
Frequently Asked Questions

About our Bankruptcy Legal Services

As with anything legal, there are unusual exceptions in bankruptcy law. Any answer in this "Frequently Asked Questions" section may be wrong in some exceptional case. If you answer my questions about property, debt and other matters, I can usually tell you exactly what will happen if you file bankruptcy. A lawyer can never guarantee to win a lawsuit. However, a bankruptcy is not a lawsuit where one side always wins and the other loses.

Some of this information is copied from the Federal Trade Commission website on consumer information: <http://www.ftc.gov/ftc/consumer.htm>. They have a lot of good information.

What is bankruptcy?

Bankruptcy is a legal proceeding in which a person who cannot pay his or her bills can get a fresh financial start. Bankruptcy cases are handled in federal court.

Can I file a bankruptcy?

Probably. You do not need to "qualify" to file a bankruptcy, and anyone can file. The question is whether bankruptcy is the right business decision for you and will solve your particular financial problems. The bankruptcy code was amended in 2005 to provide that a debtor would be denied a discharge if a debtor had received a discharge in a prior Chapter 7 case filed within eight (8) years of the filing of the present case.

Do I need to pass a "means test" to file a bankruptcy?

No. The Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCA) uses a complicated "means test" that involves your income, expenses and numerous other factors. This means test may affect the type of bankruptcy you file (Chapter 7 or 13), but it never means you cannot file a bankruptcy. The means test does not cause a problem for most people who need to file a bankruptcy.

What if I just don't feel right about filing bankruptcy?

Financial problems can be deeply disturbing and extremely stressful. You should not feel alone if you are embarrassed about considering bankruptcy. It is only natural that you would prefer to pay your bills, but bankruptcy may be your best option if you are not able to pay all your debt. Civilized societies provide a way to help people who cannot pay their debts. See Deuteronomy, Chapter 15. Bankruptcy is a business decision. I suggest that you let your lawyer advise you whether it is the right business decision for you.

What are the types of bankruptcy?

There are four types of bankruptcy cases:

Chapter 7. The basic idea in a Chapter 7 bankruptcy is to discharge (wipe out) your debts in exchange for your giving up property, except for "exempt" property that the law allows you to keep. Texas has the best exemptions in America, so all of your property will probably be exempt. Therefore, Chapter 7 usually gets rid of your debt, and you lose nothing. The Chapter 7 Trustee sells property that is not exempt and distributes the money to creditors.

Chapter 13. In a Chapter 13 case you file a "plan" showing how you will pay off some of your past-due and current debts over three to five years. This means that Chapter 13 costs you more money than a Chapter 7.

Chapter 11. Chapter 11 is a type of reorganization used mostly by businesses and a few individuals whose unsecured debts are over \$300,000. It is very complicated and expensive.

Chapter 12. Chapter 12 is only for family farmers.

What can Chapter 7 bankruptcy do for me?

Bankruptcy may make it possible for you to:

Eliminate the legal obligation to pay most of all of your debts. This is called a "discharge" of debts. It is designed to give you a fresh start.

Stop lawsuits, debt collection harassment, and similar creditor actions to collect a debt.

What can Chapter 7 bankruptcy not do?

Bankruptcy cannot cure every financial problem. In bankruptcy, it is usually **not** possible to:

Eliminate certain rights of "secured" creditors. A "secured" creditor has taken a mortgage or other lien on property as collateral for the loan. Common examples are car loans and home mortgages. Some stores may also have a security interest in furniture, jewelry or major appliances that you bought on credit. You generally cannot keep the collateral unless you continue to pay the debt.

Discharge types of debts singled out by the bankruptcy law for special treatment, such as child support, alimony, student loans, court restitution orders, criminal fines, and some taxes.

Protect cosigners on your debts. When a relative or friend has co-signed a loan, and the consumer discharges the loan in bankruptcy, the cosigner may still have to repay all or part of the loan.

Discharge debts that arise after bankruptcy has been filed.

What can Chapter 13 bankruptcy do for me?

The main reason most people file Chapter 13 is to pay tax that cannot be discharged in a Chapter 7 case or save their house from foreclosure and car from repossession. Bankruptcy may make it possible for you to:

Keep your house and car by making back payments through the Chapter 13 plan.

Reduce the amount you must pay on unsecured debts like credit cards.

Stop lawsuits, debt collection harassment, and similar creditor actions to collect a debt.

Restore or prevent termination of utility service.

What can Chapter 13 bankruptcy not do?

