

# Stopping Foreclosure in Maryland-

The Truth About Loan Modification,  
Mediation, and  
Chapter 13 Bankruptcy

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# Making a “Fresh Start”

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# Introduction

## **Why this book was written.**

You are probably reading this because you are in foreclosure and wondering how you can save your home and get your life back on track. You may also be facing garnishment of your hard earned paycheck or a freeze on your bank account and you don't know where to turn for help. Unfortunately there is a lot of information out there about foreclosure help and bankruptcy that is misleading, outdated or just plain wrong.

My name is Jim Logan and I wrote this book to give you the straight dope about loan modification, foreclosure help and bankruptcy. I have been helping people in Maryland file for bankruptcy for over 12 years and have filed over 2,000 cases. This book answers the most common questions I have been asked over the years and lets you know what relief is available to you today. You can read this book in the privacy of your own home and then make an educated decision about how to handle your financial problems.

## **What this book is.**

This book is meant as a general discussion of a typical consumer bankruptcy case and covers the issues that most commonly arise. The information contained here is general in nature and meant to apply to a wide variety of situations. There are many, many things that can come in a bankruptcy case that are not covered in this book, mostly because they rarely come up. Bankruptcy law is complex and contains many provisions that are difficult for experienced attorneys to figure out what they mean, let alone someone reading them for the first time. The goal is to make bankruptcy understandable to someone who has never been through it before, and hopefully, will never have to go through it again.

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## **What this book is not**

This book is not legal advice, nor does it create an attorney - client relationship. Until you agree to hire me AND I have agreed, in writing, to take your case, I am NOT your lawyer. I am licensed only in Maryland and the Federal District Court for Maryland. I have no liability nor responsibility to any person or entity with respect to any loss or damage caused or alleged to be caused directly or indirectly by the information covered in this book. Whew, that was a lot of legalese!

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## You Are Not Alone

In 2011, there were an estimated 100,000 homeowners in Maryland who were behind on their mortgages. That means that there are thousands of people out there just like you who have missed mortgage payments and are facing foreclosure. The main reasons people have fallen behind are job loss, medical problems and divorce. This economy has forced many people who never thought they would be in such a position to make some very difficult decisions about their homes.

This book will educate you about the foreclosure process, discuss all of the options that are available to you, and allow you to make the best decision for you and your family. But the most important thing to remember is that you must do something. Unfortunately, I have seen many people try to ignore the problem until it is too late and they end up losing everything. This is understandable, because being in foreclosure is a very stressful and emotional situation. Also, many foreclosures are a result of job loss, illness or divorce, so you may already be under a lot of stress. A very normal human reaction to this stress is to ignore your problems and hope they go away or solve themselves, but this does not work.

The good news is that getting this book, you have taken the first step towards a better future. After reading this book, you will have a clear understanding of the foreclosure process, what your options are, and where to go for help. This book will discuss all your options including re-instatement, forbearance, deed in lieu, loan modification, short sales, mediation and bankruptcy. Depending on your particular situation, each of these options may have

advantages and disadvantages for you. Then you can make the best decision for you and your family and TAKE ACTION. So let's get started.

## Why is There a Bankruptcy Law?

Lawmakers have realized since ancient times that some times people need a "Fresh Start". In the bible, debts were wiped out every seven years to allow this. Today, we have a federal bankruptcy law that allows every American the opportunity to make a "Fresh Start". The reason for this is to keep people from becoming burdens on society. If old debts could never be wiped out, more and more people would become prisoners of their creditors and soon no one would be working for the future. By wiping out old debts, people can start contributing to the economy again by buying goods and services.

## Are there different kinds of Bankruptcy?

Yes, there are 5 different kinds of bankruptcy, but most cases are filed under either Chapter 7 or Chapter 13. A Chapter 7 is a "liquidation" bankruptcy where any assets are sold to raise money for your creditors. But don't worry, you can "exempt" or keep some assets so most people lose nothing in a Chapter 7. A Chapter 13 is a "re-organization" bankruptcy where a payment plan is set up to pay back your creditors. Most people who are filing Chapter 13 are trying to stop a foreclosure on their homes. There are also Chapter 9, 11 and 12 bankruptcies. Chapter 9 is for governments-in fact Harrisburg PA recently filed for Chapter 9 protection. Chapter 11 is for business re-organizations and Chapter 12 is for farmers.

## How Will Bankruptcy Help Me?

Filing a bankruptcy is the one way to absolutely, positively stop a foreclosure auction on your home. If you are so far along in the foreclosure process that an auction date is pending and you have not found any other solution, bankruptcy is the one thing you can do to make sure you stop the foreclosure. This is the power of bankruptcy to deal with your mortgage company. The fancy legal name for this is the “automatic Stay”, but what it means to you is breathing space. Filing bankruptcy gives you time to decide how to deal with all your creditors in an organized way. As long as you file the case BEFORE the auction, your mortgage company MUST stop the foreclosure sale and give you a chance to try and save your home.

There is an important exception to this rule. If you have filed one or more bankruptcies in the year before the current case is filed, you may not get the protection of the automatic stay. If you have filed before, you should talk to an experienced bankruptcy attorney to make sure you will be protected. But as long as it is your first time filing, you will be able to stop the foreclosure and save your home.

Bankruptcy also offers you many other benefits such as the ability to “strip off” or get rid of second mortgages, judgments and tax liens. You may also be able to “cram down” your car loan to the value of the car, or “redeem” it for the actual value. Don’t worry if you don’t understand these terms, as they will be discussed in detail later on. Bankruptcy also stops BGE from turning off your electric if you are behind. If your service has already been cut off, filing bankruptcy will force BGE to turn it back on. And of course, bankruptcy wipes out all kinds of debts like credit cards, medical bills, deficiencies on cars, and other collections. Just remember that is your right and your creditors can’t do anything to stop you from filing.

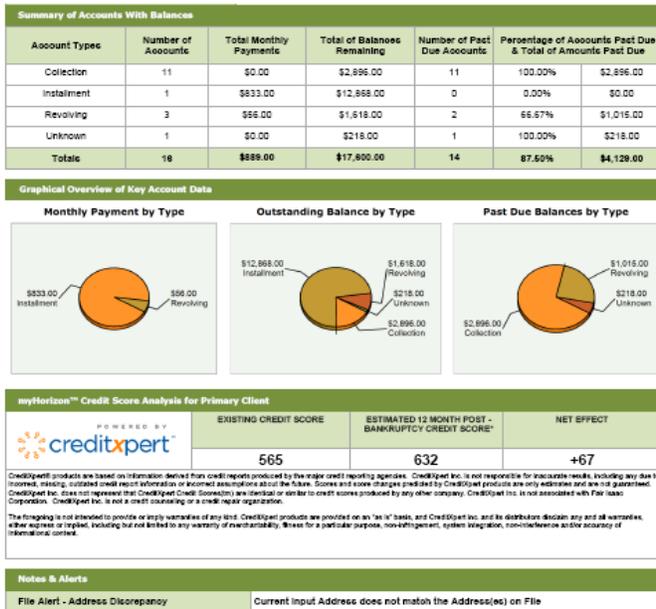
## Won't bankruptcy ruin my credit?

This short and correct answer is a resounding NO! This is a very common belief that exists because creditors want you to believe that bankruptcy will ruin your credit. But is a myth because it mixes up two different things- One- the FACT that you filed bankruptcy is a negative mark on your credit and TWO- the effect that that one negative fact has on your overall credit. Your credit score is determined many different factors- how much debt you have, if you pay your bills on time, how much you pay each month, if you have any lawsuits or judgments against you, if you have any foreclosures or repossessions etc.

