

THE TACTICAL BANKRUPTCY MANUAL

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Updated 2007 and for the October 2005 Law Changes

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

Financial advisers will often advise you to cut expenses, sell assets or refinance to pay debt. If you are in financial trouble there are other choices other than bankruptcy but these choices may be worse than filing bankruptcy. If you have more monthly debt than income you will eventually lose you home or car unless you increase income or decrease expenses. Mortgaging your home or cashing in your retirement when you have a negative cash flow is only a temporary fix and a guaranteed loss of that asset unless you change your budget. Within weeks or months you will be desperate and broke again. All you will do is lose your home or retirement funds. You have to adjust your budget and live within that budget. Bankruptcy is an opportunity to do just that.

Debt Management will do just as much damage to your credit scores as bankruptcy. Also it isn't the bargain that they claim it is. Here are some problems with Debt Management counseling.

1. First about 90 percent of people never complete Debt Management counseling. If you complete most of the plan in bankruptcy you can get an early discharge
2. Second many Debt Management companies file bankruptcy themselves within 4 years after starting up and your money is just lost. Ameridebt and other agencies have filed bankruptcy themselves after paying millions to the corporate officers that ran the agency.
3. Third your credit is trashed both ways. You need to sweep your credit file afterwards.
4. Fourth you can't force a creditor to accept partial payments through Debt counseling. They have to accept a court approved bankruptcy plan. Bankruptcy has the power of a federal judge behind it and the advantages of court orders that can order things like a redemption which allows you to buy your car and personal property from the bank. Only bankruptcy has the power to destroy debts and allow you to restructure
5. Fifth I often file Chapter 13 plans that pay back only 10%. Most Debt Management counseling plans require 50% repayments plans. In most Chapter Seven cases 0% is repaid. All the other methods require you to repay debts at least 50% or lose property.
6. Sixth If you do Debt Management you will be taxed for the amount of the debt you are "forgiven" by banks which turn in a 1099. If a bank agrees to charge off 100,000 you will repay about 40,000 in taxes for the 100,000 of debt forgiveness just as if earned the 100,000. Bankruptcy normally doesn't cause a tax problem. Ask H&R Block.

Do I need to keep going on about credit counseling or is this enough????? It does work if you can make the payments over the course of the plan. It is better for smaller amounts of debt. However if your situation is serious bankruptcy is the answer.

1. THE NEW RULES THAT TOOK EFFECT AFTER OCTOBER 2005

Credit Counseling

The law on October 2005 made 217 changes to the code most are minor. 21 or so are major changes. Of these change the most important principal is that now you must prove that you qualify for a Chapter 7 by supplying documents and taking two credit counseling courses. Otherwise the only change that most people notice is that the process is more expensive but it now has more benefits. You can now keep more property and pay less back than ever before.

After 10-17-05 all persons filing a Chapter 13 or 7 must have a minimum of 90 minutes of

Credit Counseling prior to filing and 2 hours of Credit training after you file bankruptcy.

Although the credit counseling is low in cost or free it is just one of several major increases in time and red tape that is required after October 17th. You must take this training “**prior**” to filing and a second training within 45 days after filing. Chapter 7 filing fees have increased to 299 from 209. However little of the actual law has changed. You can still file Chapter 7 it is just a little more expensive and requires more records now along with about 4 hours of classes. You can now file only one Chapter 7 every 8 years and get a discharge. It used to be every 7 years. That is about all that has changed for you the Debtor! Bankruptcy will not be impossible just a little more time consuming. Bankruptcy now protects middle and upper income families and people with secured debts more than ever before and punishes lower income families with more expense and work.

The required credit counseling is more like traffic school for a traffic ticket. It is required in a belief that it will help you in the future to manage and budget. However many bankruptcy cases are filed due to divorce, hurricanes, illness, corporate downsizing etc where there is little the debtor could have planned for. 50% are filed due to medical expenses and 20% are due to non payment of child support or alimony.

The End of Chapter 20

Many people used to file Chapter 7 cases to avoid their unsecured debts and then filed a Chapter 13 cases to still saved their home or deal with secured debts in the chapter 13. Now a person has to wait 8 years from filing a Chapter 7 before filing another Chapter 7. You can't file a Chapter 7 for 6 years if a prior Chapter 13 paid less than 70%. You can't file a Chapter 7 for 4 years otherwise after a 13. And you can't file a Chapter 13 for 2 years after another Chapter 13. You can file and get the stay you just can't discharge any debts.

This was done largely to prevent people from repeat filing. Instead it may encourage repeat filings. Because you have to wait 8 years to file the next Chapter 7 people will probably file a Chapter 13 merely to wait out that period of time. Also in order to avoid taxes chain filing is being used to age taxes so that IRS collections will die off. Although the IRS has up to 10 years to collect they rarely attempt collections after 7 years.

New Residency requirements to keep property, Trustee rules

Your state of residency for the prior 2 years now controls what state you can file in, what property you can keep and what state law you can use to keep property. You may file in your new state but you will use the old state for your exemptions. In order to stop fraudulent transfers and preferential transfers the trustees can now look at property that you sold or gave away up to two years ago. The Trustee will audit cases both at random but especially for those people that have income, expenses, assets and liabilities that are out of time. Fraud enforcement has also been increased. IRA's are protected up to 1 million dollars.

Means Testing for average income

After October 2005 **families that earn over the average income and fail the means test** for their size family will be required to file a Chapter 13, **unless** they can show and prove that they cannot afford \$100.00 a month Chapter 13 payments. The means test allows you to take your average income for the prior 6 months and deduct for average expenses or actual secured debts such as a mortgage or car loan. If you can't afford the 100 per month payment or a 10% plan you can still file a Chapter 7. Notice that by being off work for the last month you may qualify although your income is above the chart. The average of your income for the last 6 months is used. Also the

Trustee may look ahead one or two months to see if your income increases. **IF THE MAJORITY OF YOUR DEBTS ARE BUSINESS DEBTS OR YOUR DEBT IS ABOVE THE MAXIMUM LEVEL FOR A CHAPTER 13 (1,250,000 IN 2007) YOU SKIP THE MEANS TEST AND YOU AUTOMATICALLY QUALIFY FOR A CHAPTER 7 BANKRUPTCY.** Notice that the new bankruptcy code preferred middle and upper income. The presumption is that lower income minorities were getting away with bankruptcy fraud not upper class business owners with primarily business debt.

People that earn under the average income will be able to automatically file a Chapter 7. If you earn over that amount only then will you have to calculate the means test which deducts for expenses and secured debts. Having a high amount of secured debt may allow you to qualify for a Chapter 7. Almost all Chapter 13 plans will be for 5 years. People with below average incomes may file 3 year plans. Chapter 13 is often used to avoid a foreclosure. You will be given a budget for your expenses that you will have to live within. In order to calculate whether or not you have below or above average income you will have to supply the last 180 days of pay advices (normally pay subs or other proof of income) and the prior 60 days of pay stubs from your employer. Your last 180 days (prior 6 months) will be averaged to find the average monthly income.

The means test calculates your annual income minus your expenses for taxes, child support, car payments and house payments to determine what you have left over to pay debts with. In short unless you earn less than 32,000 for a single individual or 55,000 for a family of four in Kentucky a Chapter 7 will probably not be possible. But do not totally rely on just this! The means test allows deductions for average expenses and a 4 person family in Kentucky with 85,000 or more may still qualify under the means test after deducting expenses. This is the link to the means testing data however it is always based on year old data. <http://www.usdoj.gov/ust/bapcpa/meanstesting.htm> The Means test is a long 5 page calculation to arrive at average income minus standard expenses and only your attorney should do this for you. You automatically qualify if your income is below this 2006 chart. If your income is above you need to do the extra math with your attorney and you probably still qualify.

State	1 person	2 person	3 person	4 person
KENTUCKY	\$32,647	\$40,260	\$49,183	\$54,992
INDIANA	\$37,552	\$47,313	\$55,496	\$64,564

There is a second half of the test which looks at your gross income minus your actual expenses for Mortgages car loans and secured debts plus your average expenses. If you can't afford a payment after this which repays a significant portion of your debt you may still file a Chapter 7.

Increased costs but substantial increases in the property you can keep

Attorneys will have to verify the documents and information you supply to them. This is sort of like a small IRS audit. On a positive note this will help women collect child support as a priority debt and the amount of property you can keep under Kentucky's state law increased dramatically. You will be able to keep at least 18,450 in home equity instead of just 5,000 every per person that was on the Deed for your home. Also this will be increased with the cost of living each year. All of the amounts of property you can keep will increase in Kentucky and it will continue to increase each year with cost of living increases.

After October 2005 you or your attorney will need to supply the following documents or you will not be able to file a bankruptcy: **Items that are underlined are required** and your case must and will be dismissed if you fail to supply these documents. **Underlined and Italics are documents required by Kentucky or the case will be dismissed these documents may not be required in other states.**

Required Supporting Documents

1. **A certificate of Approved Credit Counseling prior to filing, and your certificate of training after filing.**
2. **Evidence of income for the prior 6 months so that your income can be averaged including the last 60 days of pay stubs together this is a total of the prior 7 months.**
3. **At least 6 prior months of bank statements, loan dates for secured debts;**
4. **A detailed list of personal property - furnishings;**
5. **Past utility or medical bills; if they are above normal**
6. **Statement of monthly net income and any anticipated increase in income or expenses after filing**
7. **Court Orders if you have child support or Alimony obligations. Proof that you are up to date on your domestic support obligations alimony child support.**
8. **Mail for secured creditors showing at least twice that they used the same return address as an address for notices to them**
9. **Copies of your Deeds and Mortgages showing time stamped date of when it was recorded**
10. **Bank statements for accounts which you have an interest or signature authority on the date you file. Tell your attorney if you are on someone else's bank account, car title or property**
11. **Titles to all vehicles, jet skis, trailers or boats titled in your name (again tell your attorney if you are on someone else's car).**
12. **Proof of full coverage insurance if you have a loan on your car.**
13. **Photo Id and Social Security Card**
14. **The last four years of tax returns, not your copy, the transcript from the IRS which takes time and money to get; plus tax returns filed during the case. If you have not filed returns you cannot file. Often we will get these for you if you don't have them but you must sign papers allowing us to get them for you.**

If you fail to submit your documents or file documents on time, the Trustee, the Court or **a creditor** may be able to object for not doing your due diligence and you will have to prove the figures and information. If you do not, you will have to pay the costs of the attorney's objection and, you may not get a discharge of some or all your debts or your case may be dismissed. The failure to take the second class will mean that you will not get a discharge. You will still owe your debts. You can reopen the case later but at a heavy cost in filing and attorney fees.

As of 10-15-2006 the United States Trustee and United States Attorney started auditing Chapter 7 and 13 cases for accuracy, completeness and fraud. You will be far better off if you pay attention to the accuracy of your petition. The failure to accurately file may mean dismissal of your case or worse.

2. THE LAW BEFORE OCTOBER 2005 WHAT REMAINED THE SAME

Local rules and Judges may make how you file in one state slightly different than in others. In 2004 1.6 million people filed bankruptcy; about 30% filed Chapter 13. One of the reasons for the new law was to make bankruptcy fairer by making it the same in all of the states. Generally the rules are now standardized and the general law didn't change. Kentucky now requires copies of your last year of bank statements, copies of tax returns federal and state for the last four years from the IRS not your copy, proof of income for the last 6 months including pay stubs for the last 60 days and copies of any auto titles, deeds, and mortgages. **Your deed and mortgage must show the date and time they were recorded at the courthouse and the failure to properly file a deed mortgage car title or car lien may cause a person or the bank to lose property.** We will need these documents before we can file. These documents are generally required in every state. Your attorney must supply these documents before the hearing or your case will be dismissed. It is common that the attorney fails to bring these documents and the hearing is continued or dismissed **so you should have a copy of your supporting documents when you appear in Court.**

When the Trustee is asking for these documents from you what is he looking for? The Chapter 7 Trustees are paid a fee for every case they review (about 60 dollars in 2005) **and they are paid a commission or hourly fee for any property they seize from you.** When the Chapter 7 Trustee is requesting documents from you this is why he is asking for those documents. Often he is looking for property to seize.

Document	Reason and the Rule	What to do
Mortgages and Deeds Rarely caught but becoming common. Taken if mortgage was not recorded or not timely recorded	If a mortgage is not filed at all the Trustee can take your home. OR under Kentucky law If the mortgage was filed within 90 days before filing bankruptcy but was not filed within 20 days after the property was purchased or filed 10 days after refinancing the Trustee gets the home. You may have to worry about this a year after you finance your home.	Check your mortgage filing dates before you file. Last year over 10 million dollars in homes were seized in Kentucky alone by Trustees and they were sold for about 75% of their value to pay debts. Don't let this happen to you. And don't think that they won't do it.
Car titles Commonly taken if liens not recorded or not timely recorded	Similar to mortgages if you have no lien recorded or under Kentucky law if you bought the car within 90 days of filing bankruptcy and the lien was not recorded within in 10 days after the car was bought the Trustee owns the car.	Check your car title and when it was recorded after you bought it. Even more cars than homes are taken. If the car was in your name it doesn't matter that you meant for it to belong to your sister.
Bank Account Very commonly taken	The Trustee may own what is in your bank account if you have too much money in your account and if it is not exempted. How much did you have in the bank on the day you filed?	Keep a minimum in your bank account until you get notice of the filing.
Inheritances Commonly taken	Inheritances you get within 6 months after you file are property	

	of the trustee.	
Tax returns Very commonly taken.	How much is your tax refund? The unearned income child credit part of your refund is a welfare benefit and not normally attachable but the remainder of your income tax refund is an asset merely held by the government.	Plan your tax refund properly If you receive a large refund you may lose it. If you earn over 70,000 the US Trustee often objects to you filing a chapter 7 and may ask you to file a 13. Couples earning 70,000 may want to file separately.

IT IS THE PANEL TRUSTEE’S JOB to insure the accuracy of your bankruptcy petition and to take as much of your property from you as he can and give that property to your creditors. He can’t do that without your records and an accurate petition.

IT IS THE US TRUSTEE’S JOB to put you into a Chapter 13 if you are too rich for a Chapter 7 by filing a 707 (b) motion to dismiss or convert the case to a 13. He may prosecute bankruptcy fraud such as lying under oath or for supplying false or incomplete documentation. Never make false statement or hide property. You may plan your bankruptcy. You can spend your tax return before you file to avoid losing it. That is planning. This is just like taking the right tax deductions. We can help you plan deductions to keep property if you tell us about the asset. But you cannot hide a car and swear you don’t own one to keep it or transfer it without getting back the fair market value for it. Bankruptcy fraud is a crime. You will get caught. Your attorney will go home to a warm bed. You will go to prison.

IT IS YOUR ATTORNEY’S JOB to properly prepare your petition so that you maximize your exemptions and keep the maximum amount of property that you can keep and to prepare the petition properly. You should understand before you file what is at risk but you have to tell your attorney what property you own, what income you have, what expenses you have, if you have transferred property and what debts you owe. YOU must tell him about such things as a judicial lien, transfer or a pending lawsuit or you will lose property.

IT IS YOUR RESPONSIBILITY to fully disclose your income, expenses, assets, debts and any transfers of property. You must provide the documentation when it is asked for and to cooperate fully with the Trustee and the court in following their orders. If you do, your case should have your debts discharged and the case should go smoothly, quickly and easily. Part of our contract with you is that you read this so that we can work together. Not knowing what to do will produce disastrous results. Your case may be dismissed if documents are asked for and you do not supply them. You must tell your attorney if you want a judgment lien released or if other liens exist. He does not run a title check unless you pay him to do that and he is not psychic. If you are in a Chapter 13 your payments to the Court and Chapter 13 Trustee will start the month that you file. Later on you will have financial reports to the court if you file a 13. You will lose any tax refunds if you file a Chapter 13.

TO ATTEND YOUR MEETING YOU MUST HAVE A PHOTO ID AND PROOF OF YOUR SOC SEC #. You can’t even get in the building or have a hearing without your picture id or proof and your social security number. You can get a new Social Security Card by calling 1-800-772-1213 or go to www.ssa.gov. Failure to attend your hearing is a basis for dismissing your case and you must have these documents or your case will be continued or dismissed. After October 2005 you will have one chance to file whatever Chapter 7 or Chapter 13 you want to file. You must get it right because you won’t be able to file again for years. If you filed to avoid a foreclosure then to have your case dismissed means in most cases the end of any chance to save the house. You

cannot simply refile cases anymore. Mess it up and your attorney will be paid for the work he does and go home. You may not have a home to go home to or you may have to refile. You should also bring proof of car insurance.

In 2002 we changed to electronic filing which makes filing a little more expensive but faster. This provides a permanent record which can be looked up instantly. In 1999 only about 9,000 cases were filed in Louisville, in 2001 this jumped up to over 12,000 as a result the court now has 341 hearings about 5 days a week. The Louisville Court hired a CPA in 2002 to audit cases and to force people to file more Chapter 13 cases. In 2005 the US Trustee added several paralegals to audit cases. This requires more attorney work in attention to details and fees. What they are especially looking for is whether Debtors make enough income to force them into a Chapter 13 repayment plan. They are now audited for accuracy and the completeness of your documents and answers. Each month more of your rights go away as the law goes into effect in stages and it will only get more difficult and expensive.

3. SOME INITIAL ADVICE

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

There are two purposes to the bankruptcy laws. The first is to stop creditor harassment and a fresh start all over. Most people are only interested in stopping the harassment and getting a fresh start. They forget the second purpose which is why the Trustee is there. The second purpose is to provide all of the creditors a chance to equally and fairly share in any assets that may exist in an orderly process of distributing what little the Debtor has. Normally, there is nothing left for the Trustee to take especially if the bankruptcy is planned right. If you keep these two purposes in mind it is easy to see why we have certain bankruptcy rules and why the Trustee is asking for certain information and looking for assets.

Remember: In a Chapter 7 it is the Trustees job to insure the accuracy of your bankruptcy petition and to take as much of your property from you as he can and give that property to your creditors. It is your responsibility to provide documentation to the Trustee when it is asked for and to co-operate fully with the Trustee and the Court in following Court orders. If you provide the information you will normally have your debts discharged and the process will be easy. Often the Trustee just wants the information and just wants to process the case. If you don't provide the requested information to the Trustee you will make additional work for him, and upset him. He will dig and continue to dig until he gets the information. He will become curious and suspect fraud. You will not get your case discharged until you do give him the information he wants. Even worse, your case may be thrown out, fully audited, you may lose property or prevented from filing for years. Lying is a crime. Do not make the judge or Trustee mad or curious about why you aren't giving information! You will only upset them if you waste their time and make them force you to turn over documents.