The main limitation of Chapter 13 is that you must have a job with enough income to pay your bills after you file the bankruptcy. In order for you to use Chapter 13 to catch up on house payments or other debt problems, you must be able to make payments to the Chapter 13 plan and make your regular monthly payments on your house, car and other bills after you file. That means that, after you file a Chapter 13, you must make all regular monthly payments on your house and car, as well as payments to the Trustee to get caught up on the late payments. Therefore, the hard question to ask about filing a Chapter 13 is: if you were not able to make the payments before, will you be able to make the payments after you file a Chapter 13?

Can I file alone, without my spouse?

Yes, but we usually advise that it is best for both husband and wife to file together. I discuss this with individual clients.

What debt can I get rid of in the bankruptcy?

Tell me about **all** debt, so I can give you good advice. Never assume that debt is not dischargeable. There are seventeen kinds of debt that may be nondischargeable. I will advise you about them if they apply to you. For example, fraudulent debt may not be dischargeable.

What can the creditors do when I file for bankruptcy?

Not much. There are numerous exceptions that apply in unusual circumstances, but the creditors have no way to object to anything in at least 90% of the bankruptcies in Texas. For example, credit card companies can only object to the discharge of credit card debt in certain unusual situations. The most common exceptions are discussed below.

Can the creditor try to collect the debt after a bankruptcy?

No. Many clients ask whether creditors can do anything to "undo" the bankruptcy or reinstate the debt. This is not a problem. Except in the most unusual circumstances, bankruptcy is final. There are exceptions to discharge, such as injuries caused by drunk driving. However, after a debt is discharged, it is gone forever.

What if the creditor sells my account to someone after I file a bankruptcy?

The debt is still discharged. Selling an account to someone else does not make it into a new debt. Likewise, hiring a new bill collector does not create a new debt.

Can I be accused of fraud for filing bankruptcy?

Usually not. The right to file bankruptcy is a matter of Federal law, and there is nothing dishonest about bankruptcy when it is the right business decision. However, it is wrong to incur a debt if you intend to try to discharge it in bankruptcy. Sometimes creditors will ask when you first consulted a lawyer about bankruptcy. If you charge things after seeing a bankruptcy lawyer, the creditor may think you were not sincere about wanting to pay the bill.

What if I use my credit cards right before filing bankruptcy?

The debt may not be dischargeable. You cannot discharge luxury items charged within 60 days of when you file your bankruptcy. A creditor can also object to the dischargeability of a debt if there is reason to believe you made the charge intending not to pay it. For example, if you charge \$2,000 of Christmas gifts while you are unemployed, then file bankruptcy four months later, the creditor may claim you never intended to pay the bill. Continuing to charge on a credit card after you stop making payments on the card also indicates you did not intend to pay. Credit card creditors may also look at cash advances to see if you made cash advances while intending to file bankruptcy. Also, you should not continue using your credit cards after you consult a lawyer and decide to file a bankruptcy. What you tell me is confidential, but the date you see me is not. If the trustee asks me when you first consulted with me, I will give the trustee the date. If you have charged things after that date, you may have to pay those debts.

Should I continue to make payments on credit cards before filing bankruptcy?

Not if you have decided, based on your lawyer's advice, to file bankruptcy. Sometimes I advise clients to wait to file a bankruptcy. For example, you may need to wait until tax debt is three years old. If you have decided to file bankruptcy, you should not charge anything else on a credit card because it is fraudulent to use the card if you do not intend to pay it. However, you do not need to make any more monthly payments. Of course, the creditor can continue to try to collect the debt until you file bankruptcy.

Can I keep a credit card?

Maybe. If you do not owe any money on a card, you do not list it in the bankruptcy because it is not a debt. You can continue using the card after bankruptcy if the creditor does not cancel the card. The credit card company may still check your credit and cancel your card if they no longer consider you credit worthy. Our experience has been that most companies, other than Home Depot, Exxon, AT&T, Provident, Bank One and Chase, do not cancel your card if you do not owe them a debt at the time you file a bankruptcy. However, companies can change their policy, so we cannot guarantee you a credit card company will not close your account. If you owe money on the card, but want to keep it, I will explain your options to reaffirm the account. However, you should never transfer the balance from one card to another, so that you will not owe a balance on the card you want to keep. It is fraudulent to try to keep the card you want, but stick someone else with the money owed on the card.

Can I continue to use my credit cards after I file bankruptcy?

Not in a Chapter 13. While you are making payments during a Chapter 13, you must live by the budget

approved by the Court. The Court must approve any new debt. In a Chapter 7, you may reaffirm or get new credit cards. Of course, you cannot discharge any debt incurred after you file bankruptcy.

Are traffic and parking tickets dischargeable?

No. Traffic tickets and parking tickets are criminal fines and cannot be discharged.

Are student loans dischargeable?