By the time you are even considering bankruptcy, you will already have most or all of the negative factors on your credit report. Most people who come to see me already are in debt, are already behind on their bills and may be facing lawsuits, judgments, garnishments and foreclosures. In other words, by the time you are even considering bankruptcy, your credit is already shot.

When people come to see me, one of the first things I do is get a credit report with a credit score. Most people have credit scores in the mid 500s, which, if you didn't know already, is pretty bad. The good news is that by using a credit score simulator, I can show them that a year after filing bankruptcy, they will see an IMPROVEMENT

in their credit score! Most people are amazed by this-how can filing for bankruptcy actually improve my credit?



The above is an example of a credit report obtained for one of our clients. As you can see, the current credit score is 565. But a year after filing, the credit score can improve by an estimated 67 points. This is all part of the fresh start that bankruptcy gives you. By wiping out old debt and paying your utilities, rent and car payments on time, you can rebuild your credit after filing.

The reason is because bankruptcy is just one fact on your credit report. By filing bankruptcy you can remove a bunch of negative facts like balances due and begin to make your “Fresh Start”. After filing for bankruptcy, your creditors are required to report all account balances as included in bankruptcy and having a balance due of \$0.00. If you make sure to pay any bills that remain such as payments on cars you want to keep, you can begin to improve your credit. In fact, you may receive offers for new credit after you file for bankruptcy. Creditors know that you have wiped out all your old debts and can’t file bankruptcy again for 8 years, so they can offer you new credit. You must be very careful, however, not to get yourself back into debt again.

When people ask me if they should file for bankruptcy relief, I reply by asking them “Where do you want to be in five years?” If your credit is currently good, i.e. up to date on most or all payments, and you can pay off all your

debts in five years, you probably should not file for bankruptcy. On the other hand, if you are already behind on your bills, filing for bankruptcy is probably not going to make your credit much worse. If you file for bankruptcy and put aside the money that would have otherwise gone for bills, in five years you will have a nice amount saved.

## I'm In Foreclosure. What Happens Now?

You are probably reading this because you have received a notice from your mortgage company that you are in foreclosure. This can be a very scary time, but the good news is that you still have time to act and save your home. Maryland has passed several laws in the last few years to slow down the foreclosure process. This gives you time to seek alternatives to foreclosure.

### The Foreclosure Process.

Foreclosure in Maryland is a process that takes many months from the time you miss your first payments to the time you are forced to move out of your home. At each stage of the process, you have options to try and save your home. The most important thing to remember is that the longer that you wait, the fewer options you will have. This is because you are falling further behind on your payments and the foreclosure auction is getting closer. By getting this book, you have taken the first step to making things better.

### The Notice of Intent to Foreclose.

The foreclosure process begins when you miss your first mortgage payment. Most mortgages are due on the 1<sup>st</sup> of each month and are considered late after the 15<sup>th</sup>. Most times, however, you won't be marked late on your credit

report until you are 30 days behind. Once you are 90 days behind, most mortgage companies will start to foreclose on your home. In Maryland, your mortgage company must send you a letter called a “Notice of Intent to Foreclose”. The Notice of Intent to Foreclose must include important information such as why your loan is in default, the amount you owe to bring your loan current, the last payment received, contact information for the lender or secured party, for the mortgage servicer that collects your mortgage payments and for the department that can help you work out your default (the loss mitigation department).

45 days after sending the Notice of Intent, your lender can file the foreclosure. This is done by going to the Circuit Court for the county you live in and filing a bunch of papers. Here is a partial list:

- A statement of how much you owe on the house.
- A certification that you are not on active duty in the military.
- A statement of the last payment made and when the Notice of Intent to Foreclose was mailed.
- A copy of the Notice of Intent to Foreclose;
- Original or certified copy of the mortgage or deed of trust;
- Copy of the debt instrument and an affidavit of ownership;
- Original or certified copy of the assignment of the mortgage if applicable;
- The mortgage lender and originator’s license number if applicable; and
- A uniform Notice regarding the filing of the foreclosure action.

Your mortgage company must deliver a copy of all these papers to you before they can move forward. So when you get a big package from the court, you will know that the foreclosure has been formally filed.

## Once The Foreclosure is Filed.

Once you get the papers (legally known as “being served”), your mortgage company must wait 45 days before doing anything else. Under a new Maryland law, you now have the right to ask for mediation, but you must act quickly. You only have twenty five (25) days from the date the foreclosure is filed to request mediation. If you do not file the request, you may lose your right to mediation.

Mediation can be a very powerful tool when dealing with your mortgage company. If you request it, a date for a hearing will be set and your mortgage company will have to send someone to meet with you face to face. This is an excellent opportunity to get your mortgage company to work with you. Mediation is so important there is an entire chapter on it later in this book.

## The Foreclosure Auction

If you don't request mediation, or if a mediation is held but no agreement can be reached, your mortgage company can move forward to the next stage, the foreclosure auction. This is done by setting up a date for the auction and sending out the required notices. Before they can hold the auction, your mortgage company must advertise the foreclosure auction three times in a local newspaper. The first ad must be less than 15 days before the auction and the last ad must be at least 7 days before. The ad must also be mailed to you by regular and certified mail at least 10 days before the auction.

The auction date is really the last chance to save your home. If the auction is held, you are no longer the owner of the home and eventually you will have to move out. So if you want to save your home, you need to act BEFORE the auction. Sometimes, however, people are just looking for time to save some money before moving, so the good news is that you do NOT have to move out of the house on the day of the auction.

## How long after the auction before I have to move out?

Once the auction is held, your mortgage company must file a report of sale with the Circuit Court. You then have 30 days to object to the sale. You must have a legal basis to object so if you feel there was something wrong with the way the sale was handled, you should probably contact a lawyer. If no objections are filed, the Court will approve (“ratify”) the sale. The new owner of the property, usually the bank, will then file for a Writ of Possession and you will have 30 days to respond to that. After that, the Court will issue an Order for possession and the new owner will take it to the local sheriff. The sheriff will set a date for the eviction and at that point, you will have to move.

It is important to note that no one can force you to move out of your house without going through the legal process. So some times the new owner will offer “cash for keys” in order to get you to move out voluntarily. Basically, they will offer you an amount of money and you agree to leave. But again, no one can force you to leave except the sheriff. So, from the date of the auction to the date you must move is roughly 90 days or more.

## What Are My Options?

Depending on where you are in the foreclosure process you, you will have different options. When you first fall behind, you should be considering either re-instatement or forbearance as your primary options. If you can't do one of these, then a loan modification may work for you. If you are further in the foreclosure process, then mediation or Chapter 13 bankruptcy may be the best option for you. If you decide you can't afford the house or don't want to keep it, then a sale, deed in lieu or Chapter 7 bankruptcy may be your best solution. Don't worry if you don't know that these terms mean, because they will be explained briefly below. Later on, most important ones will be explained in detail in their own chapters.

### Re-Instatement

A re-instatement means paying all the back payments, plus any late fees and other costs in one lump sum. This is a good option to consider when you have a steady source of income and can afford the regular mortgage payments. For example, if you had a medical emergency or temporary job loss that caused you to fall behind on your mortgage, but now you are back to work, this may be a good option. You may be able to use you tax refund, or get a hardship loan form your IRA or 401K to catch up and get back on track.

