

# **THE TRUTH ABOUT BANKRUPTCY IN CONNECTICUT**



**David F. Falvey, Esq.**

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# Testimonials

"Attorney Falvey and staff were courteous and understanding with my situation. They were there every step of the way with a free consultation and then the actual procedure."

-----Mary H.

"Attorney Falvey and his staff came with the highest recommendations. Very professional, knowledgeable and experienced. Reassuring in every aspect. Very thankful for their effort and helping me gain a fresh start"

-----Kathleen J

"Had an issue with company reporting incorrect information to credit bureau and Action Advocacy contacted them to not only fix the problem but had the company pay me damages. Would highly recommend this office as they are friendly and you get results;"

-----Joey D

"I went in for a consultation regarding my debts and few months later Attorney Falvey's office was able to get a creditor to pay \$7,000.00 for harassing phone calls that were made to me. This not the end. I have other creditors who we have found violated

the law in their collection methods and I expect to receive more money soon. So I can tell you that when the office staff that when the office staff shows you to make money believe them. At first I was skeptical but today I walked away with a significant check and I am waiting for other creditors to pay me more money. Thanks to everyone for the guidance in helping me through these difficult financial times. Everyone at Attorney Falvey's office has been a great help."

---David H.

"If you have any serious financial problem, ACTION ADVOCACY is the solution! I was completely hopeless when I lost my career due to illness and I maxed out my credit cards, a home equity loan, and my mortgage was under water and months behind payment. I was facing foreclosure and constant phone calls from creditors. Attorney Falvey's tremendous expertise and gentle words of wisdom gave me a fresh, confident plan to reestablish my financial freedom. Attorney Davison was especially effective in his stalwart foreclosure defense of my home. Attorney Davison even made the mortgage company (that I owed money to!) pay me a settlement check for harassing phone calls, after Attorney Davison sent them legal notice to stop calling me but they continued to call. This team and

staff is of the highest caliber and above all, unbelievably humane. God Bless and Thank You.

-----Joan L.

"I would to thank Attorney Falvey and his staff for their excellent work in helping me settle my finances so quickly. The experience was the best I ever had. I would recommend Attorney Falvey and Attorney Ken Davison to anyone that ever has a financial problem. I could not believe that they were able to get \$3,230 back from two of my creditors because they harassed me."

-----Mike J.

## Warning

*The law is as vast as the ocean and is always in flux and it changes. That's why it's very important to consult specifically with an experienced attorney who specializes in bankruptcy. Abraham Lincoln has said, "He who represents himself has a fool for a client." My book is written to give you an understanding of the law of bankruptcy and is not meant to replace the advice of an attorney who specializes in bankruptcy law.*

## Letter From The Author

If you're reading this book, the chances are that there has been a financial bump in the road for you or someone you know. It is nearly impossible to get through life unscathed. When I look around at those in my life, I see all sorts of unforeseen circumstances that have caused major life changes, whether through illness, divorce, job loss or business loss.

My career began as an English teacher at our local high school which back in the day, the Federal Government had a program that if you taught as a teacher for 10 years, all of your student loans would be cancelled. So I know from first-hand experience about student loan debt. I thoroughly enjoyed my career as a teacher but after my student loans had been retired, I thought it was time for me to start practicing law. I started my legal career with a law firm but eventually 'went out on my own'. I was inspired by Gerry Spence's book, 'Gunning for



Justice'. I was determined to make the law work for the 'little guy'.

At first I was in the general practice of law but I became fascinated with the possibilities of setting people free from debt. And it had been an issue in my family that during the Great Depression, my grandfather lost his farm. The pain of that loss continued for decades. I began to concentrate all my time to setting people 'free from the prison of debt'. And when I help people today, I know that my work will have consequences for generations yet unborn. Freedom! New Hampshire has got it right, 'Live Free or Die' and there's a famous expression among the Greeks, 'Eleftheria i Thanatos' - 'Freedom or Death'.

'Debt' is the legal construct for slavery. And if a Black Person could pay off the 'debt' that was imposed on him/her, they could buy their 'Freedom' prior to the American Civil War. Very few were able to 'pay off their debt' but a few were able through Herculean effort, to pay off their debt and buy their freedom. I began to realize that there are 2 types of slaves, namely, a 'political slave' is someone who can't vote and a 'financial slave' is someone who can never throw off the yoke of debt.

I tell clients what they already know which is that we have freedom of speech, assembly, the press and religion but another freedom which is

very important is 'freedom from debt'. I won't recite to you the History of Debt, but 'freedom from debt' is, of course, very important. This is not discussed as one of our 'civil rights' but I consider it one of our civil rights as equally important as our other freedoms. And that, ladies and gentlemen, is America: FREEDOM.

Many people and attorneys say, 'Get a Fresh Start' and file for bankruptcy. But I say when we file a bankruptcy petition, we are seeking 'Freedom from Debt Slavery'. Then I urge my clients not to squander their freedom, but to use my systems of budgeting and credit improvement so that within 12-24 months to obtain a 720 credit score. I compare bankruptcy to an accelerant or a fire where you 'burn the field' but then you have to go onto the field and pull out the tree stumps and boulders and prepare the ground for planting and obtain a good credit score. You can squander your freedom and simply walk away from the field but we all know that all the weeds will just grow back. I urge people not to squander their 'freedom' and, indeed, I have a whole program to help people accelerate getting a good credit score within 12-24 months after filing a bankruptcy petition and I am so passionate about not squandering your 'freedom' that there's no additional charge for my work in this area. I want 'freedom' to ring through the land!

But I have found that it's critical to dispel the 'myths' about bankruptcy because so many people are 'afraid', 'embarrassed', and confused and on the Internet it is loaded with fraud and consumers fall into their traps because they offer false hopes and use the psychology that as no one wants to go to a hospital, or a funeral parlor, or have a root canal- no one wants to file for bankruptcy and the scam artists will use this 'fear' and 'avoidance mechanism' we all have, to avoid something that is scary and foreign.

But the 'truth shall set you free' and this book is going to pull back the curtain and give you the 'truth' and that will be the first step toward FREEDOM.

YOURS IN FREEDOM,

Dave Falvey

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## Getting Started

### Why file bankruptcy?

*Maura was an elderly woman who had paid her bills on time all of her life, but she had begun to accumulate credit card debt to pay basic expenses when she was forced to give up her part-time job due to ill health. She only had her Social Security check each month. Now the monthly minimum payments were cutting into her budget to the point that she was unable to pay her monthly living expenses. She could not take the stress of the creditor calls when she became late. She sought relief in Chapter 7.*

You file bankruptcy because you want a fresh start. The law allows you to keep assets that are necessary for you after bankruptcy. In addition, bankruptcy allows you to discharge certain debts that you have incurred, and you can begin the process of credit repair.

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Most people file bankruptcy because an unforeseen event has occurred in their lives, nearly always outside of their control. Either one or both spouses have lost their job or had a decrease in their work hours. To afford to raise a family today with all the expenses involved, many families are on the edge at all times. If one spouse is out of work for a period of time, or even just one family member is unable to contribute, it's easy to get behind on the bills. The problem arises when you start using your credit cards for your living expenses, and you're unable to pay them in full when they come due. Most credit cards have high interest that will continue to accrue. And if you miss one payment or are late, many credit card companies automatically charge the default interest. They entice you with offers of low interest rates, balance transfers, and other promotions. Then all you do is skip a beat, and you're paying over a 30 percent interest rate. The next thing you know, you're behind on your mortgage because you can't keep all the bills current.

