

*FREE REPORT*

# **BANKRUPTCY**

**It's *NOT* a  
Life Sentence**



*Key Information  
to help you  
make the right  
decisions about  
your debt*



**George "Dave" Giddens**

Consumer Report

# **Bankruptcy: It's Not a Life Sentence**

Key Information to Help You Make the  
Right Decisions About Your Debt

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# **About The Author**

## **George “Dave” Giddens**

Dave Giddens, has spent more than 30 years in Bankruptcy law. He was rated 'Best of the Bar in Bankruptcy' in 2011, by the New Mexico Business Weekly. He and all of his team have a passion for people in trouble from debts and factors they can't control.

Dave has been a practicing attorney since 1983. Dave was named a Southwest Super Lawyer in 2009, 2012, 2013, 2014, and 2015-2020. He was named a Top Rated Lawyer for Corporate Restructuring and Bankruptcy in 2013. He was also named Best of the Bar/Bankruptcy in 2011. And Dave was named Best Lawyers in America, 2014 and 2015. Dave has also maintained his Martindale Hubbell AV Preeminent rating since 2004.

Most of the attorneys send their top clients and friends to his firm. The firm's walls are filled with just about every award available in New Mexico for excellence in bankruptcy law. He and his firm know exactly how to help you because they also work with some financial institutions on the other side. The firm knows what your creditors are thinking and how to negotiate to get the best outcome for you.

Because of Dave's compassion, he started out over 30 years ago helping New Mexico farmers save their farms. He has instilled that quality and compassion in all of his attorneys and staff.

## **Giddens & Gatton Law, P.C.**

### *Why You Should Hire Us*

Giddens & Gatton Law, P.C., has developed an excellent reputation with both referral sources and clients during its 20+ year history. The firm is known for its high-quality work in all practice areas, resulting in both partners' and attorneys' achievement of excellent ratings among their peers. Client feedback consistently praises the firm's attorneys for their experience, their knowledge and the creative solutions they bring to the resolution of their sometimes difficult problems. Clients also express gratitude for the attorneys' timely response to their needs and the personable and compassionate way they approach their concerns and issues.

*Giddens & Gatton Law, P.C., resolves clients' complex issues with knowledge, experience, creativity and compassion.*

Hence:

**Expertise with Compassion**

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# Introduction

I understand that making the decision to face unbearable debt problems and seek help from a bankruptcy attorney can be a difficult one. However, it is the job of a quality bankruptcy attorney to guide you through the often emotional ordeal.

I believe that the best part of being an attorney is the opportunity to help people when problems seem insurmountable. When the case is over, I feel like my clients have gained some added value in their lives.

I do sometimes meet people who've borrowed and spent irresponsibly. However, the vast majority of them find themselves in my office because of what I term, "life happens".

It just came to a head because they lost a job, got a divorce, medical bills piled up or their business failed.

It isn't uncommon for people to have more than one major life changing event that sends them into our offices. The real rub, none of them ever thought they would need our skills and expertise.

Because anyone can find themselves in an unsustainable debt situation, the people who seek a lawyer's help should expect to be treated with the concern, compassion and dignity they deserve.

The job of a quality attorney is to help folks get out of debt, reclaim their lives, and give them a fresh financial future. Because being debt free brings peace of mind.

For as long as I can remember, my dream growing up was to go the Air Force Academy and become a fighter pilot.

I did receive an appointment to the Air Force Academy, enrolled, and quickly realized that it wasn't for me. As I progressed I realized that it could be fun and exciting, but it wasn't going to take me to where I could help everyday people the most.

I have never regretted my decision to become a lawyer instead of a fighter pilot. Seeing that sigh of relief, that frown turn to a smile reminds me every day why I made the decisions I did.

I've written this booklet to help you know and better understand this bankruptcy world and shed light on and often scary world.

# The Beginning



If you are reading this, more than likely you have found yourself in an unsustainable debt situation, and you may be asking yourself: How did I get here? How am I ever going to find my way out? What are my options? Or, am I just doomed to struggle to

get my head above water?

For the clients we help, it's often circumstances that has brought them to the point of feeling so trapped by overwhelming debt that they sit in despair.

