



THE CALIFORNIA GUIDE TO

BANKRUPTCY

The truth about bankruptcy and how it can help
the people of California start over.

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The authors are a federally defined Debt Relief Agency, and help people file for bankruptcy.

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TABLE OF CONTENTS

CONSUMER DEBT: IT'S EVERYWHERE	6
Create a Realistic Picture of Your Current Financial Situation	6
Start Your Financial Review	7
<hr/>	
WILL CREDIT COUNSELING OR DEBT SETTLEMENT HELP?	8
Credit Counseling	9
Debt Settlement	9
<hr/>	
BANKRUPTCY: NOT AS BAD A SOLUTION AS YOU THINK	10
Bankruptcy Is Widespread	10
Why Did The Government Create Bankruptcy Laws?	11
<hr/>	
THE BIBLICAL ROOTS OF THE MORAL STIGMA OF BANKRUPTCY	12
<hr/>	
COMMON MYTHS ABOUT BANKRUPTCY	13
<hr/>	
WHAT IS BANKRUPTCY?	16
What Are The Basic Types Of Bankruptcy?	16
Automatic Stays In Bankruptcy	17
What Does The Automatic Stay Cover?	17
What Does The Automatic Stay Not Cover?	17
How Long Does The Automatic Stay Last?	18
Does The Automatic Stay Differ Between Chapter 7 And Chapter 13?	18
What Is The Role Of The Case Trustee?	18
<hr/>	
CHAPTER 7 BANKRUPTCY	19
Qualification For Chapter 7 Bankruptcy	19
Property And Assets You Keep In A Chapter 7 Bankruptcy	20
Equity Explained	22
Chapter 7 Bankruptcy And Non-Exempt Property	22
Debts That Cannot Be Discharged In Chapter 7 Bankruptcy	23
Student Loans & Chapter 7 Bankruptcy	23
Do You Qualify For A Chapter 7 Bankruptcy?	24
The Chapter 7 Bankruptcy Process	24

Filing The Chapter 7 Bankruptcy Petition	25
The Chapter 7 Bankruptcy Meeting Of Creditors	25
The End: The Chapter 7 Discharge	25

CHAPTER 13 BANKRUPTCY **26**

One Of The Great Benefits Of A Chapter 13 - Getting Rid Of Your Second Mortgage	27
How Does A Chapter 13 Work?	27
Special Rules In A Chapter 13	27
Chapter 13 Meeting Of Creditors	27
Paying Your Creditors In A Chapter 13	27
How The Chapter 13 Plan Is Structured	27
Chapter 13 Plan Confirmation	28
Keys To A Successful Chapter 13 Plan	28
The Discharge In Your Chapter 13 Case	28

OTHER COMMON CHAPTERS OF THE BANKRUPTCY CODE **30**

Chapter 11 Bankruptcy	30
Chapter 12 Bankruptcy	30

WHAT TO LOOK FOR IN A BANKRUPTCY LAWYER **31**

Your Free Bankruptcy Consultation	32
The Free Consultation And What To Bring	33
What You Want To Ask Your Bankruptcy Lawyer	33

MAKE US YOUR LAWYERS **35**



CONSUMER DEBT: IT'S EVERYWHERE

A bad economy, coupled with job losses, mortgage woes, and credit card payments have struck consumers especially hard in recent years. Millions of people are struggling to keep up even minimum payments on credit cards and other loans, including mortgages and car loans.

CNN Money recently that, as of 2008, the average American was carrying over \$8,000 in credit card debt alone. In 1990, this figure was only \$5,000, showing how our general indebtedness has risen over the years. Things haven't improved. The N.Y. Times recently reported that more than 40% of Americans are in some form of financial stress. As can be expected, the more debt the American consumer is carrying, the harder it is to keep up with the payments. Whether they are families or individuals, Americans are experiencing serious financial challenges.

If you are one of those who are experiencing serious financial hardships, and are unable to keep up payments on your debts, you know it's time for you to look for solutions.

CREATE A REALISTIC PICTURE OF YOUR CURRENT FINANCIAL SITUATION

The first step in working toward regaining control of your finances is to honestly assess your current financial situation. Take financial inventory and be realistic about your situation.

START YOUR FINANCIAL REVIEW

How do you start this process? The first step is to request a copy of your current credit report from the three financial reporting institutions. This step is especially important if you haven't recently reviewed your financial situation. Here are their names, phone numbers and websites to get you started:

Experia	(800) 392-1122	http://www.experian.com/
Equifax	(800) 685-1111	http://www.equifax.com/home/en_us
Trans Union	(216) 779-7200	http://www.transunion.com/

You can also get a copy of your credit report for free once a year at

<https://www.annualcreditreport.com/cra/index.jsp>.

When you receive them, use them to determine who your primary creditors are, and how much money is owed to each of them. Also note any delinquencies that appear on your record.

Sort out your finances according to assets, liabilities, income, and expenses, to get a current picture of your financial reality. This will help you determine what your next steps need to be.

Next, you want to determine your current household discretionary income. Discretionary income refers to the amount of money left over at the end of each month, after all the household bills have been paid for that month. This allows you to get a picture of what you have to work with. You can work out your discretionary income by reviewing your monthly household budget and checking on the variable and fixed expenses that are due every month. If you don't have a household budget, this is great incentive for creating one!

Fixed expenses are fairly self-explanatory. For instance, if you have a fixed rate mortgage or car payment, which is the same every month, that is a fixed expense. This category can also include consumer loans or credit card payments, provided you don't keep running up credit card bills.

A variable expense is one that changes month to month. As such, a variable expense often has a discretionary variability, and you have some flexibility in adjusting it. Common discretionary expenses can include items like food, clothing, travel, dining out, entertainment, or even your heating or air conditioning bill.

Then figure out your monthly household income, and subtract the expenses from your income, to arrive at your total discretionary income. A positive number indicates that you have more income coming in than going out, and the leftover amount is your discretionary income. A negative number shows that you have more expenses than income, and no discretionary income at all. Every month, you are spending more than you are taking in, and going deeper into debt.



WILL CREDIT COUNSELING OR DEBT SETTLEMENT HELP?

When debt overwhelms you, and you are falling further and further behind on payments, you're probably looking for solutions. Signs that you are in trouble are if you are failing to meet your monthly minimum payments on your credit cards, or if you are paying late on your bills, every month. You may be receiving collection calls, or have been unable to negotiate with your creditors.