Other than loss of a job, what we see a lot of people who have a medical condition – they're injured or they get sick – and their medical situation prevents them from being able to work. Sometimes their inability to work is temporary and sometimes it's permanent. Meanwhile, their obligations such as

car and mortgage payments and educational loans begin to pile up, making it very difficult to pay back the creditors at this point.

In the event of a divorce, the husband's and wife's earnings are no longer combined and their expenses no longer split. An individual income may not be enough to live on in addition to paying child support and alimony, and the spouse who has custody of the children may not have enough income to provide the extras. Marital debts that may have accumulated now have to be split in addition to the added expense of living alone. So a divorce can wreak havoc on family finances. There is a great intersect between bankruptcy and divorce and bankruptcy can be a good option.

Another reason to consider filing bankruptcy is involvement with a business that fails. The American dream is to have your own part-time or full-time business. Often, the dream doesn't work out. Either the local economy doesn't support your business, or the product you sell or the service you provide doesn't succeed despite your hard work. Many times, a business failure will have the effect of pulling you down individually. Even though they're business debts, you may be obligated personally to the creditors or on loans to the bank, and because of the business failure, the creditors will come after you personally.



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Another prevalent reason for filing bankruptcy concerns the elderly. They're no longer able to stay employed due to their age, and they go from working full time to living on Social Security. The Social Security check isn't enough to cover all of their expenses, and they get caught incurring credit card debt.

For those in financial trouble, bankruptcy still remains a good option because you're getting a fresh start. There are loan consolidation programs and debt settlement opportunities available. If you are exploring these options, look closely at the fees these options charge, as well as the total amount of money you're going to have to pay back.

There's the option of debt settlement, also, called 'debt negotiation'. There's considerable fraud on the internet with this service. How do you tell who are the scam artists? A company to be legitimate has to be licensed and bonded by the Connecticut Department of Banking. You should check on Verify a License under Debt Negotiators. Go to: <https://portal.ct.gov/DOB/Consumer-Credit-Licenses/Consumer-Credit-Licenses/Debt-Negotiators-Licensed-in-Connecticut>

Or you could call the Depart of Banking's toll free number and ask for 'Consumer Credit Verify a License' (800) 831-7225. In Debt Settlement you can

still be sued and that's why you need an attorney for this option.

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## What are the requirements for filing bankruptcy?

*Melissa worked two jobs but was unable to keep her spending under control, and her credit cards got out of hand. Once she took the debtor education courses and obtained her discharge, she set up a budget and was able to live within her means.*

*Adam wanted to get married and start a new life without bringing his debt with him. He was able to file and receive his discharge in ninety days from start to finish.*

Prior to filing bankruptcy, the law requires you to take a debtor education course. The course is online and takes approximately an hour. After you file, you must take a financial management course, which is also online and around an hour long.

In these courses, you'll learn how to budget your money and hopefully not fall into the same situation you got yourself into before. These courses became required in 2005 when creditors were noticing repeat filers and debtors who were not making any attempt to repay them, despite having a decent income. So Congress changed the rules. People have told me that the courses are actually interesting and that they've benefited from them going forward.

Generally, the time-consuming part is locating all your creditor information and completing the checklist of items that you'll need. If you work with an attorney he or she will give you a checklist of documents that you'll need to put together, including tax returns, pay stubs, a Kelly Blue Book valuation on your automobile, and either an appraisal or CMA on your home. You'll also be required to take the credit-counseling course and prepare a budget of income and expenses. Bankruptcy attorneys will require all fees to be paid prior to filing your case. Our office works out a payment plan to get the process started and manage your creditors. After you assemble all of your documents and deliver them to your attorney, Chapter 7 will take approximately ninety days to obtain a discharge once it is filed. In a Chapter 13, it takes typically three to five years to receive a discharge.

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## **Do I qualify for bankruptcy and how long does it take?**

*Michael was a physician who was juggling payments to an ex-wife and the IRS, as well as significant credit card debt incurred helping educate his kids. He had a good income, but the interest and penalties on the debt were significant, and he was left with little for living expenses. He was able to file Chapter 13 and stop all interest and penalties. He was then able to pay off the debt he owed.*

Almost everybody qualifies for some type of bankruptcy, whether it is Chapter 7 or Chapter 13. A Chapter 7 is a liquidation where all debt is wiped out with few exceptions (e.g., student loans), and Chapter 13 is considered a reorganization bankruptcy where you pay some or all of your debts back over time. Two factors will determine which chapter you file. The first is the assets you have and whether they are exempt. The second qualification is analyzing whether your family is above or below median income. All income sources are considered, including rent that you might be receiving from a family member.

In 2005, the bankruptcy laws were amended following efforts from credit card companies to pressure individuals making above a certain annual

income to pay some or all of their creditors back in Chapter 13. Congress amended the code to include the means test, which, depending on the state you live in and your family size, will determine whether or not you would qualify for Chapter 7. Connecticut has one of the highest median incomes in the country. The median income for a single person in 2019 is \$65,117.; the median income for a family of two is \$83,597; and a family of 3 is \$100,836; and the median income for a family of four is \$116,897. It changes every quarter.

Occasionally, even if you're above the median income, you can still qualify for Chapter 7 if you have greater-than-average deductions such as union dues, health insurance, and a higher-than-average mortgage or auto payment. These deductions would allow you to offset some of that additional income. In determining whether or not you qualify for filing Chapter 7 bankruptcy, there are other factors that should be considered. If someone has recently died in your family and you are due to get an inheritance, the money you're going to inherit could go to pay your creditors. Also, a personal injury may not be fully exempt from creditors in a Chapter 7 bankruptcy.

Additionally, you're only able to file for bankruptcy under Chapter 7 every eight years after receiving your last discharge, while a Chapter 13

allows you to file every four years. This law was changed in 2005.

At the outset, your attorney will calculate the means test and perform an analysis of your assets and exemptions; then you will take credit counseling. Once you've made your final decision, you are ready to complete the process. A bankruptcy petition, schedules, and a statement of financial affairs are filed with the court.

After you file for bankruptcy, you will have to appear for what's commonly called a *meeting of creditors* or a *341 meeting*. It will generally be held within an hour's drive from where you live. Prior to the hearing, your attorney will provide the trustee with pay stub, tax returns, and other documents.

The 341 hearings are conducted by the trustee, who will ask you if you've listed all of your assets and liabilities on the schedules, whether your schedules were true and accurate at the time you filed for bankruptcy, and whether the schedules are still true and accurate at the time of the meeting. If you've forgotten or deliberately failed to list all of your real estate assets, chances are the trustee would have done his research and already know that. If you've listed all your assets and all your liabilities and your assets are exempt, the trustee will close out your case and file a no-asset report with the court.

By law, you're not entitled to receive a discharge for sixty days after the 341 meeting. The sixty-day period is generally for any creditors to object to your discharge. This rarely happens unless you have abused your cards prior to filing.

After sixty days, the bankruptcy clerk will mail you an *order of discharge*. This is endorsed by the judge and states that your debts have been discharged. There are not tax consequences to receiving a discharge in bankruptcy, unlike a debt being written off by a creditor. Furthermore, the whole process from start to finish will have taken approximately ninety days.

If you file for Chapter 13, the bankruptcy process takes a little longer. The initial phase of filing, meeting with the trustee, and resolving any objections with the trustee and creditors takes approximately six months.

