

# A SURVIVAL GUIDE

TO PRE-BANKRUPTCY

WHAT *You* SHOULD KNOW BEFORE  
*You* FILE *for* BANKRUPTCY

Material adapted from Mitchell Allen's  
*A Survival Guide to Debt*

D | E | C | A | F

DEBT EDUCATION AND CERTIFICATION FOUNDATION

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First Edition

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Dear DECAF Student,

If you are reading this booklet, you are likely considering or are in the process of filing for bankruptcy. And if you are considering filing for bankruptcy, you have been facing some difficult financial decisions in your life. Bankruptcy may be the solution to your financial problems—or it may not be. That is why the first step in the bankruptcy process is to educate yourself about your options. And you do have options.

Regardless of why you are in your current financial situation, there is a path back to financial security. Remember: you are not your debt. This booklet is designed to give you supplemental material to the course you recently completed. It will provide you information and resources so you can emerge from your current financial situation stronger and better equipped to deal with your finances. Though all of the material here may not apply to you, my hope is that much of it will, and that you will use it to make the best choices for your situation and your goals.

I wish you and your family the very best.

Good luck,

A handwritten signature in cursive script that reads "Mitchell Allen". The signature is written in black ink and has a long, horizontal flourish extending to the right.



# INTRODUCTION

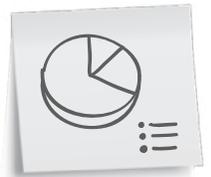
Debt Education and Certification Foundation, or DECAF for short, is an Executive Office of the United States Trustees (EOUST) approved\* provider of pre-bankruptcy credit-counseling courses and post-bankruptcy personal financial courses. DECAF is not a law firm and offers no legal advice. Please consult with an attorney if you have any questions about filing bankruptcy or bankruptcy alternatives.

The unpleasant fact is that a number of factors—some of which you may have been able to control and some of which you probably couldn't—have landed you in the middle of serious money problems. Perhaps you are a small contractor who lost a key client to competition or unexpected government regulation; or maybe you worked for the same corporation for twenty years and have watched helplessly as tough economic times hammered the value of your stock or destroyed your pension; or maybe you've lost your job and haven't been able to find work for months; or maybe you didn't have health insurance, were in a serious accident, and now have medical bills that you have no hope of being able to pay. Or maybe, like many Americans, you have a history of living beyond your means and your spending habits have caught up with you.

Regardless of the reasons behind your financial troubles, you should know that you are not alone. More than 70 percent of Americans live from paycheck to paycheck.

A survey we recently conducted emphasizes the complexity of the causes of financial problems. Those we surveyed about why they were considering bankruptcy gave the following reasons for their money problems:

**More than  
70 percent of  
Americans  
live from  
paycheck  
to paycheck.**



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\* Approval does not endorse or assure the quality of a provider's services.

## 2 *Debt Education and Certification Foundation*

- Unexpected expenses—77 percent
- Unemployment or business loss—70 percent
- Unnecessary spending—50 percent
- Illness or injury—38 percent
- Divorce, separation, or death of a loved one—29 percent
- Addictions (including gambling) and other reasons—7 percent

You may notice that these percentages add up to more than 100 percent. Many people cite multiple factors contributing to their financial problems. Money stress—sometimes caused by job loss or problems with a business—often leads to marital problems or can cause a person to develop dependency on drugs or alcohol. No matter how you analyze it, money problems are often complex and can involve multiple factors. Let's take a more detailed look at the causes cited.

- Unexpected expenses or straight up “bad luck” afflict a surprising number of people. We can mitigate some of these causes of financial trouble by educating ourselves on financial matters, but sometimes events are out of our control and we just have to roll with the punches, as when two family vehicles die in one month.
- Job loss or other reduction of income, especially in a weak economy where new or extra work is difficult to find, quickly creates financial shortfalls. And most people in America either don't or aren't able to follow the standard financial advice that says we should all have three to six months' worth of expenses in savings to fall back on when this happens.
- Unnecessary spending, poor financial decisions, and bad spending habits can be a result of a lack of discipline or an inattention to one's financial situation. Many people engage in these activities to fill emotional voids in their lives.
- Serious medical problems, even when covered by insurance, can drain savings and income and lead to large debt balances. And if you've lost your job, you may have also lost your health insurance or your ability to

pay for health insurance. At the same time, poor health compromises earning ability, either because of disability or because of extended leave during treatment.

- Divorce or death of a wage-earning spouse often reduces available household income by at least 50 percent, but usually only reduces expenses by around 20 percent. If a family with a high amount of debt and/or very little savings suffers a divorce or separation, financial problems, including the outright loss of home and other important property, usually aren't far behind. Furthermore, these events—especially divorce—can force someone into the workforce without adequate preparation or skills. And if a spouse has died and did not have adequate life insurance, even the cost of the funeral can send a family into financial turmoil.
- Addictions (including gambling) can quickly erode years of savings and even more quickly result in unemployment.

Sometimes, financial trouble is like the elephant in the room: it's crowding out everything else in your life, but it's the last thing you want to talk about. You don't even want to admit that it exists. But you need to remember the old saying about the way to eat an elephant: "one bite at a time."

No matter how bad things are for you right now, don't lose heart. You are not your debt! Whether you got into financial trouble because of poor decisions and bad financial management, or whether you were thrust into it because of circumstances beyond your control, your self-worth as a person should not be measured by your past-due balances or your lack of sufficient income. Once you know the various courses of action available to you, you'll be more able to focus on a plan for your future rather than simply worrying about things you seem helpless to do anything about.

**You  
are not  
your  
debt!**



This booklet will help you learn how to go from being a passive, avoidant victim of debt to being a proactive, confident debt survivor.

And that is a great feeling.

# FIRST STEPS TO FIXING THE PROBLEM

When you're sick and you go to the doctor's office, the first thing he or she asks is usually something like, "So, what seems to be the problem?" You then describe your symptoms so the doctor can figure out what treatment to recommend.

Debt trouble is a lot like being sick. The problem is, many people can't or won't admit to themselves that they have this particular illness until they're already in the financial equivalent of critical condition. What could have been handled in the early stages with a few simple preventative measures now requires admission to the financial ICU.

Eventually, of course, debt trouble will reach the point where it can no longer be ignored. And that probably describes your situation. You are in financial stress: getting increasingly stern warnings from creditors in the mail; receiving creditor calls; maybe facing the loss of your car, your home, your business, or other assets. So you have been forced to admit that you have a serious problem.

To get out of the trouble you are in, you have to realize that *you* are responsible for taking action to improve your situation.

You are reading this booklet, which means that you are already headed down that path.



**You have  
to realize  
that *you* are  
responsible  
for taking  
action to improve your  
situation.**

If you're bleeding to death financially, the first thing you need to do is apply a tourniquet so that you can buy enough time to address the underlying issues that got you into trouble in the first place. You may have already taken some critical actions to address the problems

discussed below, but let's explore some of the first steps you can take to improve your situation right away.

## DELAYING FORECLOSURE

For most of us, losing our home to the bank is probably the thing we fear most, and with good reason. Our homes are usually the single largest and most valuable asset we have, and they provide an essential need: shelter. If you've reached the point where your mortgagor is threatening or has initiated foreclosure proceedings, that's the first thing you must address.

Communication is your most useful tool as you work your way out of debt. Now is the time to begin using it.

Call your mortgage lender and tell them about your circumstances. Tell your lender, who *does not want* to foreclose on your home, about the problems that are leading to nonpayment. If you are honest and forthcoming in your explanation, your lender will almost always work with you on a reasonable plan to help you get current. Foreclosure is expensive and time-consuming—for both parties involved.

The important thing to remember is that your lender wants to hear from you. A lender's favorite form of communication is a full payment received on time, but if that is impossible for you, by all means, communicate this in some fashion. A call from you asking for additional time to work things out is vastly preferable, from your lender's perspective, to no communication at all.

For more information on what you can legitimately do to delay foreclosure, read the report by the Federal Trade Commission called "Mortgage Payments Sending You Reeling? Here's What to Do," available at [www.ftc.gov](http://www.ftc.gov) (just type "mortgage reeling" into the search box).

Most people don't realize that filing for bankruptcy protection may stop or stall foreclosure.

**Communication is your most useful tool as you work your way out of debt. Now is the time to begin using it.**





### **CAUTION:** *Avoid Foreclosure Scams*

Don't allow your panic over possible foreclosure to stampede you into responding to one of the many scams that promise to halt foreclosure. These fraudulent schemes may promise to save your home, even offering a money-back guarantee. The problem is, by the time you realize they aren't going to do what they promised, your money—and, sometimes, what is left of your equity—has vanished. The Federal Trade Commission has more information on avoiding scams. Go to [www.ftc.gov](http://www.ftc.gov) and type “foreclosure scam” into the search box to find the publication “Foreclosure Rescue Scams: Another Potential Stress for Homeowners in Distress.”

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## STALLING REPOSSESSION

Following closely behind our homes in importance are our automobiles. Usually, car payments are second only to house payments in our chart of monthly expenses. If your lender is taking steps to repossess your car, there are some things you can do to give yourself a little more time as you form a plan for getting out of debt. Here again, communication is at the top of the list.

Although repossession of a vehicle is easier for a lender than foreclosure on a mortgage, it is still a costly process that the lender would much rather avoid if it thinks there is a reasonable alternative.

Call your lender and explain your situation. If you can send them even a partial

payment, let them know that. If you've fallen on hard times, give them specific information, especially if you think you'll be in a better position in the future. If you agree to send a payment or even something as simple as calling back in three days to give them an update, *follow through*.

**Repossession is a costly process that the lender would much rather avoid if it thinks there is a reasonable alternative.**



Again, filing for bankruptcy protection may stop or stall the repossession process.

## **DEALING WITH CREDITOR CALLS AND MAIL**

Creditor calls are no joke, especially if those creditors are contacting you during working hours. Fortunately, recent laws governing debt collection have greatly improved debtors' ability to protect themselves from harassing or threatening calls from creditors.

### **Asking Creditors to Stop Calling You at Work**

If you're fortunate enough to be gainfully employed, the last things you need are the distraction of stressful calls and the potential embarrassment and/or disfavor with your employer they can cause.