There are two different trustees with two different goals. The Panel Trustee in a Chapter 7 is looking at bank records to grab whatever was in your account on the date your bankruptcy was filed. They also look to see if you had any large deposits or withdrawals just before filing and to whom did those checks go to? They try to catch "preferential transfers" which are essentially transfers or gifts to others that you may have made just before filing this can include giving a bank a security interest for a loan or the bank garnishing property.

When the Trustee asks for tax documents he is looking at past income in an effort to make you file a Chapter 13 and each spring from November to about May he is looking for tax refunds to seize if you are filing a Chapter 7. If you get a tax refund in the spring after filing a Chapter 7 bankruptcy it is property of the Trustee unless you can exempt it. You may wish to spend your refund and then wait 30 days to file. However the exemptions are now so large that unless you have a 10,000 dollar tax refund you probably still get to keep it. Income tax refunds are property that you have a right to at the time of filing but that you just haven't gotten yet. The unearned income portion is a welfare benefit and is not normally attachable as a welfare benefit.

If you keep good credit for 2 years you will qualify **by federal guidelines** for government home mortgages after bankruptcy at prime rates and your credit may actually be much better than it is today. This is an opportunity for you to plan not just your bankruptcy but a better life. We also have letters that you can download from our website that you can use to clean up your credit after filing or you may want to use Lexington Law or a similar service to clean your credit file. My wife is a mortgage banker that often offers prime rate loans to people that have filed. If you do not wait the 2 years and pay your debts on time you will normally have to pay higher sub-prime rates.

4. A QUICK OVERVIEW OF THIS MANUAL

This manual covers the law about Kentucky Bankruptcy however bankruptcy law is generally the same for all of the other states. The major difference from state to state is that the property that can be kept in each state is different. For instance in Texas and Florida you can presently keep 125,000 in equity in a home and file. However in Kentucky, you can only keep 18,450 in home equity or 39,000 if you are a couple (18,450 per person on the deed). In Indiana you can keep 7,500 per person on the deed.

I'd like to thank you for requesting our bankruptcy manual. I believe the information in this manual will answer many of your questions about bankruptcy and will explain exactly how to bankrupt your debts and still keep as much of your property as possible. Some banks trustees and attorneys will be upset if they know we are sharing these secrets, but our aim is to help you to properly prepare and plan for your case as well as you can and to save you from unnecessary costs and problems. We have written this manual so you will know everything we believe that you should know when you file. Every year, people fail to follow directions, choose a good attorney, manual, or ask questions—and it always costs them money, property or, at least, their time. **I honestly believe that clients that read my manual save about 8,000 or more than the clients that just file bankruptcy and that do not read it. It probably takes less than 4 hours to read the first 55 or so pages so that is 2,000 dollars per hour. You don't need to read all 80 unless you wish to but at least read until you get to the FAQ section.**

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

If you are going to file a bankruptcy, it is up to you to make sure it's done right. You should plan and prepare for your case as much as possible. If you don't plan your own lawsuit or financial affairs, you will pay for it in time, money and loss of property. To win your case—and not be a victim—you have to share the responsibility for filing it right with your attorney. For

example, you must get your financial records together. No Attorney can do that for you unless you pay him \$150 per hour to read and organize all of your receipts and records. The Attorney can't show up at your hearing with your insurance records for you. The Attorney can't be sure you have listed all your Creditors. He can't make the Chapter 13 payments on time for you. If you don't follow the rules, you will be the person that loses his or her home, car, or other property. Neither your Attorney nor your accountant will go to prison or lose anything if you fail to follow the rules.

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

Our current bankruptcy law stems from the Biblical and Jewish laws that prohibited Creditors from holding a man a slave for his debts for over 6 years. It is part of the United States Constitution. Bankruptcy is meant to give the unfortunate debtor relief and a fresh start when he has lost his job, been ill, has gone through a divorce or experienced some financial hardship. It wasn't designed for cunning crooks. If you plan to deceive you will get caught. But people that 1) plan their bankruptcy 2) know what to do 3) and properly claim their exemptions, just like properly claiming the tax deductions, will save far more property. The law traps the person that attempts to defraud the court. The law rewards the person that claims exemptions properly. If you obey the rules and properly plan you will do well. Taking exemptions properly is not fraud. If you plan to hide, lie or scheme you will get caught and you will lose what you could have kept if you had just done it properly. You don't have to be dishonest to keep property.

The purpose of bankruptcy is to put you on a budget that honest people that have fallen on hard circumstances are given a fresh start. Filing the wrong type of bankruptcy, negligently preparing your case or listening to poor legal advice insures failure. It is sad but some attorneys will file Chapter 13 cases just to earn higher fees. This manual is designed to inform you, help you keep your property, and to protect you from bad legal advice.

5. THE 3 SECRETS OF BANKRUPTCY

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

ONE...

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

Within six months to a year, most people can get a car loan at the similar interest rates as anyone else if you repay your debts that remain after bankruptcy on time. Within two years, FHA, VA, Kentucky Housing Corporation and other State and Federal government mortgage lenders **are required** by government regulations to lend to you at the same low rates as anyone else as long

as you have paid debts on time after filing and no foreclosure was involved. If a foreclosure was involved in the bankruptcy the time is 3 years after the agency paid the foreclosure. The rule is that 2 years after discharge or 3 years after a foreclosure sale is paid you will be allowed to apply for a mortgage and it will not be held against you. They will merely look at how you have paid for the last 2 years and your income to debt ratio.

In a Chapter 7 Bankruptcy, most persons keep all their property and only pay the secured debts on property they want to keep. Every year about 2 million people bankrupt debt with few, if any, problems by filing bankruptcy. Even if they file a Chapter 13 they normally pay no interest on their unsecured debts and now they can pay as little as 10% or less on the dollar for their unsecured debts and can take 3 or 5 years to repay their debts. The Kentucky courts used to require debtors to pay back 70% but the new laws across America allow you to repay as little as 10% in a Chapter 13.

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

TWO...

Filing bankruptcy can actually help clean up your credit.

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

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

THREE....

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

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

THREE CREDIT SCAMS USE SOME COMMON SENSE & AVOID THEM

SCAM NUMBER ONE **Predatory lenders** often advertise that mortgaging your home is a good way to pay off your debts. Normally predatory lenders such as the Money Store will lend to you based on you having 30% or more equity in your home. You sit down, sign the mortgage papers

which gives away the equity in your home and they foreclose within a year or two taking their profit from the sale of your home. You repay them at higher interest rates (10-20%) for a mortgage while people with good credit have prime rate mortgages (in 2005 this was 5-6% mortgages). **If you have bad credit it is never the time to refinance a mortgage because you will only be offered high rates.** Whether you pay or whether they foreclose predatory lenders make huge profits. Predatory lenders carry prepayment penalties, packing of the loan and high broker fees and closing costs hidden in the loans (normal mortgage broker fees are about 2-3% of the loan for processing your loan application and about \$1000 for a closing). Predatory lender fees will run at least 5% and often more with the fees often hidden in the loan interest rate.

SCAM NUMBER TWO The other common scam you hear about in bankruptcy is that you can **erase bad credit**. Every year we see someone that claims that if you give them 3,000 dollars they can erase your bad credit. There are even laws against these businesses but like drug dealers they get busted and then reopen shop making the same false promises in another name over and over. Often they take the money and promise results they can't produce. You can only erase untrue items on your credit report. You do this by contesting the information on your credit report. Our website has a letter for cleaning up untrue information and you can download it for free instead of paying them for something you can do yourself. The law says that if you dispute the truth of information on your credit report that the agency must ask and check its truth with the bank. Sometimes a bank will become lazy and fails to answer the letter so even true bad information can be erased. Anyone who knows anything about credit knows you can't erase true, negative items from your credit report or invent a new credit history - without committing fraud. Do this in Kentucky and now there is a law called identity theft and you can go to prison. There's nothing a credit-repair clinic can do for you that you can't do for yourself. However we have found a law firm which does dispute your negative items they are a regular law firm and will do this work properly. Having a law firm do it is entirely different than having someone that can't sue send the letter.

SCAM NUMBER THREE is that you can **"Protect your credit by settling your debts!"** For **just one more time I will warn you about credit counseling.** For every action there is an equal and opposite reaction, and nowhere is that more true than in the world of credit. Pay less than you owe through credit counseling, and your credit rating gets trashed. If the debt is forgiven you will pay a tax on the debt you are forgiven making it less affordable. Yet, many debt-settlement companies insist they can pay your debts for you and pay only 50 cents on the dollar and that you will have good credit. You can't have good credit by just settling your debts. There are always people who believe it. If you want your credit to be just worse than a Chapter 7 bankruptcy go ahead. The down side of this is that you will take more time to repay their 50% repayment plan when you could have repaid it with a 10-20% Chapter 13 repayment plan. Also they don't have a federal judge ordering the company to take it or else. Credit Counseling:

1. Will charge you for it with high fees deducted from your payments to them.
2. The effect on your credit will be just as bad as bankruptcy.
3. Some companies won't take the reduced payments and will sue you anyway.
4. After you pay the debt at 50% on the dollar that you will also have to pay a tax of as much as 40% on the debt you are forgiven.
5. some banks only take payments if you go to their Credit Counselors (so they earn fees) 90% of the people never finish these credit counseling plans that are set up If you can't finish a Chapter 13 you can convert to a Chapter 7 or perhaps get a hardship and,
6. These debt settlement companies often only pay themselves. They pay themselves first and sometimes only pay themselves until they go out of business. That's right sometimes and

all too often they never pay the credit card companies and then they file bankruptcy themselves after telling you not to. Look at the history of Americredit.

6. WHAT WILL IT COST TO FILE A BANKRUPTCY?

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

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

Our flat fee is 1000, 1200 for a joint uncontested petition. Chapter 7 Court costs are presently 299. Your total cost is \$1299 but this will probably change. Chapter 13 Court costs are \$275. Attorney fees in a Chapter 13 are about 2600. Attorney fees in a Chapter 13 are paid as you pay your payments.

We DO charge for filing any adversary proceeding to discharge student loans, recovering garnishments, or for avoiding a judicial lien if a lawsuit filed a lien on your property. These problems are rare. But, you should always check to make sure that you have not been sued and that you have no liens on your home. Getting rid of a judicial lien also requires that you get an appraisal.

We also charge different fees for business and contested bankruptcies. Contested bankruptcies are very rare and less than 1% of bankruptcies are contested. If we believe your bankruptcy will be contested, we will tell you in the interview. The major reason for a contested bankruptcy is an attempt to bankrupt a non-dischargeable debt such as you are seeking to get rid of a student loan as a hardship discharge, intentional injury or a debt due to fraud. If you charge up your cards just before filing your debt on a card may not be entirely dischargeable and you may have to repay what you charged. (see Section 5 for more information on non-dischargeable debts) or fraud. After 10-2005 many people that file a Chapter 7 may have their cases objected to claiming that they should be in a Chapter 13. Business bankruptcies follow the same rules and procedures but take more attorney and staff time.

We also charge a small fee if you need to file motions or proceedings to redeem property or to avoid judicial liens on real property (such motions are not included in the fees charged by us in filing an uncontested bankruptcy). Removing a judicial lien requires an additional hearing, motion and an appraisal which is more legal work than a standard bankruptcy. **You will have to get a real estate appraisal** in order to get rid of a judicial lien. There are no Court costs for a motion to remove a lien. A bankruptcy can get rid of a judicial lien (such as a lien resulting from a lawsuit or tax lien), but you must ask us to remove any lien before the bankruptcy is discharged and give us a copy of any such lien, your deed, and an appraisal. If you don't tell us about it we can't remove it.

If you need to file a separate adversary proceeding to recover garnished wages or attached bank accounts, or to avoid liens, we charge 33% of what we recover. See Section 10.5 for more on

Judicial Liens. If you have a lien on your household goods we can file a motion to avoid and destroy that lien but again probably not after October 2005 ask us if you file after October!

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

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

You get what you pay for. Don't overpay, but attorney fees are 150-200 an hour. If you do your work a Chapter 7 bankruptcy shouldn't take more than 5-10 hours of your attorney's time under the new law, including going to court. If you don't pay him don't expect him to work weeks on your case. I will share a secret with you he won't. And if the attorney is desperate for work because he has no cases there is probably a reason why no one uses or wants him.

7. THE MOST COMMON MISTAKES

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

7.1. MISTAKE NUMBER ONE: MONEY IN YOUR CHECKING ACCOUNT WHEN YOU FILE.

You are required by the Court to list all of your assets. Under the bankruptcy code you are allowed to keep a certain amount of property. All of the rest of your property is turned over to the Bankruptcy Trustee as an asset to pay your creditors.

The most common property people lose are income tax refunds and checking account funds. If you have 25,000 dollars in your checking account or if you have an income tax refund and you don't spend it before you file you may lose this money to the Trustee. Therefore spend it or lose it. Don't have large amounts of money in your checking account the day before you file. If you have a large tax refund coming in a month or two get your refund and spend it first. Otherwise you will have to exempt it and you may not have enough exemption. If you don't use the real estate exemption which is about 20,000 you can use ½ of that amount as a wildcard exemption to save other property.

Another common asset you can lose is your car in Kentucky. If your bank didn't file it's lien or mortgage properly the trustee owns it. If all you have is 2900 in equity in a car then you will keep the vehicle provided you listed it. People that don't list an asset, can lose the asset by failing to list it. You can also be charged with Bankruptcy Fraud as a crime by failing to list an asset or have your cases dismissed for fraud and be barred from filing for up to 8 years.

7.2. MISTAKE NUMBER TWO: FAILURE TO LIST ALL YOUR DEBTS

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

You can add a Creditor even after the bankruptcy is over (discharged) but you will have to reopen the case and pay a filing fee (about \$300) and an Attorney fee (\$250 to \$500 at 2007 prices) to add debts after a discharge. You are permitted to file an amendment to add a Creditor before the final discharge of your debts for 29 dollars plus a small attorney fee. This is a costly and time-consuming nuisance, so it is better to list debts the first time. You may add a debt **after** your case is discharged but **only** if the Creditor is not placed at an undue disadvantage because of your delay. Adding a debt after your case is closed will cost you at least 600 dollars in court costs and attorney fees so make certain you add any debts long before your case is discharged. Adding a debt after your case is over is basically like starting the case from scratch. The only difference is that there is usually not a 341 hearing in a reopened case.

Bankruptcy is the nuclear bomb of lawsuits: It destroys almost every type of debt. It will sometimes even accidentally destroy debts that some Attorneys and the law will tell you are not dischargeable. Although it may be harder to qualify for it is still a nuclear bomb carrying the authority of a federal judge. Even though some debts are supposedly not dischargeable they will be discharged anyway if the creditor forgets to object. If you have a doubt about whether or not to list the debt, list it. **You normally can't be harmed by listing a debt or hurt your co-signers by listing a debt.** Many people do not wish to list a particular Creditor because they want to keep the property, or stay friends with a local lender—but all your creditors MUST be included by law. Forgetting to add a debt may mean that you have to pay it later to get a home mortgage.

Until 2005 you could reaffirm and pay a debt to retain property. A reaffirmation is a signed agreement to repay a Creditor even though you have filed bankruptcy. Normally, you keep property by listing the Creditor and then signing a reaffirmation agreement with them. The new law states that it is inherently a hardship and that the attorney cannot sign if income is less than expenses. Therefore the attorney can no longer sign a reaffirmation and instead the judge will sign your reaffirmation in a second hearing. By signing and repaying on time, you work to rebuild your credit.

In 2005 changes may make the attorney liable for the debt if he signs a reaffirmation that you will repay the debt. As a result no attorney that I have spoken to encourages a reaffirmation after passage of the law. Hopefully this will change back to the old rule. We suggest that you pay your home and car on time and keep it fully insured to comply with your contract and keep the lender happy. If you sign a reaffirmation under the new law the lender may foreclose or repo and sue you for the difference. The failure to sign a reaffirmation or redeem means that the stay is automatically terminated 45 days after filing and that they can pick up property.

Often, Banks Mortgage Companies and Creditors will accept continued payments without a reaffirmation but some may refuse to send you monthly statements. To get monthly statements you can have your bank send you a form allowing them to contact you which your attorney may

have to sign. We commonly allow them to call you to negotiate a workout if they send us a reaffirmation and you wish to keep property. Creditors cannot be forced to accept reaffirmations, but it is very rare for them to refuse and many do not require it. If your bank requires a reaffirmation, it must be signed before the case is discharged. Reaffirmation agreements can be filed after discharge, but they must be signed before discharge.

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

If you choose us as your Attorney, we will need a list of your debts with CORRECT account numbers and addresses for each and every Creditor. We cannot and will not run down the addresses unless you wish to pay us 150 an hour to do it. We highly recommend that you get a credit report that lists the addresses. Most credit Reports normally don't list the addresses of the Creditors or the account numbers. **The account number is also required after 10-2005.** Bring a list of all of your debts with complete addresses with you when you come. **You may guess the amount of the debt but you must have a correct address.** Remember that credit reports do not usually have the addresses for the Creditors listed and to list a debt you need both the address and the amount. You can get a free report from our website. On our web site you can download a spreadsheet for listing your debts and a budget.

7.3. MISTAKE NUMBER THREE: FAILURE TO SHOW UP AT YOUR 341 HEARING

Every year, people file for a bankruptcy and then fail to come to their hearing. Every year, these people have to pay twice for their bankruptcy. In any bankruptcy, you will have a 341 hearing (also called the Meeting of Creditors) in about four to six weeks after you file. Several people make this mistake every year. They oversleep, they get lost on the way to the Courthouse, or they simply forget the hearing or don't care. The Bankruptcy Court in Kentucky, like most federal Courts, rarely accepts excuses for missing a hearing. Miss your 341 hearing — or fall more than a month behind in your Chapter 13 payments—and your bankruptcy will be dismissed. The Courts have very little tolerance for missed hearings or missed payments.

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

We often hear that clients are still getting notices, letters, and phone calls from Creditors because the Creditors' collection departments claim they never got a copy of the hearing notice. To prepare for this, we suggest you make several copies of your hearing notice. **If you get a bill after filing, send the Creditor a copy of your hearing notice. He either did not get it in the mail or got it and is lying.** Within seven to ten days after the Court gets your petition, you, the creditors and your attorney will receive a notice in the mail specifying when and where this hearing will be held. A notice will be sent to your attorney by email within 2 days. The Court mails out notices to Creditors, the Debtor (you), and the Attorney all at the same time. If you get a call from a creditor that claims they didn't get notice you know they are lying unless their address was incorrect but it always seems to happen. Just be sure your Creditors' addresses are correct so that they get notice. If you still continue to get a bill, it may be because they can't stop

the computer from sending out bills. If you continue to get calls after they have been noticed, tell them that you are recording the call and that you have filed. Give the Creditor the benefit of the doubt if he attempts collection action right after you've filed. But, if the Creditor persists or becomes abusive, gather proof by recording the call so you can take legal action against him.

