Indiana and Florida, they use the state exemptions. State exemptions are increased only when a state deems it necessary to increase them; they may not be increased for decades. States determine whether federal or state exemptions are used. If you are in Indiana, the home equity you can keep is far less. You may be forced to file a Chapter 13 because Indiana exemptions are low. Texas and Florida have higher exemptions than the federal exemptions.

There are four rules to remember when choosing a Chapter 7 or 13:

1. A Chapter 13 is used in handling certain debts over a longer period than four months like in:
 - a. Foreclosures where you must catch up the payments.
 - b. Priority income tax debts and non-dischargeable tax problems.
 - c. Debts with co-signers who need to be protected.
 - d. Second mortgages that can be stripped.
 - e. Heavy private student loan debts and collections where you are avoiding garnishments.
2. Because you can only file a Chapter 7 once every eight years, you may also be forced to file a Chapter 13 until you can convert to a Chapter 7.
3. A Chapter 13 must be used if you have a large amount of equity in your homes or autos or you need to modify these debts by lowering the interest rates or modifying when they are repaid. If you have too much in assets or excess income, you may need to file a 13 to keep them.
4. A Chapter 13 must be used if you have enough disposable income to allow a significant amount to be paid to unsecured creditors (10% or more).

Any Chapter 13 must repay the larger of the following three amounts:

- 1) All your leftover disposable income,
- 2) enough to repay priority debts in full (think income taxes which less than two years are old or
- 3) at least what you would have paid under Chapter 7.

Most clients have little or no disposable income to fund a Chapter 13 and little or no assets to lose in a Chapter 7. If you do have assets that would be sold in a Chapter 7, you may want to sell and dispose of them prior to filing so funds from the sale can be used for some benefit to you. For instance, \$25,000 in a bank account can be used for clothing and furniture, which has about a \$15,000 exemption. The \$25,000 you paid for furniture last week is worth \$5,000 the day after you bought it. The \$25,000 in the bank is worth \$25,000, and you may not have enough exemptions to keep cash. Once you file a Chapter 7, the trustee may sell or take assets that exceed your exemptions or may abandon them if the funds from the sale are not worth liquidating. For most clients, a Chapter 7 is what should be filed.

While it is referred to as a “liquidation bankruptcy”, filing a Chapter 7 doesn’t mean you lose property. Fewer than 1% of the people who file Chapter 7 ever lose any property. Yes, if you own more than you can start over with, you may lose property. But that is rare, and your attorney should know and advise you if that is a risk. In some cases, you may not mind losing property to get rid of the debt. I had a doctor who was overpaid more than \$25 million by Medicaid who filed and repaid nothing, but he had to lose \$10,000

to the trustee. That was a very small sacrifice. Two prior law firms charged him \$30,000 for Chapter 11 cases that were never filed or confirmed.

Losing a \$3,000 boat in a Chapter 7 may be worth it if the alternative is repaying \$200 a month for 60 months (\$12,000) in a Chapter 13. In chess you sometimes sacrifice a pawn to win the game. You let some things go in life to win. Needs must be paid and provided for, while wants (i.e. your dream motorcycle) must sometimes be sacrificed.

Chapter 7 cases are audited by the U.S. trustee to see if they should be a Chapter 13. Cases which are filed initially as a Chapter 13 are not audited as closely. If you

- 1) earn substantially more than the average income for your size family,
- 2) have enough income after expenses to repay 10% or more to your creditors or
- 3) have a lavish lifestyle

the U.S. trustee will object and ask you to file as a Chapter 13. Exceptions to the means test include:

- People who have suddenly become disabled or otherwise unemployed and unable to repay.
- Persons with primarily business debts from businesses automatically qualify.
- Veterans who obtained most of their debts while on active service.
- Persons who have high necessary expenses or reasonable secured debts that leave no disposable income to fund a Chapter 13. Some people may have high incomes, but those incomes may not be available to pay creditors if their medical, child support or other expenses eat up disposable income.

High-income couples should be able to pay \$130 a month into a Chapter 13 plan for a few years and at least partially repay their debts. If the plan fails, a debtor can convert to a Chapter 7 and at least they tried. In the case of debtors close to the income guidelines, it may be best to file as a Chapter 13 and convert later if it becomes necessary. If a couple files as a Chapter 7 and is forced into a Chapter 13, they are closely audited. They may convert to a Chapter 13, but if they need to convert back to a 7 later, it will almost always be closely audited. If a couple files as a Chapter 13 initially, they are rarely audited for abuse. Converting from a Chapter 13 to a Chapter 7 is not normally objected to as long as they file as a Chapter 13 first and later meet the income and expense guidelines at the time of the conversion.

Debtors with large medical conditions may want to file as a Chapter 13. They can pile up medical debt for years and then convert to a 7 taking the medical debt with them. By waiting to convert to a 7, they are protected by Chapter 13 until they reach maximum medical recovery and can then discharge all the debt.

The advantage of a Chapter 7 is that if it is properly filed, you will no longer have to repay your unsecured debts and your debts will be quickly and cheaply “discharged.” However, after discharge, you are on your own to handle the leftover secured and non-dischargeable debts.

Filing a Chapter 7 does not work if the debtor needs to strip a second mortgage. You must get a discharge in the Chapter 13 to strip a second mortgage which has no equity. The laws vary from state to state about whether a discharge is necessary to strip a second mortgage. Some things can only be done in Chapter 13.

Most Chapter 7 cases are discharged about four months after being filed. Property you have given as security may be repossessed if you don't pay for it by redemption or reaffirm the debt and make payments.

Your goal in a Chapter 7 bankruptcy is to list and “exempt” assets so you can keep property and wipe out the maximum number of your debts. Trustees will attempt to sell large assets you fail to “claim and exempt”. You can’t exempt and protect property you don’t claim, or property you transfer or hide. Do not attempt to hide or transfer property.

Redemption, Reaffirmation, Cramdown and Surrender

In a Chapter 7, you have three alternatives: **Surrender**, **Reaffirmation** and **Redemption**, if you have property with a lien. Some liens, especially household good liens, can be stripped off; we will discuss lien stripping in other sections. Stripping down lowers the secured claim. Stripping off a lien destroys the lien. Second mortgages can be eliminated (stripped off) if the second mortgage has no equity but only in Chapter 13 for Kentucky. Judicial liens can be stripped off if it impairs your exemption in the property. Some districts may allow stripping a second mortgage in a Chapter 7 but not Kentucky. You must choose one of the three alternatives and indicate in your petition if you want to surrender, reaffirm or redeem any secured debt:

1. **Surrender:** If you don’t have the money to make the payments, don’t need or want the property you may surrender property and never owe the debt again. If you surrender the auto, the debt becomes an unsecured debt. You can abandon property and the debt is then an unsecured dischargeable debt.
2. **Reaffirmation** is an agreement to pay the debt for the item. Often a car company will send a reaffirmation agreement to your attorney. Mortgage companies and now sending out reaffirmation agreements more often which helps you recover your credit more quickly and refinance later.

If you sign a reaffirmation and fail to pay, the bank can repossess, sue and get a deficiency. **Never reaffirm credit cards, doctor bills, and other unsecured debts. Be wary of reaffirmations with buy-here-pay-here car lots.** Reaffirmations are rarely in your best interest since the creditors are then able to repo and sue. But if you don’t reaffirm, the lender will not report on-time payments to credit agencies. The only advantage to you signing a reaffirmation agreement is your FICO score will recover more quickly if you repay on time and they report. If you sign a reaffirmation you have a short period of time before the case closes to rescind and take back your reaffirmation. Filing notice on the court records creates a record of the rescission.

3. **Redemption.** In a Chapter 7 Bankruptcy, you can give the bank the value of what the item is worth and force them to release the lien on personal property, such as a car, boat or furniture. This is a good option when:
 - The payment is unaffordable.
 - You owe more for the property than it is worth.
 - You dislike the bank or the bank dislikes you and working with the lender in the future will be difficult.

Obtaining a car during a Bankruptcy. You can often obtain the money for a redemption or buy a different car with 722 Redemption. 722 works with U.S. Bank to offer loans to people who have just filed bankruptcy to either purchase an auto or pay off the old creditor for the book value of the auto. 722 Redemption is in Cincinnati; they also sell autos and can be reached at 1-888-721-2800. Most of these cars are \$10,000 to

\$12,000 two-year-old autos. From time to time we have sent people to other local dealers who finance during the bankruptcy. Financing a home or auto during a Chapter 13 requires court approval.

Buy-here-pay-here car lots rarely report to credit agencies if you pay on time. Finance companies generally have less respected impact on your credit score. Rebuilding credit is difficult or impossible if you deal with buy-here-pay-here lots or small finance companies. It keeps you buying and financing with them. Some high rate credit cards will also fail to report your on-time payments. It is not in their best interest for you to repair your credit and move to a better lender.

Reaffirmations: Under the new law, if your income is less than your expenses, reaffirmations are presumed under a hardship and no attorney should sign the reaffirmation agreement. Be careful in reviewing your budget to ensure your budget does not show a negative cash flow, or you will be unable to reaffirm any secured debt. If your budget is in the negative, a judge may hold a separate hearing and approve a reaffirmation, but there is a presumption you cannot afford it if your budget is in the negative. Although your budget must be accurate, you can eliminate some expenses to give yourself enough funds to show a judge you can afford a car payment and reaffirm an auto.

It is normally not in your interest to sign a reaffirmation. You can be sued later for a deficiency if you sign a reaffirmation and fail to pay. Technically, if a reaffirmation is not signed within 45 days after you file, the stay terminates, and the mortgage company or car dealer could start foreclosure or repossess a car automatically. It takes time to get this reaffirmation filed, so your reaffirmation should be signed within 30 days after you file the bankruptcy. Normally, lenders will not repossess or foreclose if payments are current and property is fully insured. If you pay a car loan after bankruptcy without a reaffirmation, it is called a ride through.

You can negotiate a reaffirmation with some creditors such as a finance company. You may get lower payments, reduced interest, a reduced overall amount or a longer term to repay by negotiation.

Reaffirmation is a good option when:

- You owe less than the property is worth.
- The property is in good operating condition.
- You wish to keep the property and have a positive relationship with the lender.

You may have to catch up payments to reaffirm. Lenders are not required to reaffirm, and some don't like doing the extra work. Some credit unions may not agree to allow you to reaffirm unless you also reaffirm on other loans. ***If the lender refuses to reaffirm, at least consider redemption, which is often a better option and can be forced upon the creditor if reaffirmation is a bad deal.***

Consider whether you really need the item, what you can afford and what it is worth. To survive and have a budget you can live with, some people must give up luxuries. Establish a maximum value you would pay for property. Then offer that amount or less to the creditor. You may want to bargain for the value of the property, interest rate, total repayment amount, or monthly payment amount in a reaffirmation or redemption. Home mortgage companies and banks negotiate very little and often only make a take-it-or-leave-it offer. Finance companies negotiate. If you reaffirm a debt and find you cannot make the payments, you may revoke your reaffirmation. You have 60 days after you sign a reaffirmation agreement to revoke — but no later than your discharge date — to back out of a reaffirmation. You must communicate your revocation, and it is best to send a revocation by certified mail and file a revocation with the court.

- 4) **Redemption:** You may redeem property and pay the replacement value of the item in a lump sum cash payment in a Chapter 7. Most judges use NADA retail book value, but other values have been used. Under section 722 of the bankruptcy code, you have the right to purchase, in cash, personal property free from the bank's lien. Redemption requires the bank to release a lien by filing a motion and paying the bank the replacement value of the item. Redemptions can only be done with personal property (cars, boats, ATVs, mobile home or furniture), not real property, and redemptions can only be done in a Chapter 7 case. It must be personal property used by a debtor primarily for family, household or personal purposes. This avoids the high replacement cost debtors would otherwise suffer from repossession. If you have a 20-year-old like new jeep in perfect showroom condition you may want to redeem it for 1000 dollars.

If your 4-year-old Camry is wrecked and has 140,000 miles on it, you probably don't want to redeem it. The debtor files a motion to redeem and then pays the lien creditor the fair value market value of the item. The average person who redeems instead of reaffirms their vehicle with negative equity will save about \$8,000. **Redemption is a good option when you owe much more than the property is worth and property is in good condition.** The problem with redemption is you must pay for the property in a single lump cash payment, which can be difficult for people in bankruptcy. I have seen payments taken by agreement with the bank.

YOU CANNOT REDEEM REAL ESTATE. A mobile home is not real estate. Only land is real estate. You can redeem a mobile home, which is not permanently attached to the land. Doing a redemption requires a hearing and a small attorney fee for the motion. Doing redemptions in the Western District is much easier and normally does not require an expert witness. Every bankruptcy district has individual rules; the rules are stricter in the Eastern Kentucky District for redemptions.

What If You No Longer Have the Property?

You may no longer possess property that has a lien. It may have worn out, been stolen, 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.** You don't insure the property. If you have sold or given the property away, you are liable for the amount you received or what it is worth. Creditors at the 341 hearing may try to get you to say you sold, pawned, or gave away property to make you responsible. If your ex-girlfriend stole the diamond ring you don't pay for the ring. If you gave it away to a girlfriend, you pay for it.

CHAPTER 13: THE PLAN AND GENERAL PRINCIPLES

The second type of bankruptcy for consumer debtors is a Chapter 13 repayment plan. In a Chapter 13, you must pay back the greater of:

1. All your disposable income, or
2. as much as a Chapter 7 would have if there would have been a liquidation.

Plans must be proposed in good faith and pay all the leftover disposable income from the debtor's budget, with their best effort. Kentucky used to require all plans to repay 70%. After 2005, our court often allows plans below 10%. Nationwide there is a presumption a plan is proposed in good faith if it repays about

70%. Under the 2005 law, plans below 10% are allowed, but you only get a presumption of good faith with a plan over 70%. In Western Kentucky, 100% plans do not require the debtors to turn over tax refunds or file annual budgets. Plans offering 70% repayment are not even reviewed by Judge Lloyd and are presumed filed in good faith and are not reviewed by Judges Fulton and Stout if they repay 50%.

Section 1325 requires all Chapter 13 plans to pay back at least as much as a Chapter 7 would have and to pay priority tax debts in full. This means if your house would have been sold in a Chapter 7 and would have paid back \$20,000, your Chapter 13 plan must repay at least \$20,000. Chapter 13 allows you to avoid losing a home or other property if you have too much equity.

The goal is to give the debtor an affordable budget for five years and then allow a discharge and become debt free. All plans are five-year plans unless the debtor earns less than the average income. If the debtor earns less than the average income, then the plan may be a three-year plan. A 60-month plan may be more affordable for a low-income debtor. Only individuals can file a chapter 13. The debt limits for a Chapter 13 in 2019 are \$394,725 for unsecured debt and \$1,184,200 for secured debt but they can increase slightly in any year. Corporations can only file as a Chapter 7 or 11. Individuals can file as Chapter 7, 11 or as a Chapter 13. Chapter 11 cases are basically Chapter 13 cases for corporations and high-income individuals. Chapter 11 cases have additional powers and duties but fail more than 90% of the time.

In a Chapter 13, you have three alternatives if you own property that has a lien or mortgage:

1. You can **surrender** a car or home and treat the debt as if it were just another unsecured debt. Creditors deduct the sale of the security from the debt and then are paid any remainder as an unsecured creditor, often at a low percentage of the debt or zero.
2. **You can value the security and cram down or strip a secured loan.** You can strip down an auto often called cramming down a car loan. You can also strip off a second residential mortgage that has no equity or modify commercial and secondary home mortgages. Example: If the home is worth less than the first mortgage, you should be able to strip off a second mortgage because it is essentially an unsecured debt. But there must not be one cent in equity for the second mortgage, or the second mortgage survives the motion to strip off the mortgage.

First residential mortgages must be repaid and caught up in full. **Commercial, vacation or second-home mortgages can be modified or stripped and treated as part secured and part unsecured.** Only primary residential mortgages are safe from modification and stripping. Personal property loans are treated as part secured and part unsecured and may have their interest rates lowered.

A refinanced auto or commercial vehicle loan may be modified and treated as part secured and part unsecured. You cannot treat a consumer auto loan that is less than 910 days old into a part secured and part unsecured if it was solely taken to purchase a consumer auto. So, a loan for a car used in business can be crammed down, and a loan to purchase a car and boat can be stripped down as part secured and part unsecured regardless of how old it is

And the court will lower the interest rate to 5% (as of 2018) regardless of whether it is 910 days old. Normally, the interest rate will be lowered to 1 to 2% above the rate banks pay for their money. You can look it up at *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004) 11 U.S.C. § 1325(a)(5)(B).

3. **Repayment in full or in part of mortgages and car loans.** If a **consumer car loan** was made to purchase a car within 910 days of filing the Chapter 13, you must generally repay the debt or surrender the auto. You may reduce the interest rate of a loan less than 910 days old, but you must repay the principal amount of a consumer auto loan even if it exceeds the value of an auto or surrender it. 11

U.S.C. § 506 of the code allows you to value a car or home into secured and unsecured parts. The secured part gets paid and the unsecured part gets paid with the other unsecured debt. In a redemption or stripping a mortgage, we use retail value; but occasionally, we use a quick sale or auction value in preparing the petition for older autos.

If the auto loan **was refinanced or it is used for a business**, you can repay the auto at less than 100% of what you owe but pay the secured part in full. Indiana does not allow stripping refinanced autos. An unsecured part of the loan would be paid as an unsecured claim, often partially. As an example, assume the car has a \$15,000 debt, but it is worth only \$10,000, with 10% being paid to unsecured claims. A commercial vehicle would have a \$10,000 secured claim and a \$5,000 unsecured claim, which would be paid \$500. A consumer auto would have a \$15,000 secured claim. You can always offer less than 100% of what the car is worth, but the lender will often reject the offer. It is amazing how often consumer vans and trucks become commercial vehicles as soon as a bankruptcy is filed.

Chapter 13 plans operate much like a consolidation loan. Debts are consolidated into one monthly payment, paid to a trustee. The plan may stretch out payments for a car, but luxury items like boats and motorcycles are normally surrendered if plans pay less than 100%. The more creditors are forced to sacrifice, the more debtors are forced to live on strict budgets. If the creditors must tighten their belts the debtors have to tighten theirs. The Trustee pays **priority** creditors, such as alimony, child support, attorney fees and income taxes less than three years old first, then **secured** and finally **unsecured debts**. The debtor's payments to the court and to their mortgage start the month you file.

Plans can be dismissed for a failure to make payments, failure to turn over tax refunds, or a failure to file the annual budget under our local rules in Western Kentucky. Minor local rules vary from district to district. In conduit states like Indiana, the regular monthly mortgage payments are paid by the trustee and through the plan. In Kentucky, the debtor directly makes the current payments on the home and only the defaulted arrearage is paid and caught up through the plan; payments start the date the plan is filed.

Motions to terminate the Stay. The failure to pay the mortgage or car payments on time will allow a creditor to file a motion to terminate the stay and foreclose or repossess the auto. Falling behind can be very expensive while you are in a Chapter 13. To stop a motion to terminate the stay you must pay the \$350 filing fee and the attorney fees the mortgage company paid for your failure to pay on time. This is often more than \$1,500 dollars for just being late a month or two. Plus, you must pay your attorney fees. Similarly, the trustee can file a motion to dismiss the case for failure to make plan payments.

The seven major benefits to a Chapter 13 are:

- **A Chapter 13 can repay, manage or discharge debts a Chapter 7 can't.** There are few or no tools to manage or modify the difficult debts such as non-dischargeable tax and student loan debts in a Chapter 7. Secured debts and liens can be more fully modified in a Chapter 13 and partially repaid. Foreclosures, tax collections and student loans collections are stayed (delayed) while other workable solutions are worked out. Tax collection, student loan and foreclosures are often stopped for years or permanently, not just months.
- **A Chapter 13 protects property.** You never lose property in a Chapter 13 unless you want or need to. In a Chapter 7, the Trustee owns the property the moment of filing but must allow your exemption in the property and must pay off any mortgage or car loan to sell a home or car. In a Chapter 13, the

debtor stays in possession of the property but must repay what a Chapter 7 would have paid. If there is a danger of losing property, the Debtor may always dismiss his case in a 13. You can't voluntarily dismiss a Chapter 7. The Chapter 7 trustee makes about \$70 dollars from every case he reviews and 25% of what he can take and distribute to creditors. After a Chapter 7 once it is filed the Trustee technically owns the home or car but will abandon it as soon as he proves there is no equity and there is nothing to sell. You must make sure before it is filed that you have not transferred money to mom or been placed on the title of dad's car or the deed to your son's home.