Doing nothing definitely doesn't help! But what about credit counseling or offering to settle debts? These other options, not just bankruptcy, should be explored. Each option has advantages and disadvantages that should be carefully weighed before deciding on a course of action.

Working with credit counseling or debt settlement agencies can offer getting a handle on on debt for some people, but these solutions are not suitable for everyone. You must carefully evaluate your financial situation before deciding on any of these alternatives, to be sure these really give you a financial advantage. Also, there are caveats to be aware of. Don't take any action without careful and thorough evaluation.

CREDIT COUNSELING

Historically, credit counseling has been offered by non-profit agencies that assist the consumer by creating debt management plans where new terms are created with lowered interest rates. The consumer then agrees to a repayment schedule for eliminating the debt. Consumers facing an unmanageable amount of debt often consider credit counseling to consolidate it into a plan that has monthly payments they can manage.

Currently, consumers need to take care in selecting a credit counseling plan. Credit counseling services have sprung up virtually everywhere, offering to manage your indebtedness for a fee. While there are many reputable agencies offering services, there are also many shady firms who take your money and provide little to nothing in the way of services.

If you are looking for a credit counseling service, watch out for the following warning signs:

- Charging Large Upfront Fees
- No Accreditation
- Unrealistic Promises About Resolving Your Credit Issues

DEBT SETTLEMENT

Debt settlement is negotiating with your creditors to find a mutually-agreed on solution, as an alternative to bankruptcy. Debt settlement companies will work with your creditors to lower your overall debts by having the creditors accept lump-sum payments for less than the balance due.

However, consumers should be aware that debt settlement is often unsuccessful. Not all creditors are willing to work with debt settlement companies, and the up-front fees can be steep, often as high as 25% to 35% of the total forgiven debt.



BANKRUPTCY: NOT AS BAD AS YOU THINK

There is a point where you've done everything you can, and the bill collectors are still knocking on your door. At that point, you should consider whether filing for bankruptcy is a good alternative for resolving your financial difficulties. Bankruptcy may or may not be an option.

First off, you need to be prepared with both the facts about bankruptcy and a realistic evaluation of your financial situation. In determining if bankruptcy is right for your situation, you need to find out more about bankruptcy from an expert, not just from what you find on the Internet, information from TV, what your neighbor knows about it, or even this booklet!

BANKRUPTCY IS WIDESPREAD

Let me reassure you: bankruptcy isn't as scary as you think, and you most definitely aren't alone, if you are contemplating bankruptcy. We are currently in a terrible financial situation, nationwide, and the facts and figures bear this out.

The sobering fact is that, according to data from the National Bankruptcy Research Center, 1,473,449 bankruptcy cases were filed in 2009. This figure means that there was a 31% rise in bank-

ruptcy filing over the number of filings in 2008. In California alone, the increase was over 45%. We expect the need for bankruptcy relief to continue to increase.

But even this isn't the full picture. In the past decade, over 12 MILLION American consumers have filed for bankruptcy. Just so you get an idea of the scale of those 12 million bankruptcies, that's as if every man, woman, and child in both New York and Los Angeles had filed for bankruptcy. Statistics don't lie. This indicates a devastating economic situation that has been continuing for years. In short, if you're contemplating bankruptcy, you've got a lot of company.

WHY DID THE GOVERNMENT CREATE BANKRUPTCY LAWS?

First, from the beginning, our U.S. Constitution mandates Congress to create bankruptcy courts and bankruptcy laws. Our forefathers acknowledged that as a civilized society, deserving people and businesses will need relief from financial stress in order for the economy to continue to progress.

Bankruptcy laws were created because the government knows that people who are up to their ears in debt generally aren't out there spending money, which helps the overall economy. The economy trickles down, or trickles up, or slows to a crawl, depending on whether or not people are spending money. If people are spending money, they buy more goods, which supports both businesses and manufacturing. When business and manufacturing are doing well, they hire more people, creating more jobs. These jobs make America more prosperous overall, because people who are working and have disposable income buy more goods and services, and buy cars and homes. With a mountain of debt hanging over them, people stop buying things, and the flow of money slows to a trickle. The economy slows, falters, and grinds to a halt.

Bankruptcy provides a government-sanctioned safety valve that discharges debt, providing a spur to the economy by allowing people to go back to spending money on things other than their debts. They can start spending money again, which primes the stream of commerce.



THE BIBLICAL ROOTS OF THE MORAL STIGMA OF BANKRUPTCY

Many believe that declaring bankruptcy is morally wrong. This stigma may have roots in the Bible, where certain passages suggest that some form of bankruptcy has existed since the earliest times. The Bible also suggests that people have a moral duty to act as strong financial stewards. This has led to many religious interpretations implying that bankruptcy is wrong and immoral. However, in Biblical times, debt relief was not questioned, and did not carry a moral stigma.

The Bible makes a strong case for both compassion for the poor and economic justice. People are urged to help, rather than judge, those who are suffering economic hardship. For instance, in **Deuteronomy 15:7-10**, the Bible states, *“if there is a poor man amongst your brothers...do not be hardhearted or tightfisted toward your poor brother. Rather be open-handed and freely lend him whatever he needs. Be careful not to harbor this wicked thought: ‘the seventh year, the year for canceling debts, is near,’ so that you show ill toward your needy brother and give him nothing. He may then appeal to the LORD against you, and you will be found guilty of sin. Give generously to him and do so without a grudging heart; then because of this the LORD your God will bless you in all your work and in everything you put your hands to.”*

Deuteronomy 15: 1-2 also contains a provision for the discharge of debts, as according to God’s will: *“At the end of every seven years you shall grant a release. And this is the manner of the release: every creditor shall release what he has lent to his neighbor, his brother, because the LORD’s release has been proclaimed.”* It would appear, then, that bankruptcy law has a Biblical precedent.



COMMON MYTHS ABOUT BANKRUPTCY

Just as people have background moral beliefs about bankruptcy, bankruptcy is also fraught with myths and rumors that seem to propagate through our collective consciousness. These other beliefs also need to be addressed, as they are widespread, and you need facts, not rumor and hearsay. Here are some of the most common myths about bankruptcy. We'll address them point by point.

1. Bankruptcy was outlawed by recent changes in the law.

Yes, bankruptcy law was modified in recent years. However, it is still available to those debtors who do not have other options for discharging their debts.