No. Student loans are not dischargeable. Until 1998, student loans were dischargeable if they were seven years old. Congress changed this in 1998, so student loans are never dischargeable, except for a hardship discharge that is very difficult to get while you are working.

Can I get another student loan?

Yes. An employer or government agency cannot discriminate against you because you have filed for bankruptcy. This includes student loans.

Are taxes dischargeable?

Maybe. Many people think tax is never dischargeable; that is not true. Most income tax over three years old is dischargeable. Some property tax is dischargeable. Tax liens may not be discharged. I can advise you about the affect of a tax lien.

What if I have not filed my income tax returns?

Income tax is not dischargeable in a Chapter 7 until two years after you file the tax return. You can file a Chapter 7 and discharge your other debt, but you will still owe the IRS if you have not filed your returns. However, the situation is more complex in Chapter 13, and you should get individual advice if you have not filed your returns.

Does filing bankruptcy affect when I file my tax returns?

Not in a Chapter 7. Filing bankruptcy does not affect your obligation to timely file your tax returns on April 15. If you have loss carry forwards or other tax issues related to a business, you should consult a CPA.

The rules about filing tax returns in a Chapter 13 are more complicated, and you should talk with your lawyer.

Will I get my IRS refund if I file bankruptcy?

Maybe. The IRS only keeps your refund for taxes, student loans or child support. Bankruptcy does not discharge student loans or child support, so the IRS can still keep your refund for student loans or child support. If the tax is discharged, filing bankruptcy stops the IRS from taking your refund for tax years *after* you file bankruptcy. If you file bankruptcy in 2005, the IRS cannot take your tax year 2005 refund. The tax lien attaches at the end of the year. For example, if you file bankruptcy in December 2004, when you know you will receive a big refund, the lien has not yet attached to the money and you should get your refund if you file before the end of the year. Therefore, it may be important to file your bankruptcy before the end of the year if you are expecting a big refund.

If you file a Chapter 13, the court may require you to pay your income tax refund into the plan. Chapter 13 Trustee Heitkamp requires that any tax refund more than \$1,000.00 be paid into the plan for the benefit of your creditors.

What is the Automatic Stay?

In general, the automatic stay means that no one can harass you or try to take anything away from you without asking the bankruptcy court for permission. The automatic stay goes into effect automatically as soon as your bankruptcy is filed. There are many exceptions and complications to the stay, but it stops most creditors from bothering you. It is important to understand that the creditor can ask the court for

permission to lift the stay. This happens most often if you do not make regular monthly payments on a house or car after you file bankruptcy. The stay is in effect until you get your discharge from the court. This is usually around six months.

What if I have a cosigner?

A cosigner is liable on a debt, just like the main debtor. A Chapter 7 bankruptcy protects you; it does not protect your cosigner. The "codebtor stay" of Chapter 13 protects your cosigner if you pay the debt through the plan. If you discharge a debt in either Chapter 7 or 13, the creditor will seek to collect the debt from the cosigner. Even if you continue to pay the debt, such as a home loan or car loan, the cosigner must be notified of the bankruptcy.

What if I have an additional user, like my son, on a credit card?

If your son signed a credit application, he is a cosigner and is liable on the account. If he did not sign the credit application, he is not a cosigner, but the bankruptcy may still be reported on his credit report. With certain special exemptions, credit-reporting companies can report anything that is accurate. Therefore, the credit reporting company can report on your son's credit report that you filed bankruptcy to discharge a credit card upon which your son was an additional user, even though your son is not responsible to pay the debt.

What if I have cosigned for someone else?

A cosigner is liable on a debt, just like the main debtor. You should list the loan as a debt to be discharged in bankruptcy or you may still be liable on the debt. The creditor could consider your bankruptcy a default on the loan agreement. The creditor might be able to declare the note in default if you, the cosigner, file bankruptcy. The creditor could then repossess any collateral, like a house or car. As a practical matter, this almost never happens. Most creditors will not consider the loan in default so long as the main debtor keeps making the payments on time.

What if I am divorced or getting a divorce?

Just like a cosigner, a spouse or ex-spouse may be jointly liable on a debt. Your bankruptcy protects you; it does not protect your spouse or ex-spouse. Also, you cannot get a divorce while the bankruptcy is pending unless you ask the bankruptcy court to lift the automatic stay. This is a complicated area of the law, and I will advise you about your specific rights.

What if I have been sued before I file bankruptcy?

If someone has sued you, you can stop them from getting a judgment. However, filing bankruptcy does not automatically make a lawsuit go away, so you must tell me about the lawsuit.

Can I get rid of a judgment?

