

## *Housing & Economic Recovery Act of 2008 Section*

The purpose of this section is to explain (hopefully) what you need to know to profit from this new Act and to help you buy a home or save your home.

Unless you find reading nearly 800 pages, 786 to be exact, of Washington prose exhilarating, you might be left to wonder what this really means to you as a prospective home buyer or homeowner. I have gone through the material and pulled out the nuggets that you can use now to save some money or help out a friend or family member.

So, why the new law? Today we are feeling the effects of both a housing boom and the hangover from easy credit given to many people it probably should not have been extended to - the result of which can now be felt in a national housing market that has slowed and is in need of a jump start.

One thing is certain: the impact has been felt all the way to Washington. When the housing market slows, so does the U.S. economy. Whether it is the lack of fees and income that are generated from slowing real estate transactions or the lack of additional tax revenues earned by state and local governments, people take notice. All things roll downhill 'til they land at the steps of Congress.

Ultimately, the purpose of the legislation is to stimulate activity in three areas. The first is to stimulate additional buying activity, particularly at the entry level or first-time home buyer market.

The second goal is to provide relief to current homeowners experiencing difficulty or who are in foreclosure.

And the third is to enact legislation and standards that are aimed at cleaning up the lending business. In a sense, we want to get rid of the bad actors in the business.

OK, let's break it down and see how it really impacts us. First up is FHA financing. Congress is modernizing the FHA, bringing in several good things for home buyers and homeowners. Next up, pull out the paddles, and put a shock into the heart of housing by providing tax credits and additional incentives.

For those areas that have benefited from higher conforming loan limits, changes are being made to provide continued relief but not quite to the extent we have seen. For homeowners in financial distress, lenders are getting some assistance to help them. Finally, lenders will have to step it up as new minimum standards go into play.

If you were a first-time home buyer in recent years, you might have asked "Can you get me in a home with no money down?" A typical answer in the past could have been, "I can if the seller agrees to help you with down payment assistance (DPA)." Well, effective October 1<sup>st</sup>, this is going away. So, if we were talking baseball, this one just left the bat but has yet to clear the fence. However, that 360 feet marker in left field is October 1, and no one looks like they can make the leaping catch to save the day.

Why kill the golden goose? Because these loans have proven to be the ugly duckling with no swan in site as three times as many loans fall into trouble with DPA as compared to those that do not.

Now don't think everyone has packed it in and given up here. There are a number of companies continuing to lobby Congress to save this. However, there are no guarantees and right now, I would prepare for the worst. BOTTOM LINE, if you need seller paid assistance, you better act now as many lenders are already pulling the trigger and stopping DPA in its tracks today. The final cut off time from HUD though is the loan has to be approved and in the system prior to 10/1; although, some lenders are already stopping loans with DPA.

Back up the truck and empty your wallet. I'm kidding of course but first they eliminate DPA and now increase the down payment. FHA buyers need to come up with another .5% contribution from 3% to 3.5% now. Mortgage insurance costs are changing for many as risk-based pricing models will be implemented following credit scores, meaning those with lower scores will have to pay a little more. There is still more to follow as we look for clarification but there is an opportunity for anyone getting into the game now. Take advantage of it and if you are serious about buying a home, get under contract quickly to save yourself some money.

Want some good news? Of course you do! How about a tax credit to first-time buyers and anyone that has not owned a home in the last three years? Eligible buyers will receive up to a \$7,500 tax credit for all homes purchased, between, April 9, 2008 through July 1, 2009. Keep in mind, a tax credit is, in essence, a refund. If you found yourself owing \$3,500 in taxes next April, you would actually get a refund of \$4,000. Pretty, cool, right?

The tax credit is based on 10% of the sales price up to a maximum of \$7,500. It must be the buyer's primary residence and there are a few income restrictions. To capture the full amount, single buyers can't make more than \$75K and couples can't earn more than \$150K. At \$95K and \$170K respectively, the credit gets phased out all together but that certainly seems reasonable.

There has to be a catch, right? Let's look at the fine print here. Well, this kind of generosity from Washington can't be free. And it isn't. It's actually an interest-free loan that must be paid back over 15 years, or \$500 a year if the tax credit extended was \$7,500. But heck, there's nothing wrong with getting an interest-free loan when buying a car, why not when buying a home?

Also, if the home is sold before 15 years, repayment of the loan will be limited only to the amount the home has appreciated.