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

8. SEVEN DEBTS YOU CAN'T BANKRUPT (AND HOW TO BANKRUPT THEM ANYWAY)

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

1) Child Support and Alimony are usually not bankruptable, but there are exceptions. **Past due child support and alimony amounts can be repaid in a Chapter 13. Under the new law you cannot get a discharge in a Chapter 13 if your spouse complains that your child support is past due. Your case will be dismissed or converted if you fall further behind while you are in a Chapter 13 and the spouse complains.** If you owe child support to an individual you are only able to reduce the amount of your child support by having the Family Court review the child support and a reduction is only granted if you have a substantial reduction in income. Child support is determined by a chart in every state. To calculate your amount, see our Divorce manual and website.

2) Taxes less than three years old. (Yes, income taxes over 3 years old are bankruptable!) Taxes that are filed and over 3 years old **are treated as if they were general unsecured debts.** To bankrupt income taxes, you have to file the taxes and have filed those returns 3 years or more ago. There also must not have been an assessment within the last 240 days for the years you are bankrupting. You can only bankrupt the unsecured amount. But you can avoid a tax lien on your home in some cases. There must be no fraud involved in the return. Any offer in compromise or bankruptcy will increase the time limits. If you want specific information on how to discharge taxes, see Section 20.3 in the appendix of this manual. **WHEN IN DOUBT LIST YOUR TAX DEBT IT MAY BE BANKRUPTED ANYWAY. If you owe taxes we may be able to negotiate a settlement if your taxes are less than 3 years old. Taxes can often be bankrupted in a Chapter 13 when they can't be discharged in a Chapter 7 due to timing.**

3) Federally Guaranteed Student Loans are generally not bankruptable unless you qualify for a hardship discharge. **This is now almost impossible. After October 2005 both non government and government student loans are non dischargeable before October 2005 only governmental loans were protected.** Before October 1998, Federally Guaranteed Student Loans over 7 years old were bankruptable. The law was changed in October 1998 and, except for hardship discharges, government guaranteed student loans are no longer bankruptable. The Court considers three factors in determining whether you should get a hardship discharge:

- Whether or not you tried to repay in good faith before you became unable to repay.
- Your present and future ability to repay.

- Whether or not it would create a hardship to your family if you had to repay.

It seems that Hardship Discharges are becoming easier to get **but you must first attempt an income contingent repayment plan**. If this is an issue in your situation, please discuss it. **It may be worth a try**. The key is that repayment must be a real hardship—not just hard. The situation must hurt your ability to support yourself and your family. A perfect example of a real hardship is the nurse who has a child with a heart defect. The child is in need of constant care, preventing the nurse from working. Life at the poverty level or permanently on government support used to guarantee a student loan hardship discharge but now you must at least attempt the Ford loan program first. .

Under the new law after October 2005 all student loans are not bankruptable governmental or not. Ordinary Debts such as room rent to a college are generally just as bankruptable as any other debt. There is a Ford loan that allows you to pay what you can afford on a student loan until it is 30 years old and then it is discharged forever. The payments are however decided by the government according to what they think you can afford on your income. In the past this was not a fully funded program. However if you owe 150,000 and live on 15,000 a year this seems a good option. Not all loans qualify for the Ford consolidation program.

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

The fraud exception to discharge means **criminal theft or actual fraud cannot be discharged or that you charged over 1000 dollars within 60 days of filing this amount drops to 750 or less after October 2005**. The fact that the credit card company failed to run a credit check or made a stupid loan is not fraud. Only a proven, material, and intentional misrepresentation will be considered fraud. The burden of proof is on the lender, and it is rare that fraud can be proven. Under 11 U.S.C. 523 2 (c), **a charges of over \$1,000; a purchase of a \$500 luxury item within 90 days; or a cash advance of 750 within 70 days before filing will be assumed to be fraudulent, and it will be assumed that you knew that you were in a bankrupt condition when you made those charges. Don't charge \$1,000 or more on any one charge card just before filing**. However, if you do charge over \$1,000 within 90 days of filing, you can list the debt and, if the Creditor fails to object, it will be bankrupted anyway.

There are 12 factors altogether that are now considered and additional facts may allow a judge to come to a different conclusion. If you are asked “when did you know you were bankrupt” by a Creditor at the 341 hearing, this is the trap in which he is trying to catch you. Every year, someone makes large charges too close to filing, and this question pops up. Taking a car or home mortgage loan just before filing and then paying for the car or home is not a problem. Making a \$1500 charge for a fur coat at Macy’s on your American Express the day before filing will be a problem. These 12 other factors include:

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

- The financial sophistication of the Debtor.
- Whether or not there was a sudden change in the Debtor's buying habits.
- Whether or not the purchases were made for luxuries or whether payments were made after charging on the account.

5) Criminal Acts: Criminal Restitution and Intentional Injuries

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

B. Criminal Acts or Criminal Restitution. Same idea as 5A: The judge ordered you to pay restitution after you stole from or intentionally hurt someone, and you try to bankrupt the criminal Court order. It doesn't work. Also, if you were ordered to pay restitution in a criminal Court, a bankruptcy will not stop a criminal Court judge from ordering you to pay anyway.

6) No Insurance and Drunken Driving Accidents. Same idea as 5A and 5B: They closed this loophole in 1994. You can't get drunk, drive, cause an accident, and then bankrupt the damages. However, if you get drunk, drive, cause an accident, try to bankrupt the debt, AND the person fails to file an objection to the bankruptcy, it may be bankrupted anyway. **A bankruptcy can also allow you to get a license back if you lost it due to unpaid accident damages. You can fax a copy of the filing to the driver's license department and get your license the same day you file your bankruptcy.** You should never fail to list a debt. The person often will fail to object on time and it will be discharged anyway. Fax proof of your filing to 502-564-3250 in Frankfort to get your license back.

7) Marital Property Settlement Agreements. The fact that your ex-wife or ex-husband was ordered to pay a bill in a divorce action, and has the responsibility for paying it, does not mean that he or she will pay it. Often both people are forced into bankruptcy. The Divorce Court normally only orders jail time for failure to pay alimony or child support for an underage child. After October 2005 one of the major changes in the law is your family obligation for support of children and a spouse they are given preferences over your other debts for repayment. Shifting certain debts to them as support maintenance or a settlement agreement may be possible and then paying them as a preferred creditor may have some real planning possibilities.

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

If you have any of these non-dischargeable debts, you should discuss the possibility of having them bankrupted anyway with your Attorney. There are several exceptions to almost every rule. **If you list a non-dischargeable debt and the Creditor fails to object, it may be discharged anyway.** If you don't list it you may have to pay additional fees later to add it. When in doubt, list the debt. **Look at the bottom of your 341 hearing notice and you will see that, if a Creditor wishes to object to your filing a bankruptcy against his debt, he must file his objection by a certain date. If no objection is filed by that date, the debt is often**

bankrupted anyway. The Creditor must file an objection by the deadline or he is forever barred.

9. WHAT IS A CHAPTER 7 AND CHAPTER 13?

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

9.1. CHAPTER 7

Chapter 7 is the liquidation bankruptcy that 60% or more of our clients file. Your case may be audited by the US Trustee to see if it should be a Chapter 13. If you make over 60,000 or 70,000 thousand per year the US Trustee will often object to your filing a Chapter 7 and attempt to force you to file a Chapter 13 by filing a 707(b) motion objecting to the Chapter 7. **After October 2005, anyone with over the average income for the state and his size of family must file a Chapter 13.** Exceptions include

- People that have been unemployed or partially unemployed for the prior 6 months which affects the average income for the prior 6 months.
- Persons with primarily business debts from businesses such as doctors lawyers etc automatically qualify.
- Persons that have high secured debt amounts which cause them to fail the second half of the test.

The idea is that surely the people could pay 100 a month into a plan with all that income for a couple of years. If the plan fails it should then be converted to a Chapter 7. A couple that makes 70,000 jointly would be unable to file a Chapter 7. However a couple living separately going through a divorce might be able to file separate Chapter 7 cases with individual incomes of 35,000.

If you properly file a Chapter 7, you will no longer have to repay your debts and your debts will be “discharged”. A discharge in bankruptcy means that you no longer personally owe the debts. However, property that you have given as security may be repossessed if you don't pay for it by redemption or reaffirmation or co-signers may be required to pay the debt. **The most common problem in not getting a discharge is not taking the second class after you file or the failure to file that certification with the Court. Just because you took the class doesn't mean that we got it or filed it.** Your goal in a Chapter 7 bankruptcy should be to “exempt” all of your assets so that you can keep all of your property and still wipe out all of your debts. However the Trustee will attempt to sell any assets you fail to properly “exempt”.

In a Chapter 7, you are allowed to keep a certain amount of property that is called exempted property. The bankruptcy court and creditors cannot take “exempted” property from you unless they have a lien or mortgage on it. In June 2005 Kentucky's exemptions increased see the chart in section 10.

In Kentucky, you are allowed to keep \$2950 equity in a car, \$9225 in personal property, \$18450 in a home, a 1000 wildcard exemption plus another \$9225 wildcard exemptions in any property that you choose if the home exemption is unused. You also have an almost unlimited exemption

for retirement funds but you must list property or you lose the right to own or keep it. Transfers to your retirement account within 6 months or someone else before filing may be a fraudulent transfer.

You can keep other cars but they will have to be exempted under an exemption or you must have no equity in them. Several other exemptions exist, that allow you to keep tools of the trade, part of the funds from a lawsuit, and other property. In Kentucky, professional individuals may keep their library books and a professional vehicle. The property you can keep is governed by state law. **Each state has different rules for the property it allows people to keep.** Generally, all states treat pensions as exempt. Because the exemptions are so large and Creditors usually wish to reaffirm secured debts, **very few persons filing Chapter 7 lose any property they do not wish to lose.**

Your “equity” is that part of the property that you own. To figure out how much equity you have, deduct what you owe on the property from what it is worth: The part of the house, car, or property that you own is called your personal equity in the property. In a Chapter 7, your property or your equity must be less than or equal to the exemptions in order to keep that property. If this is going to be a problem, the Attorney preparing your bankruptcy should advise you that you have too much equity and tell you to consider a Chapter 13. This is rarely a problem.

Property may be valued by the Debtor in a bankruptcy at its appraised, taxed, PVA, or liquidation value (which is what property would bring at an auction). Normally you should value property at auction, liquidation or wholesale value. You can redeem or buy back **personal property** from a lienholder, by redeeming it. After October 2005 you will pay replacement value for any redemption this can be a private party sale value or auction value. You can't redeem real property (homes), only personal property atvs, computers, cars etc and you can only redeem in a Chapter 7. Redemption allows you to get your property free and clear by filing a Chapter 7 bankruptcy and paying the bank the auction value of the item (more on redemptions in Section 10.1).

Exemptions are doubled if you are married because each person has his/her exemption but the title must be in a persons name to declare the exemption. Exempted property cannot be touched by a Creditor or the Bankruptcy Court. If a spouse didn't work to contribute to a tax refund you can't use their exemption.

<p>EXAMPLE OF EQUITY IN YOUR HOME Value of the Home \$100,000.00 Less Amount owed (Bank's equity) \$ 80,000.00 Your Equity \$20,000.00</p>	<p>Below is a worksheet for calculation of whether or not you would lose property or owe the Trustee money in a Chapter 7. The first line is just an example of a person that would lose 10,000 to the Trustee if he had 20,000 in home equity</p>
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<p>Property Value What the property is and what it is actually worth</p>	<p>- Amount owed Deduct the part the bank or car lot owns the remainder is</p>	<p>Equals Your Equity and what you own in the property Stop here though and</p>	<p>-Your Exemption If you own some part of the property your exemption is how</p>	<p>Amount to Trustee If You have more property than what you are allowed to keep you will owe</p>
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on a quick sale	your equity and what part you own	don't apply an exemption unless you own part of the property	much you are allowed to keep (Increase in parenthesis)	this amount to the Trustee in a Chapter 7 in a Chapter 13 your case must pay the equal of this column
Home 100,000	Mortgage 80,000	Equity 20,000	18450 per person on deed	1,550
Home	-		(\$18,450)	
Car	-		(\$2950)	
Car	-		(\$2950)	
Personal Injury case			(\$18,450)	
Household goods	-		(\$9850)	
Bank account or Tax refund	-		(Wildcard=\$1000 plus ½ of the unused Homestead)	
Any Chapter 13 repayment must equal the amount due to the Trustee in a Chapter 7!				

The principle of a Chapter 7 bankruptcy is that the Debtor is allowed to keep a small amount of necessary exempted property to start over with and his creditors keep the rest of the property. The Debtor hands over all other assets including any excess funds in property and is no longer held responsible for his debts. The most commonly lost items are:

1. a checking account, you may have too much property or you may be found as a signer on your parents or someone's account and lose funds
2. pending tax refunds **or profit sharing bonuses** paid to you shortly after filing, (example you file bankruptcy in December and you have a tax refund check coming in February. Cases filed from November or December to April 15th can have this problem but the wildcard or general exemption is so large now that it is still rarely lost to the Trustee.
3. inheritances, personal injury claims etc. Normally the bankruptcy court only looks at property that belongs to you at the time of filing. Inheritances that you receive within 6 months after filing are taken by the bankruptcy court if they know about them. There is no specific exemption for inheritances but in Kentucky we do have the 1,000 dollar wild card exemption if it has not been used for cash, checking accounts or other assets.

It is rare that any assets are ever handed over in a Chapter 7 if it is properly planned. Most people do not have any assets to hand over after they are allowed to keep their exempted property. Most property can be exempted and you simply don't have to file if it is a problem. Normally, all the property that the Debtor has is mortgaged or has liens on it or it is exempted. However if the car loan or mortgage company failed to file it's lien properly you can lose property.

Over 95% of those who file bankruptcy in our office have no equity left in any property for the Bankruptcy Court to take. All their significant property is owned by a bank and the bankruptcy does not normally affect the bank's mortgages or liens on cars (unless the lien or mortgage was not recorded). If you have property that is mortgaged, you will have three choices: reaffirmation (pay the debt), redemption (pay what the property is worth), or surrender (giving it back). These options are explained in detail in Section 10.1. **A Chapter 7 does not protect co-signers and only protects joint property belonging to the Debtor while the Chapter 7 stay is in effect.**

A Chapter 7 can get rid of judicial liens where you have been sued and the Creditor has attached your home but it generally does not get rid of consensual liens like mortgages unless they are preferential transfers where someone was given a lien in exchange for less than what it was worth just before you filed bankruptcy.

A Chapter 13 can destroy a second mortgage that has no equity in the home. In a Chapter 13 although the lien is not destroyed the secured claim is divided into a secured and an unsecured part and only the secured part is paid in full. The unsecured part is paid as if it were an unsecured debt. All liens or mortgages must be paid in full or redeemed at retail value.

You may only get one Chapter 7 discharge every 8 years after October 2005. This time period runs from the date of filing (when the first case started) to the date of the new filing. People used to file a Chapter 7 to get rid of their unsecured debts and then pay back their secured debts or prevent a foreclosure in a Chapter 13 filed right after that. This all changed the new law makes you wait 8 years after a Chapter 7 discharge to file another Chapter 7 and get a discharge of your debts. You must wait 4 years to file a Chapter 13 after a 7 and get a discharge. You must wait 2 years to file a 13 after another 13 and get a discharge. If your last Chapter 13 paid less than 70 % then you must wait 6 years to file a Chapter 13. No more chain filing of one after another is allowed. Chain filing was the abuse of filing a Chapter 13 to save a house or car by making just a few payments and having the Chapter 13 eventually dismissed (which takes about a year) and then filing another chapter 13 shortly after the first one is dismissed. In one case I saw one man keep a home for 7 years from foreclosure repeatedly filing one Chapter 13 after another.

9.2. CHAPTER 13 THE ADVANTAGES OF A 13...

The second type of bankruptcy for individuals is a Chapter 13 repayment plan. **In a Chapter 13, you must pay back Creditors, within five years, in full or in part to the best of your ability and you must pay as much as a Chapter 7 would have paid if there would have been a liquidation.** Persons that have less than the median income may file 3 year plans. Kentucky requires that most plans repay at least 10% to the unsecured Creditors in cases less is possible but the Trustee wont get paid at some point. Plans must be proposed in good faith and pay all the left over income from the budget. Other states have lower repayment rates—the rate in Indiana can be as little as 10% and I have seen a 1% plan. Kentucky used to require all plans to repay 70%. There is a presumption that the plan is proposed in good faith if it repays at least 70%. Kentucky changed drastically in 2003 by allowing 10% and 20% repayment plans. Under the new law even lower plans will be allowed but you only get the presumption of good faith with a 7) or greater

plan. All Chapter 13 plans must always pay back at least as much as a Chapter 7 would have. This means that if your house would have been sold in a Chapter 7 and would have paid back 20,000 dollars your Chapter 13 must repay at least 20,000.

Chapter 13 plans operate very much like a bill consolidation loan, in that debts are consolidated into one monthly payment which is paid to a Trustee. Payments start the month that you file. Plans can be dismissed for the failure to pay or the failure to turn over tax refunds or to file the annual budget. The Trustee then pays the Creditors. Certain debts such as alimony, child support and attorney fees are given super priority and are paid first. Taxes are given priority and are paid before the secured debts but after trustee and attorney fees. The last debts to be paid are unsecured debts.

A Panel Trustee is an attorney or CPA appointed by the Court. He is not a judge, although he runs the 341 hearing in both Chapter 7 and 13 cases and will ask questions at the 341 hearing like a judge but these “hearings” are actually more like a deposition. The Panel Trustee does not work for you. The Trustee is not your friend. He represents the banks and the Creditors that you owe.

The Panel Trustee’s major job is to take property from you if he can. This is how he earns his fees. Although you are required to tell the truth at the hearing, this is not the time to brag about how much your property is worth if it is worthless and it is the time to check your titles to make certain they are properly recorded. I guarantee you that he will attempt to take your home or car if the mortgage or if a lien is not properly recorded. **The US Trustee is a completely different person that will audit your documents** for accuracy and will dismiss your case or force you to file a Chapter 13 instead of a Chapter 7 if your documents are not accurate.

The 5 major benefits to a Chapter 13 are:

1. A Chapter 13 can be used to repay certain debts that a Chapter 7 cannot, such as fraud debts, child support, taxes less than 3 years old and student loans after October you lose this ability to get a super discharge that does more than a Chapter 7 discharge.
2. If you can’t finish paying the plan but you have repaid the majority of the Chapter 13 payments you can get a “hardship” discharge for having made most of the repayments as long as you have repaid what a 7 would have repaid. The plan can also be modified or lowered or increased. If your Chapter 13 is dismissed voluntarily or due to a willful violation of a court order you may not obtain a discharge by filing another Chapter 13 for years. You may be able to obtain the stay to stop a foreclosure by proving that it will work a second time but you won’t get a discharge of your unsecured debts. If it was dismissed involuntarily due to no fault of your own you can refile immediately. If you were in a credit counseling plan and fail to finish paying payments you go back to owing as much as you originally owed
3. If you can’t finish the repayment a Chapter 13 can also be converted to a Chapter 7. This is often useful if you filed a Chapter 7 less than 8 years ago and you need relief now but want to convert later.
4. **A Chapter 13 protects co-signers, as long as the Chapter 13 pays the debt in full, and it allows you to keep property that you might otherwise have to turn over in a Chapter 7 liquidation bankruptcy.** (A Chapter 7 does not protect co-signers and only protects joint property belonging to the Debtor while the Chapter 7 stay is in effect.)

