



Bankruptcy Protections For Older Consumers

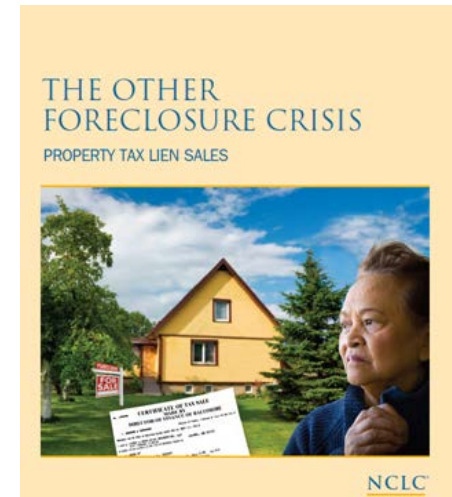
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National Consumer Law Center

National Consumer Law Center

- Advocate on behalf of low-income consumers
- Provide training, legal analysis, case consultation and advocacy on consumer law issues
- Other training opportunities
 - Webinars
 - Annual conferences
 - In-person trainings



What is Bankruptcy?

Bankruptcy is a legal proceeding designed to help individuals and businesses get protection from their creditors

- Article I, Section 8, of the Constitution authorizes Congress to enact "uniform Laws on the subject of Bankruptcies"
- Right to file for bankruptcy is provided by federal law – Title 11 of U.S. Code
- All bankruptcy cases are handled in federal bankruptcy court



Key Lessons

- Bankruptcy may be the easiest and fastest way for older consumers to deal with all types of debt.
- Bankruptcy temporarily stops almost all creditors from taking any steps against the older adult except through the bankruptcy process.

Key Lessons

- Bankruptcy can permanently wipe out the legal obligations to pay back many debts.
- Bankruptcy allows older consumers to keep many types of assets including certain retirement pensions.

What Are Some Key Bankruptcy Concepts?

Fresh Start: Goal of bankruptcy to provide help with existing debts and give consumer a second chance financially

Two key elements to bankruptcy fresh start:

- **Discharge:** Elimination of the legal obligation to pay a debt
- **Exemptions:** Property which the law allows a bankruptcy “debtor” to keep



What Are Some Key Bankruptcy Concepts?

Filing bankruptcy instantly creates an “**automatic stay**”

- Temporarily stops most all creditor actions to collect debts or take debtor’s property
- Exceptions to the stay include:
 - Criminal actions or proceedings
 - Enforcement of domestic support obligations
 - Enforcement of police or regulatory powers



How Can Bankruptcy Help Older Consumers?

Bankruptcy may make it possible to:

- Eliminate legal obligation to pay most or all debts (even if debt has become a court judgment)
- Stop home foreclosure (including reverse mortgage) and allow consumer to cure default
 - *Note: Bankruptcy does not automatically eliminate mortgages and liens without payment*
- Prevent repossession of car and other property (and even force creditor to return repossessed property)



How Can Bankruptcy Help Older Consumers?

- Stop debt collection harassment, wage garnishment, and similar creditor actions to collect a debt
- Restore or prevent termination of utility service
- Lower monthly payments on some debts
- Allow consumer to challenge claims of creditors who have committed fraud or are trying to collect more than is really owed



Bankruptcy Cannot:

Bankruptcy does not cure every financial problem;

nor is it the right step for every individual in financial trouble.



Bankruptcy Cannot:

In bankruptcy, it is usually *not* possible to:

- Eliminate certain rights of “secured” creditors
- Discharge some types of debts, such as:
 - child support, most student loans, criminal fines, and most taxes
- Discharge debts that arise after bankruptcy is filed



Who Files Bankruptcy?

- Most households do not file
- 39% of American families from 2008-2010 experienced one or more indicators of financial distress
 - In 2008, less than 1%, or 1 in 100 households filed bankruptcy



Who Files Bankruptcy?

- Lack of emergency funds:
 - 2012 BankRate survey: Half of all Americans do not have enough savings to cover 3 months of normal living expenses
 - 2011 study: Half of families could not come up with \$2,000 from savings, friends, family or borrowing to deal with a financial emergency



Age of Filers:

- Age of filers went up from 1991 to 2007, showing more financial vulnerability among the aging
- Median age of population as whole went from 33.1 to 36.1 from 1991 to 2007; for those in bankruptcy, it went from 36.5 to 43
- Sharpest increase: 55 and older
- Of 2007 bankruptcy filers, 22% were 55 or older.

