

# **A HEAD START ON YOUR FRESH START**

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For information, please contact:

Julie O'Bryan.  
O'Bryan Law Offices  
1717 Alliant Avenue Ste. 17  
Louisville Kentucky 40299

PH: 502-339-0222

[www.obryanlawoffices.com](http://www.obryanlawoffices.com)

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**THIS IS AN ADVERTISEMENT**

# Head Start On Your Fresh Start

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## **INTRODUCTION**

Congratulations on your fresh start!

I'm sure you are anxious to know, "What exactly does that mean?" During your bankruptcy you heard the term "fresh start" used often by your attorney, by the trustee, and maybe even by the bankruptcy judge. The United States Supreme Court has said that the purpose of the bankruptcy laws is to give "the honest but unfortunate debtor . . . a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt." In other words, bankruptcy gives you a fresh start on a new financial future!

The truth is that neither the bankruptcy law nor the bankruptcy court gives any guidance on how to begin your "fresh start." Chapter 7 debtors receive a discharge order from the bankruptcy court that reads:

### **DISCHARGE OF DEBTOR**

It appearing that the debtor is entitled to a discharge, IT IS ORDERED: The debtor is granted a discharge under section 727 of title 11, United States Code, (the Bankruptcy Code).

That's it.

So, now what? How do you start fresh?

Life after bankruptcy is all about hope and promise. The relief provided by your bankruptcy discharge is real and the possibilities are endless. The purpose of this Ebook is to give you a head start on your fresh start. It points out some things you need to know and offers suggestions on how to begin your new journey. This Ebook can't possibly answer all of your case-specific questions, but it does serve as a general guide for post-discharge matters.

The secret to making the most of your fresh start is to make wise and confident financial decisions. Contributing to savings, investing in your future, practicing conservative spending, and managing credit wisely are all time-tested ways that lead to financial security over the long-haul. However, this Ebook focuses more on the immediate concerns of the post-discharge bankruptcy debtor. Questions like, "How do I rebuild my credit?" and "What if a discharged creditor contacts me?" It may take a little effort, but over time your financial ship will be repaired and you will be sailing in smooth waters.

Good luck with your fresh start and, as always, consult with your bankruptcy attorney for legal advice specific to your case.

## CHAPTER 1: DEBTS THAT ARE DISCHARGED

### Your Bankruptcy Discharge

The bankruptcy discharge is the first step on your road to financial health. Before proceeding forward on your journey to a better financial future, it is important to take a minute and review what has happened during the bankruptcy process. Before planning your future you must understand what your bankruptcy discharge is and what it is not.

The bankruptcy discharge is an order from the United States Bankruptcy Court. The order of discharge generally occurs at the end of the debtor's bankruptcy case and copies of the discharge order are mailed by the bankruptcy court to all of the debtor's creditors. The discharge order informs creditors that the debts owed by the debtor have been discharged and that they should not attempt any further collection. If a creditor does try to collect from the debtor personally, the debtor can complain to the bankruptcy judge and the creditor may be held in contempt of court.

The discharge order is issued by a federal judge and is a very serious matter. The discharge acts as a court injunction directed at your creditors and prohibits any attempt to collect on a discharged debt from *you personally*. The order discharging your debts contains the name of the judge and bankruptcy court, the date of the discharge order, and your bankruptcy case number. This information may be required in the future, so keep it in a safe place so you can access it in the future.

Discharged creditors are strictly prohibited from contacting you by mail, phone, or otherwise; filing or continuing a lawsuit; attaching wages or other property; or taking any other action to collect a discharged debt. A creditor cannot contact your friends, family, or employer in an effort to get you to pay a discharged debt. A creditor who violates this order is subject to contempt of court for violation of the discharge injunction and may have to pay damages and attorney's fees.

It is important to understand that your discharge does not "erase" your debts. The debts still exist, but the bankruptcy court order prohibits the creditor from collecting the debt from *you*. Since the debt has not been legally extinguished, the creditor *can* take any collection action not prohibited by the discharge injunction. For instance, a creditor may still collect from anyone still legally obligated for the debt, like a non-filing co-debtor.

While the discharge injunction prohibits collection from you personally, there are situations in which the creditor can collect against your property. One of the most common situations is when the bankruptcy does not extinguish a property lien and the debtor decides to discharge the personal obligation. Such a situation may occur with a vehicle or a house. The personal obligation to pay the debt is discharged, but the creditor's lien against the property to guarantee payment remains. In this situation the creditor can repossess the property, but cannot collect money or other property from you.

The bankruptcy discharge is separate from an order closing the case, although in many cases the order closing the case closely follows the discharge. There may be additional activity in your case after you receive your discharge and prior to the conclusion of your case. The bankruptcy court and your attorney will inform you when your case is closed.

### **Creditor Contact After The Bankruptcy Discharge**

Sometimes a creditor may contact you after your bankruptcy case is discharged. Often this contact is a mistake and the creditor is unaware of your bankruptcy discharge. Generally informing the creditor that you have filed bankruptcy and received a discharge of the debt will be enough to end the collection. The creditor may want to know certain information from you in order to update their records and stop further collection efforts. You can answer these questions or simply refer the creditor to your attorney.