2. If you file for bankruptcy, you'll lose everything you own.

Not true. Most who file for individual bankruptcy do not have sufficient assets that qualify for liquidation under the bankruptcy code. Exemptions allow filers to qualify to keep some assets and, often, their primary residence. Bottom line, in most cases people filing bankruptcy keep all of their property.

3. Bankruptcy makes you a poor credit risk and you'll never get credit again.

Not true. While your whole credit history is investigated when you apply for new credit, your past credit history often counts for less than your more recent credit history. Bankruptcy does not necessarily mean you will be unable to secure new credit in the future, provided you show responsible money management going forward.

4. You can choose which debts you want to include in the bankruptcy.

By law, you must list all debts when you file for bankruptcy. You cannot pick and choose debts. Failing to list all debts can result in a dismissal of the bankruptcy case. This is why it is so important to be thorough and list all debts when filing for bankruptcy. A recent copy of your credit report can be invaluable in keeping you from overlooking any debts.

5. Making late payments is as bad for your credit as a bankruptcy filing.

While late payments can lower your credit score, many different items can affect your overall credit. Maintaining a high amount of debt, bad debts, and other items can lower your credit score more than a bankruptcy. Bankruptcy erases debts and allows you a clean start in rebuilding your credit history over time.

6. If you're employed, you're not eligible to file for bankruptcy.

Not true. However, to determine which version of bankruptcy (Chapter 7 or Chapter 13) is appropriate, someone filing for bankruptcy must pass a "means test." The "means test" also determines if they are eligible to file for bankruptcy at all. The "means test" is a review of all your family income and expenses.

7. Medical bills can't be discharged.

Not true. In most cases, if the bankruptcy is approved, all debts are discharged, and that includes medical bills.

8. Taxes can't be discharged.

Not true. Most older taxes are discharged in bankruptcy.

8. If you file for Chapter 13, all debts must be repaid in full.

A Chapter 13 filing includes a repayment plan, and the terms of the plan vary according to the income ability of the individual filing. The repayment plan takes into account the filer's income, total assets, exempt assets and total debts. It is very common for a person to not pay all of their unsecured debts in full in a Chapter 13.

9. You can only file for bankruptcy if you owe debts above a certain amount of money.

There is no minimum debt requirement in filing for bankruptcy. If you are unable to pay down your debts and you and your creditors have been unable to reach an agreement, on your own, you can seek to have them discharged through bankruptcy.

10. Creditors will still harass you if you file for bankruptcy.

Under law, once you have filed for bankruptcy, your creditors must cease and desist in contacting you. If a creditor does not comply with this law, you can file for punitive damages against them. In short, once bankruptcy has been filed, your creditors must stop bothering you.

11. Everyone will know that you declared bankruptcy.

You're not Donald Trump. Unless you are a prominent or celebrity figure, chances are that no one except your creditors will know you filed for bankruptcy protection. While the information is public record, very few people scan the court records to see who filed bankruptcy.

12. Filing for bankruptcy is a complex process.

Your bankruptcy attorney will walk you through the process and get you acquainted with all the forms and processes, and work closely with you to make sure you understand them. Your bankruptcy attorney will also be able to answer any specific questions about the process, as well as simplify things as much as possible. Bankruptcy can be complex if you're not experienced in the law and the process.



WHAT IS BANKRUPTCY?

Basically, bankruptcy is a legal process through the federal court system that is designed to help a consumer either eliminate their debts or repay them under the protection of the bankruptcy court. State and local laws have some influence, but bankruptcies are always filed in the United States Bankruptcy Court.

WHAT ARE THE BASIC TYPES OF BANKRUPTCY?

Within the United States, there are four types of bankruptcy. These are:

- **Chapter 7:** This is a straight bankruptcy filing, and is the fastest, easiest and least expensive kind of bankruptcy. It is also known as liquidation.
- **Chapter 11:** A Chapter 11 bankruptcy reorganization is used primarily by businesses. It is also used by people who have substantial debts and assets.
- **Chapter 12:** This form of bankruptcy is used solely by family farmers in reorganizing their finances. It is used much less frequently, because of the limited number of family farmers in most locations.
- **Chapter 13:** A Chapter 13 filing can be thought of as the personal version of Chapter 11. It is designed for individuals who have a regular source of income and can repay on a payment plan, in exchange for keeping all of their property. It's mostly used by people who have a goal such as saving a home from foreclosure or a car from repossession.

Personal bankruptcies for individuals are usually filed under Chapter 7 or Chapter 13, and up to 65% of all bankruptcies in the United States are filed under Chapter 7. Businesses and corporations file for bankruptcy under Chapter 7 or Chapter 11.

AUTOMATIC STAYS IN BANKRUPTCY

When you file for any kind of bankruptcy, it results in an automatic injunction against the continuance of any action by any creditor against you or your property. This injunction is called an automatic stay, and is a critical factor in bankruptcy proceedings.

In the case of Chapter 13 bankruptcies, the injunction extends to anyone else who is responsible for repaying your debts.

The automatic stay protects you from your creditors during the bankruptcy case proceeding. For a creditor to take any action against you, after bankruptcy is filed, that creditor must obtain court approval beforehand. There are, however, time limits on the automatic stay. Here are some examples of the limits:

- If you had filed a prior bankruptcy case that was dismissed within the last year, the automatic stay lasts for only the first thirty (30) days after your case is filed. This limit applies unless you or your lawyer are able to get a court order extending the automatic stay.
- If you have had two or more prior bankruptcy cases pending within the past year, and these were dismissed, the automatic stay does not take effect at all. As with the case above, getting a stay is possible if you or your lawyer can get a court order, but the stay is not automatic.

WHAT DOES THE AUTOMATIC STAY COVER?

While the automatic stay is in place, the following actions are prohibited:

Beginning or continuing law suits

- Collection calls and letters
- Repossessions
- Foreclosure sales
- Income executions (“garnishment”)
- Bank account levys
- Includes collections of delinquent taxes

You will notice that the automatic stay confers a tremendous advantage to you by stopping many types of creditor actions. This power lets you experience the effects of a fresh start through bankruptcy almost immediately.

WHAT DOES THE AUTOMATIC STAY NOT COVER?

Be aware the automatic stay does not cover the following actions:

- Criminal proceedings
- Actions for a family support order or the modification of such order
- Actions to collect support from property that is not property of the estate
- Tax audits, demands by a taxing authority for you to file tax returns, or assessment of taxes due

If you have any of these sorts of problems, speak to your bankruptcy attorney before filing your

bankruptcy case. The two of you can then work out how these issues will be dealt with. There may be options that will allow you to work with these kind of creditors, and a well-informed bankruptcy attorney can advise you on this.

