

DEBT FREE!

***STOP THE BILL COLLECTORS AND
WIPE OUT YOUR DEBTS***

By Timothy S. Huyck, JD

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This book is dedicated to my beautiful and patient wife,
Susan. Thank you for marrying me and sticking with me
through the tough times. I love you.

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INTRODUCTION

From Bankrupt to Bankruptcy Attorney

My Fresh Start Story

In 2007, I was in debt – a lot of debt. I had run up my credit cards and lines of credit to well over \$100,000. I was getting cash advances and using credit cards for all of my purchases because I didn't have any money coming in. Each month, I would have to borrow more than the month before in order to pay the bills and also cover the additional interest on the money I had borrowed in prior months. This debt snowball was growing faster and faster.

At the time, it didn't seem like a huge deal. I was a partner in seven real estate development projects and was on track to earn several million dollars over the next two or three years. I thought that I'd easily be able to pay back my debts as soon as one of our projects sold. Little did I know that life was about to take a turn for the worse.

When the real estate market went south in 2008, my world came crashing down. Our development projects were now worthless. My credit card accounts and lines of credit were maxed out. Since I was no longer able to borrow money, I couldn't pay the bills. The collection calls started and became so frequent and intolerable that I stopped answering the phone. Our mailbox was filled with threatening letters from our creditors and more than one filed lawsuits against me.

Our home was foreclosed in July. I filed bankruptcy in December. My wife's car was repossessed a few weeks later. Real estate was the only way I knew to earn a living and these were grim times for that industry. We moved into an old, "tear-down" house that had been part of one of our development projects. When the investor foreclosed on the

property, I expected him to evict us. Fortunately, he graciously allowed us to stay there rent free. He said he was happy to have someone there so that the place wouldn't be vandalized but I think he just felt sorry for us. Or perhaps the condition of the house led him to believe that he'd never be able to find a paying tenant. Whatever the reason, we were very grateful to have a roof over our heads, despite the leaks and the faulty septic system.

We received some help from family so that we could cover some basic necessities but still found ourselves without water and electricity for a time because we couldn't pay the bills. We got Food Stamps and help from our church so that we wouldn't starve.

I continued to try to work in real estate but wasn't able to earn any commissions. I tried to get a regular job but it seemed that no one was hiring. The unemployment rate was 14%.

As I pondered about what to do, it occurred to me that this might be a good time to get more education. I had always wanted a graduate degree. But what should I study? What I really wanted to do was get an MFA in art. My wife thought I should get an MBA. I investigated the options and finally decided to go to law school.

In September 2009, at the age of 58, I enrolled in a 4 year Juris Doctor program. Most law degree programs are three years long but this one was designed for working adults so it was an extra year.

I graduated in January 2014, at 62 years of age and passed the California Bar Exam the following month. My post law school education focused on estate planning and a short time later, I was introduced to Bernie Gartland, a tax attorney in La Quinta, California. He trained me in bankruptcy practice, with a particular emphasis on tax bankruptcies. Bankruptcy

is a major part of my practice now. Having experienced bankruptcy as a debtor, I believe I have some valuable insight into what my clients are experiencing when they contemplate bankruptcy. I have been in their shoes and I know that they can usually get the relief they so desperately need.

PLEASE NOTE: The contents of this book are based on my experiences as I practice bankruptcy law in the Central District of California and may not apply if you are in a different judicial district.

This book is not intended to be a comprehensive treatise on bankruptcy. Hopefully, it will provide some of the basic information you need in deciding whether or not bankruptcy is a good option for you. It should also dispel some of the common misconceptions regarding bankruptcy that may be floating around in your head.

Timothy S. Huyck, JD

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CHAPTER ONE

A Fresh Start Story Featuring YOU

You are an honest, hard-working individual. You do your best to meet your obligations and try to play by the rules. You want nothing more than to be happy and enjoy life with your friends and family. But somehow, you have racked up a huge amount of debt that is now crushing the joy out of your life. It may be taxes that resulted from not having enough withheld from your paycheck. Maybe it's credit card debt that ballooned due to emergency car repairs or to replace a dead refrigerator. Perhaps you or someone in your family had a medical emergency that heaped thousands of unanticipated debt on you. It may be your fault or it may be due to circumstances beyond your control.

The "how" doesn't really matter now. What matters is that the bill collectors are constantly calling you. Threatening letters arrive at your mailbox almost every day. You may even have been served with a summons to appear in court because a creditor is suing you. Perhaps the tax man or other creditor has placed a lien on your property, taken money out of your bank account, and/or garnished your wages.

You are overwhelmed. You can't sleep. You feel depressed and worthless. Your relationships are suffering because of the discouragement and anger that you're experiencing. You feel very grouchy, and for good reason. Your world is crumbling around you and you see no way out.

You rack your brain for a solution. Perhaps you should ask your boss for a raise; take a second job, or a third job. You're already cutting back. Instead of going out to a movie, you get a DVD from Redbox. You've discovered that ramen, rice and beans, or baked potatoes can fill you up. You notice every time the price of gasoline goes up. You find yourself

putting \$10.00 in your tank instead of filling it up. You wonder if your creditors would negotiate a more affordable repayment plan. If you own a home with some equity, you've considered refinancing to take cash out to pay your debts. Should you cash in some or all of your 401(k) in order to pay the bills? Is there a good solution? What's the best solution? You're so distraught, you can't think straight and you don't trust your own judgment to make a good decision. After all, it may have been your decisions that got you into this mess.

Despite your embarrassment, you take a chance to explain your desperate situation to a trusted friend or relative, hoping that they will have some ideas for you. Someone suggests that you look into bankruptcy. Your first thought is an adamant "NO! Bankruptcy is for deadbeats. Bankruptcy is for losers. If I file bankruptcy, I'm admitting that I'm a failure. If I file bankruptcy, I can no longer consider myself an honest, hard-working individual who plays by the rules. If I file bankruptcy, everyone will know that I can't manage my life. If I file bankruptcy, I will lose everything that I have."

But then you wonder how life would be without the constant pressure coming from the bill collectors. You start to imagine a life free of debt. You daydream about having enough money to occasionally go out to a movie, or to dinner, or on vacation. How would it feel to be free of this crushing debt?

After giving it some thought, you decide that it certainly wouldn't hurt to learn more – to see if bankruptcy is a viable option. You go online and search "Bankruptcy." In .59 seconds, Google returns 232,000,000 results. Ads from debt relief agencies, debt consolidation companies, and bankruptcy attorneys all vie for your attention. Is there any way to make sense of it all?

You visit the websites of a few bankruptcy attorneys. Some are screaming that they offer the lowest fees. Others tout their experience and competence. You wonder, are they all the same? If so, then maybe the cheapest price is the way to go. But you've lived long enough to know that you usually get what you pay for. Maybe price is not the best way to choose an attorney. You realize that the best attorney is probably not the cheapest. But maybe you don't need the best attorney. Why buy a limousine if a bicycle will get you to your destination?

During your investigation, you come across a local attorney who is offering a free book about bankruptcy. Since you need information and the book is free, you decide to take the chance and order it. It arrives within a couple of days and you begin to peruse its pages.

As you read the book, you begin to feel that bankruptcy might be the solution you're seeking. In the book, you discover that the author has been in your shoes. Before becoming a bankruptcy attorney, he worked in real estate and lost everything when the market crashed in 2008. You also read that since 2015, he has successfully helped hundreds of people eliminate millions of dollars of debt through bankruptcy. You read some of the testimonials in back of the book and decide that this attorney might be all right. You make an appointment and are soon sitting down with the author of the book. As you explain the details of your situation, he makes notes. He then tells you whether or not bankruptcy is a good option for you.

If bankruptcy is your best solution, he lays out a step by step plan for you and explains the process. He is there to guide you and make it understandable.

You still wonder if this is the right thing to do. Surely, there's a better way. You wonder about the downside of bankruptcy. You don't want your credit score ruined. But

then you realize that your credit score is already suffering because you can't keep up with your bills. And if you do nothing, the calls, letters, lawsuits, garnishments, etc. will continue. Failing to act will just extend your misery. How much more of this can you take? At least bankruptcy shines a ray of hope on your situation and lets you catch a glimpse of a brighter future. You decide to move forward with bankruptcy.

Your attorney gives you a short list of documentation that you need to provide and arranges for your intake interview. After the necessary information has been gathered, your attorney drafts your bankruptcy petition and has you review it for accuracy and to see if you have any questions. Once you are satisfied that everything is correct, you sign the petition and it is filed with the court. There – you've done it! Now what?