- **If you can't afford a Chapter 13 repayment, a Chapter 13 can be converted to a Chapter 7, payments can be lowered, or the case can be dismissed or converted to a Chapter 7.** This is often useful if you filed a Chapter 7 less than eight years ago. You can get the protection and relief now in a small 13. But you can dismiss the 13 later and file as a Chapter 7 after eight years has passed. You can file the Chapter 13 temporarily for many reasons. You may need to continue medical treatments while medical debts are racking up. It may not be yet time for that Chapter 7 discharge. If the plan is unaffordable you can modify the payments if conditions have changed.
- **A Chapter 13 protects co-signers.** If the plan pays the creditor 100% on a co-signed debt, the co-signer is protected. A Chapter 13 allows you to protect co-signers and can allow you to keep property you otherwise turn over in a Chapter 7 liquidation bankruptcy. (A Chapter 7 does not protect co-signers and only protects joint property while the Chapter 7 stay is in effect.)
- **A Chapter 13 is often used to stop foreclosures, obtain a mortgage modification, or refinance a mortgage.** You can take up to five years to repay the default on your home mortgage in a Chapter 13. After just one year in a Chapter 13, lenders (such as FHA) can refinance or finance a home at prime rates if you repay on time while you are in the Chapter 13. After one year of repaying your Chapter 13 on time, you can refinance your home at normal rates.
- **You can strip a second mortgage with no equity in a Chapter 13.** You must prove if the house sold, no money would go to the second mortgage. The second mortgage is then repaid as an unsecured claim and required to release the mortgage at the end of the plan when you get a discharge. A Chapter 7 or a Chapter 13 can strip off a judicial lien where you have been sued. But only a Chapter 13 can strip off a second mortgage.
- **You can eliminate many of your debts in a 13 by reviewing and objecting claims** prior to them being approved and paid. In the Western District of Kentucky, a Schedule of Allowed Claims is prepared by the attorney for the debtor. The schedule advises the court which debts should be paid. Often, creditors file a claim late or may file a claim that belongs to another person. Some claims fail to include necessary information and should be objected to. If you file motions to object to questionable debts, some lenders will not bother to respond.
- **If you recently filed bankruptcy, a Chapter 13 may be your only option.** A Chapter 13 is often filed immediately after a prior Chapter 7 to stop a foreclosure. The debtor may not need the discharge in the 13. The debtor may only need to stop student loan collection. By filing a Chapter 7 first, there may be no unsecured debt to repay in the 13 and a home may be saved.

There can be drawbacks to any Chapter 13:

- A debtor must have enough income to pay the Chapter 13 payments.

- Forgetting to include all the necessary expenses in the budget can make the plan unfeasible.
- In our district, the debtor loses tax refunds and must file annual budgets if a plan pays less than 100%.
- Any priority tax claim (income tax debt less than three years old) must be repaid in full during the plan. Filing a bankruptcy one day too early may cause you to repay more than you should.
- If you keep an auto for consumer purposes, it must be repaid in full if you purchased it within 910 days of filing the Chapter 13. A commercial vehicle, refinanced vehicle, or auto purchased more than 910 days before filing may partially repay the unsecured portion of the debt.
- A plan must pay an amount at least equal to what a Chapter 7 would pay.
- It takes 3 to 5 years to complete a Chapter 13. A Chapter 7 only takes four months to restart your life. It takes a longer time for credit to recover from a 13, plus you have the costs of repaying at least part of the unsecured debt.
- Having a court involved in your life. If you need to buy or sell a car or home or will finance one within the next five years, you will need your attorney to apply for permission to sell or borrow.

A stay is the *temporary* court order that protects you and your property when you file the case. It goes into effect immediately. The stay protects you from even IRS and student loan debts.

The discharge is the *permanent* court order issued at the end of the case if the bankruptcy is properly completed. But the discharge does not protect you from the non-dischargeable debts and is therefore less powerful. You only get one Chapter 7 discharge every eight years. If you have filed a Chapter 7 within the last eight years, Chapter 13 is your only option. You can always file a Chapter 13, even one day after a 7.

Chapter 13 has a five-year-long stay. Non-dischargeable debts like private student loans are not discharged. But they have no ability to collect during Chapter 13, either. Chapter 13 often ends the collections of private student loan debt by making the debt too costly to collect. Private student loans have statutes of limitations that do not age during the Chapter 13.

The chances of being sued for a private student loan after being starved and not being paid in a 13 is less than 1%. What often happens is the student is sued, he files a 13, which repays nothing. The lender has the costs of litigation, which is often \$500 to \$1,000 or more. The state lawsuit is dismissed for lack of prosecution within a year. Lender is repaid zero. Five years later, a discharge is entered, and the lender makes the business decision to never pursue legal collections ever again. Bankruptcy discourages collections for even non-dischargeable debt. Government student loans will restart collections eventually.

If you voluntarily dismiss your own Chapter 13 case or there was a willful violation of court orders, you cannot refile a bankruptcy and automatically obtain a stay in a second case within a year. You can, however, file a motion to extend the stay if you explain a good reason why this new Chapter 13 would work and how it is proposed in good faith. It may be that the prior Chapter 13 failed due to a short-term illness that won't be repeated. Chapter 13 cases are often dismissed or converted to a Chapter 7 if the debtor cannot make payments to the plan or if the debtor later wishes.

Filing a Chapter 13 will be reported to the IRS. You can't file without the prior two years of tax records being sent to the court and trustee. To file a Chapter 13, you must have filed tax returns for the last four years. If you have not filed or paid taxes over the last few years, any tax debt you have will be added to your Chapter 13 repayment plan and must be paid in full. You must file tax returns up to date to have a Chapter 13. You must also not fall further behind in taxes or child support or the case may be dismissed.

If you file a Chapter 13 with less than a 100% plan, you will lose your tax returns to the Chapter 13 trustee in Western Kentucky. If you lose a tax refund, creditors are paid a higher percentage, but your plan payment and number of months remain the same. **Adjust your deductions to avoid losing your tax refund.** If your income goes down, the payments can be adjusted, but “extra income” of a tax refund or inheritance is lost.

Before 2005, plans had to repay more than 70%, whether they could afford it or not. This caused 95% of Chapter 13 plans to fail. This has dropped significantly. Chapter 13 has become more popular, successful and affordable. Even if people have the income to repay a plan, problems can occur before the five-year plan is up, making repayment impossible. Debtors can seek an early hardship discharge, modify Chapter 13 plan payments and convert plans into Chapter 7 if the plan becomes a hardship. If most of the payments have been made in the Chapter 13 and the person is unable to continue the plan, a Chapter 13 early discharge may be granted if it has repaid what a 7 would have.

Some people want to save their home from foreclosure and file a Chapter 13. Others only want to delay the foreclosure long enough to find other options for housing. If you have negative equity in a home or a bad mortgage, you may want to fight the foreclosure in state court and file bankruptcy. This allows the home to go back in a foreclosure over time. You live in it rent free while it is in foreclosure. You can delay the foreclosure, save mortgage payments up and then use them as a down payment when you need to move or finance a home.

Debtors spend two years reestablishing credit before they can buy a home. Since a debtor spends more time in a Chapter 13 case, it takes more time for credit to recover from a Chapter 13, but we have had clients obtain a 730 score while they were in a 13. It takes two years after the Chapter 7 discharge before you will be able to purchase a home. But you can purchase or refinance a home while you are in a chapter 13. Remember, a Chapter 13 takes three to five years to get the discharge. A Chapter 7 only takes four months to get the discharge.

When Chapter 13 Payments Begin and Mortgages

Deserving debtors must live within a reasonable budget. If you have a Chapter 13, your Chapter 13 payments must be reasonable, feasible and affordable. Feasible means it includes expenses such as health care, property taxes and car tags and it shows the ability to pay these expenses. **In a Chapter 13, your plan payment and regular mortgage payment will begin the month you file.** If you fail to make payments at the start of the case and on time your case will be dismissed. Just because there are 5% plans do not ask the judge to allow you to keep a 600 class Mercedes as a second car, or a \$750,000 home that is larger than the judge’s own home unless you are seriously repaying debt.

The judge and trustee will not want to waste time if it is obvious you can’t or won’t make the payments for a car and keep it insured or won’t make the payments on your own home. The number of favors a judge or trustee is willing to extend to you depends on your history. The worse your history and unreasonable the plan is, the less favors you can expect to receive.

To foreclose or repossess during a bankruptcy, a bank must get permission to terminate the stay and then foreclose or repossess property. They do that by filing a motion to terminate the stay, claiming payments are not being made, the plan is unfeasible, the insurance is not being paid, or you intend to surrender the property. Your case will be dismissed if you fail to pay the regular plan payments in a Chapter 13, or fail to obey the rules in your district, such as the rule to turn in an annual budget or tax refund. You can track

the progress of your case in any district by using the Chapter 13 [National Data Center](#) to view your case information online or request information from the trustee. If you fail to make mortgage payments, the creditor will be given permission to foreclose or repossess their property.

Preparing your Plan and Budget

In preparing a Chapter 13 plan, you must include how you plan to repay priority and secured debts. The Chapter 13 plan outlines what percent is repaid to unsecured debts and how secured and priority creditors are paid. A Chapter 13 plan works closely with the budget to show the debtor has enough income for the plan to be feasible and catch up mortgage payments and/or fund the plan. **Unless creditors object to a plan, a plan may limit or modify their loans, liens and property rights.**

In a 2010 case called USA Funds v Espinosa, Mr. Espinosa limited the interest and penalties for his student loan in a Chapter 13 plan; the student loan lender failed to object. Mr. Espinosa paid the principal but discharged his student loan interest and penalties in the plan. Today that would be difficult or impossible to do because judges review plans more closely. Discharging a student loan normally requires an adversary lawsuit. However, this is an example of how creditors who fail to object to the plan are affected. A confirmed plan overrules almost anything; a creditor who fails to object agrees with a plan.

To have an effective plan in a Chapter 13, all the necessary expenses must be included in the plan. If children require daycare and school lunches and you forget to include these in your budget, there will be no money for that expense. No checklist can include all the possible expenses, but there is a checklist of often overlooked expenses on our website, www.Bankruptcy-divorce.com. Expenses include taxes, 401k repayment and contributions, church tithes and private school expenses that have a documented history and are necessary due to a disability or other problem. If a plan does not include necessary expenses, it will fail.

Lien Stripping, Avoidance and Cramdowns

With real estate you can let it go in foreclosure and then purchase it at the foreclosure sale or rent or buy a different home. If you have a bad home mortgage and owe more than the property is worth, you may want to:

1. Let it go back in foreclosure. If the owner fights back, it often takes one to three years for a foreclosure sale to happen. Filing an answer and discovery to the foreclosure will extend the time it takes. People often live in their home for 2 to 3 years rent free until the date it is sold, saving up for their next home. A house can be sold in 90 days without fighting back.
2. Refinance at a lower rate after you repair your credit in a Chapter 13 and have paid on time more than one year.
3. Consider lien stripping. Redemptions can only be done on personal property in a Chapter 7. But judicial liens can be stripped in a Chapter 7 or a Chapter 13 to make it more affordable. A consensual lien (mortgage or car loan you agreed to) can only be stripped or crammed down in a Chapter 13 or Chapter 11. If the home is worth less than the first mortgage and a second mortgage is treated as an unsecured debt, you may strip the second mortgage and pay it in a Chapter 13 as an unsecured debt. In Kentucky, stripping a lien can only be done in a Chapter 13 with a discharge.

Lien Stripping a Second Mortgage an example

Tim and Joan own a home. The home is worth \$140,000; they owe \$145,000 to the first mortgage on a 5% fixed-rate mortgage. They owe \$50,000 to the second mortgage, but even if they sold it over the next year, there would be no one who would pay more than the \$140,000 it is worth today.

Tim and Joan could let the home go back in foreclosure and file a Chapter 7 or Chapter 13 bankruptcy. They love their home, but they just can't see paying \$50,000 more than what it is worth and an extra \$700 per month when they can barely repay the first mortgage.

Solution: Tim and Joan file a Chapter 13 plan with language in it to strip the second mortgage, along with a motion to strip. Essentially, the second mortgage will be treated as unsecured and the plan language requires the second mortgage to release the mortgage at the end of the plan. Completing the plan and getting the discharge satisfies the debt in full. There is no equity in the property to pay the second mortgage. By filing a Chapter 13, the second mortgage is treated just like the other unsecured creditors and paid back perhaps 10% or less from the \$200 per month paid into the plan. If Tim and Joan finish the plan, the mortgage company can be forced to release the second mortgage. However, the attorney should file a motion to find the second mortgage current and/or paid in full at the end of the 13 before discharge.

Failure to complete the plan means the second home mortgage did not get paid in the Chapter 13. The second mortgage remains and may go into foreclosure if the Chapter 13 is dismissed without being stripped. Notice the \$200 per month Chapter 13 plan payment is less than what they would have paid for the second mortgage payment. Stripping the second mortgage paid off debt, plus the second mortgage was released.

Cost per month for the next five years if they did nothing		Cost if they filed Chapter 13	
Monthly 1 st Mortgage	\$1,000	Monthly 1 st Mortgage	\$1,000
Monthly 2 nd Mortgage	\$700 (reduced by \$500 in a 13)	<u>Chapter 13 plan payment</u>	<u>\$200</u>
Credit Cards	\$400 (eliminated in a 13)	Monthly Debt Load	\$1,200
Monthly Debt Load	\$2,100		
Savings per month	\$900	Second mortgage released in five years on completion of plan	
		Savings \$48,000	

Lien stripping can be done to residential second mortgages, judgment liens and all mortgages for commercial or vacation homes. Only residential first mortgages cannot be stripped or modified.

Cramdowns, Adequate Protection Payments & 910-Day Car Claims

Just like home mortgages, car loans can occasionally be stripped. If the car loan is a commercial vehicle, a consumer vehicle loan is more than 910 days old, or the loan for the vehicle was not solely made for the purchase of the vehicle, then it can be separated into secured and unsecured claims. Examples:

1. Jim uses his pickup truck primarily for his tree business. It is worth \$5,000, but he owes \$15,000 for it. Commercial vehicles can be crammed down (stripped down) and GMAC may have a \$5,000 secured claim paid in full and a \$10,000 unsecured claim partially paid. The partial amount repaid can be as little as \$1,000 if the plan only repays at 10% of \$10,000.

2. Sue refinanced her car in Kentucky. Since this was a refinance and not a loan to purchase a car, in Kentucky it can be crammed down in a Chapter 13 and her \$12,000 loan for a \$4,000 auto becomes a \$4,000 secured claim and an \$8,000 unsecured claim. This result is different in Indiana, where refinancing in state law is still a loan to purchase a car.
3. Finally, Bill has an old loan with a lifetime unlimited warranty on his 2007 Dodge truck, and he plans to drive it for 900,000 miles, following tractor trailers in his job as a truck escort. He took out a 72-month loan and has half paid in 2010. It is 920 days after the loan closed, but he has 300,000 miles on it, and it has depreciated to just \$1,500. It is also used in his business, so it also qualifies as a non-consumer loan. It is like new, but he still owes \$30,000. Bill's car loan is more than 910 days old and should be treated as a \$1,500 secured car claim with a \$28,500 unsecured claim paid at 5% interest.

Car companies hate cramdowns. You can see why. Without stripping down Debtors normally must either:

- 1) Accept a lease or auto loan, or
- 2) surrender the auto and owe nothing in a Chapter 13.

Unless you strip the lien, a debtor who fails to surrender a car must pay the full amount during the plan. Even if he later surrenders the auto or the auto falls apart; he remains liable the plan controls him too. Car loan companies and banks watch the plan language to make sure their loans are fully paid. However, some buy-here-pay-here lots and small loan companies often fail to monitor plans. Plan language in a confirmed plan rules how the car is valued.

Unless the debtor can cramdown the auto lien, all the court can do is lower the interest rate in 13. Normally, the debtor must either 1) pay the debt over time at a low interest rate, or 2) surrender the auto and owe nothing. A Chapter 13 usually forces you to accept and pay a secured debt for a consumer car purchased with a loan within 910 days of filing a Chapter 13 or abandon the car and treat the creditor as unsecured.

Income Tax Refunds and Inheritances

There are special rules for calculating when income taxes can be discharged and when they are treated as unsecured dischargeable debts. In a Chapter 13, income tax debts less than three years old must be paid in full by the plan, or the plan cannot be confirmed. If a secured debt remains unpaid, the lien remains at the end of the plan. (Income tax liens expire 10 years after the return is properly filed). By merely waiting the proper period, many income taxes which are priority claims can be repaid lesser percentages. Inheritances from a death within six months after the discharge should be reported to the trustee and are property of the estate and trustee. Tax refunds are not part of your budget and belong to the trustee. In a Chapter 7 they can be exempted and kept in part or in total. In a Western Kentucky Chapter 13 plan which pays less than 100%, the refund is surrendered to the trustee. You can, increase deductions and eliminate losing refunds.

The Co-Debtor Stay and Effects on Co-Debtors

In a Chapter 7: Co-Debtors are not protected directly in a Chapter 7. While the case has a stay, any property in the debtor's name is protected, but this protection ends within 45 days after a Chapter 7 is filed, unless a reaffirmation or redemption is filed. A co-signer may keep the property and pay for it, but since the co-signer did not file bankruptcy, the creditor may fully collect from the co-signer for the debt after the Chapter 7 is discharged.

In a Chapter 13: In a Chapter 13, the co-signer is protected from collections if a plan repays 100%, but they are not protected if a plan pays less than 100%, or a creditor shows they will suffer irreparable harm if they are not allowed to collect from the co-signer.

Modifying Plan Problems and Early Discharges

Sometimes a debtor cannot pay because of a temporary layoff or illness. During a short-term layoff or illness, a debtor may ask for a three-month suspension of plan payments for a good reason. However, if the plan payments cannot be made for an extended period, the plan fails and is no longer feasible.

The budget in our district is turned in every year. Incomes may increase, or expenses may increase. If the disposable income increases or decreases significantly, the plan payments can increase or decrease. To have payments decreased, a new budget and motion to modify the plan must be filed.

However, sometimes there is no way to finish the plan. In that case the debtor may:

- 1) Convert to a Chapter 7 if the debtor has not received a Chapter 7 discharge within eight years of when the Chapter 13 was filed.
- 2) Dismiss and file as a Chapter 7 if the debtor received a Chapter 7 discharge within less than eight years of when the Chapter 13 was filed.
- 3) Obtain an early discharge of the Chapter 13.

To get an early discharge of the Chapter 13 under 11USC 1328(b), the debtor must prove:

- 1) He paid a substantial part of the plan.
- 2) The plan paid more than a Chapter 7 would have.
- 3) Failing to complete the plan was not his fault (often because the Debtor has become disabled, etc.; not just unemployed and looking for work.) As such, you can't shoot the husband and then complain you can't complete the payment of the Chapter 13 plan due to losing his income. In Re: Brown, Missouri Bankruptcy Case No. 07-43738-13-jwv, 2009 Bankr. Lexis 640, March 24, 2009

DOCUMENTS: WHAT ARE THEY LOOKING FOR?

The panel trustee in a Chapter 7 will look at bank records to see if you had any large deposits, payments or withdrawals just before filing and to whom those checks went to. They try to catch "preferential transfers," which are payments, liens or garnishments to creditors you made just before filing. When the trustees ask for tax documents, he is looking at past income to make you file a Chapter 13. From around November to around May, the Trustee may be looking for large tax refunds to seize. In Kentucky Chapter 7 cases, the exemptions are so large you will rarely lose a tax refund. We have kept \$12,000 tax refunds when the debtor had no equity in real property and the real property was used to the tax refund. In Indiana, the exemptions allowing you to keep property and start over are small and you may only be able to keep up to a \$300 tax refund. You may wish to spend your refund and then wait about 30 days to file if you live in Indiana. Income tax refunds are property you have a right to at the time of filing but haven't received yet.

The unearned income tax credit is a welfare benefit and is not normally attachable. Similarly, inheritances can be lost if you receive them shortly after filing.

Document they look at	Why they look at it & the Rule	What to do
Mortgages and Deeds Rarely caught but becoming more common. Real Estate can be taken if a mortgage was not recorded or not recorded in a timely manner.	If a mortgage is not filed at all or improperly filed, the trustee can take your home. Under Kentucky law , if the mortgage was filed within 90 days before filing bankruptcy but not filed within 20 days after the property was purchased, or filed 10 days after refinancing, the trustee gets the home.	Check your mortgage filing dates before you file . In 2009, more than \$10 million in homes were seized by trustees in Kentucky alone, and they were sold for about 75% of their value to pay debts. Don't let this happen to you.
Car Titles Commonly taken if liens are not recorded or not recorded in a timely manner.	Like mortgages, if you have no lien recorded or under Kentucky law, if you bought the car within 90 days of filing bankruptcy and the lien was not recorded within 30 days after the car was bought, the trustee owns the car. This law has changed without notice and you should check if you buy an auto within 90 days of filing.	Check your car title and when it was recorded after you bought it. Even more cars than homes are taken. If the car is in your name, it doesn't matter who is in possession of it or what you intended. If the title is in your name it is your auto, house etc. and may be taken.
Bank Account Commonly taken in the past, but Kentucky now has large wild card exemptions that normally prevent it.	The trustee may own what is in your bank account if you have too much money in your account and if it is not exempted. They look at how much did you have in the bank on the day you file.	Keep a minimum in your bank account until you get notice of the filing. However, the exemptions are large enough that you should not have a problem.
Inheritances Commonly taken.	Inheritances you get within six months after you file are property of the trustee.	Property of the estate includes property that you own but just didn't get, such as tax refunds.
Tax Returns Rarely taken today unless you run out of general exemptions in a Chapter 7. But taken in a Chapter 13 for 4 years in Western Kentucky and not in Eastern KY and Indiana	How much is your tax refund? The Earned Income Credit (EIC) is a welfare benefit and not normally attachable , but the Child Tax Credit and remainder of your income tax refund is an asset merely held by the government.	Plan your tax refund properly. If you receive a large refund you may lose it if there are no exemptions left. You may wish to spend it prior to filing for necessary expenses. Refunds are always turned over in a Chapter 13, unless the plan repays 100%.