Maybe you or your partner lost your job. When you lose your source of income, expenses pile up. And when that turns into long term unemployment, you can only cut back on your living expenses so much. Then the only alternative left is to use your credit cards to finance your everyday expenses.

When that happens, the big waves of debt wash over you leaving you feeling like you are gasping for air every day of your life. And then comes an even bigger tidal wave of circumstance that just seems to sink your ship.

## You May Feel Like There's No Way Out

Maybe you have a sick child. Or something unusual happens to you. Illnesses and an unexpected trip to the emergency room can result in monstrous medical bills piling up quickly.

Experts recommend maintaining an emergency savings account. What if you or your partner is out of work and your emergency fund is gone? How do you pay those bills?

Maybe a business you owned has failed? When your business fails it is devastating and often times you, the business owner, have personally

guaranteed loans.

Unpaid business loans not only means your business is in trouble, but you may be personally liable. By law, you must pay back those debts the business has incurred. And you just don't have it.

What if you were involved in a divorce? Divorce is another life changing event that I find often forces people into mounting debt. This happens for several reasons. Divorce is expensive because when you were married you had only one household to maintain and now there are two.

Even if you and your spouse are no longer together YOU still owe any debt incurred while you were married. All too often I find cases where the spouse refuses to pay the debts.

That leaves you liable for that debt with no money to satisfy it and the creditors calling you constantly wanting their money. You feel like it's choking you to death.

Maybe it's the national epidemic of left over student loans. Under most circumstances student loans can't be discharged but they can and do affect your ability to pay the rest of your bills. In today's economy some people find they can't pay both their student loans and their bills.

There are so many more stories I hear where the debt has just overwhelmed people. It isn't unusual to have one or more of these debt stories creating a dark thunder cloud of doom over the future.

**You are not alone and there is help.**

You may have found yourself in an unsustainable debt situation your emotions have taken over and you don't know what to do.

Up until now you've been handled your debt issues yourself, putting up with paralyzing stress, mounting bills and endless demand calls from creditors.

**You need a solution NOW.**

So how do you get out of debt and what are your options? Should you consider debt settlement? How about debt consolidation? The solutions may seem confusing.

Should you attempt loan modification? There are many confusing options. You need someone to help you chose the best one.

## Is Bankruptcy the Best Solution for You?

So far I've talked about how people get into debt. Now it's time to make a plan for getting out of debt AND getting your life back to normal.

Before we start I must stress a point.

We aren't the right law firm for everyone. In fact, we don't take every case we interview. We only have time to help a limited number of clients at a time.

First off, we **are not** a bankruptcy mill.

There **are** lawyers that will take your case for what seems like a very low retainer. That's usually a sign of one of two things. They don't do many cases and need your case to keep the doors open. Are you sure you want someone who needs you worse than you need them?

Second, they are what the industry calls a "Bankruptcy Mill". They have one solution for everyone. Rush your case through the courts, get it done and move on to the next one.

The lawyer has no consideration for your personal situation. It's a cookie cutter bankruptcy. Each one comes out looking exactly alike. Your future is not the primary concern. Getting it done in the shortest, easiest time possible so they can move on to the next case, is the goal.

Whatever you do, find the funds to hire an attorney that will customize a plan that fits your specific situation and gets your bankruptcy done right.

The kind of attorney you need will have several creative ways for you to find the funds to complete your bankruptcy . . . the best way for you . . . not for them.

Sometimes our clients tell us they just don't have the money. But the longer you wait, the longer we don't help you find the funds, somewhere; the more money you'll owe and the harder it will be for us to help you get your life back to normal and get credit again. The sooner you get started the better.

## What You Will Learn

This report will touch on the three main alternatives to bankruptcy as well as the types of bankruptcy. I'll cover some of the common questions clients ask us, and how to choose a qualified bankruptcy attorney.

### Chapter 2

# The Alternatives To Bankruptcy

## 1. Do Nothing.



That's right, doing nothing **is** an option, IF you don't make a much money, AND don't have any valuable assets that can be liquidated. You **can** just ignore the debt.

With little income, little or no assets, you, as the debtor become "judgment proof." That means the creditor has nothing to attach in your life so they have little or no recourse to collect from you.