HOW LONG DOES THE AUTOMATIC STAY LAST?

The automatic stay is an immediate and powerful solution to your immediate situation, when you file for bankruptcy protection, but it doesn't last forever. While it shields you from creditor actions in your immediate future in most cases, in other cases it may expire or not even go into effect.

The automatic stay for your bankruptcy case also may be lifted if a judge issues a court order to lift the stay because of a creditor petition.

Lastly, the automatic stay ends at the same time as your bankruptcy case, when your debts are discharged. At the close/discharge of a chapter & case, a discharge stay goes into effect.

It is wise to remember all rules have exceptions and limitations, so be careful and don't assume you are protected when you may not be.

DOES THE AUTOMATIC STAY DIFFER BETWEEN CHAPTER 7 AND CHAPTER 13?

In Chapter 7 bankruptcy filings, the stay applies only to you, the individual who has filed for bankruptcy. In Chapter 13 filings, the automatic stay also covers any other people who are obligated to repay your debts. For example, if you have a mortgage and are using the bankruptcy filing to stop a foreclosure, anyone else who is on the mortgage with you will also benefit from the stay.

WHAT IS THE ROLE OF THE CASE TRUSTEE?

When either a Chapter 7 or Chapter 13 bankruptcy is filed, the U.S. Trustee appoints an impartial case trustee to administer the case. With a Chapter 7 bankruptcy, the case trustee will also sell nonexempt assets. The case trustee is looking for property to sell in order to pay you're debts. Your attorney will be working to prevent this.

If all of your assets in Chapter 7 are either exempt or subject to valid liens, the case trustee then usually files a "no asset" report with the court. This means there will be no distribution to unsecured creditors.



CHAPTER 7 BANKRUPTCY

A Chapter 7 bankruptcy can be filed either by a consumer or by a business. Both are considered “persons” under the law. The general life span of a Chapter 7 bankruptcy can range from as little as 3 months to as long as 6 months. When you enter into a Chapter 7 bankruptcy, your assets become part of the “bankruptcy estate” whereby the bankruptcy trustee has the right to sell the nonexempt property to satisfy your debts. In a Chapter 7 bankruptcy, the ultimate goal is a “discharge.” In other words, your debts are eliminated, or considered satisfied. But, you will want to make sure that, under the bankruptcy code, your debts are actually dischargeable. This guide will give you those answers.

Fortunately, most of your assets will be protected by the bankruptcy code. The law provides for numerous “exemptions,” which protect your property from sale. As an example, most of the equity in your property will be exempt. Furthermore, Social Security, disability, and unemployment payments will also be exempt. But, since the exemptions can be complicated, we recommend that you seek the advice of an experienced Chapter 7 bankruptcy attorney.

QUALIFICATION FOR CHAPTER 7 BANKRUPTCY

Not all consumers will qualify for a Chapter 7 bankruptcy. For instance, if your income is too high, or the bankruptcy judge determines that you have enough money to pay into a Chapter 13 bankruptcy, you cannot qualify for a Chapter 7 bankruptcy liquidation. It is important that your bankruptcy attorney understands how to calculate your “income” so as to best interpret the law in your favor.

PROPERTY AND ASSETS YOU KEEP IN A CHAPTER 7 BANKRUPTCY

If you are a consumer who files for Chapter 7 or Chapter 13 bankruptcy in California, you will be allowed to keep your property that falls under a number of bankruptcy exemptions. Exemptions are parts of the bankruptcy code that delineate what you can keep, while at the same time eliminating debts in Chapter 7 liquidation.

While Bankruptcy is governed by federal law, the exemptions are governed by state law in California. California has one more of the complicated exemptions systems in the country. That sounds bad but that is not necessarily the case. The reason is that California has great exemptions for its citizens and it is very common that people filing bankruptcy get to keep all of their assets.

One of the confusing things about the California exemption system is that there are two sets of exemptions. You have to choose one or the other. It is usually an easy choice. Basically, if you own a home and have equity in your home, you will generally choose one exemption system. If you do not own a home or do not have equity in your home, then you will generally choose the other one. Exemptions under California Code of Civil Procedure 704 (This is the exemption that you might use if you own a home and have equity in the home).

- Real or personal property you occupy including mobile home, boat, stock cooperative, community apartment, planned development or condo to \$75,000 if single and not disabled; \$100,000 for families if no other member has a homestead (if only one spouse files, may exempt one-half of amount if home held as community property and all of amount if home held as tenants in common), \$175,000 if 65 or older, or physically or mentally disabled; \$175,000 if 55 or older, single and earn under \$25,000 or married and earn under \$35,000 and creditors seek to force the sale of your home; sale proceeds exempt for 6 months after received (husband and wife may not double).
- Motor vehicle (any combination of aggregate equity, proceeds of execution sale, and proceeds of insurance or other indemnification for loss, damage, or destruction) - **\$ 2,900**
- Material to be applied to repair or maintenance of residence - **\$ 3,050**
- Jewelry, heirlooms, art - **\$ 7,625**
- Personal property used in debtor's or debtor's spouse's trade, business, or profession (amount of exemption for commercial motor vehicle not to exceed \$4,850) - **\$ 7,625**
- Personal property used in debtor's and spouse's common trade, business, or profession (amount of exemption for commercial motor vehicle not to exceed \$9,700) - **\$ 15,250**
- Deposit account with direct payment of social security or public benefits (exemption without claim, section 704.080(b))
 - Public benefits, one depositor is designated payee - **\$ 1,525**
 - Social security benefits, one depositor is designated payee - **\$ 3,050**
 - Public benefits, two or more depositors are designated payees - **\$ 2,275**
 - Social security benefits, two or more depositors are designated payees - **\$ 4,575**

- Inmate trust account - **\$ 1,525**
- Inmate trust account (restitution fine or order) - **\$ 300**
- Aggregate loan value of unmaturred life insurance policies - **\$ 12,200**

Exemptions under California Code of Civil Procedure 703.140(b) (This is the exemption that you might use if you do not own a home or you have little equity in your home)

- The debtor's aggregate interest in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor - **\$ 25,575**
- The debtor's interest in one motor vehicle - **\$ 5,100**
- The debtor's interest in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor (value is of any particular item) - **\$ 650**
- The debtor's aggregate interest in jewelry held primarily for the personal, family, or household use of the debtor or a dependent of the debtor - **\$ 1,525**
- The debtor's aggregate interest, plus any unused amount of the exemption provided under paragraph (1), in any property - **\$ 1,350**
- The debtor's aggregate interest in any implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor - **\$ 7,625**
- The debtor's aggregate interest in any accrued dividend or interest under, or loan value of, any unmaturred life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent - **\$ 13,675**
- The debtor's right to receive, or property traceable to, a payment on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent - **\$ 25,575**

We know these exemptions are a little confusing, but do not fear, they are for your benefit.