Another prerequisite of filing bankruptcy is to determine whether or not you've transferred any property in the last four years (or in the last ten if it's a self-settled trust). Many people run into trouble with creditors and start transferring property to a spouse or a family member, and they transfer it for less than the actual value so it's outside the reach of creditors. The bankruptcy laws frown on these types of transfers. They're



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considered civilly fraudulent and can be voided for the benefits of creditors.

When you meet with your bankruptcy attorney, you'll want to make sure to tell him/her of any transfers you made in the last few years or to yourself under another entity; they may be able to be fixed.

## Who finds out about my bankruptcy filing?

*Sandra worked in customer service at a bank and was terrified that she would lose her job. Since there was no requirement in the bankruptcy code to notify your employer, she was able to complete her bankruptcy, and her employer never found out.*

Other than your individual creditors, the only entities that find out about you filing a bankruptcy are the three credit reporting agencies; TransUnion, Experian, and Equifax. Your employer does not get a notice. Your spouse will not find out unless you tell him or her or if he or she sees your mail and your spouse does not have to consent to your filing. It will not appear in the local newspaper. You can't even find out if someone filed by using a Google search. Word just doesn't get around. Yes, a bankruptcy is recorded on the public record, but it isn't published for the average person to see. So don't worry.

## Bankruptcy And Your Home

### If I file bankruptcy, will I lose my house?

*Other than a ten-year-old car, William's only asset was his home of thirty years, and he had paid down most of his mortgage. He was able to file bankruptcy and eliminate his credit card and medical debt. His house was protected in the process, and he was able to keep current to his mortgage.*

As a rule, if you are current on your mortgage payment(s), you won't lose your home in bankruptcy. Here's how it works: Chapter 7 is called 'liquidation' and many people envision a conveyer belt where all their debts fall from a conveyer belt and into the fire and 'liquidated'. But then all your assets are put onto the conveyer belt to be 'liquidated' for the benefit of the creditors. But here's where the attorney takes those 'assets' off the conveyer belt because you have 'exemptions', meaning the asset is exempt from liquidation.

How does this work? You have 2 Exemption laws but you can't mix and match them. You have Connecticut Exemptions for your home or Federal Exemptions. Connecticut's Homestead Exemption is

\$75,000 for each owner and if 2 people own the home, there's \$150,000 worth of exemption power provided you or a dependent is living in the house. Under Federal Exemptions, each person has \$25,150.00 exemption and two people owning same home have a total of \$50,300.00 for a Homestead Exemption.

Now let's apply these rules. Let's suppose you and your wife own a home and it's worth \$300,000.00 and there's a mortgage of \$150,000. Therefore, your equity is \$150,000 and this would be exempt under Connecticut Exemptions. We don't have to exempt the value of \$300,000, we only have to exempt the equity in your home. Sometimes people have equity in a home more than their exemption power, in that case we have to review either a Chapter 13 which is Reorganization and you don't lose your home equity or an out-of-court Option called Debt Settlement or Debt Adjusting. Connecticut has a 'stingy homestead exemption' compared to Rhode Island and Massachusetts which is \$500,000!

## How can I keep my home if I am having trouble affording it?

*Joseph was diagnosed with cancer and was unable to continue working while in treatment. A year later, he had beaten the cancer and was employed again but found himself eight months behind on his mortgage and with a pile of credit card debt. He filed Chapter 13 and is paying his delinquent mortgage payments over five years.*

Keeping your home obviously means that you're going to have to pay for your home. Just because you're receiving a discharge of bankruptcy doesn't mean that the bank is going to wipe out your mortgage or that you're not going to have to make your regular monthly mortgage payments. During the process, the lender is still going to be expecting you to make the payments, and if you don't make the payments, the lender will foreclose on you. It's as simple as that. Otherwise, you'll be able to exit your bankruptcy and keep your home.

If you aren't current on your mortgage and are having trouble catching up, you can file a Chapter 13 and pay your mortgage arrears a little each month over sixty months. In the meantime, if you stay current and make your payments, the bank

can't foreclose on you, whether it wants to or not. The law doesn't allow it. I regularly see people who haven't made mortgage payments in months or years, and they are able to catch up with affordable monthly payments in Chapter 13.

Now, let's say you want to keep your house, but you can't afford the monthly payments. Your other option is to try to modify your loan. If you are approved, the bank could reduce your current interest rate and put the delinquent payments on the back end of the loan. Then you'll just resume payments under what is generally a trial modification. There are quite a few government programs as well as in-house modifications that banks are willing to look at to keep you in your home. The programs depend on whether you're current or delinquent on your mortgage. Modifications are going to require a financial hardship, such as one resulting from divorce, illness, loss of job, or cut in work hours.

The guidelines on getting approved are tricky, especially if you are self-employed. As part of our prebankruptcy planning or foreclosure defense, our office assists individuals and families in modifying their loans when appropriate. There is also assistance available with the local housing authorities.

If you can't modify, you're left with only Chapter 13 if you want to keep the house. Let's assume for a moment that you are behind six mortgage payments of \$2,000 per month for a total of \$12,000, and no matter how hard you try, you're not able to get current. You're getting letters from the bank saying you're delinquent. You have the ability to file for Chapter 13 and pay the balance over time.

Let's break it down further. For example, in a Chapter 13, your payment will be approximately \$225 a month for sixty months, meaning that each and every month for the next five years, you will mail a check for \$225 to the bankruptcy trustee. After the 10 percent trustee fee is deducted, the balance will be sent to your bank.

When you are under the protection of Chapter 13, the bank cannot foreclose on you as long as you're paying your trustee payment of \$225 and keeping your mortgage current.

Sometimes in Chapter 13, despite your best efforts, you're not going to be able to afford the current payments plus the trustee payments. If that happens, you have to take a hard look at your situation and see whether keeping this home is in your best interest.

Part of your plan might be to file the Chapter 13 and continue the effort to modify your loan or

struggle to pay the arrears over the life of the plan. If you're unable to afford it, you can sell the property in Chapter 13 or convert it to a Chapter 7 to discharge your other creditors rather quickly. That's not something that you hope to do, but reality may be at the door. You will be able to sell your house while in Chapter 13.

When you are trying to save your house, one of the many benefits of bankruptcy is that you get what's call the *automatic stay*. Now, let's assume that your bank is putting pressure on you and begins foreclosure proceedings. It may start with a simple form letter. But the bank may get more serious and hire an attorney, send you a formal letter, file a proceeding in court, publish the notice in the newspaper, and schedule an auction date.

When you file for bankruptcy, the court imposes the automatic stay. The stay means that all foreclosure and collection activity stops at the moment of filing. If your intention is to keep your home and you file Chapter 13, the automatic stay allows you time to submit a plan to the bankruptcy court, in which you would state that you intent to keep the property and resume payments.

The automatic stay, I tell clients, is like a "force field" which the creditors can't penetrate and go after your home.



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## What are my options if I don't want my house or can't afford it?

*Jeffrey came to us having recently divorced and being unable to sell the marital home, which was worth less than what was owed. He wanted to get a fresh start and not have the bank come after him for the difference after a foreclosure. He was able to file a bankruptcy, and he discharged his obligation to the bank.*

Let's say you can't afford your monthly payments or that your house is underwater; in other words, you owe more on it than what it's worth. You have the option to walk away or abandon your house. By abandoning the house, you receive a discharge in bankruptcy relieving you from your obligation to the bank, whether you have one mortgage or two mortgages. You can also sell the home by short sale or give it back to the bank in what is called a *deed in lieu* of foreclosure (hand the bank the keys) and release yourself from obligation. Your personal liability is discharged in bankruptcy, and the bank can't come after you for the deficiency.