5. **Chapter 13 is often used to stop foreclosures. Remember that 2 year rule on home loans? In Kentucky, you have to repay the default on your home mortgage within 2 years in a Chapter 13. After just one year after you start a Chapter 13 agency lenders (VA FHA HUD KHC) can refinance or finance a home mortgage at prime rates even while you are in a Chapter 13 if you repay on time while you are in the Chapter 13. After 1 year of repaying your Chapter 13 on time you can pay off the 13 and refinance your home at rates as low as 5-6% (2005) rates to finish the Chapter 13.**

A stay is a Court order that goes into effect when you file the case. The stay orders Creditors not to take further collection action. Although you may not be able to get a discharge you may want to file a Chapter 13 bankruptcy anyway in order to get the stay. In order to foreclose or repossess a bank must get permission to terminate the stay and then foreclose or repossess property. If you fail to pay the regular monthly payments on your home or the payments in a Chapter 13 your case will be dismissed or the creditor will be given permission to foreclose or repossess their property.

If your case was involuntarily dismissed and it was not for a willful violation of the court orders you can refile any bankruptcy immediately. If an objection is filed or your case was dismissed for a violation of court orders you must wait 6 months under 109(g) to refile. **If you have filed a Chapter 7 within the last 8 years, a Chapter 13 is your only option.** But, Chapter 13 cases are often converted to a Chapter 7 after time, when the Debtor cannot make the payments to the repayment plan or if the Debtor later wishes.

Filing a Chapter 13 will be reported to the IRS. You can't file without the last 4 years of tax records. But if you have not filed taxes or paid taxes over the last few years, any tax debt you have would be added to your Chapter 13 repayment plan. In a Chapter 7, if you filed taxes properly and promptly, any income tax over 3 years old that you owe will be discharged. You must file your taxes up to date in order to have a Chapter 13. You must also not fall further behind in support payments or the case may be dismissed.

If you file a Chapter 13, you will lose your tax returns to the repayment plan and creditors will be paid a higher percentage but you will still have to pay the same payments for the same amount of time. If your income goes up or down the payments can be adjusted.

If you have so much income that a Chapter 13 could repay 100 a month or make over the average wage for a family of your size, you may be required to file a Chapter 13. However this is determined by a complex calculation your attorney should do. This is not automatically a rule. Deductions are taken for standard IRS expense amounts to determine this. Years ago when plans that had to repay 70% of your debt over 95% of these plans failed. Since this has dropped to 10-20% Chapter 13 has become more popular and repaying them early by refinancing a home is becoming common. Even if people have the income to repay a plan, events often occur before the 5 years is up that make repayment impossible because you are not allowed to miss any payments. Debtors that don't refinance a home to pay off a Chapter 13 are often forced to convert their Chapter 13 plans into Chapter 7 plans later. If the majority of the payments have been made in the Chapter 13 and the person is unable to continue the plan, a hardship discharge may be granted as long as it has repaid what a 7 would have.

In a Chapter 13 plan you may be able to lower the interest rates being charged to you on certain loans (not home mortgages but car loans are often lowered), stretch out your payments, and still keep your property. A Chapter 13 will stop foreclosures, garnishments, and Creditor harassment. If you file a Chapter 13, you partially repay unsecured debts

with no interest. In the past, over 95 % of all Chapter 13 cases failed because the Debtor couldn't afford the high payments or things happened after filing. Now many people repay far less than 75% in repayment plans. **Chapter 13 cases are limited to cases with about \$1,250,000 (1.25 million for 2004) in debt but this amount can increase.**

Filing a Chapter 7 will temporarily stop a foreclosure for 1-3 months but it won't permanently stop a foreclosure. **If you file a Chapter 13 to stop a foreclosure in Kentucky, you must correct or cure any default or arrearage on your mortgage within 2 years of filing or the mortgage company may object to confirmation of the plan.**

If your Chapter 13 is dismissed for the failure to comply with a court order such as paying on time you lose the presumption that any case filed within one year after that is filed in good faith. One major advantage of the Chapter 13 is that a person will often keep all of his or her property, no matter what the property is or how much equity the Debtor has in that property as long as their plan repays what a Chapter 7 would have paid. A repossession or voluntary surrender of collateral (for instance returning a car) is normally worse in its effects than filing a bankruptcy and it increases the time you will have to wait to get another home.

If you have negative equity in a home or a bad mortgage rate you may want to allow the home to go back in a foreclosure and live in it rent free while it is in foreclosure. You can save those mortgage payments up and then use them as a down payment later when you can finance a home. **If you let a home go back in a Chapter 7, it will take about 6 months to 2 years before you will have to move (due to the length of time it takes to foreclose and sell the house). After bankruptcy this time is spent rent free in your home while the foreclosure happens and you owe no deficiency! Then 2 years after a discharge in bankruptcy or 3 years after the foreclosure sale you can purchase a home at the current prime interest rate! (On 3/2007 the rate was as low as 6.25% with Kentucky Housing Corporation)**

If you don't file bankruptcy and your home is sold in foreclosure and the sale does not pay the debt, you will be sued for any remaining amount (deficiency). A foreclosure or surrendering is worse than filing bankruptcy to your credit and fico score. In a foreclosure or with a deed in lieu of foreclosure you owe the deficiency judgment. **Judgments can be renewed every 20 years and on your record permanently** not just 7 or 10 years. Every time they attempt to collect or renew it will be reported and renewed on your credit report for an additional 7 years. This can become an endless loop. But bankruptcies are only reported for 10 years and sometimes are removed before the 10 years. If they keep trying to collect a judgment your record may never go away and you will never get a reasonable mortgage rate.

If you file bankruptcy however you will often qualify for a home mortgage 2 years after discharge or 3 years after a foreclosure as long as you pay on time after filing your bankruptcy. **If you make your payments on time during a Chapter 13 bankruptcy you can refinance within just 1 year.** Many people use this as a method to pay off the Chapter 13 plan. If you file a Chapter 7, you will be able to refinance or purchase 2 years after discharge or 3 years after a foreclosure.

Attorneys may try to coerce you into filing a Chapter 13 because they are paid more if you file a Chapter 13. Your Attorney should advise you to file the bankruptcy that is best for you. If he wants to file a Chapter 13, he should be able to explain why either you are required to file a Chapter 13 or why you should file a Chapter 13. Too often, the only reason a Chapter 13 was filed is because it made the Attorney more money. Although the cost to file a Chapter 7 may increase it may be the best choice for you.

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

1. **you would lose property otherwise**
2. **you have more than the median income for your state and must file a 13**
3. **or there is some other valid reason such as the protection of a co-maker or a time limit.**

If an Attorney claims that you will lose property, double-check to make sure that you can't exempt your car or home and keep it in a Chapter 7. Don't be told by any Attorney that you don't pay the Attorney fee in a Chapter 13 or that the Court pays the Attorney fees for you. The Attorney fees come from your payment that you pay to the Court.

The average fee for a Chapter 7 is about \$1100 for a single 1300 for a couple. The average fee for a Chapter 13 is about \$2600. A majority of the plans fail because people later become disabled or otherwise can not finish the repayment plans. Many are converted to Chapter 7 bankruptcies. With such high failure rates, even the judges and Attorneys don't expect you to finish the payment plans. However now 10% and lower plans are common and offer much a cheaper repayment option than debt counseling without the negative problems of debt counseling.

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

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

10. THE KENTUCKY EXEMPTIONS

This book may use the old Kentucky exemptions. After October we should replace all of the exemptions with the new Federal ones throughout the book. Your exemptions are the property you may keep.

Property	Old Law	Your Exemption after 7-2005
Real Estate	5000 per person on the Deed	\$18,450 per person unused is applied as a wild card up to 9,250
Household Goods	3000	\$9,850 BUT no item may be worth over 475 Limited to 1 tv 1 VCR 1 Computer unless the wildcard is used to exemption multiple TV's etc
Car	2500	2,950
Wildcard	1000	950 plus what you don't use of the real estate exemption up to \$9250
Retirement	Unlimited	Amount reasonably necessary for support
Personal Injury	7500	\$18,450
Tools of trade		1,850

11. WHEN SHOULD I FILE A 13?

In most cases, you want to file a Chapter 7 because it immediately eliminates your debts and you get the bankruptcy over with in 3-4 months with less cost. Because a Chapter 13 bankruptcy lasts 3-5 years and requires repayment, it will be more of a burden to you than a Chapter 7. During this time, if you want to buy a car or a home or apply for additional debt you have to ask permission. **You will lose your tax refunds to pay the Chapter 13 plan.** The majority of all Chapter 13 cases fail and are converted to Chapter 7 cases. But, in a few situations, a Chapter 13 is a good solution. For instance, Chapter 13s

1. protect co-signers better,
2. stops foreclosures as long as the arrearage is paid within 2 years and can
3. and is the only option if you filed a Chapter 7 less than 8 years ago

4. You may use it to pay child support before any other debts are paid.

There are times to use a Chapter 13 as a tool to stop a foreclosure or to protect a co-maker. But it is important that if you are going to file a Chapter 13, you should at least think about filing a Chapter 7 to get rid of unsecured debts that may make it impossible to afford a Chapter 13 debt repayment plan. Since Kentucky changed to allowing 10% Chapter 13 plans more Chapter 13's are being filed and there is less need to resort to first filing a Chapter 7.

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

A Chapter 7 may do less damage to your credit than a Chapter 13, and it normally repairs your credit more quickly. However a Chapter 7 only **temporarily** stops a foreclosure and after 10-2005 you can no longer file a Chapter 13 immediately after a 7. A person that finishes a Chapter 7 bankruptcy will spend about 2-3 years to reestablish his credit before he can buy a home from a prime lenders. If the same person files a Chapter 13 he may now be able to buy or refinance a home within 1 year after he files if he pays his Chapter 13 on time.

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

12. QUESTIONS I SHOULD ASK AND OTHER DEBT TACTICS?

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

1. **Do you expect an inheritance within the next year or could I get a tax refund within a couple of months?** Bankruptcy property includes not only the property you have at the time of filing but sometimes property that you may acquire or get later. You are allowed enough property to start over but no more. Inheritances, tax refunds, lottery tickets and personal injury lawsuits are especially property that the court looks at although you don't have the money the day of filing. Be sure to list these as assets or you lose them.
2. **Do you expect to have major medical expenses within the next year?** Maybe you want to wait until after you have these expenses to file or if they were from an auto accident you may want to reconsider filing this may be an asset if you have a lawsuit pending against the doctor or person that hit you.
3. **Have you paid a creditor more than the normal monthly payment or paid someone close to you anything within the last year?** This is a preferential transfer which may be avoided by the court and the person you paid may have to pay the court back. Preferential transfers are when anyone gets something for less than its fair market value just before filing. **This includes giving a mortgage to an unsecured creditor or paying a creditor off just before filing or giving a car or other property to a relative or friend before filing.** Transferring assets just before filing into your retirement account within 6 months or into other exempt forms is also a preferential or fraudulent

transfer.

4. **Do you have child support alimony or is there a pending dissolution of marriage?** Overdue alimony and child support can only be repaid in a Chapter 13. You must be current on support or a spouse may object to the discharge and have your case dismissed or get other sanctions.
5. **Do you owe student loans taxes or did you go crazy and charge up your credit cards just before filing?** Some debts like taxes are dischargeable if you wait the proper period of time. Student loans may be dischargeable under a hardship discharge. Also if you went crazy and charged up your credit cards just before filing they won't be dischargeable unless you wait 90 or more days. Such credit card charges are looked at as fraud.
6. **Are you unable to keep payments current on secured property?** If so a Chapter 13 is never the long term answer you will eventually lose property you can't keep up the payments on. You will eventually have to file a Chapter 7, and/or surrender the property or repay the deficiency. You have to live within your budget.
7. **Do you have regular income or valuable non exempt assets?** If you have regular income you may have to file a Chapter 13 unless your expenses exceed your income. If you have valuable assets that you cant exempt you may have to file a Chapter 13 or lose them.
8. **Are you able to produce a list of your debts and financial records?** You need to know who you owe how much you owe and the addresses of your debts. Fail to list a debt or tell your attorney about it and you may have to pay it. You may also have to provide bank and tax records and copies of deeds mortgages and titles. Fail to list an asset and it will at least look like fraud and hurt your case. You even have to include your retirement as an asset although it is exempt in Kentucky. After 10-2005 retirement accounts will be limited to the amount reasonably necessary for support.
9. **Have you filed bankruptcy within the last 8 years or had a prior bankruptcy dismissed.** OOOPS you may not be able to file a Chapter 7 just yet then.
10. **Have you charged large amounts, sold property and not paid the lender or obtained a loan by fraud such as overvaluing assets or giving property as security that you don't own?** If you charged a large amount within 90 days prior to filing you may not be able to obtain a discharge but such a lawsuit (adversary proceeding) against you is hard to prove and win.
11. **If you have bought or sold property was the lien or mortgage properly recorded?** If a mortgage or lien was not properly recorded the bankruptcy court may own it. For that reason we need the mortgages and titles of property you own or that you bought and sold within the prior 2 years.

There are other good and poor Debt elimination tactics!

Debt Consolidation Debt Consolidation for Homeowners and Home Equity Loans

Generally paying unsecured debts from your retirement or home equity is a poor idea. Your retirement and your home should not be sacrificed to pay debts. Especially if your income is less than you spend never do this. If you have a negative cash flow i.e. you spend more to live than you make you must sit down and make out a budget to live within. You may have to let a home or house go back. You must live within your budget. Filing a bankruptcy allows you to let some property go back and keep other property so that you can start over fresh and live within your budget. You can bankrupt unsecured debts and often keep your home or retirement.

Sometimes bankruptcy isn't necessary. If you have good credit (a FICO score over 600) you might get a low rate debt consolidation loan or refinance a mortgage at a prime interest rate (in 2007 under 7% for a fixed mortgage). If you can refinance at a lower rate you might even lower your house payment. If you have good or perfect credit and you want to see if you can get a Kentucky Housing Loan or a prime rate mortgage see us and we can recommend someone that specializes in this! **Many** Debt Consolidation programs are scams by predatory lenders to get you to sign for high rate loans. If a company claims that they can get even bad credit applicants approved you are dealing with a sub prime or predatory lender. **Never refinance a home to consolidate debt unless you go to a lower interest rate or you will probably eventually lose your house.** There are few very laws that protect you from these people. **Period!**

13. DOCUMENTS YOU NEED TO FILE A BANKRUPTCY

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

When you come to your initial bankruptcy consultation session with us, please bring **at least** a list of your bills with complete and accurate addresses account numbers and amounts for each and every debt. Also, please bring the prior 7 months of paycheck stubs with your correct name, address, and social security number to help us prepare an accurate budget. **The best method is to enter your information on line at our website.** You can also fill out a questionnaire—from the “Court forms” page of our website. These items will speed up your bankruptcy filing, and save you time and trouble. If you do, we will have most of your bankruptcy prepared when you come.

The Trustee demands a copy of your

1. last six months of bank statements,
2. a copy of your tax transcripts from the IRS for the last 4 years not your copies,
3. copies of your filed titles deeds and mortgages from the courthouse, and
4. a copy of any car or vehicle titles.
5. Copy of all paystubs and proof of your income from the past 180 days to the current date
6. Photo ID and social security statements
7. Completion of any debtor counseling and training prior to filing.

You must supply a copy of the mortgage and deed time stamped at the court house. We have to have these documents before we can file your bankruptcy.

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

14. EXEMPTIONS, HOW TO KEEP YOUR PROPERTY

There are only a few ways you can keep property when you file a Chapter 7 bankruptcy. The type of property is very important: For example, you can't keep \$18,450 dollars in a bank account, but you can buy a house and have \$18450 in equity in that home.

In order to keep property in a Chapter 7 bankruptcy, you have to apply the proper exemption against it. (Information on exemptions and what property you can keep is provided in Section 10.) To save property you can use several methods:

- Sell or spend part or all of the property that can't be saved.
- Mortgage property (borrow against an asset to use up equity). (The problem is that the money you borrow is now an asset and that may become a preferential transfer or an asset if that money is not used or changed into an exempted asset) Mortgaging, buying a car, or being unemployed may allow you to file a 7 and pass the means test when you otherwise could not file a Chapter 7. However buying a car you needed is proper buying a Lincoln Navigator just to avoid the means test is not.
- Exempt the property (find and use an exemption to protect property from the Court).
- Convert non-exempted property into exempted property and wait a period of time normally over a year to avoid any fraud or preferential transfer claims after 10-2005 this will increase to 2 years. (change the type of property, such as selling your second car and investing the proceeds into a retirement fund that is 100% exempt within at least 6 months before filing).

There are many ways to plan your bankruptcy so that you can keep assets and destroy debts. That planning includes timing issues. For instance, filing tax returns on time and waiting until your income tax debts are 3 years old may allow you to bankrupt your income tax debts. There is nothing wrong with planning your taxes or bankruptcy. The mistake you can make is not disclosing all of your assets, debts, income expense and transactions. You can tell a Trustee yes I spent my Tax refund for food. However you have your case dismissed or go to prison for lying or failing to disclose assets.

It is illegal not to list assets or to give assets away just before filing or not disclose a transfer. In order to keep your assets, we are happy to work with you to plan your bankruptcy so that you discharge the maximum amount of your debts and keep most of your property. However, in rare cases it may be required that small assets are turned over to the Court to avoid thousands in debt. **The most common assets to lose are funds in a checking account and tax refunds but homes, cars, and personal injury lawsuits are also commonly lost by not listing the asset or transfer with your attorney. Listing the asset and telling your attorney about it allows him to help you find an exemption to keep it. Bankruptcy law says that if you don't list it, then may lose it or have your case dismissed. If you don't list it you also can't claim the exemption.**

The Bankruptcy Court will look over the accuracy of your petition and **if your house is valued lower than 80% percent of the PVA (property tax evaluation) of your home your valuation may be questioned.** The Trustee checks the property records for records on homes cars and boats. In Louisville you can obtain your PVA value at www.pvalouky.org or you will find it on your tax bill. Your car should be valued at the Kelly Blue Book trade in value listed at (www.kbb.com). **If it is valued at less than 80% of it's trade in value it may also be questioned.** You should value your house at it's PVA value.