EQUITY EXPLAINED

When you are going to file for a Chapter 7 bankruptcy, the equity in your home (or other property) is an extremely important concept to understand. When determining whether or not an asset is exempt from liquidation, it is vital that your California bankruptcy attorney calculates the equity in that property.

At its most basic level, the equity in a certain piece of property is the difference between what you owe on the property and how much the property is worth. That distinction, however, really requires a more in-depth inquiry.

When considering a property's value, several factors must be taken into account. Generally, the value of a certain piece of property is what you would be able to sell it for on the open market. Put another way, if you look at the clothes you are wearing right now, their value would be determined as if you took them off your body and tried to sell them today. That is market value in a nutshell. When you think about most of your property, the value is relatively small; to the bankruptcy trustee the value will be almost always zero.

But, market value can become somewhat more complicated when we look at other items. Let's say, for example, you have a home that is worth \$900,000. The market value is not necessarily \$900,000 because there are other costs associated with the sale of the property. For example, you would have to pay broker fees and closing costs. This decreases the amount that you can recover. Now, let us look at the portion of equity that involves what you owe. In other words, how much of that equity is the secured debt associated with the property? This concept can be illustrated in a simple example. If you bought a car and took out a \$15,000 loan, you owe \$15,000, which is secured by the value of the car. That seems pretty simple.

The concept, however, can become more complicated than that. If you have a home with a \$250,000 mortgage, \$10,000 of associated debt in unpaid property taxes and \$2,500 of associated debt in unpaid homeowners association fees, what do you do? What if you tack on a \$20,000 personal judgment?

You may not realize it, but there is a lot more encumbering the property than the mortgage. Yes, each of these items is a claim against the property. Many people do not realize that personal judgments in California also attach to property.

It is very important that you calculate the equity properly, so that, when you file your Chapter 7 bankruptcy case, you will know how much your exemption will be.

CHAPTER 7 BANKRUPTCY AND NON-EXEMPT PROPERTY

The general idea of a Chapter 7 bankruptcy is that all non-exempt property becomes part of the bankruptcy estate, which can then be used to satisfy creditors.

But, in reality, the bankruptcy trustee will not sell property that has a relatively low value because it would cost the trustee more to sell than the value. This is good news. What happens is that the trustee then considers the property to be abandoned and you get to keep it!

If the bankruptcy trustee makes the decision to sell a specific non-exempt property, he or she may give the consumer the option to buy the property over a period of time.

DEBTS THAT CANNOT BE DISCHARGED IN CHAPTER 7 BANKRUPTCY

The main goal of a Chapter 7 bankruptcy is to have most, if not all of your debts discharged. In other words, these debts are eliminated. When a debt is discharged in a Chapter 7 bankruptcy, you no longer have to repay it. Unfortunately, not all of your debts can be discharged.

Generally, the following debts will not be discharged in a Chapter 7 bankruptcy:

Child Support Payments – under the bankruptcy code, child support payments cannot be discharged in a Chapter 7 bankruptcy. Additionally, the automatic stay will not prevent one spouse from going to Court to collect on that debt. Furthermore, if you owe back child support payments, the bankruptcy code says that the bankruptcy trustee must pay those debts before paying other creditors. If the consumer cannot make the child support payments after filing for Chapter 7 bankruptcy protection, you can petition the Family Court to lower your payments.

Spousal Support Payments – in a very similar manner to how child support payments are handled, you cannot discharge spousal support payments in a Chapter 7 bankruptcy filing.

Tax Liens are not removed. As a general rule, most recent tax obligations cannot be discharged in a Chapter 7 bankruptcy. But, there are certain exceptions to this rule. If you meet the following criteria, you could have those debts discharged in the filing:

- If the date the tax was due was more than three years before the Chapter 7 filing (the tax return for the tax debt in question must have been recorded at least two years before the Chapter 7 filing.)
- If the statement from the IRS says that you have tax debt, but that statement is at least 240 days old.
- Finally, the tax return must not be deemed fraudulent.

Debts to the Government – this situation is a little less common. For example, if you owe money to the Social Security administration or any other government entity, that debt generally will not be discharged in Chapter 7.

Debts Due To A Criminal Conviction – if, as part of a criminal conviction, you have been ordered to pay restitution to the victim in the case, that debt will not be discharged.

Debts Arising From Intentional Conduct – if, for example, you have a judgment against you for fraud, battery, or other intentional conduct, that debt will generally not be discharged in a Chapter 7 bankruptcy.

Student Loans – student loans can only be discharged in extreme cases. In order to have the student loans discharged, you must show the bankruptcy Judge that the loans are an undue hardship on your finances. This is very difficult to show.

STUDENT LOANS & CHAPTER 7 BANKRUPTCY

If you owe money because of student loans your options are rather limited. As noted above, you will have to prove hardship in order to have the Judge discharge the debt. Hardship requires meeting several criteria which are quite difficult to show.

As a general rule, an educational loan is not dischargeable. One condition used to be that the loan not be an old one. Another condition is that it must be a loan. It used to be that the loan must be from a governmental unit or a nonprofit institution of higher education but that was changed by a 1998 amendment to the bankruptcy code as well.

In order to discharge your student loan debts in, the consumer must show ALL of the following:

First, taking into consideration your current income and living expenses, you must show that requiring you to repay your student loans would force you below a minimum standard of living. This element is usually the easiest to prove.

Second, you must show that your current financial situation will continue, as is, for a significant portion of the time you have to repay your students loans. In other words, you have to show that the first element is going to last into the foreseeable future.

Third, you must show, up until this point, you have been, in good faith, attempting to repay your student loans. This requirement does not necessarily mean you are actually making payments. The bankruptcy code contemplates such things as going back to school with the goal of increasing your income, consolidating loans in order to lower monthly payments and other efforts.