It is good practice to document any collection effort by discharged creditors, innocent or otherwise. The bankruptcy discharge applies to the debt and enjoins *any* collection of the debt. Consequently, the discharge injunction applies to the original creditor, collection agencies, attorneys, and any other subsequent collector. While these collection attempts are often mistakes, a main purpose of the bankruptcy discharge is to allow you to live your life free from creditor harassment. If you are contacted persistently by creditors, contact your attorney and assert your legal rights!

### **Repaying Discharged Debts**

The Bankruptcy Code provides, “Nothing contained in . . . this section prevents a debtor from voluntarily repaying any debt.” 11 U.S.C. § 524(f). You are free to make voluntary payments on all or part of your discharged debts. These payments do not invalidate the discharge order and do not create a new legal obligation. The creditor is still prohibited from contacting you in any way and cannot take any collection action against you, including sending you a bill or even encouraging your continued payments. In this case the term “voluntary” means repayment free from creditor influence or inducement.

Any payments you make on a discharged debt are the result of a moral obligation since the legal obligation to pay the debt has been discharged by the bankruptcy court. While there are generally few risks and down-sides to voluntary repayment of a discharged debt, it is a good idea to discuss the matter with your attorney prior to making any payments.

### **Tax Consequences For Your Discharged Debts**

Many people are surprised to discover that the cancellation or forgiveness of a debt is considered taxable income by the IRS. Banks and other lenders send out IRS Form 1099(c) in the thousands to shocked and confused debt settlement and credit counseling clients. Many debt

counselors do not want their clients to know that if the lender was settled for less than payment in full, you must pay taxes on the difference.

Fortunately, the federal bankruptcy laws are different. Section 108 of the Internal Revenue Code specifically excludes debts discharged in bankruptcy from the definition of debt income. If you have received an IRS 1099(c) on a debt discharged during your bankruptcy case, you can file IRS Form 982 explaining that the debt was discharged during bankruptcy and should be excluded from your income. Make sure that your tax professional is aware of your bankruptcy case and is able to contact your bankruptcy attorney for more information.

## **CHAPTER 2: DEBTS THAT ARE NOT DISCHARGED**

### **When Congress Says Your Debt Is Not Discharged**

The bankruptcy laws are meant to give the honest debtor a *fresh start*, but not a *head start*. Therefore, Congress has identified certain debts that cannot be discharged in a bankruptcy. These debts survived the bankruptcy discharge and creditors can collect from you personally. Many debts that would ordinarily qualify for discharge may be determined as non-dischargeable if a debtor has committed a crime or fraud in acquiring the debt. Other debts are deemed generally non-dischargeable based on public policy reasons (like taxes or child support).

Generally, the following are non-dischargeable debts:

1. child support or alimony obligations, and debts considered in the nature of support;
2. student loans, unless repayment would cause you undue hardship;
3. criminal fines or restitution;
4. debts listed in a prior bankruptcy where debtor was denied a discharge;
5. recent income taxes less than three years past due; and
6. auto accident claims involving intoxication.

Additionally, there are circumstances which may make a debt non-dischargeable:

1. debts incurred on the basis of fraud;
2. debts from willful or malicious injury to another or another's property;
3. recent purchases with credit cards;
4. debts from larceny (theft), breach of trust or embezzlement; and
5. most federal, state and local taxes and any money borrowed on a credit card to pay those taxes.

All of the categories of non-dischargeable debts in bankruptcy have specific rules and exceptions and each situation has its own challenges. Finally, debts incurred *after* the date of the bankruptcy filing are not included in the bankruptcy discharge. If you have questions regarding whether a specific debt was discharged, contact your attorney.

## **Child Support**

If you are paying child support, you may be confused about the effect of a bankruptcy filing on your child support obligation. A bankruptcy filing generally protects the debtor from the collection actions by creditors, but Congress has not extended the same protections to child support issues. Under the bankruptcy laws child support is a “non dischargeable debt” which means that the obligation will survive the bankruptcy, regardless whether it is a current or past debt.

In addition to child support, debts that are “in the nature of support” (e.g. medical expenses, educational expenses, etc.) are ineligible for discharge. The bottom line is: child support obligations must be paid. If you have filed a Chapter 7 case, but still owe child support, you may want to discuss the matter with your bankruptcy attorney and consider filing a Chapter 13. Even though you may not be eligible for a bankruptcy discharge (remember child support is non-dischargeable, so it really doesn’t matter), the Chapter 13 will allow you to repay your child support obligation over 3-5 years while under the protection of the bankruptcy court. This could stop a contempt of court action and unreasonable garnishments.

## **Student Loans**

The federal bankruptcy code states that a debtor may obtain a discharge of a government-sponsored student loan only if repaying the loan would impose an “undue hardship” on the debtor and his dependents. Most bankruptcy courts interpret “undue hardship” as meaning that the debtor cannot repay the loan *and* maintain a minimal standard of living. As a result of this very high bar it is rare that a student loan is discharged during bankruptcy.

