

Getting Out of

Debt –

The truth about debt

consolidation, bankruptcy and
debt relief.

JAMES R. LOGAN

Making a “Fresh Start”

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2419 Maryland Avenue
Baltimore, MD 21218
Phone (410) 243-1508

Table of Contents

Introduction

You Are Not Alone	6
Why is there a bankruptcy law?	7
Are there different kinds of bankruptcy?	8
How do I get a “Fresh Start?”	9
Too Much Debt?	12
The truth about debt consolidation	14
Won’t bankruptcy ruin my credit?	15
How to stop creditor calls	20
What is Bankruptcy?	26
Before You File Your Case	33
What NOT to do before filing	36
Chapter 7	39
What can I keep in bankruptcy?	40
What debts are not wiped out?	44

Chapter 13	48
The Meeting of Creditors	52
How to Choose a Bankruptcy Lawyer	58
7 Myths About Bankruptcy-Busted	63
Bankruptcy Words and Terms You Should Know	69



Introduction

Why this book was written

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 Unfortunately there is a lot of information out there about debt relief and bankruptcy that is misleading, outdated or just plain wrong.

My name is Jim Logan and I wrote this book to give you the straight facts about debt consolidation, bankruptcy and debt relief. I have been helping people in Maryland file for bankruptcy for over 12 years and have filed over 2,000 cases. This book answers the most common questions I have been asked over the years and lets you know what relief is available to you today. You can read this book in

the privacy of your own home and then make an educated decision about how to handle your debts.

What this book is

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

What this book is not

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

Dedication

A special thanks to my wife Michelle for inspiring me and editing this book. And also to Renee, Betty, Tracy and Ayanna for all their hard work in the office and help with my clients.

You Are Not Alone

In 2011, almost 30,000 Marylanders just like you filed for bankruptcy protection. Most of them were decent, hardworking people who were overwhelmed by circumstances beyond their control such as job loss, illness, divorce or the decline in the real estate market. Most of them explored options such as

debt settlement or loan modification before making the difficult decision to file for bankruptcy.

In 2010 bankruptcy filings in Maryland increased over 2009 and the trend continues upward. The same is true nationwide as over 1 million people filed for bankruptcy. So if you feel as if you are the only one experiencing economic distress, remember there are millions of other people in the same circumstances.

Why Is There a Bankruptcy Law?

Lawmakers have realized since ancient times that some times people need a “Fresh Start”. In the bible, debts were wiped out every seven years to allow this. Today, we have a federal bankruptcy law that allows every American the opportunity to make a “Fresh Start”. The reason for this is to help people contribute to society. If old debts could never be wiped out, more and more people would become prisoners of their creditors and soon no one would be

working for the future. By wiping out old debts, people can start contributing to the economy again by buying goods and services.

Are There Different Kinds of Bankruptcy?

Yes, there are 5 different kinds of bankruptcy but most cases are filed under either Chapter 7 or Chapter 13. A Chapter 7 is a “liquidation” bankruptcy where any assets are sold to raise money for your creditors. But don’t worry, you can “exempt” or keep some assets so most people lose nothing in a Chapter 7. A Chapter 13 is a “re-organization” bankruptcy where a payment plan is set up to pay back your creditors. Most people who are filing Chapter 13 are trying to stop a foreclosure on their homes.

There are also Chapter 9, 11 and 12 bankruptcies. Chapter 9 is for governments-in fact Harrisburg PA recently

filed for Chapter 9 protection. Chapter 11 is for business re-organizations and Chapter 12 is for farmers.

How Do I Get a “Fresh Start”?

The stated mission of the Maryland Bankruptcy Court is to “Promote social and economic order by reconciling the opportunity of debtors for a fresh start with the right of creditors to be paid.” This reflects the balance the Court tries to maintain between debtors and creditors. The government allows you to make a fresh start but still may require you to pay some or all of your debts.

Your ability to pay your debts is determined in two ways. First, do you have any “non-exempt” property that can be sold to raise money to pay your debts? In Maryland, you are allowed to “exempt” or keep up to \$12,000 in cash and personal property, \$2,500 in tools and \$21,625 in equity in your home. You may also exempt most retirement accounts. This is to give you a little bit of money to make

your “fresh start.” However, if you have a great deal more than this, the Trustee may use the non-exempt assets to pay some of your debts. There is a requirement to pay your creditors if you can afford to do so. The good news is that more than 95% of Chapter 7 bankruptcies are no asset cases, meaning you keep everything you already own in most bankruptcies.

The second way the court determines if you have the ability to pay some or all of your debts is the “means test.” This test was added when the bankruptcy laws were changed in 2005. Basically, the means test looks at your income during the six months prior to your filing and subtracts your expenses. If you have any money left over, you may not be able to file for Chapter 7. Fortunately this is usually not the case and most people “pass” the means test. If you are feeling a little confused, don’t worry. Both of these subjects will be covered in greater detail later on.