Usually. A judgment is dischargeable, just like any other debt. However, the exceptions to the dischargeability of debt also apply to judgments. I will advise you about any exceptions to discharge.

Can a judgment keep me from selling my house?

Yes, if you do not avoid the lien. If you have a house, a judgment lien may create a cloud on the title, so you will not be able to sell your house without paying the judgment.

Should I pay my utility bills before filing bankruptcy?

Public utilities, such as the electric company, cannot refuse or cut off service because you have filed for bankruptcy. A utility bill can be discharged in bankruptcy, but you must pay your bills after filing. Also, the company can require a new deposit within 20 days of filing if you discharge your debt to them. Most of our clients prefer to pay utility bills.

What property can I keep?

The short answer is that 95% of the people who file a bankruptcy case in Texas keep everything because all their property is exempt. BAPCA created new limitations on the Texas homesteads, but these restrictions will not affect most homeowners. However, this is a complex area, and I will advise you whether anything you own might not be exempt.

What is a bankruptcy trustee?

A bankruptcy trustee is the person responsible for administering each Chapter 7 or Chapter 13 bankruptcy. The trustee is not a government employee, but he or she is hired by the U.S. Trustee to handle the cases for the government. The trustee represents the interest of the creditors. In a Chapter 7, the Trustee determines whether you have any non-exempt property he can take away from you to sell in order to get money for the creditors. In a Chapter 13, the Trustee takes your monthly payments and distributes the money to the creditors.

How does the trustee know what property I have?

We tell him. Each debtor is required to report his property on the bankruptcy schedules. Many people are unnecessarily nervous about reporting their property because, for most people, all their property is exempt. To a certain degree, we are on the honor system because the trustee's main source of information is the schedules we prepare for him. However, intentionally lying in bankruptcy schedules is a federal crime punishable by a \$50,000 fine and five years in jail. It is particularly foolish to commit a federal crime when I can advise you on how to maximize your exemptions to protect your assets.

If I tell my lawyer something, will he keep it confidential?

Usually, I am bound by attorney-client privilege to keep your secrets. You should be able to talk with me without being afraid that I will turn on you. However, there are some exceptions to attorney client privilege. One exception is that I cannot help you commit a crime. It may be a crime to hide assets in a bankruptcy, so you cannot expect me to help you lie on documents filed with the court. You should still tell me everything because I can probably advise you on a legal way to protect your property.

Should I tell my lawyer everything?

Yes. It is very foolish to hide things from your lawyer. I can give you good legal advice on how to handle any legal situation. We can usually develop an intelligent and ethical legal strategy for any problem. I cannot advise you if I do not have the facts.

Will anyone come to my house?

No. The trustee does not have the manpower to do anything like that. Sometimes, the trustee may require additional information after he reviews the schedules. He will then ask us to give him the information. Sometimes the trustee may ask to see your tax returns or bank records. The trustee requires us to cooperate with him, but he does not come to your home.

What about my bank account?

A bank account is just like any other property; it will be exempt for most people. I will advise you if the money in your account is not exempt. A lot of people believe they cannot use a bank account during a bankruptcy. This is not true. You can use a bank account as always. Bankruptcy law allows banks to freeze your bank account when you file a bankruptcy, but our experience is that Wells Fargo is the only bank that actually freezes accounts.

Is my retirement account or IRA exempt?

Yes. Almost all retirement accounts are exempt. I will advise you on your individual account.

What if I want to get out of a lease?

You can terminate a lease before we file the bankruptcy. For example, if you have a one-year lease on your apartment, you can move out of the apartment. The landlord will be able to report it on your credit and rental history. You will not get your deposit back, but the landlord can't sue you.

What is secured debt?

Secured debt is when the creditor has the right to take property away from you if you do not pay the debt. As a general rule, bankruptcy does not get rid of "purchase-money" secured debt. The creditor who sells you something on credit can have a purchase money security interest in what he sells you. For example, Circuit City can have a purchase money security interest in the stereo you buy on credit.

A "non-purchase-money" security interest is where you already own the property, but you put the property up as collateral to get the loan. For example, you may give a creditor a security interest in your television, stereo and other household goods in order to get a personal loan. You may be able to avoid some non-purchase-money security interests. This is not automatic, so you should talk with me about any security interest.

How do I know who has a security interest in my property.

You must sign a security agreement for the creditor to have a security agreement, but the agreement is sometimes in the "fine print" of the sales slip. House notes and car loans are almost always secured. Furniture stores, stereo and computer stores usually keep a security interest in things they sell on credit. Items installed in your house, such as carpet, may be secured. Some creditors may keep a security in some items like jewelry and appliances. Credit cards like MasterCard, Visa and Discover are not secured.

What will happen to my home, car or other secured property?