Source: Consumer Bankruptcy Project 3 Harv. L. & Pol'y Rev. 87 (2009)



When Do Consumers File Bankruptcy?

- Despite debt problems, most delay filing and suffer silently
- Most unwilling to admit financial failure
- Women experience far more stress in pre-bankruptcy period

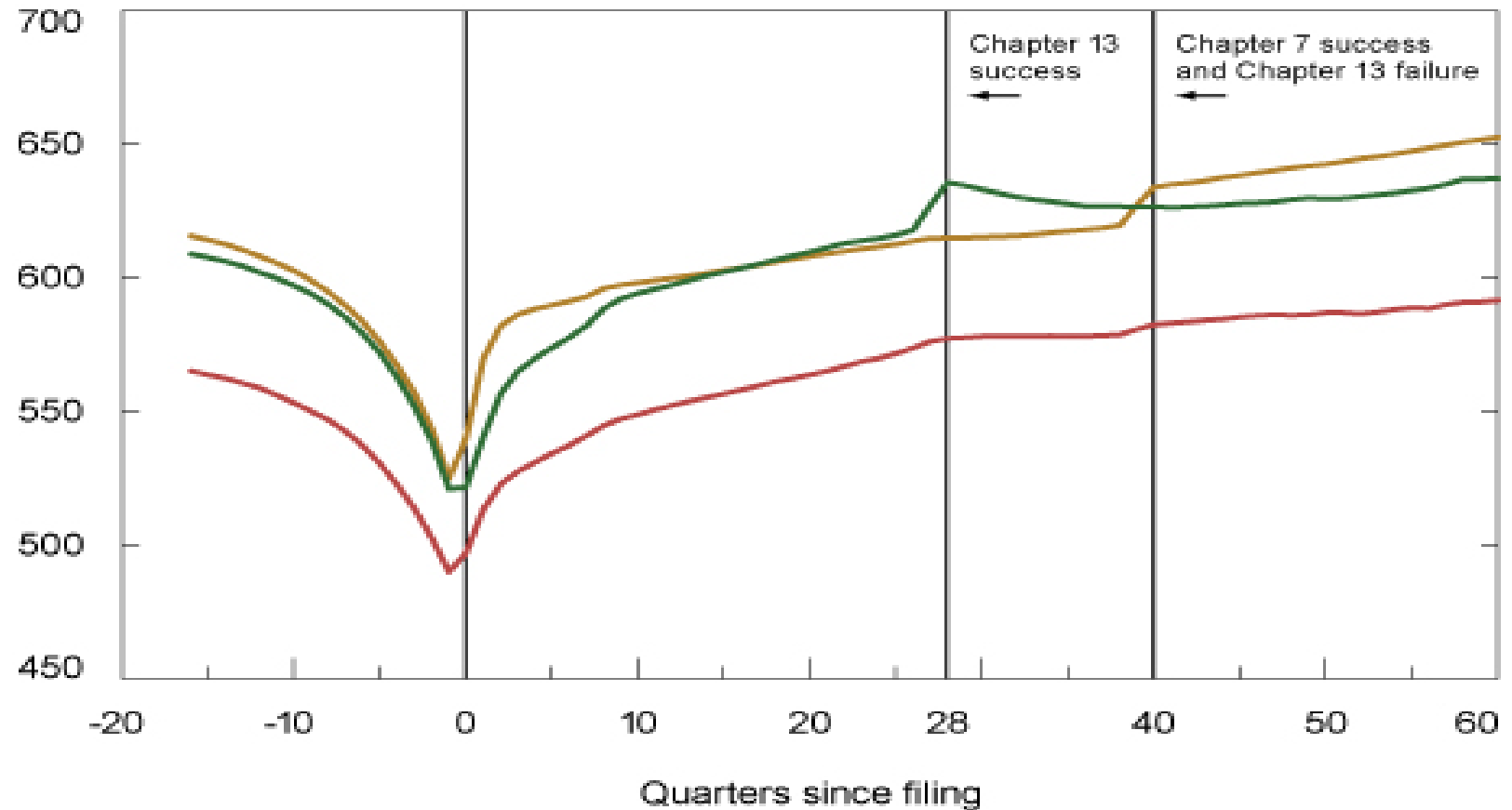
Broke: How Debt Bankrupts the Middle Class



Credit Score Path for Bankruptcy Filers

Chapter 7 Chapter 13 failure Chapter 13 success

Credit score



Source: Author's calculations using the New York Fed Consumer Credit Panel / Equifax.