In summary, there are millions of people who have filed for bankruptcy, and millions more will be filing in the future. They are exercising their legal rights under federal law to wipe out their old debts and make a fresh start. As long as you are truthful and accurate with the bankruptcy court, you too can exercise your rights and move forward with your life.

Too Much Debt?

You are probably reading this because you have reached a point where your debts are starting to make your life miserable. When times were good you were able to acquire credit and make your payments without too much stress, but unfortunately times have changed. Debt that was easy to get into with little or no documentation such as mortgages and readily available credits cards is very difficult to get out of. This is not an accident. Creditors are very sophisticated in how they market loans and they basically want you to get into debt and not be able to pay it back.

How does this make sense- to lend money and not want it to be paid back? That is because creditors realize that they make far more money through interest and fees. By making minimum payments, the principle amount is barely touched and most of the payments are interest only which is almost entirely profit for your creditors. Even better, if you make late payments they hit you with late fees and over limit charges.

Layoffs have also affected millions of Americans causing them to fall behind on their bills. Even if you are lucky enough to have a job, you are probably working longer hours without raises and worrying that you may be laid off next. You may be keeping up on your bills but only by making minimum payments or by neglecting some bills in order to pay others. This is called robbing Peter to pay Paul and simply delays the inevitable crisis.

The Truth about Debt Consolidation

At this point you may begin to consider credit counseling or debt settlement in order to get out of debt. This is a voluntary process where you negotiate with your creditors to accept lower payments and/or settle your debts for a lump sum. There is no shortage of companies and agencies out there willing to help you with this process but unfortunately, there are a lot of bad actors that will take your money and leave you worse off than when you began.

If you are considering debt settlement, you should look for companies that do no charge up front fees. In fact, under Maryland law, it may be illegal for a debt settlement company to collect any fees from you until they have actually settled your debt. Also consider that some creditors may refuse to work with you or your agency and may even file a collection lawsuit against you while the process is pending.

Another problem with debt consolidation is that the interest continues to add up on your unpaid balance because in most cases, the creditor does not waive the interest or lower the rate on the debt. So even though your payment(s) may be lower while you are in the plan, the total amount you owe may stay the same or even increase.

Another downside to settling a debt is that some or the entire amount forgiven may be considered “income” to the IRS. For example, if you charged \$1,000 on a credit card and then settle it for \$600, your creditor is supposed to report the \$400 difference to the IRS. That’s right, even though you never had the money in your pocket, the IRS views the forgiven debt as income and taxes you on it. Talk about being kicked while you are down.

Won't Bankruptcy Ruin My Credit?

The short and correct answer is a resounding NO!
This is a very common belief that exists because creditors

want you to believe that bankruptcy will ruin your credit. This is a myth because it fails to take into account everything that makes up your credit score. It is true that filing bankruptcy is a negative mark on your credit. However, your credit score is determined by many different factors including how much debt you have, if you pay your bills on time, how much you pay each month, if you have any lawsuits or judgments against you, if you have any foreclosures or repossessions, etc.

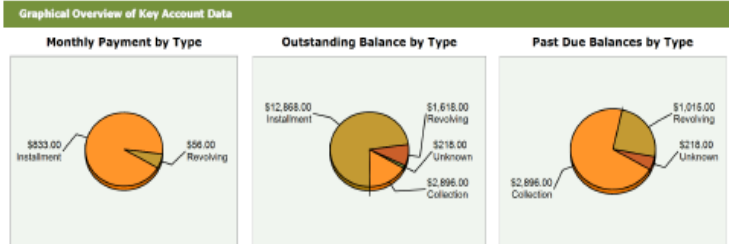
By the time you are considering bankruptcy, you may already have most or all of these negative marks on your credit report. Most people who come to see me are already in debt, are behind on their bills and may be facing lawsuits, judgments, garnishments and foreclosures. In other words, by the time you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

When people come to see me, one of the first things I do is get their credit report with a credit score. Credit

scores vary from 800 to 400. Any score over 700 is considered good. Someone with a credit score below 600 will have difficulty qualifying for credit. If they do qualify, they are likely to pay the highest rates of interest. Most people who come to see me have credit scores in the mid-500s. The good news is that by using a credit score simulator, I can demonstrate how a year after filing bankruptcy, they can see an IMPROVEMENT in their credit score. Most people are amazed by this. Filing for bankruptcy may actually improve my credit!