**Be careful however!** Conditions in life often change. If your financial situation improves, your creditors may come after you for any unpaid debt sometime in the future when you do have money.

## 2. Debt Settlement & Debt Consolidation

Debt Settlement reduces the amount of your debt while debt consolidation reduces the number of creditors. The goal of both strategies is to get you, the consumer, out of debt faster and save money.

With debt settlement you owe the same creditors but you owe then less money.

**Debt Warning!** If you settle with a creditor or debt collector for *less than* the full debt amount claimed, and the difference is more than \$600 the creditor/debt collector is likely to file a 1099-C with the IRS. This document reports to the IRS that your creditor has “cancelled” or “forgiven” a portion of the debt you owed.

The IRS now gets excited, and treats the amount reported on a 1099-C as **income**. That Means, you now must declare that amount reported to the IRS on your tax return and **pay taxes on it**.

Yup, that’s right: the creditor or debt collector sticks it to you. . .**again!** And the IRS helps.

### 3. Credit Counseling

Credit counselors can help you create a plan to effectively manage your money and help you create a debt repayment plan.

A debt management plan means that you stop paying your creditors. Instead you'll make one payment to the debt management company and they will distribute your payment to your creditors for you.



**Caution!** It's important that you choose and work with a reputable credit counseling agent. Check around. Find some people who have used them and find out their experience. Check online for possible negative problems.

**There are dishonest agencies** that will have you stop paying your creditors. You begin making payments to the agency. Later you find out they never turned the payments over to your creditors.

What happened? It turns out the agency took all of your money, your debts didn't get paid, and your creditors will still come after you to collect on your debt.

AND, that will leave you feeling worse than you did before.

## 4. Debt consolidation

Debt consolidation allows you take out one loan at a lower interest rate and pay off all of your lenders.

The amount you owe stays the same but you save money because of the lower interest rate of the new consolidated loan.

Another caution here. A debt consolidation loan may leave you in debt for a longer period of time and require you to put up property such as your house or car as collateral against the loan. If you don't make your payments you could lose your house or car.

While both options save you money you are still responsible for paying your debt and neither completely erases your debt. Bankruptcy is an option that has the potential to wipe out your debt and give you a fresh financial start.

It is important to keep in mind that when you hire a credit counselor or some other debt relief agent will cost you money. You should weigh the costs of credit counseling versus bankruptcy. Sometimes people will attempt credit counseling first only to discover their debt issues are too large and that filing bankruptcy is the best option. A reputable debt-relief firm can review your options and help you decide on the best course of action.

# The Bankruptcy Option



Bankruptcy is a choice that may help, if you are facing serious financial problems. Depending on the circumstances, you may be able to cancel your debts, stop collection calls, and get a fresh financial start.

Bankruptcy can help you with some financial problems, but does not guarantee you will avoid financial problems in the future.

If you choose bankruptcy, you should take advantage of the fresh start it offers and then make careful decisions about future borrowing and credit, so you won't ever need to file bankruptcy again.

There are four types of bankruptcy cases provided under federal law: Chapter 7, 13, 11, and 12. Debtors usually file a chapter 7 or 13 bankruptcy case.

Both cases require a debtor to file lists of ALL debts and ALL property of any kind that the debtor owns and to answer questions under oath asked by the trustee and by creditors early in the case.

## What Bankruptcy Can Do For You

- Eliminate the legal obligation to pay most or all of your debts, which can give you a fresh financial start.
- Stop foreclosure on your house and allow you the opportunity to catch up on missed payments.
- Prevent repossession of a car or other property.
- Stop wage garnishment and debt-collection harassment.

# The Four Main Types of Bankruptcy

## Chapter 7



**Chapter 7 is known as “straight” bankruptcy or “liquidation.”** It is most commonly referred to as personal or consumer bankruptcy and a trustee is appointed to the estate.

Any non-exempt property can be sold by the trustee to pay off the debtor’s creditors. Chapter 7 is designed for debtors in financial difficulty who cannot repay their debts.

If you want to keep property like a home or a car and are behind on payments, a Chapter 7 case will probably not be the right choice for you.

Why? This type of bankruptcy does not eliminate the right of mortgage holders or car loan creditors to take your property to cover your debt.