One more thing and here is some really good news. If you happen to die, the loan is completely forgiven! On the flip side, you're dead so I guess it's not all good news!

Where is the bright light here? It's simple. For first time home buyer (FTHB), there have never been more incentives offered to get you off the fence and to buy a home, especially with home prices right now. Builders can't come close to rebuilding the homes for what buyers are getting them for so stop worrying about whether the homes will go down another 5-10%. Within a year or so, you'll see homes shoot up right to the point of the costs to build, about another \$15-25 per square foot from where prices are at today. However, good things don't always remain to those who wait. There is a limited time window here and people need to act.

The tax benefits extended are only to FTHB though. For people that own a home and still file the EZ form for their income taxes, they are not taking advantage of being able to write off their property taxes. With this bill, they may be able to do so.

While I haven't filed the EZ form in years, there are people that do. For single filers, they now get to deduct up to \$500 and for couples, up to \$1,000.

Now, as we discussed, not all 786 pages of the bill were directed just to home buyers. In fact, you would have had to have been locked in a cave to not know housing has been in a tail spin, led by price declines and increasing foreclosures. So there is hope for many homeowners.

The people targeted here are those that are upside down, meaning they now owe more than their home is worth. I'm not going to go into granular detail here but I will say that there are very detailed guidelines for those that can benefit. For those who qualify, they can refinance into a new loan, at 90% of the new appraised value. In exchange for that, they agree to share in the future appreciation with the government at a minimum of 50%.

**For this remedy to realize itself in your situation, here are some things that need to be in place:**

- A. The property in question must be your primary residence.
- B. You can't own any investment property.
- C. The existing owner of the loan must be willing to accept a payoff equal to 85-90% of today's value.
- D. You must qualify for this new loan amount documenting your income.

While no one wants to give up future appreciation, the benefits are pretty compelling to do so with a lower house payment, immediate equity in their home where there was none before, and taking a potentially disastrous foreclosure off the table for them.

The benefit for the community is that there would be fewer homes in foreclosure, putting less pressure on home prices. So in the end, everyone benefits here.

So what do you do with this information? If you know anyone in trouble, make them aware of the program and direct them back to me. I can help them get pointed in the right direction. You will help keep your community stronger and also you just might win a friend for life!

OK, this one hits close to home. When the media talks about housing issues, they talk mortgage market meltdown. And inevitably, examples point to mortgage originators that took advantage of some people. Well, the heat is on to clean up the mortgage business and it starts from the bottom up.

Federal licensing requirements are coming that are aimed at taking the villains off the street. No crooks, thieves, or felons allowed. Yeah, I know, novel idea! The good news here, better times are ahead for all of us with smarter and more trustworthy loan originators to choose from across the country; and, you already have that with.

So, where do we go from here? ACT NOW! WHY?

It's simple. Home prices haven't been better in years! Many experts expect that the bottom in real estate is here as home prices in many communities have already fallen in some cases up to 30% or more from recent highs.

Remember, the only way to see the bottom is in the rear view mirror, meaning that you won't KNOW you are at the bottom when you are there. We can only tell when we hit bottom in coming months. As some markets are already starting to rebound as home prices have dropped, we are already seeing evidence that the bottom is starting to form. We have seen sales spike in the last couple of months statistically.

Home loan rates are still exceptionally low! With interest rates below 7% and home prices coming down, owning a home is a great decision today. And knowing that you are experiencing the benefits of owning property as opposed to your landlord is a great feeling.

However, just like eating a great ice cream cone, wait too long and you'll be sorry. The benefits from the legislation will not last forever and the clock is ticking. Don't miss out on this opportunity.

The first step I recommend for you is that you get pre-approved for a mortgage. With a pre-approval you will eliminate any stress of knowing what you can qualify for and know exactly how much you can afford to pay to stay within your budget.

Also with a pre-approval, a professional Realtor can often negotiate a better price for you as you are almost looked at the same as a buyer that is extending a cash offer. If timing is of the essence to take advantage of a really hot property, getting pre-approved can often cut the time to get a mortgage fully approved in half!

All you have to do is call our Concierge Hotline and we'll do the rest for you. It's really that simple. Now, for some more details on the tax credit, see the next page.