The main drawback to re-instatement is that it won't help you much if you can't keep up the payments in the future. Unfortunately, many times I have seen people scrape together enough money to get caught up just to fall

behind again. Now you are in a worse position because you may have used up any savings, tax refunds or retirement accounts to catch up and won't be able to use them to catch up a second time.

## Forbearance

A forbearance is when your mortgage company agrees to postpone, reduce or suspend your mortgage payments for a few months, usually 3-6 months. The mortgage company will stop any foreclosure process during the time of the forbearance. This may be a good option when you have a temporary interruption in your income, but expect to get back on your feet in the next few months. Any interest or payments that are not paid may be added to the balance of your loan. At the end of the forbearance, you may go back to your regular payments or be eligible for loan modification.

Much like a re-instatement, a forbearance is a good option when you have experienced a temporary disruption in your income. Unfortunately, if you are unemployed or your income has been reduced, a forbearance will not solve your problem.

## Loan Modification

A loan modification is a permanent change to the terms of your mortgage. The most important thing to remember about loan modification is that it is a voluntary agreement between your mortgage company and you. You can NOT force your mortgage company to modify the terms of your loan. Anyone who guarantees that they get your loan modified is probably a scam artist and trying to get you to pay them money. In fact, Maryland has passed several laws in the last few years to protect you from loan modification scams.

## Mediation

Recently, a new law was passed in Maryland that you can use to force your mortgage company to sit down and negotiate with you. Under current Maryland law, when a foreclosure is filed on your home, you can file a request with the Court for mediation. If the Court grants your request, you will be given a hearing date and location for the mediation. At the hearing, someone from your mortgage company must show up and meet with you, along with a mediator. You can present whatever facts and evidence you think are important and your mortgage company will do the same. The mediator will listen to both of you and try to get you to work out some sort of solution. The mediator is not a judge and can not order either you or the mortgage company to do anything. Instead, he or she just tries to encourage both sides to work together.

## Chapter 13

Chapter 13 bankruptcy is one of the most powerful tools you have for negotiating with your mortgage company. When you file for Chapter 13, you automatically stop all foreclosures, repossessions, garnishments and other creditor activity Chapter 13 is discussed in detail in Chapter 6 of this book.

## Sale/ Deed In Lieu

All of the above options assume that you want to keep your home, but sometimes people realize that holding on the house no longer makes sense. You have several things you can do if you decide that you are ready to move on. If you owe less than your house is worth, you can sell the house and get some money to make a fresh start. You should contact a real estate agent who sells a lot of houses in your area to see what your house will sell for, or you can go to [www.zillow.com](http://www.zillow.com) and get a pretty good idea of what your house is worth.

If you are “underwater”, that is you owe more than your house is worth, you can look into a short sale or deed in lieu. A short sale means you sell the house for less than you owe and your mortgage company agrees to take less than they are owed. In a deed in lieu, you basically give the house back to your mortgage company. In either on of these situations, you will need to get you mortgage company to agree to work with you. There are also legal and tax issues your should be careful with, so you should consult an experienced attorney before signing anything.

## Chapter 7

A Chapter 7 is a chance to make a “Fresh Start”. It is a very emotional decision to let a house go, but sometimes it is a very smart financial one. If you are underwater on the house but need time to find a new place to live, a Chapter y can buy you up to 6 months or more to live in the house and save you money. Unlike all of the options discussed above, in a Chapter 7 you do not have to make payments to anyone and you do not have to move out of the house for a few months.

## Loan Modification

You have probably heard a great deal about loan modification and may have even applied for one. There is a lot of information on the internet and TV about loan modification, but unfortunately, much of it is misleading. The most important thing to know about loan modification is that it is a VOLUNTARY process between you and your mortgage company. Your mortgage company does NOT have to modify your loan when you are behind or can't afford your payments. There is very little you can do to negotiate with them. If anyone "Guarantees" that they can get you a loan modification, you should run away as fast as you can! I have seen many people pay thousands of dollars to loan modification "consultants" and get nothing in return. In fact, the problem has gotten so bad that new laws have been passed in Maryland to protect you from these scam artists.

### What Is a Modification?

You may remember when you first bought your home, or when you refinanced it, you signed a bunch of papers. Among these papers were two documents- a note and a deed of trust. The note and deed of trust are agreements between you and the bank with the terms of the loan spelled out. The note states how much you owe, what interest rate you are paying, how much your monthly payment is, and how many months you must pay until the loan is paid in full. The deed of trust states what happens if for any reason you can't make the monthly payments. In

short, the deed of trust says “If you pay you stay and if you don’t, you won’t”. The deed of trust allows the bank to sell your house to pay back some or all of the money you owe.

A loan modification is a voluntary agreement between you and the bank to change or modify some of the terms of the note. The most important thing to know about loan modification is that it is voluntary on the part of the bank. This means that there is very little you can do to force the bank to work with you. Unfortunately, there are many people out there who will “Guarantee” that they can get you a loan modification in order to get your money. Once you have paid them money, in some cases thousands of dollars, these so called helpers will disappear and leave you worse off than before. The problem has gotten so bad that the state of Maryland has enacted new laws to protect vulnerable homeowners from these rip offs. This will be covered in detail in the next section.

A loan modification can change the interest rate you are paying, reduce your monthly payments, put any missed payments at the end of the loan or even reduce the amount that you owe. Basically, anything that you and the bank can agree on can be changed. The reason that the bank will agree to make some changes is that they may not want to foreclose on your home. With so many people behind on the mortgages, it may make sense for the bank to work with you to keep you in your home. If you can keep up with the payments on the modification, everyone wins.

## Protection Under Maryland Law

As discussed earlier, Maryland has passed a new law to protect home owners from being scammed. Much of the foreclosure process is public record, so when are falling behind on your mortgage, you become a target for foreclosure “helpers” of all kinds. You will probably get letters or see ads for "loss mitigation consulting," "foreclosure prevention," or "mortgage loan modification.” Many of these are from legitimate organizations but unfortunately, some are complete scams. Before you pay anyone to help you with your mortgage problems, you should know the following:

The new law requires anyone who provides loan modification services to be licensed as a Credit Services Business (CSB), so ask to see proof of the license.

The new law prohibits the charging of fees up front or at any time during the loan modification process. If they insist upon payment, look elsewhere for help.

The new law requires a written contract and must include a detailed description of the services to be performed and the results to be achieved by the CSB.

The new law gives you a right of rescission. You have until midnight of the third business day after you sign to change your mind and cancel the contract.

In addition to the above, you should also keep in mind these things:

**Do not believe guarantees.** A reputable counselor will not guarantee that they can stop the foreclosure process or get you a loan modification, regardless of your circumstances. Working with a legitimate counselor can certainly increase your chances of keeping your home -- but be wary of people who promise a sure thing. Again, first get the details of your transaction and any related promises in writing before you enter into an agreement.

**Beware of anyone who says they can "save" your home if you sign or transfer over the deed to your house.** Do not sign over the deed to your property to any organization or individual unless you are working directly with your mortgage lender, or with an attorney.

**Never give your mortgage payments to anyone other than your mortgage lender.** Some scammers will get you to pay your mortgage directly to them and promise to pay the mortgage company for you. Instead, they pocket the money and you end up in foreclosure.

## Loan Modification Programs

One of the most common loan modification programs is the Making Home Affordable Program (“HAMP”) Sometimes this is known as the Obama program. There are many requirements for this program but the most important ones are:

You must live in the house.

Your mortgage must be less than \$729,750.00.