Asking creditors to stop calling you during working hours sounds ridiculously simple—and it is—but many people just don't realize that they have this right. The law states that creditors may not communicate with consumers "at any time or place which is unusual or known to be inconvenient to the consumer" or if the debt collector "has reason to know the employer forbids such communication" ([www.ftc.gov](http://www.ftc.gov)). The next time a creditor calls you at your place of employment, simply say something like this:

I must ask you to stop calling me at this number during working hours. I am not trying to avoid this debt, but you are potentially jeopardizing my employment. Please do not call me at this number from the hours of [give your working hours] again.

Be courteous but firm. If the calls continue, document the fact in writing; it may give you grounds for filing a formal complaint with the FTC.

Times within the hours of 8:00 a.m. to 9:00 p.m. are presumed to be convenient unless you can prove otherwise. If you work during this time frame, these hours may not be convenient for you. However, you should exercise caution in

pushing too hard on this point; creditors who feel they have no other recourse to communicate with a debtor may file a lawsuit, which provides specific means for communication between the parties.

## **Write a Cease-and-desist Letter**

Another way to get creditors to stop contacting you is to send them a letter. Again, this sounds like an obvious course of action, but many people are so intimidated by their situation that they never think of simply sending a written demand to cease contact.

Here again, the laws governing debt collection provide that creditors who are in receipt of a properly worded cease-and-desist letter must stop contacting you except for in the specific instances allowed by the law, which are

1. to inform you that they have ceased efforts to collect the debt;
2. to inform you that they may invoke “specified remedies” (which sometimes means a lawsuit); or
3. to inform you that they intend to invoke “a specified remedy” ([www.ftc.gov/os/statutes/fdcpa/commentary.htm#805](http://www.ftc.gov/os/statutes/fdcpa/commentary.htm#805); accessed 4/5/2010).

What this means to you is that you should probably tread carefully in the area of sending a cease-and-desist letter. Why? Because for some creditors, receiving a letter from you forbidding them to contact you anymore—even though it is your legal right to send such a letter—may cause the creditor to conclude that it’s in their best interest to utilize their legal right to bring a suit for collection of the debt. As you can probably figure out, this is a situation you want to avoid if at all possible. Before sending such a letter, you may want to consult an attorney so that you understand the potential consequences.

If you’re one of the many debtors who have tried to avoid looking at those demand letters you’ve been getting, start opening and reading your mail. No matter what course of action you eventually decide to pursue on your way to regaining financial health, you have to know where you are before you can figure out where you need to go.

One of the most important tools you have at your disposal in this task is communication—not only with your creditors but also with family members and other involved parties.

Maintaining lines of communication with your creditors is especially important if you decide to work directly with your creditors to satisfy the debt. Creditors are much more willing to give the benefit of the doubt to consumers who are honest, forthcoming, and respectful in their communications, whether by phone or by mail. Collection agents spend the majority of their time trying in vain to establish contact with debtors. By returning their calls and answering their written communications, you immediately place yourself on a different—and better—list than debtors who are uncommunicative or who otherwise give the appearance of trying to avoid making good on their obligations.

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## GETTING COLLECTORS TO WORK WITH YOU



A collector's job is to convince you to send money; if you could have done that, you wouldn't be behind in the first place. However, there are things you can do and say that will encourage your creditor to be more patient with you as you work on a plan for repayment. Chief among these are

- honest acknowledgment of your responsibility for the debt,
- being forthcoming with information about your financial circumstances and ability to repay the debt,
- maintaining a respectful tone, and
- following through on anything you agree to do, including subsequent communications.

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The last thing you may feel like doing is sending a follow-up letter to a creditor or taking a phone call from a collector, but sometimes a bit of time spent in communication with the creditor can pave the way to an easier path out of debt. It can also sometimes help keep you out of a lawsuit.

# CONSUMER PROTECTION

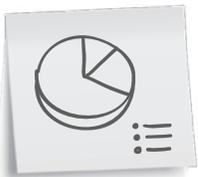
Let's take a look at some of the laws surrounding consumer debt, including three major consumer protection acts for the credit industry: the Fair Credit Reporting Act, the Fair Debt Collection Practices Act, and the Fair Credit Billing Act.

## THE FAIR CREDIT REPORTING ACT

Your credit rating is based on almost everything that is knowable about your financial history. This information is collected by lenders and prospective lenders from the entries you make on loan applications, records of credit card transactions, and monthly payment information. The data are forwarded by your creditors to one or more of the three main credit bureaus in the United States: TransUnion, Experian, and Equifax.

These companies maintain huge databases of information on consumers. They evaluate the sum total of your transactions and assign a credit score—both a “report card” on how well you meet your present obligations and a prediction of how well you’ll meet them in the future. FICO credit scores—which stands for “Fair Isaac Corporation,” the company that developed the first credit scoring system—can range all the way from 300 (the worst) to a “perfect” score of 850; a score of 700 or higher usually indicates good credit, and a score of 600 or

less generally makes loan officers look for a way to end the meeting. The practical difference your credit score makes is that the higher your score, the lower your interest rate will be on loans. Lenders compensate themselves for the higher risk of loaning to people with poor credit histories by charging premium interest rates.



**Data are forwarded by your creditors to the three main credit bureaus in the United States: TransUnion, Experian, and Equifax.**

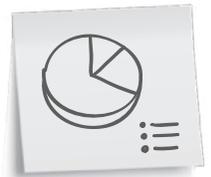
Congress passed the Fair Credit Reporting Act (FCRA) in 1970 to “ensure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer’s right to privacy” (www.ftc.gov). The FCRA guarantees the following rights:

- The right to know what is on your credit report
- The right to be informed if someone uses information in your credit report as a basis for adverse actions or decisions
- The right to receive your credit score
- The right to dispute incomplete or inaccurate information and have it removed from your credit report
- The right to have your credit information revealed only to parties with a valid need to see it
- The right to control access to your credit information
- The right to seek damages for violation of your rights under the FCRA

Knowing and verifying the accuracy of your credit report information is especially important because a certain percentage of all credit reports contain some inaccurate or incomplete information.

The FCRA, through amendments to the original act, guarantees you the right to receive a free credit report once a year from each of the major credit reporting agencies; you should take advantage of this right to review your report. If you believe that your report contains erroneous entries, circle the entries, attach documentation that supports your claims, and send everything with a letter that explains your request to the credit reporting agency. They must investigate your claims within thirty days, unless they believe your claims are frivolous.

**A certain percentage of all credit reports contain some inaccurate or incomplete information.**



## **THE FAIR DEBT COLLECTION PRACTICES ACT**

Congress passed the Fair Debt Collection Practices Act (FDCPA) in 1978 to regulate the debt collection industry and to eliminate abusive practices that collectors might employ against consumers when attempting to collect debts. The FDCPA sets strict limits on what creditors or third-party collectors may do or say in their attempts to convince you to send money:

- Creditors and collectors must treat you fairly and respectfully.
- You may limit the times and ways in which you may be contacted about your debts.
- You must be informed about the debt and the fact that it is legitimately owed by you.
- Creditors and collectors may not use harassing, abusive, or threatening means or false representations to collect debts.
- You may seek damages against any creditor or collector who violates your rights as guaranteed by the provisions of the FDCPA.

Take notes on any conversations you have with a collector. This could come in handy later, especially if you're unfortunate enough to be contacted by one of those collection thugs the FDCPA was designed to protect you from.

## **THE FAIR CREDIT BILLING ACT**

Many consumers don't really look closely at their credit card statements, other than to check the payment due date and amount. You should get in the habit of reviewing your monthly statements to verify that the charges making up your balance are, in fact, charges you've incurred or authorized.

The Fair Credit Billing Act (FCBA) is an amendment to the Truth in Lending Act that provides specific rights and procedures for customers who believe they are being incorrectly charged by a credit card company or other revolving credit agreement, such as a department store charge card. Here are the types of charges covered by the act, according to the FTC website:

- Unauthorized charges (your liability is limited to \$50)
- Charges listing the wrong date or amount
- Charges for goods or services you didn't accept or that weren't delivered as agreed
- Mathematical billing errors
- Failure to post payments and other credits, such as returns
- Failure to send bills to your current address (the creditor must receive your change of address in writing at least twenty days before the billing period ends)
- Charges for which you request an explanation or written proof of purchase along with a claimed error or request for clarification

You must send a written notice—including your account number, name, and address—to the “Billing Inquiries” address on your statement (not necessarily the payments address) that explains what you believe the error is. It must be received by your creditor within sixty days of your receipt of the statement showing the error. Usually, it's best to send such communications via certified mail with a return receipt requested, so that you can prove when the creditor received it.

The creditor has thirty days to send you written acknowledgment of your complaint, and it must resolve the complaint within two billing cycles (but no more than ninety days) after receiving your communication. While the charge is in dispute, you may withhold payment on the item in question. Your credit rating or credit report cannot be affected in any way by the disputed item or amount during this time. The creditor may report the matter to a credit bureau, but it must also report that you are disputing the item or amount.

If you are correct in your claim, your creditor must send you a written explanation of the corrections and adjustments that will be made to your account. If any late fees or finance charges have accrued because of the item, your creditor must remove them. If, however, your claim is determined to be invalid, you must receive prompt written notice of how much you owe and why. You may also owe finance charges that have accrued while the matter was being investigated.

# TAKING STOCK

If you are in serious financial trouble and are seeking outside help or are considering bankruptcy, it's extremely important for you to know exactly what your resources are—your assets, your liabilities, your sources of income, and your essential expenses.

Not knowing your available resources or having an accurate picture of your liabilities may be what got you into money trouble in the first place. You're in a tight spot; don't make it worse by continuing the same behaviors that got you there.

## MONTHLY CASH FLOW STATEMENT

The month is most likely your basic unit of financial time. You probably get paid once or twice a month, and your bills come due once a month. Therefore, the logical place to start assessing your situation is to find out what you've got coming in and going out each month. For that, you need a monthly cash flow statement, which shows income minus expenses.

A sample monthly cash flow statement is shown on page 16. To prepare one for yourself, you will need to gather information about your income and expenses.

### **Income**

Find a copy, either paper or online, of your most recent paycheck. Write down your monthly net pay, the amount you actually deposit in your account on payday after all deductions. Note, however, that if you have payments being payroll-deducted for things like car payments, personal loans, or other payments on obligations, you'll need to add these amounts back into your monthly net pay; we'll deduct those amounts later, when we look at your monthly expenses.