Consequently, many bankruptcy debtors are caught in a student loan trap of being unable to pay on the student loan and the interest continues to accrue. While discharging the student loan may not be possible, there are options for dealing with a student loan during and after bankruptcy.

First, the student loan lender or collection agency is strictly forbidden from engaging in any collection action during the bankruptcy. This protection (known as the “automatic stay”) may last from a few months during a Chapter 7 to several years during a Chapter 13 repayment plan. Interest may continue to accrue and will be tacked-on at the end of the bankruptcy case.

Second, if the student loan was not defaulted prior to the bankruptcy filing (meaning no payment for more than 270 days), the account will usually be re-aged and is considered current upon the conclusion of the bankruptcy case. This is a good time to negotiate with the lender for a payment plan you can afford. If the student loan was defaulted prior to the bankruptcy, the lender may offer a loan rehabilitation program.

Finally, your student loan lender has many repayment options after your bankruptcy case ends, including the Income Based Repayment Plan which limits your loan repayment to 15% of your income and offers loan forgiveness after 25 years of repayment (or 10 years for public service employees).

## **Taxes**

Generally, in order to discharge tax debt, the taxes must meet all four of the following criteria: (1) the taxes must be income taxes or “gross receipt taxes;” (2) the taxes must be over three tax years old; (3) your taxes must have been filed on time; and (4) the tax debt must not be amended or challenged by the IRS as inaccurate.

There are four different types of tax debts that are automatically excluded from your bankruptcy discharge:

1. unpaid taxes due within three years of the bankruptcy filing;
2. unpaid taxes for returns filed late, but within two years of the bankruptcy filing;
3. unpaid taxes for tax years when the debtor did not file a return; and
4. unpaid taxes due when the debtor filed a fraudulent return or tried to evade the tax obligation.

If you have any questions whether your tax debt survived your bankruptcy, consult with your attorney. Some tax penalties are subject to the bankruptcy discharge, so be sure to understand exactly what portion of your tax debt survived your bankruptcy.

Tax liens can be stripped off during a Chapter 13 bankruptcy to the extent that the lien is more than the equity in property. Tax liens cannot be stripped or otherwise avoided in Chapter 7, however if the tax is dischargeable in a Chapter 7, the bankruptcy court should determine the extent of the tax lien against your property.

If you owe non-dischargeable taxes or have a tax lien that survives the bankruptcy, your best option is to contact the tax authority and negotiate a repayment plan.

Property taxes are treated differently after bankruptcy. Your personal obligation to pay property taxes can be discharged if the tax was last payable without penalty more than one year before you file bankruptcy. However, property taxes are secured with a lien against the real estate. The lien will generally survive and must be paid after the bankruptcy. If the property is surrendered during the bankruptcy, you will owe nothing.

## **Bad Checks**

There are generally two types of “bad checks.” The first type is the kind that is “payable on demand” meaning that it is expected that the bank will honor the check when it is presented. This is the most common type of bad check. When you write a check that the recipient believes

is “payable on demand,” and the check is returned for Non-Sufficient Funds (NSF), you may have committed a criminal act. Depending on the amount of the bad check written, a person can be prosecuted for a misdemeanor or a felony. Even if you later make payment on the check there may be criminal charges or substantial fees and/or fines.

A NSF “payable on demand” check is not dischargeable in bankruptcy and bankruptcy will not exonerate you of a criminal act. The bankruptcy automatic stay does not apply to stop criminal prosecutions. Likewise, any debt to the victim of the bad check is now considered criminal restitution, also not dischargeable in bankruptcy. Any restitution, costs, and fines are not discharged by the bankruptcy.

While criminal prosecution of a bad check case is not affected by your bankruptcy, private collection *is* stopped by your bankruptcy. Any civil legal action concerning a bad check must stop, and any civil garnishment or other collection action must cease.

The second type of bad check is the post-dated check. These checks include payday loans and other checks that are essentially promises to pay in the future. You and the receiver are aware that the check is not *presently* negotiable. The bank will not pay the check because you don’t *presently* have the money in your account.

With a few narrow exceptions, being unable to pay a post-dated check is not a criminal act. However, it may be a crime to write a post-dated check that you intend to include in your bankruptcy. Typically the recipient of the post-dated check would have to file an adversary case with the bankruptcy court and prove that you committed fraud in writing the check with no intention to ever pay it. The best advice is: if you have written a bad check, discuss the matter with your attorney!

## **Reaffirmed Debts**

A Chapter 7 bankruptcy discharge releases an individual from personal liability for a debt. In some cases the bankruptcy debtor wants to keep a car or a house, and will agree to continue to pay the loan. In those cases a reaffirmation agreement is filed with the bankruptcy court. A reaffirmation is an agreement that continues the debtor’s personal obligation on a debt, even though the debt would otherwise be discharged in the bankruptcy. The creditor agrees to not repossess the property as long as the debtor continues to pay the debt. A debtor that reaffirms a debt is personally liable for any subsequent default on the loan. Should the debtor default, the lender may sue for damages in state court and the property securing the loan may be repossessed.