You got the mortgage before January 1, 2009.

You are behind, or are in danger of falling behind, on your payments.

Your current mortgage payment is more than 31% of your current income.

In order to apply for a loan modification, you should contact your lender and ask for a loan modification package. The loan modification process can be long and frustrating. You may be asked to provide the same documents several times. You may speak to a different person every time you call and they may not know anything about your particular situation. You may be lucky enough to deal with one person, and then call one day to find out they no longer work there. You will probably get the run around and feel like you are wasting your time. This is probably not because your lender is trying to annoy you, but because they are swamped with requests for loan modifications.

In order to keep your case moving forward, you should write down the date and time of every call, the name of the person you spoke with, and the subject of the call. By keeping good records, you can eliminate a great deal of frustration. Remember, the person on the other end of the phone is probably handling hundreds of cases. So the more organized you are, the easier it is for them to help you. Sometimes, it can take a year or more to get your loan modified, so be prepared to be patient and persistent.

The loan modification package will generally consist of a financial statement, a hardship letter, and request for copies of your tax returns. Your lender will ask you to fill these out and return them along with paystubs, bank statements and other proof of income. They may ask you to update these from time to time as the process moves along. If you are approved for a loan modification, you will enter a three month trial period to show that you can make the payments on the modified loan. It is extremely important to make these payments on time or the permanent loan modification may be denied. If you do make the payments, your lender will send you some papers to sign and make the loan modification final.

## Mediation

In July, 2010, Maryland passed a new law that requires your mortgage company to review your situation before they can sell your home at foreclosure. Along with all the other papers they must file at the Courthouse, your lender must also file either a PRELIMINARY LOSS MITIGATION AFFIDAVIT or a FINAL LOSS MITIGATION AFFIDAVIT. These are statements signed under oath that they have reviewed your individual file and what options you may have to prevent foreclosure of your home.

If you get the Preliminary Loss Mitigation Affidavit, it will tell you what options your lender is offering you in order to prevent foreclosure of your home. These may include reinstatement, forbearance, or loan modification. It will also include an application, instructions on how to fill out the application and a pre-addressed envelope to mail it back.

If you get the Final Loss Mitigation Affidavit, it means your mortgage company has reviewed your file and does not believe you qualify for any loss mitigation program they may offer. It will also include a Request for Foreclosure Mediation Form, and envelopes pre-addressed to the Clerk of the Court and the attorney handling the foreclosure.

If you get the Final Loss Mitigation notice and you want to request mediation, you must fill out and file the request for mediation within 25 days. You will have to pay \$50.00 to file the request and send a copy to the

foreclosing attorney. The Court will grant your request unless your mortgage company objects. Once the request is granted, a date, time and location will be set for the mediation. The mediation will be held within 60 days of your request. You will get a letter in the mail letting you know when and where to go.

The letter will also tell you what documents you will need to send to the mediator and your mortgage company. These must be sent at least 15 days before the hearing and include things like, paystubs, bank statements and tax returns. In addition, your mortgage company must send you certain documents, including what programs they have to help homeowners.

You may bring anyone you want to the mediation, but only an attorney can speak for you. If you have friends or family that can offer useful information, you should bring them along. At the mediation, there will be a mediator and someone representing your mortgage company. The mediator is not a decision maker and has no legal power to force you or your mortgage company to do anything. They are there as a neutral party to help both sides try to work out an agreement.

If you can work out a solution, the mediator will write up an agreement to be signed by you and your mortgage company. You will get a copy of this before you leave. The most common solutions are forbearances or loan modifications. If you do reach an agreement, your mortgage company will follow up with more detailed paper work. Whatever you work out, you must make sure you keep up your end of the agreement. If you don't you may find yourself back in foreclosure.

If no agreement is reached, the mediator will file a report with the Court saying that. The mediation is confidential, so nothing you say can be used against you later in the foreclosure process. But your mortgage company can continue with the foreclosure process, so will need to pursue other options.

## Chapter 13

A Chapter 13 bankruptcy is a very powerful tool for dealing with your mortgage company and your other creditors. Bankruptcy is a federal law so that mean that it applies in every state, so no matter where you live, you can use bankruptcy to deal with your creditors. Chapter 13 is a special form of bankruptcy that allows you to re-organize you finances. In a Chapter 13, you set up a payment plan to pay back your creditors over 36-60 months.

### What Does Chapter 13 Do For Me?

The first thing Chapter 13 will do for you is to immediately stop the foreclosure of your home. As long as your case is filed before the exact date and time of the auction, the filing will stop the loss of your home and give you a chance to re-organize and catch up on your payments. Once the case is filed, you submit a plan to the Trustee and all your creditors telling them how you are going to pay them back. You also need to put any lien avoidances or cram downs that you intend to file in your plan.

You also must begin to make the regular payments that come due on your mortgage and car after the filing of the case. And, you must begin to make your plan payments to the Trustee. If you do all of the above, you are safe from your creditors as long as you keep up the payments. Now, let's look at these items in more detail.

## The Plan.

Your Chapter 13 plan tells the Trustee and all your creditors how you propose to pay them back. In Maryland, there is a form plan with very specific language that should be used. This plan has a section for each type of creditor. There are basically four types of debts in a typical Chapter 13 case- priority, arrearages, secured and general unsecured. Priority debts include child support and taxes less than 3 years old. Arrearages are the missed payments on a house or car that you want to keep. Secured are debts like water bills or judgments that will be paid in full during your case. And general unsecured debts are most other things like credit cards, auto deficiencies, medical bills, BGE bills, Student loans are also general unsecured debts, but they are not discharged or wiped out in bankruptcy.

The monthly amount have to pay is figured out in several different ways. The first is by adding up the amount you owe and dividing by 60. You divide by 60 because this is the longest plan by bankruptcy law and will result in the smallest possible payment. To figure out the amount you owe, you add up the priority debts, the arrearages, and secured debts. You must also add interest to the secured debt. This total must be paid in full. Then you add any general unsecured debt. Depending on other factors, you may be able to pay as little as 5% to 15% of this amount to your creditors.

This is a little complicated, so let's use some numbers as an example. Say you owe \$1,000.00 in taxes, you are \$7,500.00 behind on your mortgage, you have a \$500.00 judgment lien on your house, and \$10,000.00 in credit card debt. Your total debt to pay would be as little as \$10,150.00 or as much as \$19,150.00. In both cases, I have added \$150.00 in interest to the judgment, but the first case I have proposed to pay 10% to your general unsecured creditors, while the second example assumes a 100% payment to these creditors. After adding a 10% fee for the Trustee, your monthly plan payment in the first case would be about \$200.00 per month and about \$350.00 in the second.

Because you MUST pay priority, arrearages and secured claims in full, there is a minimum amount you will have to pay in any Chapter 13 plan. This may result in a monthly payment that you can not afford and, unfortunately, there is nothing any attorney, Trustee or Judge can do to reduce this amount. If you add up the amounts owed and find the payment will be more than you can afford, you will need to consider other options. Many times, at the time the case is filed, you don't know exactly how far behind you are and so you must guess. When the mortgage company files a claim, and the arrears turn \out to be much higher than you originally estimated, your payment may have to increase

## How Much Will I Have to Pay My Creditors?

There are two ways to determine how much you have to pay to your unsecured creditors. The first is the Chapter 7 equivalency test. This is a fancy way of saying that your creditors must get a much in a Chapter 13 as they would if you filed a Chapter 7. Remember earlier, when I said that sometimes people file Chapter 13 because they have assets that they can't protect in a Chapter 7? If you are in this situation, you still must pay the same amount to your creditors, but you can do it over 60 months and with little or no interest. So, if you have \$40,000.00 in equity in your home and \$10,000.00 in GUC, your plan will probably have to be a 100% plan.