Most Chapter 7 cases take about four to five months to complete. The debtor usually gets his or her discharge within two to three months after the meeting with the trustee and creditors.

## Chapter 13

Chapter 13 is a type of “reorganization” used by individuals to pay all or a portion of their debts over a period of years using their current income.

As the debtor, you can usually keep your property, but must continue to earn wages or have a source of regular income.

If your income is above the median family income in the state of New

Mexico, you may be required to file under Chapter 13.

Higher income consumers have to fill out a “means test” form requiring detailed information about their income and expenses.

If that form indicates, based on standards in the law, that you have a certain amount left over that could be paid to unsecured creditors, the bankruptcy court may decide that they can’t file under Chapter 7, unless there are special circumstances.

The most important thing about a Chapter 13 case is that it will allow you to keep valuable property, in particular your home and car, if you can make the payments that the bankruptcy court requires that you make to your creditors.

In most cases, these payments will be at least as much as your regular monthly payments on your mortgage or car with some extra payments for the amount you are in arrears.

You should consider filing for Chapter 13 if you:

- Own your home and are in danger of losing it;
- Are behind on debt payments, but can catch up if given some time;
- Have valuable property which is not exempt, but you can afford to pay creditors from your income over time.

## **Chapter 11**

**Chapter 11, known as “reorganization,”** is used by corporations and partnerships and a few individuals whose debts are very large.

Debtors are required to file various documents pertaining to their income, assets, liabilities and a debtor’s plan or intention to file such a plan.

Upon filing a petition for relief under Chapter 11, the debtor automatically assumes an identity as the “debtor in possession” and is able to keep possession and control of its assets.

## **Chapter 12**

Chapter 12 is similar to chapter 13, except it is for family farmers and fisherman with a regular annual income.

# What Not To Do

## **Lie To Your Attorney.**

Misrepresenting your financial situation can result in a denial of your discharge or in some cases you can be criminally prosecuted.

## **Not File Tax Returns.**

Your tax returns are required by law, and your bankruptcy cannot move forward until your tax returns are filed.

## **Incur New Debt**

If you run up more debt during the 70 to 90 days prior to filing your creditors may object to your discharge on the basis of fraud.

Do not cash out or take out loans against your 401K (retirement) plan, or line of credit against your home for the same reason.

## **Hide Assets**

The bankruptcy process require the debtor to provide an accounting of all assets. Creditors and bankruptcy trustees will examine your financial affairs going back as many as four years. You will be required to account for assets that you have disposed of, and if you can't, you may not receive a discharge for your debts.

## **Wait Too Long**

Do not wait until you have a judgment against you. Your attorney will need to answer those judgments to stop your creditors from seizing your property and that can add to the cost for filing your bankruptcy. It may cost you more money if you wait too long.

# Answers To Common Bankruptcy Questions

*Courtesy of the National Consumer Law Center and the State Bar of New Mexico*

A decision to file for bankruptcy should be made only after determining that bankruptcy is the best way to deal with your financial problems.

## **What is a bankruptcy discharge?**

One of the reasons people file for bankruptcy is to get a “discharge.” A court order which states that you do not have to pay most of your debts.

## **What documents should I bring to my first appointment?**

**Please bring the following:** A list of your creditors and the balance due on each account, a list of your monthly expenses, and a copy of any documents that pertain to your situation

- A list of creditors and the amounts of your debts
- Summons
- Complaint,
- Collection letters, etc.

## **Will my creditors stop harassing me?**

**Yes.** When you file for bankruptcy relief there is an “automatic stay” that is immediately initiated. This automatic stay arises out of 11 USC §362 of the Bankruptcy Code and immediately “freezes” all collection efforts

against you. Therefore, upon filing for bankruptcy, creditors cannot continue in their pending lawsuits against you without Bankruptcy Court approval, creditors can no longer contact you regarding your debt (by mail, over the phone, or in person), and all other collection efforts also cease.

### **Does my spouse have to file bankruptcy with me?**

**It depends.** If the debts that are of concern are primarily in one spouse's name then it would probably be a better idea to only have one spouse file for bankruptcy.

However, if the debts are in both spouses' names then both spouses should file. The primary reason is that although one spouse will receive a discharge, the other spouse will then remain liable for all of the debts and the creditors will then go after that one spouse.