EXEMPTIONS: HOW TO KEEP PROPERTY

Your "equity" is that part of the property you own. To figure out how much equity you have, deduct what you owe on the property from what it is worth. The part of the house, car, or property you own is called your personal equity in the property. In a Chapter 7, your property or your equity must be less than or equal to the exemptions to keep that property. If this will be a problem, the attorney preparing your bankruptcy should advise you if you have too much equity and tell you to consider a Chapter 13 where you can't be forced to sell the home.

A debtor may keep more property in a Chapter 13 than what is normally allowed by paying back in the Chapter 13 the value of what a Chapter 7 would repay deducting the costs of sale and what the Trustee is

paid. In a Chapter 13, the property that can be kept is often higher and increased by what the debtor pays into the plan. For instance, in Kentucky, if you have \$70,000 in equity and the husband and wife only have \$40,000 in real estate exemptions, paying back \$30,000 in a Chapter 13 would certainly allow them to keep the home. If the trustee would have only distributed \$20,000 to the creditors, the Chapter 13 plan only needs to pay back \$20,000 (what a 7 would have given to creditors deducting the costs of sale and trustee fees).

You may keep equity in property and start life over. For instance, if you own a \$140,000 home with a \$90,000 mortgage, you have \$50,000 in equity in the home. Exemptions are doubled if you are married because each person has his/her exemption, but the title must be in your name to claim the exemption. Exempted property is protected from the claims of creditors and the Trustee. If a spouse didn't work to contribute to a tax refund, you can't use their exemption toward exempting their refund. If you jointly own a home, you may each keep \$22,925 of equity each. If you file as a Chapter 13 and the plan repays \$3,075 each or \$6,150 over the next 5 years, you may keep the home. In a Chapter 13, the plan must repay, at a minimum, what a Chapter 7 would have paid.

In Kentucky in 2018, you could keep at least \$3,775 equity in a car, \$12,625 in personal property, \$23,675 in your home, a \$1,250 wildcard exemption and a \$11,487 wildcard exemption if the home exemption wasn't used. **These amounts increase slightly every year for cost of living.** For the most recent amounts, [see our chart](#). You also have an almost unlimited exemption for retirement. Large and unusual transfers to retirement accounts within six months before filing may be a fraudulent transfer. Continuing to make the same deductions from your pay for the same level you have maintained for prior years will not be objected to, and repayment of 401k plans are allowed.

You can keep a second car, but additional cars must be exempted under other exemptions or you must have no equity in them. You can use more than one exemption on an item, or you may use one exemption for several items. So, a \$3,775 auto exemption will allow you to have one \$3,775 car, or you can keep a \$13,775 car with the \$3,675 auto exemption and \$10,000 of an unused real estate wildcard exemption. Several exemptions exist that allow you to keep tools of the trade, funds from a lawsuit, and other property. In Kentucky, professional individuals may keep their library books and a professional vehicle. The property you can keep is governed by state law. **Each state has different rules for the property it allows people to keep.** All states treat pensions as exempt. Because exemptions are so large, and creditors usually wish to reaffirm secured debts, **very few persons filing Chapter 7 lose property they do not wish to lose.**

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 a quick sale or auction). Normally value property at auction, liquidation or wholesale value.

Exemptions are doubled if you are married because each person has his/her exemption, but the title must be in your name to declare the exemption. Exempted property is protected from the claims of Creditors and the Bankruptcy Court. If a spouse didn't work to contribute to a tax refund, you can't generally use their exemption towards exempting their refund.

Property Value	minus Amount Owed	equals Your equity and what you own in the property.	minus Your exemption.	Amount to Trustee: If you have more property than what you can keep you will owe this amount to the trustee in a Chapter
What the property	Deduct the part the bank or car		If you own some part of the property your	

brings on a quick sale.	lot owns. The remainder is your equity and what part you own.	Only use an exemption if you need it.	exemption is how much you can keep (Increase in parenthesis.)	7. In a Chapter 13, your case must pay the equal of this column.
This is a worksheet. Exemptions are for 2017 and may have increased. First row is an example.				
Home \$148,000	Mortgages and other liens \$70,000	Equity \$78,000	Minus your exemption (2 x \$23,675) per person on deed \$47,350 for your person residence Otherwise reduce by 50% as a wildcard	Excess above exemption and amount a Chapter 13 would have to repay. \$30,650 or what creditors would receive, which is slightly less.
Home			(\$23,675)	
Car	-		(\$3,775)	
Car	-		(\$3,775)	
Personal Injury case			(\$23,675)	
Household goods	-		(\$12,625)	
Bank account or Tax refund	-		(Wildcard=\$1,250 plus ½ of the unused Homestead)	
Any Chapter 13 repayment must equal the amount due to the trustee in a Chapter 7!				

The Kentucky Exemptions

Property	Pre-2005 KY state exemptions	Your Exemption in 2017
Real Estate	\$5,000 per person on Deed	\$23,675 per person on the deed. If not used on your home, you may reduce it by 50% and use it as a wild card for any property (\$11,842.50).
Household Goods	\$3,000	\$12,625
Car	\$2,500	\$3,775
Wildcard	\$1,225	\$1,250 plus what ½ of what you don't use of the real estate exemption on your home, up to \$11,487.50.
Retirement	Unlimited	Amount reasonably necessary for support
Personal Injury Case	\$7,500	\$23,675 for bodily injury
Tools of trade		\$2375
Jewelry		\$1,600
Life Insurance		\$12,625

ADVERSARY PROCEDURES, MOTIONS AND FRAUDULENT TRANSFERS

Adversary proceedings are separate lawsuits filed in bankruptcy court. A motion is a small request that does not require a full trial before a judge. Examples of adversary proceedings are:

- 1) Jim charges \$5,000 for a new fur coat as a gift to the wife. MasterCard wants him to repay the \$5,000 to them because they believe the purchase was made while he was bankrupt and while he knew he could not repay the debt since it was made the week before filing the bankruptcy. Mastercard files an adversary to find the debt non-dischargeable as a fraud. Jim may have to prove it was not fraudulent since it was so close to filing.
- 2) Mary is disabled and wants to discharge her student loans. She will have to prove repayment is a hardship to her and her dependents by filing an adversary proceeding. Studies show she had a 40% chance.
- 3) Bad Boy finance made a dozen phone calls to Bob after a Chapter 7 bankruptcy was filed threatening him with jail time if he didn't repay the debt. Bad Boy finance was listed in the bankruptcy as a debt. Bob needs to sue Bad Boy finance company and he has recordings of the phone calls to prove it. Bad Boy finance company has committed contempt of court. Bob can file an adversary case in bankruptcy court and may recover enough to pay for his bankruptcy.

Motions are for much more minor requests like:

- 1) Phil will be out of work and needs to reduce his plan payments temporarily or obtain an early discharge.
- 2) William would like to redeem his car.
- 3) Susan hasn't been making her Chapter 13 payments and mortgage payments. The Chapter 13 trustee wants to dismiss the case, the mortgage company wants to go back to state court and start foreclosure again, and she wants to catch the payments up. A judge would decide if she can. Normally, she would get one bite of the apple of not making payments; she probably won't get a second chance. This is federal court; there is no "three strikes and you're out" policy.

Fraudulent Transfers

Fraudulent transfers are commonly handled by motion, and they can happen accidentally. A fraudulent transfer is any transfer of property made within one year before the filing date of the bankruptcy petition made with the intent to hinder, delay or defraud creditors. It can happen accidentally, and it can happen without the debtor even knowing it happened. Some transfers can be both a fraudulent transfer and a preferential transfer. If a transfer was made to an insider family member, the trustee can go back two years to undo these transfers under his avoidance powers under Section 548 of the bankruptcy code.

Under Kentucky in state court, a trustee or creditor can go back five years to reverse a fraudulent transfer. Fraudulent transfers often happen by selling or giving property to someone for less than the real value of an item, such as selling a new car for \$500 to mom because if you file bankruptcy, you would lose it. A

trustee may recover property by filing a motion or adversary proceeding. An unsecured creditor that takes a lien on property without giving anything of value would have both a fraudulent and preferential transfer.

Preferential Transfers

A judgment lien which attaches within 90 days of filing also has the same problem. Section 547 (b) describes it as “a transfer of property which places a creditor in a better position than it would have been if the bankruptcy had been filed”. Preferential transfers allow the creditor to receive more than he would have gotten in a liquidation. This type of transfer is voidable by the trustee. If the creditor gives full value for the item, then there is no preferential or fraudulent transfer and it is a sale “in the normal course of business.” Fraudulent transfers and preferential transfers are easily confused because they operate similarly.

NONDISCHARGEABLE DEBTS YOU THOUGHT YOU COULDN'T BANKRUPT

The most common reason for a bankruptcy to be contested is that the debtor has attempted to bankrupt one of several debts that, under 11 United States Code 523, cannot usually be bankrupted. The basic and most common “non-bankruptable” debts are quickly listed below but tax and student loan sections have expanded detailed sections on how to manage those debts that follow:

Property Settlements, Child Support and Alimony

Property settlements, child support and alimony are not generally bankruptable, but they can be repaid in a Chapter 13 or paid in a Chapter 7 from the sale of assets. They are paid as priority debts ahead of secured and unsecured debts. **Your case may be dismissed or converted if you fall further behind while you are in a Chapter 13 and the spouse complains.** A bankruptcy will not reduce or modify child support. You can only reduce your child support by having the family court review the child support; a reduction is only granted if you have a substantial reduction in income. Child support is determined by a chart in every state. To calculate your amount in Kentucky, see our divorce manual. *Property settlements and a debt for your spouse from a divorce court order may be repaid in a Chapter 13; it is never discharged in a Chapter 7!*

Only Income Taxes less than three years old are non-dischargeable

Yes, income taxes more than three years old are dischargeable! Income Taxes more than three years old **are treated as unsecured debts** if they were timely filed and other conditions are met. To bankrupt income taxes, there must be no fraud or intent to evade taxes and:

1. You must file the returns at least two years before filing the bankruptcy petition.
2. The income tax must more than three years old. This is calculated as 3 years from when the return was due. If you filed for an extension and it was due October 15th it is 3 year from that date.
3. There must be no new assessment of taxes within 240 days before filing the bankruptcy.

For an example, if you filed on April 16, 2012, you could not bankrupt 2011, 2010 or 2009 returns, but you can bankrupt 2008. If April 15 falls on a weekend or holiday, add those days to the waiting period. The three years must use business, not calendar, days. You can only bankrupt the unsecured amount. Tax liens dissolve 10 years after an assessment of the tax lien. The bankruptcy judge can adjust and set the value of the property and lien but cannot remove the lien because it arises by statute. Only income taxes are dischargeable. Sales tax, withholding and other taxes are not dischargeable, and property taxes cannot be stripped. There must be no fraud involved in the return. *Any offer in compromise, due process hearing,*

or bankruptcy will extend the time periods you must wait to file and obtain a discharge. WHEN IN DOUBT, ALWAYS LIST YOUR INCOME TAX DEBT. IT MAY BE BANKRUPTED ANYWAY, AND FILING MAY DISCOURAGE COLLECTION.

Income taxes have a ten-year statute of limitations. Often, the way to bankrupt income taxes is to enter into a payment agreement or enter uncollectible status and wait out the period to file bankruptcy. Although the IRS has up to 10 years to collect for a lien, they rarely attempt collections after seven years of failure to collect. The IRS also has a currently uncollectible status where they will not attempt collection. Payment arraignments have been made which paid less than the interest due each month.

Federally guaranteed student loans are generally not bankruptable, unless you qualify for a hardship discharge. While it is exceedingly difficult, it is possible under some conditions to bankrupt student loans. A hardship discharge is granted about 40% to 50% of the time when debtors apply. But it may only discharge part of the debt. After October 2005, both private and government student loans were made non-dischargeable. Before October 2005, only governmental loans were protected. If you filed bankruptcy before 2005, any private student loan debt was discharged.

We handle private student loan collections just like defending a credit card debt. If the private lender can't win the collection lawsuit they can't collect. Often, they can't. Private student loans need to win a court case and get a judgment to garnish wages and bank accounts. Government loans do not need to sue to collect. Government loans can directly garnish bank accounts, social security benefits and wages. Government loans can be placed into the IBR program to make them affordable. The bankruptcy court considers three factors in determining whether you should get a hardship discharge in bankruptcy under the Brunner test:

Whether or not you tried to repay in good faith before you became unable to repay.

Whether your present and future ability to repay shows you cannot repay without it being an undue hardship to you and family, and

Whether you have done all in your ability to repay.

Kentucky uses the Brunner Test, but another test of the totality of the circumstances is becoming popular in other states to determine what an undue hardship is. Other types of discharges such as the disability discharge can be used to discharge the debt for government loans. You can lose the disability discharge by returning to work. Other types of administrative discharges are available. Parents that had a child die are discharged of government student loans if they co-signed for that child. Discharges for school closings, fraud and other reasons exist.

Since 2007, working for a nonprofit corporation will also discharge Department of Education student loans over 10 years instead of 20 for income-based repayment plans. In 2010, the official financial report of student loans showed more than \$1 trillion; more money was owed to student loans than all credit card debt combined. About 35% to 40% of all student loans are in default. After 2012, almost all student loans at public schools were originated by DOE the department of education. But some private lending will probably always remain. Private loans have a much higher rate of default and problems.

A Student Loan Hardship Discharge normally requires you first attempt **an IBR or ICR Loan Repayment Plan**. There is a requirement that you exhaust your administrative remedies before you ask for a hardship

discharge of government loans. If your income is zero and the payment can be zero, there is probably no hardship. If a student loan discharge is an issue in your situation, please discuss it. **It may be worth a try every year people do get them.** The key is repayment must be a real hardship—not just hard.

If the loan does not leave enough money for food, shelter, clothing or medical care it is a hardship. Doing without cable TV does not qualify for hardship. 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 needs constant care, preventing the nurse from working. Life at the poverty level or being permanently on government support used to guarantee a student loan hardship discharge prior to IBR, but that is not necessarily the case. Since private loans do not have IBR programs they are more likely to be discharged.

Ordinary debts to a school such as room rent or a direct loan to a college are just as bankruptable as any other debt. An IBR loan allows you to pay what you can afford on a student loan until the debt is 20 years old or until you are disabled, and then it is discharged forever. The payments are, however, decided by the government according to what they think you can afford on your income. In the past this IBRs were not a fully funded program. However, if you owe \$150,000 and live on \$15,000 a year, this seems like a good option. Not all student loans (including private loans) qualify for IBR; therefore, applying for the program may not be required to obtain the undue hardship discharge.

Debts due to theft or fraud

Certain creditors may claim you tried to defraud them by obtaining 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 are always in financial trouble, and just being in financial trouble when you made the loan does not constitute fraud.

The fraud exception to discharge means **criminal theft or actual fraud cannot be discharged.** The fact that the credit card company failed to run a credit check or made a foolish loan is not fraud. Only a proven, material and intentional misrepresentation is considered fraud. The burden of proof is on the lender, and it is rare that fraud can be proven. But under 11 U.S.C. 523 2 (c), certain charges are assumed fraudulent and are a basis to require you to repay it when you charge on a card and grab property just before filing, including:

- **a purchase of a \$500 luxury item within 90 days** luxury goods or services however does not include goods or services “*reasonably necessary for support or maintenance of the debtor*” so a 500-dollar Rolex is not allowed and 3,000 dollars for a new refrigerator the family needs and tires for the car would probably be allowed. Because this wording was changed, I have not seen an objection to buying reasonably necessary goods just before filing for years.
- **a cash advance of \$750 within 70 days before filing will be assumed to be fraudulent, and it will be assumed you knew that you were in a bankrupt condition when you made those charges**

However, if you charge a cash advance or luxury goods, you can list the debt and, if the creditor fails to object, it will be bankrupted anyway. **Notice only the amount you charged will be excepted from discharge.** The rest of the credit card is discharged only the debt for the mink coat must be repaid.

There are 12 factors altogether now considered and additional facts may allow a judge to conclude fraud. If a creditor asks, “**When did you know you were bankrupt?**” at the 341 hearing, this is often 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 \$5,000 charge for a fur coat at Macy's on your American Express the day before filing will be a problem. These 12 factors include:

- The timing between making the charges and filing. (Did you charge just before filing?)
- A sudden change in conditions like unexpectedly losing a job or becoming disabled shortly after making the loan so that you had no warning you wouldn't be able to repay.
- The amount of the charges made. (Assumes small charges are normal.)
- 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.

Criminal Acts: Criminal Restitution and Intentional Injuries

Intentional injuries: You intentionally assault or injure a person and then attempt 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 for sympathy to help you out. However, you can list the debt and, if the person fails to object, it will be discharged.

Criminal Acts or Criminal Restitution: If a criminal judge orders you to pay restitution after you stole from or intentionally hurt someone, and you attempt to bankrupt the criminal court order, it won't work. A bankruptcy court judge cannot stop a criminal court judge from ordering you to pay. If there was no court order and the individual fails to file an adversary objection to you discharging the debt, it would be discharged.

No Insurance and Drunken Driving Accidents: Same idea as criminal acts and intentional injuries. 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 will be discharged anyway. **A Bankruptcy can also allow you to get a license back if you lost a driver's license 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. Fax proof of your filing to 502-564-3250 in Frankfort to get your license back. 502-564-0279 is their phone number.

Marital Property Settlement Agreements: You can pay a marital property settlement obligating you to pay debts in a Chapter 13. You can't in a Chapter 7. 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 he or she will pay it. Oftentimes, both people are forced into bankruptcy. The divorce court normally only orders jail time for failure to pay alimony or child support for an underage child. After October 2005, one of the major changes in the law is your family obligation for support of children and a spouse are given priority preference over other debts in a Chapter 13. Designating certain debts as support, maintenance or a settlement agreement may allow payment as a priority debt. It is possible to pay them as a priority creditor under Chapter 13.

Debts for student loans, child support, alimony and taxes are not subject to the objection deadline rule. If other Creditors fail to file an objection, the debt may be discharged even though it is non-dischargeable. This is one more reason we require you to list all debts, even if the debt is non-dischargeable.

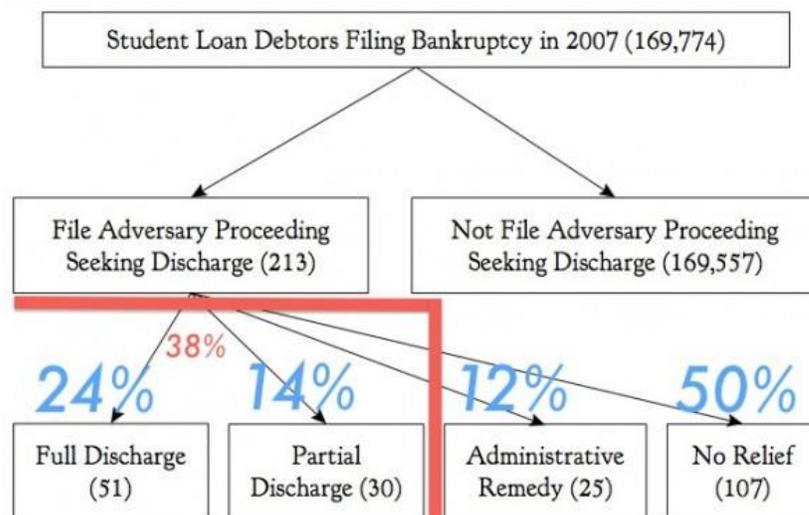
If you have these non-dischargeable debts, discuss the possibility of having them bankrupted anyway. There are several exceptions to almost every rule. **If you list a non-dischargeable debt and the creditor fails to object, it may be discharged anyway.** If you don't list it, you may have to pay additional fees later to add it. When in doubt, list the debt. **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.

HOW TO MANAGE/DISCHARGE STUDENT LOANS

You may want to skip this student loan section if you don't have student loans, but it won't hurt to read it to get a better understanding of bankruptcy and how lenders and servicers work. Many so called "non-dischargeable" debts, including income taxes, can be discharged, managed or paid in a Chapter 13 bankruptcy while credit cards and doctor bills are paid little or nothing. More than \$1 trillion in student loan debt is owed in America. This is more than all credit card debt combined and second only to mortgages. The defaulting **cohort** rate is about 11% and a school with a high default rate can lose certification if their default rate reaches 30-40%. One Kentucky public school Southeast Kentucky Community did reach that rate in 2018. The actual rate of student loans which do not repay the amount borrowed is much higher about 35-40%. IBR loans repay what is affordable not what is borrowed. As a result, a 200,000 loan may only be repaid 50,000 or less but not be included in the cohort default.