This can be a hardship sometimes. I have had clients with a lot of equity in their homes, but they were on a fixed income. Because of the equity, the required plan payment was more than they could afford so they could not file Chapter 13. And obviously they did not want to file a Chapter 7 and lose their homes, so bankruptcy wasn't the best solution for them. Fortunately, some were able to get a reverse mortgage and solve their problems. If you are over 62 and have equity in your home, this may be an option.

The second reason is the B22 form I talked about earlier. The amount of “excess income” you have according to the B22 is one factor in determining what your plan payment should be. Basically, the new law says that whatever amount is left over after adding up your income and deducting your expenses, is the amount you have to pay each month in your plan. Many times, this number is negative, so it doesn’t affect your plan at all. Other times, it is positive but is less than the amount needed to pay your priority debts and secured debts and mortgage arrearages, so again it makes no difference to your plan. And sometimes the excess income is enough to pay all your debts in full. In this case the Trustee will want you to pay all your debts in full, unless you can show why the amount of excess income should not apply. If you find yourself in this position, you will probably need an experienced bankruptcy attorney to guide you.

## Payments You Must Make After Filing Chapter 13.

Since most people file Chapter 13 to save their homes, the absolutely most critical thing you MUST do after filing the case is make your regular mortgage payments. Also, if you have a car payment and you want to keep the car, you MUST make your car payments’ on time after filing. These payments must be made as they come due after filing. For example, let’s say your case is filed on the 15<sup>th</sup> of January. If your mortgage payment is due on the 1<sup>st</sup> and your car [payment is due on the 22<sup>nd</sup>, you would have to make your car payment by January 22 and your mortgage payment by February 1<sup>st</sup>.

There is a myth that you have 30 or 60 or 90 days after filing before you need to make any mortgage or car payments. This is absolutely not true. Many times I have clients tell me “When so and so filed, they didn’t make payments for months....“ or something along those lines. Do not believe what your neighbor, cousin or co-worker tells you about how they didn’t make any payments when they filed bankruptcy. Their situation was

different than yours and they may have filed for Chapter 7. If you do not make your payments after filing, you are putting your whole case at risk of falling apart and you may lose your car or home needlessly.

You should make your payments in a way that can be tracked. The best method is to send a check. That way, if the check is cashed, you can look at the back and see who cashed it. If the check is not cashed, then the money is still in your account and available for your use. Checks over the phone are good for the same reason as they will give you a tracking number for the payment. Make sure you keep a record of this as well as your bank statement so you will have proof if there is a dispute.

You should never send money orders. Many times I have had clients send money orders to their car and mortgage companies and then the creditor will say they never got the money. The problem is that you have a receipt for the money order but you can't prove that the creditor got the money. It can take up to 90 days to track down the money order and you do not have access to the money.

The other payment you MUST make after filing is your plan payment. This is due 30 days after filing and monthly thereafter. So, in the example above, the first plan payment would be due on February 15<sup>th</sup>. You will get a letter from the Trustee telling you where to mail the payment. If you do not make your payments, the Trustee may file a motion to dismiss your case.

## Claims in your case.

Once your case is filed, your creditors have xxx days to file a claim in your case. A claim is simply a statement of how much is owed filed on a Court issued claim form. You may have a pretty good idea how much you owe, but it is the allowed claims that will ultimately determine you much you plan payment will be.

An allowed claim is one that has been filed and not objected to, or was objected to but the Judge decided that the money was owed. You should review all claims that are filed see if they agree with your records. You may be able to object to some claims and have them disallowed.

The good news is that if you notify a creditor that you filed Chapter 13 and they don't file a claim in time, you may not have to pay them at all! As long as you make all your plan payments and get your discharge, the debt will be wiped out. For creditors- if you snooze, you lose.

## Beating Up Your Secured Creditors

You also may be able to change the status of some claims from secured to unsecured. One very common example of this is a lien avoidance or strip down. Earlier, I talked about having to pay more to your creditors because you had equity in a house or other assets. This is the opposite idea. If you have secured creditors who aren't secured, you can avoid their liens and pay them like they are unsecured. This can save you thousands of dollars.

For example, let's say you own a house worth \$100,000.00 and you owe \$110,000 on the first mortgage. You also have a \$25,000.00 second mortgage and have a \$5,000.00 judgment lien. In a Chapter 13, you can strip off the second mortgage and the judgment liens and pay them like general unsecured debt. If you complete your Chapter 13 plan and get your discharge, you will own your house free and clear of these liens. With today's real estate market being so bad, this happens all the time.

You can also reduce your car loan to the current market value of the car. This is known as a cram down. If you owe more on the car than it is worth, you can divide the loan into secured and unsecured

portions. The secured part must be paid in full during your plan. Also you must pay the creditor interest on this portion, but the rate may be lower than your original loan. The unsecured portion is paid along with your other unsecured debts. One downside to doing a cram down is that if you alter convert your case to Chapter 7 or your Chapter 13 is dismissed, you may lose your car because the cram down will no longer be in effect. In order to cram down a car loan, you must have gotten the loan more than 910 days before the filing of your case.

## Motions For Relief

As discussed earlier, after your case is filed, you **MUST** make your mortgage and car payments on time. It is very important that you keep good records of all your payments, so you can prove that you made your payments. The whole point of filing a Chapter 13 is to save your home or car, so if you don't make these payments your case will fall apart pretty quickly.

If you do miss some payments, your car or mortgage company will file what's known as a Motion for Relief from the Automatic Stay. When you file your case, the automatic stay went into effect and stopped your creditors from taking your property. The motion is basically asking the Court to remove the stay and let them start moving forward again with foreclosure or repossession. Sometimes there is a mix up in the payments and you are not behind on the payments so this is why it is very important to keep complete and detailed records of all payments made.

If you are behind on the payments, the creditor can work out a separate payment plan with you to make up the payments missed **AFTER** filing your case. This is known as a consent order because you and the creditor are agreeing to the terms of the order. If you make up the missed payments, all is good. However, if you fall behind on this second plan payment, the creditor will get relief from your bankruptcy and proceed with their

foreclosure. It is important to note that if you work out a consent order with your car or mortgage company, you **MUST** continue to make your plan payments and other payments as well.

## Chapter 13 Is Not Working for Me

Unfortunately, sometimes Chapter 13 does not work out. One common reason is that the case is filed and a plan is submitted based on an estimate of what is owed. However, when the actual claims are filed, the required plan payment is too much to afford. Another common reason is that there is a change in the income in the household. Maybe someone loses a job, or is sick and can't work, or the overtime is cut back.

Today, many times people realize after filing a Chapter 13 that the house is no longer worth fighting for. Because house value have gone down so much, you may be tens or even hundreds of thousands of dollars upside down on the house. When you add up the regular mortgage payment plus the plan payment, you may find you are spending too much money to hold onto something with no value. In any case, you may decide to let the house go.

This can be a very emotional decision. You may have owned the house for many years or have your children enrolled in the local school. But many times, when you make the decision to let the house go, you will find a sense of relief. I have had many clients tell me that once they didn't have the stress of trying to make the payments anymore, they felt much better and could actually sleep at night. And remember, it will be months or even years before you will have to move out of the house, so you can be saving money the whole time.