### **Who will know?**

Although bankruptcy filings are public record and are available to anyone who inquires, only the creditors listed on the bankruptcy schedules will receive actual notice of the bankruptcy. The bankruptcy filing is also published in the Business Outlook (part of Albuquerque Journal), but it is listed along with various other filings and is not conspicuous unless someone is purposely going through the filings each time it is printed.

### **Will I ever get credit again?**

**Yes,** immediately. Upon filing for bankruptcy, you will likely receive many offers for credit cards and vehicle loans. The primary reason for this is that the lenders know you cannot file for bankruptcy for another 8 years (unless you are filing under a different Chapter of bankruptcy) and therefore they know that you will likely not be able to discharge their debt— especially vehicle loans that usually have a maximum length of 5 years.

## **Which Debts Do I Still Owe After Bankruptcy?**

When your bankruptcy is completed, many of your debts are “discharged.” This means they are canceled and you are no longer legally obligated to pay them. The discharge only applies to debts that arose before the date you filed.

## **Are there any debts that cannot be discharged?**

**Yes.** Certain types of debts are NOT discharged in bankruptcy. The following debts that generally may not be cancelled by bankruptcy:

- Most taxes
- The vast majority of tax debts cannot be discharged.
- However, this can be a complicated issue. If you have tax debts, you will need to discuss them with your lawyer.
- Child support
- The debtor must continue to pay child support during a bankruptcy case
- Alimony
- Most student loans
- Almost no student loans are canceled by bankruptcy. But you can ask the court to discharge the loans if you can prove that paying them is an “undue hardship.” There are options for reducing your monthly payments on student loans, even if you can’t discharge them.
- Money borrowed by fraud or false pretenses

A creditor may try to prove in court during your bankruptcy case that you lied or defrauded them, so that your debt cannot be discharged. A few creditors (mainly credit card companies) accuse debtors of fraud even when they have done nothing wrong.

Their goal is to scare honest families so that they agree to reaffirm the debt. You should never agree to reaffirm the debt. If the company files a fraud case and you win, the court may order the company to pay your lawyer’s fees.

- Court fines and criminal restitution
- This exception includes even minor fines, including traffic tickets.

- Personal injury caused by drunk driving or under the influence of drugs.

You must list all your property and debts in your bankruptcy schedules. If the debt is not listed, it is possible the debt will not be discharged. The judge can also deny your discharge if you do something dishonest in your case, such as destroy or hide property, falsify records, or lie or disobey a court order.

### **Do I Still Owe Secured Debts (Mortgages, Car Loans) After Bankruptcy?**

**Yes and No.**

The term “secured debt” applies when you give the lender a mortgage, deed of trust or lien on property as collateral for a loan. The discharge applies to secured debts which means the secured creditor can’t sue you after a bankruptcy to collect the money you owe.

But, and this is a big “but,” the creditor can still take back their collateral if you don’t pay the debt. For example, if you are behind on a car loan or home mortgage, the creditor can ask the bankruptcy court for permission to repossess your car or foreclose on your home. Or the creditor can just wait until you bankruptcy is over and then do so. Although a secured creditor can’t sue you if you don’t pay, that creditor can usually take back the collateral.

For this reason, if you want to keep the property that is collateral for a secured debt, you will need to catch up on the payments and continue to make them during and after bankruptcy, keep any required insurance, and you may have to reaffirm the loan.

### **How long will bankruptcy stay on my credit report?**



The results of your Chapter 7 bankruptcy case will be part of your credit report for ten years. The ten years are counted from the day you filed for bankruptcy

This does not mean you can’t get a house, a car, a loan, or a credit card for ten years. In fact, you can probably get credit even before your bankruptcy is over. The question is, how much interest and fees will you have to pay? And can you afford your monthly payments, so you don’t begin a new cycle of painful financial problems.

Debts incorrectly reported as having a balance owed will negatively affect your credit score and make it more difficult to get credit.

You should check your credit report after your bankruptcy discharge and file a dispute with credit agencies if the reported information is not correct.