If you are self-employed, start by writing down your gross pay—the amount of your income before any deductions. Then subtract the necessary deductions: Social Security, pension, payroll taxes, Medicare, and insurance are the most common ones. You should be deducting each month for the estimated income tax payments you're supposed to be sending in each quarter. After you've totaled all the deductions, subtract that amount from your gross pay; the result is your monthly net income.

If your spouse works, follow the procedure described above to list your spouse's income.

Next, list any other sources of monthly income, such as rental payments, alimony, child support, retirement benefits, etc. Add these amounts to your list of income.

## **Expenses**

Get out your checkbook or look at your record of online payments. For expenses that vary from month to month, such as utility payments or clothing, you may need to review the last several months and get an average amount for budgeting purposes. List amounts for the categories shown: rent or mortgage; utilities, including electricity/gas, telephone (cellular and/or landline), cable/Internet fees, and water; food; clothing; medical; transportation, including car payments, if any, gasoline, maintenance, or other commuting costs such as taxis, trains, buses, or other mass transit; recreation/entertainment; and charitable contributions.

Next, enter amounts for life, medical, auto, home, renter's, or other insurance payments you make each month. In a separate category, enter alimony or child support payments you are required to make. Write down any payments you're making on other debt (credit cards, merchant charge accounts, other installment payments). Finally, list any other taxes or fees you are required to pay (if some of them are paid other than monthly, divide the annual amount by 12 and enter the result).

**Monthly Cash Flow Statement****INCOME**

Monthly gross income		\$ _____
Payroll taxes	\$ _____	
Social Security	\$ _____	
Medicare	\$ _____	
Insurance	\$ _____	
Union dues	\$ _____	
Retirement	\$ _____	
Other deductions	\$ _____	
Monthly net income (gross pay minus deductions)		\$ _____
Other income	\$ _____	
Other income	\$ _____	
Total monthly income		\$ _____

**EXPENSES**

Rent or mortgage	\$ _____
Electricity	\$ _____
Gas	\$ _____
Telephone (cellular and/or landline)	\$ _____
Cable	\$ _____
Internet	\$ _____
Water	\$ _____
Food	\$ _____
Clothing	\$ _____
Medical	\$ _____
Car payments	\$ _____
Car maintenance	\$ _____
Gas	\$ _____
Other commuting costs (train, bus, etc.)	\$ _____
Recreation/entertainment	\$ _____
Charitable contributions	\$ _____
Life insurance	\$ _____
Medical insurance	\$ _____
Auto insurance	\$ _____
Home or renter's insurance	\$ _____
Other insurance	\$ _____
Alimony	\$ _____
Child support	\$ _____
Total monthly expenses	\$ _____
Bottom line (subtract expenses from income)	\$ _____

## The Bottom Line

Total your income and total your expenses, and then subtract your expenses from your income. The result should be a positive number. If not, you are in a negative cash flow situation. That is, you are spending more than you make. While this situation may be manageable in the short term, it is impossible to continue this indefinitely. And the obvious but perhaps difficult answer is that income must increase or expenses must decrease.

Now that you've created a monthly cash flow statement it's time to take a closer look at your debts. In the cash flow statement you noted what is probably your two most important debt payments—mortgage and car payments. But it's possible that you have other debt payments, such as credit cards, student loans, bank loans, signature loans, or medical bills. And while just paying monthly expenses with monthly income results in positive cash flow, once you add in managing debt payments the cash flow situation becomes tougher. So, let's take a look at types of debt and then some options you have for dealing with them.

## TYPES OF DEBT

Almost all consumer debt can be classified as either secured or unsecured. A secured debt is one that is backed by collateral—a home or other real estate, or a vehicle, for example. Unsecured debt is backed only by the consumer's creditworthiness and promise to pay. This is the category that almost all consumer debt other than mortgages or vehicle loans falls into.

Let's start by looking at the main types of secured debt held by most consumers, and what the issuers of that debt can do in the event of nonpayment.

### Secured Debt

For individuals, secured debt represents the most critical obligations—those that must be satisfied before all others. At the top of the list is your mortgage. Because it is collateralized by your home, if you fail to meet this obligation, the mortgage lender has the legal right to take back possession of your house, forcing you to live somewhere else.

Fortunately for homeowners, strict laws govern foreclosure on home loans, and the process by which a bank may repossess a home for nonpayment of a mortgage obligation is carefully regulated by the states. Currently, no state allows a foreclosure in less than one month, and some states mandate a minimum time period of as much as seven months for foreclosure. Laws vary, of course, and are subject to change, so these are general guidelines only.

A second lien against your home (often called a “home equity loan”) also represents a secured loan, though it ranks below your primary mortgage in priority. The holder of the second lien, like the primary mortgagor, has a legal interest in your home that can be satisfied once the primary mortgage holder is taken care of. Many people, in response to the active marketing programs by banks, have taken second liens against their homes, not fully realizing that they are giving someone else in addition to their original mortgage lender the right to take possession of their residence in the event of inability to pay.

Your car loan is also a secured loan because it is collateralized by your vehicle. If you get far enough behind in your payments, the bank or other lender can and will repossess your vehicle. You will typically receive a written warning—though many states don’t require this of lenders—and, sometimes, a follow-up call. One or both of these notices may advise you of a grace period that the lender may extend, during which you have the opportunity to bring your account current and avoid repossession.

Depending on the terms of the loan and the laws governing repossession in your state, the lender may be entitled to repossess the car at any time of the day or night and may use any means to do so, as long as the repossessing agent does not commit a “breach of the peace” by using force, or threats of force, or by break-

ing into a locked building. Once the car has been repossessed, typically the only way you can get it back is by making all past-due payments and also paying fees and costs incurred for the repossession—and these can be quite hefty. If you don’t pay all the fees and back payments by a certain time period, the car will be sold at auction.



**Prioritize  
your debt:  
Secured debt  
represents  
the most  
critical obligations—those  
that must be satisfied before  
all others.**

As a practical matter, most reputable vehicle lenders don't want to take away your car any more than you want to lose it. A car, unlike a home, is a rapidly depreciating asset; as soon as you drive it off the dealer's lot, it's worth much less than you just paid for it. For that reason, vehicle lenders much prefer that you keep your car and make the payments on the loan, as scheduled. They get full value for the car—plus a generous amount of interest—and you have ready transportation to work, school, the grocery store, or the soccer field.

### Not Secured, but Almost

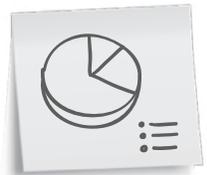
Obligations such as back taxes and student loans are not technically secured obligations, but because they are issued by or owed to agencies of government with the authority to levy and collect taxes, you can almost place them in the same priority as secured loans. The IRS, for example, has the authority to garnish your wages—to collect a portion of each paycheck before it even hits your desk—in order to satisfy unpaid taxes. They can place liens on your property, repossess your vehicle, and require you to sell assets in order to pay obligations owed them. Student loans, which are usually backed by federal guarantees, are another form of debt that, although not strictly secured in the legal sense, would be close to the last type of debt on which you'd want to default. Consult with your attorney, but even bankruptcy cannot usually relieve you of the responsibility for student loans.

Court-ordered child support and alimony payments, though not really a form of debt at all, are another obligation that should be near the top of your “must-pay” category. In most states, failure to pay child support or alimony makes you subject to prosecution, garnishment of wages, property liens, and other unpleasant consequences, including jail time.

### Unsecured Debt

The leading form of unsecured personal debt is credit cards. At roughly a trillion dollars and growing, credit card debt makes up almost 40 percent of all consumer credit in the United States, according to a Federal Reserve report

**Credit card debt grew from nearly \$800 billion in 2003 to \$976 billion in late 2008.**



issued December 5, 2008. The rapid growth of credit card debt is staggering: It grew from nearly \$800 billion in 2003 to \$976 billion in late 2008.

Remember all those “pre-qualified” and “zero-interest” offers you got in the mail? That’s because the banks that issue credit cards decided they could make more money by doing minimal underwriting—determining how qualified potential borrowers were—and at the same time issuing thousands of cards, hoping that most of the people who got them would use them and keep them current. Unfortunately, as you know, things don’t always work out as planned, either for the banks or the consumer.

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## **MAKE YOUR PAYMENTS ON TIME OR BEAR THE CONSEQUENCES!**



If you make a late payment or miss a payment, most credit card agreements give the issuer the right to raise your interest rate from that temptingly low introductory rate up to rates sometimes in excess of 25 percent! So, you can see how once you start to get behind on credit card payments, things can get out of control.

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In order to collect on debt that has fallen behind, the credit card companies have collection departments whose sole job is to call people who have late payments or who have stopped making payments and try to convince them to send in money. Eventually, if the debt isn’t brought current, the bank’s accounting rules require them to charge off the debt. But that doesn’t mean they’ve completely abandoned efforts to get you to pay.

Often, credit card companies will assign charged-off accounts to independent collection companies who, for a fee (sometimes as much as 50 percent of the amount collected), will continue calling you and may even bring a lawsuit against you to force payment of the debt. Because credit card debt is unsecured, the lender has no contractual recourse to any of your property in order to satisfy the debt. However, if the company sues you and is successful in obtaining a legal judgment against you, the terms of the judgment can entitle the creditor to cer-

tain of your assets in satisfaction of the debt. Some states exempt certain types of assets, or assets up to a certain value, from the claims of unsecured creditors. Laws vary significantly by state, so this is an area where you should consult with a qualified attorney to determine exactly what an unsecured creditor can and cannot take if the creditor wins a court judgment against you.

Unsecured debt, though it comes with legally enforceable remedies for non-payment, should not be prioritized ahead of secured debt, in most cases. In other words, credit card debt should not be ignored, but neither should it become more important to you than taking care of your mortgage and other secured debt. If you have to cut back or delay a payment, you should make every attempt to do it somewhere other than on your secured debt, since this debt is typically backed by your most important possessions.

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## PRIORITIZE YOUR DEBTS



1. Secured debts that could result in the loss of your home or vehicle should be priority number one.
  2. Debts that aren't secured but are "must pay," such as child support, taxes, and student loans, should be priority number two.
  3. Unsecured debts that are likely to appear on your credit report, such as credit cards, should be priority number three.
  4. Unsecured debts that are less likely to go to collection, such as bills from doctors, should be priority number four.
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As you can probably tell by now, the type of debt making up your liabilities also makes a big difference in how you approach getting out of financial trouble. There are things that a mortgage holder can do to satisfy a debt that a credit card lender cannot. There are things that a student loan lender can do that a signature loan lender cannot.