Sample Credit Report

Summary of Accounts With Balances						
Account Types	Number of Accounts	Total Monthly Payments	Total of Balances Remaining	Number of Past Due Accounts	Percentage of Accounts Past Due & Total of Amounts Past Due	
Collection	11	\$0.00	\$2,896.00	11	100.00%	\$2,896.00
Installment	1	\$833.00	\$12,868.00	0	0.00%	\$0.00
Revolving	3	\$56.00	\$1,618.00	2	66.67%	\$1,015.00
Unknown	1	\$0.00	\$218.00	1	100.00%	\$218.00
Totals	16	\$889.00	\$17,800.00	14	87.50%	\$4,129.00



myHorizon™ Credit Score Analysis for Primary Client			
POWERED BY 	EXISTING CREDIT SCORE	ESTIMATED 12 MONTH POST-BANKRUPTCY CREDIT SCORE*	NET EFFECT
		565	632
<small>CreditExpert products are based on information derived from credit reports produced by the major credit reporting agencies. CreditExpert Inc. is not responsible for inaccurate results, including any due to incorrect, missing, outdated credit report information or incorrect assumptions about the future. Scores and score changes predicted by CreditExpert products are only estimates and are not guaranteed. CreditExpert Inc. does not represent that CreditExpert Credit Scores are identical or similar to credit scores produced by any other company. CreditExpert Inc. is not associated with Fair Isaac Corporation. CreditExpert Inc. is not a credit counseling or a credit repair organization.</small>			
<small>The foregoing is not intended to provide or imply warranties of any kind. CreditExpert products are provided on an "as is" basis, and CreditExpert Inc. and its distributors disclaim any and all warranties, either express or implied, including but not limited to any warranty of merchantability, fitness for a particular purpose, non-infringement, system integration, non-infringement and/or accuracy of information content.</small>			

Notes & Alerts	
File Alert - Address Discrepancy	Current Input Address does not match the Address(es) on File

The above example of a credit report obtained for one of our clients shows a current score of 565. But a year after filing, that same client's credit score can improve by an estimated 67 points. (The change in your credit score depends on many different factors, so your credit score may

change more or less than this example.) This is all part of the fresh start that bankruptcy gives you. By wiping out old debt and paying your utilities, rent and car payments on time, you can rebuild your credit after filing.

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

When people ask me if they should file for bankruptcy relief, I reply by asking them, “Where do you want to be in five years?” If your credit is currently good, i.e. up to date on most or all payments, and you can pay off all your debts in five years, you probably should not file for bankruptcy.

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

How to Stop Creditor Calls

The Fair Debt Collection Practices Act (“FDCPA”) states that if you notify a debt collector in writing that you wish for the debt collector to cease all communication with you, they may NOT contact you again (with a couple of limited exceptions). A debt

collector's failure to abide by your request that they "cease and desist" from further collection activities may entitle you to money damages and to have your attorney's fees paid by the debt collector.

You should send the letter by fax, regular mail, e-mail and certified mail, return receipt requested, or some other form of delivery where you will be able to prove that it was received by the debt collector. They may deny receiving your letter. It will be much easier to prove they did receive it if you have the certified mail "green card" or some other proof of delivery. Make sure to save a signed copy of your letter as well. You can use the letter at the end of this book as a guide.

STOPPING CALLS AT WORK

Collectors are permitted to call someone other than you at your work place only to verify your employment. Discussing your debt or any other personal information is illegal. They are allowed to call

you at your place of employment if they have not been told that your employer prohibits such calls.

If your employer objects to collectors calling the work place, either you or your employer must inform collectors of the "no call policy." This can be stated verbally or in writing (the FDCPA supports verbal notification). Once creditors are informed, additional calls to your work place violate the FDCPA and open the collector up to a lawsuit.

HOW TO DOCUMENT CREDITOR HARASSMENT

Once you have sent the letter, the calls should stop. If they do not, you need to document any further contact. I have noticed that creditors are becoming much more aggressive in their collection tactics over the past couple of years. While this is probably because they are having more difficulty collecting money, it

does not mean you have to suffer from harassment and abuse.

The following tips will help you document the creditor's actions. This may allow you to sue them under the Fair Debt Collection Practices Act. More importantly, it means you can provide proof of your allegations in court. The debt collector will likely deny that he or she did anything wrong, so keeping detailed notes is critical.

- Save ALL letters and notices you receive from the debt collector including the envelopes. Do not throw anything away.
- Save all recorded voice mail messages from the debt collector (with a date and time stamp if possible) and any written phone messages.
- DO NOT record any phone calls without permission from the person with whom you are

speaking. This is illegal in the state of Maryland (remember Linda Tripp in the case involving Monica Lewinski?).