Don't assume you can't discharge student loans in bankruptcy. Individuals who can prove they can't afford health care and essential food shelter and clothing if they are forced to pay student loans have an undue hardship discharge available to them. Every year about 500 people nationwide get this discharge.

You do have to file an adversary proceeding, which is a separate lawsuit in bankruptcy to obtain the undue hardship discharge for student loans. However, it can be done and has been done by many who worked hard to obtain it when the conditions were right. Three studies show 50% of the time when a debtor asks for an undue hardship discharge, he is given one. Even if the entire debt is not discharged, a partial discharge that eliminates 50% to 90% of the debt is possible. [Jason Iuliano](#) is the more popular study. This is a breakdown of the approximate results from adversary proceedings to discharge student loan debt.



Several attorneys and doctors have discharged student loans because they were willing to spend the time and effort to get it done. If the conditions were right, they were able to articulate and properly present the issues to the court while the average citizen wasn't. In one case, an attorney who owed two child supports and cared for an elderly father discharged \$90,000 of \$120,000 in debt. No income was left without abandoning the care of a family member. In a 9th circuit case, an attorney discharged the entire debt after failing the bar exam.

Many attorneys say you can't discharge student loans because they believe they can't. There are many reasons why lawyers avoid these cases. In my opinion these attorneys:

1. Don't know the rules.
2. Assume it is too much work for too little money.
3. Won't spend the time and effort to do quality work or learn how to discharge/manage student loans.
4. Are tired of clients that say things on the witness stand that destroy the case, so they don't want to go to trial.

Often, clients leave the offices of these attorneys worse off from a bankruptcy than when they went into their offices. For instance, federal student loans can issue a 25% penalty if a student loan goes into default. If the loan goes into default while it is in bankruptcy, the client is damaged permanently from being assessed this penalty. If the student loan is properly handled by being discharged or being placed into an IBR, there is no penalty.

The most common rule for undue hardship is the Brunner test, which was made up by a very conservative New York judge to decide what an undue hardship is. Brunner is a harsh rule and when the appeals court reviewed it, all they said was that the Brunner test did not abuse the discretion of the court. The Appeals Court never said Brunner was a good rule or a rule they liked. Today, the same judge no longer sits in that New York court, and that court no longer follows the Brunner rule. But that rule continues to be followed by judges in other states after years of cases. The totality of the circumstances and other rules are used in other courts. To get around Brunner, the debtor must show:

1. that he has exhausted every other avenue to manage the debt and
2. keeping the debt is an undue hardship denying him or his family medical care, or essentials.

The first step in managing student loans is to determine if a loan is government or private. Sallie Mae and ECMC originate, guarantee and collect both private and government loans. Here is the tool to determine if it is private or government: [National Student Loan Data System](#). Private student loans are more likely to be dischargeable in bankruptcy. **Private loans often pay for ineligible schools**. Check to see if the institution is an eligible educational institution. If it wasn't, or a student was unable to benefit from training because he wasn't eligible, then the loan is automatically discharged because the loan didn't qualify for the protected status. If the school is not an "eligible education institution" under IRS code section 26 USC 221(d)(1) and (2) then the debt is not a "qualified education loan(s)" under 11 USC 523(a)(8)(B), and not dischargeable. See [if your school qualifies](#). Wendy Adams v Sallie Mae Oregon 2012 12-3159; Jennifer Davidson v Sallie Mae Oregon 12-3171.

Also, only loans for an educational purpose are non-dischargeable. There are many methods to manage government loans and avoid collection. There are few or none for private loans. The only reason for a loan being non-dischargeable is if the funds were used to educate the debtor. If the debtor can prove he was not qualified for the educational program, or that the funds were not used for an educational purpose, then the loan loses its non-dischargeable status as a student loan. It may also be possible to discharge a student loan that was a fraud on the student. Many private "business" schools promise results or salaries that are unreasonable. But proving fraud is hard to do. Morgan King has a book and audio which is far more detailed in discharging student loans. We also have a long page on our website about this.

Collections

If a student loan cannot be discharged in bankruptcy, then it must be managed. Managing governmental loans is easy due to the numerous programs to avoid default. Once the loan is in default, the government has strong collection powers. It can seize tax refunds, garnish wages, garnish government benefits like social security, attach real estate and property through Department of Justice lawsuits and seize bank funds. The Statute of Limitations does not apply to Government Student loans 20 U.S.C. § 1091a(a). But a government student loan cannot garnish more than 10% of wages under 59 Fed. Reg. § 22473. Disability, closed school and other "administrative" discharges are available for federal student loans.

DOE has many programs which allow you to avoid collections and keep a loan out of default. Department of Education (DOE) loans do not generally go into default until they are 270 days overdue. Private loans and Perkins loans technically may be in default the day after the due date. Numerous penalties kick in when government loans go into default and you should avoid the loans going into default. You will not be allowed to obtain a FHA, VA, Kentucky Housing Corp or federally insured home mortgage if your government student loan is in default; it can also affect your employment and interest rates. Collectors can be sued for FDCPA violations. That's right — you can sue debt collectors back. However, the loan isn't being collected by a debt collector until it is in the hands of a 3rd party collector who is handling the loan while it is in default. Government lenders have a duty to explain and help you with IBR applications, but they don't get paid for that. Since they get paid for collecting late fees you can't expect them to look out for your best interests.

Sometimes, government student loans can be repaid at the expense of private unsecured debt, especially if government loans are classified as "business expenses" under 1325(b) 2 or have terms longer than five years. The bankruptcy code allows debtors to pay long-term, non-dischargeable debts in a Chapter 13 plan at the normal monthly payment. This may save co-signers at the expense of unsecured debts.

It was reported that at one point during the 2008 recession about 25% of all four-year degree loans were in default, 35% of all two-year degree loans were in default and 45% of all private loans were in default. Collection agencies get paid for collecting student loans. They often “flip” (refinance) loans into new loans to earn commissions for a new loan. Refinancing the loan makes collectors the maximum profit. The amount the student owes is increased and this prevents the statute of limitations from running for private student loans. The trusting student does not understand banking and is left with a new loan worse than the old one.

Each state has a statute of limitations which applies to private student loans. A private student loan is no different from a credit card debt and all the state defenses such as the statute of limitations applies to these private student loans. The most common defense used is the statute of limitations. In some states the statute of limitations is only 3 years and 5 years in most states. Refinancing restarts the clock on the statute of limitations for a new loan. In Kentucky it starts a new 15 years for the statute of limitations to run.

You may ask a collector to remove you from their internal call list and avoid phone calls altogether. ICR is the version of IBR (Income Based Repayment) for parents that co-signed for a child. There are several versions of income-based repayment IBR, PAY, PAYE, and REPAYE each has benefits and problems.

Managing Federal Student Loans

Income Based Repayment

Federal and State agency student loans should be placed into an [income based repayment plan](#) when it is possible. There are 10-year, 20-year and graduated repayment plans. The IBR program in 2014 will be a 20-year repayment plan where your payments are 0 at poverty level and increase in percentage on a sliding scale up to 10% of your income above the poverty level. Upon year 20, any remaining balance is discharged (forgiven). This may or may not cause a tax problem 1099(c) in that year. Since this is the term of the loan repayment it shouldn't cause a tax problem.

To qualify for IBR, you only need to have this program payment be less than your 10- or 20-year repayment. Normally, getting into this program will resolve loan payments being unaffordable. This program will not consolidate private student loans. Payments in the past have not been based on “household income,” but increasingly household income has been used for income-based repayment plans. In the past, filing separate tax returns allowed you to obtain a lower payment. If a person drops to 0 income due to unemployment, the IBR payment drops to 0. Never use a deferment or forbearance. If your income drops your payment drops. But even a zero payment year counts towards the 20 years.

Public Service Repayment

Persons who work in public service, such as government workers or persons working at a nonprofit company or hospital, are forgiven 10% of their loan for each year of service. This can be used together with an IBR or another program. It is just a simple form available from DOE to enter the program. [Public Service Loan Forgiveness \(PSLF\)](#)

Rehabilitation

If you enter the rehabilitation program for student loans, the default notation for the loan is completely removed from your credit. Rehabilitation of an unaffordable loan does not make it affordable. It is important to insure the debt is affordable and often only some form of income-based repayment will do that. Rehabilitation takes a loan out of default to improve a credit rating and restart payment as if the loan was never in default. In rehabilitation, you must make nine of ten on-time payments to rehabilitate the loan.

These payments should be affordable. Often the collection agency will set high payments for a rehabilitation in order to earn higher fees. Social Security does not count as income because it is not income or part of AGI. You can only make one rehabilitation.

To insure a loan is affordable you should get into some form of income-based repayment. Often the IBR or Public Service Repayment options are never completely explained to you by a debt collector. Debt collectors earn from commissions and some debt collectors have earned million-dollar salaries at Sallie Mae and ECMC by misleading students to believe refinancing loans was their only option. Refinancing is often the worst of the three options.

Managing Private Student Loans

Private student loans can be easily recognized by looking at the interest rate, which is always higher than government interest rates, which are currently less than 5%. Many private loan rates are at credit card rates of around 20% and are adjustable or require a co-signer. To determine whether a loan is government or private, always look at the [National Student Loan Data System](#). There are few defenses to government loans, but the FDCPA and other defenses apply to third party private student loan collectors. All the defenses that can be raised against credit cards can be used against these loans (except bankruptcy discharge).

The statute of limitations in Kentucky is 15 years. In Kentucky, no payment can be made on the loan for 15 years or the waiting period starts all over again. In other states the period is three or five years, and in many states, the three- or five-year period will run even if a payment is made. A Chapter 13 will age these loans and during that period the student loan lender cannot garnish or sell property and the Chapter 13 payment may only be \$75 or \$100 per month. A 0 % repayment may even be possible. You may also challenge the amount of the debt or reasonableness of charges. All the defenses a debtor could raise against a credit card such as infancy, fraud, lack of standing, securitization, etc. can be used in a state court. If a private student loan is in default, they must sue to collect. Private student loans are often transferred several times and the lender may not be able to prove they own the debt or even have access to the original documents.

State Agency Student Loans

States like Kentucky also have state-created-and-owned corporations like Kentucky Higher Education Assistance Authority. Kentucky Housing Corporation is another state-created corporation. These state agencies have a couple of increased collection powers, but they are still a private lender and should be treated as a private lender. The primary things KHEAA can do that a private lender can't is to take a state tax refund or do an administrative wage garnishment of a state employee. If the loan is in default, the collector can be sued under FDCPA for any violations. See our website and [PowerPoint](#) for more info.

HOW TO MANAGE/DISCHARGE INCOME TAXES

The goal for income tax debtors is to always wait long enough so the income tax debt eventually converts from priority, secured, non-dischargeable debt into a non-priority, unsecured dischargeable debt status or the 10-year statute of limitations destroys the debt and any lien. In common language, this means there is a 10-year statute of limitations that runs from the date the income tax return is filed or when it was due —

whichever is later. On that date, the tax liens and the debt are uncollectible unless you commit fraud by attempting to delay collections improperly. You can bankrupt income tax debts if:

1. you wait until three years after the return was due (That date is 4-16; if you asked for an extension, that date will be 10-16 unless 4-15 was a weekend or holiday),
2. file the tax return within two years of filing the bankruptcy, and
3. there is no assessment within 240 days of filing the bankruptcy.

Always add a week to be safe, but there is a [calculator](#) to determine the date when your income taxes are dischargeable. Never try to calculate that date yourself. It can't be done reliably without the IRS transcript. To read the transcript you must understand the codes. If you miss the date by one day, there is no way to repair it. Most bankruptcy attorneys can't calculate when the income taxes are dischargeable. The IRS will give it to one of their own experts to calculate it. The IRS won't tell you when the date is and if they do and they tell you an incorrect date, they can't be held accountable for giving you the wrong date.

Normally, you just count ahead three years from the date the return became due; but any bankruptcy that is filed during this time, due process hearing, assessment, or offer in compromise will increase the period you have to wait. The IRS wants the minimum of three years to collect from you. Any fraud or evasion on your part will prevent it from being discharged. A payment plan will age the debt, so you can discharge it after the three years have run. Do not file an offer in compromise bankruptcy or ask for a due process hearing if you want to age the debt for bankruptcy. This stops the clock from running on the statute of limitation and aging of the debt for bankruptcy purposes.

If you wait the three years, it is treated like any other unsecured debt and discharged in a Chapter 7 or 13 just like a credit card debt. If you can't wait the three years, the debt is a priority debt. If a person files a Chapter 13 and the debt is a priority debt, the plan must repay the income tax debt in full. Priority debts such as child support are paid before anything is paid to secured or unsecured debts, and at the expense of unsecured debt. If the principal is paid in full, the penalties and interest do not survive and are treated like unsecured debt. Sections 507 523 and 1325 of the code determine income tax bankruptcy discharges. If you need to know the code sections, look at our PowerPoint on this.

If a person has an unsecured, dischargeable tax debt it is paid like any other unsecured debt and discharged. Secured tax debts are paid just like any other secured debt, but after the priority claims. There is a [calculator](#) at <http://www.taxdischargedeterminator.com> to help you determine the exact date you qualify for a discharge for income taxes.

The most common causes of problems in getting the taxes discharged include:

1. Non-filed returns or late-filed returns (the clock doesn't run if you don't file). You can fail to pay, but you should never fail to file.
2. Assessments within 240 days of filing the bankruptcy.
3. Fraud or efforts to hide and transfer assets by the taxpayer to avoid collection.
4. Bankruptcy cases that are inside of the three-year period extend the waiting period for the time the bankruptcy was inside of the three-year period, plus six months.
5. An offer in compromise also extends the waiting period.

6. Any due process hearing also extends the waiting period,

The IRS offers payment plans and can place a taxpayer in an uncollectible status. During either of these programs the clock runs, so most debtors can later file and discharge the tax. There is a form some IRS agents will attempt to get the debtor to sign that will not allow the clock to run on these time periods. **DO NOT SIGN THIS FORM!!!!!!** There is a PowerPoint presentation and more information on our website about how to properly handle tax problems at www.Bankruptcy-divorce.com,

HOW TO HANDLE FORECLOSURE, PROPERTY LIENS AND MORTGAGES

If your home is sold in foreclosure you will owe any deficiency. A foreclosure or surrendering the home is worse to your credit and FICO score than filing bankruptcy. In a foreclosure or with a deed in lieu of foreclosure, you may owe the deficiency judgment. Short sales still leave you with a tax debt and often any deficiency. **In Kentucky, judgments can be renewed every 20 years and can remain on your record permanently if a judgment is continually renewed.** A Chapter 7 bankruptcy requires you to wait two years after discharge to buy a home. You can buy or refinance a home while you are in a Chapter 13. A foreclosure or short sale requires waiting three years to buy another home with FHA, VA or Kentucky Housing Corporation. The foreclosure has a far greater effect on your credit than bankruptcy.

The major mistake people make in handling a foreclosure is to ignore it or think there is no hope. By ignoring the problem, they may owe a deficiency on their home when it is sold. They may end up with an income tax debt even if the mortgage is forgiven. After the foreclosure sale they may still owe property taxes, home owner association fees, or insurance they wouldn't have to pay if they filed bankruptcy. Or they may be forced out of a home early. Whether they keep the home or not should be a financial decision based upon whether the home is a worthwhile investment or not. You should not pay too high an interest rate, or more than the property is worth for a home — and never make an emotional decision.

When a creditor charges off a debt, the IRS regulations require the lender to file a 1099 for the debt that was not collected to obtain an income tax deduction. This ends up as an income tax for the person that didn't pay the debt. Filing a Chapter 7 or 13 bankruptcy prior to the sale of the home delays the sale for about an additional six months. The mortgage company must get the home out of bankruptcy court and back into a state foreclosure court to sell the home. Filing a bankruptcy just prior to the home being sold also prevents the debt from becoming an income tax assessment. Without filing a bankruptcy prior to the home being sold, a homeowner may be stuck with an IRS debt in the thousands, or a deficiency.

If the person files bankruptcy prior to the sale, the debt is discharged. There is no income or property tax problem. Property taxes are paid before the first mortgage at sale. Sometimes a husband will file a Chapter 7 first, then a wife will file a second time about six months later, which extends the foreclosure for about a year. A home may be tied up in foreclosure litigation for years just by filing an answer and discovery in state court at a minor cost of about \$1,500-\$2,000. The longest foreclosure litigation we have seen a foreclosure delayed from filing an answer, discovery and bankruptcy was fifteen years. The normal amount is 2 to 3 years. (During those fifteen years, that homeowner did not make one payment!)

Lien stripping away a second mortgage, objecting to overcharged fees and catching up a mortgage in a Chapter 13 are your primary tools to save your home. If you can't afford a home mortgage payment, you will eventually lose your home. If your home is not worth close to what you owe for the home, or it does

not meet your needs, you should eventually let the home go back. Bankruptcy can often strip away a judicial lien or second mortgage where there is no equity for part or all the lien.

Bankruptcy cannot modify the principal amount owed for a first residential mortgage. If a mortgage is for a commercial mortgage or vacation home, the first mortgage can be modified or stripped down in a Chapter 13 plan. A code section prevents modification of primary residential first mortgages. For a long time, we have attempted to give bankruptcy judges the power to modify first residential mortgages, but the banks have spent millions lobbying to prevent it.

Banks are protected from loss at taxpayer expense due to mortgage insurance. If they were not insulated from mistakes, they wouldn't make bad loans. They would share the risk with homeowners. However, taxpayers subsidize risk taking for residential loans through mortgage insurance. This can encourage fraudulent practices and risk-taking debtors would go to jail for.

From 2002 to 2009, mortgage brokers inflated the values of homes to make larger profits. Loan applications had fraudulent claims of income and few lenders were prosecuted. Banks looked the other way and made loans that couldn't be collected because mortgage insurance insured them from loss. They sold these investments. Fraud was a no-lose deal for banks. As a result, the country went into a recession/depression from 2007 to 2011 and property values dropped up to 50%, which fueled even more foreclosures.

The guiding principle of mortgage and car lending is lenders never structure a loan or go into business to lose money. Whenever you trade with a bank, you will pay for credit. The riskier the loan, the higher the interest paid. If you have a 700+ credit score, 20% down, cash reserves, high income to debt ratios and a long-term job, you will pay lower rates. But scores as low as 620 can qualify you for a home loan.

The goal is to have a budget you can live with and never pay too much for a car or home. The higher the interest and less equity in the home (or auto), the worse the mortgage and more you should consider surrendering the home or auto and starting over. With every home or car situation, I begin with the idea I can surrender the home if the home or auto does not fit my needs. Needs must be provided for. Wants or luxuries, such a large home, boat or motorcycle payment, are often a burden. If I am paying too much for a home or auto and I can't modify the principal or interest, it is a bad deal and should be surrendered.

It may take the lender years to get a home back while a homeowner uses the collateral and fights the foreclosure sitting rent free in the home. To fight the foreclosure complaint, we attack what the lenders and servicers have done with the payments, and whether the loan was properly secured by answering the foreclosure and filing discovery. Often, the homeowner may sit in the property for years. But homeowners rarely pay on the mortgage during that period.

It is common for a lender or servicer to be a part of mortgage broker and predatory practices. If the lender or servicer practices predatory lending, then **he deserves to lose part of his investment**. Sometimes going on the offensive and suing the mortgage company back will cause them to modify the mortgage, but loan modification can be a long and expensive process. To litigate these cases an attorney must take fewer cases. You can't litigate 1,000 cases a year and know the facts of each case intimately and give a case the attention it deserves. You are lucky to do 100 to 200 bankruptcy and foreclosure cases a year.

We often do bankruptcy cases for landlords who have 50 or 100 homes. Some were good investments, and some were bad. The commercial landlord that owns many homes often offers the lenders terms for reaffirmation in a bankruptcy. I have had several landlords who owned 50 or more homes, which became

very profitable by surrendering homes which lost money and keeping homes which were good deals. Often, we would surrender a third of the homes that consistently had nonpaying renters and had no equity. By keeping only, the profitable ones, made the business profitable. We often bargained for lower interest rates or principal amounts and smaller banks were happy to modify mortgages rather than have properties back.

Banks hate being a landlord and having properties sit vacant while they are vandalized or fall into disrepair and depreciate. When faced with a commercial bankruptcy, lenders understand they have one last chance to modify mortgages. Homeowners are forced to purchase mortgage insurance. If the homeowner doesn't repay, the mortgage insurance pays for most of the loss. Mortgage companies are not completely gambling with their money when they foreclose on residential homes. Some of them buy properties cheaply at foreclosure, allow the insurance company to take the loss and then sell for more.