Reaffirmation agreements are only available to Chapter 7 debtors and the agreement must be executed before the bankruptcy discharge is entered. The debtor can revoke the agreement within 60 days after the agreement is signed.

If you did not file a reaffirmation agreement with the bankruptcy court during your case, and you still are in possession of property secured by a valid lien, the property may be subject to

repossession by the creditor, *even though* you are still paying on the loan. If this situation applies to you, you should consult with your attorney and make sure you are fully informed.

### **Post-Petition Debts**

Debts that are incurred after the date the bankruptcy petition is filed are generally not included in the bankruptcy discharge. Even though you have not yet received your discharge, a debt that arises after your case is filed is not included in the bankruptcy discharge.

One notable exception to this general rule is when debts are incurred after the filing of the bankruptcy case, but before the conversion of the case to a different chapter. For instance, if a debtor filed a Chapter 13 bankruptcy case and then later converted the case to Chapter 7, the debtor would be able to include debts that arose between the Chapter 13 filing and the Chapter 7 filing.

## **CHAPTER 3: REBUILDING CREDIT**

### **Living Without Credit (For Now)**

It can be a little unsettling to some to live without a credit card or overdraft protection at your bank. Many people are so accustomed to using credit that they are not aware of the high fees that they incur each month. For some, bankruptcy is a blessing as it forces your attention to your finances. That means using cash to pay for life's necessities.

Debit cards can be very useful to the recently discharged debtor. Debit cards can be a cash substitute since the purchase is deducted directly and usually immediately from your bank account. Recent banking laws prohibit your bank from automatically honoring your debit charge or ATM withdrawal if that would overdraw your bank account, unless you "opt-in" to the overdraft protection. In other words, if the transaction will cause an overdraft, your debit card will be declined. You can "opt-in" to the overdraft protection and your bank will continue to overdraw your account.

Another issue with debit cards is card authorizations made by certain businesses. Two of the most problematic are gas stations and hotels. All gas stations pre-authorize your debit card for a gas purchase at the pump. In this way the gas station knows that your card is good and it can sell you gas. However, when you pay at the pump your card has been pre-authorized, but the amount of the total purchase is unknown. Hypothetically you could have \$1.00 in the bank and get \$50.00 in gas. As a precaution, some gas stations now place a hold on your debit card for \$50.00 thereby ensuring payment. The problem is when you get \$10.00 in gas and think you have another \$40.00 available in your account. This can cause purchase declines and fees, so consider paying in cash for gas station purchases.

Likewise, hotels often place a hold on your debit card to cover any damage to the room, pay per view television, food or beverage purchases, or other hotel charges. These holds can last several days and tie up your bank account.

### **Is My Credit Ruined After Bankruptcy?**

No! For most debtors your credit report immediately after bankruptcy is a mess. Your credit is “broken,” but not “ruined.” It simply needs fixing!

The credit score for some debtors drops dramatically upon filing bankruptcy. For others who have struggled financially for some time, the drop is not much at all. Bankruptcy has a detrimental impact on your ability to borrow money for the short run. However, bankruptcy also lightens your debt load significantly and gives you a second chance to arrange your finances in a way that is manageable for years to come.

### **How Do I Repair My Credit After Bankruptcy?**

While the bankruptcy laws promise a “fresh start”, in reality you do not “start fresh.” Your debts are not erased. Your credit is not reset to a perfect score. It is up to you to rebuild your credit after your bankruptcy discharge.

Fortunately bankruptcy is not a debtor’s prison or a financial death sentence. Many people are able to rebuild their credit and obtain credit cards, or purchase automobiles and real estate just months after their bankruptcy case closes. The process is actually very simple, but requires a great deal of care, attention, and information. Below are some common sense suggestions to help you “fix” your credit and improve your credit score.

### **Obtain Copies Of Your Credit Reports**

Immediately after your case closes (Usually 3 months soon after the discharge order is issued and your case is closed), you should obtain a copy of your credit report. Federal law states that you are entitled to one free copy of your credit report every twelve months. The three largest credit reporting bureaus (Experian, Equifax, and TransUnion) have established a web site for obtaining these reports free of charge: <https://www.annualcreditreport.com>

AnnualCreditReport.com is the ONLY authorized source to get your free annual credit reports under federal law. You can request your free report online, by phone or by mail. Visit AnnualCreditReport.com, call 1-877-322-8228, or fill out the Annual Credit Report Request form and mail it to Annual Credit Report Request Service, P.O. Box 105281, Atlanta, GA 30348-5281. No matter how you request your report, you have the option to request all three reports at once or to order one report at a time.

Don't be misled by flashy television commercials or catchy jingles that offer "free" credit reports. Some sites, like Experian owned FreeCreditReport.com, uses the offer of free credit reports to lure customers to pay for a monthly service that alerts subscribers to important changes in their credit status. Annualcreditreport.com is entirely free for your credit reports. **NO CREDIT CARD NEEDED!** If you want to add your credit score to your reports, it is available for a modest extra charge.