Likewise, there are steps you, as a debtor, can take with certain types of debt that are impossible with others. Let's examine your options.

# YOUR SITUATION, YOUR STRATEGY

You basically have four options for getting out of debt and back on even keel:

1. Handle the debt on your own by negotiating with your creditors directly, raising money to pay off debts, and developing a debt payoff strategy.
2. Seek credit counseling or follow a debt management plan.
3. Use debt settlement.
4. File for bankruptcy.

Let's explore each of these options so that you can determine your best path.

## **HANDLE THE DEBT ON YOUR OWN**

After a review of your situation, maybe you've concluded that your best course of action is to handle everything yourself. That's a perfectly good decision, especially if you're not facing imminent legal action. However, if you've been notified that a lender is beginning foreclosure of your home, or if an attorney has sent you a letter notifying you of a pending suit, you would be well advised to speak to an attorney.

When you handle debt on your own you are responsible for negotiating (or settling) with your creditors; obtaining the funds to pay off the debt; and then figuring out how to use the cash you have in a smart payoff plan.

### **Negotiating with Your Creditors**

If you're going to work things out with your creditors, you have to talk to them, which means you have to answer the phone or take the initiative and call them.

Speaking respectfully and honestly with a creditor automatically encourages them to place you in a different category from the dozens of accounts they're working. See "Getting Collectors to Work with You" on page 9 of this booklet.

The creditor may offer some sort of hardship plan. If they don't offer, ask about their hardship plans or plans where you could pay back at least part of the balance over a longer term. Many banks have a "loss mitigation department" that exists for the sole purpose of figuring out ways for people who have fallen behind on their mortgages or loans to get caught up and resume making regular payments. Among the tools mortgage lenders specifically have at their disposal are

**If they don't offer, ask if they have any sort of hardship repayment plan available.**



- Temporary forbearance—a period of time during which reduced or no payments are made
- Reinstatement—often used in combination with forbearance, in which a borrower is allowed to pay the delinquent amount in a lump sum at a future date
- Repayment—a period of time during which the borrower is allowed to pay portions of the past-due amount along with regular payments, gradually becoming current
- Loan modification—actually rewriting the loan contract and changing its terms to make it easier for the borrower to get and remain current (e.g., extending the term of the loan to reduce payments, moving missed payments to the end of the loan, and changing an adjustable-rate mortgage to a fixed rate).

If student loans are a part of your financial difficulties, depending on the specific type of loan you have and when you obtained it, you may qualify for temporary deferment of payments because of unemployment or financial hardship ([studentaid.ed.gov](http://studentaid.ed.gov)). With certain types of student loans, however, interest

continues to accrue during the deferment period; you must check the provisions of your specific loan contract to be certain.

While you have various negotiation options, you can also attempt to settle the debt, sometimes for less than the amount due. You may want to work with a professional debt settlement organization (discussed later) if you go this route.

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## **BASIC STEPS FOR WORKING WITH CREDITORS**



1. Acknowledge the debt.
2. Explain exactly why you can't pay the debt right now.
3. Ask for help—reduction in interest rates, expanded payment dates, even reducing the balance or principal.
4. Document communications.
5. Follow through with what you say you are going to do.

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But, of course, if you are going to negotiate or even settle with creditors, you will have to have a way to make payments—you have to find the cash.

### **Making More, Spending Less**

To find the cash to pay off your creditors, you should first try to make more and spend less, freeing up as much cash as possible to go toward getting out of debt. There may be ways of generating extra income that you haven't considered, such as the following:

- Ask for more hours at your current job or work overtime, if possible.
- Ask for a raise if you are in good standing at work.
- Take a part-time job for a while.
- If there is a stay-at-home adult in your household, consider having that person enter the workforce so that you have a second income.
- Sell items you don't need or use.

And there are many ways to reduce expenses, although it requires taking a hard look at your lifestyle and making choices about your priorities. Here are some ideas to consider:

- Downsize your home.
- Downsize your vehicle.
- Consider thrift and resale stores or discount stores for purchases.
- Rent movies or check them out from the public library.
- Brown bag it for lunch rather than buying lunch out.

## WANTS VERSUS NEEDS

Here's an important point: most cost-saving measures involve carefully analyzing needs versus wants. When we exercise careful discretion and are honest with ourselves, our wants are almost always much greater than our needs. If you are in financial trouble, one of the reasons may be a difficulty in distinguishing between the two. You must learn to discipline yourself to take care of the needs first and defer the wants until there is money available to satisfy them.



### *A Realistic Look at Your Housing Costs*

If your mortgage is absorbing more than 29 percent of your monthly income, then according to the Federal Housing Administration you may be “house poor,” a fairly common situation for many people who find themselves in financial trouble. You need to take a serious look at what you're paying versus what you can afford. Whereas providing shelter for yourself and your family is definitely a basic need, you may actually be satisfying a want—and at this point, you may not be able to continue to indulge in that choice.

## Borrowing from Friends and Family

If you have family and friends with the financial means to help you solve your problem, get past any embarrassment you may have and simply have an honest

conversation with them about your situation. Ask them if they can help. If they can't, they'll tell you, and that's that. If you do decide to try to get a loan from family or friends, it may help to carefully calculate when and how quickly you'll be able to repay the loan, once your situation has improved. If you clearly and honestly communicate a realistic scenario and then follow through on your promises, there's no reason why your temporary difficulties should cause long-term damage to your relationships.

## **Borrow Against or Sell Assets**

Borrowing against or selling your assets will help you pay off all or a portion of your debt, though some approaches mean jeopardizing collateral by turning unsecured debt into secured debt. Following are some examples:

- **Home Equity Loan:** With a home equity loan, your mortgage is either rewritten with new terms or a second mortgage is established. These types of loans can be a source of low-interest funds to get rid of debts with punitive interest rates. However, when you use home equity to pay off unsecured debt, you are reducing the value of your asset and getting nothing in return. You still have the debt, and now somebody could potentially take your home if you cannot pay. Please consult a financial advisor or attorney if you are considering this route.
- **Consolidation Loan:** Debt consolidation loans work by taking out a loan secured by your home equity or other assets, then using the proceeds to pay off high-interest loans. Because the consolidation loan is secured debt, you generally get lower interest rates and longer repayment schedules. But you may be risking your most valuable assets by going this route, and you should consult a financial advisor.
- **Liquidate assets:** Apportioning and selling off your assets toward relieving some of your debt will help bring down the amount you owe. However, not only will you lose the asset, you are also unlikely to receive fair market value under liquidation.

## Developing a Payoff Plan: Make the Most of Your Cash

If you can raise money to pay your creditors, you have to decide who you should pay off first. There are a couple of main schools of thought on the best strategy to use for paying off debt.

- **Snowball Payoff Plan.** The idea here is to pay the minimum on all debts; then with any extra money you have begin paying off debts with the smallest balances. As soon as one debt is paid off, you add the amount you've been paying on that obligation to the next smallest, and so on. The advantage is that you develop momentum and motivation by quickly seeing the number of your creditors dwindle while seeing the amounts you're paying against your debt steadily increase.
- **Highest-Interest-First Payoff Plan.** With this strategy, you prioritize your debt for payoff by the rate of interest being charged by the creditor. Whichever debt has the highest interest rate gets the most money each month until it is paid off. Then, you add that payment amount to the debt with the next-highest interest rate, and so on. The benefits here are that you aren't wasting so much money over time on interest payments, reducing the overall amount that you will pay to get rid of your debt.
- **Hybrid Payoff Plan.** Some personal finance writers advocate a third method that is a sort of hybrid of the two above. With this method, you calculate which of your debts has the lowest ratio of monthly minimum payment to debt balance and focus your energies there. Often, this method works out very similarly to the snowball strategy.

You may have found some hope in the description of working with creditors on your own. But many people try these techniques and still are not able to make the payments necessary to work their way out of debt. Or the process of working with creditors becomes so overwhelming that they feel they need help. For those people, credit counseling and debt settlement agencies can be good options.

## CREDIT COUNSELING

The National Foundation for Credit Counseling (NFCC) and the Association of Independent Consumer Credit Counseling Agencies (AICCCA) are the two industry trade groups that accredit credit counseling agencies. The principal objective of most credit counseling firms is to enroll you in a debt management plan (DMP) that will eventually result in full repayment of your debt. So what's the advantage to the consumer? There are actually a few:

- When you enroll in a DMP with a credit counseling agency, the collection calls will stop. The agency will contact your lenders to inform them that you are enrolled in a DMP and are in the process of satisfying your debt.
- Once you begin making timely payments on your DMP, your past-due accounts will often be “re-aged,” which means that the lender agrees to remove late payment notations from your credit record, and you'll end the process with a cleaner credit report.
- The fact of your credit counseling will be on your report (a negative), but it will also show your completion of the DMP (a positive).
- You gain the simplicity of a single monthly payment (paid to the agency), and the payment is often

less than the sum of your former payments. The credit counseling company essentially works with the banks issuing the credit, so lenders will accept lower payments from consumers who are enrolled in a DMP.

- Credit counseling agencies are also usually able to get your interest rates reduced.

You may be wondering, “What's the downside?” There are some details you should be aware of before working with such an organization.



**When you enroll in a DMP with a credit counseling agency, the collection calls will stop.**

- Credit counseling firms receive consumers' payments on their DMPs and forward those funds to the issuing lenders—less a portion called the “fair-share payment.” The lenders are paying the credit counseling firms a fee to collect and distribute payments from consumers.
- Credit counseling firms can collect up-front fees from consumers. Agencies affiliated with the NFCC typically charge a nominal setup fee of around \$10, but some agencies can charge significantly more.
- Nonprofit credit counselors may solicit voluntary donations from consumers who are enrolled in DMPs. Some consumers have reported difficulty in extricating themselves from these “voluntary” programs.
- A number of state and federal entities have begun investigating the practices of some nonprofit credit counseling agencies. Some have had their nonprofit status revoked. Before working with an organization, be sure to do your research and verify its reputation.

There are many good organizations that deliver the services and benefits they advertise. One way you can help yourself narrow the field down to some of the companies that are more worthy of your trust is by working only with agencies accredited by the NFCC ([www.nfcc.org](http://www.nfcc.org)) or the AICCCA ([www.aiccca.org](http://www.aiccca.org)).