- If you have caller ID (nearly every cell phone plan does these days), take a photo of the caller ID showing the date, time and number from which the debt collector is calling.
- Keep records of the date and time of all phone calls from the debt collector with notes regarding what was discussed. Be sure to get the name of the person who is calling. Ask for first and last names. Use the attached call log.
- Use a call log and keep it by your phone. If the debt collector leaves a message, indicate that on your call log. If you speak directly with the collector, make notes of the discussion. Be sure to note any harassment, threats, obscene

language, etc. If they demand a payment, make a note of the amount requested.

- If the debt collector is contacting your friends or family members, ask if they will make the same notes regarding the calls they receive.
- Make sure to keep the same notes regarding any calls that were made to you at work. Tell the debt collector – in no uncertain terms – that you do not want to be contacted at work and that your boss or employer does not allow you to take such calls (if that is the case).

What is Bankruptcy?

Bankruptcy is a federal law which means it applies in every state. More importantly, it applies to every creditor as well. That means wherever you live in America, you can file for bankruptcy protection from your creditors. In fact, the papers filed with the Bankruptcy Court to start the process is called Petition for Relief. That is what bankruptcy does- it gives you IMMEDIATE, automatic relief from your creditors. That means all foreclosures, garnishments, lawsuits and creditor calls MUST STOP when you file.

How does bankruptcy do this? When you file for bankruptcy, the “Automatic Stay” immediately goes into effect. The automatic stay is perhaps the most important and the most powerful section of the bankruptcy law. The idea behind the automatic stay is that by the time you are considering bankruptcy, you are probably being pursued by your creditors. Some creditors are more aggressive than others and they may be able to squeeze more out of you because they are more aggressive. Or they may repossess your car or foreclose on your home.

Filing for bankruptcy stops all of your creditors and allows you time to catch your breath and deal with all of them at the same time. It also forces creditors to line up in order of priority and wait to get paid. In a bankruptcy, some debts such as taxes may have a higher priority than other debts such as credit cards. This prevents a lower priority creditor from getting money from you that could have been paid to other, higher priority creditors.

The automatic stay, while automatic and immediate, does not cover all creditors or collection actions. Nor does it stop criminal prosecutions. The good news is that these situations are rare and unlikely in most consumer bankruptcy cases.

If you have never filed for bankruptcy before, the automatic stay goes into effect and lasts until one of your creditors files a motion with the Court asking for the stay to be lifted. If you have filed for bankruptcy before, the automatic stay may be limited or, in some cases, not go into effect at all when the case is filed. If you have a prior case, it is highly recommended that you seek professional advice to make sure you are eligible to file and that the automatic stay will apply.

When you file bankruptcy, any actions taken by creditors after filing are null and void and can be undone, even if they were unaware that you filed. Of course, the best

practice is to notify all creditors as soon as possible after filing to avoid any confusion.

All bankruptcies start with the filing of the Petition, Schedules A through J, the Statement of Financial Affairs and the B22 form. The Petition lists basic information about you such as your name, address, and whether you have filed before. It also asks, “Do you own or have possession of any property that poses..., a threat of imminent and identifiable harm to public health or safety?” I have never had a client answer yes to this question but I suppose there may be one someday.

Schedules A and B list all of your assets (things you own that have value). Schedule A is for real estate (houses, land, condos, etc.). Schedule B is for all of your personal property. Bank accounts, household goods, clothing, jewelry, tax refunds, life insurance, cars, boats and tools are the most common things listed under personal property. Schedule C is your exemptions- the property you wish to

protect and retain in your bankruptcy. Schedules D, E and F list all of your liabilities (people you owe money to). Schedule G lists and leases you may have. Schedule H lists any co-debtors you may have. Schedules I and J list your income and expenses.

The Statement of Financial Affairs lists your income in the last three years, lawsuits, transfers of property, payments to creditors and other information. If you own or have owned a business in the three years before filing, there are additional questions to answer.

The B22 form, also known as the “Means Test” is a new form and was added in the 2005 bankruptcy reform. You have to “pass” the means test to be able to file a Chapter 7. In order to pass, you need to either be below the median income OR be able to deduct enough from your income to get below the median income. Let’s break this down a little bit to make it easier to understand.

You start with the household size- how many people live in your home?

Family of 1	\$57,455.00
Family of 2	\$73,947.00
Family of 3	\$84,151.00
Family of 4	\$100,928.00

If you are below the income shown on the right, congratulations! You have passed the means test and you do not have to fill out any additional information on the form. . If you are above the income, you still may qualify for Chapter 7 but you must complete the entire form. The good news is you may be able to deduct house payments, car payments and other expenses from your income in order to qualify for chapter 7 but you will probably need to consult with an experienced bankruptcy attorney to accomplish this.