Here is an example. Without bankruptcy, if you have a house worth \$350,000 and owe \$400,000, you are underwater. The bank sells the house at a

foreclosure auction for \$300,000. You would be liable for the remaining \$100,000 if the bank files a *Motion for Deficiency*. A bankruptcy, though, would eliminate that liability. It's all part of the fresh start bankruptcy affords you. If you decide not to file for bankruptcy, the bank can come after you for the difference. If the bank forecloses and decides to sue you, it has twenty years to collect on the judgment. You can run a risk by not filing bankruptcy and the deficiency judgment will hang over your head for up to twenty years.

## How does Chapter 13 work?

*Susan and Ed had well-paying jobs, but unfortunately in maintaining all of their children's activities and paying for day care for the youngest, they had accumulated a lot of credit card debt. They were able to file Chapter 13 and pay a nominal amount to the creditors each month through the bankruptcy plan.*

The Chapter 13 plan is based on your current income and expenses. It is essentially a budget that shows where your monthly income is coming from and where it's going to in itemized expenses. The plan has to be approved by the trustee for feasibility to make sure that your income and expenses are reasonable. If the trustee signs off on the plan, then it goes to the judge, who – assuming there's no objection from any creditors – will approve your plan.

Once the judge approves your plan, the payment that you make remains fixed for five years. Now, if you have a significant increase in your income, you may be required to make a larger plan payment to your creditors.

We talked earlier about assets that you will be able to keep in Chapter 7. In Chapter 13, you have the ability to keep the luxury items or assets that are nonexempt in Chapter 7, such as boats, personal business assets, and certain securities.

Retirement funds are covered or protected as an exempt asset. But those other assets that are not necessary to your daily life are considered nonexempt assets. While you will be able to keep these assets, you will be required to pay the value of those assets to your creditors over the life of the Chapter 13 plan.

For example, if the value of a boat you had was, say, \$18,000, you could deduct \$12,000 for the allowable exemption in both Chapter 7 and Chapter 13. The remaining \$6,000, which is not exempt, would be paid to the creditors through the Chapter 13 plan, so your payment would be approximately \$115 a month for the next five years. That payment would go to the bankruptcy trustee who would divide it proportionally among your creditors.

You also have the option while in Chapter 13 to attempt to modify your home loan again. If you were denied your loan modification before you filed for Chapter 13, and there's a change in circumstances, you can still possibly modify your loan in Chapter 13.

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## **Can I eliminate home equity loans or second mortgages in bankruptcy?**

*Stephanie and her husband bought a house in 2006 during the height of the real estate market with what was called an 80/20 loan, in which there was a second mortgage for 20 percent of the purchase price. The value of their house had now fallen below the amount they owed on their first mortgage, and their house was significantly underwater. They were able to file a Chapter 13 and discharge their second mortgage.*

Another benefit of filing Chapter 13 in Connecticut is that you're able to strip your second mortgage if the value of the house is less than what you owe on your first mortgage.

For example, if your house is worth \$300,000 and you have a first mortgage with a balance of \$310,000 as well as a second mortgage of \$90,000, the value of your house is less than your first mortgage. Therefore, in Chapter 13, you could strip the second mortgage (the \$90,000 mortgage) from your property. In fact, you will get an order from the court after you've completed Chapter 13 that will be recorded with the registry of deeds showing the mortgage is discharged. This helps families who bought homes back in the mid-2000s at the height of the market and then saw the market fall out.

When the market crashed, the value of those houses plummeted below their original purchase prices.

This option is not available if you have equity in your house or if the value of your home is greater than your first mortgage. So it comes with conditions.

## What happens to the liens that are on my house?

*Tanya wanted to sell her house but was unable to because she had liens from credit card companies that had obtained judgments. We filed Chapter 7 for her and removed the liens as part of the ninety-day process. She was able to sell her house and keep the proceeds.*

If over the years you have been unable to pay your creditors and they've put liens on your home, you are going to be able to discharge those liens in bankruptcy. To the extent that you have a homestead, you will be able to strip the liens in bankruptcy. Your attorney will file what's called a *motion to avoid* the lien with the bankruptcy court. Only judicial liens, which are liens obtained by lawsuits against you by the creditors, can be stripped. Liens that cannot be stripped include any liens from the IRS or the Department of Revenue or any liens or Domestic Support Obligations, such as child support and alimony. If you owe child support and maintenance payments, those debts are not dischargeable, and those debts can be enforced with a lien on your property. If you have liens on a house that's underwater and you intend to abandon the property, there is no reason to remove the liens. When the senior mortgage, or first mortgage, goes

through the foreclosing process, the liens that are behind it will be wiped out. So you do not have to worry about having to deal with those liens if the property was foreclosed on, as long as you list the underlying debt in your bankruptcy.



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## **Will I get to keep my other assets in bankruptcy, such as my car and household possessions?**

*Jose came to us with a mountain of credit debt, but he was most afraid of losing his Harley if he filed a Chapter 7. We were able to exempt the Harley using the "wild card" exemption, and he was able to file Chapter 7 and keep the motorcycle.*

The short answer is yes. Again, the idea behind filing bankruptcy is to give you a fresh start and allow you to keep your necessary possessions: house, car, furniture, jewelry, clothes, lawn mower, dog – all those items of value that most people need in life. There's a limit on what the value of these items can be worth. Like the homestead, these are called *exemptions*. The value of these items has to be reasonable and is further defined in the code; you may not be able to keep luxury items. Say you get to keep your car, but it's not going to be the brand-new Mercedes with no loan on it. It's going to be your basic automobile, along with reasonable retirement accounts and personal possessions.

If you want to keep a luxury item – say a boat, a motorcycle, or a camper – you may be able to keep it under what is called the *wild card exemption*. A wild card exemption is a possession of one or more items with a value of up to

approximately \$13,000. In your life you may not consider these luxury items. I've had more than a few people tell me that a Harley is a necessity.

If your luxury item has a value greater than \$13,000, and you still want to file for Chapter 7, the trustee will take that item and sell it. The trustee will give you up to the \$13,000 you have exempted. The rest of the proceeds are used to pay your creditors. That's how Chapter 7 works. Generally, if you have those types of assets, you will do some type of prebankruptcy planning. You may want to consider selling the asset prior to filing for Chapter 7, spend the money on living expenses, and keep the difference. And you always have the option of filing for Chapter 13 and keeping the asset.

## Bankruptcy and Debt

### What debts are discharged in bankruptcy?

*Kevin owed the IRS for old taxes and was discouraged that they kept adding penalties and interest to an amount that he couldn't afford. They had levied his bank account and were keeping his tax refund every year. He filed Chapter 7 and eliminated his old tax debt. He was able to begin receiving his tax refund immediately.*

The short answer is unsecured debt and promises to pay. Those are credit cards that are either current, delinquent, or sold off to a collection agency for failure to pay the original creditor. Credit card debt is freely traded as a commodity. The initial credit card company, once it has tired of chasing you around for the debt, will sell your debt to another collection agency. Then you'll start receiving calls from the new company. When it gets tired of you, or maybe you have moved or changed your number, that company will sell your debt off to a third agency, then to a fourth agency, and down the line. If you've been delinquent over the years for

not making credit card payments, you're liable to hear from a collection agency you haven't heard from before out of the blue. So it's important when you file for bankruptcy that not only the underlying creditor is listed, but also the agencies that are bothering you, so they receive notice. Now, you may have thrown out your mail by this point or not know who's out there, but a lot of this information will appear on your credit report. And if it doesn't show up, what's most important is that the initial creditor is listed. So if your MasterCard is on your bankruptcy petition, even though it has sold off two or three times down the road the debt will be discharged.