## **ASK A PROSPECTIVE CREDIT COUNSELOR**

- What services do you offer?
- Are you licensed to offer your services in my state?
- Do you offer free information?
- Will I have a formal written agreement or contract?
- What are the qualifications and training of your counselors? Are they accredited or certified?
- Have other consumers been satisfied with your services?
- What are your fees? Are there monthly or setup fees?

- How are your employees paid? Are they paid more if I sign up for certain programs or services?
- How will you ensure the privacy of any information I give you?

(Source: [www.ftc.gov](http://www.ftc.gov).)

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## DEBT SETTLEMENT

In a debt settlement, you convince your creditor to accept a part of the balance as full payment. You agree to pay this amount in a lump sum at a specific point in the future. Your creditor puts its agreement with the terms in writing, you send the money at the appropriate time, and the account is considered “settled” by your creditor. Your credit report reflects a settled account with a zero balance due, though the late or missed payments will still show, in most cases. Everybody walks away with something. Debt settlement applies to unsecured creditors only—primarily, credit card companies and holders of uncollateralized loans.

When a credit card company forgives some portion of the debt you originally owed them, they may actually send you a 1099, showing the amount as income paid to you. You would need to report this on your tax return and possibly pay taxes on it. You may want to consult with your tax adviser on the potential tax consequences of any debt settlement before you agree to it.

If you have several creditors you need to settle with, things get more complicated. In this situation, you may actually need someone experienced in working with creditors who can run interference for you. This is where a dependable, professional debt settlement firm can be helpful. Unlike credit counseling firms, debt settlement companies make no pretense or claim of being nonprofit; their services are provided on a fee basis, and the fee is paid by the consumer. So you need to ask lots of questions and request lots of written confirmation from any debt settlement firm you are considering. Following are some of the most important questions you can ask:

- **How much will I pay you, and what happens to the money I send you each month?** Debt settlement firms are not geared toward 100 percent repayment, nor are they funded by banks. The money you send to a debt settlement firm goes into a trust account—not to your creditors—with the goal of accumulating funds that can be used for a lump-sum payoff of a portion of your balance that the creditor will accept as final settlement. Halting all payments to the creditors is central to the debt settlement model. As long as you are paying money in any amount to the creditor, they have little incentive to consider a partial payment as a settlement. You should insist on a debt settlement company that works with a trust account because you don't want the debt settlement company itself holding or controlling your assets. Debt settlement companies charge fees for their services.
- **Can you provide documentation of settlements you've successfully negotiated for other people in my situation?** Debt settlement firms base their appeals on their ability to settle debts for significant savings over what consumers could negotiate on their own. A reliable company should be able and willing to provide proof of its successes on behalf of other customers.
- **When will you communicate with creditors on my behalf?** Most debt settlement companies will not actually get directly involved in working with your creditors until you have enough or almost enough money in your trust account for them to make an offer of settlement. Not only that, but they will not represent you in any legal actions surrounding your debt. This means that during the time you are building up your payoff fund—a period that can easily be a year or more—you are the only one who will be communicating with your creditors.

Remember that certification or accreditation by a trade group is no guarantee that you're working with an up-front, honest firm. But at least you have some sort of umbrella organization, in addition to the Better Business Bureau or the Federal Trade Commission, to complain to in the event of problems.

## **PERSONAL BANKRUPTCY**

If you've tried to resolve your debt on your own, have worked with a credit counseling or settlement firm, or have simply become overwhelmed by your debt and aren't able to make the payments necessary to keep your head above water, you may need to consider filing for bankruptcy.

Few people are eager to file bankruptcy. This option should be considered only after you believe you have exhausted all other reasonable options. You should only file bankruptcy after speaking to an attorney who is experienced in personal bankruptcy cases similar to yours. Bankruptcy can help you get back on your feet; it can give you the fresh start you desperately need. But it is also a serious matter, with long-term implications for your ability to borrow and other aspects of your financial life. As with any other major financial decision, you should carefully weigh all the factors before opting to proceed with personal bankruptcy.

The U.S. Bankruptcy Code is divided into sections called "chapters." Each chapter is devoted to a specific aspect of the code. The two chapters of the bankruptcy code that are applicable to most individuals are Chapter 7, in which unsecured debt is discharged and in some cases assets sold and the proceeds paid out to creditors, and Chapter 13, in which a repayment plan is worked out to allow the debtor to retain assets and still satisfy creditors over time. Deciding which of these options is best for you is a choice you should make after receiving the advice of a qualified bankruptcy attorney.

Personal bankruptcy, in its simplest terms, is a court-ordered and court-protected plan to help those in financial crisis satisfy their creditors to the extent possible. It provides a way for individuals to protect themselves from repossession, foreclosure, and other legal actions that creditors might take. Under the court's approval and protection, you can work out a plan that, if approved by the court, will permit you to satisfy your creditors as much as possible and get a fresh start with your finances.

The rest of this booklet will explain the bankruptcy filing process, the pros and cons of bankruptcy, and the differences between different types of bankruptcy filings, beginning with bankruptcy myths and facts.

# BANKRUPTCY MYTHS AND FACTS

Though you might believe bankruptcy is the way for you to get out of your financial problems, if you're like most people, you may still have some serious concerns. You may be thinking, "I'll never be able to get a loan again," or "bankruptcy is for dishonest people," or "bankruptcy is the same as admitting I'm a failure." All of these are self-defeating and wrong.

If some of these thoughts are going through your head right now, join the crowd. Such negative associations exist for many people and can hold them back from giving bankruptcy the serious consideration it deserves, even though they may have few other options available. Most of the fears and beliefs people have about the effects of bankruptcy are based on incomplete information.

Let's take a look at a few of the major myths surrounding bankruptcy and shine a little factual light on them. Then we can examine the facts of bankruptcy so that you understand the benefits and consequences—what bankruptcy can do for you and what it can't—before filing.

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## RESOURCE ON BANKRUPTCY CODE



To download the entire text of the U.S. Bankruptcy Code or one of the individual forms (such as Chapter 7 or Chapter 13), go to [http://uscode.house.gov/download/title\\_11.shtml](http://uscode.house.gov/download/title_11.shtml).

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## MYTH: BANKRUPTCY IS FOR IRRESPONSIBLE PEOPLE OR LOSERS

The number one bankruptcy myth that needs to be dispelled is that bankruptcy is for irresponsible people. The purpose of bankruptcy is to give honest but

unfortunate people a chance to have their debts eliminated or reduced, and to get a fresh start. While some may have the perception that people file bankruptcy because they lived foolishly and bought lots of stuff they couldn't afford, the fact is that the majority of individuals who file for bankruptcy protection are doing so because of the financial fallout from death or divorce of a spouse, loss or reduction of income, medical bills, unexpected expenses, illness or injury, or death of a wage earner. This is their last hope to retain control of the assets most critical to their families: their homes and vehicles.

As a matter of fact, significant protections against abuse are written into the U.S. Bankruptcy Code to prevent, as far as possible, their misappropriation by greedy and dishonest people. Judges take a very dim view, for example, of people who max out all their credit cards, then file bankruptcy as a means of avoiding paying for their spending binges. Further, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 adds additional protections against what some have considered "frivolous" filings in the past, including the requirement that you must submit tax return information in order to have your petition proceed.

And if filing for bankruptcy makes you a loser, then we need to redefine what constitutes being a loser. There are many people who have filed bankruptcy and gone on to lead productive—and, in some cases, history-changing—lives. Don't think of bankruptcy as the end—think of it as a second chance.



**Bankruptcy  
protects honest  
people who have  
fallen on hard  
times.**

Just as you are not your debt, you are also not your bankruptcy. Most of the people who file for bankruptcy are doing it to give themselves a much-needed fresh start.

## **MYTH: BANKRUPTCY IS FOR PEOPLE WHO ARE FLAT BROKE**

Bankruptcy is actually a way for you to *protect the assets you do have*, so that they won't be taken away from you without your consent, after careful consideration of your best interests and the nature of your debts. Many people who file bankruptcy

have significant assets that they are seeking to maintain control over, rather than giving up control to their creditors. Bankruptcy is more about protecting what is most important to you, rather than giving everything you have to creditors.

## MYTH: BANKRUPTCY RESULTS IN LOSING EVERYTHING

Bankruptcy does not automatically result in giving up everything you have to satisfy creditors. State and federal law allow for certain assets to be exempt from bankruptcy proceedings. These exemptions typically cover things like your house, your car, and certain personal belongings that are considered crucial to resuming a normal life after bankruptcy. The laws governing exemptions vary from state to state, so you will need to discuss the exemptions allowed in your state with a bankruptcy attorney. See the further discussion about exemptions in the section “Fact: Bankruptcy Allows You to Keep Certain Assets on page 39.”

**Bankruptcy is more about protecting what is most important to you, rather than giving everything you have to creditors.**



## MYTH: I WILL NEVER RECOVER FROM BANKRUPTCY

Bankruptcy gives you the ability to rebuild your finances—including your creditworthiness—over time. While it takes responsibility, discipline, a healthy set of financial habits, and patience, you can make a new and improved credit reputation for yourself, even after coming out of bankruptcy. And that improved reputation will allow you to have access to credit to buy a home or a car or other essential items.

The key word in that last paragraph is *responsibility*. Many of us have heard horror stories about people who come out of bankruptcy, grab a fistful of those credit card offers with come-ons like “Bad credit? No problem!” printed on them, and quickly run up tens of thousands of dollars in brand-new unsecured debt,

landing themselves right back in the same predicament they entered bankruptcy to escape. That is behavior that any reasonable person would want to avoid.

It is very important, especially after bankruptcy, that you review your credit report and correct any inaccurate information you find there. Mistakes do show up on credit histories. For example, it is not uncommon for individuals who have just emerged from bankruptcy to find that one or more of the debts included in the bankruptcy filing is still listed as “open” on the credit report. In that case, the individual should contact the credit bureau in writing and direct that the entries be changed to show “included in bankruptcy.” Taking care of such details is an important part of the post-bankruptcy rehabilitation program for your finances.

It should probably go without saying that you should be completely truthful with prospective lenders regarding your bankruptcy. While having a bankruptcy on your credit history is a significant negative factor, it is only one factor lenders consider.



**Obtaining and responsibly using credit will allow you to make steady improvements in your credit rating.**

Rest assured: if you pay your bills on time and don't apply for or use all the credit someone is willing to give you, you will begin to build the kind of record that will make you a “good customer” again in the eyes of lenders. And that is true even if you just came out of bankruptcy.