### \$7500 First Time Homebuyer Tax Credit Information

Feature	H.R. 3221 Housing and Economic Recovery Act of 2008
<b>Amount of Credit</b>	<p><b>Ten Percent of the cost of home, not to exceed \$7500.</b></p> <p><b><u>Examples:</u></b></p> <ul style="list-style-type: none"> <li>➤ <i>If a home costs \$65,000, the allowable credit would be \$6,500.</i></li> <li>➤ <i>If a home costs \$120,000, then the allowable credit would be \$7,500.</i></li> </ul>
<b>Eligible Property</b>	<p><b>Any single-family residence (including condos) that will be used as a primary residence.</b></p>
<b>Refundable</b>	<p><b>Reduces income tax liability for the year of purchase. Claimed on tax return for that tax year.</b></p> <p><b>Individuals should consult a professional tax advisor for exact tax calculations.</b></p> <p><b><u>Examples:</u></b></p> <ul style="list-style-type: none"> <li>➤ <i>If an individual's actual tax liability was \$5,000, then after the tax credit is applied the purchaser would receive a total refund of \$2,500. The refundable amount is the difference between the \$7,500 tax credit and the amount of one's tax liability.</i></li> <li>➤ <i>If an individual's actual tax refund was \$2,000, then after the tax credit is applied the purchaser would receive a total refund of \$9,500.</i></li> </ul>
<b>Income Limit</b>	<p><b>Individuals whose Form 1040 filing status is single (or head of household) are eligible for the tax credit if their income is no more than \$75,000. Individuals who file a joint return may have no more than \$150,000 in income.</b> Individuals with incomes between \$75,001 and 94,999 (single) or \$150,001 and \$169,999 (joint returns) are eligible for a partial tax credit. Individuals with incomes greater than \$95,000 (single) or \$170,000 (joint return) are not eligible for this tax credit.</p>
<b>First-time Homebuyer Only</b>	<p><b>Purchaser (and purchaser's spouse) may not have owned a principal residence in three years previous to purchase.</b></p>

Recapture	<p>A portion (6.67% of credit) is to be repaid each year for 15 years. If home is sold before 15 years, then remainder of credit is due in the year of the sale.</p> <ul style="list-style-type: none"> <li>➤ If a homebuyer claims the \$7,500 credit in 2009 on their federal income tax return for a closing that occurred in 2008, then the credit is received in 2009, so repayment begins in 2010 with an annual repayment amount of approximately \$500 a year.</li> <li>➤ If the homeowner dies, their heirs do not have to pay back the remaining balance.</li> <li>➤ If the house is sold before fifteen years have passed and the home's appreciation is less than the amount needed to be paid back, the loan is forgiven.</li> <li>➤ If the home is turned into a rental or investment property, the pay back balance is due in that year.</li> </ul>
Effective Date	Purchases on or after April 9, 2008 until July 1, 2009

### Debt and Credit Section

#### ➤ What should I do about those nasty phone calls that keep coming?

Inform that caller that they are no longer to communicate with you by phone and to **CEASE AND DESIST**. Follow up with a Cease and Desist letter to their company informing them of your rights under the Fair Debt Collection Practices Act to **CEASE AND DESIST all telephone communication and that only communication in writing is acceptable.**

#### ➤ How do I answer the telephone when a bill collector calls?

Very simple. **HANG UP**. You do NOT owe that bill collector one dime, unless he proves you owe it. All of the threatening he/she does on the telephone simply means more ammunition for you to settle the dispute under your terms. There is NO LAW that says you need to talk to them.

This is the best way to keep your blood pressure low and not get anxious. You are NOT required to talk to a collector, so don't! Just wait until you get something in writing and then respond the way you need to. Best bet, call Herocare and we can connect you with a credit education affiliate that can teach you everything you need to know to deal with debt and collectors, etc.

You also might consider changing your home and/or cell phone number(s) and make sure that you tell the phone company that you want your new number UNPUBLISHED. This way you won't even have to deal with the phone ringing.

#### ➤ Can a bill collector call me at work?

**NO**, especially if he knows that your company does not allow outside calls, which they don't, right? The first time that they call, remind them that your company does **NOT ALLOW** outside calls, period. If, he/she/they continue to call, by all means, answer the phone but tell them you are recording their call and have logged it in your records that they called you at work again AFTER you informed that you couldn't receive calls at work. Folks, this is a clear violation of the Fair Debt Collection Practices Act. Make sure you keep a diary/record as to when, what time and who called. This is your bullet proof argument about why/when they violated the Fair Debt Collection Practices Act. They can be fined \$1,000 for this action.

It has nothing to do with the debt. It is a statutory violation and they will be fined, if you handle it properly.