Unsecured debt is debt for which there's no security, security being a house car, jewelry, or furniture that you've given as collateral for the loan. You'll get a complete discharge from all of the credit card debts as long as you don't abuse the credit cards in the three months prior to filing. The law says that if you abuse those cards during that time by buying luxury items or getting cash advances against those cards, those specific debts will not be dischargeable in bankruptcy.

It's important to work with your bankruptcy attorney to review the activity on your credit cards in the time leading up to the filing. If you do have those types of charges on your cards, sometimes

it's advisable to wait a little bit to file the bankruptcy and let those charges get further from the filing date, outside of that three-month period. However, intent is always a problem, even if you are outside of the three months. There's a presumption that if you file for bankruptcy within three months of using the card for a luxury item or cash advance, that you did it intentionally – you went to Best Buy and bought a TV with no intention of paying it back. And that's considered obvious.

Mortgage liens and car liens are not removed in bankruptcy. However, your personal guarantee to these lenders, though, is discharged. So if you're not making a mortgage or car payment on time, they can't come after you for the difference if you default. They can still take the item and foreclose or repossess, but you'll be discharged of the personal obligation.

Student loans, as I'm sure you have heard, are not dischargeable, as a practical matter. When Congress enacted the student loan laws, it decided to give you the money to educate your children or yourself, but it wants the money back, unless there's a hardship.

Generally, a hardship is a physical or mental handicap that would not allow you to repay the loans. And essentially you have to be pretty much on or below the poverty line to get that hardship. If

you have any ability to pay your loan back, Congress is not going to let you walk away from it. I have had Federal Student loans canceled through an 'administrative procedure' using a physical hardship with a doctor's affidavit.

You'll be discharged from utility bills owed to both public and private companies. They will reset your meter to zero after the filing date. Therefore, if you owe the electric or gas company, you'll get a fresh start. Public utility companies will service you in the future and wipe out the old balance. However, they can insist on a security deposit of an average monthly usage. If you owe a private company and list it on your bankruptcy schedules, the debt will be discharged, but that company may choose not to sell you oil in the future.

You can also discharge all kinds of medical debt that you have, whether it be copays or the actual bill. You can also discharge court judgments. You may have been taken to court or sued by creditors, and they have a judgment against you and bring you back to court; those debts are also discharged in bankruptcy. After you file, your bankruptcy attorney will send a *Claim for Statutory Exemption* to the state court and you will no longer need to appear in court. This procedure 'injects' the notice of bankruptcy onto the docket which

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prevents any creditor from 'accidentally' filing a Motion to Attach your wages or bank account.

## What debts survive bankruptcy?

*Missy had significant student debt that she was unable to pay monthly, as she had so much other debt. She was able to file Chapter 7 and discharge her old utility, medical, and credit card debt. She was then able to start paying off her student loans regularly.*

Student loans survive as well as your car loan, mortgage, and domestic support obligations. The automatic stay allows you to suspend payments on student loans while you're in bankruptcy. So for approximately ninety days, you won't have Sallie Mae contacting you. However, once you receive your discharge in bankruptcy, you'll have to go back to making the student loan payments and keeping current. Any nondischargeable tax debt survives too. Income tax can be discharged in bankruptcy in Connecticut only if they are 3 years old, the tax return has been filed for 2 years and the tax has been assessed 240 days before your file a bankruptcy petition. Sales taxes and employee withholding taxes are 'trust' taxes and are not dischargeable in Chapter 7 and in Chapter 13 have to be repaid, 100%.



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## When will the creditors stop calling?

*Gloria was living on Social Security and received daily and nightly phone calls from collection agencies for debts she had incurred by helping out her grandchildren. These calls were causing her tremendous stress, as she was trying to send them something each month. She filed Chapter 7, and the calls stopped. She was able to stretch her monthly budget to make it work.*

Legally, creditors can call you between 8 am and 9 pm, Monday thru Sunday. Now, how can you stop harassing calls? Answer: By turning the problem into an opportunity.

Our firm explains your rights under the law not to be harassed and we have detailed procedures for how to write down all of your calls. First, we explain the Federal Fair Debt Collections Act (FDCPA) and the Telephone Consumer Protection Act (TCPA) in everyday language. We simply drop all the legal vocabulary which is necessary for court. Secondly, we have developed an App for your iPhone or Android where you can write down all your information and send it to a special website.

We represent many clients who have been harassed and we sue the creditor and/or collector

on a contingent fee basis! And that means, if we don't get any money for you, nothing is owed. We have been successful for many clients and they have received checks from \$1,000 to \$8,000. We not only stop the harassing calls, we are also very aggressive in defending your rights.

We tell clients that under the law, if you tell a creditor or collector that you are represented by an attorney, that creditor or collector can't talk with you. All the collector can do is ask the name and telephone number of the attorney. Once you give the collector our name and telephone number, they can't say another word without violating the law. One client told a collector we represented him and the collector continued to yell and shout at my client that they didn't know the law and their lawyer didn't know the law. This cost the collection agency \$5,000 which was paid immediately once we sent a demand letter.

Knowing your rights and how to preserve the evidence is really powerful. If you receive a robocall and that's when a machine calls you to collect a debt, we can still sue the company for \$500 to \$1,500 per call if your credit contract doesn't give them permission to call you. If you receive 10 robocalls from the same collector, that's potentially worth \$5,000 to \$15,000. This is what we mean by turning the problem into an opportunity.

Also, at the time you file, if you're subject to a wage garnishment by a creditor, the IRS, or the Connecticut Department of Revenue Service (DRS), that will also stop.

When you file, we will fax a copy to your bank and to the creditor so that wage garnishment will stop, whether it's from the IRS, the Department of Revenue, or another creditor. By law they have to stop, or else.

In Connecticut, if you don't pay your taxes to your local town government, you'll not be able to register your car. The Motor Vehicle Department has no mercy. If this happens, you can contact our office and we'll help you. But you should know that bankruptcy can discharge car taxes if they have been due and collectible for 1 year. If the car tax is not more than 1 year old, then you have to pay the tax in order to register your car. Most of the time, people who owe car taxes to the town will owe them for several years. Therefore, the filing of the bankruptcy will cancel all of the car taxes which are more than 1 year old and that saves considerable money, even though you still have to pay for 1 year.

In addition, if you're on a payment plan with the IRS or the Department of Revenue at the time you file bankruptcy, you will stop making those payments. At that point, if the taxes are discharged

through Chapter 7, you'll never to make another payment again. If the tax is not discharged, you'll be able to resume payments upon the completion of your Chapter 7, which will be in approximately three to four months. If you decide to file a Chapter 13, you will pay those taxes that are not dischargeable over sixty months usually with no interest which runs between 7% or 12% or 18%, provided the tax debt is not secured.