In a foreclosure, the homeowner needs to analyze whether to save or surrender a home. If the price and interest rates are reasonable, you fight to keep the home. Here are points to consider:

1. If the homeowner is paying substantially more than a home is worth, the home mortgage needs to be modified or eventually surrendered. The homeowner may offer the mortgage company terms to reduce the mortgage principal, but lenders almost always refuse due to mortgage insurance and the difficulty in writing off part of a mortgage. The homeowner may fight the foreclosure and cause the mortgage company to reconsider modifying the mortgage. A small foreclosure defense by sending an answer and discovery will delay the process sometimes for years without very much expense. An all-out war may be more trouble than benefit. But a small defense normally profits a homeowner.

This may force the mortgage company to offer terms if you work with them. The average time it takes to foreclose nationwide was 630 days to foreclose in 2012. Normal is about 1 to 2 years. The homeowner pays a thousand or two in legal fees and sits in the home for a year or more because he filed an answer on time and discovery. When served with foreclosure, you must file an answer within 20 days or a default is issued, and the home can be sold within 30 days after the default judgment is issued. The shortest period we have seen a house sold in Kentucky was about 90 days by KHC after the homeowner was sued for foreclosure. The longest foreclosure we were ever a part of was over 15 years. It was still going on when we left the drama in 2012 and it may still be going on.

We had one homeowner who litigated a mortgage for five years without payment. He was eventually offered the home for \$85,000 at about a 5% rate, which was the lowest rate at that time being offered by Kentucky housing.

2. If the home mortgage interest rate is too high but the amount owed is fair, the homeowner may want to catch up the home mortgage arrearage by filing a Chapter 13, and perhaps eventually finance to a better mortgage rate. The house cannot be refinanced if you owe more than what it is worth. A home must be affordable for your budget and needs. Home mortgages can be refinanced after they are paid on time for a year, and we have had home mortgages refinanced while debtors were in a Chapter 13.

Sometimes a mortgage company abandons a house. Building code violations are eventually issued for overgrown grass and other problems. After talking to Louisville code about homes surrendered in bankruptcy and not foreclosed, they advised code violation citations were issued automatically from property valuation records. If the homeowner can talk PVA into sending the PVA bill to the mortgage company, the mortgage company is cited for derelict property — not you.

Mortgage Modification

Mortgage modifications still exist. HOPE and HAMP were temporary programs by the federal government to encourage mortgage lenders to modify mortgages rather than let them go back into foreclosure. Mortgage companies have often used this as an opportunity to make even more profits from homeowners by flipping the loans and refinancing them into even more profitable loans. It is difficult to obtain approval. If you are approved, the program may make your loan worse than if you had not gotten the modification.

Servicers often ask you to stop making payments while you are up to date so you can apply for the program, which may cause you to fall into foreclosure. Most modifications have temporary lower rates or payments which increases over time, essentially being the same as adjustable rate mortgages. Often, additional fees in the new notes slow down how quickly you earn equity in the home.

When mortgage companies were asked to modify mortgages, many banks tempted homeowners to modify their mortgages to adjustable mortgages that:

1. temporarily lowered interest rates,
2. placed overdue payments at the end of the note, or
3. reduced payments temporarily.

Overall, these mortgage modifications often made owning the home more expensive by eating up equity. The underlying principle is banks never make a deal unless they believe they will profit by it. In submitting a loan modification request, a homeowner must show:

1. that the bank will make more money from the modification than from foreclosure (often simply showing a foreclosure will sell the property for less money than the amount owed),
2. that the homeowner is likely to make future payments, and
3. the homeowner falls within income-to-debt limits.

If the government runs the mortgage modification program such as a Fannie Mae, the mortgage modification has a chance of being fair. Mortgage modifications from or with a qualified and licensed HUD approved counselor are free and paid for by the government. However, persons who claim to be mortgage modification specialists which charge high up-front fees are often scams. If the home mortgage is owned by a private lender and the homeowner asks for modification, there is a chance for the bank to switch to a more profitable loan with the homeowner. A congressional oversight committee report showed the more predatory the lender was, the worse the lender performed in modifying and making the loan affordable for the homeowner. This report is available on our website as a download. [Congressional Oversight Panel report](#)

The congressional oversight committee's own figures about the program confirm what bankruptcy lawyers have seen about the program. Most private mortgage modifications shifted low-rate mortgages to adjustable rates which temporarily made the loan affordable and made the mortgage companies even more profit. Other mortgage modifications placed payments that were overdue back into the principal amount of the loan, inflating the balance due or placed a balloon payment at the end of the note. The congressional oversight committee for these loan modifications announced statistics which showed although the multi-billion-dollar mortgage modification program was supposed to modify four million homes, it failed almost 95% of the time.

1. It only modified 750,000 homes, which is about 20%. This is an 80% initial failure rate.

2. 75% of these 750,000 homes saved (562,500) are estimated in the study to still fall into foreclosure within five years. The remaining 182,500 will be temporarily saved but foreclosed after that 5 years, or people will pay extra for the loan at the end of the term. If this additional failure rate is included, the overall failure rate becomes 94%.
3. Very few homeowners modified the principal of their mortgages (less than 3%, or 21,500). Much of the impetus behind the legislation was that one of the primary causes of the housing crisis was predatory lending practices, which often included inflating the values of the property purchased. However, the small percentage of homeowners able to save their homes from foreclosure could not adjust the inflated property value of their home.

Short Sales

Short sales offer the homeowner a slightly better advantage than a foreclosure in that the effect on a person's credit may be slightly better than foreclosure and the amount in deficiency may be lower than foreclosure. But if the homeowner files bankruptcy and lets the home go back, there are no tax problems and no deficiency amounts owed. If the homeowner short sales, there can be these problems:

1. He may owe a tax debt for any amount of debt forgiven by the mortgage company. Short sales were exempt from tax liability if the home was sold or foreclosed before 12-31-2013. The mortgage company currently reports this as a loss and claims the loss as the debtor's income on a 1099.
2. The homeowner may be still be sued for a deficiency unless they are formally released and can be sued up to 20 years later after the short sale.
3. The homeowner is often asked to sign a note for the deficiency at a short sale.
4. The homeowner does the work of selling the home for the mortgage company and gets little benefit.
5. The debtor often must file bankruptcy anyway. If a debtor files bankruptcy, he should file prior to the sale to ensure there is no tax debt. Filing after a sale does not ensure there is no tax debt,
6. If you short sale a home, you can be sued by the new homeowner for defects of the home.

I have rarely seen any large benefit in doing a short sale for the homeowner. Yes, you can do it. But why short sale, if you still must file bankruptcy anyway? Never short sell if you will then owe an even worse income tax debt that can't be bankrupted. Occasionally, I will get a client who owns assets which would be lost by filing bankruptcy. If the bank will accept a short sale in full satisfaction of the debt, then it may be acceptable to short sell the property. However, all too often, it is not in the best interest of the homeowner to short sell due to tax, possible deficiency and liability problems.

Foreclosure Scams

Foreclosure scams often involve selling your home to someone else, transferring it to someone else or paying upfront fees to someone to save the home from foreclosure. Remember there are bank and government programs that charge no fee to negotiate with your mortgage company for a modification. Getting money back from a debt consolidation or foreclosure scam is next to impossible.

HOW TO HANDLE A SMALL BUSINESS BANKRUPTCY

A corporation is a separate entity. Corporations cannot file as a Chapter 13 because only individuals can file a Chapter 13 bankruptcy. But if a person or married couple are the sole owners of a company, then a company restructuring may be possible inside the Chapter 13 without the company filing bankruptcy separately. Either a business or an individual can file a Chapter 7. There are Chapter 11 bankruptcy cases if you owe more than \$383,175 for unsecured debt or \$1,149,525 for secured debt and cannot file as a Chapter 13. But more than 90% of all Chapter 11 cases fail. If a corporation files a Chapter 7 the case does not close with a discharge in the same manner that a consumer Chapter 7 discharges. Instead the trustee files a final report, but the case remains subject to being reopened if it is necessary to reopen it later.

A Chapter 12 is for a family farm or fishing operation with much higher debt limits than a Chapter 13. Both Chapter 11 and Chapter 12 can operate like a Chapter 13, but in 20 years I have seen very few successful Chapter 11 or Chapter 12 cases. Chapter 11 has difficult accounting and reporting problems and very high expenses. Due to the expense of a Chapter 11, most persons file as a Chapter 7 or 13 and restructure their businesses by filing personally, occasionally filing a Chapter 7 for the business.

Most persons with a small business can file as a Chapter 7. A debtor engaged in a business is normally at a substantial advantage. First, if most of his debts are business debts, then the means test does not apply to the debtor, and his commercial vehicles and properties can be freely stripped down or stripped off from liens and mortgages that lack any equity. The business debtor often exits bankruptcy more financially secure and profitable than when they filed.

Example: Jim had a real estate company which owned 100 homes. 20 of the homes had histories of non-paying renters that damaged the property after it often took months to remove them. None of the 20 properties had any equity. These properties damaged the cash flow so badly that all the properties were in risk of foreclosure. The other 80 homes had positive cash flows, but some were worth less than what was owed. Jim filed a Chapter 7 and immediately surrendered the 20 non-paying homes. Most of the mortgages with negative equities were modified, and a few that would not allow modification were surrendered. Jim was left with about 77 homes, all with positive cash flows and no negative equity.

In other cases, a company can be stripped and collapsed. Some companies must close because they have negative cash flow and cannot service the debt load to operate properly. A company can often survive if it can have a new budget and restructure.

To do this the owner of the company often starts a new organization: Company B. Company B buys all the necessary assets it cannot get from vendors from the original Company A. Then Company B starts up operations and eventually Company A closes. When Company A closes there are little or no assets for the benefit of creditors, but the owners and employees can continue to work and earn wages with the new company. A corporate officer, however, should pay all trust taxes prior to closing so the owners, partners or corporate officers are not held liable for any fiduciary/trust taxes. Corporate officers who fail to pay sales and other trust taxes are personally liable for them. Trust taxes are not dischargeable and follow the corporate officers. Form 941 allows you to designate you are paying the trust taxes and not the income tax for the corporation.

In analyzing a company, cash flow is the first consideration as to whether a company should be permanently closed. If a company cannot pay day-to-day operations, then it must close. Some operations can operate on

a break-even basis and build value in assets over time. For instance, an apartment house may operate on a break-even basis and eventually pay off a mortgage, allowing the landlord the ability to sell the building. But the day-to-day operating expenses must be met by any business.

THE 341 HEARING AND POST-BANKRUPTCY EVENTS

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 seven days after you file. All debtors must attend the 341 hearing if they file a bankruptcy, but if you become severely disabled and cannot attend, it is possible to excuse your attendance and do a 341 by interrogatory. **If you miss the 341 hearing and your bankruptcy is dismissed, you will have to repay filing and attorney fees to file again.** Sometimes it may be possible to get a continuance, but a continuance should be requested before the hearing, not after you miss it, and an affidavit with proof of the reason you cannot attend must be attached. Filing such a motion is an additional expense.

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

- What is your name and address?
- What is your social security number, and may I see your photo ID and Social Security card as proof? (Asked in every case and the case is continued if IDs are not produced.)
- Did you list all your assets and all your debts?
- Do you understand what a reaffirmation and redemption 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 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 \$1 million if you want to keep it.)

The Chapter 7 trustee is there not only to ensure the paperwork is properly done, but also to collect and sell 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 truthful, poor and a time to have little or no assets. You are under oath. You must be truthful and complete in your answers.

Creditors may appear and ask questions at the 341 hearing, but often no one shows. If a secured creditor shows, the only questions they normally ask are whether you wish to keep property and if it is fully insured.

You may ask for a lower interest rate or a lower payment amount for a longer period, if you cannot afford the current payments. **You do not want to keep property and agree to pay for any debt you cannot afford.** Smart lenders will negotiate with you to keep you off their delinquent accounts, and they will renegotiate repayment terms. Finance companies and credit unions are much more willing than national banks to negotiate for lower interest rates or lower payments over a longer period. Banks are more likely to have a “take it or leave it” policy. If the payments are current, and the car is insured, it is rare for even a bank to repossess a car. Banks will rarely change the terms of the note, and finance companies will often reduce high interest rates. Banks are in the business of lending. Banks are not in the business of selling furniture, homes, and cars, and they do not want to be in that business.

Kentucky has a local auto insurance rule. Not having your car fully insured automatically allows the creditor to repossess it within 10 days after filing the bankruptcy without a hearing. If a creditor asks for proof of insurance, you have 10 days to reply.

What You Should Bring to the 341 Hearing

Bring proof of full-coverage insurance on your car, a photo ID (driver’s 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 be asked to make the first payments on your Chapter 13 plan at the 341 hearing. Chapter 13 payments start the month you file. If you are keeping your home and you have not been paying on your home, start making these mortgage payments again when you file a Chapter 13.

AUDITS 2004 EXAMINATIONS

No one enjoys an audit. The U.S. trustee silently audits all Chapter 7 petitions closely, using computers, accountants and CPAs to ensure the accuracy of the petitions and to make sure persons file Chapter 13 cases if they can afford repayment. If your petition is sloppy or has questionable income, transfers, debts, assets or expenses, you can expect to be audited under oath often at an additional cost. The U.S. Trustee has incredible access to court, business and government records. This includes records of businesses you may own or operate, deeds, car titles, bank records and income taxes. Sometimes the U.S. Trustee may appear at a 341 meeting to clear up a minor question. Sometimes when he appears it is the start of a larger investigation.

The following matters can often cause a 2004 examination:

1. Filing a Chapter 7 when a Chapter 13 should have been filed.
2. The petition is incomplete, poorly prepared or confusing.
3. Fraud was committed by hiding assets.
4. Assets were transferred to family and friends for less than the fair market value.
5. Income was under reported, or expenses were overstated or unreasonable.
6. Otherwise filing inaccurate petitions.

These audits by the U.S. trustee and requests for additional documentation are similar to IRS audits. They are as much fun as getting caught on a lonely stretch of road by a policeman. If there is a hint of fraud or creative accounting, they will find it; lying in one of these audits only makes matters worse. Creative accounting practices often happen in a business bankruptcy when a businessman fails to treat his business separate from his own finances. For consumer cases, sloppy bankruptcy petitions by paralegals and unskilled attorneys cause many of the audits.

If you fail the audit:

1. Your case may be dismissed, or you may lose property.
2. You may be forced to convert to a Chapter 13.
3. You may be barred from filing for a period of years.
4. The attorney may be sanctioned, fined or barred from practicing law in bankruptcy court.
5. In rare cases, it may lead to criminal investigation and prosecution.

Audits are never pleasant for the debtor, who must explain his financial affairs and bookkeeping. Avoid them at all costs. Blaming errors on the attorney will not prevent you from losing property, etc.

THE DISCHARGE, CONTEMPT AND DISCRIMINATION

The discharge is the permanent court order everyone wants at the end of their consumer case. When the case is filed, the debtor automatically gets a temporary court order called a stay, stopping collection activity. This stay is not automatic if you filed a second case after a first case was dismissed for misconduct within the prior year. At the end of the case, the debtor normally obtains a permanent court order, called a discharge, that stops debt collection for dischargeable debts for all time. Some debts, such as criminal court fines or child support orders, are not subject to the temporary stay order.

A mortgage company may file a motion in court to terminate the stay, so they can commence a foreclosure action if the mortgage is not being paid. If you dismiss your Chapter 13 case after a motion for relief from stay there is no automatic stay in the second case. You must ask for it and the judge may or may not grant it in a second case. The failure to timely pay in a Chapter 13 results in it becoming harder and harder to keep a home or auto.

If a creditor ignores the court order and attempts to collect, a debtor may sue for actual and punitive damages plus attorney fees for contempt. Kentucky and Indiana allow recorded phone calls in court as evidence that a creditor continues to call and harass a debtor. Do not record calls coming from or going to the following states, which do not allow recording without permission: California, Connecticut, Florida, Illinois, Massachusetts, Maryland, Michigan, Montana, Nevada, New Hampshire, Pennsylvania and Washington. Always keep records of any communication; for phone calls, make note of the name of the person and company, address, as well as what was discussed. Suing these companies for contempt when they know you filed bankruptcy and still ask for payment may pay back more than the bankruptcy cost.

If you don't file a reaffirmation or redemption in a Chapter 7, the court ordered stay will expire for a secured creditor 45 days after filing, and the creditor can then foreclose or repossess an auto. The stay orders creditors not to contact the debtor to collect, but the creditor can pick up collateral by repossession after the stay expires.

From the moment you file, all creditors (anyone to whom you owe money and list) are stopped by the automatic bankruptcy stay from commencing or continuing any legal proceedings against you personally. If you list them as a debt in your bankruptcy, they are presumed to get notice. If you don't list them, they may by accident contact you and there is no contempt.

They may not harass you, garnish your wages, or take property without court permission. Getting a discharge (final order) does not mean a creditor will never call or write, but they will not have the right to ask you personally for the payment of the discharged debt. Often, letters may continue to come after you file, due to a computer continuing to mail account statements or other items. If billing happens accidentally, you may want to mail a copy of your 341-hearing notice to the creditor. But if you are asked to pay, you have the right to sue for contempt. If it was from a 3rd party debt collector, it is also a violation of the Fair Debt Collection Practices Act. Co-debtors and co-signers are only protected by the stay in a Chapter 13 if the debt is paid in full. Co-signers enjoy a limited protection while the Chapter 7 stay is in effect for jointly owned property. When it is over and the discharge is issued, they again become liable.

Secured creditors often call for the limited purpose of getting a reaffirmation agreement signed, working out payments or arranging to pick up property you want to surrender. If you wish to keep security, you will have to reaffirm or redeem property. If you choose us as your attorney, we will warn you about the dangers of reaffirmation. If you sign a reaffirmation, the bank can sue you later if you fail to pay. We will often agree to allow a bank to contact you to make an agreement to keep your home or car. We may allow a secured creditor to call you to negotiate keeping property. We never agree to an unsecured creditor contacting you and asking for payment.

The collector who calls to collect after receiving notice knows what he is doing is illegal. Normally, if he is dragged into court, he will deny he called, or he may attempt to make up an excuse for the call. The employee fears if he does not collect, he will be fired. If he is good at collections, he will get commissions, bonuses and promotions. If he is caught committing an illegal act, his employer will often deny his acts and fire him. 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 the harassment by telling the collector you are recording the call then he knows if it goes to Court, he will lose his job. Recording him without his knowledge or permission is legal in Kentucky.

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 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 the 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 for "cleaning up your credit file" often simply dispute every negative item in your file.

You have no right to a deletion of correct and true information. But by objecting to the item it may be deleted by accident. Clean your credit file by paying the debts you owe on time. As items get older, they become less relevant to your score and fall off. We have the credit sweeping letters as a form on our

website. There is a page on our website dedicated to teaching you in detail how to get a 725 or better credit score after bankruptcy. Some of our clients have obtained a 730 while they were in a Chapter 13.

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

Under the Truth in Lending Act, charges must be accurately stated in the lending documents. Normally, the penalty is the debt obligation is wiped out.

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. Attorneys themselves must use the FDCPA statement that this is an action to collect a debt in evictions. The FDCPA only applies, however, to 3rd party collections such as collection companies and consumer debts.

Under the FDCPA, debt collectors must be truthful, fair, and treat debtors with dignity and respect. Any conduct that is harmful, oppressive, abusive or invasive is improper. Although creditors read the law, they rarely obey it, thinking they will never get caught or be sued. A debt collector is a 3rd party hired to collect the debt while it is in default. The following are violations:

- 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
- 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 at www.annualcreditreport.com. 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.

If you no longer wish to receive calls, you may ask to be put on **an internal do not call** list and the creditor cannot call you any longer.

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 is pretending to lend at a lower rate but instead switching to other loans at closing to strip the equity from the home.

LIFE AFTER BANKRUPTCY CREDIT REPAIR

Getting Credit after a Bankruptcy

A common scam you hear about is you can erase poor credit or settle your debts with no disadvantages. Every year we see someone claim if you give them \$3,000, they can erase your imperfect credit. There are laws against these businesses, but like drug dealers, they get busted and then reopen shop making the same false promises in another name, in another state. They take money and promise results they can't produce. You can only force the removal of untrue, misleading, or outdated items on your credit report. You do this by contesting information on your credit report. Our website has a letter for cleaning up untrue information and you can download it. The law says if you dispute information on your credit report, the agency must check its truth with the creditor. Sometimes a bank will fail to answer the letter, so even true information can be erased. But you can't force the removal of true items from your credit report or invent a new credit history.

There is a Kentucky law on identity theft that makes inventing an identity criminal. We found a law firm, "Lexington Law," which will dispute negative items. Having a law firm cleaning your credit record differs from having someone that can't sue send a letter. Most "credit record cleaning" companies are a scam. Only untrue information can be guaranteed of removal, but this law firm has existed for at least 10 years and has been doing an excellent job. It comes at a cost, you must work with them to clean it up by giving them copies of your credit report occasionally and they will have done most of what can be done within a year.