What Are the Different Types of Bankruptcy Cases?

There are four types of bankruptcy cases:

Chapter 7, Chapter 13, Chapter 11 and Chapter 12



What Are the Different Types of Bankruptcy Cases?

- **Chapter 7**, known as “straight” bankruptcy or “liquidation”
 - Requires individuals to give up property that is not “exempt,” so property can be sold to pay creditors
 - But most consumers who file chapter 7 keep all of their property except:
 - property which is very valuable, or
 - property subject to a lien which they can not avoid or afford to pay



What Are the Different Types of Bankruptcy Cases?

- **Chapter 13** is a type of “reorganization” used by individuals
 - Consumer submits plan to pay all or portion of debts over a period of years using current income
 - Homeowner with mortgage default given time to get caught up, generally over longer period (often up to 5 years) than under workout agreement
 - Unsecured debts (such as credit cards) may be paid either in full or a percentage of amount owed, over a 3 to 5 year period
 - Late charges and interest after chapter 13 filed do not have to be paid on unsecured debts



What Are the Different Types of Bankruptcy Cases?

- **Chapter 11**, known as “reorganization,” is used by businesses and a few individuals whose debts are very large
- **Chapter 12** is for family farmers and fishermen
 - Most consumers file under either chapter 7 or chapter 13
 - Either type of case may be filed individually or by a married couple filing jointly



Federal Bankruptcy Exemptions

Examples of exemptions under § 522(d):

- Up to:
 - \$23,675 in residence;
 - \$3,775 in one motor vehicle;
 - \$12,625 household furnishings, goods, clothing, appliances, etc;
- Wild card exemption: \$1,250 plus unused amount homestead exemption, up to \$11,850;
- Most retirement funds



What Must Be Done Before Filing Bankruptcy?

Credit Counseling:

- Consumer must receive budget and credit counseling “briefing” from an approved agency **within 180 days before** bankruptcy case is filed
- Briefing may be provided by in-person, telephone or Internet, and in individual or group session
- Consumers should be advised to complete counseling as soon as they think bankruptcy may be an option, especially if they may need to stop a foreclosure sale



Can Credit Counseling Requirement be Waived?

- Counseling may be ***waived*** if debtor is:
 - disabled,
 - incapacitated, or
 - on active military duty in combat zone
- Counseling may be ***deferred*** for 30 days after case filed if:
 - “exigent circumstances” exist, and
 - debtor requested counseling from approved agency, but was unable to obtain services during **five-day** period after request made



Can Counseling Fee be Waived?

- Most approved agencies charge between \$5-\$35 for the pre-filing counseling
- Approved agencies must provide bankruptcy counseling and necessary certificates ***without considering ability to pay***
- If consumer cannot afford the fee, should ask agency to provide counseling free of charge or at a reduced fee



What Does It Cost to File Bankruptcy?

- Chapter 7 filing fee is \$335 and \$310 for chapter 13
- Approx. \$5-35 for credit counseling briefing and \$20-50 for education course
- Attorney fees have gone up since 2005
- Limited availability of legal services and *pro bono* resources



Can Bankruptcy Filing Fee be Waived?

- Chapter 7 filing fees may be waived
- Debtor's income must be below 150% of poverty line
(figures for 2016 are \$24,030 for a family of 2 and \$36,450 for a family of 4), and
- Debtor must be unable to pay filing fee in installments



Who is Eligible to File Chapter 7?

- Bankruptcy judge can dismiss chapter 7 case if filing is an abuse of bankruptcy system
- “Means test” was added in 2005 to make it more difficult for wealthy consumers to file
- Most consumers who file bankruptcy are not affected by this change



Who is Eligible to File Chapter 7?