## Can I keep a credit card after I file for bankruptcy?

*Mark was disappointed that all of his credit cards were canceled immediately on filing bankruptcy, especially because he lost his beloved AMEX card that he'd had for years. He was surprised that he was able to qualify for a new card within two months of filing. It was only a small-balance card, but he was able to rebuild his credit back into the 700s from that one card.*

Many individuals have credit cards that they've had for years, and they've become very attached to them, whether it is their Gap, Old Navy, or Macy's card. When they've used them, they always paid them off on time. The question always is, can I keep that card? Well, first of all, if you pay it off on time, you don't have to list it on your bankruptcy form, so it doesn't even have to appear on your schedules. If your Gap card has a zero balance, the company will not get notification that you filed for bankruptcy through the bankruptcy court.

However, the entire credit world is connected. So Gap would ultimately find out, whether through some type of service the company subscribes to or when it routinely runs your credit. So what will the retailer do when it finds out? It's a possibility that Gap could cancel your card. That is why it's important that you rebuild your credit after you file.

Even if you lose that beloved store card that you have had for years, by filing bankruptcy you will be able to obtain new cards right away. That's for cards with a zero balance.

How about those cards that have a balance, but you still want to keep them, and yet you don't want to list them in your bankruptcy? Well, first of all, you're going to be signing a document certifying that you have disclosed all of your assets and all of your liabilities. This means that you are required to list it. That should be enough of a reason.

But if for some reason you inadvertently forgot to list a card with a balance, the credit card company again would most likely find out that you had filed for bankruptcy.

This can create a problem. When you inadvertently fail to list a creditor in a Chapter 7 no-asset case, there is case law that holds that the unlisted debt is still discharged. But you might have to argue this point with an aggressive collector and I assure you that I had a case just on point. However, we did amend the petition, and that meant that when the creditor brought a complaint that the debt wasn't discharged because it wasn't listed, we had a slam-dunk defense against the meanest junk yard dog collector who was going to appeal the case law that an inadvertent, unlisted debt in a no-asset Chapter 7 is still not discharged,

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the collector was going to appeal this case law all the way to the US Supreme Court!

Well, because we had amended the creditor list and the collector didn't bother to read the entire court docket, that mean junk yard dog collector left the courtroom with his tail between his legs. There is the saving grace of some important case law decision but the far better practice is to list every creditor on your petition, plus the law requires that you list all your creditors.

If you catch this mistake during the 90 day period in which you filed your petition, it's easy to amend your petition but there will be a court filing fee and extra legal fees. But if it's a year or even a few months after your case is closed, you might not be allowed to reopen your case to amend the creditor matrix. Plus, there are considerable extra legal fees and filing fees to accomplish this and many times the Judge doesn't allow the matrix to be amended.

However, having the card shown as a charge off on your credit report after you file bankruptcy is certainly not something you want. So it's very important that you list all of your creditors initially. When we obtain all your credit reports, we will find to whom you owe money anyway. So a card with a balance shouldn't be missed.

As far as your credit reports go, as you know, not all of your creditors report to the credit bureaus. For instance, hospitals, doctors, utilities, cell phone companies, and similar types of creditors don't always report. This is another important reason to list them, so they don't sue you later on and it becomes part of your credit report as a judgment. Yes, if you make us aware of this problem, we'll defend you in the case but you are going to incur more legal fees.



## How will my credit be affected by filing bankruptcy?

*Maria came to us having been recently divorced. Her credit score was so low that she wasn't able to obtain a loan to replace her fifteen-year-old car, which was breaking down constantly. She had left over debt from the divorce that was being reported negatively. We were able to file a Chapter 7, wipe out her debt, and reset her credit score at 680 within a few months.*

The chances are if you're reading this book, you're already having trouble paying your creditors. Maybe you've missed a few payments, have a court judgment against you, or have maxed out your credit cards. All of these factors have already contributed to your credit score being affected negatively. Collectively, these little nicks and bruises have caused your credit score to fall.

As you know, the entire credit world is connected in the age of the Internet. Credit card companies are finding out from other companies whether you're current on your payments. This may have already resulted in your credit limits being cut on your cards.

Now, ordinarily these delinquencies will stay in your report for six years if you do not file bankruptcy. Filing bankruptcy cures the negative reporting faster. The three credit reporting bureaus

are TransUnion, Equifax, and Experian. All are subject to the Fair Debt and Credit Reporting Act. This act states that individuals who have filed bankruptcy are not subject to negative reporting from credit card and collection agencies after receiving their discharge. The good news is that the credit card companies don't have a choice in this. This is a law, and so all their negative reporting of you for all these years is going to stop, and you'll get that fresh start on your credit. Essentially this has the effect of being *credit neutral*, meaning that a credit card company's report is no longer a black mark, but it isn't positive either.

Obviously, the fact that you file for bankruptcy stays on your credit report for a period of time. However, from what we've seen, generally it takes only about two years after you receive your discharge before there is no negative impact on your ability to borrow money. There's also an entire cottage industry of credit card companies that will solicit you subsequent to bankruptcy. Your mailbox will be stuffed with preapproved applications. Upon receipt of the discharge, you should take advantage of these offers. That's how you rebuild your score.

Generally, we see credit scores reset at between 650 and 680 within 12 months following the bankruptcy and this may be higher than the score you have before you file. But in order to get

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your score back up in the 700s, you're going to have to take affirmative steps to rebuild your credit. It doesn't happen on its own.

Take advantage of those small offers that come your way for a \$500 Capital One card or a MasterCard. Some of these offers may be for a secured card. To become a good credit card borrower, buy groceries and gas and pay the balance on time. Don't max out the card and pay it off, or most of it, each month. By doing this, you will rebuild your score.

Also, if you make credit card payments faithfully, you'll find that companies will raise your credit limits as you go along. All of these things are going to be important for you in obtaining your fresh start and rebuilding.

You will find that in order to buy a house, there's a twenty-four-month waiting period prior to being able to get a conventional loan or any other type of mortgage. You, also, may not get the preferred rate for a car loan for two years after your bankruptcy discharge. But these waiting periods after bankruptcy are often far better than if you had done nothing.

You may think, "Why would a credit card company send me a new credit card? Why would they want my business?" Prior to filing bankruptcy, you have all this debt. You're not a good credit risk

because you have all kinds of payments that you can't make and balances on credit cards that you can't afford to reduce. A new card is probably the last thing you need in any event, unless you want to prolong the inevitable.

However, after you've completed your bankruptcy, you no longer have that financial burden – credit card balances are no longer weighing on your credit score and impacting your ability to make payments. So you truly have a fresh start. The credit card companies know it and are more than happy to send you a new card and start making money off of you again. But now you not only have the ability to pay on time because you've gotten a reduction in your debt, but also you have an incentive to pay; you want to get your fresh start, and you're not going to go back to where you came from again.

The other reason why credit card companies are willing to give you credit cards after you file is that you're not going to be able to file Chapter 7 again for eight years. So now that you have received a bankruptcy discharge and have that new Capital One card for \$500, if you don't pay it off, the company will now have eight years to go after you to collect. And you're not going to be able to file bankruptcy again, so that gives them eight years to harass you.

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Many people who file for bankruptcy say, "I'll never have another credit card". But ironically, if you don't use credit cards wisely and well, it will take years upon years to get a good credit score. First, you should use our Pennywatchers program for budgeting. Second, you should at least obtain a secured credit card but shop on-line for secured credit cards which report to the credit bureaus! Use the search in Google under 'secured credit cards who report to credit bureaus'.

If you're young enough and you're going to want to buy another house or a car at some point in the future, you definitely need to get back in the credit world. You'll want to take advantage of credit cards that actually report to the credit bureaus. You need to actually obtain credit in order to have it reflect positively on your score.