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

A debtor may keep his property by claiming exemptions of his homestead and certain personal property from attachment and execution of a judgment, or in a bankruptcy proceeding. The KY bankruptcy court will not touch your home if you have less than 18,450 in equity (36,900 if married and both are on the deed). Items of personal property which may be exempt include clothing, household furniture and furnishings not to exceed \$9850 in value but no single item over 450 unless you exempt it by wildcard. You may also exempt tools, equipment and livestock not exceeding \$1850 in value. You may exempt up to 2,950 in equity in a car or motor vehicle and its necessary accessories. (KRS 427.010) In addition, a debtor may be entitled to exemption of awards under a crime victim's reparation law, and a certain portion of recovery from wrongful death or personal injury actions up to 18,450 and 36,900 per couple if both are injured. You may exempt and keep pensions, retirement benefits, (KRS 427.150) up to a "reasonable amount" which is probably for retirement accounts 1,000,000 or more. And you have a general exemption not to exceed \$950 plus up to 1/2 of what you don't use as the homestead exemption (18450/2= 9225) to be applied toward any property (normally this exemption is used to exempt taxes, or bank accounts) (KRS 427.160) If you plan your bankruptcy it is unusual to lose anything because the exemptions permit you to keep so much property in a Chapter 7.

There are both state and federal exemptions. After June 20th 2005 people in Kentucky will use the Federal Exemptions of 18,450 for a home.

14.1. CAN YOU KEEP MONEY FROM LAWSUITS?

After June 20 2005, if you have a personal injury lawsuit you are allowed to keep up to 18,450 of the proceeds from that lawsuit for your bodily injuries. However you are not allowed to keep any recovery for pain and suffering or mental distress. In order to keep 18,450 it must be for your actual losses (disability or future wage earning ability) not emotional suffering. **You must list the lawsuit in your petition or you lose the asset and perhaps your bankruptcy may be dismissed for fraud.** You only have the right to keep property that you list in your bankruptcy schedules. What happens is that you list the lawsuit as an asset and then you exempt it so that you can keep your 18,450 interest in the lawsuit. The Trustee gets the rest of any interest in the lawsuit to pay your debts. If there is anything above the amount to pay your debts you will

normally receive it.

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

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

Penalties for not listing assets can include:

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

14.2. WHAT ABOUT MORTGAGED PROPERTY OR LIENS?

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

- 1) You can always **Surrender** a car or home and pay for it as if it were just another unsecured debt in the Chapter 13. They deduct the sale of the security from the debt and then they are paid as an unsecured creditor.
- 2) **Strip a 2nd mortgage that has no equity.** Example: If the home is worth less than 1st mortgage you may be able to strip away the second mortgage because it is essentially an unsecured debt. But, there must not be one dollar in equity for the second mortgage or the whole mortgage survives.
- 3) **Repayment in full or in part of mortgages and car loans.** If a car loan was made within 910 days of filing the Chapter 13 you must repay the debt or surrender the auto. You can offer less than 100% but the lender may reject the offer. First mortgages must be repaid in full. Some second mortgages may be treated as if they were unsecured. Other secured loans may be treated as part secured part unsecured.

In a Chapter 7 you have three alternatives **Surrender, Reaffirmation** and **Redemption** if you have property that has a lien on it. You must choose one of the three alternatives within 45 days after you file and you must indicate in your petition if you want to surrender reaffirm or redeem any secured debt.:

- 1) **Reaffirmation** is to return to owing for the item. Often the car company will send you a reaffirmation agreement. However most mortgage companies forget and rarely send a reaffirmation agreement. If you fail to make the payments they eventually

simply file a foreclosure. If you sign a reaffirmation the bank will be able to sue you later if it repossess and gets a deficiency.

- 2) **Surrender** if you don't have the money to make the payments or don't want the property you can always abandon the property or allow it to go back and owe nothing.
- 3) **Redemption.** In a Chapter 7 bankruptcy you can give the property back and owe nothing or redeem the property and give the bank the value of what the item is worth. This is a good option when
 - a. the payment is unaffordable,
 - b. you owe more for the property than it is worth, or
 - c. The property is in poor condition or is worthless and you want to return it.

The following is a common scenario that we do not recommend In one case we had, it involved a man with two trucks. One was a two year old truck financed for \$30,000 and the other truck was approximately eight years older with no lien on the older truck. Just prior to filing, the engine needed repair on the newer vehicle. The engine and transmission were removed and sat on the ground. In order to get the engine out somehow the radio, battery, tires, front seat and tail bed also needed removal. The new truck went back in repossession without these items sold for about 1000 dollars. **We do not recommend this.** It does seem to happen a lot and so far his old truck is still on the road.

The law changed in 2005. We expected more redemptions fewer reaffirmations and more Chapter 13 plans that surrendered autos. Before 10-2005 people often purchased cars homes or refinanced just before filing bankruptcy if their credit was still good. Under the new law passed on April 2005, an attorney can no longer advise a Debtor to borrow just before filing bankruptcy. But this was beneficial in cases where they would not be able to purchase a car after filing and needed to purchase it before filing.

Reaffirmations. Reaffirmations after October 2005 can make the attorney that signs a reaffirmation a surety just like a cosigner. Also under the new law if your income is less than your expenses you are a hardship case and no attorney may legally sign. No attorney that I have talked to wishes to be a co signer for someone that is filing bankruptcy and it is not in your interest to sign such agreements and be sued later for a deficiency. But if a reaffirmation is not signed within 45 days after you file the stay terminates and the mortgage company or car loan may repossess if you have not made an agreement with them to the keep payments current. Instead we allow mortgage and car companies to talk to you to make arrangements to keep your cars and homes by your continuation to make payments and keeping the property insured. Also you may sign the reaffirmation and file it and the judge will sign it if you wish.

Before May 2005 you could sign a reaffirmation agreement to pay all or part of the amount owed for the property. You can negotiate the reaffirmation with some Creditors: You could get lower payments, reduced interest, reduced overall amount or a longer term to repay by negotiation with finance companies. Reaffirmation was a good option when you owe less than the property is worth and the property is in good operating condition and you wish to keep the property. You may have to catch up payments in order to reaffirm, and some credit unions may not agree to allow you to keep the property unless you also reaffirm with other loans. In such cases, you may

want to consider redemption.

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

3) Redemption. You may redeem the property and pay the replacement value of the item in a lump sum cash payment in a Chapter 7. In 1978, the Bankruptcy Code was revised and included section 722, the right to redeem from a lien Creditor tangible, personal property intended to be used by the Debtor primarily for family, household, or personal purposes. Under prior law if a Debtor wanted to keep items, he or she would be at the mercy of the lien Creditor and he could only reaffirm or surrender. By enacting section 722, Congress intended to give the Debtors a way to avoid the high replacement costs they would otherwise suffer from repossession. To exercise the right, the Debtor pays the lien Creditor the fair value (the auction or liquidation value) of the item. Case law now says that this is the liquidation value the Creditor would have gotten at auction. Kelly Blue Book gives the trade in value and the Auction value is in a secret book called the black book value on the internet. The average person that redeems instead of reaffirms their vehicle will save about 8,000 dollars. Notice that you can also strip the lien in a Chapter 13 but you must complete the Chapter 13 plan and you must give the retail value and you can't give the wholesale value. After October 2005 you must use the replacement value for redemption and the loan value to keep property in a 13.

Redemption is a very good option when you owe more than the property is worth and the property is in good condition. The problem with redemption is that you must pay for the property in a single lump cash payment, which can be difficult for people who are in bankruptcy. But there are banks that will lend for this. Redemption can be used for a mobile home, auto, or any item of personal property.

YOU CANNOT REDEEM REAL ESTATE. With real estate you can let it go into foreclosure and then purchase it at the foreclosure sale. If you have a bad home mortgage and owe more than the property is worth you may want to

- 1) let it go back in foreclosure. It often takes 6 months to 2 years for a foreclosure sale to happen. Filing an answer to the foreclosure will extend the time. People often live in their home for a year rent free until the date it is sold saving up for their next home.
- 2) Refinance at a lower rate after you repair your credit in a Chapter 13 and have paid on time for over 1 year.
- 3) If the home is worth less than the 1st mortgage and the second mortgage is basically an unsecured debt you may be able to strip the second mortgage and pay it off in a Chapter 13 as an unsecured debt. Stripping a lien can only be done in a Chapter 13.

Redemptions can only be done on personal property in a Chapter 7 and stripping a lien can only be done in a Chapter 13. Redemptions can be done after 10-2005 stripping a lien will also be available.

Doing a redemption can require a hearing and requires a small attorney fee for the motion. Doing redemptions in the Western District is much easier and normally doesn't normally require an expert witness. Every Bankruptcy District has individual rules and the rules are strict in the Eastern Kentucky District. This is why it costs much more to file in the Eastern District.

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

14.3. HOW 722 REDEMPTION FUNDING CAN HELP WITH A CAR

You will get many offers after you file for bankruptcy from on the lot auto car companies. Most of these places are not the place you wish to buy a car from. They often buy cars from auctions, mark the car up from 4 to 5 times what they paid for the car, ask you for a down payment equal to what they paid for the car and then ask 30% interest rates. They will also attempt to sell you a warranty that won't pay and that is funded by some insurance company that went out of business or that will only pay ½ of the bill and only if you take the car to their mechanic who claims that there is nothing wrong with the car.

722 works with car lots that have slow selling autos they wish to wholesale. These are family cars like a Chrysler Cirrus or Olds Alero that are not hot selling cars. These cars will get you to work. They won't get you a hot date on a Saturday night. They about 3 years old and have depreciated. They are commonly sold for wholesale just to move them off the lot. However 722 has a 22% interest rate. At least it is better than the above option. You can either 1) purchase a car from their lot or 2) allow them to finance a motion to redeem a present car if you owe to much. They finance vehicles for people that have filed bankruptcy. Until 10-2005 you can redeem for wholesale after 10-2005 all redemptions will be for retail or replacement value prices.

722 Redemption Funding will finance a redemption if the car is less than 7 years old and has less than 100,000 miles. They require stable jobs and residence history, adequate income and no repossessions to qualify. Their phone number is 1-888-721-2800. This can be useful to you if

- You are behind on payments and the bank requires you to catch up or surrender,
- Your payments are too high or need to be on a different date,
- You owe more than the car's value,
- You would owe the Trustee for the car because the lien wasn't recorded, or
- You have a lien on the vehicle that can be avoided.
- If you file after October 17 2005 and you cant sign a reaffirmation

If any of these 5 conditions apply to you, you might want to consider contacting 722 Redemption Funding. You will need a stable job, stable residence history, enough income, and no (or very few) prior repossessions. A repo makes borrowing very difficult. Even 722 with their 21% rate

and liberal lending will deny a person that has a couple of repossessions or unstable history. Normally 722 will lend if you have a stable job or residence.

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

As a redemption example, if you owe \$15,000 on a car worth \$9,000 retail and 6,000 wholesale, you do have the choices of keeping the car payments for 15,000, or paying \$6,000 in cash and redeeming it. Since you probably don't have the \$6,000, 722 Redemption Funding will lend you money to redeem the car. By redeeming the car you saved \$9000. However, 722 will charge about 21% in interest (about the same as some bank rates to high-risk individuals) after October 2005 you would redeem it for retail 9,000 and save only 6,000. Even if this interest rate is higher than your old rate, you would still save. You can save money with a higher interest rate if you save enough on principle.

The benefits to using 722 Redemption Funding includes:

- The ability to redeem a vehicle and pay the wholesale value for it.
- No car payments for a couple of months. In a reaffirmation or workout, the bank may ask you to catch up payments. It can leave you short on cash when you're paying for the bankruptcy and paying to catch up car payments.
- The opportunity to reestablish your credit with the 13th largest bank in America and to have bank credit.
- If you have a lemon auto and use their services to buy a new car, the ability to buy a late model car at wholesale.
- In some cases, the ability to lower your car payments or the number of payments.

14.4. WHAT IF YOU NO LONGER HAVE THE PROPERTY?

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

14.5. JUDICIAL LIENS, GARNISHMENTS, FORECLOSURE AND PREFERENTIAL TRANSFERS

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

have a judgment against you and you own real property that may have a judicial lien on it.

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

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

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

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

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

A bankruptcy does not normally get rid of consensual liens (mortgages and car title loans where you agreed to give someone a lien), but a consensual lien on a car or mobile home can be removed by redeeming the property (see Section 10.1). The reason why a household goods lien can be avoided in Bankruptcy court is because it is an illegal and unfair trade practice that was outlawed by the government over 20 years ago but finance companies still use it as a tactic to

scare people into paying. See *In Re Raymond* 103 B.R. 846 (Baker W.D. Ky 1989) see also FTC regulation 16 849 CFR ch 1 § 444. After October 2005 removing a household lien may be difficult or impossible please discuss this with me.

In a Chapter 7, the lender is entitled to apply to the Court for permission to go forward with the foreclosure. So, in a Chapter 7, although your debt may be discharged, a secured lender will be able to get collateral back if you don't pay for it. A Chapter 7 only removes your responsibility for a debt: It normally can't remove a lien or mortgage unless it is a judicial lien from a lawsuit and even then it requires extra work and cost. In a Chapter 13, however, you will be able to keep the house and stop a foreclosure, just by catching up the payments within 2 years.

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

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

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

- 1 Paying off a creditor just before filing
- 2 A creditor that garnishes over 600 dollars in wages or from a bank account

Examples of a Fraudulent transfer would be:

- a. Selling a car worth 5000 to a friend for 500
- b. Giving a car to mom before filing

The debtor's property is assumed to be all of his property at the time of filing. In addition it includes any inheritance or tax refund due to him at the time of filing or received within 180 days after filing. Tax refunds and money in your bank account are the two most common assets that you normally lose. It doesn't matter that you had checks outstanding. The Trustee owns what you have in the bank at the time of filing. (Of course you may use the 1000 dollar wild card exemption to keep some money or some of a tax refund. But if you have 10,000 in the bank when you file it doesn't matter that you had a 10,000 dollar check outstanding or that the 10,000 belonged to your mom). The debtor is allowed to keep most of his property through legal exemptions. However the remainder belongs to the court and the trustee who will divide that

remaining property to the debtors in an “orderly distribution”. In a Chapter 7, it is rare for there to be property left over for division.

The debtor is assumed to be bankrupt for 90 days before filing and any attachment or gift over 600 dollars by him during that time is avoidable by the court or the trustee. **The Trustee now has the power to look back 2 years.** He rarely looks back more than 6 months and normally not more than 90 days. Gifts to family, friends and business associates are preferential transfers to an insider. Insider transfers have an up to one year rule. If you give property to an insider for less than its fair market value within one year before filing the bankruptcy court may go back after that property. A single gift from a father to a daughter of \$5,000 is an avoidable preferential transfer. However, 10 gifts of \$500, done in 10 separate transactions to 10 children, are completely legal. If a transfer of the Debtor’s assets is more than \$600, a 506 motion (motion to dismiss), 522 (f) motion, cram-down motion, or adversary lawsuit may be filed to avoid that preferential transfer.

15. AN EXAMPLE OF BANKRUPTCY STRATEGY

This is a fictional example of bankruptcy planning and strategy taken from two true stories. Federal law prevents any attorney from giving advise to borrow before filing Bankruptcy to you. So we will not give that kind of advise to you but this is an example of borrowing so that there is no equity left for the Trustee to take.

It is 2007. James X has a 190,000 dollar house. He used to be able to afford his credit cards but his wife became disabled and now he is close to losing his home. The home has a 100,000 dollar mortgage and James has 100,000 in credit card debt. At this point James is still up to date on all of his debts. The interest rates on the cards are close to 21% and he can barely pay the interest. At 21% they double every 3 years. Because he has 90,000 in equity he can’t file a Chapter 7 bankruptcy without losing his home. He is allowed to keep 20,000 for himself and 20,000 for his wife if both are on the Deed but not 140,000. His only initial choices are to file a Chapter 7 and let his home go to the bankruptcy court or to file a chapter 13 and repay at least 50,000 dollars to the bankruptcy court over the next 5 years at over 1000 per month. If he misses one payment in his 13 he will be tossed out of court.

James also owes 20,000 on his 2002 GMC Truck to Ford Motor Credit, but it is only worth 10,000. James also has two old junk cars a 1992 Firebird and a 1990 Jeep Cherokee neither cars have a motor or transmission. Both are worth only 500 book value.

He refinances his 9% mortgage and gets a 6% mortgage with 50,000 dollars for 10,000 in car and 40,000 in home repairs. He replaces his carpet, roof, driveway, furnace and purchases siding for his home doing only overdue maintenance on his possessions. He also replaces the air conditioner, seats, carpet, engine, transmission and tires on his 12 year old Firebird and Jeep Grand Cherokee with about 10,000 making them like new. Three months later he files bankruptcy. He keeps his house and he exempts his car for 3000 dollars and his Jeep for another 2000 dollars which is the new book value. The 100,000 in credit card debt is gone and no Chapter 13. The 2002 GMC truck goes back or he redeems it for 10,000.

James no longer has a car payment. He lowered his monthly house payment and may owe less in the long run on his home. There was nothing illegal about any of what he did. James planned his bankruptcy instead of letting it happen to him. An even better example is in our next section on mortgages. After 2005 an attorney can no longer advise you to refinance and use the money for home repairs, surgery or a trip and then file bankruptcy after you have no excess equity.

16. MORTGAGES AND GETTING A LOW RATE LOAN

Let a bad home go back but make money off it

If you are buying your home or plan to buy a home at some time read this section completely. If you don't plan on ever buying a home skip this section and go on. Bad mortgages and credit cards are common reasons for filing bankruptcy. They can take all of your income if you foolishly let them charge you high rates. Your home is your largest debt and investment.

There are two types of mortgage lenders: Prime banks and Sub-Prime banks. Prime banks or mortgages are banks that lend to you because you have the ability to repay. Examples are FHA VA and Kentucky Housing loans. They lend at low interest rates as class A loans. Prime mortgages are presently (in 2005) at about 5-6% for home loans. Included with this are government programs such as first time homebuyers which can have even lower rates or special terms such as assisting you with up to 20,000 down on your home.

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

Sub-Prime banks are called equity lenders. They often offer to "help" to keep you from filing bankruptcy by paying off and consolidating your debts. They actually steal your home. They lend at 9, 10, 11% interest or more when normal rates are 6% or with adjustable rates that skyrocket. **Some of these equity loans are over 21%.** They charge high origination, closing and broker fees that become part of the loans. These lenders often use unfair trade practices, like flipping and packing, high appraisal values, and over insuring to increase their income. They also charge higher points, upfront fees, prepayment penalties and other charges. Predatory lenders rarely keep the loan. Instead predatory lenders sell it to other lenders. They lend to you based only on the equity in your home not your ability to repay. They intend to resell the loan or foreclose in order to be repaid. They often inflate appraisals to make the loan. If you borrow from them after you file bankruptcy they will claim to you that since you filed that you have to pay higher rates. They "forget" to tell you that if you will just wait 2 years after your bankruptcy discharge and pay on time that you can get lower rates.