## **Contest Erroneous Information On Your Credit Reports**

Debts that were discharged by the bankruptcy court during your case should be listed on your credit report as **"Discharged in Bankruptcy"** or **"Included in Bankruptcy"** with a **"Zero Balance."** The date of the last activity should be the bankruptcy filing date, not the discharge date.

These discharged debts should reflect no activity after the date of your bankruptcy filing. This includes transfer of the debt to collection agencies. The report of the transfer or update of records after the filing date is a collection activity that impacts your credit score. Collection attempts after the date of the bankruptcy filing are protected by the bankruptcy automatic stay, and attempts after the discharge date are protected by the bankruptcy discharge injunction.

All of the credit bureaus have simple instructions for contesting erroneous information on your report and is supplied to you with your reports. For most debtors it is recommended that you send a copy of the discharge order and bankruptcy schedules D and F (secured and unsecured creditors) to the credit bureau by certified mail. This information will speed the bureau's correction process and decrease the likelihood that the information will be falsely verified.

Once you have contested the erroneous information on your credit report, the reporting bureau is required to send you an updated credit report. Review this new report for errors. You may need to repeat the process once or twice before your report is finally accurate. Remember, your credit report is only as good as the information the credit reporting bureau receives. It is your responsibility to ensure that it has accurate information.

## **Maintaining Your Credit Report (This Is Important)**

Once your credit report is correct, it is important to monitor your credit periodically. It is a good idea to check your credit report and score at minimum six months after you have completed your initial report correction. It is not uncommon for a discharged debt to reappear unexpectedly on your credit report with a changed status of the account.

For instance, a car surrendered to the bank during your bankruptcy should be listed as "Included in Bankruptcy" with a zero balance. Months after your bankruptcy case closes the bank may sell the vehicle for less than what is owed. The bank may send an update to the credit bureaus reporting that the car was "Repossessed" and may show the deficiency balance. While

this is a violation of the bankruptcy discharge injunction, the bank has probably made an error of negligence. The easiest way to fix the problem is to contest the account directly with the credit bureau and notify the creditor of the error by certified mail with a copy of your scheduled debt and discharge order.

Occasionally a discharged debt may be sent to a collection agency or purchased by a third party. Again, this is a violation of the bankruptcy discharge injunction, but likely an error of negligence. The first thing to do is to file a direct dispute to the credit bureau and to notify the collection company by certified mail with a copy of your scheduled debt and discharge order.

If you can afford it, subscribe to a credit monitoring service. A monitoring service charges a monthly fee and will send you alerts when there is a change to your credit report. Be warned: these monitoring services can be expensive! Monitoring services are especially good when preparing to make a significant credit purchase, like a car or house. An unexpected drop in your credit score from erroneous information could mean the difference in getting a loan or increased interest rates.

### **Obtain A Copy of Your Chexsystems Report**

Most consumers know about the big three credit reporting bureaus and the importance of reviewing their credit reports. Most consumers are not aware that there is another credit reporting agency that keeps data regarding how consumers manage their bank accounts.

Chexsystems is used by eighty percent of banks to check for banking irregularities such as overdrafts, unsatisfied balances, and fraudulent or suspicious activity in your bank account during the past five years. Most banks that use Chexsystems will not open a new account for a customer that has a negative item on the Checksystems report.

Factual information about the debt may remain on a Chexsystems report for five years and will make it difficult for you to open a bank account. It is important to know what is reported on your Chexsystems report. Fortunately, you can obtain a free Chexsystems report at: <https://www.consumerdebit.com/consumerinfo/us/en/chexsystems/report/index.htm>

Review the Chexsystems report for accuracy and dispute erroneous information, if necessary. While a bankruptcy will discharge a bank account debt, factual information concerning the debt will remain on your Chexsystems report after the bankruptcy. This information is available to financial institutions and may prevent you from opening another bank account.

### **Rebuilding Your Credit Report**

Once you have corrected your credit report, it is time to rebuild your credit score. Your credit score is a number that lenders use to estimate risk, and is made up of several aspects: approximately 1/3 of your score is based on your payment history; 1/3 is your available credit;

and 1/3 is various items like types of credit and length of credit history. The best way to rebuild a credit score is to start a new, responsible history of managing credit.

The perfect credit file has often been described as two credit cards with high limits, low balances and perfect payment history; one car loan and one house loan with perfect payment history; many years at the same job; and no public records (bankruptcy, repossession, foreclosure, or lawsuits). As you can see, your credit report essentially comes down to a description of the types of credit you have used, how you have managed that credit, and how financially stable you are. For instance, a person with a high credit score who suddenly applies for four different credit cards will see a drastic and immediate reduction in her credit score. Why? This behavior is an indication that the person is loading up on credit and may be indicative of trouble in the person's life! The credit score model is highly sensitive to these types of activities or patterns.

Rebuilding your credit history requires diligence and patience. It is important to be vigilant and careful with your credit each month, and it takes time to establish a positive credit history. With responsible use of credit and on-time payments you will discover that your credit score will increase month after month.