There are three major factors that are considered when granting credit: Enough income to repay the debt, credit history, and security. If your credit is poor, filing a Chapter 7 Bankruptcy will normally improve your ability to repay and, eventually, repair your credit — if you repay your secured and unsecured debts on time after the discharge. It is better to have a past bankruptcy and a clean slate or new history of on-time payments than to forever have creditors you still owe and don't pay with repossessions, charge offs or judgments on your record.

If you have negative accounts, then after bankruptcy they should be reported as account closed. They should not be reported as being 6 months overdue after you have obtained a discharge. You no longer owe the debt. Therefore, reporting it as overdue is untrue. It should be removed and reporting it as overdue is the basis for a lawsuit.

Credit repair may clean your credit report, so you can buy a home or car at a reasonable rate. We know some options for cleaning your credit. See the credit repair section on our website. There is no penalty for getting your free annual credit report. It really is free if you do not sign for the unnecessary extras. You don't know how many untrue and negative items you have if you don't annually check your report. Repairing your credit after your bankruptcy is a crucial step to getting your life back on track. Getting low rate mortgages and car loans is the last step.

You can still get a checking account if you've lost yours to a Chex Systems report. This normally occurs due to returned checks. There are two programs that allow you to take a course on how to manage a checking account. When you complete the course, you'll be given a certificate to open a bank checking account with a participating bank or credit union. Get Checking is for banks, InBalance is for credit unions. For more information and a list of participating banks, go to: www.getchecking.org. For information about InBalance, go to: www.getinbalance.org. If you live in Louisville, KY, where our office is located, The

Woodforest Bank at the Wal-Mart on New Cut Road offers second-chance checking. Local banks in your area may also offer second-chance checking.

Your FICO Score

Your FICO credit score uses six factors. With some credit reports a 1000 score is possible, but I have never seen a 900. All the reports use the same basic six factors. Filing bankruptcy will only drop a 600 score about 20 to 50 points at first. By paying on time after bankruptcy for the 3 distinct types of credit, your FICO score should increase from a 500 score as much as 200 or more points within two years. Only a 620 score is needed to obtain a home mortgage. There are six factors that account for the 1,000 points. Your FICO score can be used to deny you employment or it may increase your insurance rates. This is how the six factors add up to 1,000 points:

1. **Previous Credit History: 350 points, 35%:** Your credit history is the largest factor in calculating your FICO credit score. By paying on time and not having any delinquent payments or charge-off accounts, you will increase your score as old accounts drop off your record and are replaced by a good payment history. Your score will improve after bankruptcy as old, unpaid accounts drop off and as you make payments on time.
2. **High Levels of Available Credit: 300 points, 30%** Having more than 30% of your credit limit on your credit cards charged at any one time has a derogatory effect on your credit scores. Having the least amount charged on your revolving credit cards decreases this ratio and improves your score. However, it takes time for debts to drop off after filing bankruptcy. The best thing is to only have necessary credit and just the basic car and mortgage payment. (After bankruptcy, your debt to income is drastically reduced); however, having revolving debt is necessary to improve your score — but only have a minimum amount charged at any given time.
4. **Limited Credit History: 150 points, 15%** A limited history hurts your credit up to 150 points. Canceling older debts with a good history will hurt your score. Newer credit counts as less important.
5. **New Credit Applications: 100 points, 10%** Every time you make a credit application it costs, because it reduces your credit score automatically. Reducing your credit scores means you pay higher interest rates. Applying for credit deducts from your score every time you do it, so only apply if you need the item, such as a car or home loan.
6. **Limited Types of Credit: 100 points, 10%** If you only have car loans and you have no other type of credit, your score will be deducted from. Have at least three forms of credit: a home mortgage, a car loan and a small department store or credit card with a history of on-time payments, small balances and few applications for credit to have the maximum score.

Prime, Sub-Prime and Damaged Credit

Prime If your credit score is above 640-800, you are considered a "prime borrower," and you normally have no problem getting mortgages, cars or credit cards.

Sub-Prime Credit scores below 640 are "sub-prime." You may have higher interest rates, but there are lenders. This extends down to somewhere in the 500 range. The lower your credit score, the higher your rates and harder it is to get credit. Also, the lines are a little blurred as to where these lines are exactly.

Damaged Credit becomes too expensive to use. You buy on cash. Less than 500 is the damaged credit zone. You may get a credit card, but at such high fees and uselessly low credit limits, it's just too expensive. Your interest is double the normal rates for prime borrowers. You pay more for insurance and may be barred from some jobs. Bankruptcy is often your only way to repair damaged credit. Old unpaid debts drop off, and as you repay on time, credit is repaired.

How much does a damaged credit score cost you?

Increased Insurance Rates: A low credit score means you pay more for all forms of insurance.

Credit Cards: The few credit cards available for people with damaged credit have low credit limits and high fees. These lenders do not report your good credit activity, making it impossible to repair your credit with them.

Automobile Financing: If you have damaged credit, the increased interest you pay for auto financing costs even more. Just look at this chart.

If you purchase a \$20,000 car and pay over 5 years: (these rates are from the year 2000)

CREDIT STATUS	RATE	PAYMENT	COST OF DAMAGED CREDIT
Prime	10%	\$424.94	\$0.00
Subprime	14%	\$465.37	\$4,722.54
Damaged	20%	\$529.88	\$8,593.30

Home Mortgage The cost of a home can more than double if you buy a home from a subprime lender at higher rates. Even a small home will cost between \$100,000 and \$180,000 more in interest if you are buying a home with damaged credit. We used mortgage rates to show your costs below for just a \$100,000 home.

If you purchase a \$100,000 home and pay 30 years (these rates are from 2000 mortgages)

CREDIT STATUS	RATE	PAYMENT	COST OF DAMAGED CREDIT
Prime	5%	\$450.30	\$0.00
Subprime	9%	\$804.62	\$100,310.48
Damaged	12%	\$1,028.61	\$180,996.87

How to Repair Your Credit Score

Now you know how your credit score is calculated and the costs. You can repair your credit score. Here are the four things that will help after bankruptcy but please look at how to get a 725 score on our website:

- After bankruptcy, pay your bills on time and your score will improve over time.
- Bankruptcy will dramatically lower your debt to income ratio. Keep your balances low on credit cards and on all your debts.
- Rarely apply for credit. Applying for credit often lowers scores. If you apply, know if you will get the loan or credit card prior to filing for it.
- Make sure the information in your credit report is correct. **Removing negative items on your credit report has the largest impact on your FICO score. Technically, you can only force untrue items to be removed from your credit file. However, some lenders will fail to update, defend or supply information, and if you dispute items using Lexington Law or our form letters you may remove**

negative information, even if it is true. These letters are always available from the forms section of our main website. We also have letters that help you dispute a debt and offer to settle it for less than what you owe.

Keeping debt that can't be repaid and constantly being overdue on your bills will often keep your credit rating low until you file bankruptcy. Filing a bankruptcy allows you a fresh start and the ability to restructure your budget. Bankruptcy is not the end of getting credit. People can easily a home after they have filed, if they've rebuilt their credit and have the income. A bankruptcy should be considered when the bills will never be paid with the income available and when your family will suffer unless debt is cleared up. Bankruptcy is a tool to create a new budget and get a fresh start. Normally a 500 score improves immediately after filing a bankruptcy. If filing bankruptcy is a negative factor, is not relevant after two years. As information gets older, it becomes less and less important. Normally only fresh, recent credit information is relevant in decision making.

Other kinds of "bad credit," like "slow pay" or "no pay" or repossessions, stay on your record until seven years after the last collection activity and 20 years from a judgment, which means it can be on your credit much longer than a bankruptcy. For instance, your car may be repossessed four years after the loan is taken out, and you may be sued seven years later when they find out you have a job. The record of non-payment would be on your credit record for at least 38 years. Each collection activity has a seven-year max reporting, but the judgment was good for 20 years to prevent a home purchase (4+7+ 20+7). A bankruptcy would have been on there for only 10 years. **Slow payment will give you the same kind of credit problem 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. After bankruptcy, it will take you about 1 to 2 years of repaying your debts on time to overcome most negative effects for consumer lending.**

How to Get A Mortgage After Bankruptcy

Most people can have their debts wiped out in Chapter 7 bankruptcy with little or no long-term effects within 2 to 3 years. There are regulations that allow you to qualify for FHA, VA and Kentucky Housing Corporation mortgage loans at prime interest rates within 2 to 3 years after filing or during a Chapter 13. There are also ways to improve your credit after you file.

Within six months to a year after bankruptcy, most people can get a car loan at a reasonable interest rate if you keep two secured debts and pay on time after the bankruptcy is discharged. Within two years, FHA, VA, Kentucky Housing Corporation and other State and Federal government mortgage lenders **are required** by government regulations to lend at the same rates as anyone else if you have paid debts on time after filing and no foreclosure was involved. This guideline has been in place since December 2010. It states two years after discharge or three years after a foreclosure sale is completed, you may apply for a mortgage and it will not prevent you from obtaining a mortgage. Lenders look at:

1. How you have paid debts for the prior two years.
2. Your income to debt ratio.
3. Stability of your job and income; long-term jobs are preferred.

Conventional mortgage companies can use longer time limits, and this rule could change with conservative rule making. The minimum credit scores for a bank mortgage on January 2019 when we updated this was 620 to 640 and it has been about that score since 2010.

In a Chapter 7 bankruptcy, most persons keep all their property and only retain the secured debts on property they want to keep. Every year, about 4 million people file bankruptcy with few problems. Bankruptcy is a process that allows people to establish a new budget they can maintain. Even if they file a Chapter 13, they normally pay no interest on their unsecured debts and repay as little as 10% or less on the dollar to unsecured debts and can take five years to cure a mortgage arrearage. Courts used to require debtors to pay back 70%, but the new law allows you to repay 10% or less in a Chapter 13 if that is all you can afford. However, you must pay all you can afford.

Filing Bankruptcy can help clean up your credit.

Filing Bankruptcy would make borrowing more difficult **if you had good credit when you file**; however, if you can't borrow money because of poor credit, filing bankruptcy will make it easier to borrow by lowering your debt to income ratio.

Every time a creditor attempts to collect, it can be reported on your credit for a new seven-year period. This can become an endless loop. Bankruptcy ends this cycle. If they keep trying to collect a judgment, your record may never go away, and you will never get a reasonable mortgage rate. If you file bankruptcy, however, you will often qualify for a home mortgage just two years after discharge or three years after a foreclosure, if you pay on time after filing your bankruptcy. **If you make your payments on time during a Chapter 13 Bankruptcy, you may refinance (or purchase) after just one year.** If you file a Chapter 7, you can refinance or purchase two years after discharge or three years after a foreclosure.

A Final Note about Financial Security and Your Future

There are ways to make sure you are a financial success. Most fortunes are made slow and steady, day after day, by living within your budget and including a 15 to 20% savings for retirement, etc. After surveying 1,115 millionaires around the country, authors of "The Millionaire Next Door," Thomas Stanley and William Danko, came up with seven common characteristics millionaires have:

1. They live well below their means, often in modest homes and in modest cars.
2. They allocate their time, energy and money in ways to build wealth.
3. They believe money in the bank is more important than spending it to keep up with the Joneses.
4. They do not provide financial care (support) to their children.
5. Their adult children were taught to be and are economically self-sufficient.
6. They are proficient in targeting and taking advantage of market opportunities.
7. They chose the right occupations (Occupations that allow them to save, invest and gather money).

In other words, they properly budget. They save and live simply. Because they save and invest, they are in control of their money and their lives. When you save your money rather than continually spend, you buy yourself control of your life. Then you have a say in how you'd like to spend your time. With money saved and invested, you can live for years without earning money, or you can at least afford yourself the luxury of working part-time. This vastly differs from living paycheck to paycheck. "The truly wealthy in this country don't live in Beverly Hills or on Park Avenue — they live next door."

The typical wealthy individual lives next door to people with a fraction of his wealth. The survey indicates while the paycheck-to-paycheck crowd drive new cars, millionaires don't. They're not wearing expensive clothes and watches, and their houses are modest. They buy homes and stocks, not new cars. Buying a home at a good interest rate is a start toward financial security. You can't do it without a good credit score and a low debt to income ratio. Starting over includes budgeting, cleaning your credit and getting modest cars and homes at normal rates.

COMMON BANKRUPTCY ISSUES AND QUESTIONS

Do you expect an inheritance within the next year or could you get a tax refund within a few months? Bankruptcy property includes not only the property at the time of filing, but also some property you own now but may not acquire till later. You are allowed enough property to start over but no more. Inheritances, tax refunds, lottery tickets and personal injury lawsuits are property the court looks at, although you may not have the money on the day of filing. List these assets and exempt them or you will lose them.

Do you expect to have major medical expenses or other debts coming within the next year? Maybe you want to file a Chapter 13, so you can keep the case open and active. After you have included these expenses, you can then convert to Chapter 7 and discharge, eliminating expenses you know you will pile up later.

Have you paid a Creditor more than the normal monthly payment or paid someone close to you more than \$600 within the last 2 to 5 years? This may be a preferential or fraudulent transfer, which may be avoided by the court — and the person you paid 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 lien or mortgage to an unsecured creditor or paying a creditor off just before filing or giving a car or other property to a relative or friend before filing.** Transferring large assets just before filing into your retirement account or into other exempt forms is often a preferential or fraudulent transfer. You may want to wait before filing.

Do you have child support or alimony, or is there a pending dissolution of marriage? Overdue alimony and child support can be repaid in a Chapter 13. It is not discharged. You must stay current on support or a spouse may object to the discharge and have your case dismissed or obtain other sanctions. You can't fall further behind with your child support if you are in a Chapter 13.

Do you have old tax debts? Some debts like taxes are dischargeable if you wait the proper period.

- i. Three years after the return was due (be careful of business days, filing extensions, etc.)
- ii. The tax return must be filed at least two years before the bankruptcy is filed.
- iii. There must be no assessment within 240 days before the bankruptcy is filed.

The statute of limitations for tax collection is 10 years. Some charges on credit cards may not be dischargeable if they were charged just prior to filing for luxury items. However, tires and appliances are generally not subject to this.

Are you unable to keep payments current on secured property? If so, a Chapter 13 is probably not the long-term answer. You will normally eventually lose property if you can't keep up the payments. You always must live within a budget. You may destroy debts or get a better job to earn more, but we

eventually must live on a budget. A Chapter 13 is particularly good at teaching you how to live on a budget.

Do you have substantial amounts of regular income or valuable nonexempt assets? If you have substantial amounts of regular income, you may have to file a Chapter 13 unless your necessary and reasonable personal expenses exceed your income. A \$500,000 house expense in Kentucky or luxury Harley Davidson is not reasonable for a debtor with a family of four, even if you make \$200,000 a year. If you have valuable assets you can't exempt, you may have to file a Chapter 13 and repay or lose them.

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. If you fail to list a debt in an asset case where creditors are repaid you may have to pay it.

Providing bank and tax records and copies of deeds, mortgages and titles is a requirement. Fail to list an asset and it will look like fraud. You may lose the right to exempt and protect assets by failing to list them. You must include retirement as an asset, although it is exempt. Retirement accounts are limited to the amount reasonably necessary for support, which is often more than \$1,000,000. If you have not kept great records, consider filing a Chapter 13 where you have less scrutiny of the records.

Have you filed bankruptcy within the last eight years, had a prior bankruptcy dismissed, or do you have tax debts less than three years old? Timing is important. You may not be able or want to file a Chapter 7 just yet. Some debts such as taxes have timing limitations. Or you may need to be in a 13 until eight years after your last Chapter 7 filing to file another Chapter 7 bankruptcy.

Have you charged large amounts, sold property, overvalued assets or given property as security? If you went on a shopping spree and charged a large amount within 90 days on your credit card just prior to filing, you may not obtain a discharge for that debt. The rest of the debt will be discharged, just not the recent charges. Proving these lawsuits (adversary proceedings) against you is often unprofitable and sometimes hard to prove and win for a creditor. Cases are sometimes threatened but rarely filed. Normally, the worst penalty is the debt is not discharged and must be repaid.

If you have bought or sold property, was the lien or mortgage properly recorded? If a mortgage or lien was not properly recorded or not recorded on time, the trustee may own it. For that reason, we need mortgages and titles of property you own, bought or sold within the prior year. Review if there is a properly recorded lien.

EXAMPLES AND THE TEST

These examples are part actual cases and part fiction to protect the identity of debtors. They are used to demonstrate principles you should understand. **If you understand why the following people are in trouble, you paid attention to the manual and pass the test. If you don't understand why they are in trouble, you need to read the manual again.** We use actual cases because things my clients, attorneys, banks and children do are more imaginative than anything I can fantasize. You can't make this stuff up.

All Mr. Smith had to do was to show up for court. He had a simple case. However, he left his photo ID and social security card at home. The U.S. Marshall would not let him enter the court house. His friend told him, "Don't worry, the court just sets another date in state court — they will just assign another date." He just went home. He never called his attorney to ask for an affidavit and a motion to continue. The court dismissed the case. He had to file a second case and pay another \$1,535.

Mary owned a home worth \$300,000 and made about \$100,000 as a single person. In Kentucky during 2018, this is twice the average home and income for a single person. Her home mortgage was \$1,950 per month, which was reasonable but a little high as an expense; deducting it allowed her to file as a Chapter 7. It was obvious the only reason she was able to file as a Chapter 13 was because the high mortgage could be deducted from income as a secured expense in the means test. It was fully explained that if she kept the home she could file as a Chapter 7, but if she intended to move to an apartment and her rent dropped to \$1050, she would have a \$1,000 monthly Chapter 13 payment. At the 341 meeting, the first question was "Do you intend to keep this home?" to which she replied "No, I would like a cheap little \$1050 per month apartment." The trustee then turned to the attorney and stated this case must be converted to a Chapter 13. Mary was then stuck with a five-year, 60-month, \$1,000 per month payment (\$60,000).

Mr. Gambler had a credit card with a \$50,000 limit. He purchased 10 Rolex watches for \$50,000. He then attempted to cure his financial problems by selling the watches for \$25,000 and going to the gambling boat. He lost it all. He then sent in a check for \$50,000 from an overdrawn checking account to the credit card company. This increased his credit charge limit back to \$50,000. He then purchased another \$50,000 in Rolex watches just before the check bounced, which he sold for \$25,000. He went to the gambling boat for a second attempt. He lost again and now owed \$100,000 on a \$50,000 card. He filed bankruptcy six months later and the credit card company filed an adversary proceeding. Mr. Gambler fought back and filed an answer. The attorney for Minorcard failed to appear in court twice for hearings, and the judge dismissed the credit card company's case.

Jerry claimed he had not worked for two years in his business. Everyone else in his line of work made about \$200,000 a year. He owed old tax debts and some business debts. He claimed he had no income tax returns for the prior two years because his domestic partner (a student studying to be a barber) had supported him with credit cards. He claimed he had no business equipment, no bank account and no account receivables (persons that owed him money). Two weeks after filing, he bought a \$20,000 auto in cash. (It was not the time to purchase the auto and claim no income or assets.) In a NACBA seminar example, one doctor claimed his 16-year-old son owned the one-year-old Porsche Twin Turbo, his teenage daughter owned the home, and he forgot about the plane in another state.

Strange Responses from Actual 341 Meetings

These are items said at 341 Hearings. I try to keep answers from hearings. If you are nervous about your hearing, think of these answers. Please don't say these things and your hearing should go well.

1. "You are not going to check how much my house is worth, are you?" (The trustee did after that statement. Please be prepared to explain it if you have a low estimate for how much your house or car is worth.)
2. "Why did I file? Well I guess I really don't need to, I make enough." (He felt guilty for filing and that response caused questions.)
3. "I earn twice the income in my petition, but I didn't want my ex-wife to know what I earn because it would increase my child support."
4. "I thought you'd ask me to turn that car over to you, so I gave it to mom." Mom had to give it up.
5. "Yes, I won the lottery, but I bought the ticket the day before I filed, and I did not know I won until later." (He owned the ticket before he filed, so it was property of the estate and trustee took it.)
6. "Do we have to include the rent I get from my home? I really don't live in my home; I just rent it out to my brother." (In Kentucky, you must live in your own home to use the full amount of the home exemption. This guy almost lost his home.)
7. (Bank questions the debtor about a boat that wasn't listed in the petition.) "Dad only titled 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 kept the boat free and clear because it was his dad's. The debtor was incredibly lucky in that case)
8. "My attorney warned me to list all my assets."
9. "Yes, I'm interested in real estate." (Answered to, "Do you have any interest in Real Estate?")
10. "Yes, I know what a discharge is. The wife had one ..." (The rest is too inappropriate to repeat.)
11. "I pawned the secured item before filing." (He had to pay for it. Selling or giving it away would have the same result. If he had lost it, lost it by fire, theft or broken and disposed of it — no problem.)
12. "Yeah, I got a \$1,000 cash advance on my credit card just before I filed because I knew it would be my last chance." (He had to pay it back. If he had waited 10 more days to file, he would have been within the rule and may have kept the money.)
13. "I knew Mom was dying and I would inherit it all, so I charged it up, rushed out, and filed just before she died." (Not good. The inheritance belonged to the trustee the charges were fraud.)
14. "Did I know I was bankrupt and couldn't repay the loan I took out just before I filed? Yeah, I knew I was filing bankruptcy when I took it out." (He had to repay it.)
15. "My house is worth at least \$80,000!" (She bragged about how much her house was worth and forgot she could only keep \$23,000 in equity. She had to pay for an appraisal to keep it.)