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

Some mortgage brokers may be honestly trying to offer help but a lot of predatory lenders offer "help" to debtors and end up stealing the Debtor's home. Generally a debtor that is considering bankruptcy needs to talk to a bankruptcy attorney to see if they would lose their house in

bankruptcy and seek proper financial advice. The average Class A lender mortgage broker will make 2% of the amount financed from refinancing your home. So a 100,000 home will have about a 2,000 broker fee. The Class B and C lenders will make 4 to 16% or more. Their fee will be from \$5,000 to as much as \$16,000 from refinancing a 100,000 dollar home. One case had a 32,000 fee. More expensive homes have even higher broker fees. Refinancing while your credit is poor just makes the mortgage broker money. You must have one year or more of on time rent or mortgage payments before you apply for a mortgage or you won't get a prime rate loan. Also your income to debt ratio must be good.

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

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

Often, home improvement companies will also use predatory lenders. They promise to repair your home, the bank pays for the repair, and the repairman heads for Miami. These lenders make loans knowing that the bank will eventually repossess the home and take it from you. If you have gone to one of these lenders, and the loan is properly closed, it is difficult to do much about it: You have simply given away your home.

Do not use the sub-prime lenders! Your best strategy is to only deal with a prime lender so that you can get a 5-6 % rate (or whatever the prime rate is at that time). If your credit isn't good with at least 12 months of on time payments you won't be approved by a prime mortgage lender.

It may be difficult to tell if you are dealing with a prime lender or not: Most sub-prime lenders try to pretend that they are prime lenders. They will use names like "US Mortgage" or "Respectable Mortgage" to make them look like a government agency, official, proper, or like other banks. They often promise you a 6% loan but at closing it turns into 12% at the table. Prime lenders have strict lending rules and they follow legal guidelines. Sub-prime lenders are far more likely to make "Truth in Lending" and other errors. The Truth in Lending act makes the loan invalid if the fees were not properly reported. Sub-prime lenders often "keep the change" if you overpay fees for credit reports or inspections and overcharge items and understate fees and interest.

You do have choices in getting a low rate mortgage and filing bankruptcy. **First, you may be able to refinance a mortgage** to a lower rate before filing bankruptcy. That might save you from having to file bankruptcy if you can also live after that on your budget. If you go from a home mortgage at 10% on a 100,000 dollar home to a 6% mortgage you will reduce your monthly payment from about 1,000 dollars to 600. Just refinancing to a lower interest rate may make you enough money that you can avoid bankruptcy. However you can only do this if your

credit history is perfect prior to filing (paid on time for the last 12 months) and you have made the last year of payments on time and you don't have too high a debt to income ratio.

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

Third, if you have gone to one of those high interest rate mortgage companies and you have a lemon home or mortgage, you might want to file bankruptcy, let it go back and get a different home and mortgage. It takes at least 6 months to 1 year to finish a foreclosure. In some cases, I have seen people sit in the home for 2 and 3 years if you file an answer to the foreclosure. This means that you can file bankruptcy and sit in the home for 1-2 years rent free and in some cases longer. At the end of 2 years after your discharge in bankruptcy you can then purchase a new home with the money you have saved up over the prior 2 years because the statutes, regulations and guidelines under FHA, VA and the other government programs require them to ignore the bankruptcy and to lend to you at the normal rates which at the time of this writing (fall 2002) are about 6.00%. Their credit decision will solely be made on your financial affairs during the two years after bankruptcy.

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

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

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

The FHA official policy and administrative regulation is that a bankruptcy gives the potential borrower a clean slate. In granting a loan they only look at how you handle your financial affairs after the bankruptcy and your ability to repay. Establishing credit with FHA is simple: You only have to pay your landlord and utilities on time after filing bankruptcy. FHA does have very

lenient guidelines, and their interest rates will be as low for you after bankruptcy as it is for the best borrowers. Special financing, at under 6%, is presently available through some programs for home mortgages and that will save you thousands. FHA, however, does require that you wait two years after the bankruptcy before you can apply. There are other government programs that offer similar low interest loans. Single-parent families, the disabled, first time homebuyers, and some can obtain even 1% mortgages and grants of up to \$15,000 dollars to help with the down payment on your home allowing you to buy a 100,000 dollar home for 80,000. **If you have good credit after your bankruptcy**, you can get these mortgages and we can help.

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

17. HARASSMENT AFTER YOU FILE BANKRUPTCY

When you file a bankruptcy, a Federal Court Order, called a "stay", goes into effect. **After October 2005 if you don't file a reaffirmation the stay will expire for a secured creditor 45 days after filing.** The stay orders Creditors not to contact the Debtor to collect the debt. From the moment you file, all your Creditors (anyone to whom you owe money) will automatically be stopped by the Automatic Bankruptcy Stay from commencing or continuing any legal proceedings against you. They may not harass you, garnish your wages, or take your property. If a Creditor violates this Order you are allowed to sue them for actual damages, and Attorney fees. (Notice that the bank you sue for violating your rights will be required to pay your Attorney fees if it is proven that they did in fact violate the stay.) Getting a Discharge in bankruptcy does not mean that a Creditor will never call again, but they will not have the right to ask you personally for the payment of the debt. Often, bills may continue to come in the mail to you after you file, due to a computer continuing to mail past due notices or other items. If this happens, mail a copy of your 341 hearing notice to the Creditor.

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

Secured Creditors often call for the limited purpose of getting a reaffirmation agreement signed, working out payments or for arranging to pick up the property you want to surrender. If you wish to keep the security, you will have to pay for it by reaffirming doing a workout agreement or redeeming it. If you choose us as your Attorney, we normally don't sign a reaffirmation. If you sign such an agreement the bank will be able to sue you later if it repossesses and gets a deficiency. We will often agree to allow a bank to contact you to make an agreement to keep your home or car. We may agree to allow a secured creditor to call you in order to negotiate how to keep property. We NEVER agree to have an unsecured Creditor contact you.

The collector who calls after receiving notice knows that what he is doing is illegal. Normally, if he is dragged into Court, he will deny he ever called or at least make up an excuse for the call. You must remember that the employee fears that if he does not collect the account he will be

fired. If he collects, he will get a commission, bonus or a promotion. However, if he is caught committing an illegal act, his employer will deny his acts and he will be fired. Often he is told by his supervisor to violate the law but, once he is caught, the employer will fire him even though his boss told him to call. Often, you can stop harassment just by telling the collector you are recording the call—he knows if it goes to Court, he will lose his job. Recording the call to you without his knowledge or permission is legal.

18. OTHER LAWS THAT PROTECT YOU

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

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

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

Under the Truth in Lending Act, all charges must be accurately stated to you in the lending documents (see Section 12 for more information). The penalty is that the debt is wiped out.

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

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

- call without giving their identity;
- use obscene language;
- threaten arrest, violence, or lawsuits unless it is a legitimate possibility;
- pretend to be Attorneys or law officers;
- misrepresent government affiliation or the character amount or status of the debt;
- use postcards;
- repeatedly call;
- or remain on your property if you ask them to leave.

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

Under the UCC code, any repossession of any property must be done in a commercially reasonable manner and with notice to the Debtor. If a car lot fails to sell the car in a reasonable

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

19. GETTING CREDIT AFTER A BANKRUPTCY

There are three major factors that are taken into consideration when granting credit: Your income, credit history, and character. Filing a Chapter 7 bankruptcy will normally improve your ability to repay and, eventually, will repair your credit—especially if you repay your secured debts on time. If you show an improved history of timely repayment after filing, bankruptcy can help you improve your chances of getting credit. In essence, it is better to have a past bankruptcy and a clean slate than it is to forever have Creditors that you still owe and don't pay with repossessions, charge offs or judgments on your record.

Most Credit Record cleaning companies are a scam however there is one law firm on our website that charges about 100 in the first month to set you up and 39 dollars a month after that to challenge all of the negative information on your record. If you want to use them please use their link on our website so that our record is sent to them. Only untrue information can be guaranteed of removal but this law firm has been in existence for at least 3 years to our knowledge and has been doing a good job ethically all this time.

Cleaning your record is not credit counseling. Credit repair cleans your credit report so that you can buy a home or car at a reasonable rate later. We do encourage using Lexington Law for cleaning your credit in order to contact them see our credit repair section on our website. Also there is no penalty for getting your free annual credit report from our website. It really is free. And you don't know how much untrue and negative items you have if you don't annually check your report. Repairing your credit is the last step to your bankruptcy and being back on track.

If you lose your checking account due to returned checks Chex Systems or a bank using your Fico to grant you a checking account you can still get one. There are two programs that allow you to take a course on how to manage a checking account. When you complete the course, you'll be given a certificate to open a bank checking account with a participating bank or credit union. Get Checking is for banks, InBalance is for credit unions. For more information, and a list of participating banks, go to: www.getchecking.org. For information about InBalance, go to: www.getinbalance.org.

20. YOUR FICO SCORE

Your FICO credit score uses 5 factors and a 1000 score is possible. Although with some credit reports only 900 or 950 is possible still they all use about the same 5 factors. Filing bankruptcy will only drop a 500 score about 20-80 points at first. By paying on time after bankruptcy your FICO score may increase 100 or more points within 2 years. There are 5 factors that account for the 1000 points and the FICO score is also often used to deny a person employment or increase your insurance rates. Here is how the 5 factors add up to 1000 points.

1. **Previous Credit History 350 points 35%** Your Credit History is the largest factor in calculating your FICO credit score. By paying on time and not having any slow payments or charge off

accounts you will increase your score as old accounts drop off your record and are replaced by a good payment history. (After Bankruptcy as old unpaid accounts drop off and as you make payments on time your score improves.)

2. **High levels of Debt to Income 300 points 30%** If you have a 40% income to debt ratio where 40% of your income is going to car and credit card payments there is no income left for new credit. Simply not having any debts and debts owed automatically increases this ratio and your score. The best thing is to only have necessary credit and just the basic car and mortgage payment. (After Bankruptcy your debt to income is drastically reduced increasing your score)
3. **Limited Credit History 150 points 15%** If you have a limited history your credit may suffer up to 150 points. Canceling older debts with history will hurt your score. Newer credit counts less.
4. **New Credit Applications 100 points 10%** Every time you make a credit application it costs you more than 100 dollars. That's right 100 dollars. Why? Because it reduces your credit score automatically every time you apply for credit. The little 2 dollar tee shirt Sears gave you for that credit application means that you lost 98 dollars. Reducing your credit scores means that when you do get credit that you pay higher interest rates. Applying for credit deducts from your score every time you do it so only apply if you desperately need the item such as a car or home loan.
5. **Limited Types of Credit 10%** If you only have car loans and you have no other type of credit your score will be deducted from. You should have at least 3 forms of credit a home mortgage a car loan and a small credit card with a history of on time payments small balances and few applications for credit to have the maximum score.

Prime, sub-prime, and Damaged Credit

Prime If your credit score is above 600-650, you are considered a "prime borrower" and you have no problem getting mortgages, cars, or credit cards.

Sub-prime Credit scores below 600 are "sub prime". You may have higher interest rates but there are lenders. This extends down to about 500 the lower your credit score the higher your rates and harder it is to get credit.

Damaged Credit Credit becomes too expensive to use. You buy on cash. Below 500 is the Damaged Credit Zone of 400 scores. You may get a credit card but at such high fees and uselessly low credit limits that credit is too expensive. Your interest is double the normal rates for prime borrowers. You pay more for insurance and may be barred from some jobs. Bankruptcy is often your only way to repair damaged credit. Old unpaid debts drop off and as you repay on time, credit is repaired.

How much does a Damaged credit score cost you?

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

Automobile Financing. If you have damaged credit the increased interest you pay for auto financing costs even more.

<i>\$20,000 car paid over 5 years:</i>			
CREDIT STATUS	RATE	PAYMENT	COST OF DAMAGED CREDIT

Prime	10%	\$424.94	\$0.00
SubPrime	14%	\$465.37	\$4,722.54
Damaged	20%	\$529.88	\$8,593.30

Home Mortgage The cost of a home can more than double if you buy a home from a subprime lender at higher rates. Even a very small cheap home will cost between \$100,000 and \$180,000 more in interest if you are buying a home with damaged credit. We used mortgage rates for 2003 and 2004 to show your costs below for just a 100,000 dollar home.

<i>\$100,000 home paid over 30 years:</i>			
CREDIT STATUS	RATE	PAYMENT	COST OF DAMAGED CREDIT
Prime	5%	\$450.30	\$0.00
SubPrime	9%	\$804.62	\$100,310.48
Damaged	12%	\$1,028.61	\$180,996.87

Repair your credit score

Now that you know how your credit score is calculated and the costs, you can begin to repair your credit score. Here are the 4 things that will help after bankruptcy.

- 35% of your score. After Bankruptcy pay your bills on time and your score will improve over time.
- 30% Bankruptcy will dramatically lower your Debt to income ratio. Keep your balances low on credit cards and on all of your debts.
- 10% Rarely apply for credit. Applying for credit often lowers scores. If you do apply know that you will get the loan or credit card prior to filing for it.
- Make sure the information in your credit report is correct. **Removing negative items on your credit report has the largest impact on your FICO score. Technically you can only remove untrue items from your credit file. However some lenders will fail to update, defend or supply information and if you use dispute items using our form letters you may accidentally remove negative information that is true. These letters are always available from the forms section of our main website. We also have letters that help you to dispute a debt and that offer to settle it for less than what you owe.**

Imagine being so poor that you can't repay your bills or ever owning a home. Keeping debt that can't be repaid, and constantly being overdue on your bills, will only keep your credit poor until you do file a bankruptcy. Filing a bankruptcy allows a person a fresh start and the ability to restructure your budget. It is not the end of getting credit, and people can easily buy homes after they have filed. A bankruptcy should be considered, when the bills are never going to be paid with the income that is available, and when your family is going to suffer unless that debt is cleared up. Bankruptcy is a tool to make a new budget and to get a fresh start.

A bankruptcy stays on your record with credit reporting companies for 10 years after filing. Other kinds of "bad credit", like "slow pay" or "no pay" or repossessions, stay on your record until 7 years after the last collection activity—which means it can actually be on your credit much longer than a bankruptcy. For instance, your car may be repossessed 4 years after the loan is taken out, and you may be sued 7 years later when they find you have a job. In that case, the record of non-payment would be on your credit record for at least 18 years (4+7+7), but a bankruptcy would have been on there for only 10 years. **Slow payment will give you the same kind of credit problems that a bankruptcy filing will give you, even if you pay all the money**

back. Normally, credit or loan officers do not consider credit history that is more than two or three years old. It will take you about 1 to 2 years of repaying your debts on time to overcome most of the negative effects of a bankruptcy.

21. WHAT THINGS SHOULD YOU DO BEFORE FILING?

Do not make any additional charges, including cash withdrawals, on any charge cards or loans just before filing. If you charge or withdraw over \$1000 on any one credit card within 90 days before filing, statute 11 U.S.C. 523 (a) (2) will presume you made this extra charge in order to defraud the credit card company. If you know you are in a bankrupt condition, you should not incur any additional debt just before filing. The closer to the filing date, the larger the amount, or the more the item can be considered a “luxury item”—the more likely it is to be seen as fraudulent. Charging a luxury item or a cash advance reduces the 1000 to 500. Charge \$100 the day before you file and usually nothing will be said. Charge \$5000 for a weekend at a gambling casino the week before you file, and it will probably be considered a fraudulent transaction—and you will have to repay it. If you have made charges over 500 dollars on an account within the last 90 days, we ask you to talk with your Attorney about it. You may wish to wait before filing to insure the statute has run out.

Don’t have any substantial funds in any bank account until after you get your hearing notice after that you may put money in your bank account.

If you have a tax refund you may want to wait to file. The earned income portion of your return is normally exempt however as a welfare benefit. If you are considering filing bankruptcy in November, December or January, and you expect a refund of more than \$1000, you may wish to file a rapid tax refund beforehand to avoid losing any of the excess. If you have a refund more than what we can exempt with the wildcard exemption (plus the earned income portion), the Trustee will be owed the excess amount. (If you spend it and later file, you won’t have to exempt it, or turn it over to the Trustee.

22. WHAT THINGS SHOULD YOU DO AFTER FILING?

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

- Save up enough money for the cars or a home you know you will keep, so you will be able to “catch up”. If you are redeeming the car there is no reason to make any more payments you will simply pay the lump sum and buy back your car.
- You have 45 days to do your second counseling after filing and to reaffirm surrender or redeem property. Do not release any property to a Creditor until you are told to (usually, at the 341 meeting which is about 3-6 weeks after you file and it can be much later).
- If a secured Creditor calls, you may wish to negotiate, or you may wish to advise him when and where to pick up his security (if you have been told by us to do so). You are better off negotiating with a secured Creditor yourself, because you know better than we do what your property is worth. Secured Creditors may appear at the 341 hearing to negotiate a workout.
- It is best that you negotiate at the 341 hearing because you make the decision while your Attorney is present to give advice. The better Creditors will appear at the 341 meeting if they can. Some intelligent secured collectors may have even advised you to file a

Chapter 7 because they knew that you would be better able to repay them after discharge of your unsecured debts. **A call from a secured Creditor should be a friendly call just to find out whether or not you wish to keep property. If the collector becomes abusive, ask him to work out the something through your Attorney.**

- An innocent unsecured Creditor may call because he failed to get notice. Often the bankruptcy notice goes to a payment center, but the collection department never gets the notice. However, there are also a few unsecured Creditors that have no respect for the intent of the Court order. Please tell any unsecured Creditor that continues to call you to call our office. If they continue to call you, you should record the call so we can take them to Court. Just telling them that you are recording the call will normally stop the calls forever. Remember, we depend on you to gather the proof that they are calling you and intentionally violating the order: The same person or company that does not respect the law and Court orders will normally lie and claim that they never made the call. You have the burden of proof, and it is not illegal for you to record his conversation and later use it against him. We do not wish to sue any Creditor that just makes a minor or honest mistake, but we do wish to nail any company or person that ignores the law. Creditors have gone so far as to call your work and claim there was a death in the family, just to get you to call him back. **We never advise you to sign a reaffirmation with an unsecured Creditor.** For a reaffirmation agreement to be valid, your Attorney must sign it.
- **Show up at your 341 hearing.** Tell us of any change of address or phone number. Call us if you don't receive notice of when and where your hearing is within 2 weeks of filing your case. If you fail to show up, your case will be dismissed, and you will have to pay all over again to file a new case.
- Obey all orders from the Court and the Trustee and fill out your paperwork honestly.

23. WHAT QUESTIONS WILL THEY ASK AT MY HEARING?

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

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

- What is your name?
- What is your address?
- What is your social security number?
- Did you list all your assets and all your debts?
- Do you understand what a reaffirmation is?
- Do you understand what the effects of a bankruptcy are?
- Have you given any property to the Trustee?
- Have you recently won the lottery or inherited property?