The above three elements are known as the **“Brunner Test.”** The test is named after the appellate court decision that first set forth the rule.

Now, not all of the news is bad. The bankruptcy court has the authority to discharge a portion of your student loan debt. The consumer must show that he or she has the ability to repay some, but not all, of the student loans. While you stand a much better chance under this scenario, you must still meet all three requirements of the Brunner Test. Doing so is quite difficult to accomplish. We recommend consulting with an experienced bankruptcy attorney to find out what options are best for you. This is one of those times that you don't want to leave your case in the hands of an inexperienced lawyer.

DO YOU QUALIFY FOR A CHAPTER 7 BANKRUPTCY?

You should examine several considerations to make sure you qualify for a Chapter 7 bankruptcy in California. They are as follows:

1. Whether you have had a bankruptcy petition dismissed within the last 180 days and that dismissal was due to your failure to appear or your failure to follow a bankruptcy court order.
2. If you have voluntarily dismissed a bankruptcy petition during which a creditor had sought relief from a stay so as to recover property on which there was a lien.

Further, you must make sure that, within 180 days of filing your bankruptcy petition, you receive your credit counseling certificate from an approved credit counseling company.

THE CHAPTER 7 BANKRUPTCY PROCESS

Many of our potential clients want to have a general outline of what is involved in the Chapter 7 bankruptcy process.

FILING THE CHAPTER 7 BANKRUPTCY PETITION

The Chapter 7 bankruptcy always starts with the filing of the bankruptcy petition in the appropriate bankruptcy court for your location. Along with that bankruptcy petition, you must file numerous documents related to your financial situation, as well statements made under oath.

It is important to note that a husband and wife can file separately or jointly. Even if a husband and wife decide to file together, each will still have to fill out the bankruptcy paperwork as though they were filing individually.

One of the most important questions concerns costs. The filing fee, to the bankruptcy court, is \$335.00. This goes directly to the court and is not a fee to your Chapter 7 lawyer. There are certain circumstances in which the court may allow you to pay in installments. You will want to consult with your attorney about these circumstances.

To submit a complete bankruptcy petition you must provide the following information:

- A. The names of all your creditors and how much you owe each
- B. The name of your employer or, in the alternative, your source of income
- C. How much money you make and how often you make it
- D. A list of all your assets
- E. A list of all your monthly expenses
- F. A statement of your financial affairs

This information must be provided for both husband and wife, regardless of whether they are filing individually or jointly.

THE CHAPTER 7 BANKRUPTCY MEETING OF CREDITORS

Generally, the only time the debtor will have to make an appearance during his or her Chapter 7 bankruptcy case is during the meeting of creditors. This meeting usually takes place three to five weeks after the bankruptcy petition is filed. This is not a traditional court appearance. At this meeting, the debtor and his or her attorney meet with the bankruptcy trustee so that the trustee and creditors can inquire about the debtor's financial situation.

It is very important that you answer the questions truthfully. If a husband and wife have filed a joint bankruptcy petition, they will both have to be present and answer the trustee's questions. If you fail to cooperate with the trustee or fail to provide any of the requested documents, your bankruptcy case may be dismissed.

THE END: THE CHAPTER 7 DISCHARGE

The ultimate goal of a Chapter 7 bankruptcy petition is the discharge. The discharge is essentially saying that you no longer have to pay the creditors that were listed in the petition. Further, it prevents any of your old creditors from taking action against you to collect those debts. In a Chapter 7 petition, the process to discharge is much faster than in a Chapter 13. As a debtor, you can expect a discharge 2 to 3 months after the first meeting of creditors. Make sure you contact an experienced Chapter 7 bankruptcy attorney so that you can assure your discharge.



CHAPTER 13 BANKRUPTCY

A Chapter 13 bankruptcy in California is designed for those individuals who have a steady monthly income and are able to gradually pay down their debt. A Chapter 13 is also known as a reorganization. In general, you will not have to pay all your debt, just a portion of that debt.

When you file for debt relief protection under Chapter 13 of the bankruptcy code, you must submit a plan to the Chapter 13 trustee. This plan will outline how you propose to repay a portion of your debt over a short period of time. Generally, the time for repayment of the debt is between 3 and 5 years. In determining how much you are to pay, the bankruptcy trustee will look at how much money you make, how much money is owed to your creditors, and how much those same creditors would have received if you had qualified for a Chapter 7 bankruptcy.

In addition, you can only have so much outstanding debt. These limits are imposed by the Federal Government. At the time of this writing, the limit is \$1,149,525 in secured debt and \$383,175 in unsecured debt.

Finally, one of the benefits of a Chapter 13 is that if you are behind on payments to your secured creditors, your bankruptcy plan will allow you to make up those payments. This will allow you to save your home from foreclosure or save your vehicle from repossession. Those missed payments are included in the bankruptcy petition and you make up the missed payments over the life of the plan - up to 5 years.

ONE OF THE GREAT BENEFITS OF A CHAPTER 13 – GETTING RID OF YOUR SECOND MORTGAGE

One of the great things that Chapter 13 can do for people is to wipe out the second mortgage on their home. This does not work in every case. But if you owe more on your first mortgage than your house is worth, there is a good chance that you will be able to get rid of your second mortgage through a Chapter 13 Bankruptcy. This is called lien stripping.

HOW DOES A CHAPTER 13 WORK?

In terms of costs, the Chapter 13 is almost exactly the same as a Chapter 7, except that the filing fee is a somewhat lower.

Other than the filing fee, there are additional differences between the Chapter 7 bankruptcy petition and the Chapter 13 filing. The most obvious difference is that you must file a plan of payment with the Chapter 13 filing, whereas you do not in a Chapter 7 filing.

SPECIAL RULES IN A CHAPTER 13

Just as with a Chapter 7 filing, one of the most powerful aspects of any type of bankruptcy filing is what is known as the automatic stay. The automatic stay prevents your creditors from taking any further collection action against you. But, in a Chapter 13 bankruptcy, there are special rules concerning the automatic stay. Unless the creditor gets permission from the bankruptcy court, it cannot proceed with collection activities for a consumer debt involving an individual who may also be liable for the debt, along with the debtor.

CHAPTER 13 MEETING OF CREDITORS

As in a Chapter 7 bankruptcy case, a Chapter 13 filing requires that you attend a meeting of creditors. The meeting will generally be 4 to 5 weeks from the date when you filed your petition. The substance of the meeting is usually exactly the same as for the Chapter 7 meeting.