This spot is reserved for the next person who does not read this manual.

KENTUCKY AND INDIANA DISTRICTS

Where Is the 341 Hearing? (Kentucky Residents only)

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

Western District of Kentucky

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

Eastern District of Kentucky Counties

Frankfort	Lexington Hearings	Covington	London	Pikeville
Anderson Carroll Franklin Henry Owen Shelby Trimble	Bath, Bourbon, Boyle, Clark Estill, Fayette, Fleming, Garrard, Harrison, Jessamine Lee, Lincoln, Madison, Menifee, Mercer, Montgomery, Nicholas, Powell, Scott, Wolf Woodford	Boone Bracken Campbell Gallatin Grant Kenton Mason Pendleton Robertson	Harlin, Bell Whitley, McCreary Wayne, Perry Leslie, Knox Laure, Clay Pulaski, Jackson Rockcastle, Owsley	Pike, Floyd Knot, Letcher Johnson, Martin Magoffin

The remaining Eastern Kentucky counties are in Ashland, which we normally don't service without an extra \$200 fee for traveling because of the distance.

If you get a credit report, get one with the addresses and account numbers on it. 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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FAQS

The Top 60+ Frequently Asked Questions at Our Office

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

The Top 5 Questions:

Q1: We seem to be losing our home and car and we just don’t know whether to keep it or let it go.

Whether or not to keep a home should always be a financial decision, not an emotional one. A car can be bought at a normal interest rate about a year after a bankruptcy discharge, and a home three years after a foreclosure sale or two years after discharge under FHA, HUD and VA rules. We often buy more home or car than what we need. A two-year-old hail-damaged Ford may not look as nice as a Lexus, but it may last the same miles, serve the purpose and cost thousands less.

In 2012 it was common to see someone paying \$200,000 for a home that is only worth \$150,000 or less. The \$50,000 difference may fund a college degree or part of a retirement. If you owe more than the home is worth or have a high rate, then you are probably better off letting a home go back. The average time it took in 2012 nationwide to foreclose was about 630 days, if an answer and discovery was filed. If a person answers a foreclosure and issues discovery, it will take much longer than a default. During that time, people often live in the home without paying a mortgage, taxes or insurance and save thousands from staying in the property.

It is unlikely to ever find a lender that would refinance a home with negative equity. If the rate is much higher than normal, you may be much better off letting the home go back. If the home has a second mortgage, a Chapter 13 can strip away a mortgage where a Chapter 7 would not be able to eliminate the second mortgage. It isn’t unusual to see a person better off by filing a Chapter 13 than a Chapter 7 if he is stripping away the second mortgage in the Chapter 13. The Chapter 13 will discharge more debt than the Chapter 7 will, and the Chapter 13 may only have \$100 monthly payments.

If the home or auto does not meet your needs or if it is too expensive, it can be replaced. Cashing in your retirement or mortgaging a home often shifts the burden of retirement to your children or other taxpayers. The bank that made the bad loan or car sale should bear the burden of the unmanageable debt, not the public.

Q2: 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. A Chapter 7 bankruptcy normally has less impact than a foreclosure or repossession on credit. A Chapter 13 will take three years if your income is less than the average income, or five years if above average, but it has more tools and may cost less than a Chapter 7 overall if you are stripping a second mortgage or discharging more debt in the 13.

Very few people lose property when they file bankruptcy. As of 2019 in Kentucky, you can keep about \$3,775 equity in a car, \$12,625 in personal household goods, \$23,675 in a home, and at least \$1,250 in any property that you choose in a general exemption, plus ½ of the unused portion of the home exemption. The

exemptions are adjusted in April every year. For married couples filing jointly, these exemptions are doubled. See our website for the current amounts.

To stop a foreclosure in Kentucky with a Chapter 13, you only need to cure the arrearage within a reasonable time, and you may take up to five years.

Only seven major magical items can be paid in a Chapter 13 but not discharged: Child support; alimony; taxes less than three 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 exceptions to even those, such as student loans can be discharged if they are an undue hardship. 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, email us.

Q3: What does it cost to file bankruptcy? *Court* costs are about the same, \$335 for a Chapter 7 and \$310 for a Chapter 13, plus postage for sending the plan to the Creditors (\$25), so both filing fees are about \$335. Uncontested Chapter 7 *Attorney* fees at our office will run about \$1,200 for a single, \$1,400 for a couple, plus any filing fees, but expect fees to increase. They have been the same for eight years and should increase in 2019 or 2020. About 5% of the cases may require additional work for a motion to redeem, strip a judicial lien, etc.

Chapter 13 attorney fees are set by the court, which is presently paying about \$3,750 in Western Kentucky for Chapter 13 through confirmation and the schedule of allowed claims. This is paid to the attorney as you pay the court and normally only decreases what is paid to unsecured creditors.

Q4: What happens when I file? When you file a bankruptcy, a court order called a stay goes into effect immediately, stopping all collection activity. This includes stopping foreclosures, attachments, garnishments and creditors from 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 four to six weeks after the bankruptcy is filed. When the bankruptcy is finally over, a discharge is issued. This is a final and permanent order that permanently stops all collection activity and declares the debts to be non-collectable. 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 destroy or modify some mortgages and liens. It makes you no longer liable for the debt if you successfully get the discharge.

Q5: I live in Pikeville (Eastern District). Can I file in another district (such as Louisville in the Western District)? A lot depends on whether you have real property and if you are living in the Western District at the time of filing. Procedural rules vary from district to district, making it more or less difficult, expensive or time consuming. It normally costs less to file bankruptcy in the Western District, etc.

Jurisdiction and residence are based on your intent to live in a place — so, if you say you live in the Western District and you have substantial contacts there such as you live with family, you vote there or have a driver's license with a local address, you probably do reside there. Many people live in an area because of school or work but have their real contacts elsewhere. For instance, a serviceman or student in Alaska does not generally lose his right to file in Kentucky if they are from here. If you move to the Western District from another state, the other state's exemptions may apply if they are lower.

The Other Questions:

1) Can I plan my Bankruptcy? Of course! Good planning is why you want to read this manual. Planning allows you to save more money and property and gives you a workable budget for success. For instance, you may wish to delay filing your bankruptcy to ensure that your taxes are more than three years old and dischargeable. This is just like taking proper tax exemptions when you file a return. There is nothing illegal or improper with properly taking exemptions. But you can become too greedy in converting assets. Always involve your attorney in planning your bankruptcy. Waiting a few months until your tax debt becomes bankruptable is acceptable. Converting enormous amounts of assets into your retirement or going on a spending spree with credit cards just prior to filing isn't acceptable.

2) Which Bankruptcy is right for me: Chapter 13 or Chapter 7? A Chapter 13 is like a bill consolidation loan, and you normally file it to keep property, discharge or control certain debts, and stop foreclosures. A Chapter 13 will discharge a wider variety of debts. A Chapter 13 will require you to budget. Budgeting is a skill the court is trying to teach the debtor in a Chapter 13, so problems do not reoccur. A Chapter 7 is generally used to wipe out unsecured debts and surrender property you don't wish to keep. Both stop garnishments and creditor harassment. If you earn more than the average wage for your state and size of family, you will often be required to file a Chapter 13 due to the means test.

Chapter 13 cases are becoming more popular. Before 2005 over 95% of all Chapter 13 cases used to fail because they became unaffordable in Kentucky. But now, 10% and lower repayment plans are often approved in Chapter 13 cases if that is all the debtor can afford. Chapter 13 plans are now more successful, especially if you include often overlooked expenses in your budget. See our website for a list of commonly overlooked expenses. Often an attorney may want to file a Chapter 13 because he will earn more than he would in a Chapter 7. Usually, the only times you want to file a Chapter 13 are:

- 1) when you have already filed a Chapter 7 and can't yet file another Chapter 7,
- 2) you have so much property and equity that a Chapter 13 is necessary to keep property, or
- 3) you have certain non-dischargeable debts that require repayment in a Chapter 13.

You may have to file a Chapter 13 if you have so much disposable income (after you pay normal monthly living expenses) that you can repay something to your debts. A Chapter 13 can no longer be used to discharge certain unusual debts such as trust taxes. But it has always been used to repay income taxes less than three years old, child support, student loans, or to protect co-signers.

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 \$60,000 or more in equity for a home or more than \$10,000 of equity in cars (these amounts are for Kentucky), may want to choose Chapter 13. Each state can have different rules for what property can be kept. Kentucky uses the federal exemptions. Indiana allows far less property to be kept. Florida and Texas allow far more. You can have slightly more in equity than the exemption because the costs of a sale and trustee fees may be deducted from the formula. The sale must pay something to the creditors and not just pay the trustee and real estate agent.

3) Why file a Chapter 7? If you have substantial unsecured debts, little equity in property and an average or less disposable income, 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 most debtors lack any substantial equity in any property that exceeds the exemptions allowed.

4) Why file a Chapter 13? You may want to file Chapter 13 if you have secured debts, or are threatened with foreclosure or repossession, if you filed Chapter 7 less than eight years ago, if you wish to protect a co-signer, wish to strip a second mortgage or if you have certain debts that are not dischargeable in a Chapter 7 but are payable or dischargeable in a Chapter 13. Taxes and child support (priority debts) can be paid first in a Chapter 13, before secured creditors. This gives you the advantage of not losing a car or property but having all your payments go to the IRS or child support at the start of the case. If a debt must be paid for a term longer than the plan (such as mortgages or student loans), the debtor can pay those payments directly outside the plan. This may allow the debtor to bump up student loan payments and nearly pay off a student loan during a 13 at the expense of unsecured debt.

5) Can I convert from a Chapter 13 to a 7 or from a 7 to a 13? Yes, a Chapter 7 or 13 can be converted. There is an absolute right to dismiss a Chapter 13 or convert from 13 to 7. Conversion of a Chapter 13 to Chapter 7 has a lowered level of scrutiny than if you filed a Chapter 7 directly. Dismissal of a Chapter 7 or conversion of a Chapter 7 to Chapter 13 is only with permission. Very few people convert from a 7 to a 13 unless they have been audited by the trustee and caught with improper transfers, excess property or excess disposable income. If you get caught, it is generally too late to convert because the panel trustee earns a 25% fee from property he can locate, seize and sell assets for the benefit of creditors.

If you file a Chapter 13, you have a good chance that you will have to convert from a 13 to a 7. Over 3 to 5 years, you are likely to miss payments and have a Chapter 13 dismissed (or have to re-file). In a Chapter 13, you will have to file an annual budget in our district and lose your income tax refunds if the plan is less than a 100% plan. Many 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 an early hardship discharge, but there are three factors that the court considers in any application for an early discharge that must be proved. Primarily, the debtor must show that the inability to complete the plan was not his fault. Plans can also be later modified if income changes.

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 a property from foreclosure. This is jokingly referred to as a “Chapter 20.” However, it saves the debtor money by ensuring that only the mortgage is repaid in the later Chapter 13. Since the debtor just got a discharge in the Chapter 7, there is no need for a second discharge. Filing a “Chapter 20” can be the intelligent and affordable way to file a Chapter 13. Filing a Chapter 7 and then a Chapter 13 to obtain the benefits of both is very effective in stopping a foreclosure. Although you have the right to dismiss a 13 after you cure the arrears, you may not want to dismiss and then must face unsecured creditors.

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 five years by just one Chapter 13. You are “extending” your repayment time by filing two Chapter 13s to handle taxes or student loans. This may stop wages or property from being attached and allow you to obtain freedom from the debt by waiting for a disability discharge of a student loan or currently uncollectible status of an income tax debt.

7) How long will bankruptcy take? It will take about three to four 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 and that you are required to take the second class (debtor education). A hearing will be held about five weeks after you file. Chapter 13s normally take five years, but if you earn less than average income you may file a three-year plan.

8) What are the most common mistakes I can make when filing? Not showing up for your hearing; not bringing your social security card to the hearing and not listing all your debts. Fail to show up at the hearing, and your case may be dismissed. Fail to list a debt, and you may have to reopen your case after discharge to add it, with considerable cost and time spent. The best policy is to list all debts and assets. List every debt, even if you think it is non-dischargeable. It may be discharged anyway. You may wish to list large utilities, but you may be required to make a deposit equal to one month's service if you do discharge a utility. Cable is not a utility.

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. In my first 15 years of practice, I had one person not qualify for a Chapter 7. You only must be a US citizen, reside in the state you file in, and not have filed within time periods (you can't file two Chapter 7s within eight years of each other). After 2005 to file a Chapter 7 you had to meet certain income guidelines. Persons under the average income for their size household automatically qualified. For incomes over the average they had to have little or no disposable income.

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 can usually be easily corrected by amendment. It is less costly and time consuming to do it right the first time. If you earn so much you can afford a Chapter 13, you will be forced to convert from a Chapter 7 to a Chapter 13. Chapter 13s are often modified. Occasionally, a case will be dismissed because of fraud, but not being approved is very, very rare.

11) How often can I file? You can file a Chapter 7 eight years after your prior Chapter 7 was discharged (prior to 10/2005, the time limit was shorter). You can file a Chapter 13 two years after a prior Chapter 13 discharge. You can file a Chapter 7 four years after a Chapter 13 discharge. You can only have one bankruptcy going on at a time. See our chart in that section of the book.

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 a bankruptcy was filed. Bankruptcy does not give you a good credit record or "repair" your credit record automatically. After discharge the notation for most debts will be "account closed" which is often better than "account overdue". You repair credit by paying your debts on time after the bankruptcy and by deleting inaccurate, outdated and misleading information from your report.

13) Can I file without an Attorney? Yes. You can file a bankruptcy yourself. This is called "filing pro se." You can also do dentistry on yourself, but we don't recommend it. Handling your own case is a very bad idea. First, if you are in a Chapter 13, the money you saved by using an attorney will only be used to increase the amount you pay to the unsecured creditors. There is no "savings" to pro se filing in a Chapter 13. You only cause yourself more work and lose the expertise of the attorney to help you plan and process the case. This book alone will not give you the 20 years of experience and training you need to file. Use this manual to educate yourself, find a good attorney and discuss issues.

There are also other problems if you file pro se. 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. Consider the time and risk involved. You often 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. You are normally better off working overtime to make it up.

14) What about a Bankruptcy Mill? Some firms have one experienced attorney that never or rarely meets clients. To give you quality representation, the attorney must have experience, knowledge and spend time meeting you to analyze your needs. Some firms file thousands of cases by spending on advertising, and then switching you to a paralegal or a junior attorney with little experience. You often pay the same price as hiring the experienced attorney. You end up paying more or lose property.

Many people have lost thousands of dollars through foreclosure and debt settlement scams or just plain poor 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.”

15) Are you a real attorney? Yes. I have been filing Bankruptcy cases for more than 30 years, and I have filed thousands. I have worked for banks and financial companies and as an assistant attorney general assigned to the tax department. I personally prepare every case. I never have a secretary or paralegal prepare the petition.

16) How much do you charge? We charge a flat fee of \$1,200 for doing a personal and \$1,400 for a joint uncontested Chapter 7 Bankruptcy but this will go up. Court costs are \$335. Your total cost as an individual is about \$1,535 and \$1,735 as a couple plus the cost of counseling which runs 10-50 per class.

Chapter 13 Court costs are \$310 plus \$25 for mailing. In Kentucky and most states, the attorney fees are normally set as a flat fee. There is no shopping for a lower attorney fee in a Chapter 13. Attorney fees in a Chapter 13 mean less is paid to unsecured creditors.

17) Can I pay you in payments? Filing fees must be paid before we file any petition. Filing fees can be paid in installments, but our office will not do that. If you pay the filing fee in payments, you are more likely to have the case dismissed. For a Chapter 13, you only need to pay the filing fee before we file the petition and your first couple of payments. For a Chapter 7 the fees must be paid for before the case is filed.

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, Covington and Bowling Green (1.5). Take I-64 to Louisville, and then north on the Hurstbourne Exit. We are at 800 Stone Creek Parkway, Suite 6, 40223 just behind the Barnes and Noble Bookstore on Hurstbourne in the office condos.

19) What paperwork do I need to bring to my attorney? There is a list of required documents on our website you may download. Bring the names, amounts, account numbers, and the proper addresses of all creditors if you can't input the debts on our website. Credit bureau reports have the addresses on them. We have the ability for you to input your information on our website, but we will still need your last two years' worth of tax returns, last six months of paystubs and bank statements, and copies of your car titles, deed and mortgages. See our website for audios, PowerPoints and manuals.

20) How can I get a copy of my credit report? You can get a free copy of your report at www.annualcreditreport.com and 1-877-322-8228. Please don't pay for it unless you recently got one within the prior year. 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 for a small fee (if you don't) without going through a "middle man" by contacting any of the 3 major reporting services below. They may charge between \$3 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 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.

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 or separately. Sometimes a spouse may want to file separately to delay a foreclosure even longer. The first spouse files the first bankruptcy and delays the foreclosure six months or more, and then the second files just prior to the sale and the second bankruptcy delays the foreclosure an additional six months to a year or more.

Your spouse doesn't have to file with you, but if most of your debts are joint debts, he or she may want to file with you. There are few reasons for a spouse to file if the debts are not in their name. If you are filing a Chapter 7 and the bills are also in your spouse's name, he or she should generally file. (Co-signers are protected in a 13 with 100% plans but are not in a Chapter 7.) There is often a minor additional charge for a spouse filing, but it is far less than being charged for a second case.

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 jointly responsible 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 spouse has signed to be legally responsible, they are not responsible. Collectors are often paid a commission, which causes abuse.

They may even put a "no pay" on her credit report if the amount is unpaid; however, she may ask any credit 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 is only legally responsible if she signed to be responsible. If they damage her credit record, it is grounds for a lawsuit.

23) Will my co-signers be protected? Cosigners are protected only if the Chapter 13 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 co-signer for any remaining portion of the debt if it is 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 (property jointly owned by you and the co-signer). 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 completely own the business, the business is merely your asset. If it has a substantial value (inventory, etc.), it may belong to the court like any other asset. If the business is co-owned, such as a partnership or corporation, then it becomes almost impossible for creditors and a trustee to reach assets for your personal debt. You may want to file a Chapter 7 to officially terminate a business that is losing money, but normally you would merely dissolve a failed business without a corporate bankruptcy. If your business files bankruptcy, it generally doesn't affect you unless you are personally responsible for the debts of the business.

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

26) What will happen to my bills? When you file a bankruptcy, a court order called a stay goes into effect; it keeps creditors from legally collecting from you. At the end of the case, a permanent court order called a discharge is entered. 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 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 violated the order. 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 put anything on paper after you file, but they may make phone calls hoping you pay, or sell the account to a debt buyer.

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 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. 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 Chapter 7 and until you have negotiated with the creditor to keep the property. Don't pay any creditor in a Chapter 13 unless it is the regular monthly mortgage payment or car payment, and the 13 was filed to retain that property and catch up the arrearage. Most creditors want the payments paid on time and the auto insured so he does not take a loss. The creditor doesn't want the property unless you are going to continue being a problem and not pay or destroy the collateral. 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 take the collateral until the stay is terminated. If no reaffirmation is filed within 45 days after the bankruptcy is filed, the stay automatically terminates, and the bank can take the car. The creditor may also file a motion to terminate the stay after the

bankruptcy is filed. Bankruptcy stops your obligation to pay, but the creditor still has a lien and rights in the property. Bankruptcy can affect liens of some creditors.

You often quit paying for items when you file so that you have time to decide on repayment, redemption or surrendering. I rarely have a bank refuse to agree to repayment, but you don't want to make payments if they aren't going to let you keep the property. Signing a reaffirmation will make you liable for any deficiency if you have it repossessed later. In rare cases, with people who are never going to repay, the bank may refuse to reaffirm. Some credit unions may refuse to reaffirm a car or mortgage unless you also repay their credit cards. In cases like this, you may want to redeem property instead. That is why you don't want to make payments just before or after you file. You can take time to negotiate your options. You don't have to be caught up on your payments to reaffirm. A Chapter 13 can be filed to force creditors to allow you to keep property, so they will often negotiate to cure arrearages over time.

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 a week.

30) Do I have to go to Court? You must attend a hearing presided over by a Bankruptcy Trustee. This hearing is called the 341 Hearing (Meeting of Creditors). At this hearing, the Trustee (who is an Attorney or CPA) will ask questions under oath, regarding the content of your bankruptcy papers, assets, debts and other matters. It is very much like a deposition. It is not a trial. If you can't attend (example: if you are disabled or 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, check accuracy of paperwork and determine what chapter your case should be. *The Trustee represents the banks — not you.*

31) Where is my 341 hearing? Your 341 hearing is always at the federal court in your district. 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. If your paperwork is done correctly, your hearing will only last 5 minutes. Just bring yourself, 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. Dress appropriately.