➤ **What should I do about all of those collection letters?**

Read them very carefully. Make sure that the date that you received the letter from them gives you the full (30) days to dispute any portion of the debt. **If**, in their letter, they inform you that you **MUST** send some money before that (30) days is up, they are in violation of Federal Law.

When you first get a collection letter, by law, you have the right to dispute the debt. So, dispute it! Send the dispute letter within 30 days via **CERTIFIED MAIL RETURN RECEIPT REQUESTED**. The letter should state that you dispute the debt and under the Fair Debt Collection Practices Act, you formally request legal validation of the debt.

Also, **SAVE EVERY LETTER YOU GET FROM A COLLECTOR IN ONE PLACE. ORGANIZE THEM AND KEEP THEM.** Many of the letters you'll receive are in violation of the FDCPA (Fair Debt Collection Practices Act).

➤ **My credit report is so confusing, what am I really looking for?**

You are looking for each account that shows when the account was opened and if it is reporting a charge off or placed for collection, the first date/month in which it was first late to determine when the (7) year period of reporting starts. That is Federal Law under Section 623(a)(5) of the Fair Credit Reporting Act.

If any creditor or collector reports the date of delinquency **AFTER** the actual date you first went delinquent and never got caught up (a common industry practice), that is a violation. Watch for that... Collection agencies often report the "date opened" as the date "they received the debt" and this is illegal. They must report the date of the original creditor account. This is commonly called "re-aging" an account.

➤ **What is the difference between verification and validation?**

Verification of a debt or account is when the credit bureau responds to your dispute letter. In this process they contact the creditor and simply ask for social security numbers, account numbers etc. They do not check payment histories, aging or anything else about an account **UNLESS** you have requested a specific item in your dispute.

Validation is the requirement of the law in which a creditor/collection agency proves the debt, amounts, etc. Legal validation requires the creditor OR collection agency to produce the application for the account signed by you and the entire general ledger of the account which would include **EVERY** payment made, every fee charged, every charge made, every action on that account; from the date opened to current. The creditor/collector has to do this to prove that, (1) The account is actually yours; (2) How they arrived at what they allege you owe.

➤ **I am being sued for a credit card that I cannot remember when I used it last?**

If you do not remember when you used it last, you can use this as a wonderful tool in defeating the lawsuit. First of all, if the collection agency is reporting the entry on your credit report, they **MUST** by **FEDERAL LAW** notify the bureaus as to **WHEN** the account was first late

and never got caught up. Here is their dilemma. Usually, the collection agency cannot produce any records. If they do produce anything at all it might be photocopies of some invoices. **BUT** never a payment record that will show when you were first late and never got caught up.

If they can't produce this documentation, this item **MUST** be removed from your credit report under the Fair Credit Reporting Act and the creditor/collector probably doesn't have a valid claim that they can state. As always, if you're being sued, we highly recommend you go see an attorney. That first consultation is always free so use it.

Then, read below because, usually, if you can't remember details of the debt it's pretty old.

➤ **A collector is trying to collect money from me on a very old debt. What do I do?**

This might be what's called a "TIME-BARRED DEBT." A time-barred debt is a debt that cannot legally be collected on after the Statute of Limitations has run on the debt. In Florida, the Statute of Limitations is **FOUR (4) YEARS** on unsecured debt like credit cards. This means that if it is four years from the Delinquency Date (the date you first went delinquent and never got caught up), the debt has been extinguished by "operation of law."

A collector may **TRY** to collect by sending you a letter, etc. **BUT** if they threaten a lawsuit **OR** actually file one on a time-barred debt, they are in clear violation of the FDCPA.

➤ **What is the most common error on any credit report?**

After reviewing thousands of credit reports, we know that the most common error is when the creditor/collection agency fails to report the "commencement of the initial delinquency." Without this date, violation after violation of Section 623(a)(5) of the Fair Credit Reporting Act, no one can determine how long this derogatory entry will remain in the consumers' credit files. This is by far the largest complaint received by the FTC regarding consumer credit complaints.

➤ **What will lower my credit score quicker than anything?**

A recent late payment can lower your credit scores as much as 50-60 points.

➤ **What is the quickest way to raise my credit scores?**

Look at all of your credit cards. Total the amount of credit authorized and on each account try to make the balance owed to always be about 50% of what your credit limit is.

Make payments on time.