- Consumers with household income below state **median family income** are protected by a “safe harbor” and not subject to the means test
 - national median family income for “1 earner” in 2017 ranges from \$37,051 in Mississippi to a high of \$63,401 in Maryland



Who is Eligible to File Chapter 7?

- Consumer with income above median must fill out form that compares monthly income with actual and assumed expenses in variety of categories
- Some expenses are based on IRS collection guidelines
- If form shows that consumer should have certain amount left over to pay unsecured creditors, bankruptcy court may decide consumer cannot file chapter 7 case, unless there are “special circumstances”



What About Homes, Cars and Other Secured Property?

- Bankruptcy usually does not eliminate a creditor's lien or security interest on property
- Secured creditor may be able to foreclose on a home or other property, usually after the bankruptcy case, if consumer does not take some action

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What About Homes, Cars and Other Secured Property?

In a chapter 13 case, consumer may be able to keep secured property by paying:

- The value of property rather than full amount owed (but usually not on auto loans taken out within 910 days of bankruptcy and home mortgages), often at a lower interest rate; or
- The amount needed to catch up on back payments and get current on the loan
 - This right to cure applies to reverse mortgages

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What About Homes, Cars and Other Secured Property?

In a chapter 7 case, a consumer may be able to keep certain secured property by:

- Agreeing to keep making payments on debt until it is paid in full (some creditors may request a formal “reaffirmation” agreement, which must be filed with the bankruptcy court), or
- Paying the creditor the amount that the property is worth (this is called “redemption” and must be made with a lump sum payment)



What Must the Consumer Do to Complete the Case?

- After the case is filed, consumer must complete an approved course in personal finances
- Course takes approximately two hours to complete
- Course may be taken in-person, by phone or Internet
- If fee charged, course must be provided without regard to ability to pay
- Certificate of completion must be filed with bankruptcy court to get discharge



Counseling the Judgment-Proof Consumer

- If client's income and assets are exempt under state or federal law, the property cannot be attached even if creditor gets a judgment
 - Social Security benefits are exempt from attachment (other than for child support, alimony, tax debts, student loans, and public benefits overpayments)
- But being judgment-proof does not protect debtor from being sued or receiving collection calls



Counseling the Judgment-Proof Consumer

- Bankruptcy may provide peace of mind, particularly for older consumers
 - or could recommend sending the creditor a “cease contact” letter under the FDCPA, 15 U.S.C. § 1692c(c)
- If client is likely to have other (garnishable) income in the future, bankruptcy may be worthwhile
 - If client may incur more debt, waiting to file may be the better choice



Alternatives to Bankruptcy

- Credit Counseling
- Debt Management Plan
- Debt Settlement (*beware!)
- Reverse Mortgage
- Debt Consolidation Loan



Does Bankruptcy Affect the Consumer's Credit?

- Bankruptcy can stay on consumer's credit report for **ten years**, rather than normal seven years for other credit information
- Bankruptcy usually does not make credit record any worse, if there have already been numerous reports of defaults



Does Bankruptcy Affect the Consumer's Credit?

- Some creditors lend to recent filers because all or most of consumer's past debts have been discharged and consumer cannot get a discharge in another chapter 7 case for period of **8 years**
- Bankruptcy may be problem in getting approved for conventional home mortgage
- But most lenders still provide mortgage if consumer has reestablished good credit for period of **two to four years** after discharge



Final Thoughts

- Most consumers file bankruptcy only as a last resort
- Those struggling to keep up with unmanageable debt should weigh these alternatives in relation to the hardships that may be avoided by obtaining bankruptcy relief
- Bankruptcy may be the only way to eliminate debt and preserve income and property that an older consumer may need to maintain a healthy and safe lifestyle



Additional Resources

- Consumer Financial Protection Bureau: consumerfinance.gov
- Federal Trade Commission: ftc.gov
- Legal Assistance:
 - National Association of Consumer Advocates: consumeradvocates.org
 - Legal service: isc.gov/what-legal-aid/find-legal-aid
- National Consumer Law Center: nclc.org
- National Association of Consumer Bankruptcy Attorneys: nacba.org



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