### **Pay Your Existing Bills On Time Each Month**

The first and most important aspect to rebuild your credit is to pay any debt that survives the bankruptcy discharge *early* every month. Certain debts may be non-dischargeable (e.g. student loans), and others may have been reaffirmed during the bankruptcy (e.g. a car loan). Pay these monthly debts *religiously* and *early*.

Since approximately 1/3 of a credit score is based on payment history, simply making payments on time each month will greatly enhance your credit score over time. Some credit counselors advocate paying off revolving debt balances each month, but in some cases the creditor will not issue a report for a consumer who carries a zero balance. It is important that your creditors *report* your timely payment history each month. Carrying a small balance on a credit card (less than 10%) will ensure timely reporting and not negatively impact your credit score.

### **Avoid Any Late Payment**

While on-time payments to a creditor will improve your credit score, a thirty day late will significantly harm your rebuilding efforts. If you begin having difficulty, speak with the creditor immediately and make payment arrangements. The road to financial recovery takes persistence and some patience. Do not allow your efforts to be wasted by one careless act.

## **Keep Your Credit Balances Low**

Approximately one third of your credit score is the amount of available credit you have. The credit scoring model favors low balances, whether that is a 10% use of a \$50,000 limit or a 10% use of a \$500 limit. Keeping your credit available suggests that you are not cash-strapped and that you are able to pay your creditors. When you are using a high percentage of your credit limit, it suggests that you are unable to meet your monthly bills without resorting to using credit. Even though you may pay your bills on time each month, your credit score will be lowered. This is especially a bad sign to lenders when coupled with a previous bankruptcy filing.

## **Get New Credit**

Many individuals have found that they can quickly rebuild their credit by making on-time payments on one or two credit cards. In most cases debtors report being offered unsecured credit cards shortly after their bankruptcy discharge. This is not surprising considering that a recently discharged debtor is unable to receive another bankruptcy discharge for several years, and likely has a good debt-to-income ratio. Many post-discharge credit card offers carry high interest rates and fees, so choose wisely.

Secured credit cards are another credit option after bankruptcy. A secured credit card requires a security deposit placed with the credit card company who then issues a credit line secured by the deposit. Many banks and credit unions offer their customers secured credit cards at reasonable interest rates.

In some cases a friend or family member may be able to add you as an authorized user to an existing credit card account. If the card holder is responsible with the monthly payments, the credit card company will report these payments as a positive payment history on your credit report also. In most cases the time that the credit card has been open will also be reported on your account, improving your score.

## **Personal Loan**

Many banks and credit unions can help you rebuild your credit history by extending a small loan secured by collateral. In most cases that collateral is a cash deposit. For instance, you borrow \$500 and deposit \$500 with the bank as collateral to secure the loan. Each month you make monthly loan installments to the bank until the debt is paid (and your \$500 deposit is returned to you, usually with some interest accrued). Make sure that the bank reports these on-time monthly payments to the credit bureaus. At the end, you not only have a positive credit history, but you have the beginnings of a good relationship with a local bank.

## **Buying A Car After Bankruptcy**

Buying a car after a bankruptcy can be an intimidating process. In many cases you are at the mercy of the car dealer and rely on its connections to get you financing. Therefore, the first and best advice is to visit the largest car dealer in your area. High volume dealers will typically have the best chance at finding financing for you.

To improve your chances at obtaining a loan at favorable terms, have a large down-payment. The more money you can put down, the harder the dealer and lender will work to approve the loan. As the saying goes, "Money talks." Typically, a "large" down payments starts at 20% of the purchase price. You can expect to be offered better terms as the amount of the down payment increases. Local banks and credit unions also require large down payments and may offer better terms than the dealer, but expect the required down-payment to increase to 30-40%.

An alternative to a large down payment is to use a co-signor to help you purchase a vehicle. Basically the lender will sell you and your co-signor the vehicle based on the strength of your co-signor's credit. If you fail to make the payments, your co-signor is responsible and will suffer the consequences.

A terrific resource for information on "bad credit" auto loans and credit cards is [www.creditboards.com](http://www.creditboards.com), a forum site for credit information. Obviously the reader must use a critical eye and a healthy dose of skepticism when getting advice from [creditboards.com](http://www.creditboards.com), however much of the information is useful and accurate. The contributors to this forum board tell their experience when dealing with certain lenders, which is useful to identify trends. For instance, at the time of this writing, [creditboards.com](http://www.creditboards.com) is reporting that Ford Motor Credit offers financing to recently discharged bankruptcy debtors, while financially troubled GMAC Automotive Financing does not.

## **Buying a Home After Bankruptcy**

Attitudes towards bankruptcy have changed dramatically over the past decade. With more than 1.4 million cases filed annually, a significant portion of the population has filed bankruptcy. Banks now recognize that an individual who receives a bankruptcy discharge generally has little or no unsecured debt and a good debt-to-income ratio. Throw in a steady and stable income and many lenders consider the bankruptcy debtor a good credit risk.

The Federal Housing Authority (FHA) credit guidelines require the debtor to show two years of responsible credit management after the bankruptcy discharge before it will issue a federal guarantee on a home loan. It is also possible to obtain a federal guarantee after twelve months, if the debtor can show that the bankruptcy was caused by extenuating circumstances beyond his or her control. An FHA guarantee means that the lender is guaranteed money if the borrower defaults on the loan. This federal guarantee makes your loan application more appealing to banks and other lenders.