The moment your bankruptcy case is filed with the court, the automatic stay prevents your creditors from contacting you in any way. The phone calls stop. The letters stop. Lawsuits are dismissed. Garnishments stop. No more fear of foreclosure or repossession. Your phone stops the incessant ringing. Your mailbox is no longer full of collection notices. What you hear from your creditors now is just wonderful, beautiful, blissful silence.

The pressure is off. You can relax. You can sleep. Not much happens for the next five weeks or so until your meeting with the bankruptcy trustee. Of course, you are a little apprehensive because this is all new to you. But your attorney has prepared you for this meeting. After about five minutes of answering the trustee's questions, you're done.

About nine weeks later, the court files your Discharge Order. This is the Holy Grail of bankruptcy. It is an order from a federal judge that tells your creditors that your debts are wiped out. If they attempt to collect a discharged debt, they

are violating a federal court order and there can be severe consequences.

A few days after the Discharge Order is filed, your case is closed. The whole process has taken about four months.

YOU'RE DEBT FREE!

Life is better. You can breathe. Now that you're not sending every last dime to your creditors, you have more money to live a normal life. You successfully harnessed the power of federal law to take control of your finances and now that control can give you a better future. Your fresh start has begun.

CHAPTER TWO

Consumer Bankruptcy – Your Ticket to Freedom

There are several types of bankruptcies but this book will only discuss consumer bankruptcy – particularly Chapter 7 and Chapter 13.

Chapter 7

Chapter 7 bankruptcy is the most common. It is often referred to as a liquidation bankruptcy or a straight bankruptcy. The typical Chapter 7 case takes about four months from the time it's filed to the time the case is closed. At the conclusion, the Debtor's debts are discharged. Some debts are not dischargeable but most are. Your attorney will let you know if you have debts that will survive your bankruptcy. In order to file a bankruptcy under Chapter 7, the Debtor must meet certain qualifications. If you make too much money, then you may not qualify for Chapter 7, in which case, your next bankruptcy option is Chapter 13.

Chapter 13

Chapter 13 is a repayment plan that is governed by the bankruptcy court. Depending upon your circumstances, the monthly payments can last for three years but most go on for five years. The size of your monthly payments is determined by a complex set of calculations that take into account your income, your allowable expenses, and the amount and type of your debts. If your debts exceed certain limits, then Chapter 13 is not an available option. In that case, your best option may be a bankruptcy under Chapter 11, which is outside of the scope of this book. Rest assured that the vast majority of people who consider bankruptcy will qualify for either a Chapter 7 or a Chapter 13.

The Bankruptcy Process: An Overview

If you are considering bankruptcy, here is a very brief synopsis of the process.

- Intake – this is where your attorney gathers the information needed to draft the bankruptcy petition. Sometimes, the intake is in the form of an “in-person” interview. Or you may be asked to fill out the intake form online.
- Credit Report – your attorney will obtain your credit report in order to get most of the information needed regarding your creditors and your debt.
- Analysis/Petition Drafting – your attorney prepares the bankruptcy petition based on the information you’ve provided.
- Client Review/Corrections/Identify potential problems – you will review the draft of your bankruptcy petition and make note of anything that needs to be corrected. Your attorney will identify any potential problems that may need to be resolved prior to filing the petition with the court.
- Pre-filing planning to protect assets – if you have assets that cannot be exempted, there may be ways to protect them. Your attorney can guide you in this regard.
- Credit Counseling class – when Congress rewrote the bankruptcy law in 2005, they decided that all bankruptcy filers must take a credit counseling class prior to filing and a financial management class after filing. The credit counseling class can be taken online or over the phone. It takes a little more than one hour and costs \$15 to \$45 dollars, depending on which provider you use.

- Signing/Filing – when your bankruptcy petition is accurate and complete, you will sign it so that it can be filed with the court.
- Automatic Stay – this is the magic of bankruptcy. As soon as your bankruptcy petition is filed, the automatic stay prohibits any creditor from contacting you or pursuing collections against you. Lawsuits come to a screeching halt, garnishments cease, even the tax man is prohibited from chasing you down for back taxes.
- Reaffirmation Agreements/Surrender/722 Redemption Motion/Lien Strip 522(f) or 506(g) – If you wish to reaffirm any of your existing secured debts such as auto loans or mortgages, you may do so. If you want to be rid of a vehicle because it's a lemon or because you no longer want to make the payments, you can surrender it to the lender. If they sell it for a loss, they cannot come after you for any deficiency. If you are upside-down on your car loan, you may be able to acquire title to your car for its actual value rather than the full amount that you owe by filing a Motion to Redeem. You may also be able to rid yourself of judgment liens or strip off a second mortgage in some circumstances.
- Financial Management class – this class is required in order to obtain the discharge of your debts. It takes two hours either online or over the phone and costs between \$8 and \$20, depending on the provider. If you fail to take this class before your case is closed, your debts will not be discharged and your creditors will be allowed to resume their collection activities. You can still obtain your discharge, but you'll first have to pay more money to reopen your case so that you can take the class.
- 341(a) meeting of creditors – this is your meeting with the bankruptcy trustee and is usually the only

meeting you'll have to attend. You will be asked several required questions that your attorney will discuss with you in advance. The trustee may ask additional questions depending upon your particular circumstances. Most interviews with the trustee take about five minutes.

- Discharge/Case closed – the court will issue your Discharge Order, officially wiping out your debts and then your case will be closed. This usually occurs about 4 months after your case was filed.

CHAPTER THREE

Important Things to Know

The Means Test

In 2005, Congress rewrote the bankruptcy code. The new law provided some qualifications for filing a Chapter 7 bankruptcy. Among the qualifications is the Means Test. Generally speaking, you need to pass the Means Test to file under Chapter 7. This test compares your household income to the median income of other households of the same size in your county. If your income exceeds the median, you fail the test. The analysis covers the six full months prior to the month that you file your bankruptcy petition with the court. If your debt is primarily consumer debt, then you must take Means Test. But if your debt is mostly taxes or business debt, then you are not required to take the Means Test. Failing the Means Test does not necessarily prevent you from filing bankruptcy but it does trigger additional scrutiny by the U.S. Trustee's Office.

Client Experience

FILING CHAPTER 7 AFTER FAILING THE MEANS TEST! M & G failed the Means Test because their income over the six months leading up to their bankruptcy showed that they earned too much money. However, M had recently lost his job. His recently reduced income allowed them to still qualify for the bankruptcy. The U.S. Trustee's office asked us to provide them with information to verify the Debtor's current income. We did so and the case sailed through without trouble.

The Magic of Social Security Income

TIP FOR SENIORS - Social Security income is not counted as income when we analyze income and expenses in

bankruptcy. It's as if the income doesn't exist. However, if you are filing a Chapter 13 bankruptcy case and need to show sufficient income to fund the plan, you may choose to count some or all of your Social Security. It's like magic. If it's to your advantage to count your Social Security as income, you may do so. If it's not, then you don't have to.

The Automatic Stay

This is found in Section 362 of the Bankruptcy Code and gives you the power to stop all collection activities of your creditors. As soon as your bankruptcy petition is filed, all of your creditors must immediately stop their collections activities - no more calls, letters, lawsuits, foreclosures, garnishments, or repossessions. The automatic stay remains in place until your bankruptcy case has been dismissed or closed. The only way a creditor can get around the stay is to file a motion for relief from the automatic stay.

Exemptions (Keeping/Losing Property in Bankruptcy)

Most people who file a Chapter 7 bankruptcy are able to keep all of their property. The only property that is lost in bankruptcy is that which cannot be exempted. When you file bankruptcy, something called a bankruptcy estate is created. All of your unexempt property is part of the bankruptcy estate and the person in charge of the estate is the bankruptcy trustee.

Each state has the option of using the exemptions provided in the Bankruptcy Code or establishing their own system of exemptions. California has opted out of the federal exemptions and has created its own system of exemptions. In

fact, California has two different systems of exemptions, commonly referred to as 703s and 704s. These numbers are derived from Sections 703 and 704 of the Code of Civil Procedure, or C.C.P. for short.

C.C.P. Section 704 is the system that provides the greatest protection for equity in a primary residence. C.C.P. 703 is the system that provides the greatest protection for other types of assets, including cash. Your attorney will help you determine which system of exemptions is better suited to your particular situation.