➤ **Why do I have the same account on my credit report with (3) different collection companies?**

Well, they transfer and sell back and forth. When one company knows that they legally are trapped, they will ship it to a "brother or sister" company. That way it shows on your credit report more than once. These duplicate accounts are very easy to get removed from your credit report with the right know-how.

➤ **What can I do to remove those multiple items?**

You simply have to write to each one that is considered a “furnisher of information” and ask them to verify their claim. When they cannot do this within the (30) day time limit as mandated by Federal Law, they must delete it. However, there are no credit cops that will enforce the rules.

➤ **We sent a letter of dispute and the answer came back as “information verified” what next?**

Well, Charlie, here is where the “rubber hits the road.” Now you write a letter to the creditor seeking **VALIDATION** of the debt. You get a copy of your certified mail return receipt. When the collection agency/creditor cannot validate the account (they rarely do), then you take the copy of your letter and postal receipt and send it to the credit bureau and simply ask them “how can you verify this debt (**information as accurate**) when the creditor cannot prove it because they have not validated it” **WIN-WIN EVERY TIME.**

➤ **I have medical bills that I do not understand. How do I handle this?**

Under the HIPAA which is short for the Health Insurance Portability and Accountability Act, you have **POWER**. Yes, you have power. Let’s go back to square one. How can a furnisher of information provide accuracy when he legally cannot review your medial records? **READ CAREFULLY.** You always get that bill collector that is reading you a statement when they call you...

These are your **MEDICAL RECORDS** and the only people that can review them are people that **YOU** authorize or the people that are in direct responsibility of your well being through a Power of Attorney. The bill collector that was just assigned the account by the hospital cannot look at your medical records. With that being “etched in stone,” tell me how he can prove a medical debt? Let’s suppose the Doctor ordered one amount of a certain drug and the pharmacy only has it in a much larger container... You most probably will be charged for the container on your bill. **BUT**, if you compare the medical records with the bill, they always reduce the bill. But then again, the collector can’t do either because they don’t have access to the records.

When the bill collector furnishes you with a copy of the bill, it **MUST** come from the creditor and be on the, creditors stationery. Otherwise, they violate Federal Law

➤ **How do I answer a lawsuit in small claims court?**

An answer is exactly what it says. Do not get hypnotized or intimidated by legal mumbo jumbo. An answer can simply be, “this is not my debt.” Or, “I do not owe the amount claimed to be owed.” In either case, you are required to answer the complaint. If you don’t, you are automatically defaulted and the other side wins. So, don’t be intimidated because it is in a court, actually, the court is your friend. Besides, in most cases, you are scheduled for a pre-trial conference with a court mediator and the plaintiff’s attorney. They will usually want to settle the case before going to trial.

As always, we highly recommend you get an attorney to help/represent you in any lawsuit. Do **NOT** ignore a lawsuit, go see an attorney or call me and we can help you find one who will meet with you for a free consultation.

➤ **How should I shop for a car without getting so many inquiries on my credit report?**

When you go to the dealer and they ask you for your driver's license and social security card, you can bet that you're going to be exposed to at least (6) lenders that they are trying to get you financed with. Of course, you are not aware of this usually... So, if you are just shopping for a car and trying to get some prices, don't fall for this ploy. Go to your credit union first and talk about a new car loan. Don't apply yet, just talk about it. When you get to the dealer and the ACE salesperson starts his little "financial ploy" to see if they can get you approved, you simply say (without lying), I have already been to my credit union and I just want to know the price so I can get back to them. Thank You. See what happens.

➤ **Does my credit score affect my car insurance rates?**

Unfortunately, the answer is yes. Someone with a good driving record but poor credit can end up paying more for insurance than someone with a less than perfect driving record but with better credit scores. Not fair you say.

Well the insurance company underwriters equate credit to risk and feel that someone with poor credit is naturally a poor risk. I cannot explain that logic, but it is the system.

➤ **If we signed a residential lease for a year can we break it?**

In some states, this can be done but it also depends on the wording of the lease. Look at your state statutes and look up landlord – tenant laws and read your lease. Most of the states have a statute that if you notify your landlord **IN WRITING** ( 60) days before you want to move out, they can only keep one months rent and you are legally out of the lease. Some courts have found that by leaving the apartment empty for one month, this is ample time for the landlord to lease it out. If your lease is on a month to month basis, you need only give a (30) day notice. It is important that you understand your tenant –landlord rights in your state. Seek an attorney's advice as well.