While a bankruptcy may disqualify you from certain loans, there are still many options for individuals who can show a commitment to responsible financial management. It is very important that you ensure that your credit reports from Experian, Trans Union and Equifax are correctly reported and that you safeguard your credit after bankruptcy. Whatever the reason you filed bankruptcy, a lender is far more concerned with your financial history *after* your bankruptcy.

## **Qualifying For Financial Aid After Bankruptcy**

Students who have filed bankruptcy are eligible to receive *need-based* financial aid such as Pell Grants and Stafford Loans. Your bankruptcy does not affect receiving this aid because your credit is not considered.

*Credit-based* financial aid includes student loans from private lenders such as Sallie Mae. Applying for credit-based loans is the same as applying for an unsecured personal loan. Your credit history is considered and your bankruptcy will play a part in the decision of whether you will be approved for the loan.

Parent loans like the PLUS (Parental Loan for Undergraduate Students) Loan and Graduate PLUS (a loan for Graduate students) Loan are also credit-based loans and the parent's credit history is considered. The federal government issues this loan and has decided that a parent with a bankruptcy within the past five years is automatically disqualified from obtaining a PLUS Loan for his or her child, unless there were extenuating circumstances or the borrower obtains a creditworthy endorser. However, if you are denied a PLUS Loan, your child qualifies for increased unsubsidized Stafford loan limits. More information can be obtained from your student financial aid advisor.

## **Using Co-Signors**

Many people use co-signors or co-debtors to speed the bankruptcy recovery process. Co-signors, co-debtors, and joint debtors are usually the same thing: two or more people agree to share joint responsibility of a debt. In some cases the creditor agrees to pursue collection from one debtor before attempting to collect from others, and in other cases the co-signor is a guarantor of the debt – a person that is only responsible if the primary borrower defaults. In most cases the creditor expects payment from *someone* and really doesn't care who pays. The law considers most joint debtors "jointly and severally liable." That means if your mother and father co-sign for you to obtain a car loan, and you default on the loan, your *mother* is on the hook for 100% of the debt, your *father* is obligated for 100% of the debt, and *you* are obligated for 100% of the debt. The creditor can collect from any of you and is not limited to a portion of the debt per person.

A co-signor can improve your chances of obtaining a loan or getting a better interest rate. For some using a co-signor is a good option when there is a stable employment history and enough money in the monthly budget to pay the debt. However, while much of the risk is the co-

signor's, you may have some risk if your co-signor is also a joint owner of the secured property. A dispute may arise and the co-signor may demand possession or the sale of the property. Before using a co-signor, weigh the risks and choose the best option.

## **Credit Repair Scams**

In the financial waters there are sharks everywhere. Credit repair companies often make big promises, but deliver little results. The truth is that there is nothing that a credit repair company can do for you that you cannot do for yourself. Perhaps the easiest way to identify a credit repair scam is by taking a look at a federal law called the [Credit Repair Organizations Act](#) (CROA). One of the most important aspects of this law is a prohibition to credit repair companies from taking payment from their clients prior to completing the services they have promised. Under the CROA the credit repair company must first do the work, and then send the bill. The CROA also applies to licensed attorneys who do credit repair work. If you are considering hiring a credit repair company and it requests *any* up front payment, run away!

Another popular credit repair scam for the recently discharged debtor to avoid is the promise to erase the bankruptcy filing from your credit report. There are several things wrong with this promise. First, the federal bankruptcy court maintains a public record of your bankruptcy which can be easily verified by the credit reporting bureau. There is no way to “erase” this record with the bankruptcy court. Second, all of your creditors were notified when you filed bankruptcy. Upon your discharge, many of them automatically update the status of your debt to “Discharged in Bankruptcy” with the credit bureaus. Even if the record of the bankruptcy filing could be erased, each creditor on your credit report states that their debt was discharged in bankruptcy. Anyone who promises to erase the bankruptcy from your record should not be trusted or believed.

## **Creditors Omitted From Your Bankruptcy Schedules**

A creditor is sometimes forgotten or overlooked when preparing the debtor's bankruptcy schedules. Even the most diligent individual can occasionally forget a past debt. If you realize that you have forgotten a creditor after you receive your bankruptcy discharge, notify your attorney immediately. How this omitted debt is handled depends on the court and the circumstances.

In some cases it may be prudent to ask the bankruptcy court to reopen the bankruptcy case and discharge the debt. In other cases the debt may be considered discharged as a matter of law - in other words, the bankruptcy discharge took care of that debt even though it wasn't listed in the schedules. Finally, in some rare cases the debt cannot be discharged and the debtor is simply stuck with it. Remember, if you discover an omission, contact your attorney immediately!