Client Experience

TIP: BE CAREFUL ABOUT RAIDING YOUR 401(k) TO PAY YOUR DEBTS! Your 401(k) or other pension account is exempt in bankruptcy. Some accounts are only exempt up to about \$1.2 million. ERISA qualified accounts have an unlimited exemption. We had a lady come to our office to discuss bankruptcy. She had been struggling with a lot of debt. She took \$200,000 out of her 401(k) and started paying her creditors. After spending \$75,000 of the \$200,000, she realized that this plan would not clear up her debts. She was going to need more money. She was wondering if she could file bankruptcy in order to lose the debt. We had to give her that bad news that the remaining \$125,000 that she had removed from her 401(k) was not exempt. If she were to file bankruptcy, the Trustee would take the money. Had she left it in her 401(k), it would have been safe.

Car Loans (Reaffirmation, Surrender, Redemption, Cramdown in 13)

When you file bankruptcy, you have three different options for dealing with auto loans.

Reaffirmation: If you want to keep your vehicle and keep making the monthly payments, then you will enter into a Reaffirmation Agreement with the lender.

Surrender: If you no longer want to keep your vehicle, you may surrender it during the bankruptcy. The lender will sell the vehicle at auction and even if they lose money, they will not be allowed to come after you for any deficiency.

Example:

Redemption: If your vehicle is worth less than the amount left on your loan, you might want to investigate filing a Motion to Redeem. This procedure allows you to pay only the value of the vehicle rather than the amount you actually owe on the loan.

Example: Our client owned a car that was worth \$12,000. The loan balance was over \$19,000. We filed a Motion to Redeem and the judge granted the motion. Our client obtained a loan from a lender that specializes in this type of transaction. She now owes \$12,000 instead of \$19,000, saving over \$7,000.

There is a similar procedure in Chapter 13 bankruptcy, called a “cram-down.” If you are upside-down on your car when you file a Chapter 13 bankruptcy, you can file a valuation motion. If successful, you will only pay the actual value of the vehicle rather than the amount you owe on the auto loan.

Home Loans (Reaffirmation)

For many years, most lawyers felt that it was unnecessary to reaffirm home mortgages. But over the last few years, problems have cropped up for those who haven't reaffirmed their home mortgages. When there is no Reaffirmation Agreement, the lenders will stop reporting the post-bankruptcy payments to the credit bureaus. This makes it difficult, if not impossible to refinance or obtain a new mortgage because of the mortgage payment history on the credit report. Unless you plan to walk away from your house during bankruptcy, you should plan to reaffirm your mortgage loan. As an alternative, many lenders seem willing to enter into a loan modification with their customers who file bankruptcy. This could possibly reduce your monthly payment.

Second Mortgages (Lien Strip Motion in Chapter 13)

If you have a second and/or third mortgage and your home is worth less than the balance owed on your first mortgage, then you may qualify for a lien strip. This procedure was more prevalent before the real estate market rebounded from the mortgage meltdown of 2008 but may still be useful in some instances. In order to strip off a second or third mortgage, that mortgage must be wholly unsecured. If there is even one dollar of equity available to secure the junior mortgage, then a lien strip is not an option.

For example, let's say that your house is worth \$300,000 and the unpaid balance of your first mortgage is \$310,000. If you have any junior mortgages, they are wholly unsecured and can be stripped off. However, if your first mortgage loan balance is \$299,999, then your second mortgage is not

wholly unsecured and a lien strip motion is not available to you.

To be successful, a lien strip motion typically requires an appraisal or Broker Price Opinion as evidence of the home's value. The court is unlikely to accept your opinion regarding the value of the home. A successful lien strip motion can relieve you of the burden of paying off those junior mortgages. Be advised though, that the lien strip does not become permanent until you complete the Chapter 13 repayment plan. If your Chapter 13 fails, then the lien will remain.

Judgment Liens (Chapter 7 or 13)

When a creditor obtains a judgment against you, they can turn that judgment into a lien on your real estate by following a simple procedure. All they have to do is get an Abstract of Judgment from the court and record it with the county recorder's office in the county where your real estate is located.

It is important to note that once a lien has been placed on your property, it does not automatically go away when you file bankruptcy. Be sure to consult with a knowledgeable attorney if you are being sued or if you already have a judgment against you so that you understand whether or not bankruptcy will help you. A bankruptcy will prevent a creditor from coming after you to collect the money but it will not remove a lien. The lien has a life of its own and will have to be paid off if you sell or refinance your property before the lien expires. Judgment liens are valid for ten years and can be renewed by the creditor for another ten year span. However, once you file bankruptcy, the creditor is not allowed to renew the lien. The good news is that the lien

may be removed through a 522(f) motion if it impairs your homestead exemption.

Client Experience

A.W. filed a Chapter 13 bankruptcy. She had a judgment lien in the amount of \$54,000 against her home that impaired her homestead exemption. We filed 522(f) motion and the judge stripped the lien from the property.

Tax Liens

Federal tax liens have a life of ten years from the date the taxes are assessed. If the taxes meet the three rules for dischargeability, then the IRS will no longer be able to come after you for the money but the liens will remain in place until the ten years has passed. This means that you won't be able to sell or refinance the property without paying off the liens. You'll have to sit and wait for the liens to expire.

California state tax liens have a life of twenty years.

The Bankruptcy Trustee

The bankruptcy trustee's job is to liquidate any unexempt assets and distribute the money to your creditors. The trustee is required to ask you certain questions at the Section 341(a) meeting of creditors. He or she will review your bankruptcy petition in order to identify any assets that can be taken.

Here are the questions that the trustee is required to ask you:

- State your name for the record.
- Is the address on the petition your current address?

- Please provide your picture ID and social security number card for review.
- Did you sign the petition, schedules, statements, and related documents and is the signature your own?
- Did you read the petition, schedules, statements, and related documents before you signed them?
- Are you personally familiar with the information contained in the petition, schedules, statements and related documents?
- To the best of your knowledge, is the information contained in the petition, schedules, statements, and related documents true and correct?
- Are there any errors or omissions to bring to my attention at this time?
- Are all of your assets identified on the schedules?
- Have you listed all of your creditors on the schedules?
- Have you previously filed bankruptcy?
- What is the address of your current employer?
- Is the copy of the tax return you provided a true copy of the most recent tax return you filed?
- Do you have a domestic support obligation? To whom? Please provide to me the claimant's address and telephone number, but do not state it on the record.
- Have you read the Bankruptcy Information Sheet provided by the United States Trustee?

When a bankruptcy case is very simple, the trustee may end the questioning at this point. But if your case is more complicated, the trustee will likely ask additional questions.

Client Experience

TIP: ALWAYS TELL YOUR ATTORNEY AND THE BANKRUPTCY TRUSTEE THE TRUTH! One of our

clients was a real estate agent who tried to hide some real estate commissions that had been earned just before the bankruptcy case was filed. The trustee found out, took the commissions, and caused a great deal of grief to the client. Had the truth been told to us prior to filing, steps could have been taken to protect much, if not all of those commissions.

Discharge

In most cases, the court will issue a Discharge Order about 3 ½ to 4 months after the case is filed. This order states that all of your debts that qualify for discharge are now eliminated and the creditors are not allowed to pursue you for payment. If they attempt to collect from you, they are violating the Discharge Order and are subject to penalties.

Rebuilding Credit

Many people are concerned about their credit and are concerned that a bankruptcy will destroy any future ability to obtain credit. Indeed, a Chapter 7 bankruptcy will appear on your credit report for ten years and a Chapter 13 for seven years. However, the bankruptcy's destructive effect on your credit begins to dissipate after the first year and becomes less and less of a problem as time goes on.

Once you have filed bankruptcy under Chapter 7 of the Bankruptcy Code and have obtained a discharge, you are prohibited from filing another Chapter 7 for eight years from the filing date. In some ways, this makes you a better credit risk than someone who has the option of filing bankruptcy. Credit card companies know this and will begin sending you credit card offers. But beware. These offers usually involve onerous terms such as no grace period for credit purchases

(interest is charged from the day of the purchase), annual fees, high interest rates, high late payment fees, etc.)

It is probably a good idea to avoid these kinds of credit cards. The better option to start rebuilding your credit is to obtain a secured credit card. Here's how it works – you deposit a sum of money with the secured credit card company, say \$500 or \$1,000. They then issue your credit card to you with a credit limit that matches the amount of your deposit. The company has no risk because they hold your deposit.

If you maintain a good payment history with your secured credit card, after about a year, they will offer you a traditional credit card that does not require a deposit of money.

If you maintain good spending habits, you should qualify for a mortgage loan approximately two years after your bankruptcy.

CHAPTER FOUR

Bankruptcy Myths

Myth #1: You'll lose everything/you'll lose nothing

Most people who file a Chapter 7 bankruptcy are able to keep most, if not all of their assets. You need to consult with an experienced bankruptcy attorney to help you understand whether or not your assets are at risk in bankruptcy.