➤ **How can I get a judgment removed from my credit report?**

In most civil cases, the attorneys fail to attach or produce the required affidavit. This is a document where a person that has direct knowledge of your contract and debt, swears under the penalty of perjury that the evidence of the debt is accurate. Now, that is not enough sometimes. In order for a judge to have total jurisdiction of a case, it must have the following four elements: (1) Proof of service (2) Copy of the lawsuit/complaint (3) A sworn affidavit and (4) A certified copy of the original contract or the original contract as evidence that you entered into the arrangement and also this serves as proof of the debt. Barring any one of the four, the entire judgment can be vacated at a later date because it is VOID and cannot be re-entered.

➤ **How do inquiries affect my credit report?**

Contrary to what you have been led to believe, when you apply for a mortgage and you have up to five inquiries from different mortgage lenders and they are within 30 days of each other but, they only count for one inquiry. Multiple automobile inquiries within (15) days of each other also count as ONE inquiry. You can dispute inquiries as not being authorized by you if you did not seek credit.

Those inquiries that are marketing inquiries from credit card companies and others seeking an opportunity to market something do not impact your credit score. They are referred to as a non-impacting inquiry.

➤ **My student loans are a mess, what should I do?**

The most important thing to do is to try and rehabilitate your loans. That means to start from ground zero. The government has in place an opportunity for you to rehab your loan. If you can make your reduced payments on time for (12) months, without any late payments, the US Congress has mandated that your entire paying history will be deleted from your credit report. That is powerful and helps you when dealing with collection companies that say “we cannot delete your paying history because it is against the law.” This blows holes in that presentation. Contact the US Department of Education to get started.

➤ **I just had my car repossessed. What can I do?**

Well, first of all, understand that repossession is a physical act that the lender is entitled to under the terms of most contracts. They can legally repossess the vehicle. However, you still are considered the owner of equity and they are the lien holder of record; which in everyday language means they can take the car and sell it to satisfy their lien position. Your name is on the title as the owner and their name is on the title as the lien holder.

So, you have every legal right to redeem your own car or your interest by simply paying the back payments or the full balance according to the terms of your contract. In every case, you are entitled to go to the sale of that vehicle... of which you must be notified as to where and when in order to participate in the sale. When you are not notified, in most states, this is considered a commercially unreasonable sale. What rights do you have? Check your state laws regarding your rights under repossessions but mostly your rights prior to, during and after the sale or go see an attorney to help out.

**Bankruptcy Section**

➤ **When should I file for bankruptcy?**

Our experience and thoughts on this delicate matter have changed since the US Bankruptcy Laws were recently changed. There are more guidelines today to meet the threshold for a Chapter 7 Bankruptcy. In many instances, a Chapter 13 Bankruptcy just isn't worth it. Today, many credit card companies, creditors and banks are VERY negotiable. Once you stop paying on a debt, they will get increasingly open to working with you and negotiating a settlement or a payment plan. Pay attention here... bankruptcy might be the best thing you can do BUT it may not.

So, why declare bankruptcy and have it on your credit report for 10 years, if you can negotiate lower payments and lower balances because the credit card companies know that they are better off getting something rather than nothing. This way, you can negotiate for terms. Much better than that “black mark” on your credit report. Others have said, you get a fresh start. True to some extent... But, go ahead and try and buy a new car with a BK on your credit report. Not going to happen until many years later.

So, our recommendation is to move cautiously. Many of those “Consumer Credit Counseling” companies and agencies do more to injure consumers than help them. They don’t really negotiate much at all for you. There are some great solutions to negotiating debt down by 50% or more of the outstanding balance. We’ve seen instances where credit card companies have offered to settle for only 10-20% of the balance! If you had \$10,000 in a credit card, they might settle for as little as \$1000. This is real, so call us if you have more questions.

Given all of this, below are some frequently asked questions and some answers regarding bankruptcy.

### **Should I file Bankruptcy?**

A person should file a bankruptcy if, and only if, he or she can’t pay bills as they come due or is about to lose property or have property attached by the Court. Very few people lose any property when they file bankruptcy.

Filing a bankruptcy is generally better than having a foreclosure on your credit record. A person will often be able to rebuild credit and buy a house within 2 years after a bankruptcy. Repossession can do more damage to your credit, and it may take much, much longer to recover. Government regulations may forever keep you from financing a home with the VA or FHA if you have repossession for a home, but allows financing 2 years after bankruptcy. Only 7 magical items may not be bankrupted: Child Support and Alimony; taxes less than 3 years old; federally guaranteed student loans; debts due to fraud; debts due to drunk driving; debts due to intentional injuries; and criminal restitution. There are many exceptions to even these.