## **MYTH: FILING BANKRUPTCY WILL CAUSE ME TO LOSE MY JOB**

Unless you are in certain military, law enforcement, or national security–related jobs, your employer is prohibited from terminating your employment simply because you filed for bankruptcy protection, period. Also, holders of certain types of licensing such as securities dealers or investment brokers may require specialized assistance from a qualified bankruptcy attorney.

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## BANKRUPTCY MYTHS



- Bankruptcy is for irresponsible people or losers.
- Bankruptcy is for people who are flat broke.
- Bankruptcy results in losing everything.
- I will never recover from bankruptcy.
- Filing bankruptcy will cause me to lose my job.

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Now let's move on to the facts of bankruptcy.

### **FACT: BANKRUPTCY MAKES CREDITOR CALLS STOP**

When you file your bankruptcy petition with the court, creditors are enjoined (barred by the court) from further attempts to contact you. From that point on, any contact by creditors must be only with the court that is administering your bankruptcy or with your attorney. When you properly file your petition with the court, an automatic stay goes into effect the moment the clerk of the court time-stamps your document. The automatic stay effectively halts most collection attempts, including calls, letters, repossession of vehicles, foreclosure on mortgages, lawsuits and other legal actions toward the petitioner, and in most cases wage garnishment, during the term of the bankruptcy petition.

The automatic stay requires no hearing, no prior notification, not even the signature of a judge. Furthermore, if a creditor willfully contacts you after it has been notified of the existence of the automatic stay, you may have grounds for a legal complaint. For these reasons, you can see why some have likened the automatic stay to a “pause” button for creditor activity.

In certain situations, creditors may request relief from the stay. If the request is granted, the creditor would have the right to resume attempts to collect the debt or take possession of the collateral. However, this usually occurs only in cases where the creditor has reason to believe the collateral is being exposed to undue risk that might unfairly harm the creditor's interest. One example of this

might be a vehicle that is subject to a loan, but on which the owner has allowed the insurance to lapse. Notable exceptions to the protection of the automatic stay are court-ordered obligations such as alimony and child support.

## **FACT: BANKRUPTCY HALTS FORECLOSURE**

A bankruptcy filing halts foreclosure, though not necessarily permanently. Depending on which bankruptcy option you choose, you will either work out a plan to make up the back payments—sometimes, over as long as five years—or perhaps arrange for the mortgage holder to take back the home and, in exchange, cancel any remaining mortgage debt. This is another area where you need the advice of an experienced bankruptcy attorney.

At this point, it might be helpful to answer a question some homeowners pose: Which looks worse on your credit history—foreclosure or bankruptcy? While foreclosure stays on your credit report for seven years and bankruptcy for ten, that doesn't automatically mean that future potential lenders prefer to see foreclosure instead of bankruptcy. Especially in cases where the bankruptcy filer opted to keep the house and even continue making payments on the mortgage during the bankruptcy process, a mortgage loan officer may look more favorably on the bankruptcy than on a foreclosure.

If you are considering bankruptcy, you probably need to worry less about how your credit report will look and more about protecting your assets. In foreclosure, you actually lose something of great value—your home. In fact, one of the primary reasons many people seek bankruptcy protection is to prevent this

exact scenario, either through making up back payments or restructuring the loan: both options that may be pursued as a part of a bankruptcy proceeding.

For this and other reasons, as negative as bankruptcy can be, it may not be the “kiss of death” for your financial future that many people assume it will be.



**If you are considering bankruptcy, you probably need to worry less about how your credit report will look and more about protecting your assets.**

## **FACT: BANKRUPTCY ALLOWS YOU TO KEEP CERTAIN ASSETS**

In most cases, successful completion of a bankruptcy plan can permit you to retain your most important assets, such as your home, your car, and much of your personal property. Different state and federal laws govern which types of assets are protected—“exempt,” in legal terms—and which are not.

“Exempt” doesn’t mean you don’t have to pay what you owe on the loan for which the assets are collateral or “secured assets.” The exemption only applies to *other* creditors’ ability to use these assets to satisfy your obligations to them. If you intend to keep secured assets such as your car and your house through bankruptcy, you must pay for those assets. Bankruptcy allows you to file a plan that satisfies the lien holders who have those assets as collateral.

State and federal laws vary widely in what they consider as exempt assets. You may be able to choose which rules apply to the exemptions in your case—the federal or the state. For many people, the federal exemptions are more favorable, but in some cases the governing state’s rules could have advantages. This is another reason you should consult a qualified bankruptcy attorney in your state if you are considering bankruptcy as an option.

## **FACT: BANKRUPTCY CAN GIVE YOU A FRESH START**

For debtors who have no hope of paying back everything they owe, bankruptcy really can give you a financial “do-over.” The bankruptcy code was written so that you can draw a line under your downwardly spiraling resources, gain some time free from creditor demands to figure out a plan, and have the blessing of the courts for your approved plan and your new beginning.

## **FACT: BANKRUPTCY IS NOT AN IMMEDIATE “CLEAN SLATE”**

Even though your bankruptcy filing will give you immediate relief from most creditors and will allow you the time to form a plan for rebuilding your finances, you shouldn’t confuse this with a clean bill of financial health. Bankruptcy usually

stays on your credit history for ten years. As long as the bankruptcy appears on your credit report, you may see financial repercussions.

When you emerge from bankruptcy, one thing you will want to begin to do is prove your former creditors wrong by establishing good financial habits and building a record of timely payments on your obligations. You may be able to find a local lender who is willing to extend credit to you—though the interest rate and terms may not be what you are accustomed to. While you certainly should not go on a spending and credit binge, you may wish to consider how you can, very selectively, reestablish yourself as a credit worthy borrower. Over time, by exercising discipline and good judgment, you can rebuild your credit rating.

It is also worth mentioning that there are limitations on credit that may be obtained while a debtor is in a Chapter 13 bankruptcy. You should talk to a bankruptcy attorney to better understand those limitations.

## **FACT: BANKRUPTCY CANNOT RELIEVE YOU OF CERTAIN OBLIGATIONS**

There are some debts or payments that even bankruptcy cannot protect you from. These include student loans guaranteed by the government, some back taxes, and court-ordered child support or alimony payments.

**Student loans.** Most courts are very reluctant to discharge student loans. If your student loan is causing most of your financial problems, bankruptcy may not make sense for you. You may be able to obtain a discharge on your loans if you can demonstrate that paying them creates an “undue hardship,” but this is difficult to prove in bankruptcy unless you have become disabled to the point that you can’t work or otherwise have no prospect of being able to earn money.

**Back taxes.** Back taxes can be discharged through bankruptcy, but only in certain circumstances:

- If the due date on the return is at least three years before your bankruptcy filing
- If the return was filed at least two years before your filing

- If the assessment from the IRS is at least 240 days old
- If you aren't guilty of tax fraud or evasion

In other words, if you got slammed with a big tax bill last year and you can't pay it, don't file bankruptcy as a way to avoid it; if it isn't at least three years old, the court will have nothing to say about it.

Another note on taxes and bankruptcy: according to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 all tax returns must be filed and copies furnished to the court and requesting creditors in order for your bankruptcy petition to proceed successfully.

**Child support and alimony.** The laws are very clear: if you owe child support or alimony payments to an ex-spouse, bankruptcy will not alleviate your responsibility to continue paying these obligations. Furthermore, if you got behind on child support or alimony payments, you must still make up that deficiency, even if you have filed for bankruptcy. The automatic stay that prohibits other creditors from continuing efforts to collect from you does not apply to child support and alimony. If you owe these payments, you must continue making them—bankruptcy or not.

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## BANKRUPTCY FACTS



- Bankruptcy makes the creditors stop calling
  - Bankruptcy halts foreclosure
  - Bankruptcy allows you to keep certain assets
  - Bankruptcy can give you a fresh start
  - Bankruptcy is not an immediate clean slate
- Bankruptcy cannot relieve you of certain obligations

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Now that you understand how bankruptcy may help you and what it cannot do for you, it's time to learn the process for filing for Chapter 7 and Chapter 13 bankruptcy protection.

# CHAPTER 7 PERSONAL BANKRUPTCY: LIQUIDATION

Often called “regular bankruptcy,” “straight bankruptcy,” or “liquidation,” Chapter 7 is bankruptcy in its most basic form. Chapter 7 discharges all of your unsecured debts, and there’s no repayment plan. Under Chapter 7, you must give up any nonexempt property. The trustee assigned to your bankruptcy may sell this property and divide the proceeds among your creditors. Debts that aren’t discharged include secured loans like cars, homes, and some merchant credit card purchases.



**Most of the time people who file a Chapter 7 bankruptcy don’t lose any assets by filing.**

You can choose to forfeit the assets that provide security for these loans in order to discharge the debt. Most of the time, however, people who file a Chapter 7 bankruptcy don’t lose any assets by filing.

As a matter of fact, most people will want to file Chapter 7 if possible, since the plan is shorter and debts that are discharged in a Chapter 7 bankruptcy do not have to be repaid.

In most cases, the Chapter 7 process goes like this:

1. Analysis of your financial affairs
2. Talking to an attorney
3. Completion of an EOUST approved\* credit-counseling course; this booklet is actually supplemental material for a course you have already completed with the Debt Education and Certification Foundation
4. Filing the case with the bankruptcy court
5. The 341 meeting

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\* Approval does not endorse or assure the quality of a provider’s services.

6. Completion of a pre-discharge debtor education course, also offered by DECAF
7. Discharge

Each of these steps is described in more detail in the following pages.

## **1. ANALYSIS OF YOUR FINANCIAL AFFAIRS**

Before beginning any kind of bankruptcy proceeding, a detailed analysis of your current financial situation must be completed. It includes systematic documentation of

- Your average monthly income;
- Your average monthly expenses; and
- List of your assets and debts.

As part of this financial analysis, you may need to do some of the following:

- File tax returns for the previous four years, and have your tax return for the prior year on hand
- Collect six months of pay stubs and bank statements (you will need to retain all future pay stubs)
- Run a credit report
- List all property purchased, sold, or transferred within the last two years
- Provide documentation for any 401(k), IRA, or pension distributions; unemployment income; or child or family support income for the previous six months

Also note that you cannot use credit cards, charge accounts, or payday loans within ninety days of filing your case.