Client Experience

A man inherited an annuity from his deceased mother. He thought that it was a retirement annuity. When he filed bankruptcy, he listed it on his petition and said that it was exempt (retirement annuities are usually exempt). The trustee did her investigation and determined that this was just an ordinary annuity – not a retirement annuity. The exemption claimed by the Debtor did not apply and the trustee took the annuity and distributed the money to the Debtor's creditors.

When you have assets that are not exempt, there may be still be a way to protect them. Pre-bankruptcy planning, you may help preserve your unexempt assets.

Client Experience

A woman had a little too much monthly income to qualify for a Chapter 7 bankruptcy and also had too much equity in her paid-off car. The solution: take out a title loan on her car. This provided a monthly payment, which is an allowable expense. Her disposable monthly income was now within acceptable limits to qualify for Chapter 7. At the same time, the loan on the car reduced her equity to within the allowable exemption limit. Of course, she now had the loan proceeds which could not be exempted. But she was able to spend that

money on her rent, utilities, groceries, and other items before she filed her bankruptcy.

Myth #2: It's always better to avoid bankruptcy and pay your debts

If you have the ability to pay your debts, you should do so. Bankruptcy's purpose is to help those who cannot pay their debts or are only able to pay their debts by sacrificing the necessities of life. The purpose of bankruptcy is to give you a fresh start when dealing with your debt has become overwhelmingly difficult. If paying your debts means that you have to sacrifice for a year or two by giving up your vacations or having to work a second job, then that may be the better choice.

But if your attempts to pay your debts would result in working so much that your health suffers or prevents you from leading a normal life for years on end, then bankruptcy is probably a good option. If you find yourself only able to make the minimum monthly payments on your credit cards, it can take 20 years or more to pay them off.

Myth #3: Filing bankruptcy is a personal failing/filers are financially irresponsible/only deadbeats file bankruptcy

Although there are some people who "game the system" and file bankruptcy without first making an honest attempt to responsibly handle their debt, the vast majority of bankruptcy filers are people who have made an honest effort but are just in too deep. Health issues that result in huge medical bills, dishonest employees who embezzle money from your business, downturns in the economy that result in

a job loss, and other such occurrences may put you in such a precarious financial situation that bankruptcy is the best way out.

Myth #4: Filing will ruin your financial future

Bankruptcy will impact your ability to obtain credit for a year or two but you will be able to recover completely. Bankruptcy can give you a ‘clean slate’ from which you can build a new financial future. Everyone’s situation is different. For some, bankruptcy is not the best option. For others, it is. You should engage the services of an experienced bankruptcy attorney to help you evaluate your circumstances and determine your best solution.

Myth #5: If married, both spouses must file

You may file bankruptcy even if your spouse does not. But be aware that your non-filing spouse’s income and assets must be evaluated in the bankruptcy. California is a community property state which means that your debts are usually considered community debts. In other words, your spouse may have some liability for your debts. When just one spouse files bankruptcy, the bankruptcy petition must include an analysis of the total household income.

If the non-filing spouse’s income is so high that the other spouse cannot qualify for a Chapter 7 bankruptcy, then a Chapter 13 repayment plan is the only viable bankruptcy option. Some couples have been known to divorce or go through a legal separation in order for one spouse to qualify for a Chapter 7 bankruptcy. This is an extreme measure but may be the only way out of the burden of crushing debt incurred by one spouse.

Client Experience

TIP: BE CAREFUL WHOSE ADVICE YOU TRUST! A husband and wife came to see us regarding the husband's debts. Before getting married, they checked with a CPA who told them that they could get married and the husband's debts would not affect the new wife. When the husband sought our help in filing bankruptcy, we had to inform him that the bankruptcy analysis required the inclusion of his wife's income. He did not qualify for Chapter 7 now, but would have if he had filed before the marriage. They decided to divorce so that he could file bankruptcy and rid himself of the debt. It never hurts to get a second opinion.

Myth #6: You can run up your credit cards right before filing and then discharge the debt

If you do this, you take the risk of going through the bankruptcy process only to learn that your debts are not discharged. In general, once you decide to file bankruptcy, you should not use your credit cards at all. If you have an emergency for necessary living expenses, it might be acceptable to use a credit card shortly before filing bankruptcy but you should definitely consult a bankruptcy attorney before doing so.

Myth #7: You can only file bankruptcy once

As long as you follow the rules, you have the ability to file bankruptcy as many times as you need. The waiting period between bankruptcies is measured from filing date to filing date. Here are the basic rules:

If you file a Chapter 7 bankruptcy and obtain a discharge of your debts, you must wait at least eight years before filing another Chapter 7.

If you file a Chapter 7 and obtain a discharge, you must wait at least four years before filing a subsequent Chapter 13 bankruptcy (unless the Chapter 13 is a 100% plan).

If you file a Chapter 13 and complete the repayment plan and receive a discharge, you must wait at least six years before filing a subsequent Chapter 7 bankruptcy

If you file a Chapter 13, you must wait at least two years before filing a subsequent Chapter 13.

If you are a serial filer (a person who abuses the system by filing multiple cases in an effort to thwart your creditors' collection efforts without finishing the bankruptcy process) the automatic stay is very limited in the subsequent bankruptcy.

Myth #8: You'll lose your house

You can protect your home equity with the homestead exemption. The exemption amount varies with your circumstances. A single person can protect \$75,000 in home equity. A married couple can protect \$100,000. A person 65 or older or a disabled person of any age can protect \$175,000. If you have excess equity, over and above your maximum homestead, then the trustee may sell your home and hand you the money that represents your exemption. In that case, you will have to move. However, the trustee will usually negotiate with you. You may be able to pay the trustee some money and retain the house. Also, be advised that the trustee must factor in the cost of commissions and closing costs in deciding whether or not to sell your home.

Example: You and your spouse own a home worth \$300,000. You still owe \$190,000 on your mortgage which means you have \$110,000 of equity. But your homestead exemption is only \$100,000. You can't protect all of your equity with the homestead exemption but your home is still safe because the trustee would have to pay approximately \$24,000 in commissions and closing costs. Since selling the home would not generate any money for your creditors, the trustee won't sell it.

Here's how this example works:

Sale Price:	\$300,000
Mortgage payoff:	(\$190,000)
Commissions & closing costs:	<u>(\$24,000)</u>
Net Sales Proceeds:	\$86,000

The sale would only produce \$86,000 – not enough to pay you your homestead exemption. Your home is safe.

In order to justify the sale of a Debtor's home, the courts require that there be a "meaningful distribution" to the creditors. A meaningful distribution has been defined as 10% or more of the debt owed by the Debtor.

Let's go back to our example and assume that our Debtors have \$50,000 of credit card and medical debt. Ten per cent of that would be \$5,000. In order for the trustee to sell the house, he/she would have to generate at least \$5,000 for the creditors.

In our example, the trustee would not be allowed to sell the house unless the sale price is at least \$320,000.

Sale Price:	\$320,000
Payoff mortgage:	(\$190,000)

Commissions & closing costs: (\$25,000)

Homestead exemption: (\$100,000)

Net proceeds for Creditors: \$5,000

Note: Your homestead exemption is not limited to a traditional house. If you live on a boat, in an RV, or a mobile home, the exemption can be used to protect that asset.

Myth #9: Anyone can successfully file bankruptcy without an attorney

While some people are able to navigate the bankruptcy process without an attorney, it can be dangerous for people with assets. When you represent yourself in a legal matter such as bankruptcy, you are acting “pro se.” For most bankruptcy filers, the guidance of an experienced attorney can make the difference between a successful experience and one that turns into a disaster. If your case is simple and straightforward, then you may be able to do it yourself. But if you have assets and you don’t understand the ins and outs of exemptions, you could end up losing those assets to the trustee. The fees paid to a competent bankruptcy lawyer are worth it. Imagine that you are taking your first rafting trip down the rapids. Would you rather navigate the rushing river waters yourself, having no prior experience or would you rather have an experienced guide there to help keep your raft moving past the danger spots to safety?

Myth #10: I will lose my business if I file bankruptcy

It is not likely that you will lose your business when you file a personal bankruptcy. Whether or not your business will be affected depends on several factors – is your business a corporation, LLC, a partnership, or a sole proprietorship? Are there other owners? Does the business own assets that

cannot be exempted? An attorney can help analyze your particular situation and let you know if there is any risk to your business.