PAYING YOUR CREDITORS IN A CHAPTER 13

Many people ask us how they are supposed to pay their creditors in a Chapter 13 bankruptcy. Most don't want to go through the same bill paying procedure, month after month. Well, there is good news. Once your Chapter 13 plan is accepted, all you have to do is send your plan payment to the Chapter 13 trustee each month; the trustee then pays your creditors. All you have to do is make one payment each month.

HOW THE CHAPTER 13 PLAN IS STRUCTURED

You have fourteen days after filing the Chapter 13 bankruptcy petition to file your proposed Chapter 13 plan. The plan, of course, must be approved by the court and must provide for reasonable payments to the Chapter 13 trustee each month. As noted above, the trustee then pays your creditors each month.

As your bankruptcy attorney will advise you, your Chapter 13 does not need to include the total amount of your debt to any unsecured creditor. The Chapter 13 plan must give to creditors all of a debtor's planned "disposable income" over a fixed period of time. This disposable income must be the same, if not more, of the amount that creditor would have received if you had qualified for a Chapter 7 bankruptcy and your assets were liquidated.

What this means is that anything over and above what is reasonably necessary for you to live on must go towards payment of the bankruptcy plan. Furthermore, the length of the plan depends on factors such as family size and current monthly income.

Finally, even if your plan has not been approved by the court, you must start making payments to the trustee thirty days after you file your bankruptcy petition.

An experienced attorney knows how to create a plan you can live with.

CHAPTER 13 PLAN CONFIRMATION

The bankruptcy court will confirm your plans if it is acceptable. Your creditors will have an opportunity to object to the plan. If there are difficulties with your plan, your bankruptcy attorney can work with you to modify it so that it will be approved.

As stated above, some of your creditors could object to your Chapter 13 plan. If this happens, there will be opportunities to amend the plan to make it acceptable to all parties. Sometimes, however, your creditors will be unhappy with the plan, no matter what. If that is the case, your bankruptcy lawyer will argue that there is a legal basis for the plan and that the creditors have no right to object.

Once your Chapter 13 plan is confirmed, the trustee will start paying your creditors from the funds received from you.

KEYS TO A SUCCESSFUL CHAPTER 13 PLAN

Once the bankruptcy court decides the plan is acceptable, the ball is in your court to make it work. If you make your regular payments, everything will be fine, but if you fail to make the payments to the trustee, you could lose the protection of the bankruptcy court. The court has the authority to dismiss your case or convert it to a Chapter 7 bankruptcy or modify your plan. That may seem like a good thing, but if you don't qualify for a Chapter 7 bankruptcy, the court will not grant you a discharge.

But, don't feel like everything is set in stone. If you can demonstrate to the Court that you have had a change in your financial circumstances, the Court has the authority to modify your plan either before or after confirmation.

THE DISCHARGE IN YOUR CHAPTER 13 CASE

As with a Chapter 7 filing, the ultimate goal in your California Chapter 13 is a discharge. The discharge, though, is slightly different than a Chapter 7 discharge. The bankruptcy court will grant your discharge provided you are able to demonstrate the following:

1. All your domestic support obligations have been met
2. You have not received a discharge in another bankruptcy case, going back a specified amount of time
3. Your financial management course has been completed and approved

There are certain debts that you will generally not be able to discharge in a Chapter 13 bankruptcy. These include, but are not limited to:

1. Mortgage payments
2. Spousal support and child support payments
3. Certain tax liens (the taxes can be discharged)
4. Most student loan obligations
5. Most debts arising from bad intentional conduct

For most of these debts, to the extent they still exist, you will be responsible for their satisfaction after your Chapter 13 discharge.



OTHER COMMON CHAPTERS OF THE BANKRUPTCY CODE

Now, you are familiar with Chapter 7 and 13 of the bankruptcy code, but there are other chapters of the code that might be able to provide you with the fresh start you deserve. It is always best to seek the advice of an experienced bankruptcy attorney to determine which chapter is right for you.

CHAPTER 11 BANKRUPTCY

A Chapter 11 bankruptcy is most often used by a business that is struggling to meet its obligations. A Chapter 11 is generally thought of as a reorganization. A Chapter 11 bankruptcy can also be used by individuals whose debt limit disqualifies them for Chapter 13. The difficulty with individuals filing for Chapter 11 is that a Chapter 11 can be costly and drawn out but a Chapter 11 filing can be useful to individuals whose assets and/or debts exceed the Chapter 13 limits.

CHAPTER 12 BANKRUPTCY

A cousin of the Chapter 13, the Chapter 12 bankruptcy is essentially meant for those engaged in farming. In fact, to qualify for a Chapter 12, at least 80% of your debt must come from farming. Chapter 12 is one of the rarest forms of bankruptcy filing.



WHAT TO LOOK FOR IN A BANKRUPTCY LAWYER

The more difficult your financial situation, the more tenacious your lawyer should be. Don't think for one minute that filing for bankruptcy consists of merely filling out forms. Your lawyer must be creative and knowledgeable. It is not enough to get the cheapest lawyer in town; you must have the a good lawyer.

There are certain things you want to look for when choosing a bankruptcy lawyer.

First, you want to look at experience. The more opportunities your bankruptcy lawyer has had to learn from experience, the better off you will be. Don't fall into the trap of the new lawyer who is merely a form-filler.

Second, feel free to go see your bankruptcy attorney in action. Most bankruptcy court appearances are public. Is the attorney aggressive? Does the attorney challenge the trustee when he or she feels it is the best interest of the client?

Third, does the attorney convey information to you in way you can easily understand? Again, with

the advent of the Internet, blogging and websites allow you to see how the attorney explains the bankruptcy process.

Fourth, make sure that the attorney performing the consultation is the one that will be working on the case. Not only do many bankruptcy attorneys pass off the work to junior associates, many will delegate the tasks to paralegals and/or secretaries. Don't let this happen to you. You paid for an attorney and you should get an attorney.

Fifth, make sure you know how much you are going to pay up front. All bankruptcy cases are different, but there is no reason your attorney should not be able to outline all the costs right up front.

Sixth, don't make your decision based solely on how much your bankruptcy attorney charges. We understand that price is important, but you must make sure that your bankruptcy attorney is going to do the best job for you. Sometimes, this might mean paying a little more. That's ok. It will be worth it. Paying a few hundred dollars more now could be worth thousands down the road. That is a good investment.