Once your case is filed, the Court assigns a date for the meeting of creditors and appoints a Trustee to your case. The Trustee's job is to review all of the paperwork that has been filed with the Court and to see if you have any assets that he or she can sell to raise money to pay your creditors. The U.S Trustee may also review your case if they believe you may be above the median income or used a bankruptcy petition preparer to help you with your case.

Before You File Your Case

In 2005, Congress reformed the bankruptcy laws and made many changes, some of them minor and some very significant. One very important change was the requirement to complete a credit counseling course before you file your case. This credit counseling may be done in person, over the telephone or on-line, but it is mandatory. If you do not do the credit counseling and file your case, your case will be dismissed by the Bankruptcy Court. Moreover, it must be done with a counselor approved by the U.S. Trustee's office. Unfortunately, sometimes people do what

they believe is pre-filing credit counseling only to find out later that it was the wrong course or that the counselor was not on the approved list.

There are exceptions to the requirement of pre-filing credit counseling but they are very limited and require you to file a motion with the Court and have it granted. There is always the risk that the request will be denied and your case will be dismissed. If there is an emergency, such as a pending foreclosure, it is generally easier to do the credit counseling on-line and then file the bankruptcy petition.

If there is no emergency need to file the case, you will have to collect several documents before you file. These include tax returns, pay stubs, bank statements, car titles and a credit report. You are required to provide copies of your tax returns and pay stubs to the trustee assigned to your case. The other documents are needed to complete your bankruptcy schedules accurately and completely before they are filed with the Court.

At this point, your attorney will review the documents to determine two main things. First, are you eligible to file bankruptcy? If you have filed a Chapter 7 in the last eight years, you will not be eligible to file another Chapter 7. If you have filed a Chapter 7 or Chapter 13 in the last 8 years, you may still file for Chapter 13 but there may be limits on the automatic stay or the discharge that you receive. If you have filed a Chapter 13 and it was dismissed within the last 180 days, you may not be eligible to file again. Therefore, if you have filed before, you should consult with an experienced bankruptcy attorney to review your situation.

The second big decision is what Chapter to file. Under circumstances explained above, you may not be eligible for a Chapter 7 and so the decision is made for you. If you are behind on your house or car payments and you wish to get caught up and keep your house or car, you will probably want to file a Chapter 13. If you have assets over and above what you can exempt or protect in a Chapter 7, you may want to file a chapter 13. If you have too much

income, you may not be eligible for Chapter 7 because of the means test. If you have too much debt, you may not be eligible for Chapter 13 because there are limits on how much you can owe.

Five Things NOT To Do Before Filing Bankruptcy

It is a big decision to file for bankruptcy and it takes a significant amount of thought and planning to take the first step. But as you examine your finances and make a plan for the future, there are a few things you should absolutely avoid in the weeks and months prior to filing bankruptcy:

Do not take money out of your retirement funds.

Most IRAs, 401ks and other retirement funds are safe from creditors when you file for bankruptcy but if you take money out of them, not only are you taxed heavily, you may end up paying the money to your creditors.

Do not incur new debt, especially on luxury items.

Some people may be tempted to max out credit cards or put a down payment on a new car when they know they are about to declare bankruptcy. However, new bankruptcy laws prevent people from taking advantage of the system in this way. Spending before declaring bankruptcy will not work and it is not the right thing to do.

Do not pay back money you borrowed from mom or dad (or any relative or friend).

Even family members are considered creditors during the bankruptcy process and the bankruptcy trustee may try to get that money back from them and pay it to your other creditors.

Do not give away or sell expensive items to friends or family members to protect them during bankruptcy.

"Selling" a ring or your car to a relative to keep it safe from creditors may get your discharge denied and it is dishonest.

Do not borrow against your home.

The equity in your home may be protected from your creditors. But the money you borrow to pay off unsecured debt will be a lien on your home and may not be wiped out in a bankruptcy.

Chapter 7 Bankruptcy

Chapter 7 Bankruptcy is the most common type of bankruptcy. About 2 out of 3 bankruptcies filed are Chapter 7. They are called Chapter 7 because the laws governing them are found in Chapter 7 of the Bankruptcy Code. A Chapter 7 is known as a liquidation bankruptcy because all of your non-exempt assets are “liquidated” or sold to raise money to pay your debts. Fortunately, as we discussed earlier, most people are able to exempt or keep everything they own and do not lose anything in their cases.

You can only file for Chapter 7 once every eight

years, so if you have filed before, you may not be eligible to file a Chapter 7. If this is the case, you may still be able to file for Chapter 13 if you need immediate relief.

What Can I Keep in Bankruptcy?

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

Up to \$1,000 in household goods. This means the liquidation or yard sale value of the goods, not what you paid for them. For example, the new flat screen TV you may have bought two years ago for \$1,500 would probably only bring \$200-\$300 at a yard sale. The same goes for most everything in your home. You can only get 5 to 15 cents on the dollar for most goods that are a couple of years old. Things that are older than that have almost no value.