Myth #11: You can't discharge taxes in bankruptcy

Taxes can be discharged in bankruptcy if they meet the rules that have been established in the Bankruptcy Code. Those rules differ depending on the type of tax involved. For income taxes, there are three rules that must be met:

- 1) The tax return was due more than three years prior to the filing date of the bankruptcy. If you filed for an extension, that must be factored in.
- 2) You must have filed the tax return at least two years prior to the bankruptcy filing date.
- 3) At least 240 days must have elapsed since the taxes were assessed.

Other types of taxes may have different rules for discharge. Some taxes are not dischargeable at all. Be sure to check with your attorney and be willing to spend a little extra if a tax analysis is warranted.

Client Experience

A new client came into our office to discuss some tax issues. This client had previously filed a bankruptcy using a different attorney who did not analyze the client's tax transcripts. We ordered transcripts and performed the analysis. We discovered that if the bankruptcy filing had been postponed just one week, the client would have been able to eliminate several thousands of taxes. Make sure your attorney is familiar with the rules for discharging taxes so that you get the maximum benefit from your bankruptcy.

Client Experience

TAXES DISCHARGED! Client owed over \$1.2 million to the IRS and hundreds of thousands to the Franchise Tax Board. The federal government would not issue him a passport because of the huge tax debt. The state would not renew his driver's license. The state also threatened to publish his name on their list of the top 500 delinquent taxpayers. Fortunately, this client's tax debt met the 3 rules for discharge in bankruptcy. His income had been dramatically reduced so he qualified for Chapter 7 bankruptcy. All of his tax debt was discharged. The tax liens that had been filed by the federal and state governments were of no effect because the client did not own any real property. He is now debt-free.

Myth #12: You must already be behind in your payments before filing bankruptcy

Most people don't consider bankruptcy until they've already hopelessly behind in their monthly payments. But this is not necessary. If your current income and allowable expenses qualify you for bankruptcy, you may file right away. There is no requirement that you already have fallen behind in your payments.

Myth #13: I don't have to list all my debts

You are required to disclose all of your debts and all of your assets when you file bankruptcy. Failure to do so, if intentional, is considered bankruptcy fraud and could result in you not receiving a discharge. Your bankruptcy petition is signed under penalty of perjury, so be sure to tell the truth.

Myth #14: I will lose my job

It is against the law for your employer to fire you for filing bankruptcy. Your employer will not be notified of your bankruptcy unless they are one of your creditors.

Myth #15: Everyone will find out I filed bankruptcy

Only those persons who proactively search bankruptcy records will find out about your bankruptcy. The information is not published in newspapers or any other medium. Unless you tell others that you filed bankruptcy, it is not likely that they will find out.

CHAPTER FIVE

Frequently Asked Questions

How long will it take to rebuild my credit?

You will begin receiving credit card offers within the first few months of filing your bankruptcy. These initial offers are for cards with very high interest rates, no grace period, annual fees, and high late payment penalties. You should avoid applying for these credit cards. After about one year, you should start receiving better credit card offers. If you handle your finances wisely and stay out of trouble, you should qualify for a mortgage in as little as two years.

One of the best ways to begin rebuilding your credit is to obtain a secured credit card. You deposit a certain sum of money with the secured credit card company, which they hold as collateral. The card they issue to you will have a limit equal to your deposit. If you use the card and make your payments on time, then the company will generally issue a regular credit card to you after about one year.

Will I lose my home, car, retirement account, or other assets?

The purpose of bankruptcy is to provide you with a fresh start – not make you destitute. The law allows you to keep your property when you file bankruptcy, with certain limitations. Most filers get to keep all of their property through a series of exemptions. There are limited exemptions for your house, if you're a homeowner. There are also limited exemptions for such things as cars, tools, jewelry, life insurance policies, and certain types of retirement

accounts. The extent of the limitations depends upon which system of exemptions best suits your situation.

There are a few types of assets that enjoy unlimited exemptions. These include household goods and furnishings (as long as each item is worth \$650 or less), clothing, ERISA qualified retirement accounts, and worker's compensation claims.

The law governing exemptions in California is found in C.C.P. Sections 703 and 704. You will want to consult with an attorney to understand how these exemptions apply to you.

Can I keep one of my credit cards?

No. The credit card companies will close your account when you file bankruptcy. They will do so even if you have a zero balance and a perfect payment history. If you need a credit card, you can get a secured credit card right away.

Is bankruptcy better than credit counseling?

Credit counseling works well for some people and not so well for others. A lot depends upon your creditors. The main advantage that bankruptcy has over credit counseling is that credit counseling requires some cooperation on the part of your creditors. In bankruptcy, the creditors have no control. One very important thing to remember about credit counseling services is this – when they negotiate a discounted payoff with a creditor, that creditor will issue a 1099-C (Cancellation of Debt) with the IRS. The IRS will treat the forgiven debt as income and will expect you to pay taxes on it. If you were insolvent when the debt was forgiven, you can avoid this kind of tax liability by filing Form 982 with your tax return. When you file bankruptcy,

the creditors do not issue a 1099-C, so filing form 982 is unnecessary.

What if I make too much money to qualify for Chapter 7?

If the analysis of your income and your allowable expenses shows that you have too much money left over each month to qualify for a Chapter 7 bankruptcy, then your next best alternative is probably a Chapter 13 bankruptcy. In a Chapter 13, you make monthly payments to the bankruptcy trustee who, in turn, distributes that money to your creditors.

A Chapter 13 bankruptcy can be very complex. The size of your monthly payments depends upon the amount of and nature of your debts as well as your disposable monthly income. Your bankruptcy attorney will let you know approximately how much you'll have to pay each month. In most Chapter 13 bankruptcies, the creditors only receive a percentage of the amount owed to them. At the end of the Chapter 13 plan, any remaining debt owed to the creditors is discharged.

What will happen to my cars?

If your cars are paid off, you are allowed to use the motor vehicle exemption to protect your equity. This is a limited exemption and if your equity in a car(s) exceed(s) the allowed exemption, then you will probably have to pay something to the trustee in order to keep the car(s).

Some people take out a title loan prior to filing bankruptcy in order to reduce their excess equity so that the car is protected when they file their bankruptcy petition. Of course, the money they borrow against the car is not exempt, so they

must postpone filing their bankruptcy until the borrowed money has been spent.

If you have a loan on your car, you have three alternatives in bankruptcy:

- 1) Surrender – if you no longer want the car, you can surrender it to the lender. They will not be allowed to pursue you for any deficiency that results from their sale of the car.
- 2) Reaffirmation – you can enter into a Reaffirmation Agreement which allows you to keep the car and keep making your payments as originally agreed.
- 3) Redemption – if your car is worth less than the amount of your loan, you can file a Motion to Redeem. This is found in Section 722 of the Bankruptcy Code. If granted by the court, this motion allows you to retain the car for its actual value. For example, if your car is worth \$12,000 and your loan balance is \$19,000, a successful Motion to Redeem would allow you to obtain title to the car for \$12,000. If you don't have that kind of money lying around or cannot get it from friends or family, there are some lenders who specialize in making loans in this situation. The interest rates are high but it could be worth it. You would have to “crunch the numbers” to know if this would be beneficial to you.

Will bankruptcy help me with my business debt?

If you have a sole proprietorship business, your personal bankruptcy will include your business debt. If your business is a partnership, your bankruptcy will eliminate your obligation but your partner(s) will still be liable for the full amount of the debt. If your business is a corporation or an LLC, your personal bankruptcy will eliminate any personal

guarantees that you may have given for the corporate debt. The corporation or LLC will still be liable.

What is the Means Test and what happens if I fail it?

The Means Test is the first hurdle in qualifying for a Chapter 7 bankruptcy. If your household income is at or below the median household income of other similar size households in your county, then you pass the Means Test. If you make more than the median, you fail the Means Test.

The Means Test analyzes your household income for the six full months prior to the month of your bankruptcy filing. For example, if you are going to file your bankruptcy in July, the Means Test evaluates your household income from January 1st through June 30th.

You may still be able to file a Chapter 7 bankruptcy after failing the Means Test. If you have suffered a job loss or other life event that has caused your income to drop, and/or your allowable expenses to soar, then you may still be able to file a Chapter 7 bankruptcy.

If most of your debt is non-consumer debt, you are not required to take the Means Test. If you are a disabled veteran, in the reserves, or National Guard, you may not have to take the Means Test.

How can I make creditors stop harassing me?

If you can't pay the debt and you're not in a position to negotiate a mutually agreeable repayment plan, then you could try credit counseling, which may or may not work in your circumstances. If you file bankruptcy, your creditors

are immediately prohibited from contacting you in any way in order to collect the debt.