## When Should I File Chapter 13 Instead of Chapter 7?

The main reason to file Chapter 13 instead of Chapter 7 is because you want to keep your home. Most people file Chapter 13 to stop a foreclosure auction that is pending on their home. If you are in foreclosure and you file a Chapter 7, your mortgage company will probably seek relief from your bankruptcy and continue the foreclosure process. If you are in foreclosure and you want to keep your home, you must file Chapter 13.

Another reason to file Chapter 13 instead of Chapter 7 is that in a Chapter 13, you keep ALL of your property regardless of how much you own. This may be important if you own more property than you can protect in a Chapter 7 but still need relief from your creditors. Both Chapter 7 and Chapter 13 have an “Automatic Stay” when they are filed that stops your creditors from pursuing you. But in a Chapter 7, the Trustee can take and sell any property that you can’t protect to pay your debts. This does not happen in a Chapter 13.

One common example of this situation is when you own a house with equity in it. Equity means that the house is worth more than you owe on it. For example, if your house could be sold for \$100,000.00 and you owe your mortgage company \$60,000.00, you have about \$40,000.00 in equity in your home. In Maryland, you can exempt or protect about \$21,000.00 (the exact numbers change from time to time) in equity so you would have about \$19,000.00 available for your creditors. If you filed a Chapter 7, the Trustee could sell your home to convert this equity to cash and use the money to pay your creditors. In 14 years of practice, I have never had a client who wanted to do this!

Another common reason for filing Chapter 13 instead of Chapter 7, is because you are not eligible to file a Chapter 7. You can only get a Chapter 7 discharge once every 8 years. So even if you have filed Chapter 7 before, you can file a Chapter 13 and get many of the same protections you need. The good news is that you can file a Chapter 13 at any time even if you have filed Chapter 7 or Chapter 13 before. There are complicated rules for determining exactly what relief you get if you have filed before, so if you have filed before, you should consult with an experienced bankruptcy attorney to avoid any problems.

A more recent reason for filing Chapter 13 instead of Chapter 7 is “Means Testing”. In 2005, the bankruptcy laws were “reformed” in what is known as the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA). One of the main changes of this law was to add “Means Testing” to bankruptcy law. In short, you now have to fill out the means test, known as form B22, by adding up your income for the 6 months before you file. If you make less than 50% of the households in your state, congratulations you “pass” and can file Chapter 7.

If you make more than 50% of the people in your state, you can deduct out your house and car payments, taxes, and other household expenses. If there is no money left over, you “pass” and can file Chapter 7. However, if after filling out the B22, you have “excess income” you may not be eligible to file Chapter 7. You can still file Chapter 13, but the amount of “excess income” becomes the starting point for your Chapter 13 plan payment.

Recently, the American Bankruptcy Institute completed a 5 plus year study of the effect of BAPCPA on bankruptcy. As the name implies, the new law was meant to reduce bankruptcy abuse by forcing more people to file Chapter 13 instead of Chapter 7 and pay more to their creditors. Instead they found that the amount of money paid to creditors actually decreased! Because of the complexity of the new law, the cost of bankruptcy to consumers increased but the number of people filing Chapter 13 did not, so there was less money for creditors. This is because the vast majority of people filing for bankruptcy relief are decent hardworking people who have fallen on hard times, not people looking to abuse the system.

## Selling Your House

At any point in the foreclosure process, and even after filing for Chapter 13, you may still sell your house. There are three types of sales to consider. The first is a regular sale where your house is worth more than you owe on it. You hire a real estate agent to list your home and they do all the work of finding a buyer, writing contracts and making sure your house sells. You get the difference between the sale price and the mortgage debt. For example, if you sell your house for \$100,000 and owe \$60,000, you would get \$40,000. Out of this money, you may have to pay real estate commissions, unpaid property taxes and other expenses of sale, but you would get some money for a fresh start.

The second type of sale is a “short” sale. This is when you owe more on the house than it is worth, which is very common in today’s real estate market. It is called a short sale, because you are paying the mortgage company back less than you owe them. In other words, you are short of the amount of money needed to pay them. To do a short sale, you will probably want to hire a real estate agent who is experienced in doing short sales as they can be quite complicated and time consuming. You will also have to get permission from your mortgage company, and any other lien holders on your house. Some banks are very responsive when handling short sales and others are not, so be prepared to be patient.

Two things you should be aware of when doing a short sale. The first is that you may still be liable on the unpaid loan balance. Depending on what you are able to negotiate, you may have to sign a promissory note for the balance or it may be forgiven. If the debt is forgiven, it may be considered “income” to you and you may owe taxes on it. There are many legal issues involved in a short sale, so you should definitely talk to an experienced attorney if

you go this route. The other major problem with a short sale is that you must move out of the house at or before settlement, so you will need to have a place lined up to move into. Some advantages of bankruptcy over a short sale, are that the bankruptcy wipes out any liability you may have for a deficiency, or for income taxes, and you do not have to move out. So keep these things in mind when considering a short sale.

The third type of sale is a deed in lieu. This basically means that you give the house back to the bank. You may not be able to do this if you have a second mortgage or other liens on the house, because the mortgage company would have to pay them in order to sell the house. However, if this is an option for you, some banks will pay you to move out. This is sometimes called “cash for keys” and benefits both parties. The bank gets a house without the delay and expense of a foreclosure sale and you get the money you need to find a new place to live.

## Chapter 7 Bankruptcy

Chapter 7 Bankruptcy is the most common type of bankruptcy. About 2 out of 3 bankruptcies filed are Chapter 7. They are called Chapter 7 because the laws governing them are found in Chapter 7 of the Bankruptcy Code. A Chapter 7 is known as a liquidation bankruptcy because all of your non-exempt assets are “liquidated”, or sold, to raise money to pay your debts. Fortunately, as we discussed earlier, most people are able to exempt or keep everything they own and do not lose anything in their cases. You can only file for Chapter 7 once every eight years, so if you have filed before, you may not be eligible to file a Chapter 7. If this is the case, you may still be able to file for Chapter 13, if you need immediate relief.

### What can I keep in bankruptcy?

As discussed earlier, the idea behind bankruptcy is to leave you with some assets to allow you to make your fresh start. In Maryland you can exempt, or keep the following:

**Up to \$1,000.00 in household goods.** This means the liquidation, or yard sale, value of the goods, not what you paid for them. For example, the new flat screen TV you may have bought two years ago for \$1,500.00 would probably only bring \$200-\$300 at a yard sale. The same goes for most everything in your house. You can only get 5 to 15 cents on the dollar for most goods that are a couple years old. Things that are older than that have almost no value.

**Up to \$5,000 in real or personal property-** cars that are paid for, book, jewelry etc.

**Up to \$6,000 in cash or property of any kind** – bank accounts, tax refunds, garnished wages or any other property you may own.

**Up to \$5,000 in tools.** If you have tools that you use in a business such as contracting or car repair, you can protect and keep them. The value is based on what you would get if you took them to a pawn shop.

**Married Couples-** each spouse gets the above exemptions, so married couples can keep up to \$24,000 in cash and property.

**Wages or bank account garnished within 90 days of filing-** If an aggressive creditor has a judgment against you and put a garnishment on your paycheck or bank account, you may be able to get the money back. If the money was 1-more than \$600.00, 2-taken within 90 days of filing and 3- for a debt that is otherwise dischargeable, you should be able to get it back. If you are being garnished for student loans, some taxes or child support, you probably won't be able to get that money back.