A, driver’s license can be reinstated by filing, if you lost your license because of unpaid damages for an auto accident. When in doubt, always list the debt when filing: It may be bankruptable due to an exception.

### **What does it cost to file bankruptcy?**

Court costs are about \$300 for a Chapter 7 and \$275 for a Chapter 13. Chapter 7 attorney fees run about \$2000 plus any filing fees. Chapter 13 Attorney fees are set by the Court. These are obviously subject to change.

### **What happens when I file?**

When you file a bankruptcy, a Court order goes into effect immediately stopping all collection activity. This includes stopping foreclosures, attachments, garnishments, and Creditors calling you. The sooner you come in to the law office, the sooner you can get relief—and the more you can save from Creditors. You will have a 341 hearing within about 4 to 6 weeks after the bankruptcy is filed. When the bankruptcy is finally over, a discharge is issued. This is a final and permanent order to stop all collection activity and declaring the debts to be non collectable. Bankruptcy does not normally get rid of a security interest that you gave to a Creditor such as a mortgage or a standard car lien, but it does make you not liable for the debt.

### **Can I plan my bankruptcy?**

Of course! Good planning is why you read this thread and allows you to save more money and property. Just like taking proper tax exemptions. There is nothing illegal or improper with properly taking the exemptions.

### **Which bankruptcy is right for me: Chapter 13 or Chapter 7?**

A Chapter 13 is like a bill consolidation loan, and you normally file it to keep property and stop foreclosures. A Chapter 7 is used to completely wipe out unsecured debts and to get rid of secured debts for property you don't want to keep. Both will stop garnishments and Creditor harassment. If you earn more than the average wage for your state and size of family you will normally be required to file a Chapter 13. If you don't qualify for a Chapter 7, work very cautiously with the attorney before filing a Chapter 13, it may not be necessary.

### **Why file a Chapter 7?**

If you have substantial unsecured debts you may want to file a Chapter 7. You may also want to file a Chapter 7 if you want to surrender property and not owe for it. You can usually keep all your property in a Chapter 7, because you won't have enough equity in any property to exceed the exemptions allowed.

### **Why file a Chapter 13?**

You may want to file a Chapter 13 if you have secured debts and are threatened with foreclosure or repossession, if you filed a Chapter 7 less than 6 years ago, if you wish to protect your cosigner, or if you have debts that are not dischargeable in a Chapter 7 but are payable in a Chapter 13. Child support can be paid first in a Chapter 13 before secured creditors giving you the advantage of not losing a car or property but having all of your payments go to child support at the start of the case.

### **Can I convert from a Chapter 13 to a 7 or from a 7 to a 13?**

Yes they can be converted. Few people convert from a 7 to a 13. However if you earn over 60-70,000 you have a strong chance that the US attorney's office will file a 707 b motion that may force you into a 13. If you file a Chapter 13 you have a good chance that you will have to convert from a 13 to a 7. Over 3-5 years, you are very likely to miss payments and have the Chapter 13 dismissed (or have to refile). Some Chapter 13 cases are never finished and are converted into Chapter 7 cases. If you are close to completing the plan, you may be granted a hardship discharge. Plans can also be later modified if incomes change.

### **What is a Chapter 20? What is a Chapter 26?**

Some people file a Chapter 7 to wipe out unsecured debts and then file a Chapter 13 to keep their property. This is jokingly referred to as a "Chapter 20". Filing a "Chapter 20" can be the intelligent and affordable way to file a Chapter 13 later. Filing a Chapter 7 and then a Chapter 13 to obtain the benefits of both is very effective in stopping a foreclosure. A "Chapter 26" refers to filing back-to-back Chapter 13 cases. You would do this to pay debts that can't be paid in 5 years by just one Chapter 13. In a sense, you are "extending" your repayment time by filing two Chapter 13s. These forms of filing are no longer available after 10-2005.

## **How long will bankruptcy take?**

It will take about 3 to 4 months for a Chapter 7 to be final. (You will get a letter within 10 days of filing, telling you the time and date of the 341 hearing. This hearing will be held about 4 to 6 weeks after you file.) A Chapter 13 will take as long as the repayment plan takes.