There is temporary way that will likely stop the harassing calls and letters. If you meet with a bankruptcy attorney and let your creditors know about it, they will generally back off and leave you alone for a time. Of course, they will need the name and phone number of the attorney in order to confirm that what you have told them is true.

Can I discharge my student loans in bankruptcy?

In general, student loans are not dischargeable in bankruptcy. There are some exceptions if you attended a private, for-profit school that goes out of business before you received your certificate or diploma. Exceptions may also apply if the school gave you assurances regarding future employment that were untrue or overly optimistic.

You may be able to get into an income driven repayment plan which could give you more affordable payments. If your circumstances warrant, you might even have a repayment plan that requires zero payment each month. If that happens, you are still considered to be in compliance on the loans.

The dischargeability of student loans is a hot topic and will likely be tested in the courts in the near future. Be sure to research this issue if you are considering bankruptcy and you have student loan debt.

What happens if I forget to list a debt on my bankruptcy petition?

If the omitted debt would have been discharged if it had been included, then the debt is eliminated despite being left off the petition. This principle was established by a case known as *In re Beezley*. You should strive to be as accurate as possible on your bankruptcy petition but it sometimes happens that a debt gets left off. If an omitted creditor contacts you after your bankruptcy, just provide them with a copy of your Discharge Order. If they continue to harass you, then let your attorney know.

Will I lose my tax refund?

If your meeting with the trustee occurs near the end of the year or at the beginning of the year, this could be an issue. If you have an exemption to protect the tax refund, then there's no problem. But if you don't have any available exemptions remaining, then the trustee can and will take your refund and distribute the money to your creditors.

If you are going to receive a refund and you can't exempt it, you may want to postpone filing your bankruptcy until you've had a chance to receive the refund and spend it down. Check with your attorney regarding how to spend this money so that you don't get into trouble.

How can I protect and keep my property in bankruptcy?

In California, there are two systems of exemptions. One system, referred to as the 704s is primarily used when the debtor has equity in their home. The other system, referred to as the 703s is better for other types of assets, such as cash in the bank. Each system has certain limitations for most types of property. You will definitely want to have your

attorney evaluate the nature and value of your assets so that you can protect them to the fullest extent possible.

What is a bankruptcy trustee and what does he/she do?

A bankruptcy trustee is assigned to each bankruptcy case. The trustee has the responsibility of liquidating any unexempt assets for the benefit of your creditors. The trustee also makes sure that the debtor is not committing bankruptcy fraud. He or she will review your bankruptcy petition and ask you questions at the Section 341(a) meeting of creditors.

If you have not been truthful on your bankruptcy petition, the trustee is likely to find out about it. The consequences can be severe. Make sure you tell the truth on your petition and at your meeting with the trustee.

Will I have to go to court and see a judge?

In an ordinary bankruptcy case, you will never have to go to court or see the judge. If there are extraordinary circumstances in your case, such as a creditor filing an adversary proceeding because you committed fraud, then you may have to go to court. But this is a rare occurrence.

If you are truthful with your attorney, he or she should be able to identify potential hazards and can advise you regarding your options.

What is the difference between secured debt and unsecured debt?

Secured debt is debt that has been collateralized. For example, a mortgage is secured debt because the lender can foreclose on the collateral (the property) if you default on the loan. If you fail to make your car payments, the lender can repossess the vehicle. If you finance furniture or appliances, the loan is often secured by the property.

Unsecured debt does not have any collateral. Most credit cards, medical bills, and personal loans are unsecured. Even if you bought appliances with your credit card, they are usually not secured by the asset.

How does bankruptcy affect lawsuits and judgments?

When you file bankruptcy, Section 362 of the Bankruptcy Code (the Automatic Stay) brings all collection activities to a screeching halt. Lawsuits go away. Garnishments stop. Collection calls and letters cease.

If you have been sued and the creditor has recorded an Abstract of Judgment with the county recorder, then that judgment becomes a lien on any real estate you own in that county. Other than that, the ability of the creditor to come after you to collect on a judgment is eliminated in bankruptcy.

If a judgment lien has attached to your real estate, it will remain in place until it expires – ten years. If you file bankruptcy, it is possible to remove a judgment lien if it impairs your homestead exemption.

This can get complicated so be sure to consult your attorney.

There are some rare exceptions where a lawsuit is not automatically eliminated by bankruptcy. If you are being sued for fraud, you may not be allowed to discharge that

obligation. Also, if you are being sued for damages caused by you while driving under the influence, that obligation is not dischargeable. The creditors in these cases can petition the court for permission to press forward with the lawsuit or they can wait until your case is closed before continuing.

What happens if I inherit money or property during my bankruptcy?

If you inherit anything during your bankruptcy or up to six months after the filing date of your bankruptcy, you must notify the bankruptcy trustee. Whatever you have inherited becomes part of your bankruptcy estate and if you are not able to exempt it, the trustee will liquidate it for the benefit of your creditors.

Most bankruptcy cases are completed within about four months after the filing date. If you inherit anything after your case is closed but before the six months has passed, be sure to tell the trustee. Do not attempt to hide the fact that you've inherited property because that would be bankruptcy fraud and could land you in big trouble.

By the way, the six months is not based on when you actually receive the property, it's based on the death date of the person from whom you are inheriting it.

Does bankruptcy stop foreclosure or repossession?

Yes! All collections stop upon the filing of your bankruptcy, including foreclosures and repossessions. If your mortgage lender or car lender want to proceed with foreclosure or repossession after you file your bankruptcy, they must file a motion with the court asking for permission. Most don't bother with this motion but some do. Once your case is

closed, the lender may resume the foreclosure or repossession process unless you've worked things out with them during the bankruptcy.

The Bankruptcy Code can be used very effectively to both eliminate consumer debt and prevent foreclosure. A very sophisticated strategy, commonly referred to as a Chapter 20 bankruptcy can work wonders in certain circumstances. If you have a lot of consumer debt and you haven't paid your mortgage for several months, ask your attorney if a Chapter 20 can help. This strategy is beyond the scope of this book, so we won't try to explain it here.

What is the Automatic Stay?

The automatic stay is found in Section 362 of the Bankruptcy Code. When you file bankruptcy, the automatic stay immediately prohibits any of your creditors from pursuing their claims against you. They are no longer allowed to call you or send collection letters. If they are suing you, they must stop the legal action. If you've already been sued and your wages are being garnished, the garnishment must stop. If you are in foreclosure or being evicted or your car is about to be repossessed, all of those activities must stop.

The automatic stay gives you immediate relief from your creditors. Those debts that are dischargeable in bankruptcy will be eliminated entirely. If you have debts that are not discharged in bankruptcy, you will eventually have to pay them but the creditors cannot resume their collection activities until your case is closed or until they file a motion with the court for relief from the stay and the judge grants the motion.

Will my employer be notified if I file bankruptcy?

Unless your employer is one of your creditors, they will not be notified.

Can I list only those debts that I want to discharge?

No. The law requires you to list all of your debts. If there is a debt you wish to pay despite the fact that it can be eliminated in bankruptcy, you may do so. But don't be fooled into thinking that your credit card company will allow you to keep a credit card just because you're in good standing with them. They won't.

Do I have other options other than bankruptcy?

Yes. You can negotiate repayment terms with your creditors. You can enlist the services of a debt consolidation company or a credit counseling agency. You can sell some of your property to pay your debts. You can change your lifestyle to make more money available for your creditors. You can take a second job to generate more money to go towards your debt. Most people who file bankruptcy have already considered doing or have done one or more of these things. Very often, a person's debt is so overwhelming, that they just need to wipe the slate clean and start over. Bankruptcy can give you the fresh start that you may need.

What will happen to my co-signers?

Your co-signers will still be liable for any contractual obligations they undertook. The creditor will still be able to pursue your co-signers in order to collect the debt. The reason you have co-signers is because you were not a good

enough credit risk on your own to get the loan. If you want to protect your co-signers, you can reaffirm the debt, if it is secured by collateral.

How can I find out if I qualify for bankruptcy and if I'll lose any property?

A bankruptcy attorney should be able to give you a reasonably accurate idea regarding what a bankruptcy can and cannot do for you. They will need to know how much money comes into the household each month, the sources of that income, and some other details about your household. They will also need to know about your assets in order to determine what can be exempted and what may be lost. Most attorneys will offer a free initial consultation but they may not be able to give you a definitive answer in that short a time. I believe that you should be able to find out what bankruptcy can do for you before you spend a lot of money. The only expense my clients have before finding out if bankruptcy is a good option for them is the cost of the credit report.

What are the two classes I must take in bankruptcy?