## **How Long Does Bankruptcy Stay On A Credit Report?**

There is actually quite a bit of confusion surrounding when a bankruptcy can no longer be reported on your credit report. Some sources say ten years, others say ten years for a chapter 7 and seven years for a chapter 13. The law is actually very clear. The Fair Credit Reporting Act ("FCRA") directs credit reporting agencies to exclude bankruptcy case information from all consumer reports ten years after "the date of entry of the order for relief." The FCRA does not distinguish between chapter 7 or chapter 13. However, many credit counselors cite an "unofficial policy" of the three largest credit reporting bureaus (Experian, TransUnion, and Equifax) that removes a chapter 13 filing from your credit report after seven years.

Many individuals (and some credit experts!) are also confused over when the FCRA's ten year bankruptcy clock starts. Some say the information must be removed ten years after the date of the discharge. Section 301 of the bankruptcy code states that the "order of relief" date is the filing date, so the ten year period is measured from the bankruptcy filing date, not the discharge date. Information about your bankruptcy must be removed from your credit report not later than ten years after the date you filed the case. If you filed on January 1, 2011, the bankruptcy must be removed before January 1, 2021.

## **CHAPTER 4: MISCELLANEOUS MATTERS**

### **Employment Discrimination**

From the earliest days of bankruptcy law, Congress has been concerned with giving the honest debtor a second chance. The promise of a "fresh start" is very empty if the debtor can be liable to be fired for filing a bankruptcy. Consequently, the bankruptcy laws offer substantial protection against employment discrimination.

The first protection concerns current employment. Section 525 of the Bankruptcy Code prohibits a government or private employer from terminating or discriminating against an employee who files bankruptcy. The law is very clear: you cannot be fired from your current job because you filed bankruptcy.

The second concern is how a bankruptcy may affect your ability to get a job. Government employers are absolutely prohibited from denying employment to a person solely on the basis of a bankruptcy filing. As for private employers, most courts have found that the bankruptcy code does not prohibit a private employer from denying a person employment because of a bankruptcy filing.

## **Getting A Bank Account After Bankruptcy**

If you have discharged bank account debt, you may have difficulty opening a bank account after bankruptcy. Fortunately, many banks and credit unions offer programs to help you get a bank account because of negative banking history. Programs like “Second Chance Checking” and “Get Checking” can help you open a bank account after bankruptcy. Check around with local banks and credit unions for these opportunities. In some cases, they will not issue a new debit card until you maintain a positive balance for a specific period of time,

## **Filing Bankruptcy Again**

Filing bankruptcy is a difficult decision, but sometimes life dictates choices to us. Financial disaster can blind-side any of us, like a job loss or medical catastrophe. Whatever the reason, individuals occasionally need the protections of the federal bankruptcy laws a second time.

An individual can ordinarily file a bankruptcy case at anytime, however there may be restrictions on the relief that is available. The most common restriction is the eligibility to receive a bankruptcy discharge. To receive a Chapter 7 discharge, you must file your case eight (8) years after your previous Chapter 7 case was filed, or six (6) years after your Chapter 13 case was filed. To receive a Chapter 13 discharge, you must file your case four (4) years after your previous Chapter 7 case was filed, or two (2) years after your Chapter 13 case was filed.

In some cases, receiving a bankruptcy discharge may not be important to the debtor. For instance, if a debtor has a non-dischargeable debt like child support or taxes that must be paid, bankruptcy can offer an organized process for payment while the debtor retains some control.

Another less common restriction concerns the automatic stay. If your bankruptcy case is dismissed within the past year, the bankruptcy court assumes that your second bankruptcy is filed in bad faith. The automatic stay will only apply for 30 days after your second filing. A hearing is required to extend the automatic stay and you must convince the court that you have filed in “good faith.” If you file two or more cases within the past years, you must petition the bankruptcy court for a stay – it is not automatic for any period of time.

Finally, you are not eligible to file *at all* if your case was dismissed by the bankruptcy court within 180 days due to a willful failure to obey an order of the bankruptcy court, or if your case was voluntarily dismissed after a creditor sought to lift the automatic stay to enforce a lien against your property. Filing a second bankruptcy is not uncommon. Congress has established a few additional rules to deter abusive serial filers, but bankruptcy protection is available for the honest yet unfortunate debtor.

## **APPENDIX: IMPORTANT RESOURCES**

National Foundation for Credit Counseling

[www.nfcc.org](http://www.nfcc.org)

Call 1-800-388-2227 to speak to a counselor near you.

Para ayuda en Espanol llama al 1-800-682-9832

[www.annualcreditreport.com](http://www.annualcreditreport.com)

Inquiries and Disputes

O'Bryan Law Offices, PSC

1717 Alliant Ave. Ste. 17

Louisville, KY 40299

502-339-0222 fax:502-339-0046

[www.obryanlawoffices.com](http://www.obryanlawoffices.com)

TransUnion Credit Bureau

PO Box 1000

Chester PA 19022

1-800-888-4213

Equifax

PO Box 740241

Atlanta, GA 30374

1-800-685-111

Experian

PO Box 2002

Allen, TX 75013

1-888-397-3742

Federal Credit Reporting Act

Fair Debt Collections Practices Act

[Creditboards.com](http://Creditboards.com)

[Chexsystems.com](http://Chexsystems.com)