You do not lose your home or car just because you file bankruptcy. However, bankruptcy does not make these security interests go away. If you don't make your payments on that debt, the creditor may be able to take and sell the home or the property. Bankruptcy does not change this. With or without bankruptcy, you must pay for secured property or the creditor can take it.

Do I list my car in the bankruptcy even if I continue making payments?

Yes. You have to list all property and all debt. That includes your car and the debt on the car. Do not be afraid that you will lose the car just because you list it.

Can I sell secured property?

No, not without paying the secured debt. It is a violation of your security agreement to sell secured property. You cannot sell a car and keep the money without paying the car loan. The same is true for secured property like furniture stereo equipment and jewelry. You should not sell the merchandise without paying the secured debt.

What if I have already sold secured property?

You should consult your lawyer. The debt may not be dischargeable because you should not have ignored the creditor's security interest. The debt may still be dischargeable if you did not know the debt was secured. For example, most people are not aware that items charged on their Best Buy account are secured, but items charged on the Visa card are not. The creditor must prove that you were aware of the security agreement. The Court understands that an ordinary consumer may not be familiar with the fine print of a charge card agreement.

It is also possible for the creditor to waive its security interest. For example, courts have said that it may be wrong, in some cases, for a creditor to claim a security interest in items sold at a Christmas sale. Best Buy does not publicize that they claim a security interest in items sold as Christmas gifts. Courts have said that the store intended that items in a Christmas sale be purchased for Christmas gifts, so the store cannot claim you did anything wrong by giving them away.

What are reaffirmation agreements?

A reaffirmation agreement is an agreement for you to pay a debt after bankruptcy. If you reaffirm a debt, you have to pay the debt as if you had not filed bankruptcy. The creditor can sue you if you do not pay.

Should I reaffirm the debt on my house or car?

Yes, if the creditor requests an agreement and you want to keep the house or car. The creditor can require you to reaffirm the debt if you want to keep the property. You will then be fully liable on that debt as if you had not filed bankruptcy, and the creditor can sue you if you do not pay the debt. In short, you have to remain fully liable if you want to keep your house, car or other secured property. You can choose to give back the secured property, and then the debt is discharged just like an unsecured debt.

You do not have to sign a reaffirmation agreement if the creditor does not request one. Some creditors do not go to the trouble to do reaffirmation agreements. You still need to make the payments because the security agreement on the house or car is still good even without a reaffirmation, but you are not liable for any deficiency if the car or house is repossessed. Therefore, we never ask for reaffirmation agreements, but you should sign them if requested by the secured creditor.

Should I reaffirm the debt on other secured property such as furniture or stereo?

Maybe, if you want to keep the property. Just like a house or car, we do not request reaffirmation agreements. The creditor can require you to reaffirm the debt if you want to keep the property, or you can choose to give back the secured property. However, if the creditor agrees, you can reaffirm just part of a debt in order to lower your payments. For example: If you owe Montgomery Wards \$4,000.00, but they have a security interest only in a \$400.00 refrigerator. You do not want to reaffirm the entire debt to keep the refrigerator. We can try to negotiate a \$400.00 reaffirmation agreement to keep the refrigerator. If you do not reaffirm, the creditor still cannot collect the debt because it is discharged. Instead the creditor can only repossess the collateral. We will advise you whether a creditor is likely to repossess anything from you. For example, creditors may have a security interest in computers, but they rarely try to repossess them.

Should I reaffirm an unsecured debt?

Usually no. Unsecured creditors like Visa and MasterCard will offer to let you keep your card if you reaffirm your debt. We do not usually advise reaffirming unsecured debt. The reason you file bankruptcy is to get rid of your debt; reaffirmation of unsecured debt eliminates that benefit. Reaffirming debt can help you build your credit back after bankruptcy, and I will advise you on whether you should reaffirm any unsecured debt. However, reaffirming a debt never guarantees that you get to keep a credit card. Even after you reaffirm the debt, a credit card company can always cancel your card if they decide you are a bad credit risk.

Can I Own Anything After Bankruptcy?

Yes! Many people believe they cannot own anything for a period of time after filing for bankruptcy. This is not true. You can keep your exempt property and anything you obtain after the bankruptcy is filed. However, if you receive an inheritance, a property settlement, or life insurance benefits within 180 days after filing for bankruptcy, that money or property may have to be paid to your creditors if the property or money is not exempt.

What can I do during the bankruptcy?

The Bankruptcy Court does not impose any restrictions on your activities after the date of filing. You may immediately engage in business, earn money, open bank accounts and buy property. Continue to live your life as normal and enjoy your fresh start. There are two common conditions you should know about. First, you should not sell or transfer any non-exempt property because you might have to give the property to the trustee. Second, Chapter 13 debtors cannot borrow money, including credit cards, without court approval.