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

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

Up to \$2,500 in tools- If you have tools that you use in a business such as contracting or car repair, you can protect and keep them. The value is based on what you would get if you took them to a pawn shop.

Married couples can keep up to \$24,000- each spouse gets the above exemptions in cash and property for a combined total of \$24,000.

Wages or bank account garnished within 90 days of filing- If an aggressive creditor has a judgment against you and put a garnishment on your paycheck or bank account, you may be able to get the money back. If the money was:
A- More than \$600, **B-** Taken within 90 days of filing and

C- For a debt that is otherwise dischargeable, you should be able to get it back. If you are being garnished for student loans, some taxes or child support, you probably will not be able to get that money back.

Up to \$21,625 in equity in your home- This exemption was just added in October, 2010. Equity in your home means that you can sell it for more than you owe on it. For example, if you can sell your house for \$150,000 and you owe \$50,000 on it, you have \$100,000 in equity. You can exempt \$20,200 of this, so

Retirement Accounts- Most IRAs, 401(k) and other retirement accounts are exempt in a bankruptcy. Again, the idea is to leave you with something so you can be an active contributor to society. In some rare cases, if you have made large contributions to a retirement plan prior to filing for bankruptcy, the Trustee may be able to go after these funds.

IMPORTANT WARNING ABOUT RETIREMENT ACCOUNTS

Sometimes people come to me after withdrawing large sums of money from their retirement accounts to try to catch up on their mortgage or pay other debts. This is a huge mistake for several reasons. First, you will pay taxes and penalties on the money so the \$10,000 you take out may only mean \$6,000 in actual cash. Second, you have converted an exempt asset into a non-exempt one. This means that if you file for bankruptcy, the Trustee may take the money and pay your creditors, including creditors you did not want to pay. Third, some people take the money out to try and catch up on their mortgages only to fall behind later and eventually lose their homes. So not only is your house gone but so is your retirement money. If you are considering doing this, please consult with an

experienced bankruptcy attorney BEFORE taking any money out.

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

What Debts Are Not Wiped Out in Bankruptcy?

Taxes in Chapter 7

Many people are surprised to find out that some or all of their tax debts can be discharged in bankruptcy. There are four categories of taxes that you may owe: Non-

dischargeable, secured, priority and non-priority. Non-dischargeable taxes are employment taxes that were withheld from employee paychecks but not forwarded to the IRS. Some business owners, when times get tight, use this money for their businesses instead of sending it to the IRS. These are non-dischargeable because the money never really belonged to the business owner so the bankruptcy court is not going to help him avoid paying it. If you have never had a business with employees, you do not have to worry about this.

Secured taxes are taxes that are secured by a tax lien on your real or personal property. The IRS or the state of Maryland does this by recording the tax lien form at the courthouse of the county in which you live. The good news is that the discharge may end any personal liability you have for the taxes. This means the IRS or state can only go after the property that secured the tax lien. If there is no equity in the property, you may also be able to “avoid” the lien. This

means when you sell the house or property, you will not have to pay the creditor.

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

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

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

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

Chapter 13 Bankruptcy

Chapter 13 bankruptcy is a **re-organization** as opposed to a **liquidation** in Chapter 7. In Chapter 13, instead of wiping out your debts, you set up a payment plan to pay back your creditors in an orderly fashion. The most common reason for filing for Chapter 13 instead of Chapter 7 is to save your home from foreclosure. Filing a Chapter 13 creates the same automatic stay as a Chapter 7, which means either Chapter will stop a foreclosure auction on your home. But in Chapter 13, a plan of reorganization is filed to pay

back any missed mortgage payments and allow you to keep your home.

A Chapter 13 may also be filed when you are not eligible to file for Chapter 7. If you have received a Chapter 7 discharge in the last eight years, you cannot file for Chapter 7 again. If you have non-exempt assets that you wish to keep, you can file a Chapter 13 to get relief from your creditors without surrendering these assets to the Trustee. If you have had a case dismissed by the Court and it was dismissed with prejudice, you may not be able to file either a Chapter 7 or Chapter 13 for 180 days.

The process of filing for Chapter 13 is virtually the same as for Chapter 7. The same forms and petition are used and the same documents such as tax returns and pay stubs are required from you. Once the case is filed, you **MUST** begin to make your regular payments on your mortgage and car if you wish to keep them. For example, if your case is filed on the fifteenth of the month and your car

payment is due on the twentieth, you would have to make the car payment on the 20th of that month. If your mortgage payment is due on the first, you must make your mortgage payment on the 1st of the following month.