**Up to \$21,625 in equity in your home.** This exemption was just added in October 2010. Equity in your home means that you can sell it for more than you owe on it. For example, if you can sell your house for \$100,000 and you owe \$80,000 on it, you have \$20,000 in equity. You can exempt \$21,625 of this, so you would be able to protect all of your equity.

**Retirement Accounts.** Most IRAs, 401(k) and other retirement accounts are exempt in a bankruptcy. Again, the idea is to leave you with something so you don't become a burden on society. In some rare cases, if you have made large contributions to a retirement plan before filing for bankruptcy, the Trustee may be able to go after these funds.

## **IMPORTANT WARNING ABOUT RETIREMENT ACCOUNTS**

Sometimes people come to me after withdrawing large sums of money from their retirement accounts to try to catch up a mortgage or pay other debts. This is a huge mistake for several reasons. First, you will pay taxes and penalties on the money, so the \$10,000.00 you take out may only mean \$6,000.00 in actual cash. Second, you have converted an exempt asset into a non-exempt one. This means that if you file for bankruptcy, the Trustee may take the money and pay your creditors, including creditors you did not want to pay. Third, some people take the money out to try and catch up on their mortgage. Later on they fall behind again and end up losing the house anyway. So not only is your house gone, but so is your retirement money. So if you are considering doing this, please consult with an experienced bankruptcy attorney BEFORE taking any money out.

**Houses and cars with no equity.** The Chapter 7 Trustee is only interested in assets that can be sold to raise money to pay your creditors (and his fees). So if you are upside down on your house or car, the Trustee won't be interested in them. IMPORTANT – if you want to keep your house or car you MUST continue to make the payments on them. If you are a month or two behind, sometimes filing the Chapter 7 allows you enough time to get caught up.

## What Debts Are Not Wiped Out?

### Taxes in Chapter 7

Many people are surprised to find out that some or all of their tax debts can be discharged in bankruptcy. There are four categories of taxes that you may owe: Non-dischargeable, secured, priority and non-priority. Non-dischargeable taxes are employment taxes that were withheld from employee paychecks but not forwarded to the IRS. Some business owners, when times get tight, use this money for their businesses instead of sending it to the IRS. These are non-dischargeable because the money never really belonged to the business owner, so the bankruptcy court is not going to help him avoid paying it. If you have never had a business with employees, you don't have to worry about this.

Secured taxes are taxes that are secured by a tax lien on your real or personal property. The IRS or the state of Maryland does this by recording the tax lien form at the courthouse of the county in which you live. The good news is that the discharge may end any personal liability you have on the taxes. This means the IRS or state can only go after the property that secured the tax lien. If there is no equity in the property, you may also be able to “avoid” the lien and keep the house or other property without the lien on it.

Priority taxes are generally taxes that are less than three years old. The idea is that the IRS has three years to pursue you for back taxes. If you file for bankruptcy in this three year period, they have priority over other creditors in getting paid. After three years, the taxes become non-priority debt and can be discharged in your bankruptcy. Of course there is a catch. You have to have filed all of your taxes on time and you can not have committed fraud on your tax returns. So if you do owe taxes, you want to make sure you have filed all your returns truthfully and carefully consider the best time to file the bankruptcy.

**Student Loans-** Unfortunately, most student loans are not dischargeable and can't be wiped out in a bankruptcy. The only way to get rid of them is to show they are causing you an undue hardship, but this is very difficult to prove and very rarely granted.

**Child and Spousal Support-** both back support and current support are non-dischargeable in bankruptcy. If you file a Chapter 13, all back support must be paid before any of your creditors receive a penny!

There are other debts, such as criminal restitution and debts owed to governmental units, that are not wiped out in a bankruptcy. These situations are rare in consumer bankruptcy cases, so you probably won't come up in your case.

## How To Choose a Bankruptcy Lawyer

Bankruptcy law, like most areas of law, is constantly changing. Judges make decisions everyday that clarify, extend modify or confirm other decisions made by other judges. In these difficult economic times, Trustees and creditors have become more aggressive in trying to squeeze money from debtors, because they are struggling for money too. So, the most important thing to look for before hiring a bankruptcy attorney is CURRENT EXPERIENCE.

Practicing bankruptcy law in 2011 is different from practicing in 2010 or 2005 or 2001. The laws have changed, the local rules have changed, the Judges have changed and the Trustees have changed. Moreover, the tough economy has affected lawyers just like everyone else, so there are many new lawyers practicing bankruptcy because the other areas of law have dried up. This means there are a lot of lawyers out there who may not have the experience necessary to make sure your case goes as smoothly as possible.

Other things to look for:

- 1- Does the lawyer share information about bankruptcy so you can educate yourself and make informed decisions about your case? You need as much information as possible before making a big decision like filing for bankruptcy, so web sites, brochures, books and e-mail updates are mandatory.

- 2- Does the lawyer use technology to make your case go smoother? There is all kinds of technology out there, but if it doesn't ease communication between the client and the attorney and make the case as hassle free as possible, then it is wasted. I use Infisionsoft, a very powerful data management system, to keep in touch with clients, remind them of important dates and hearings and keep them up to date on their case.
  
- 3- Will the lawyer you meet with be the lawyer handling your case? Some big bankruptcy firms have associates who handle client appointments and the meeting of creditors, so you may be meeting you lawyer for the first time in Court. I personally meet with all clients and attend all the creditor's meetings, except for rare situations when a conflict arises.
  
- 4- Does the lawyer start working on your case immediately? If you retain us, we will send a letter to all your creditors to immediately stop calling you. Even before your case is filed, you will get relief from creditor calls and harassment.

# 7 Myths About Bankruptcy-Busted!

## **Myth #1- The new bankruptcy law means I can't file to get help.**

False- The new bankruptcy law added paper work and made filing more complicated, but you still get the same powerful relief- bankruptcy IMMEDIATELY and AUTOMATICALLY stops foreclosure, garnishments, repossessions, and other creditor harassment.

## **Myth #2- I will lose everything in bankruptcy.**

False-Bankruptcy law allows for exemptions, which means cash and property you can keep to make your fresh start. In Maryland you can keep up to \$12,000.00 of personal property (\$24,000.00 for married couples) plus other things like IRAs and worker's compensation awards.

If you are making payments on your car or home and are current, you can keep them after filing for bankruptcy protection.

## **Myth # 3- My credit will be ruined forever.**

False- By the time you are even considering filing bankruptcy, your credit is probably as bad as it is going to get. By filing bankruptcy, you are making a a fresh start and can begin to rebuild your credit. Most people actually see their credit score improve after filing bankruptcy.

**Myth # 4-Debt consolidation is better than bankruptcy.**

False- Most people who enter into debt consolidation programs make payments for a few months and then fall behind again, losing all the money they have paid in. Most, if not all of the money goes to the debt consolidation company. Furthermore, debt consolidation is voluntary and some creditors may refuse to participate.

**Myth # 5- I will never be able to buy a home.**

False- I have had many clients buy a home a year or two after filing bankruptcy. Again, the bankruptcy is a fresh start which means all your old debt is gone. If you pay your bills such as rent, electric and car payments on time after filing, you can rebuild your credit. Since your old bills are gone, it should be easier to pay your remaining bills and also save money for a down payment on your home.

**Myth # 6- I am a failure for filing bankruptcy.**

False-filing a bankruptcy simply means that your expenses exceed your income and you can't pay your bills. Most people end up in bankruptcy due to job loss, divorce or illness which are things you have little or no control over.