What if I want to sell my house, car or other property?

You cannot sell secured property without paying the creditor, but filing bankruptcy does not change your right to sell your property, so long as the property is exempt. You should consult with your lawyer before selling any property because it might affect your exemptions.

What if I own a corporation?

The corporation, or the stock in the corporation, is property that you must report in a bankruptcy case. I will advise you whether the corporation is exempt. You can file bankruptcy without interrupting the business of the corporation, but you no longer own the corporation if it is not exempt.

What if I own a business that is not incorporated?

If you are operating a business as a sole proprietorship or DBA, the business is not a separate article of property. The tools, equipment and other property you use in the business is your personal property. Both Texas and Federal law provide exemptions for tools used in a business. I will advise you whether the property used in the business is exempt. If the property is exempt, you may continue to operate the business as usual all through the bankruptcy.

Will I have to go to court?

Probably not. In most bankruptcy cases, you only have to go to a proceeding called the "meeting of creditors" to meet with the bankruptcy trustee and any creditor who chooses to come. Most creditors do not show up at this meeting. This meeting will usually be a short and simple procedure where you are asked a few questions about your bankruptcy forms and your financial situation. I will be with you. You only need to appear before a judge if there is some legal dispute. I plan ahead to avoid such disputes, and my Chapter 7 or 13 clients have testified in court only three or four times in the last ten years.

What should I do to get ready to file bankruptcy?

Don't do anything without talking to your lawyer. If you have nonexempt property, I can advise you how to arrange your finances and property to see that most or all your property is exempt. There is nothing illegal or immoral about prebankruptcy planning to protect assets if such planning is done correctly. However, debtors often run into problems when they transfer assets and take other actions that they believe will help protect them from their creditors. Do not do anything without legal advice.

Can I give away my property before filing bankruptcy?

No, that could be a fraudulent transfer. A fraudulent transfer is where you give your property away, sell it for less than it is worth or put it in someone else's name to try to hide it from your creditors. This is almost always a bad idea. I can advise you how to protect your assets without doing anything fraudulent.

Can I pay back money I owe to relatives before filing bankruptcy?

No, that could be a preferential transfer. One of the purposes of bankruptcy law is to insure equal treatment of creditors. You cannot choose to pay the creditors you like, such as your father, and then discharge the credit cards in bankruptcy. There are complicated rules that determine whether a payment to a relative is a preference. I will advise you.

Can I buy a lot of exempt property before filing bankruptcy?

Maybe. You are entitled to claim the exemptions allowed by Federal or Texas law, but it is possible to get too much of a good thing. You can be denied discharge if you use your exemptions to defraud your creditors. For example, Texas allows a homestead limited by acres, not dollar value. You might be denied a discharge if you sold \$1,000,000 in nonexempt stock in order to buy a home in River Oaks the day before filing. There is no exact rule on what use of exemptions will be considered in fraud of creditors, but it is not a problem for most people. I will advise you.

Who will know I filed bankruptcy?

The filing is reported in the *Daily Court Review*, a newspaper read mainly by lawyers. The bankruptcy is a matter of public record, so anyone can go to the Federal Clerk's office to look it up. Information on the filing may also be available through information services such as Information America, Nexus or PACER. However, you have bigger problems than bankruptcy if your friends or relatives are searching Federal court records about you.

The main way people learn about your bankruptcy is through your credit report. Not just anyone can check your credit. Someone can check your credit when you apply for credit or apply for a job. However, an employer cannot check your credit unless you give them written permission.

If you are an officer of a publicly traded corporation, you may be required to report your bankruptcy in the shareholder prospectus.

Will anyone call my employer?

No, but you may need a wage order in a Chapter 13. The name and address of your employer is listed in the schedules, so it is a matter of public record. However, your employer does not receive notice of the filing and the trustees do not call employers. In a Chapter 13, you may be required to have your plan payments deducted from your pay.

Can my employer fire me for filing bankruptcy?

It is illegal for an employer to discriminate against you because you file a bankruptcy. Just like age, race or sex discrimination, this could still happen, even though it is illegal. However, I have had only one case in the last twelve years in which a client told me that her employer checked her credit and fired her for filing bankruptcy.

How can I get a copy of my credit report?

There are three main credit-reporting agencies: Equifax, Experian, and Trans Union . They usually have pretty much the same information, but your credit report may be a little different with each company. You should be able to get free annual reports from each company at the website www.annualcreditreport.com. The site is not user-friendly, but it is free, so long as you do not buy anything extra.