## **2. TALKING WITH AN ATTORNEY**

Once you've concluded that bankruptcy could be advisable or appropriate in your situation, the next step is to consult with a qualified bankruptcy attorney. It is

absolutely essential that you have someone in your corner who knows the applicable law, is familiar with the procedures and forms, and can represent your interests to make sure you receive every possible benefit and consideration.

An important reason for completing your financial analysis before you see an attorney is that this analysis will help your attorney determine which chapter of the U.S. Bankruptcy Code or your state's bankruptcy code best meets your needs and protects your interests. As mentioned previously, some people who file for bankruptcy have the option to choose whether they want to follow the state or federal code. Because these two codes may allow for different property exemptions, this decision can have a significant impact.

Your attorney will also use your financial information to determine whether you meet the "means test" for filing Chapter 7 now required by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. This law requires that individuals with monthly incomes above their state's median income who have at least \$166.67 of monthly income above living expenses (\$10,000 over five years) available to repay debt must file Chapter 13 instead of Chapter 7.

To calculate whether you meet the "means test" for filing Chapter 7, first find out the median income for your state (these figures are available at the U.S. Census Bureau website: [www.census.gov](http://www.census.gov)). If your income is lower than the median, you can file Chapter 7. If it's higher, however, you need to calculate how much income above living expenses you have available for debt repayment. The allowance for living expenses is established by using the IRS-approved schedules for tax calculation and collection. If, by applying this schedule, you have \$166.67 or more per month above living expenses, you will probably be required to file Chapter 13. If your income is above the median and you have less than \$166.67 per month after living expenses, there is still one more hurdle you must clear to meet the means test for Chapter 7. You must determine whether the amount of excess income above living expenses available over a five-year period equals 25 percent or more of your debt. If it does, you will probably have to file Chapter 13. If it doesn't, you meet the final means test and may proceed with filing Chapter 7. Your attorney will do the calculations necessary to determine which bankruptcy chapter is appropriate for your specific situation.

### 3. COMPLETION OF AN APPROVED CREDIT-COUNSELING COURSE

Before you can proceed with any bankruptcy filing, the law stipulates that you must complete a credit-counseling course offered by an approved agency within 180 days of filing bankruptcy. Debt Education and Certification Foundation is an approved agency.\* The course you took or are taking and the accompanying certificate that you received satisfy this requirement. Once all the filing documents are in place, the legal proceedings can begin.

### 4. FILING THE CASE WITH THE COURT

The legal portion of the bankruptcy process begins when you and your attorney file an official bankruptcy petition with the bankruptcy court. Once the filing is complete, the automatic stay goes into effect. As you may remember from earlier in the booklet, the automatic stay protects you from all collection activities, lawsuits, and foreclosure proceedings that your creditors would otherwise attempt. They must stop all collection efforts at once, and cannot contact you in any way, except through the court and your attorney.

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## THINGS TO CONSIDER BEFORE OR JUST AFTER FILING BANKRUPTCY



- Do not make large, unusual purchases on your credit cards for items that would be considered unnecessary prior to filing bankruptcy.
- Prioritize your payments to creditors. If funds are limited, discuss the problem with your attorney.

Depending on your situation, it may be in your best interest to pay some creditors instead of others.

- Attend all meetings when scheduled. These meetings may have deadlines associated with them, which if not met can result in delay or dismissal of your case.

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\* Approval does not endorse or assure the quality of a provider's services.

- If additional documents are needed to file your bankruptcy case, provide them as soon as possible. There are deadlines for filing bankruptcy documents, and delay in providing these documents can result in dismissal of your case.
  - Don't take money from your 401(k) or any other type of retirement plan in order to pay bills prior to filing bankruptcy. Doing so may make you ineligible for bankruptcy, and removes protections provided by statute from these types of funds.
  - Don't transfer any property to other parties for less than fair market value prior to filing bankruptcy.
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## **5. THE 341 MEETING (CREDITORS' MEETING)**

Approximately thirty to forty-five days after filing your bankruptcy petition with the court, you and your attorney must attend a meeting, known as the 341 meeting (named for the section of the bankruptcy code that regulates it), with your creditors, if they chose to attend, and the appointed bankruptcy trustee. Once your financial information is confirmed, the trustee will review your bankruptcy petition. This usually takes between fifteen and thirty minutes.

At the 341 meeting, the bankruptcy trustee will ask you a number of questions, under oath. These include questions about the schedule of exempt and non-exempt assets you have submitted with your bankruptcy petition, whether you understand your rights under the bankruptcy code, and whether you understand various courses of action available to you.

One thing that the trustee usually asks about is a procedure called reaffirmation of debt. This is an important topic for people who are in bankruptcy but who have certain assets they intend to keep, such as houses or cars. If you are current—or nearly so—on secured obligations like mortgages and car payments, it can make sense to reaffirm those debts, and simply continue making payments on the debt during the bankruptcy and beyond.

Reaffirmation of debt can have a couple of benefits. It allows you to keep the assets and continue using them. Any debt for which you continue making timely payments will show on your credit history and will be a factor in rebuilding your credit rating. If you anticipate needing another home or car loan prior to ten years following your bankruptcy, a record of timely payments on a similar obligation can be a very positive factor.

Reaffirmation of a debt means that the debt will survive your bankruptcy and becomes ineligible for discharge. Before you give up this important protection with respect to any debt, talk to your attorney.

**Reaffirming a debt in bankruptcy means agreeing to continue making payments**



## 6. PRE-DISCHARGE DEBTOR EDUCATION COURSE

Under the new bankruptcy code in place since the passage of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, you'll also be required to complete an approved financial education course in order to have your bankruptcy petition approved and your debts discharged. Usually, this course is between two and four hours long. The course provides information on how to stay out of debt and establish good financial habits after your bankruptcy is complete. Debt Education and Certification Foundation offers this course as well. Consult with your attorney to determine when you need to take this additional educational course.

## 7. DISCHARGE

When the trustee liquidates your nonexempt assets and distributes the proceeds to unsecured creditors under the terms of your plan, and when the bankruptcy judge discharges any remaining debts included in your petition, your Chapter 7 bankruptcy is complete and you are no longer responsible for the debts discharged in your bankruptcy. The court has eliminated all of your remaining eligible debts, and your creditors are satisfied. You are now out of bankruptcy and have complete control over your money.

# CHAPTER 13 BANKRUPTCY: REORGANIZATION AND REPAYMENT

A Chapter 13 bankruptcy involves a reasonable, court-approved repayment plan designed to pay back all or part of your debt over at most a five-year period. The first eligibility requirement for filing Chapter 13 is that you have a means of income that is relatively dependable. The repayment plan will be based on your income level and covers both secured and unsecured debt.

As a part of your plan, you will establish a monthly budget that allows for all your necessary monthly expenses: food, clothing, shelter, transportation, utilities, education, healthcare, court-ordered payments like childcare and alimony, and other needs. This filing is very detailed and specific, and, like the means test for Chapter 7, is based on national standards used by agencies like the Internal Revenue Service for collection and reporting of income and expenses.

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## RESOURCE ON BANKRUPTCY CODE



To see a copy of the Chapter 13 Statement of Current Monthly Income on the U.S. Federal Court website, go to [www.uscourts.gov/rules/BK\\_Forms\\_08\\_Official/B\\_022C\\_0108v2.pdf](http://www.uscourts.gov/rules/BK_Forms_08_Official/B_022C_0108v2.pdf).

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After you have completed this form with your attorney's advice and assistance, your attorney will file it with the court. This is the basis on which the court will establish the amount of your monthly disposable income. You'll typically have to pay all of your disposable monthly income to the trustee, who then disburses the money to your creditors.

The Chapter 13 repayment plan must pass two tests: the “best interest” test and the “best efforts” test. The best interest test states that unsecured creditors must be paid at least as much as they would have if you had filed for Chapter 7. The best efforts test requires that you pay all disposable income to the trustee for up to sixty months.

Under law, Chapter 13 cannot last longer than five years. As long as you make your payments under the payment plan, creditors can’t contact you. This plan is an excellent solution as long as you have regular income and can create and follow a budget. Usually, the Chapter 13 process goes like this:

1. Analysis of your financial affairs
2. Talking to an attorney
3. Completion of credit counseling with an approved agency\*
4. Filing the case with the court
5. The 341 meeting
6. Approval by the court
7. Repayment period
8. Pre-discharge debtor education course
9. Discharge

## 1. ANALYSIS OF YOUR FINANCIAL AFFAIRS

If you are in dire financial circumstances, a detailed analysis of your current financial situation must be completed. It includes systematic documentation of

- Your average monthly income;
- Your average monthly expenses; and
- List of your assets and debts.

As part of this financial analysis, you may need to do some of the following:

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\* Approval does not endorse or assure the quality of a provider’s services.

- File tax returns for the previous four years
- Have your tax return for the prior year on hand
- Collect six months of pay stubs and bank statements (you will need to retain all future pay stubs)
- Run a credit report
- List all property purchased, sold, or transferred within the last two years
- Provide documentation for any 401(k), IRA, or pension distributions; unemployment income; or child or family support income for the previous six months

Also note that you cannot use credit cards, charge accounts, or payday loans within ninety days of filing your case.

## **2. TALKING WITH AN ATTORNEY**

The next step is to meet with a qualified bankruptcy attorney who can ensure your interests are properly protected (especially before making any large payments to a single creditor or disposing of assets through either sale or gift).

The financial analysis you completed will help your attorney determine which chapter of the U.S. Bankruptcy Code or your state's bankruptcy code best meets your needs and protects your interests. As mentioned previously, some people who file for bankruptcy have the option to choose whether they want to follow the state or federal code. Because these two codes may allow for different property exemptions, this decision can have a significant impact. For this reason, choosing which set of exemptions best fits your case is a decision you should make in consultation with a bankruptcy attorney. Once all the filing documents are in place, the legal proceedings can begin.

If you have a stable source of income and especially if you have a number of assets that you wish to retain control over during your bankruptcy, you and your attorney may conclude that Chapter 13 best serves your needs.

### **3. COMPLETION OF CREDIT COUNSELING**

Before you can proceed with any bankruptcy filing, the law stipulates that you must complete a credit-counseling course offered by an approved agency within 180 days of filing bankruptcy. Debt Education and Certification Foundation is an approved agency. The course you took and the certificate that you received satisfied this requirement. Once all the filing documents are in place, the legal proceedings can begin. Note that approval does not assure the quality of a provider's services.