Let's take a moment to discuss what happens if you're going to be applying for student loans, which is a question I encounter all the time. If you have children in college or getting ready to apply, there are federal student loan programs out there for both students and their parents. The parents will obtain what's called a *Parent PLUS loan* or will be cosigners on their children's loans. Your credit score might already be to a point where you don't qualify for Parent PLUS loans anyway, so your children will be forced to obtain the loans by

themselves. And by filing for bankruptcy, you may or may not be denied these loans.

However, your children should be able to receive additional loans as a result of your poor credit. There are many opportunities for children whose parents are unable to help them with their education. So your children will be able to obtain student loans, whether federal or private, without your assistance to get an education. At that point you can make an arrangement with your children to make payments on their student loans if you wish to help them out in years to come. As part of the prebankruptcy planning, your attorney will review your credit reports with you.

Our office has a program in which, forty-five days after receiving your discharge, you'll receive a copy of your credit report to see the impact of the bankruptcy on the individual creditors who were reporting negatively to make sure that those negative comments are now off the report. In addition, the service will monitor your credit for up to a year, making sure that you're not getting unfavorable comments and are able to rebuild your credit by obtaining new credit cards.

The good news about repairing your credit is that there's a set of consumer protection laws that work to your advantage. These laws are not discretionary. The bank and credit card companies

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don't just decide to report negatively against you after you file for bankruptcy. The federal laws protect this from happening. And based upon experience, I can say that it's a rare instance when a discrepancy appears on a credit report subsequent to bankruptcy for a debt that was discharged.

## How will my cosigner be affected?

*Sarah had significant tax and credit card debt, but she was most concerned about her father being affected, as he had cosigned her loan. Sarah was not delinquent on the payments and wanted to keep the car. She was able to file bankruptcy, her father's credit was protected, and Sarah was able to keep the car.*

Along with the topic of credit, another question that comes up is, "What happens if my mother or my father or my spouse cosigned a loan for me? Will it affect my cosigner's credit?" The answer is not as long as you continue to make your payments on time. If you have a car with a loan that was cosigned by a parent or a spouse or other family member, it's important to continue to make those payments even though it will no longer appear as favorable or negative on your credit report, as these payments will appear on your family member's report. Your bankruptcy filing doesn't affect the cosigner's credit unless you don't make the payments on time, at which point it would affect them. Therefore, it's important to protect your cosigners by making sure you make your payments on time.

Conversely, if you cosigned a loan for a family member, but he or she is not making the payments



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on time causing your credit to be negatively affected, filing for bankruptcy will not remove the negative reporting. That's the result of filing bankruptcy when family members have not honored their obligation to you by making timely payments.

## Other Concerns

### **How does bankruptcy affect my spouse, or how is my spouse affected if I've been a plaintiff in a divorce?**

*Tiffany had racked up credit cards without telling her husband, and the minimum on the cards was consuming a large amount of her take-home pay each month. She came to us but was afraid to tell her husband. We were able to convince her husband that he would not be affected, and she was able to obtain a discharge in Chapter 7.*

Bankruptcy affects him or her in that the family income must be counted in order to pay creditors. If your spouse makes a significant amount of money and the debts are in your name, unfortunately his or her income is going to be considered in the disposable income calculation, or the *means test*, which I'll explain later. However, your spouse's Social Security number is not listed on the petition, so the court doesn't recognize him or her. And the spouse doesn't sign anything. Therefore, your spouse's creditors would not be notified, and the fact that you filed bankruptcy would not appear on your husband's or your wife's credit report.

If all of the creditors are in your name alone and not your spouse's, you have the ability to file bankruptcy and wipe out your debt without affecting him or her. If your spouse is only an authorized user of the credit cards, he or she will not be responsible for the cards, and the debt would be discharged in bankruptcy. It's important to check both the husband's and wife's credit prior to filing bankruptcy to see who has the debt. A lot of times these credit card debts are sold, and you may not remember or be wrong.

If you're separated from your spouse, your spouse's income does not come into play when calculating the means test. Only your income would come into play when determining whether or not you can afford to pay your debts back. You also do not need your spouse's permission to file bankruptcy. You can file it on your own whether your husband or wife allows you to or not; you're not required by law to get his or her consent.

The same goes for your home mortgage. If you were to file bankruptcy and your spouse did not, it would not appear on his or her credit report.

If you're divorced, alimony and child support are not dischargeable debts. If you're considerably in arrears with alimony or child support, and you're unable to work something out with your spouse or with the family court, you have the ability to file for

Chapter 13. Then you can pay the arrears to your spouse over sixty months, similar to paying back old taxes or delinquent mortgage payments.

Another consideration in a divorce is if you're required to pay a property settlement pursuant to the divorce. For example, when you get divorced and are required to pay your former spouse \$20,000 by a certain date, or you are required to pay his or her credit card debt or an amount of money upon the sale of a house, you can discharge that obligation in Chapter 13. It's certainly not going to make your former spouse happy, but the filing of a Chapter 13 bankruptcy can under certain circumstances trump the divorce order.

We talked earlier about the automatic stay in that it stays all court proceedings. It does not, however, stay domestic support proceedings. If you and your former spouse are embroiled in a custody battle or trying to modify child support or alimony payments, those types of proceedings are not stayed in the bankruptcy action. The only actions that are stayed relating to your former spouse are those concerning any previous money owed for back support and the property settlements due to him or her.

Sometimes family court judges are not up to speed on bankruptcy laws. So you're going to want to make sure that your bankruptcy attorney speaks

to your divorce lawyer and provides copies of any rules or applicable sections of the code that cover the intersection of your family matter with the bankruptcy.

This is really important because you don't want to be caught in a situation where the rights afforded you under the bankruptcy laws are not being followed through in the family court. Remember that bankruptcy is a federal protection; it's governed under federal laws, while divorce and family matters are governed under state laws.

Now, when it comes to making a decision as to whether one or both spouses file, again you're going to want to look at those credit reports to find out who owes the debt. If one spouse owes a significant amount of the debt and the other owes a very small portion, it certainly doesn't make sense to do a joint filing. Because if the spouse with the small amount of credit has made payments, he or she would be able to obtain student loans or better rates for car loans and mortgages should the need arise.

Obviously, the amount of debt that each spouse has is significant in deciding whether or not to do a joint filing or single filing. If possible, you'll want to file a joint petition because you'll save on the cost of the attorney fees and only pay one filing fee.

Many times during a pending divorce, the divorce mediator or the attorneys for both parties will suggest that the bankruptcy be done prior to completing the divorce. This is advantageous because you'll enter the divorce agreement with no debt. Essentially, the marriage will end, and neither side will be saddled with debt they can't afford. Both of you start fresh and uncomplicated as your life moves forward. However, it can be more complicated than what I just stated, so it's best that you, by yourself, have a consultation with an experienced bankruptcy attorney because there are other considerations which might negate a joint filing for bankruptcy prior to the divorce judgment being entered.

If only one spouse decides to file but both are obligated on the credit card, the bankruptcy will discharge only one of the spouses. The creditor will be notified that one of the two, the husband or wife, has been discharged. But the credit card company will be free to pursue the other spouse. Thus, if one spouse decides to file, you'll want to consider that the other spouse will still be required to make payments on that credit card, or it will in fact affect the non-filing spouse's credit.