In Lexington, the hearings are at 100 Vine St. Most Courts require your attorney to bring a second set of documents.

32) What do I wear to the hearing? Don't wear cut-offs, jeans with holes in them or 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 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 you owe. You must report what you own and its value, but don't brag about your income and how much your car is worth — especially if it is worthless.

33) Do you show up with me at the hearing? Your attorney will personally appear! Well, unless he has 10 offices in 2 to 3 states, with 12 attorneys. Large firms will send someone, often someone you never saw before. We take care of you and assist through the process. We don't just file paperwork. I personally show up. However, there is work you must do, such as supply documentation. If you read this manual, you should be able to make the most of your bankruptcy.

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 must file your tax returns (unless you didn't have any income and were exempt). The court may dismiss your case if you don't file returns and we normally won't file the case until you supply your past returns to us. The tax returns and other documents are due to the trustee within two weeks after your bankruptcy is filed.

If you can get your refund and spend it before you file, you will keep your refund no matter how much it is. It is very rare for persons in Kentucky to lose a tax refund because the exemptions are so large. But in Indiana, they are commonly lost because the exemptions are so small.

If you get your refund after you file bankruptcy and the refund is more than the exemption, you may lose part of your refund. File for a quick refund if you must, prior to filing the case. Some Indiana trustees start claiming tax refunds in October and November or prorate them.

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. Example: You have a \$3,500 auto and the car exemption is \$3,750; so, you keep the auto. You can keep a certain amount of property in bankruptcy. When we prepare your bankruptcy, we will tell you if you are at risk of losing property. At the moment of filing, all property that is not exempt belongs to the court. The idea is to exempt it all, so you keep it all. The exemptions and what property you keep varies from state to state. We provide you with the Kentucky and Indiana exemptions. Kentucky uses the federal exemptions, which work for about ½ of the states. Exemptions increase annually.

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. Filing bankruptcy may increase your insurance rates but normally it doesn't if you have been with your carrier a long time.

37) Can a creditor be forced into a reaffirmation or agreement to allow me to keep property in a Chapter 7? Can a creditor be forced into redemption? No, a creditor can't be forced into a reaffirmation, mortgage modification or workout. A creditor can be forced into redemption, which allows you to purchase the vehicle or other personal property from him. Redemption pays the bank what the security is worth in one lump sum. They cannot refuse the redemption after the judge orders it.

If the bank repossesses a car, it will usually take a loss from selling the vehicle at an auction. However, since lenders have mortgage insurance, they rarely modify a mortgage because they can rely on mortgage insurance to cover the default and can make a profit on a foreclosure. With mortgage insurance, why would a bank modify to a lower rate, or reduce the principal amount of the loan?

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 to terminate the stay with the bankruptcy court and ask to foreclose anyway. If the bank is adamant that it wants the house or car back, it may file a motion to terminate the stay in a Chapter 7 and take a loss. A Chapter 13 can force repayment on the bank. Fail to repay on time and the case is dismissed. Even in a Chapter 13, the creditor can file a motion to terminate the stay if it isn't paid.

38) Can I choose which creditors I repay? Yes; you can pay one creditor, but not another. You can keep one car, but let the other car go back.

39) Can I revoke a 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 at least the 341 hearing to return your car and owe nothing. Use that period to look for another vehicle you can afford. While it is in foreclosure you normally have no obligation to make payments.

If you choose to let your house go back, you will normally have at least a year to live in it after you stop making payments. The shortest period for a foreclosure is about six months; we fought one foreclosure that took seven years and another which took about 15. Filing an answer and discovery will normally make the foreclosure take longer. By default, a foreclosure may only take three months. The average in 2011 was 630 days — nearly two years. Consider filing an answer to a foreclosure to stay in the home longer and filing discovery to remain in it even longer. Remember, a foreclosure will normally do more damage to your credit than bankruptcy. Filing a Chapter 13 to catch up on your payments is one way to keep your home. The only good reasons to let your house go back are that you have negative equity in it, a bad mortgage or it is an overwhelming burden.

41) Will I lose my 401(k) or retirement fund? 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 our 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 in 2013, you can keep up to about \$23,675 as an exempted amount of a personal injury lawsuit that you have pending. If both are injured, you may keep double that amount. Other states have different rules.

43) XYZ finance company took my household goods as collateral. Do I have to turn them over? It is possible that you may be able to avoid (strip off) such liens, if they are old enough and if you have not borrowed within a certain time before filing bankruptcy. Also consider a redemption.

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 more than \$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 income taxes on debts discharged or property taxes for items surrendered in bankruptcy? People often give up cars. If the auto is sold in another state. The car property tax bill will continue to be sent to the debtor, even though he surrendered property until the title is transferred. To correct this in Kentucky, you can file an “affidavit of incomplete transfer” with the county clerk’s office to correct the matter, proving the debtor did not have the car after discharge. See our forms. If you kept the auto, then you are liable. Property taxes are statutory liens on property, and the new home or car owner will have to pay the property tax to obtain a clear title. There is no income tax if you discharge a debt in bankruptcy

before the lender takes the write-off for the debt. You must file bankruptcy before a foreclosure sale to prove you didn't have the obligation when he writes off the debt.

46) If the trustee doesn't want the property, can I have it? Yes. But if you hide an asset or fail to list it, you lose the right to use the exemption to keep the property. You have committed fraud and you lose hidden assets and the right to claim any exemption if you hide it. If you are on a title or deed, claim it.

47) How long do I have to repay in a Chapter 13? You can s-t-r-e-t-c-h out your payments and take up to five years, but no longer. Kentucky local rules require that you can take up to five 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. If you refile a Chapter 13, you may not get the automatic stay and you may have to file a motion to obtain the stay or be denied if the case was dismissed for cause or you voluntarily dismissed the case after a relief from stay motion.

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 on priority debts such as taxes, secured and unsecured debts.

50) Do I have to pay back 100% of what I owe in a Chapter 13? No. You can repay as little as 0% to unsecured creditors in a Chapter 13. Your Chapter 13 must pay at least what a Chapter 7 would have paid. Certain plans may pay much less than 10%, if that is all you can afford. You must repay your disposable income — all of it using your best efforts. You must include all your expenses to ensure you can afford a Chapter 13.

51) Can I pay some Creditors and not others in a Chapter 13? You can't (and shouldn't) discriminate and pay one unsecured creditor differently than other unsecured creditors in that class. However, secured, unsecured and priority debts are often paid differently.

52) Should I try a debt settlement service instead of filing bankruptcy? How do debt settlement services work? "Debt Settlement Services" are agencies that pocket 10% to 50% 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 payment. The reduced amounts sent in may not even cover the interest charges. These "Counseling Services" often pretend to be nonprofit charities. Many file bankruptcies themselves, taking your money with them, or move and set up in a new corporate name. See articles on Ameridebt and the FTC complaints on this in our Bankruptcy Resources section.

If you pay a debt counseling service \$100 a month, what happens is that they often take \$40 for themselves and then send your Creditors \$60. Your bills fall even farther behind. Very few of these "repayment plans" work. More than 90% fail, leaving you worse off. Another scam is that some 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 in a home mortgage loan in foreclosure rescue scams. 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.

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

You should keep a copy of your bankruptcy, along with your tax papers, for at least seven 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 in the area for cases filed after October 2002. Paper copies are stored in Atlanta. You are only required to keep tax receipts for three years — after three years they have the burden of proof — but keep tax and bankruptcy records for seven years, anyway.

54) When will I be able to get credit again? You should be able to get other credit within six months to a year after discharge. Your ability to get credit is based on your income and your history of repayment, as well as the security you offer. If you reaffirm one or two debts and pay for them on time you should be able to get an auto loan one year after discharge and a home two years after discharge. You should always 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. A foreclosure will prevent you from getting a home mortgage until three years after discharge.

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 deduction, which means the employer will learn about the bankruptcy.

56) Will this affect my getting an apartment? Many 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? Generally, 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 present employees, but they can discriminate in hiring. Do yourself a favor: Keep it to yourself. They generally won't know unless you tell them. Series 7 securities license holders do lose their licenses if a bankruptcy is filed.

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 often result from not disclosing property you own or transfers of property to hide it from the court.

59) Do I have to disclose all 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 \$5,000, imprisoned for up to five years, or both. You automatically lose the right to any exemption. However, conviction is very rare and normally happens in only the worst cases. Normally, the court will deny a discharge, take an asset, dismiss a case 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 make minor charges on their charge cards just before filing. Generally, spending sprees and charges

more than \$1,000 on any one card within 90 days before filing **are presumed** fraudulent and non-dischargeable. Luxury items of \$500 within 90 days and cash advances of \$750 within 70 days are non-dischargeable. Charges to an account more than 90 days before filing are presumed proper. The rule you can't charge within 90 days of filing and the amounts are not written in stone. There are 12 factors judges use to determine if it is fraudulent. The only penalty is that you will have to repay what you charged, not the entire debt. There isn't really a "penalty" to these spending sprees. American Express monitors them the most, Lowes the least. If you purchase a necessary item a week before like a refrigerator or tires you are probably ok. If you purchase a Rolex, the day before filing you probably owe for the Rolex.

61) Can I give property away just before filing? Gifts of property more than \$600 just before filing are improper and a fraudulent transfer. Selling property for less than its value is also a fraudulent transfer, and the court can go after that property and the person you gave items to. Gifts less than \$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 to one child and a \$450 car to another child — even minutes apart — and that is proper.

62) Can student loans or taxes be bankrupted? (YES, in some 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. Student loans more than seven years old were dischargeable until October 1998 but are no longer bankruptable in a Chapter 7 unless you get a discharge proving repayment is an undue hardship. This normally requires disability or retirement, but it is possible and requires an adversary proceeding. Almost 50% of the time people get at least a partial discharge if they try.

63) Can I bankrupt a utility bill? Yes, but they may make you pay a deposit equal to one month's service to keep service with them. 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.

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 list them. 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. 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 cannot be bankrupted.

65) Can I get my driver's license back? If you have lost your license due to involvement in an accident where you had no or too little insurance, filing bankruptcy will restore your license. **We have the forms!** Fax forms to 502-564-3250 in Frankfort.

66) Can Bankruptcy help with tax matters or high rates and penalties? Yes, bankruptcy can get rid of income taxes, reduce interests and penalties in a Chapter 13. To be discharged:

- Income taxes must be more than three years old.
- The return must have been filed two years prior.
- There must not have been an assessment within 240 days prior to discharge the tax.
- An offer in compromise or a due process hearing can increase waiting periods. See our income tax

bankruptcy website.

The key is often to wait long enough for income taxes to be bankruptable. A payment plan will often delay collection and age the debt long enough to discharge taxes later in a bankruptcy. You can include taxes and student loans in a Chapter 13 repayment plan. The IRS lien is a statutory lien and cannot be avoided or stripped. However, it only lasts for 10 years after the tax is assessed. The tax is assessed when you file a proper return, so you must file your taxes on time so that it will dissolve 10 years later.

67) What are predatory lenders? Certain lenders don't care if you repay. They lend on the equity in your home, not on your ability to repay. They never intend or expect you to repay. They intend to steal your home. Others profit on overcharges and then selling very profitable loans to another lender. When you fail to pay, they repossess or 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 prouder they are of doing it to you.

68) I have a small retirement account. 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. 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 this is a retirement account. Just calling it a retirement account does not make it one. Real retirement accounts can't be assigned or attached. If it can be easily spent by you, assigned, or attached, it isn't a retirement account for purposes of the exemption and purposes of tax laws. Of course, putting substantial amounts of money into an account just before filing (within six months) is wrong.

If the stock is worthless, you can list it; if the trustee 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.

69) 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 ensuring that you bankrupt every possible person.

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. Make sure you tell us where you live. Please keep in mind that we cannot provide legal advice over the Internet or answer questions about other state laws. This book is for informational purposes only. It will give 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 to file a bankruptcy petition and what you, specifically, need to do.

GLOSSARY

Automatic Stay: Immediately when the bankruptcy is filed, a temporary court order called a stay goes into effect that prohibits all collection and foreclosure attempts against a debtor. Creditors are forbidden to contact a debtor or take his property unless the automatic stay is modified or terminated. At the successful completion of the bankruptcy, a permanent court order called the discharge replaces the stay.

Bankruptcy: A lawsuit filed in federal bankruptcy court that allows an individual, company or entity to sue his creditors to reduce, modify, or cancel debts and obtain a new budget that it can operate on.

Bar Date: The last day to file a proof of claim in a bankruptcy. For Chapter 7 cases, this is 90 days after the 341 meeting. In a Chapter 13, a debtor may object to claims to eliminate them and should review the claims for accuracy, excessive claims and errors.

Chapter 7: Also known as a liquidation bankruptcy, but debtors rarely lose property. A Chapter 7 eliminates most unsecured debt but does not modify mortgages or liens. It can allow a debtor to redeem collateral. 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: When a Chapter 13 plan is confirmed, it has been approved by a judge and the terms of the plan become binding on all the creditors. The requirements of a plan are in section 11 USC 1129. When the debtor completes the plan, all pre-petition dischargeable debts are discharged. However, a plan's confirmation and payments can be modified so that payments may be increased or decreased.

Consumer Debt: Debts for residential homes, personal or family purposes. Liens on personal property can be removed by redemption in a Chapter 7.

Creditor: A person, business or governmental unit to whom a debt is owed. A creditor has a claim against the debtor for payment. Creditors can be secured or unsecured. (See **secured** and **unsecured**.)

Creditor Meeting (341 hearing): This hearing is more like a deposition. The debtor is asked questions by the trustee and any creditors that appear. The trustee asks questions at that meeting to clarify the accuracy of the petition. Creditors rarely appear but may appear to ask if the debtor wishes to keep (retain) property. The 341 meeting takes place 4 to 6 weeks after the bankruptcy petition is filed.

Contingent Claim: A claim which is due if and only if a specific condition or performance occurs.

Debtor: The debtor owes debts to the creditors.

Discharge: The final court order that permanently prevents collection.

Disputed Claim: When the debtor claims that no debt is due or that the amount is incorrect, the debt is disputed.

Executory Contracts: Contracts where both parties have yet to fulfill the terms and obligations of the contract. For example: a house that has not been painted yet by the painting contractor or an unexpired lease.

Exemptions: Either a federal and state statute that protects the debtor's property and allows the debtor to keep and retain either the complete property or some equity in the property. Each state chooses whether to

accept the federal exemptions or to have their own state amount of exemption that is allowed in bankruptcy court.

Fraudulent Transfers: A transfer of property or an interest in property, such as giving a lien 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). See also **preferential transfers**, which have the same result. To be avoidable by a trustee, the transfer must be for more than \$600.

Garnishment: A court order to turn over money or property of the debtor to pay the debtor's debt.

Insider: Code section 101(31) defines an insider to be "A person who is a close working associate of the debtor or a relative of such a person." Included are relatives, officers, directors, managers, or partners.

Nonexempt Property: Unprotected property.

Nonpossessory Security Interest: Property in the possession of the debtor that has a lien or security interest.

Nonpurchase-money security interest: Where the money loaned was not used to purchase the collateral used for the lien.

Post-petition debt/liabilities: Debts that happen after the filing date but before the discharge are often included in the bankruptcy by either converting the petition or dismissing and refiling the bankruptcy. A claim may also be included by amendments.

Preferential Transfer: Under section 547(b), any transfer of property made for less than its value, within 90 days before the filing date — or within one year if transfer is made to an insider — which causes the creditor to receive more than he would have in a liquidation case is a preferential transfer. See also **fraudulent transfers**, which have the same result. To be avoidable by a trustee, the transfer must be for more than \$600.

Priority: Debts are classified in four major ways. *Administrative claims* such as trustee and attorney fees are paid first. *Priority debts* such as child support, alimony and taxes are paid before *secured debts*. Finally, *unsecured* debts are paid. Priority debts are often not dischargeable in bankruptcy and must be paid in full during a Chapter 13. Trust taxes and income taxes less than three years old are priority claims. Property taxes are secured debts; they're discharged personally but remain liens on the property.

Proof of Claim: Claims are filed with the bankruptcy court clerk by creditors stating the amount and terms of the claim under oath on a standard form. If a creditor fails to file his claim within the proper period, the claim is barred. Debtors may object to a proof of claim and modify or eliminate it.

Pro se: A person who represents himself in a court proceeding. In the Western District, if you wish to file pro se and reaffirm a debt, you must have the agreement of the judge in an extra hearing.

Purchase Money Security Interest: When the seller of a property also finances the property, the lien he holds is called a purchase money security interest. The collateral is always 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; the debtor agrees to continue being responsible for the contract. A common example is when 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 want to make sure that the agreement is fair to the debtor before it approves it. Reaffirmation agreements require the signature of the debtor's attorney and must be signed before the case is discharged.

Redemption: A Debtor may keep secured personal property (redeem the property) by paying a creditor the value of the property, rather than the amount of the debt. In cases where the loan is more than the property (car, boat, ATV) is worth, it may be better for the debtor to redeem the property than to reaffirm to keep it. Redemptions must be filed before the case is discharged.

Reorganization Plan: A Chapter 13 or 11 plan detailing how the debtor intends to repay debt and how the rights of the creditors shall be modified. If the creditors fail to object, they will be bound by the terms of the plan. Plans are normally for five-year terms but may be for three years if the debtor is below average income.

Secured Creditor: A creditor that has attached a lien on the debtor's property including tax liens, mortgages, or car and boat loans.

Trustee: A lawyer or CPA appointed by the U.S. Department of Justice responsible for the bankruptcy debtor's assets and the case. The Chapter 13 trustee manages a Chapter 13 and recommends whether to approve the chapter plan and any changes in the plan to the bankruptcy court. The panel trustee conducts a meeting of creditors (341 hearing) and asks the debtor questions about the petition and schedules. Upon filing the Chapter 7, all the property that is not exempt belongs to the trustee and is sold for the benefit of creditors.

Unliquidated claim/debt: An unliquidated debt is when you know you owe something, but the amount is unknown. For example, a judgment before the exact amount of damages has been set is unliquidated.

DIRECTIONS TO THE LOUISVILLE FEDERAL COURTHOUSE

If your court appearance is in Louisville, the **Federal Courthouse** is at 6th and Broadway in the Gene Snyder Courthouse in Louisville, Kentucky. This is the old post office building, with the social security office on the first floor. You may travel north on I-65, take the Broadway exit, and head west or get off at the 9th Street exit on I-64 and head south to Broadway, then East on Broadway to the courthouse.

The federal courthouse stands next to the Courier-Journal newspaper building. Use the elevators on the side next to Courier-Journal. 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 frequently asked questions are listed in this manual. **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 there is divorce and traffic court.

**How to File
Bankruptcy Manual
for Foreclosure,
Business, Income
Tax and Student
Loans In print for
since 1997 to help
clients prepare and
understand
bankruptcy.**



Nick C. Thompson

Former West Virginia Assistant Attorney General assigned to Tax Litigation, US Tax Court License # 51, and former Bullitt Assistant County Attorney

Very few attorneys understand how to effectively use Chapter 7 and 13 as tools. Nick teaches attorneys in his Lorman and NBI seminars how to discharge the “impossible debts” in bankruptcy court. This workbook was written by a former tax department attorney with 30+ years and more than 6,000 cases of experience. He has five-star reviews on Google, Avvo and Insider Pages from his clients and other attorneys, like this: “I have known and known of attorney Nick Thompson for at least 15 years. In that time, I have seen him, and his practice of law evolve into that of the most knowledgeable and caring bankruptcy attorney I know. If you have a bankruptcy law question or are faced with a foreclosure crisis of your own, Nick is your answer. Period. There just isn’t anyone better in the state, in my opinion.” - Avvo Review by Attorney Ronald Burge

The Manual discusses in less than 100 pages and within 3 to 4 hours exactly how to manage and/or discharge in bankruptcy, income taxes, student loans, foreclosure and small business debts. This book is the street knowledge of how to manage debts and discharge them in bankruptcy. By reading the How to file Bankruptcy Manual, you will be able to work with and discuss with your attorney even difficult to discharge debts some attorneys claim are impossible to discharge.

Bankruptcy is your main tool against foreclosure and the abuses of student loan and income tax collections. Knowing how and when to file is often the difference between getting a discharge, failing to discharge debt, losing property or having a case dismissed. Don’t expect every bankruptcy attorney to know the fine points or how it is done. Inside of 100 pages here it is with examples for most situations.

The workbook is designed to be read before you meet with your attorney, so you can intelligently discuss how to file. It covers, stripping off judicial liens, household good liens, second mortgages, stripping down auto loans and mortgage modification. Each option, including how bankruptcy can be better than a short sale or debt settlement, is discussed. Each option has advantages and costs. Know the different reasons for filing Chapter 7 or Chapter 13.