Millions of people including famous people like Donald Trump, Mike Tyson, MC Hammer, Walt Disney and Burt Reynolds have filed bankruptcy and gone on to later success.

**Myth # 7- Bankruptcy leads to divorce.**

False- financial stress is a leading cause of marriages breaking up. While the decision to file a bankruptcy is

a difficult one, most people find that after filing they feel like a huge weight has been taken off their shoulders.

**Bonus-Myth # 8- everyone will know that I filed for bankruptcy.**

False- Unless you are famous or newsworthy, the only people who will know that you filed for bankruptcy are your creditors and anyone you tell. While bankruptcy is public record, unless someone is specifically looking to see if you filed for bankruptcy, it is highly unlikely anyone will know. So just don't tell anyone!

**It sounds like there is no downside to filing bankruptcy.**

False- filing bankruptcy is a difficult and emotional decision and should be taken only as a last resort. Because bankruptcy law is now even more complex, if you file a bankruptcy without reviewing all your options with an experienced bankruptcy attorney, you could even end up worse off. There also may be solutions to your problems that can be handled without a bankruptcy filing, so consult with an experienced bankruptcy attorney before making that difficult decision.

## **BANKRUPTCY WORDS AND TERMS YOU SHOULD KNOW**

### **Adequate Protection**

Your creditors who have secured liens- like your car and mortgage payments- have to be protected during your case. This means you must make your car and mortgage payments after your case is filed-if you want to keep the car or house.

### **Adversary Proceeding**

This is a separate lawsuit filed during your bankruptcy case-usually to have the Court decide if a debt should not be wiped out due to fraud.

### **Asset**

Anything you own that has a value such as a car, bank account, furniture, clothes etc. It is very important to list ALL your assets in a bankruptcy case.

### **Automatic Stay**

When your case is filed, the “Automatic Stay” immediately stops foreclosures, repossessions, lawsuits and other collection activities.

### **Bankruptcy Code**

The part of the federal law that deals with bankruptcy.

### **Bankruptcy Petition Preparer (BPP)**

A non attorney who helps people put their bankruptcy schedules together. A BPP can NOT offer legal advice or represent you at the meeting of creditors. Many times, if you file *pro se* or use a BPP, the U.S. Trustee will appear at your meeting of creditors and ask questions.

### **Chapter 7**

Straight bankruptcy or liquidation. The Trustee sells any non-exempt assets and your debts are wiped out.

### **Chapter 13**

Payment plan bankruptcy. A plan is created to pay back your creditors in an orderly fashion. People usually file Chapter 13 to stop a foreclosure and save their homes.

**Collateral**

Property used to secure a loan such as a house, car or personal property. If the loan is not paid, the creditor can take the property.

**Conversion**

You can convert or change your bankruptcy from a Chapter 13 to a Chapter 7, or vice versa. Many times, people will start out in a Chapter 13 and then convert to Chapter 7 if they can't afford the payments.

**Cosigner**

Anyone who signs to pay a debt along with another person. If one person files for bankruptcy, the creditor can go after the other person for the entire amount due.

**Cramdown**

Reducing the balance on a loan to the value of the collateral. Many times, people are "upside down" on the cars and the loan can be reduced to the value of the car.

**Credit Counseling**

Under the new bankruptcy law there are two counseling classes that must be done. The pre-filing credit counseling must be done before filing. The financial management course must be done before discharge.

**Credit Score**

A number between 300-800 that reflects your credit history. Above 700 is very good. Most people filing for bankruptcy have scores in the 500s. The good news is that by filing your score will probably IMPROVE your score by 50-100 points.

**Creditor**

Someone you owe money to.

**Current Disposable Monthly Income**

The amount of money the Court thinks you should pay your creditors every month in a Chapter 13 payment plan.

**Debtor**

The person(s) filing for bankruptcy.

**Deficiency Balance**

The amount still owed after a car or house is repossessed/ foreclosed and sold. If the sale brings in more than is owed, you get the money, otherwise you still owe the difference.

**Dismissal**

Your case can be dismissed if you don't file all the paperwork, don't show up for the meeting of creditors or don't make your plan payments.

**Domestic Support Obligation**

Money owed for alimony, maintenance or child support.

**Equity**

The value your property that remains after mortgages, liens and judgments are subtracted. For example: if your house is worth \$100,000 and is subject to a \$65,000 mortgage, \$3,000.00 condo lien and \$2,000.00 judgment, there is \$30,000 of equity.

**Exempt**

Your property that is protected from your creditors and the Trustee in your bankruptcy. You get to keep your exempt property to make your fresh start after bankruptcy.

**Joint Petition**

A bankruptcy filed by a husband and wife.

**Lien**

A lien is the way a creditor secures its debt. If you buy a car, the creditors put a lien on your car title and if you don't pay, they can take the car and sell it. Sometimes, a creditor can sue you and get a judgment lien on your house. This is an involuntary lien.

**Lien Avoidance**

Some liens can be avoided, or gotten rid of, in a bankruptcy. This helps you get your Fresh Start because you don't have to some secured debts.

**Liquidation Analysis**

The amount of equity or money available to your creditors if the Trustee sells your house or car. You want to make sure you exempt all equity BEFORE you file a Chapter 7.

**Means Test**

The 2005 bankruptcy law added the means test. If you make less than the income (about \$55,000 for 1 person in Maryland), you pass the means test and can file for Chapter 7. If you make more, you may still be able to file Chapter 7 by deducting certain expenses from your income. However, you will probably need a lawyer to help you with this.

**Meeting of Creditors**

Usually the only time you have to go to Court in a Chapter 7. You will meet with the Trustee and he/she will ask you about your finances. What they are most interested in are assets that they can sell to raise money for your creditors.

**Mortgage/ Deed of Trust**

A lien on your house.

**Motion to Lift Automatic Stay**

A request by a creditor to have the automatic stay removed so they can try to collect their debt, usually by foreclosure or repossession of your car.

**No-Asset Case**

A Chapter 7 case where the Trustee decides you have no assets worth pursuing.

**Objection to Dischargeability**

If one of your creditors thinks you obtained money by fraud, they may file an objection to the discharge of that debt.

**Personal Property**

Assets, such as cars, stock, furniture, etc., that is not real estate or affixed to real property.

**Plan (Chapter 13)**

Your proposal to your creditors about how much they will get paid and in what order. Generally plans run from 36-60 months and are based on your income and other factors.

**Post-Petition**

Anything that happens after the bankruptcy is filed.

**Pre-bankruptcy Planning**

The arrangement (or rearrangement) of a debtor's property to allow the debtor to take maximum advantage of exemptions. (Prebankruptcy planning typically includes converting nonexempt assets into exempt assets.)

**Pre-Petition**

Anything that happened before the bankruptcy is filed.

**Preference or Preferential Debt Payment**

A payment made to a creditor within 90 days of filing bankruptcy. Also any payments you make to family members within a year of filing.

### **Presumption of Abuse**

If you are over the median income, a presumption may arise that you can afford to repay creditors and the case should be converted to a Chapter 13.

### **Pro Se**

Filing a case own your own or with a BPP.

### **Real Property**

Land and the property attached to the land like a house, townhouse or condo..

### **Schedules A-J**

Papers filed in the bankruptcy listing all your real and personal property, your exemptions, all your debts, co-debtors, income and expenses. It is very important that these be accurate and complete.

### **Statement of Financial Affairs**

Papers filed in the bankruptcy listing your financial activities in the years or so before bankruptcy.