Prior to filing bankruptcy, you must take a credit counseling class. It takes a little more than one hour and you will be issued a certificate that has to be submitted to the court when you file your bankruptcy petition.

After your bankruptcy has been filed and before your case is closed, you must take a financial management class. This class takes about two hours and you will receive a certificate when you complete it. This certificate must be filed with the court before your case is closed or you will not receive a discharge of your debts.

Client Experience

TIP: DON'T FORGET TO TAKE THE FINANCIAL MANAGEMENT CLASS! If your Chapter 7 case is closed before you take the Financial Management class, you will not receive a discharge of your debts. This is disastrous since the discharge is the reason you filed the bankruptcy. But all is not lost. You can reopen your case by paying an additional filing fee. Once the case is reopened, you can take the class, file the certificate with the court and obtain the discharge. There appears to be no time limit for this procedure. We know of a Debtor whose case was closed without discharge because he neglected to take the Financial Management class. Eleven years later, one of his old creditors restarted their collection activities. He reopened his bankruptcy case by paying a filing fee, took the Financial Management class, and obtained his Discharge Order.

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What is a Reaffirmation Agreement?

As indicated by its name, a Reaffirmation Agreement is an agreement between you and the lender that you reaffirm the terms of your loan. This agreement is generally used when you want to keep your car or your house and continue making payments according to the original contract.

Can I surrender my car in bankruptcy?

Yes. Surrendering a vehicle in bankruptcy is often the best way of getting out from under a car payment for a car that you no longer need or want. In bankruptcy, the lender may not come after you for any deficiency like they can when a car is repossessed.

Can I protect my assets by transferring them to friends and relatives right before filing bankruptcy?

No. This is considered fraud and the trustee can undo any such transfers and take the assets back. Don't do it! If the person no longer has the asset, the bankruptcy trustee can sue them.

Can I pay back friends and relatives before filing bankruptcy?

If you pay back certain debts to the exclusion of others, this may be considered preferential treatment and the bankruptcy trustee can sue the friends and relatives (those who are considered "insiders") to get the money back. If you do pay back your friends and relatives without paying other creditors also, you must wait one year before filing your bankruptcy. If you give preferential treatment to creditors who are not insiders, you must wait 90 days before filing your bankruptcy. Your bankruptcy attorney can help you determine if someone is an insider or not and whether or not your payment would be considered preferential treatment.

Can I get rid of my timeshare in bankruptcy?

Yes, you may surrender your timeshare in bankruptcy. Timeshares come with fees that you may no longer wish to pay. If you want to keep the timeshare, you may be able to do so, even if you can't exempt it. Timeshares can be difficult to sell, so your bankruptcy trustee may "abandon" it. When a trustee abandons an asset, he/she leaves it in the hands of the Debtor. There is no guarantee that you'll be able to keep it, but chances are good that you'll be able to, if you like.

Will the trustee take my tax refund?

If you are filing a bankruptcy near the end of the year or the beginning of the year, the trustee will ask if you are going to receive a tax refund. If you are, and you don't have any available exemptions to protect it, the trustee will take it for the benefit of your creditors.

If you are going to receive a refund that cannot be exempted, you may want to postpone filing your bankruptcy until after you have received and spent the refund. Be careful about how you spend it because the trustee may ask what you did with the money. Talk with your bankruptcy attorney about this before you file so that you avoid potential problems.

APPENDIX

Some Fresh Start Stories from Our Clients

During this horrible time in our lives, we had IRS debt as well as credit card debt (over \$100,000). Collection agencies were calling almost daily. Tim was able to resolve the problems we faced. It was imperative that we keep our home, which we were able to do. Tim was able to get the collection agencies off our back, which helped alleviate the stress in our lives. The massive amount of paperwork that needed to be completed was done in a timely manner and correct. It was an incredible feeling to put this in capable hands.

P.S. & R.S., Palm Desert, California

I came to the Tim Huyck's when I did not know what to do anymore - living paycheck to paycheck & being a single mom is an awful feeling. In my situation, I felt I was drowning in my debt. My big concern was how would I pay for an attorney to help me. We decided a chapter 13 would be best. I have approximately 22,000.00 in debt. Tim will do whatever he can to help and make your life better and less stressful.

S.D.C., Palm Desert, California

Your office was invaluable in helping us through our bankruptcy after the recent economic downturn in the Coachella Valley. Both our business and personal finances were becoming overwhelming both financially and emotionally. We were dealing with past due bills with vendors, financial institutions, lenders, and landlords. You and your staff worked with us through the process of liquidating our corporation and filing personal bankruptcy. Each step along the way you and your staff answered our questions clearly and provided legal guidance. Thank you for being our "guiding light" though a very difficult life experience.

R.M., Palm Desert, California

After experiencing several years of compounding IRS tax debt, combined with very high revolving credit card balances, we turned to Tim Huyck. We found him to be a very patient, understanding and competent lawyer. Tim didn't rush through issues and he slowly gathered all the data/information he needed to make an educated decision on which way would be best for us to proceed. After several free consultations, Tim arrived at a solution that would allow us to rid ourselves of IRS and revolving debt. We made the decision to go forward primarily because of Tim's professionalism and caring attitude. No one wants to be faced with the decision on whether or not to file bankruptcy, but putting all of our cards on the table, as Tim did, made the decision easy and logical.

The process was lengthy, but Tim walked us through each step and we finally made it to "our day in court" where our bankruptcy was approved, allowing us to focus on our future and stop thinking about the present. We feel Blessed that we are in this journey and we're extremely excited to complete our commitment.

D.E.L./L.L.L., La Quinta, California

When I sat down with Tim, I felt that my worries and troubles were immediately managed. I felt like I was at home and it was time to build a new house. Tim really took his time with us. Tim was warm ... Tim was open. Tim listened. Tim was kind. Tim was always there when we had questions. Tim's approach to our challenges made us both feel that there was a new "fresh start"- "a life anew" Never once did Tim make us feel bad about the ABSOLUTE MESS that we were in – he shared stories of his challenges and merely indicated that there were many people in the same situation. We did not feel alone

To this day, I am back on my feet both financially and emotionally; I really want to thank Tim for all that he did for us!

If your personal or business affairs are leading you to financial and emotional pain – I highly recommend Tim and his Team.

J.E., La Quinta, California

After experiencing unexpected illness, I was out of work on disability (1 year). My insurance carrier had denied my claims 4 times and I found myself drowning in medical bills and debt. I felt it necessary to cash in my 401k in an honest attempt to resolve my debt, get my head above water, and stop the creditors from hounding me, but I was still unable to regain my financial footing.

I only wish I had worked with Tim a few years earlier. He would have guided me on the bankruptcy process, how to protect the \$100k in my 401k, avoid the imposed tax penalties by cashing in my 401k and a host of other barriers I was encountering at the time. I finally wound up declaring bankruptcy anyway, but I would have kept my 401k savings intact and I would have gained a few years of needless worry and anxiety over my situation and how to handle it. The team at the Tim's office is caring, calm, and reassuring. The bankruptcy process was actually very simple and Tim and his staff handled everything professionally and successfully.

If you are contemplating bankruptcy or need answers regarding any financial situation or need informed answers about bankruptcy, I would highly recommend this group of professionals. They never looked down on me, the team guided me, answered many questions during the process and Tim even spoke with my father to assure him everything would be ok and helped me find balance in a bad situation that I was financially unprepared to handle.

D.Y.R., La Quinta, California

Personal bankruptcy is a very tough issue. After experiencing an accident that made me pretty much

physically dependent for two years I really felt lost as to a solution for past and mounting financial bills.

At my initial consultation with attorney Tim Huyck he made me feel very comfortable with my situation and fully explained all options. During the whole process Tim was there as my advocate. No pressure, just help. It is a very difficult personal process but was made as easy as it can be.

No one wants to go through something like this but if it is necessary I would recommend Tim Huyck to anyone.
D.B., Palm Desert, California

Lost in a whirlpool of debt with no hope of getting out is the world I lived in. Some debt self-induced and other due to unforeseen circumstances. It looked as if my entire life would be spent juggling bills. A suggestion was made to consider bankruptcy, I had not given it a thought.

I Scheduled an appointment with Tim Huyck. My life changed that day. Tim told me that I was not alone in my struggles. Credit cards, payday loans, IRS, and even title loans were all a possibility. We continued on and the rest is history. My life has changed dramatically. So much so that I am retiring next year. Life is good again.
J.Z., Rancho Mirage

Their help was so easy I would recommend my attorney Tim Huyck to any one with money problems. He made my bankruptcy so easy, it changed my life for the better. Great attorney. Everything he said was correct. Things went so easy. Life is much better now.
P.E.S., Cathedral City, California

I am a 73 year old disabled retiree living on a fixed income from Social Security and a pension. After approximately 12 years of retirement I found myself \$60,000 in debt from the purchase of a trailer to live in and then the maintenance costs and improvements that it needed.