Can you get a credit report for me?

Yes. We can order a credit report from Start Fresh Daily that compiles information from all three agencies for the most complete report available. The cost for this report is currently \$30.00 for a single person and \$50.00 for a couple.

Will bankruptcy affect my credit?

There is no clear answer to this question. If you are behind on your bills, your credit may already be bad, and bankruptcy will probably not make things any worse. The fact that you've filed a bankruptcy can appear on your credit record for ten years. The credit agencies can report bankruptcies more than ten years old if you are applying for a job earning more than \$20,000 a year or borrowing more than 50,000. It is not true that you can never get credit after a bankruptcy. You can rebuild your credit, but it takes time.

Should I get a secured credit card?

Maybe, but be careful. Secured credit cards can give you the flexibility of a credit card, but do not keep them too long. A secured card can be considered an indication of past credit problems. The secured card is reported on your credit report for seven years, just like any other credit information. If you have a secured card after bankruptcy, the secured card will still be reported on your credit report after all the prebankruptcy information comes off. A creditor might then figure that you must have had credit problems or why would you have a secured card? Also, you should beware of secured credit card scams.

See the Federal Trade Commission warning on their website.
<http://www.ftc.gov/bcp/online/pubs/credit/secured.htm>.

What is a "Fair Isaac" or FICO Score?

Some lenders use a credit score to determine whether to extend credit and at what interest rate. Fair, Isaac & Co develops the credit score, so it is called a FICO score. You can get a copy of your report for a nominal fee at www.equifax.com or www.myfico.com. It will explain your credit score and give suggestions on how to improve it. A score of less than 620 may make it difficult to get credit cards, but there is no hard and fast standard.

How can I improve my credit?

Again, no easy answer. As discussed above, it may help your credit to reaffirm some debt before your bankruptcy discharge. If you reaffirm a credit card during your bankruptcy, you may be able to start building a new credit history a lot faster. Whatever you do to build or re-establish a credit record (reaffirmation, secured credit card, store account, car loan) , make sure the creditor reports to a credit bureau. If the creditor doesn't report good information to a bureau, the card won't help you build a credit history. Ask about this before you apply for credit.

Two things in particular will hurt your credit after you file bankruptcy. One is making late payments on your remaining credit, like car payments. You should assume that late payments after you file bankruptcy show a creditor that you have not solved your debt problems. Second, it is a negative mark on your credit to apply too soon for credit and get turned down. Getting turned down for credit by one creditor makes it even more difficult to get credit from someone else. When is it not too soon? That depends several things, especially your income. Your FICO score (discussed above) may be the best thing to check before applying for credit. It is impossible to give a one-size-fits-all plan, but the following is a good guideline for re-establishing credit **after** your bankruptcy discharge:

Month 2

Send Bankruptcy Information to all three Credit Bureaus

Use Certified Mail

Send Petition (first page)

Send Creditors' List (schedules D, E & F)

Send Discharge

Month 6

Pull Credit Reports from all three Bureaus

Dispute with Bureaus until reports are accurate (be persistent)

Reports show current accounts

Reports show reaffirmed accounts

Reports indicate accounts discharged in bankruptcy

Zero amount due

No derogatory comments concerning account besides reference to bankruptcy

Month 6

Apply for a secured credit card (after reading about secured cards - see above)

Month 12

Apply for additional secured credit card

Year 2

Apply for a Store Secured Account

Examples: Sears, Conns, Fingers and Gallery Furniture

Low limit (less than \$1,000)

You may have to sell yourself and put 25-50% down

Remember, it is not the amount, it is the installment characteristic that helps credit re-establishment

Year 2.5

Apply for another Store Secured Account

Year 3

Apply for an unsecured credit card after checking your FICO score.

Tips to Remember:

Continue to pay all accounts on time or early

Apply for credit no more than once every six months

Never apply/respond to those so-called "pre-approved offers." JUST SAY NO!

Make sure the creditor reports good credit like timely payments

Credit Terms are usually negotiable; do not settle for their first offer

Can I get a house or car loan after immediately filing bankruptcy?

Maybe, but you will certainly pay a higher interest than someone with perfect credit. It is not true that you can't get a home loan for ten years. For example, you are eligible to apply for a FHA home loan two years after a bankruptcy. We can refer you to lenders who will make home or car loans immediately after a bankruptcy; you may pay a higher down payment and interest rate, but may be able to refinance after two years.

Can a credit repair service help me?