### **What is Reaffirmation?**

Although you filed bankruptcy to cancel your debts, you have the option to sign a written agreement to “reaffirm” a debt. If you choose to reaffirm, you agree to be **legally obligated** to pay the debt despite bankruptcy. If you reaffirm, the debt is not canceled by bankruptcy. If you fall behind on a reaffirmed debt, you can get collection calls, be sued and possibly have your pay garnished or other property taken. Reaffirming a debt is a serious matter. You should never agree to reaffirmation without a very good reason.

### **Do I have to Reaffirm Any Debts?**

**No.** Reaffirmation is always optional. It is not required by bankruptcy law or any other law. If a creditor tries to pressure you to reaffirm, remember you can always say no.

### **Should I reaffirm?**

If you are thinking about reaffirming, **the first question should always be whether or not you can afford the monthly payments.** Reaffirming any debt means that you are agreeing to make the payments every month, and to face the consequences if you don't. The reaffirmation agreement must include information about your income and expenses and your signed statement that you can afford the payments.

If you have any doubts whether you can afford the payments, do not reaffirm. Caution is always a good idea when you are giving up your right to have a debt canceled.

# 5 Steps To Choosing a Bankruptcy Attorney

## **Step 1: Proven track record**

First, you should do some research about the attorneys you are considering, just as you would do if you were choosing an orthopedic surgeon or another professional with a specialty.

One of the best resources is a recommendation or peer-review from another lawyer or member of the judiciary who has worked with the attorney in question.

**Martindale-Hubbell** ([www.martindale.com](http://www.martindale.com)), this online peer-review resource, generates ratings of attorneys, who have been a member of the state bar for a minimum of three years, based on evaluations from other members of the bar and judiciary.

Martindale-Hubbell evaluates an attorney's legal knowledge, analytical capabilities, judgment, communication ability and legal experience and give the attorney a numeric score, which translates into one of three ratings.

**AV Preeminent** indicates the attorney's peers rank him or her at the highest level of both professional excellence and ethical standards.

**BV Distinguished** is an excellent rating for an attorney with some experience. It is a widely respected mark of achievement and differentiates an attorney from his or her competition.

**Rated** indicates that the attorney has met the very high criteria of General Ethical Standing.

**Super Lawyers** ([www.superlawyers.com](http://www.superlawyers.com)), is another good peer-review resource. It lists outstanding lawyers from more than 70 practice areas who have attained a high degree of peer recognition and professional achievement. The company also solicits peer nominations and evaluations as well as independent research. You can search for an attorney in a specific practice area such as bankruptcy on superlawyers.com by entering the practice area and state in which you are looking for an attorney. You will then receive a number of names of highly rated attorneys in your area.

### **Step Two: Sufficient bankruptcy experience**

Bankruptcy is a specific and unique area of the law and requires an attorney with experience with both Chapter 7 and Chapter 13 bankruptcies, the two most common types of consumer bankruptcies. (If you own a family farm and are considering bankruptcy, you need an attorney who is experienced in Chapter 12 bankruptcy, which specifically addresses agricultural bankruptcies.)

Experienced bankruptcy attorneys not only understand the federal bankruptcy laws but the unique rules and regulations that pertain to the district court in their area, as well as the requirements of the bankruptcy trustees in their local area.

An attorney who practices in another area of law, or in multiple areas, may be unfamiliar with local court requirements and procedures, which may cause delays and blunders in your case.

Just as you would choose a surgeon who specializes in knee replacements, for instance, rather than a general practitioner for this type of surgery, you should only hire an experienced bankruptcy attorney who specializes in bankruptcy for your bankruptcy.

You can check to see if the attorney you are considering is a member of the *National Association of Consumer Bankruptcy Attorneys* ([www.nacba.com](http://www.nacba.com)), which is a well-respected membership association for attorneys practicing in this area.

Membership in this organization indicates that the firm or lawyer is “dedicated to the practice of bankruptcy, stays up to date on the latest developments and provides competent representation.”

You can also search for a member attorney by state.

The American Bankruptcy Institute ([www.abiworld.org](http://www.abiworld.org)) also focuses on developing the highest standards of bankruptcy practice through research and education and is another excellent membership organization for attorneys and other professionals dealing with bankruptcy.

### **Step Three: Considers alternatives to bankruptcy**

Bankruptcy may not be the only solution to your debt problems and an ethical bankruptcy attorney will explore alternative solutions for your unique circumstances.