Also, I found myself using credit cards for car repairs, and unanticipated medical and especially dental bills. I had a perfect credit rating and no debts when I retired, but I was very naive and uninformed about the expenses that I would encounter and how my needs would change as I aged and finally found myself with no alternative but to file for bankruptcy.

I was very apprehensive and depressed and didn't know what to expect. But from my very first appointment with my lawyer Timothy Huyck, I felt listened to, understood and supported. Timothy was very clear and thorough in explaining the entire process to me from beginning to end and exactly what to expect and what would be expected of me. That was very comforting, because having information and knowing what steps to follow is always better than imagining things.

By not having crushing bills to pay, I had enough money freed up to pay the fees and live with a relief that I hadn't known for years. The two obligatory courses I took gave me insight into my habits and tendencies and some concrete information to work with so I don't get myself into debt again. All in all, I am very glad I filed and would like to extend my gratitude to Timothy Huyck for his kind, gentle and respectful guidance through what was at the start a very unsettling and stressful prospect.

P. B., Desert Hot Springs, California

I was "beside myself." I already had a consolidation debt group and I had more problems keeping up with the payments. I had approximately \$70,000 of debt. Then, I consulted with a Financial Planner who suggested I do a reverse mortgage! I did not want a reverse mortgage. My spouse had passed away and I had no other help.

Tim Huyck and his staff came to my rescue. After meeting with them, I had assurance that they could help me through

these dark days of debt. They suggested that I file for a Chapter 7 Bankruptcy; and coached me on the steps required to do this. I felt so relieved and grateful for their help because I had previously thought that Bankruptcy was a permanent stigma to avoid. It gave me a new start and attitude. I would recommend this to anyone who would have similar problems with debt!

A.B., Palm Desert, California

My Lawyer was Tim. Not only have I recommended him to others, he guided me with kind hands, gave me plenty of Kleenex, which I needed, answered every question stupid or smart, and took the time to calm me down, and make my life so much better.

Of course, I had no idea about bankruptcy, nor ever thought in a million years I WOULD GO THRU IT, so it was GREAT to know somebody with such knowledge and he really guided me thru everything. Even though I asked question after question with tears. Not only was Tim WONDERFUL, but the front office, Jaelyn was just as fantastic and went beyond what a front office would do.

Tim and his staff not only saved me, my business and my house, and did so kindly. I honestly from the bottom of my heart would recommend them to anybody that found them self in a pickle. Again, if anybody needs the help, is clueless about bankruptcy as I was, please go Tim and his staff. Bankruptcy is scary, you think your life is over, I thought I would be homeless and lose my house. Yet, it ended being the only choice I could do to save what I had, and only TIM could have done it.

C.C., Palm Desert, California

I am most happy to attest to what Tim Huyck and his staff have meant to me. I was facing filing bankruptcy to cover approximately \$50,000 in federal income taxes and credit card debt of approximately \$85,000. My IRA had been depleted, and my alternatives few, if any.

I was extremely anxious, apprehensive, confused, unsure and generally desperate for help and advice. The various members of the staff whom I met in our first encounter put me in a much better frame of mind, allayed many of my fears, put a "face" on the unknown and were just generally reassuring. All members of the group have been kind and very helpful. In essence they have provided a calming effect which matched their obvious expertise in the field. I just have never felt abandoned.

As we enter the final phase of the process I am more at ease. I have a much greater sense of what I had to do and why, and am much less fearful of the whole process and course of action they have helped me choose. There can actually be a positive outcome with the aid of fine people such as these.

It has been with relief, gratitude, and pleasure that I have shared these thoughts in the hope someone else may benefit from this group's support and expertise. It can be a truly frightening experience for the uninitiated and unsupported!
D.H., Palm Desert, California

I was referred to Tim Huyck and his staff to help me resolve my back taxes. I owed well over \$180,000 in taxes and didn't know what to do or where to turn for help. The group was very prompt and professional . . . always greeted with a smile and handshake. The staff gave me options and explained everything extremely well. I'm very thankful to everyone there for helping me get back on my feet. I am forever grateful. Again, thank you.
D.N., Thermal, California

Before I retired we were able to afford the life style we were living. But then I had to retire because of medical reasons. We didn't know what to do with the debt we were able to afford before. We were referred to and met with Mr. Tim Huyck, and when we went to the creditor meeting and saw

how the other lawyers were so ill prepared we were so happy to have Tim Huyck in our corner. He was so professional compared to the other lawyers. Now our worries are no longer there.
O.R. & M.R., Indio, California

We are eternally grateful to Tim Huyck and his staff for their expertise in helping us navigate through our bankruptcy.

When we walked into their office, we were facing over \$150,000 in debt obtained by our business, but taken out in our name. We were afraid and didn't even know where to start. Mr. Huyck and the staff were great. They were on top of all communication with us and the court. When we initially went to our creditor meeting, we were knocked off our feet by the Chapter 13 Trustee. Mr. Huyck walked us through our options and later went back to court to take care of us. We ended up dismissing our case, as it wasn't what we had expected and Mr. Huyck and the staff continued to guide us through the next process. Our second round at bankruptcy was much more positive and we resolved our situation.

Since the creditor meeting, Mr. Huyck has continued to advise and help us, if something has come up from our case. Although it will take some time to recover from our bankruptcy, we feel very taken care of by Mr. Huyck and the group and know that if we need further assistance, we can contact them as needed.
B.R.S., Palm Desert, California

Due to an unexpected family crisis I lost the ability to keep up with my obligations. For someone who had been self-reliant since my 20s this was very hard to deal with. I tried working with a debt resolution company but they were unsuccessful in helping me. I was very humiliated and upset and heard the radio ad for Tim Huyck's office. I listened to the information and was emboldened to call. I was greeted

very professionally and subsequently treated in a way that calmed me and let me hope for a successful resolution.

The staff was able to take me from anxiety and humiliation by guiding through the process in a caring and non-judgmental way. I was made to feel that I could come through this situation whole and secure.

I am getting back on my feet and will be eternally grateful for the group. By the way, Mr. Huyck is an amazingly reassuring and professional man. I miss seeing him. C.B.,
Desert Hot Springs, California

After 2 job lay-offs and a cancer diagnosis, my financial situation became intolerable. I needed a fresh start. The staff at Tim Huyck's office were so helpful. They filed my case and I met with the bankruptcy trustee to confirm the details. It was that simple. Today, my life is back on track and I'm moving forward with a positive outlook.
B.L., Indio, California

We were referred to Tim Huyck who helped assist us through this difficult time.

We met him and instantly were impressed with the ease in which he handled our plight. He made us feel so comfortable, and ease the embarrassment we felt.

We were in debt for \$100,000+. He said he would help guide us through the bankruptcy and showed us ways which enabled us to make choices in order to hold on to our property. He was very honest and told us what could be at stake. We chose to go forward. Now almost three months later we feel so much more comfortable, relieved and grateful for the way Tim handled our bankruptcy and saved us ALL of our property. We will forever be grateful to Tim Huyck.
D & J, Palm Desert, California

After a thorough consultation, I decided that Chapter 13 was my best option. Tim Huyck was an incredible help and he went through everything in great detail so I always knew what was happening. He is very responsive and his office staff is very good as well.

While this is not a pleasant thing to go through, Mr. Huyck made it as free of stress as possible for me. Very professional work, approachable, and informative.
J.B., San Diego, California

Tim and his staff never made me feel uncomfortable in the process. They explained the steps and walked me through each in order to handle the impossible debts I had incurred.
J.M., La Quinta, California

I wanted to explain a little regarding my Bankruptcy. I was much in debt all with credit cards. I was always stressing over making payments to all of my creditors and actually trying to still have some money left for living expenses. I was pretty much living paycheck to paycheck. It was a horrible living experience.

That is when I decided to find a bankruptcy attorney and get some help. I called many places in the Coachella Valley. Some were a bit cheaper and some more pricey but I decided to go with Tim Huyck's office for the fact that they were very honest and helpful over the phone when I called to get my free estimate. I spoke with Tim Huyck and within the next week I went into their office in La Quinta and he was very helpful as well as the staff.

They submitted everything within a week. Now I can finally say I can breathe and be able not stress over so many payments. I can honestly say I am completely satisfied with the service that was given to me.
M.P., Coachella, California