No. The Federal Trade Commission investigates credit services, and they have never found a legitimate credit repair service. (Source: David Medine, Bureau of Consumer Protection, Federal Trade Commission) There are two main types of "credit repair". The most common type of credit repair uses the Fair Credit Reporting Act to challenge credit information on your credit history. This is perfectly legitimate, but you cannot get rid of bad, but accurate, information. You do not need to pay a credit repair service for this. We can give you publications from the FTC explaining your rights under the Fair Credit Reporting Act, and there is a good explanation of the act in the book *Know Your Rights* by Prof. Richard Alderman, the "People's Lawyer." The other method of credit repair is called "file segregation". This involves using an Employer Identification Number as a false Social Security Number in order to establish a new credit record. This is illegal.

Can the Consumer Credit Counseling service help me?

Maybe. The CCCS may be able to help if you are able to pay your debts. They can help some people develop a plan to pay their creditors. CCCS will negotiate with the creditors to reduce interest on your debt, but will *not* negotiate any reduction in the total debt. CCCS reports their counseling to the credit reporting agencies, so you could get a bad mark on your credit just by talking to them. In a 2005 article, FICO said it ignores any report about credit counseling when calculating a credit score, but it is still reported. Also, you should consider that creditors fund CCCS, so CCCS does not really represent you. CCCS considers the best interest of the credit card companies who pay their bills. For example, a number of my bankruptcy clients have reported that they got behind on house payments because they were making the payments on credit cards required by CCCS. Anyone who tells you to pay credit cards instead of your mortgage is giving you bad advice; credit card companies cannot take your home.

What if I have lost my driver's license because of a judgment against me?

If you lost your license solely because you couldn't pay court-ordered damages caused in an accident, bankruptcy may allow you to get your license back if you were not using drugs or alcohol while driving.

What can creditors do to me if I don't file bankruptcy?

In Texas, not near as much as they threaten. There are four kinds of special debt you need to watch out for: (1) secured debt, (2) student loans, (3) taxes and (4) child support. Other than these types of debt, no one can take your house or other exempt property. Other than student loans, child support or taxes, no one can garnish your pay. Bill collectors make all sorts of threats to try to intimidate you. You should not file

bankruptcy because you are intimidated. You should file bankruptcy if it is the right business decision based on your lawyer's advice.

Can I be put in jail if I don't pay my debts?

No. You can go to jail for contempt of court or for tax fraud. A judge may order you to appear in court or go to a deposition to answer questions related to a debt. You can go to jail for disobeying the judge. This is most common with failure to pay child support, but it can happen in other kinds of lawsuits. It is also possible to go to jail for tax fraud, but not just for being unable to pay tax. You can't be put in jail merely because you owe money.

Can I be put in jail if I hide secured property?

Maybe. "Hindering Secured Creditors" is a crime in Texas. That means that you could be guilty of a crime if you: (1) Do not make payments on secured property, such as a car, *and* (2) Fail to deliver possession of the property after the creditor demands its return. So far, I have never had a client charged with this crime. The District Attorney does not normally consider it his job to act as the repo man for every secured creditor in the state.

What if a creditor comes to my house to get secured property?

You don't have to let them in without a court order. No one can enter your home without a court order or your permission. If you have secured property, such as furniture or appliances, a creditor can file suit and ask a justice of the peace to order the constable to enter your home to get the property.

Can a creditor report me to the IRS to collect a debt?

No. The IRS does not collect debts for private bill collectors. Collection agents will sometimes make threats to notify the IRS of your bad debts. The only thing bill collectors can do through the IRS is to submit an IRS Form 1099, as discussed below.

Do I have to pay tax on debt discharged in bankruptcy?

No.

Do I have to pay tax on bad debt, IRS Form 1099?

Probably not. If you do not file a bankruptcy, the IRS can sometimes count a charged-off debt as income. If you do not have to pay a debt because it was charged off, the IRS may claim that it is just like you earned the money to pay the debt, so you should pay tax on the money "earned". The creditor can report charged off debt to the IRS on an IRS Form 1099. The rules on this type of tax are complicated, but it would be unusual for you to have to pay such tax. Contact your lawyer or CPA if you get an IRS Form 1099 from a creditor.

What if I forget to list a creditor?

We may charge extra to add the creditor to the schedules, but that may not be necessary. First, simply give the creditor the information on your bankruptcy, and they may not know or care that they are not listed in the schedules. If your case is closed as a "no asset" bankruptcy, debt is discharged even if you don't list the creditor in the schedules. However, it may be difficult to convince the creditor to leave you alone if they are not listed on the schedules. It is definitely important to list all your creditors on the schedules.

Are my bankruptcy attorney fees tax deductible?

Maybe, if your debts are business and not personal. Part of your bankruptcy attorney fees may be deductible if you are discharging business debt. Consult a CPA or other tax professional to find out what percentage of the attorney fees may be deductible .