You must also begin to make your plan payments after your case is filed. Your first plan payment is due 30 days after filing and every month thereafter. There are basically three factors that go into determining your plan payment- your income, the amount of debt you have and the value of any non-exempt assets you own.

The first factor is your income. In fact, to be eligible to file Chapter 13 you must have a “regular source of income.” In Maryland, the Courts and Trustees are fairly liberal in allowing virtually any source of income to fund a Chapter 13 case. In my experience, I have never had a case dismissed because a debtor failed to show he or she had some form of income. The analysis begins by completing the form B22c, also known as Current Monthly Income

(CMI). This form looks at your income for the six months prior to filing and if you are under the income limits for your household size, your CMI is \$0.00. If you are over the income limit, you fill out the rest of the form by subtracting your allowed expenses. Whatever money is left over must be devoted to your Chapter 13 Plan.

The second factor is the amount and type of debt you have. In a Chapter 13, debts are generally paid in this order: Back child support, attorney fees, priority taxes, arrearages on mortgage and car payments, other secured debt, and lastly, general unsecured creditors.

The Meeting of Creditors

Once your case is filed, you will receive a notice from the Bankruptcy Court telling you the location and date of the Meeting of Creditors. There are four places where meetings are held: Baltimore, Greenbelt, Hagerstown and Salisbury. The location is assigned based on the county in which you live. The meetings are generally scheduled about 30-45 days after filing. In most cases, this is the only time you will have to go to the Courthouse.

The Meeting of Creditors is where you meet with the Trustee to answer a standard set of questions about your

schedules. The Trustee is someone appointed by the Bankruptcy Court to review your case and see if you have anything that can be sold to pay your debts. But before you worry that you are going to lose anything in a bankruptcy, remember that you are allowed to “exempt” or keep property. The Trustee can only take property above and beyond what you are allowed to exempt, so 95% or more of people who file for bankruptcy, LOSE NOTHING in the process!

Despite the name “Meeting of Creditors,” creditors rarely show up to ask you any questions. The Trustee is NOT a judge and will not make any decisions about your case. If the Trustee suspects you are not being cooperative or are trying to hide things from him, he may file a motion with the Court to make you turn over documents.

The meetings are held in large rooms and are open to the public. The Trustee will come out into the waiting area and call a list of names of people scheduled for that time

and ask you to follow him into the meeting room. He or she will then call the first name on the list to come sit at a table with a microphone on it. The Trustee will ask to see your driver's license and proof of your social security number such as your SS card or W-2. This is very important because the Trustee will NOT hold the meeting if you do not have these items.

The Trustee will then ask any creditors present to sign in. In most cases, no creditors show up. However, if you have not filed your tax returns or owe the IRS money, they may send a representative to ask you a few questions. The Trustee will then swear you in and ask you a series of questions including:

What is your name?

What is your address?

How long have you lived there?

Did you read and review your petition and schedules before you signed them?

Are you personally familiar with the information contained in the petition, schedules, and related documents?

To the best of your knowledge, is the information contained in the petition, schedules and related documents true and correct?

Are there any changes you would like to bring to my attention?

Do you owe any child support or alimony?

Has anyone died recently and left you any money?

Do you have the right to sue anyone for personal injury?

Have you repaid any one creditor more than \$600 in the last 90 days?

Have you repaid any friends or family members in the last year?

Some Trustees ask more questions than others but they are all looking for the same thing - assets that they can sell to raise money to pay your debts. After the Trustee is finished, any creditors present can ask you questions as well. After that, the Trustee will usually let you know if he requires any additional information and will tell you how long you have to get it to him.

If the Trustee does not need anything additional information, he may tell you that he will be filing a report of no distribution, which means that he will be telling the Court that you have nothing for him to sell and he will close your case. Once the report is filed, you have only one more hurdle to jump before you get your discharge: The Financial Management Course.

The Financial Management Course

This is the second credit counseling course that is required before you can get your discharge. Just like the first one, it can be done on-line, over the phone or in person. It should take you about 2 to 3 hours to complete. It is very important to get this done or your case may be closed without a discharge and you will have to pay \$260 to re-open your case to get your discharge.

Once the Trustee has filed the report of no distribution and you have completed and filed the financial management course, you have done everything you need to

do to get your discharge. Sixty days after the meeting of creditors, the Court will enter the discharge and close your case. You will get a copy of the two page discharge order in the mail and should keep it in a safe place along with the rest of you bankruptcy paperwork.

How to Choose a Bankruptcy Lawyer

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

selecting a bankruptcy attorney is CURRENT EXPERIENCE.

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

Other things to look for:

- 1- Does the lawyer share information about bankruptcy so you can educate yourself and make informed decisions about your case? You need as much information as possible before making a big decision like filing for bankruptcy; therefore, web-

sites, brochures, books and e-mail updates are mandatory.