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

The Trustee is there not only to insure the paperwork is properly done, but also to collect any asset that is not exempt. Your 341 hearing is not the time to brag about how your property is worth a lot of money: It is the time to be completely truthful, poor and not have any assets. You are under oath. You must be truthful and you must reveal all your assets if you are questioned about them.

Creditors may appear and ask questions at the 341 hearing, but often no one shows. If a secured creditor shows the only question they normally ask is whether or not you wish to keep property. Since reaffirmation agreements will not be signed we expect secured creditors to again appear at 341 meetings. **Never reaffirm credit cards, doctor bills, and other unsecured debts.** Reaffirmations are rarely in your best interest since the creditor will now often simply repo and sue shortly after. If there will be no deficiency if you don't sign a reaffirmation you are better off.

You may also ask for a lower interest rate or a lower payment amount for a longer period of time, if you cannot afford the current payments. You do not want to keep property and agree to pay for any debt you cannot afford. The smarter lenders will negotiate with you to keep you off their delinquent accounts, and they will renegotiate repayment terms. Finance companies are much more willing than national banks to accept renegotiation for lower interest rates or lower payments over a longer period of time. Banks are more likely to have a "take it or leave it" policy. One of the better aspects of finance companies is that some of them have been flexible. As long as the payments are caught up, and the car is insured, it is rare for even a bank to repossess a car. However, banks will rarely change the terms of the note, and finance companies often will. Banks are in the business of lending money and collecting it. Creditors are not in the business of selling furniture, homes, and cars, and they do not want to be in this business.

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

24. WHAT YOU SHOULD BRING TO THE 341 HEARING AND THE DISTRICT DIFFERENCES

You should bring proof of full-coverage insurance on your car, a photo ID (drivers license, passport, etc.), and proof of your social security number (social security card, recent W-2, etc.).

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

25. A FINAL NOTE ABOUT FINANCIAL SECURITY AND YOUR FUTURE.

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

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

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

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

Three credit repair letters that you can download from our site cover 90% of the credit repair situations you may have. These letters are available from our forms section. Credit repair law firms will charge you 750.00 and more to send out these simple letters to clean your credit bureau record. After a bankruptcy you can use these letters to clean your file or you can pay 100,000 extra for your house. We also recommend using our credit repair section and Lexington Law. It is worth 39 dollars per month to have a law firm work on your credit file each month and send out a dozen letters to repair it and you can't work that cheaply and effectively. We do earn a 30 dollar referral fee if you sign on from our website but we spent 2 years looking for a honest place to do this work.

First we have credit reporting agency letters. These credit repair letters are meant to correct inaccurate or outdated information. If you send this letter you are disputing the truth of the information on your record. Credit reporting agencies are required to investigate with the lender and then delete untrue information. However it takes money, time and work to reply. Some banks simply fail to reply to the credit reporting agency. When this happens even true negative info is deleted. Many people dispute all of the negative information in their file. Always use certified letters though to document your letters to the reporting agency if the information is not removed.

Second we have disputed settlement letters. These letters are meant to settle an account for as little as 25 cents on the dollar for a debt. You simply dispute that the debt is invalid and contract to settle the debt

and to have the old information replaced with a new record that you paid the new agreement on time. You may have many reasons to dispute the debt. The product was defective, you didn't order it etc. Pick a reason. You must have some reason to dispute the debt. Once a creditor signs and agrees to the settlement, it is binding. In Kentucky, simply sending in a check saying payment in full doesn't work to remove the old negative information or settle the account. They have to agree and sign. The agreement, if signed, can be used to remove the old account record from your file at the credit reporting agency if the creditor does not remove it.

Always settle and deal with the original creditor or bank if you can. Never pay collection agencies. The person calling on the phone may not even know the bank or creditor and may simply want money or credit card information as a scam. A collector once called me collecting for Columbia House wanting my credit card information when I asked him what my social security number was it became obvious that he didn't represent Columbia House or have anything more than my name from the phone book. Even if a Collector represents the bank they will lie and use blame, shame, guilt and fear to collect and normally they do not have the authority to make deals. Whether you pay them or not they will leave you with a bad credit record so why pay when they rarely sue to collect. Your credit record will show an I-9 whether you pay them or not. Normally only the bank and their attorney have the authority to make any deals. So you do not want to deal with collection agencies. If you do, get any agreement in writing. Collectors will even pretend to be an attorney and send out false letters as if they are a law firm as a tactic.

Finally we have the verification letter. If a collection agency or attorney is collecting a debt you have the right to have it verified. This is a substantial amount of work and the collection agency is required to reply within 30 days and cease any collections for that period of time. All of the documents showing that you have any responsibility for the debt must be copied and sent to you. Often the collection agency simply quits collections and sends it back to the company rather than do the work to collect especially if you continue to dispute the debt after verification. This letter will not remove the matter from your credit file. You will have to use the report agency letter or disputed settlement letter to remove it from your file.

FAQ AND APPENDIX SECTIONS

26. WHERE IS THE 341 HEARING? (KENTUCKY RESIDENTS ONLY)

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

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

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

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

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

If you get a credit report get one with the addresses on it. If you can get one with the account numbers on it. After 10-2005 we need the account numbers. The Major Reporting Services are:

Equifax P.O. Box 740241 Atlanta, GA 30374-0241 1-800-685-1111	TransUnion 760 West Sproul Rd. Springfield, PA 10964-0390 1-800-888-4213	Experian (TRW) 1-888-397-3742 (phone and charge to card)
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27. FAQ SECTION

The Top 70+ Frequently Asked Questions at Our Office

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

The Top 6 Questions:

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

Nancy is my wife. If you want to consult with her she can tell you exactly what to do and how long it will take. Her number is 1-502-314-4660 and any consultation is free. However, if you plan this right you could make over 25,000 dollars instead of losing money every month to a 13.9% loan and paying over 78,000 for a 69,000 dollar home.

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

If a foreclosure is part of your bankruptcy and it is listed in the schedules it will take 3 years before you qualify for a prime mortgage. It is essential that you use an attorney that knows and plans with you what to do. In 2004 the rate was about 5% for a 15 year loan and 5.5% for a 30. Higher rate mortgage companies will lend to you before 2 years but you should wait the two-three years to get the lowest rate which is called a prime rate. There are B market mortgages but these are much higher rates and it will cost you more in the long run. Buying at the higher rate is possible and refinancing later but many people cant refinance if their mortgage is written with high penalties for refinancing.

Your bankruptcy can not be used to deny you a prime mortgage under FHA VA and other federal and state guidelines after 2 years again if you have a foreclosure this becomes 3 years. The myth that you can't buy a home after a bankruptcy isn't true. During that year or two you can save up the 1000 a month you would have spent on house payments and apply it directly to the principle for a new home. When just a year is

over you would have saved up 12,000 dollars as a down payment if it takes 2 years to foreclose the home you would have saved up 24,000 as a down payment on a different 69,500 dollar home and it would be almost half paid for.

Q2: Should I file Bankruptcy? A person should file a bankruptcy if, and only if, he or she can't pay bills as they come due or is about to lose property or have property attached by the Court. Very few people lose any property when they file bankruptcy. In Kentucky, you are allowed to keep \$2850 equity in a car, over \$9000 in personal property, \$18,450 in a home, and at least \$1000 in any property that you choose in a general exemption plus ½ of the unused portion of the real estate exemption. For married couples, filing jointly, these exemptions are doubled. After June 2005 these jump up dramatically see section 10 of our manual. In a Chapter 13, the property that can be kept is just about unlimited as the plan pays at least what a Chapter 7 would pay. To stop a foreclosure in Kentucky with a Chapter 13, you only need to cure the arrearage in 2 years.

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

Q3: What does it cost to file bankruptcy? After October 2005, Court costs are about \$300 for a Chapter 7 and \$275 for a Chapter 13. After October 2005 Chapter 7 attorney fees at our office will run about \$1000 plus any filing fees. .

Chapter 13 Attorney fees are set by the Court, and the Court is presently paying \$3000 in Western Kentucky for Chapter 13's. This is paid to the Attorney by installments as you pay the Court and we expect this increased to 3000 after October 2005.

Q4: What happens when I file? When you file a bankruptcy, a Court order goes into effect immediately stopping all collection activity. This includes stopping foreclosures, attachments, garnishments, and Creditors calling you. The sooner you come in to the law office, the sooner you can get relief—and the more you can save from Creditors. You will have a 341 hearing within about 4 to 6 weeks after the bankruptcy is filed. When the bankruptcy is finally over, a discharge is issued. This is a final and permanent order to stop all collection activity and declaring the debts to be non collectable. Bankruptcy does not normally get rid of a security interest that you gave to a Creditor such as a mortgage or a standard car lien, but it does make you not liable for the debt.

Q5: I live in Pikeville (Eastern District) can I file in another District (such as Louisville in the Western District)?

A lot of this answer depends on whether or not you have real property and if you are living here at the time of filing. We understand not wanting to file in the Eastern District. First, it costs less to file bankruptcy here. Second, it is more trouble. Third, perhaps you don't want the record locally and for family and friends to know. Fourth, some districts are more conservative and strict than others.

However Jurisdiction and Residence is based on your intent to live in a place—so, if you say you live here and you have substantial contacts here such as you live with family, you vote here or have a drivers license with a local address you probably do reside here. Many people temporarily live here just long enough to file, by moving in with a relative etc. But if you file here, you are supposed to live here. The new law has strict residence requirements if you move from state to state.

The Other 70 Questions:

1) Can I plan my bankruptcy? Of course! Good planning is why you read this manual and allows you to save more money and property. Just like taking proper tax exemptions. There is nothing illegal or improper with properly taking the exemptions.

2) Which bankruptcy is right for me: Chapter 13 or Chapter 7? A Chapter 13 is like a bill consolidation loan, and you normally file it to keep property and stop foreclosures. A Chapter 7 is used to completely wipe out unsecured debts and to get rid of secured debts for property you don't want to keep. Both will stop garnishments and Creditor harassment. If you earn more than the average wage for your state and size of family you will normally be required to file a Chapter 13.

Chapter 13 cases are becoming more popular. Over 95% of all Chapter 13 cases used to fail because they became unaffordable in Kentucky. But now 10 and 20% repayment plans are being approved in Chapter 13 cases and they are now more successful. After 10-2005 plans below 10% will be common. Often an attorney may want to file a Chapter 13 because he will earn more than he would in a Chapter 7, but you will usually profit far more from filing a Chapter 7. Usually, the only times you will want to file a Chapter 13 are 1) when you have already filed a Chapter 7 and can't file another one or 2) if you have so much property and equity that a Chapter 13 is necessary to keep that property.

You may have to file a Chapter 13 if you have so much income (after you pay your normal monthly living expenses) that you can repay something to your debts. A Chapter 13 can no longer be used for special purposes, such as to debts due to fraud. But can repay child support, repay student loans, or protect a co-signer. The fortunate thing about virtually all Chapter 7 cases is that the Debtor's assets are normally exempt, so there are rarely any assets to liquidate. Married couples with valuable assets, such as over \$39,000 in equity for a home or over \$1800 equity in cars (these amounts are for Kentucky), may want to choose Chapter 13. Each state has different rules for what property can be kept.

3) Why file a Chapter 7? If you have substantial unsecured debts you may want to file a Chapter 7. You may also want to file a Chapter 7 if you want to surrender property and

not owe for it. You can usually keep all your property in a Chapter 7, because you won't have enough equity in any property to exceed the exemptions allowed.

4) Why file a Chapter 13? You may want to file a Chapter 13 if you have secured debts and are threatened with foreclosure or repossession, if you filed a Chapter 7 less than 6 years ago, if you wish to protect your cosigner, or if you have debts that are not dischargeable in a Chapter 7 but are payable in a Chapter 13. Child support can be paid first in a Chapter 13 before secured creditors giving you the advantage of not losing a car or property but having all of your payments go to child support at the start of the case.

5) Can I convert from a Chapter 13 to a 7 or from a 7 to a 13? Yes they can be converted. Few people convert from a 7 to a 13. However if you earn over 60-70,000 you have a strong chance that the US attorney's office will file a 707 b motion that may force you into a 13. If you file a Chapter 13 you have a good chance that you will have to convert from a 13 to a 7. Over 3-5 years, you are very likely to miss payments and have the Chapter 13 dismissed (or have to refile). Some Chapter 13 cases are never finished and are converted into Chapter 7 cases. If you are close to completing the plan, you may be granted a hardship discharge. Plans can also be later modified if incomes change.

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

A "Chapter 26" refers to filing back-to-back Chapter 13 cases. You would do this to pay debts that can't be paid in 5 years by just one Chapter 13. In a sense, you are "extending" your repayment time by filing two Chapter 13s. These forms of filing are no longer available after 10-2005.

7) How long will bankruptcy take? It will take about 3 to 4 months for a Chapter 7 to be final. (You will get a letter within 10 days of filing, telling you the time and date of the 341 hearing. This hearing will be held about 4 to 6 weeks after you file.) A Chapter 13 will take as long as the repayment plan takes. If you file after 10-2005 before getting a discharge you will attend a hearing.

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

9) How do I qualify for bankruptcy? Can I not be approved? You qualify for bankruptcy if either your outgo exceeds your income or your liabilities exceed your assets. If you don't qualify, we will tell you when we type up the bankruptcy. It is very

rare not to qualify I had one case in my first 15 years of practice not qualify for his 7. You basically have to be a US citizen, reside in the state you file in, and not have filed within certain time periods (you can't file two Chapter 7s within 8 years of each other).

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

11) How often can I file? You can file a Chapter 7 8 years after you filed your last Chapter 7 the time used to be 6 before 10-2005. The time is measured from the time of filing your first case to the time of filing of your second case. You can file Chapter 13s 2 years after a Chapter 13 discharge. You can file a Chapter 7 4 years after a Chapter 13. You can only have one bankruptcy going on at a time.

12) If I file does it mean my old bad debts are erased from my credit report? NO! What is reported is that you had a debt and that a bankruptcy was filed. Bankruptcy does not give you a good credit record or "repair" your credit record automatically. You repair your credit by paying your debts on time after the bankruptcy.

13) Can I file without an Attorney? Yes. You can file a bankruptcy yourself, and this is called "filing pro se". You can also do dentistry on yourself, but we wouldn't recommend it. Doing your own case is a very bad idea. This book alone won't give you the knowledge you need to file on your own. Use this manual to educate yourself, so you can find a good Attorney and discuss the issues.

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

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

The bankruptcy petition preparer's role is limited by law solely to typing. Unlike an Attorney, a bankruptcy petition preparer can not help you understand the law, advise you how to answer questions, assist you in planning, or be in Court. Federal law requires that bankruptcy petition preparers sign any documents they prepare; print on the document

their name, address, and social security number; and furnish you with a copy of the document. A bankruptcy petition preparer may not sign any document on your behalf, may not use the word "legal" or any similar term in any advertisement, and may not receive any payment from you for Court fees. The bankruptcy petition preparer is also required to disclose to the Court the amount of any fee you pay. Beware of any bankruptcy petition preparer who does not comply with these requirements.

15) Are you a real Attorney? Yes.

16) How much do you charge? We charge a flat fee of about \$1000 for doing a personal uncontested Chapter 7 bankruptcy. Court costs are \$300. Your total cost is \$1400 including credit counseling Chapter 13 Court costs are \$275. Attorney fees in a Chapter 13 are set by the Court. Generally, there is no shopping around for a low fee in a Chapter 13. Since the Court sets the fee, it will be the same for whatever Attorney you use. Costs will go up after the new law.

17) Can I pay you in payments? We have taken a boat motor for payment and other items. For a Chapter 7, our filing fee must be paid before we file the petition. For a Chapter 13, you only need to pay the filing fee before we file the petition—sometimes, in an emergency, even the filing fee can be paid in payments to the Court. Our attorney fee is often paid by post dated checks or installments.

18) How do I get to your office? Do you have an office in Lexington? No, we don't have an office in Lexington, but we are only about an hour away from Lexington and Covington and 2 hours from Bowling Green or Owensboro. Take I-64 to Louisville, and then the Hurstbourne Exit. We are at 105 Daventry at the corner of Hurstbourne and Shelbyville Road look for the Qmodos Mexican grill and the old Garretts restaurant and go to then end of that road.

19) What paperwork do I need to bring to my Attorney? Bring the names, amounts, account numbers and proper addresses of all of your Creditors. You may estimate the amounts. After 10-2005 you must have the account numbers, but we must at least have perfect addresses to give notice to the Creditors. Credit bureau reports normally don't have the addresses on them. If you have gotten a Credit bureau report before filing, you still have to get the addresses.

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

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

2. Trans Union at 1-800-888-4213 or write to: Trans Union Corporation Consumer

Disclosure Center, P.O. Box 390, Springfield, PA 19064-0390

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

If you decide to write to any of these services, be sure to include your: name, address, phone number, previous addresses for the past two years, social security number, birth date, employer, signature—and be sure to include your payment. (You'll have to call to get the payment amount.) Proof of identity such as a photo copy of your driver's license will also be required. Normally you are better off if you just pay for the report.

21) Can I file jointly with my spouse? Does my spouse have to file or sign if I want to file individually? Yes, you can file jointly. No, your spouse doesn't have to file but, if most of your debts are joint debts, he or she may want to. There is no need for a spouse to file if the debts are not in his or her name. If you are filing a Chapter 7, and the bills are also in your spouse's name, he or she generally should file to be protected. (Co-signers are protected in a 13 with 100% plans, but are not in a Chapter 7.) There should be no additional charge for a spouse filing, but some firms charge extra. The only extra work to do in a joint filing is adding an additional name and social security number to the petition.

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

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

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

24) Can I file a personal bankruptcy and not have it affect my business? If you own your own business, the business is a part of your assets. If it is worth very much, it may be property of the Court. If your business files bankruptcy, it won't affect you because the business does not own you.

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

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

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

28) Do I have to pay my bills during the Chapter 7 or 13? No. Don't pay any bill until after you file a Chapter 7 until you have negotiated with the creditor to keep the property. Don't pay any payment in a Chapter 13 unless it is the regular monthly mortgage payment or car payment, and the 13 was filed to catch up the arrearage. A stay is a federal Court order to stop. If the item is secured, your overdue payments will continue to add up while you don't pay on the item. However, the Creditor can't take the collateral until the stay is terminated. If no reaffirmation is filed within 45 days after the bankruptcy is filed the stay terminates and the bank can take the car. The Creditor may also file a motion to terminate the stay after the bankruptcy is filed. Bankruptcy stops your obligation to pay, but the Creditor still has a lien and rights in the property. You often quit paying for items when you file so that you have time to decide if you want to workout a repayment, redeem, or surrender. I have rarely ever had a bank refuse to agree to repayment, but you don't want to make payments if they aren't going to let you keep the property. Signing a reaffirmation will make you liable for any deficiency if you have it repossessed later. In some rare cases, with people who are never going to repay, the bank may refuse to reaffirm. Some credit unions may refuse to keep a car or mortgage unless you also repay their credit cards. In cases like this, you may want to redeem

property instead. That is why you don't want to make payments just before or after you file. You can take the time to negotiate your options. You don't have to be caught up on your payments to reaffirm, but some banks may request it—and all of them want it.