At times, a bankruptcy attorney will negotiate with your creditors and develop a debt-settlement plan and avoid bankruptcy entirely. And at other times a bankruptcy attorney may find that the best solution is for you to pay your creditors because you have too many assets or too much income.

The point is that each client has a unique situation and requires a unique solution. So look for an attorney who considers and explains all your options and the consequences of each choice so you can make the best decision for your circumstances.

### **Step Four: Set up an appointment**

It’s difficult to choose a bankruptcy attorney without meeting the attorney face-to-face, so look for an attorney who offers a free consultation. It’s important for you to be able to gauge their professionalism, communication style, enthusiasm for their profession and their desire to help you.

Find out why the attorney chooses to practice bankruptcy law and look for answers that indicate they find it interesting and rewarding to help people get back on their feet. Ask the attorney to tell you what is most rewarding about their profession and listen for enthusiasm and passion in their response.

And make sure you feel comfortable with their personality and communication style because you will be sharing personal information and working with them for several months. Just like a doctor should have a good bedside manner, a bankruptcy lawyer should be someone you feel comfortable in sharing personal information and your biggest financial worries.

### **Step Five: What is a retainer?**

A retainer is the payment a client makes to his or her attorney before work can begin on his or her case. The fee is placed in a trust account and as your case progresses the attorney draws from the account. If there is money left when the case is over, that money is returned to you, the client.

It is important to note that a retainer fee is not the same as having an attorney on retainer. Also, unless you have an agreement for a “flat fee,” the retainer is not necessarily the same amount you will be charged for legal services.

### **How much is the investment in bankruptcy?**

Of course, filing for bankruptcy involves paying a fee. But what is a reasonable fee for bankruptcy? The cost for a bankruptcy varies widely by location and the type of bankruptcy. Depending on the complexity of the bankruptcy, fees can range from \$1,400 to \$2,500 from start to finish, for a Chapter 7. Chapters 11, 12 & 13 typically cost more.

- Do you know what you are paying for?
- Does the attorney charge for a consultation?
- If the attorney charges a flat fee what services are included?
- Is there an extra fee to respond to any lawsuits? If so, how much?

After adding up the cost for the consultation, the flat fee, and the fees to respond to lawsuits, you may find that the low-cost attorney is not that low cost.

Although fees are certainly a consideration in the decision-making process, it shouldn't be your only consideration. Finding a lawyer who has the experience, personality and communication style that works for you is an attorney whom you can trust who will help you overcome your debt issues and give you a fresh financial start.

# Questions You Should Ask Any Attorney

Q. Why should I hire your firm?

A. Because we have a proven track record of helping clients resolve their financial problems and getting a fresh start in their financial lives.

We will seek and find a solution to your problem rather than trying to put you into a cookie cutter mold and hoping that you will fit.

We have many years' experience helping people with all sorts of financial and debt problems and we use that experience to get you the best possible solution to your specific problem.

Q. Will I be able to keep my house if I want to?

A. Yes, but you will have to pay the mortgage. While mortgage can't be modified in most circumstances, we do have tools to help you catch up if you are behind.

Q. Can my student loan be discharged?

A. No, student loans are not discharged in a bankruptcy.

Q. Will I be able to get a mortgage after I file bankruptcy?

A. People can generally receive a federally insured mortgage within 2-3 years after filing for bankruptcy.

Q. I need a vehicle. Should I purchase one before or after bankruptcy?

A. Before. It is not okay to incur unsecured debt before filing bankruptcy, but you can obtain secured debt before filing bankruptcy because you either keep the debt and the collateral or you surrender the collateral and

discharge the debt. Waiting until after you file bankruptcy will mean you have a MUCH higher interest rate than if you obtained a loan before filing.

Q. I receive a government benefit, i.e. unemployment, social security, etc. Can my creditors garnish my benefits?

A. Generally speaking, no. Under both federal and/or state law, benefits received from government entitlement programs are protected from your creditors – with the possible exception of the IRS and the agency itself.

## **This Consumer's Guide Is Provided Courtesy Of**

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Call for your free personal bankruptcy evaluation with one of our specially trained Attorneys