2- Does the lawyer use technology to make your case go smoother? There are all kinds of technology out there, but if it does not ease communication between the client and attorney, and make the case as hassle free as possible, then it is wasted. I use Infusionsoft, a very powerful data management system, to keep in touch with clients, remind them of important dates and hearings, and keep them up to date on their case.

3- Will the lawyer you meet with be the lawyer handling your case? Some big bankruptcy firms have associates who handle client appointments and the meeting of creditors, which means you

may be meeting your lawyer for the first time in Court. I personally meet with all clients and attend all the creditor's meetings, except for rare situations when a conflict arises.

- 4- Does the lawyer offer payment plans? In today's tough economic times, you may desperately need to file for bankruptcy but not be able to afford the entire fee up front. A payment plan can allow you to start down the road to your fresh start.

- 5- Does the lawyer offer a guarantee? If you retain us, then I can guarantee that you will get your bankruptcy discharge. Here's the deal: As long as you are completely honest with me about all of your debts and assets, provide us with the documents we need, and show up for Court when

you are supposed to, then I will represent you to the end and make sure you get your discharge. If you do not get a discharge, we will refund 100% of all money you paid-including the filing fees!

- 6- Does the lawyer start working on your case immediately? If you retain us, we will send a letter to all of your creditors to immediately stop calling you. Even before your case is filed, you will get relief from creditor calls and harassment.

7 Myths about Bankruptcy- Busted!

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

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

Myth #2- I will lose everything in bankruptcy.

False-Bankruptcy law allows for exemptions, which means cash and property you can keep to make your fresh start. In Maryland, you can keep up to \$12,000 of personal property (\$24,000 for married couples) plus other things like IRAs and worker's compensation awards.

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

Myth # 3- My credit will be ruined forever.

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

bankruptcy.

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

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

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

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

bills and also save money for a down payment on your home.

Myth # 6– I am a failure for filing bankruptcy.

False-filing a bankruptcy simply means that your expenses exceed your income and you cannot pay your bills. Most people end up in bankruptcy due to job loss, divorce or illness which are things beyond their control. Millions of people, including famous people like Donald Trump, Mike Tyson, MC Hammer, Walt Disney and Burt Reynolds, have filed bankruptcy and gone on to later success.

Myth # 7- Bankruptcy leads to divorce.

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

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

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

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

It sounds like there is no downside to filing bankruptcy.

False- Filing bankruptcy is a difficult and emotional decision and should only be made as a last resort.

Because bankruptcy law is now even more complex, if you file a bankruptcy without reviewing all of your options with an experienced bankruptcy attorney, you could potentially end up worse off. There may also be solutions to your problems that can be handled without filing a bankruptcy. Therefore, it is essential that you consult with an experienced bankruptcy attorney before making that difficult decision.

BANKRUPTCY WORDS AND TERMS YOU SHOULD KNOW

Adequate Protection

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

Adversary Proceeding

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

Asset

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

Automatic Stay

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

Bankruptcy Code

The part of the federal law that deals with bankruptcy.

Bankruptcy Petitioner Preparer (BPP)

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

Chapter 7

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

Chapter 13

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

Collateral

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

Conversion

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

Cosigner

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

Cramdown

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

Credit Counseling

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

Credit Score

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

Creditor

Someone you owe money to.

Current Disposable Monthly Income

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

Debtor

The person(s) filing for bankruptcy.

Deficiency Balance

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

Dismissal

Your case can be dismissed if you do not file all of the paperwork, do not show up for the meeting of creditors or fail to make your plan payments.

Domestic Support Obligation

Money owed for alimony, maintenance or child support.

Equity

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

Exempt

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

Joint Petition

A bankruptcy filed by a husband and wife.

Lien

A lien is the way a creditor secures a debt. If you buy a car, the creditor puts a lien on your car title and if you do not pay, they can take the car and sell it. Sometimes a creditor can sue you and get a judgment lien on your house. This is an involuntary lien.

Lien Avoidance

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

Liquidation Analysis

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

Means Test

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

Meeting of Creditors

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

Mortgage/ Deed of Trust

A lien on your house.

Motion to Lift Automatic Stay

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

No-Asset Case

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

Objection to Dischargeability

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

Personal Property

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

Plan (Chapter 13)

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

Post-Petition

Anything that happens after the bankruptcy is filed.

Pre-bankruptcy Planning

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

Pre-Petition

Anything that happened before the bankruptcy was filed.

Preference or Preferential Debt Payment

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

Presumption of Abuse

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

Pro Se

Filing a case on your own or with a BPP.

Real Property

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

Schedules A-J

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

Statement of Financial Affairs

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