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

30) Do I have to go to Court? Not exactly, but you will have to attend a hearing presided over by the bankruptcy Trustee. This hearing is called the 341 Hearing (Meeting of Creditors). At this hearing, the Trustee (who is an Attorney) will ask questions, under oath, regarding the content of your bankruptcy papers, assets, debts, and other matters. It is very much like a deposition, not like a trial. If you can't attend (example: if you are in the service overseas), you can answer the questions by Affidavit. **The Trustee is not the judge. He is there to take any assets from you, if he can, and to check the accuracy of your paperwork.** The Trustee represents the banks—not you. In a Chapter 13 you will have a second hearing to get your discharge if your case was filed after October 2005. In this hearing you must show that you are not charged or convicted of a crime of fraud or further behind in support.

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

In Louisville, your hearing will be on the 5th floor of the Federal Gene Snyder Courthouse at 6th and Broadway. Use the elevator on the 6th street side, next to the Courier Journal newspaper building. Hearings are on Tuesdays and Fridays, and the hearings only last about 5 minutes each. If your paperwork is done correctly, the hearing will be very short. Just bring your warm body, Documents, proof of insurance on your car, a picture ID, and proof of your social security number (social security card, W-2, etc.) to the hearing.

In Lexington, the hearings are at 100 Vine St. In Frankfort, they are at the Federal Courthouse. Some Courts, such as the Eastern District, require you and or your attorney to bring a second set of documents.

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

33) Do you show up with me at the hearing? Of course! We take care of you, and hold your hand through the process. We don't just file the paperwork. However, there is some work that you must do on your own and, if you read this manual thoroughly, you

should be able to make the most of your bankruptcy without too much help from us.

34) When should I file tax returns if I am going to file bankruptcy? If I file in December do I keep my refund? If you are considering filing a bankruptcy, you must file your tax returns. No file returns.... no file bankruptcy. If you can get your refund before you file. If you do and spend it, you will keep your refund no matter how much it is. You have a general exemption (in Kentucky) that can protect a refund. If you get your refund after you file bankruptcy, and the refund is over the exemption, you may lose part of your refund. File a quick refund if you have to or apply any refund amount to next year's tax debt. If you are considering filing in the later part of the year, file before December. If you file in January, you may have to wait for some time after you get your refund back. You will be asked when you got your refund and how you spent it if you got a large refund. We strongly suggest filing long before December, rather than filing in December or January. Some trustees start claiming tax refunds in November.

35) What will happen to my house and car? Usually, you keep them. If your equity is less than or equal to your debt and exemption for the property, you keep the property. You are allowed to keep a certain amount of property in bankruptcy. When we prepare your bankruptcy we will tell you if you are at risk of losing property. At the time of filing, all your property that is not exempt belongs to the Court. The idea is to exempt it all so that you keep it all. Of course, the law concerning what property you can keep varies from state-to-state. See the state exemptions in Section 10. We can provide you with the exemptions for your state if they are not listed.

36) Do I have to keep up the insurance on my vehicle? Will my rates be affected or will I be dropped? If you fail to keep full coverage insurance on your vehicle paid for three months, the Creditor may automatically pick up your vehicle according to the local rules in the Western District of Kentucky. Other jurisdictions have similar rules.

37) Can a Creditor be forced into a reaffirmation or agreement to allow me to keep property in a Chapter 7? Can a Creditor be forced into redemption? No, a Creditor can't be forced into a reaffirmation or workout. A Creditor can be forced in redemption.

If the bank does not agree to a workout, it will usually take a large loss from selling the vehicle at an auction, or the house in a foreclosure. It may even violate federal lending rules by refusing to workout a home mortgage. A bank is able foreclose or repossess, regardless of whether you are in a bankruptcy. If they have started a foreclosure, the filing of the bankruptcy stops the foreclosure but, in a Chapter 7, the bank may file a motion with the Bankruptcy Court and ask to foreclose anyway. If a Chapter 13 offers a good repayment plan, the Court will not approve any foreclosure. If the bank is adamant that it wants the house or car back, it may do so in a Chapter 7 and take a loss. Normally, the bank will rethink their decision and give you one more chance to make payments, but no one can force them to.

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

38) Can I choose which Creditors I repay? Yes, you can pay one Creditor, but not another, after the bankruptcy. By doing this, you can keep one car, but not another, or keep a credit card, but let a lemon auto go back.

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

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

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

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

42) I have a personal injury lawsuit—will I lose those funds? In Kentucky, you can keep up to about \$18,500 as an exempted amount of a personal injury lawsuit that you have pending if both are injured you may keep 37,000. Other states have different rules.

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

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

45) Am I liable for the taxes on items gave up in Bankruptcy Court? No. People often give up cars and then the new owner fails to pay the tax on the car and licenses it in another state. In such cases, the tax bills will continue to be sent to the Debtor even though he gave up the property. To correct this in Kentucky, we file an affidavit with the County Clerk's office to correct the matter, attaching the discharge as proof that the Debtor did not have the car after the date of the discharge.

46) If the Trustee doesn't want the property, can I have it? Yes. But if you hide an asset you have committed fraud and you lose hidden assets.

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

48) What happens if I quit making my payments in a Chapter 13? Your Chapter 13 will be dismissed from Court, and you will go back to owing the original debt and being unprotected. You will not be able to refile for 6 months.

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

50) Do I have to pay back 100% of what I owe in a Chapter 13? No. You can repay as little as 10% to your unsecured Creditors in a Chapter 13. Your Chapter 13 must pay at least what a Chapter 7 would have paid. In some states and after 10-2005 certain plans may pay much less than 10% if that is all you can afford. You must repay your disposable income.

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

52) Should I try a Debt Counseling Service instead of filing bankruptcy? How do Debt Counseling services work? "Debt Counseling Services" are often high-interest loan companies. Other times, they are agencies that pocket 10-50% of the monthly money that you pay to them as fees for their "counseling". Most of these services will combine your bills and send a partial payment to each bill that you owe. Your credit will be listed by the credit card companies as delinquent for sending in partial payments, and the reduced amounts sent in may not even cover the interest that a debt charges. These "Counseling Services" are often simply rip-offs that pretend to be charities or helping agencies.

If you pay a debt counseling service \$100 a month, what happens is that they take up to \$40 for themselves and then send your Creditors \$60. Your bills fall even farther behind. Eventually, Creditors file lawsuits and you are forced into bankruptcy anyway. Very few

of these "repayment plans" work and over 90% fail, leaving you worse off. Another scam is that some debt counseling companies will charge thousands of dollars by promising to find you a consolidation loan as a loan broker or mortgage broker. These loans end up being at a high-interest rate or they pocket your money and never give you the loan. Others strip the equity from your home. Whatever method used, "Debt Counseling Services" are often scams meant to take your money when you are already in trouble.

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

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

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

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

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

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

check credit reports.

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

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

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

60) Can I run up charges on my credit cards just before filing? The official answer is "No". Many people do make some minor charges on their charge cards just before filing. Charges of over \$1000 on any one card within 90 days before filing are presumed to be fraudulent and non-dischargeable. Luxury items of 500 within 90 and Cash advances of 750 within 70 days are non-dischargeable. Charges to an account more than 90 days before filing are presumed proper regardless of the amount. But the rule that you cant charge within 90 days of filing isn't written in stone there are 12 factors that the judge will use to determine if it is fraudulent.

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

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

62) Can student loans or taxes be bankrupted? (YES, in certain cases) If someone tells you it can't be done, it often means that he doesn't know how to do it—or that he doesn't want to do it. Student loans over 7 years old were dischargeable until October 1998, but are no longer bankruptable in a Chapter 7 unless you get a hardship discharge although this normally require disability or retirement it is possible.

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

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

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

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

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

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

68) What if my question isn't answered here? Send your question to the Law Offices of Nick C. Thompson, and we will try to help you. Make sure you tell us where you live. Please keep in mind that we can not provide legal advice over the Internet or answer

questions about state law (other than in Kentucky, and Indiana, where we are licensed). This book is for informational purposes only. It will give you ideas for questions to ask to your Attorney and help you to save thousands of dollars. You must ask your Attorney about the issues specific to your case. Most bankruptcy Attorneys, such as us, do provide free initial consultations and can provide you with the guidance you need to decide whether or not to file a bankruptcy petition and what you, specifically, need to do.

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

Normally retirement accounts can't be taken by creditors or the bankruptcy court. The question is whether or not this is a retirement account. Just calling it a retirement account does not make it one. Real retirement accounts can't be assigned or attached. If it can be easily spent by you, assigned, or attached it isn't a retirement account for purposes of the exemption. Of course putting large amounts of money into an account just before filing (within 6 months) is wrong.

If the stock is worthless you can list it and if the trustee abandons it then it will belong to you. However at the moment of filing your Chapter 7 bankruptcy all your property technically belongs to the Trustee.

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

Strange Things That Have Been Said at the 341 Hearing

You are not going to check how much my house is worth are you? (The Trustee did after that strange statement.)

Why did I file? Well I guess I really didn't need to, I make enough money. (That response caused a lot of questions to be asked about why not file a 13.)

I really earn twice that, but I didn't want my wife to know what I really earn because it would increase my child support.

I thought you'd ask me to turn that stuff over to you, so I gave it to my Mom. (Mom got hauled in and had to give it back.)

Yes, I won the million dollar lottery, but I bought that winning lottery ticket the day before I filed, and I did not know I won until after that. (He owned the ticket before he filed. His bankruptcy was voluntarily dismissed and he had to pay his bills. I actually had someone that won!)

Do we have to consider the rent that I get from my home? I really don't live in my home, I just rent it out to my brother. (In Kentucky, you have to live in your own home to exempt it. This guy almost lost his home.)

Dad only put the 23-meter boat in my name just so he could get insurance on it. He lives in Chicago and someone locally had to have it in his name to get insurance. (This person actually filed the bankruptcy and kept the boat, free-and-clear, because it was his Dad's. I was very lucky in that case)

My Attorney warned me to list all my assets.

Yes, I'm interested in real estate. (Answered to "Do you have any interest in Real Estate?")

I pawned (sold or gave away) the secured item just before I filed. (He had to pay for it.)

Yeah, I got over \$1000 as a cash advance on my credit card just before I filed because I knew it would be my last chance to grab some. (He had to pay it back. If he had waited 10 more days to file, he would have been within the rule and would have kept the money.)

I knew Mom was dying, and I was going to inherit all the big dough, so I charged it up, rushed out, and filed just before she died. (No, that one did not go through.)

That student loan would have been 7 years old the week after I filed. Is that good enough? (This was a sad case, and she had to pay the loan because she filed 10 days too early. Timing is everything. [Student loans were dischargeable before 10/1998 if they were 7 years old.]

Sure, I understand what a discharge is. The wife had one last month, but aren't you getting a little personal? (Yes, it was actually said in Court. One person was that ***)

That loan that I took out just before I filed? Yeah, I knew I was filing bankruptcy when I took it out. (He had to repay it.)

My house is worth at least \$80,000! (She bragged about how much her house was worth when she did not know what it was worth. She had to pay for an appraisal to keep it after that.)

And just to demonstrate that Trustee's say dumb things too... I'm sorry but you will need to file and exempt the bush hog properly as a swine farm animal and not under tools of trade.

This spot is reserved for the next person that does not read this manual. This will be the same person that calls me 20 times a day with questions when the answers are right here in the book, then wonders why he has to pay twice for filing his bankruptcy a second time after he fails to show for Court.

Glossary

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Reaffirmation agreement: An agreement between a Creditor and a Debtor where the Debtor agrees to continue making payments in return for keeping a piece of property. A common example is where a Debtor owes money to a car dealership for a car that the Debtor wants to

keep. If the car dealer and the Debtor enter into a reaffirmation agreement, the Debtor may continue to make scheduled payments and thereby keep the car. The Court will not want to make sure that the agreement is fair to the Debtor before it approves it. The agreement requires the signature of the Debtor's Attorney and must be signed before the case is discharged.

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

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

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

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

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

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

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

Positive and Negative Aspects of Chapter 13 and Chapter 7

Positive Aspects of Chapter 13:

The power of the automatic stay keeps Creditors off your back. Payments and interest rates can be reduced, and you can modify the rights of most secured Creditors.

A Chapter 13 usually allows you to keep all of your non-exempt property. Remember, however, that judges are wary of letting you keep what they consider to be luxury items on which you still owe unless you are paying 100% of your debts.

A Chapter 13 wipes out more types of debts than a Chapter 7, including some debts that are normally not bankruptable. Child Support to the state can be repaid for pennies.

A Chapter 13 consolidates your bills and gives you up to five years to repay money you owe for taxes and up to two years (in Louisville) to catch up mortgage payments that are in arrears. Your monthly expenses may be reduced.

Some percentage of your unsecured debts may be forgiven, although you are expected to pay as much as you can afford. Plans that pay only 10 cents on the dollar are now common but 70% used to be required.

A Chapter 13 allows you to pay unsecured Creditors only what you can afford to pay them over the three to five years of your bankruptcy. However, you cannot pay less than what a Creditor would have received if you had filed a Chapter 7 bankruptcy and your property were liquidated and the proceeds used to pay Creditors.

A Chapter 13 may be your only choice if you have filed within the last 8 years. A Chapter 13 is best if you have large secured debts, like a house, a car and furniture, and a lot of equity in your property. If you are having trouble paying for these items, a Chapter 13 could lower the payments and interest rates enough so that you may be able to keep them. If you are behind on your bills, you may also be behind on making your house payments. A Chapter 13 is an especially effective way to keep your house if you are about to lose it. Usually, your house is most important to you. You may also decrease interest rates and payment amounts. In the Louisville area, you must cure any arrearage within 2 years.

Negative Aspects of Chapter 13:

A Chapter 13 will tend to hurt your credit more than a Chapter 7, if your credit rating was good when you filed.

A Chapter 13 requires a long period of involvement with the Court. During this time, you may fall farther behind on unsecured accounts while secured accounts are being paid. Or, your secured accounts may fall behind while taxes and priority claims are being paid. Your credit rating may not improve, it may actually worsen. This may continue for 5 years, whereas a Chapter 7 would have given you a fresh start within about 120 days.

Positive Aspects of Chapter 7:

Immediately upon filing your petition with the Court, an automatic stay is invoked and Creditors must stop their collection actions against you. This means they cannot call or write you, or

repossess or foreclose on your property. In addition, the automatic stay will stop a lawsuit if one has been filed against you. It will also reinstate your drivers license if you have lost it due to involvement in an accident with too little or no insurance. This immediate action by the Court relieves the pressure on you and your family.

With some exceptions, such as child support, most of your debts are wiped out.

The Chapter 7 process is quick, and it is the cheapest bankruptcy. It also offers you almost all the benefits of bankruptcy. It usually only takes about 120 days. It is often the best way to deal with a predatory mortgage where you owe 125% of the value of a home or you have a high interest rate.

Negative Aspects of Chapter 7:

Filing Chapter 7 may damage your credit rating, if you had good credit before you filed. But, more often, it allows you to repair a poor credit rating and purchase houses and cars shortly after filing. Repairing your credit is done by making prompt payments on accounts after you file. If you had bad credit before you filed a bankruptcy, a Chapter 7 is a chance to repair your credit. A Chapter 7 bankruptcy can be reported for 10 years, but your present bad credit will be reported for 7 years after the last collection action (which can make it last far longer than 10 years). Most people who file bankruptcy already have damaged credit, so a Chapter 7 bankruptcy is unlikely to harm it very much further.

Chapter 7 does not discharge all debts. Some debts, such as child support, are non-dischargeable. It also does not discharge as many types of debts as a Chapter 13. Taxes and student loans are more likely to be discharged in a Chapter 13.

The rights of secured Creditors may not be modified in a Chapter 7. These rights may be modified in a Chapter 13. An exception is that judicial liens and liens on household goods may be destroyed in a Chapter 7 and avoided if you tell your Attorney about them.

In a Chapter 7, your only options when you want to keep an asset that is collateral for a debt are to either 1) Make contractual payments promptly and reaffirm the debt with the same or different terms and possibly make up missed payments (the Creditor may not wish to reaffirm the debt if the contract is in default); or 2) Redeem the property by paying its value in a lump sum; or 3) Give up the asset to satisfy the debt.

SUMMARY

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

Debts That Are Not Dischargeable in Bankruptcy

Creditors (bills) or debts that you fail to list in your petition. However you can normally reopen cases and add debts on. At a much greater cost.

Student loans are no longer legally dischargeable after October 1998, except for hardship cases which are getting easier to get.

Income Taxes: Taxes over 3 years old are normally bankruptable if they have been properly reported. Here is the rule: Federal, state or local—any less than 3 years old, or any that have not been filed are not. Also, if the tax is 3 years old, it must not have been assessed within the last 240 days (due to a recent audit) and the debt must not be fraudulent or be a result of willful evasion. If you make an offer in compromise, then the 240-day rule is delayed by the time the offer is made until the IRS accepts or rejects it, or you withdraw it. If collections were suspended by Taxpayer assistance, the 240-day rule is extended for that period of time collections were suspended.

Maintenance (alimony) or child support.

Any criminal imposition from the government such as penalties, fines, Court costs, or restitution.

DUI debts (personal injury or death).

Debts non-dischargeable from a previous bankruptcy due to fraud or improper acts.

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

Debt from fraud, including \$1000 or more to one Creditor incurred within 60 days before filing, or cash advances within 50 days of filing.

Debts from malicious acts, larceny, embezzlement, etc.

Debts from divorce or marital settlement, if you have the ability to pay the debt or discharging the debt would result in a detriment to your former spouse that would outweigh the benefit to you.

28. THE BANKRUPTCY TIMETABLE

Normally a Chapter 7 case takes 120 days to get a discharge and your 341 is about 6 weeks after filing. This will change after 10-2005. Same with a Chapter 13 but your discharge will come after 5 years. All plans after 10-2005 will be 5 year plans unless you earn less than the average wage and at least one additional hearing will be held prior to all Chapter 13 discharges being granted.

29. DIRECTIONS TO OUR OFFICE AND THE COURTHOUSES

We are presently at the corner of Hurstbourne and Shelbyville Road. We are at 105 Daventry which is the street behind Garretts and Qmodo's Mexican Grill. Go to the end of Daventry we are in 105.

DIRECTIONS TO THE LOUISVILLE COURTHOUSE

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

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

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

DIRECTIONS TO THE FRANKFORT COURTHOUSE

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

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