## How are taxes treated in bankruptcy?

*Harold had not been able to register his car because he failed to pay the car tax owed to the Town in which he lived. He filed bankruptcy, was able to register his car and instead of paying 4 years' worth of car taxes, he only had to pay 1 year and he discharged 3 years' worth of car taxes.*

There are two basic rules for taxes in bankruptcy, and they are confusing. You really ought to consult a bankruptcy attorney on this, but here is the overview: there is a three-year rule and a two-year rule. Under the three-year rule, if the taxes were due more than three years ago, the debt will be discharged in the bankruptcy. Under the two-year rule, those tax returns had to have been filed for at least two years.

For example, if the income tax is due from 2010, the tax would have been due on April 15, 2011, and three years from that date would be April 16, 2014. The 2010 tax debt would then be dischargeable any time after April 16, 2014. However, the two-year rule states that the tax return had to be filed for at least two years. So if you were on an extension or you were late, and you didn't file that return until, say, 2013, that would not have been two years and you'd have to wait until the two years were up before you could file for

bankruptcy, even though the debt was older than three years.

And there is one more rule called the 240 day rule in discharging taxes. The tax has to have been assessed more than 240 days before you file a bankruptcy petition before it can be discharged. Some Circuit Courts have ruled that a late filed return is not a return and the tax is not dischargeable. Our Circuit Court has not ruled on this issue. But this is a very important issue. Most people with tax problems have late filed returns. Presently, income taxes with late filed returns are still dischargeable in Connecticut.

Generally speaking, the IRS and the Connecticut Department of Revenue are treated just like any other creditors in bankruptcy, although they may have a priority status. The automatic stay prevents them from garnishing or levying you while you're in bankruptcy. And they don't have any special powers. If you do decide to file for Chapter 13 because you have tax debt that is not dischargeable, the good news is that the penalties and late fees stop. The nondischargeable portion of your debt, which is generally any debt newer than three years, or sales tax or withholding tax to the IRS or the DRS can be repaid without interest running on the debt! Again, there would be no



garnishment, penalties, or late fees. Essentially, you're paying off the actual amount that you owed.

There are certain types of tax debt that are not dischargeable. If you were a business owner and owed what are commonly called 941 taxes, or payroll taxes, those taxes are not dischargeable in bankruptcy; nor are sales and meals taxes. If you're subject to any of those taxes, they're not dischargeable.

Now, when it comes to making any determination of whether a debt is dischargeable or not, it's really important to get a copy of your tax transcripts before you file a case. Then if there's any question that you may have some debt owed to the IRS or the Connecticut Department of Revenue, you or your attorney can take a look at those tax transcripts before you file; you'll want to make sure that the tax debts are dischargeable at the date of filing. Sometimes you have to wait for a couple of months or even a year if you want to discharge those debts.

Sometimes Prebankruptcy planning is needed to make sure that tax debts will fully discharge in bankruptcy. If the government has filed a notice of lien at the registry of deeds or the state or the IRS, the lien itself is not dischargeable in bankruptcy, so the lien will stay on your property. "However, the IRS lien has an expiration date and that is 10 years.

Therefore, the lien would stay on your property until it expires. It's a self-releasing lien. If the underlying debt is discharged in bankruptcy, however, the government cannot renew its lien. Unfortunately, the lien does stay at least for that period of time.

I have to give a word of caution here, especially regarding taxes. The law is as vast as the ocean and is always in flux and it changes. That's why it's very important to consult with an experienced attorney who specializes in bankruptcy. Abraham Lincoln has said, "He who represents himself has a fool for a client." My book is written to give you an understanding of the law of bankruptcy and is not meant to replace the advice of an attorney who specializes in bankruptcy law.

## Are retirement accounts protected in bankruptcy?

*Other than his car, Chuck's only significant asset was the \$25000.00 he had managed to save in his 401(k) plan. He was able to file Chapter 7 and protect the funds in his 401(k) plan.*

Retirement accounts are exempt from creditors or liquidation by the Trustee in bankruptcy due to a special exemption in the Bankruptcy Code. Under 11 USC 522(d)(12), 401K Plans which are tax exempt from creditors. And in order to be exempt, the pension fund has to be ERISA Qualified. ERISA Qualified means that under the Employment Retirement Income Security Act (ERISA) the IRS has had to issue a letter ruling that the fund qualifies as being tax exempt.

Pensions with large employers and government agencies are traditionally qualified ERISA Plans. But you have to be careful with a small employer who hasn't received a letter ruling from the IRS. Most large employers' retirement plans are ERISA qualified.

Now if you roll-over money from a 401(k) Plan into an IRA, the funds are still considered ERISA qualified. But if you have an IRA which is not ERISA

Qualified, it is not exempt from the bankruptcy Trustee. If you have a small amount of money in the IRA, it can still be exempt with using your 'Wild Card' exemption but the limit is presently \$13,000.00.

Pensions are protected in bankruptcy, as is any money due you from Social Security, veterans' disability, or any type of government assistance.

We have had many cases where people come to us having already cashed in their retirement accounts to pay creditors. If they had come earlier, they would have been able to maintain or keep their retirement accounts and at the same time eliminate the creditor that was strangling them. And, of course, there's a tax penalty for early withdrawal and you will then owe the IRS. Think twice before using retirement funds or a Worker's Compensation settlement both of which are exempt from creditors before paying those creditors.

## Conclusion

Hopefully, this book has cleared up some of the myths and mysteries about bankruptcy. Is bankruptcy right for you? Your instincts will tell you first. You'll now be more informed to make a decision. There is life after bankruptcy. Your credit will repair. You'll have disposable income to do things you haven't been able to do in a long time – some may be necessities, or it may be something as simple as going out for lunch.

The cancellation of your debts can jump start your financial life if you use the opportunity correctly. Burning the field saves considerable time and expense, but you just don't burn the field and walk away because everyone knows the weeds will grow back. You have to go onto the field and work the land in order to have a crop. The same can be said for the use of a bankruptcy. Bankruptcy is an accelerant, a fire, which can within 90 days

eliminate your debts so you have the opportunity to work the land and within 12-24 months have a 720 credit score.

How do you obtain a 720 credit score within 12-24 months post-bankruptcy? I have an entire customized program for budgeting and credit improvement post-bankruptcy, and I am so passionate about it. This program is worth at least \$1,200.00 (\$50 per month for 24 months) and for all my clients, there's no additional expense or charges for this service. It's not just about eliminating debt bondage, but real FREEDOM, a REAL FRESH START is the opportunity to be financially successful by having savings in the bank and at least a 720 credit score.

You should visit my website: [www.pennywatchers.org](http://www.pennywatchers.org) and start using our customized budget program in order to start rebuilding and saving.







## **About the Author**

Dave Falvey, Esq., is an attorney who is a specialist in consumer bankruptcy. He has been Board Certified as a Consumer Bankruptcy Specialist for over 20 years and is recognized as a Super Lawyer. He has successfully filed over 6,127 bankruptcy cases during his career. Dave's law office is in Groton, CT and he is passionate about the practice of law. Dave enjoys long quiet walks and good documentaries.

## Filing for bankruptcy gives many families the financial relief they want from their creditors. But is it for you?

Consumer bankruptcy attorney Dave Falvey, Esq., clears up the myths and mysteries of bankruptcy in this easy-to-read guide about filing for bankruptcy in Connecticut.

These questions and more are answered in this essential guide:

- Do I qualify for bankruptcy and how long does it take?
- When will the creditors stop calling?
- Will I lose my house or car?
- What debts can't be discharged through bankruptcy?

Let the answers in *The Truth about Bankruptcy In Connecticut* guide your decisions as you work to determine whether bankruptcy is the path debt relief hat best fits your situation.



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