The bottom line is that choosing a bankruptcy lawyer is an important decision. Treat it like one.

YOUR FREE BANKRUPTCY CONSULTATION

Having financial difficulty is stressful enough; you should know your options. But to know your options you need to give your bankruptcy attorney ALL the information he or she needs. Otherwise, what is the use of your free consultation? Keeping information from your bankruptcy attorney, perhaps because you find it embarrassing or uncomfortable, can lead to a whole host of problems down the road. We can generally only speak for ourselves, but certain questions will be common to all bankruptcy attorneys.

Forms – Your bankruptcy attorney will most likely have you fill out a basic questionnaire that asks for information about you. Many of these will be preliminary questions to see if you are a candidate for a Chapter 7 or a Chapter 13 bankruptcy. The answers to these questions will make your lawyer's subsequent questions more productive.

Information Organization – It is important that all your financial documents are in order. Your lawyer will ask you for certain categories of documents (i.e. bank accounts, retirement accounts, pay-stubs etc.). Again, just follow your lawyer's instructions and the process will proceed smoothly.

Face-to-Face Meeting – Make sure that, when you meet with your bankruptcy attorney, you are actually meeting with an attorney. Paralegals are not allowed to give you legal advice. Furthermore, you paid for an attorney; you should get one. If your consultation is not with a bankruptcy lawyer, find another firm.

Your Options – Determining your options is generally when that lawyer looks at your situation, based on all the information provided, and lets you know your choices. Not only should the choices be outlined, but your lawyer should also give opinions on which choices are best for you.

This is an important time in your life. No one is going to doubt that. Make sure you feel comfortable with each and every aspect of your bankruptcy case. If you follow the simple rules we have outlined above, we promise that you will be satisfied with the decision you have made.

THE FREE CONSULTATION AND WHAT TO BRING

Meeting with a bankruptcy attorney, in his or her office, is the best way to outline your options and find out if Chapter 7 or Chapter 13 is right for you. Though bankruptcy is based on a federal set of laws, each state has its own statutes augmenting the bankruptcy code.

Therefore, a bankruptcy attorney generally can only advise you concerning the laws of the state in which he or she works.

One thing that can make your initial consultation successful is making sure to bring in all the documents your lawyer requests. There is a reason why your lawyer is asking for these documents: they are important! Don't just assume that because you don't think a document is important, you don't have to provide them to your attorney. Failure to provide these documents can make the process more complicated and, in some situations, more expensive. You must bring all required documents with you.

WHAT YOU WANT TO ASK YOUR BANKRUPTCY LAWYER

We don't want to overcomplicate the situation, but there are some basic questions you should ask your bankruptcy attorney before making a decision. We know that you are feeling a great amount of stress in your life. One of the most important things a bankruptcy attorney can do, if not the most important, is to relieve some of your stress. We want to be able to give you the "fresh start" you deserve.

The questions we list below are not meant to be exhaustive. You will probably have questions not listed here. The following list is simply some basic questions that we see in our very busy practice. These questions are the most common and we believe, the most pertinent. Don't be afraid to interview your attorney. We welcome the opportunity to answer as many questions as you have. By doing so, we hope to relieve some of the stress you are feeling.

"IS BANKRUPTCY REALLY RIGHT FOR ME?"

If you have sought the advice of an experienced bankruptcy attorney, he or she will not immediately tell you that a Chapter 7 or Chapter 13 is a must. We believe that our ethical duty is to tell you what is best for you. Yes, sometimes what is best for you is not bankruptcy. It would be very easy for us to charge a fee and put you in a bankruptcy, but that sort of attitude is what gives lawyers a bad name. Make sure you get options, not just mandates.

"WHY WILL BANKRUPTCY HELP ME?"

An experienced California Chapter 7 or Chapter 13 attorney should be able to explain the bankruptcy process and its benefits in very simple terms. It is vital that you understand the differences between the two chapters and which one is best for you. If you do not understand something your lawyer has told you, don't hesitate to ask for an explanation. A good bankruptcy attorney won't have a problem explaining something twice.

"WHAT IS YOUR EXPERIENCE IN BANKRUPTCY LAW?"

If your California bankruptcy lawyer has only done a dozen or so cases, you don't want him or her gaining experience on the back of your most important financial situation. Don't be fooled by high priced advertising and fancy offices. Often times, these are just disguises for someone who might not know what he or she is doing.

"WILL YOU BE WITH ME IF WE GO TO COURT?"

One of the biggest fears clients have is going to court. But, don't fear, you will not be alone. Not only

will you not be alone, but you will also have an advocate on your side. So, why ask the question? Because, if your consultation is with someone who is not a lawyer, they will not be able to represent you in court. This is a sure-fire way to make sure you are dealing with an actual bankruptcy lawyer.

“WHAT DO THE ATTORNEY FEES INCLUDE?”

Some bankruptcy attorneys include court costs in their fee quotes and others don't. You want to make sure that the attorney fees will include everything from the preparation of the petition all the way through the discharge. The worst thing that can happen is to pay an initial fee, only to find out your lawyer will be charging you more money, each step of the way.

MAKE US YOUR LAWYERS



This consumer bankruptcy book is intended to give you the preliminary knowledge you need if you are considering filing for Chapter 7, Chapter 11, Chapter 12 or Chapter 13 bankruptcy. We hope that the information contained in these pages will help you make the decision that is best for your financial future. Each person's financial situation is different, and your bankruptcy attorney should treat each new client as special. There is no such thing as a cookie-cutter bankruptcy. Any lawyer who tells you otherwise should be ignored.

Because of this, we encourage you to contact Thompson | Wedeking, whenever you are ready. We make every effort to do what's best for you and we believe that treating people like family is important.

Consequently, we want to serve you on your terms. You are potentially paying our firm to serve your goals, not you serving ours. Life, at this time, is probably hard enough as it is. We want to make your life better.

At Thompson | Wedeking we utilize the most up to date technology, so we can serve you when you need our advice, not when we feel like seeing you. If that means meeting with you on Saturday, we will do it. If that means meeting at odd hours, we will do it. If that means doing things by phone, fax or email, we will do it.

What does all this mean for you? It means we can get you back on your financial feet and moving forward with your new financial future, faster and more efficiently. Our goal is to get results for you and to do so in a professional manner.

We invite you to experience a different kind of bankruptcy lawyer. [Call our office today.](#)



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