### **4. FILING THE CASE WITH THE COURT**

The legal portion of the bankruptcy process begins when you and your attorney file your official bankruptcy petition with the appropriate bankruptcy court. With Chapter 13, you also have up to fifteen days from the day you file the petition to file the payment plan and details of your financial situation. Again, as with Chapter 7, once the petition is filed, an automatic stay is in effect. Arising as a matter of law, the stay protects you from all collection activities, lawsuits, and foreclosure proceedings. Your creditors must stop all collection efforts, and cannot contact you in any way.

### **5. THE 341 MEETING**

Approximately thirty to forty-five days after you file your petition with the court, you and your attorney will attend a 341 meeting. The purpose of the 341 meeting is to establish the facts in your bankruptcy case, not to hold a test to prove your need for bankruptcy. The questions you'll be required to answer will be about the information you have provided and your rights under the law; you will not be required to justify your filing. Under oath, the trustee will ask you questions to confirm facts about your filing, your assets, and your documentation. Once your financial information is confirmed, the appointed bankruptcy trustee will review the repayment plan that you and your attorney have prepared. Your plan must be reasonable, the trustee must conclude that you're likely to meet your payment

requirements, and the plan must show that you are making a good faith effort to repay your creditors.

## **6. APPROVAL BY THE COURT**

Once the 341 meeting is completed, your Chapter 13 plan is sent to the bankruptcy judge for approval at a confirmation hearing. The judge makes sure all court costs have been paid, determines whether your plan complies with the law, decides whether it was made in a good faith effort to repay your creditors, and confirms that you're able and likely to meet the requirements of the payment plan. Generally the plan is approved and the filer is not required to attend the hearing.

## **7. REPAYMENT PERIOD**

Within thirty days of filing, you start making plan payments (if you haven't already done so) to the trustee. The trustee then disburses the payments to your creditors in accordance with your plan. The repayment plan may be structured over a three- to five-year period. Also, many filers appreciate that they only have to make a single payment to the trustee—not the five or ten payments they were previously making to various creditors. In some areas, you can even arrange to have your payment automatically deducted from your checking account.

## **8. PRE-DISCHARGE DEBTOR EDUCATION COURSE**

Before you receive your discharge from bankruptcy, you'll have to complete a debtor education course from an approved provider. Usually this course is between two and four hours long. The course provides additional information on how to stay out of debt after your bankruptcy is complete. Debt Education and Certification Foundation offers the pre-discharge debtor education course. Be sure to complete it as soon as your attorney advises.

## 9. DISCHARGE

Once your plan has been approved and you have made all required payments, your Chapter 13 repayment is complete. The court will eliminate or discharge all your remaining eligible debts, and your creditors are satisfied. Now you are out of bankruptcy and once again have complete control over your money.

### IF YOU ARE UNABLE TO MAKE PAYMENTS

If for some reason, after beginning your Chapter 13 repayment plan, you are unable to make your payments as scheduled, you will need to explain the circumstances to the court. Generally, your attorney will discuss with the court any problems you have completing your payment plan and can in some circumstances work with the court to amend your plan, to give you a grace period to make up for missed payments, extend the payment period, or, if the circumstances preventing you from making payments are genuinely beyond your control, to discharge your debts on the basis of financial hardship. The bankruptcy court generally tries to help debtors stay in their approved repayment plan if circumstances really are the cause of the debtor's problem.

If the court won't allow any of these alternatives, you may be able to convert from a Chapter 13 to a Chapter 7 filing. In order to qualify for this, you must not have received a discharge for a Chapter 7 filing within the previous eight years or a discharge from a Chapter 13 filing within the previous six years. You must also meet the means test that was previously discussed. Talk to an attorney to determine if this is the right path for you.

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### THINGS TO CONSIDER DURING BANKRUPTCY AND IMMEDIATELY AFTER DISCHARGE



- You will need the help of a qualified attorney if you need to purchase a car or incur any other debt while in bankruptcy.

- If you cannot pay your plan payment, contact your attorney. You may be able to convert your case to a bankruptcy under Chapter 7 or modify your plan in order to make payment possible under your current financial situation.
  - If you are sued, contact your bankruptcy attorney before you contact any other attorney. You may be able to discharge liability under the lawsuit without incurring costly legal fees.
  - If you lose your job while in Chapter 13 bankruptcy, contact your attorney's office to discuss your options.
  - After bankruptcy discharge, contact the three major credit bureaus and provide them with a copy of your discharge and schedules showing which creditors were discharged by bankruptcy.
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# DEALING WITH THE ROOT CAUSES

This might be a good time to reassess the reasons for your original financial problems in order to form strategies for dealing with any underlying causes that could land you back in trouble. Sometimes, debt trouble is a symptom of some other problem that desperately needs to be addressed.

For example, if unemployment caused you to get behind on your payments, is there anything you can do now to avoid unemployment in the future? Now is the time to be honest with yourself and ask what steps you need to take to make yourself more employable in the future. You may need to communicate to your spouse, partner, or other members of your household your need for their support as you make this transition.

Perhaps you got into debt because of gambling, drug use, excessive drinking, or other addictions. If you don't get help, you are probably doomed to repeat the cycle again. Changing jobs, moving, or even filing bankruptcy won't alter the behaviors that created your problem. If you are dealing with the underlying causes like those listed above, and you don't take the responsibility for addressing them, you probably aren't dealing honestly with the realities of your situation. You alone are responsible for finding solutions to your financial problems. The same is true for any core problems that may be contributing to your vulnerability to financial hardship. The resources are out there . . . but it's up to you to make the decision to use them.

## **RESOURCES FOR FINANCIAL EDUCATION**

This booklet is primarily intended as an additional resource for getting out of debt and beginning your financial rebuilding process; it is by no means the final word on family financial education. You don't have to spend your nest egg to get

smarter about personal finance. The U.S. government offers a variety of options for free training and education in the basics of finance and money management. Here are just a few of the web-based resources available:

- MyMoney.gov is a website maintained by the U.S. Financial Literacy and Education Commission that has some great links, including interactive, web-based programs, to help you learn the basics of household financial management. It features free online calculators for figuring mortgage payments, student loans, rent-versus-buy analysis, and lots more. You'll also find a variety of reports and information about such financial topics as smart borrowing strategies, budgeting, and taxes. There's even a whole section devoted to interactive and informational financial training for kids.
- The Federal Reserve Bank of Dallas sponsors a site called Building Wealth: A Beginner's Guide to Securing Your Financial Future (<http://www.dallasfed.org/ca/wealth/index.cfm>). This site has an interactive curriculum to show you, step by step, how to calculate your net worth, create a budget, understand the basic principles of saving and investing, and make better borrowing decisions.
- The Federal Deposit Insurance Corporation (FDIC) developed the "Money Smart" program to offer financial training and information to persons "outside the financial mainstream" ([www.fdic.gov/moneysmart](http://www.fdic.gov/moneysmart)). The site offers a section called "computer-based instruction" that allows you to educate yourself at your own pace on the basics of banking, credit, savings, and mortgages.
- The Jump\$tart® Coalition for Personal Financial Literacy is a national organization made up of educational, governmental, industry, and special interest groups "dedicated to improving the financial literacy of kindergarten through college-age youth by providing advocacy, research, standards, and educational resources." Their website ([www.jumpstart.org](http://www.jumpstart.org)) features a wide array of free and downloadable

publications covering many different aspects of personal financial management for kids and adults.

Financial education involves a lot more than just learning techniques and principles, however. If you are following your budget and sticking to your savings plan, at some point in the fairly near future you will be in the enviable position of needing to know the best ways of protecting and increasing your savings. As a matter of fact, there's no better incentive for improving your knowledge of money management than actually having some money to manage! Once you've gotten a little experience in month-to-month financial management, you'll probably want to begin educating yourself about ongoing financial trends, the economy, investment, and other money topics in order to equip yourself with the knowledge you need to make good decisions in an always-shifting financial landscape.

One of the best ways you can do this is by keeping yourself aware of the latest financial headlines and knowing how current trends in the economy, banking, and finance can affect you. Here are a few websites for keeping up with what's going on in the world of money, investment, and savings:

- [CNMONEY.com](http://CNMONEY.com), an online publication of the Cable News Network, carries the top financial headlines coming out of Washington, New York, Tokyo, and around the world. You can view videos, read news stories, check out the opinions of various analysts, and generally keep on top of what's being done and said by major corporations, policy makers, investors, and other players on the world financial stage.
- [Google Finance \(www.googlefinance.com\)](http://www.googlefinance.com), much like the ever-present Google search engine itself, offers free financial news online including the latest information on stock markets, interest rates, and breaking headlines. The site carries news feeds from some of the largest financial reporting organizations, such as Reuters, *BusinessWeek*, and others.
- [Bankrate.com](http://Bankrate.com) is a great place to get information on savings rates, mortgage and other loan rates, money market accounts, and the latest banking and finance news.

- The *Wall Street Journal* is one of the world's oldest and best-known financial dailies. And now you can read much of the paper's content online by going [online.wsj.com](http://online.wsj.com). Although some of the content is reserved for paid subscribers, you can still review the top financial headlines, view video of the day's important events, and read a wide variety of articles and educational pieces.

Just as reliable information is your best ally in the effort to deal with problem debt, educating yourself about how money can work for you will pay dividends in your quest for financial security.

## WHAT NOW?

At this point, you have likely already assessed your financial situation and determined that you are in a dire situation. You may have already talked to an attorney and determined that bankruptcy is appropriate for you. Hopefully, this booklet has removed some of the mystery, dread, and fear that most people have when considering bankruptcy. Remember, earning your financial freedom depends on making hard choices and forming good habits that don't come naturally to most people. If it doesn't seem at least a little challenging or difficult, you probably aren't doing it right!

What makes the difference between those who are able to "kick the debt habit" and those who find themselves repeating the cycle of overspending, problem debt, and financial crisis? One word: *discipline*. The people who get out of trouble and stay out are those who are determined to practice sound financial fundamentals: they stick to their budgets and don't spend more than they earn; they plan ahead and save for major purchases instead of getting them with credit; they plan ahead for future needs and, over time, build the cash reserves needed to deal with the unexpected.

It is my hope that you will be able to recover quickly and get back to building a strong financial foundation for the rest of your life. Regardless of the path you choose to get out of your financial troubles, I wish you good luck.