## **What are the most common mistakes I can make when filing?**

Not showing up for your hearing and not listing all of your debts. Fail to show up at the hearing, and your case is dismissed. Fail to list a debt, and you continue to owe it. Also people often have too much in a checking account when they file or a tax refund coming. The best policy is to list all your debts and assets. Always list every debt, even if you think it is non-dischargeable, it may be discharged anyway. Even include last month's utilities.

## **How do I qualify for bankruptcy? Can I not be approved?**

You qualify for bankruptcy if either your outgo exceeds your income or your liabilities exceed your assets. You basically have to be a US citizen, reside in the state you file in, and not have filed within certain time periods (you can't file two Chapter 7s within 8 years of each other).

## **What if the Court does not approve my Chapter 13 or Chapter 7?**

If there is anything wrong with your Chapter 13 or Chapter 7 bankruptcy it will usually be changed and amended. Of course, it is less costly and time-consuming to do it right the first time. If you earn so much money that you can afford a Chapter 13, you will be forced to change it from a Chapter 7 to a Chapter 13. Repayment plans often are amended.

## **How often can I file?**

You can file a Chapter 7 8 years after you filed your last Chapter 7 the time used to be 6 before 10-2005. The time is measured from the time of filing your first case to the time of filing of your second case. You can file Chapter 13s 2 years after a Chapter 13 discharge. You can file a Chapter 7 4 years after a Chapter 13. You can only have one bankruptcy going on at a time.

## **If I file does it mean my old bad debts are erased from my credit report?**

NO! What is reported is that you had a debt and that a bankruptcy was filed. Bankruptcy does not give you a good credit record or "repair" your credit record automatically. You repair your credit by paying your debts on time after the bankruptcy.

## **Can I file without an Attorney?**

Yes. You can file a bankruptcy yourself, and this is called "filing pro se". You can also do dentistry on yourself, but I wouldn't recommend it. Doing your own case is a very bad idea. This Q&A alone won't give you the knowledge you need to file on your own. Use this thread to educate yourself, so you can find a good Attorney and discuss the issues.

As an example, if you file a reaffirmation and represent yourself, it must be approved in a hearing by the Judge, and that will mean extra hearings and time for you. Considering the time and risk involved, I recommend you use an Attorney.

You may lose far more in Court than what the Attorney would have cost—plus there is the extra time and effort on your part doing the work.

### **What about a Bankruptcy Mill?**

Filing a bankruptcy through a Bankruptcy Mill or paralegal may be even worse than doing it yourself and they often charge as much as the attorney. Many people have lost thousands of dollars with these businesses—through intentional scams or just plain bad work. Non-Attorney bankruptcy petition preparers are barred by law from providing you with any legal advice. In enacting legislation governing bankruptcy petition preparers, Congress stated: "These preparers lack the necessary legal training and ethics regulation to provide [legal advice and legal services] in an adequate and appropriate manner. These services may take unfair advantage of persons who are ignorant of their rights both inside and outside the bankruptcy system."

The bankruptcy petition preparer's role is limited by law solely to typing. Unlike an Attorney, a bankruptcy petition preparer can not help you understand the law, advise you how to answer questions, assist you in planning, or be in Court. Federal law requires that bankruptcy petition preparers sign any documents they prepare; print on the document their name, address, and social security number; and furnish you with a copy of the document.

A bankruptcy petition preparer may not sign any document on your behalf, may not use the word "legal" or any similar term in any advertisement, and may not receive any payment from you for Court fees. The bankruptcy petition preparer is also required to disclose to the Court the amount of any fee you pay. Beware of any bankruptcy petition preparer who does not comply with these requirements an emergency, even the filing fee can be paid in payments to the Court.

### **What paperwork do I need to bring to my Attorney?**

Bring the names, amounts, account numbers and proper addresses of all of your Creditors. You may estimate the amounts. After 10-2005 you must have the account numbers. Credit bureau reports normally don't have the addresses on them. If you have gotten a Credit bureau report before filing, you still have to get the addresses.

### **Can I file jointly with my spouse? Does my spouse have to file or sign if I want to file individually?**

Yes, you can file jointly. No, your spouse doesn't have to file but, if most of your debts are joint debts, he or she may want to. There is no need for a spouse to file if the debts are not in his or her name. If you are filing a Chapter 7, and the bills are also in your spouse's name, he or she generally should file to be protected. (Cosigners are protected in a 13 with 100% plans, but are not in a Chapter 7.) There should be no additional charge for a spouse filing, but some firms charge extra. The only extra work to do in a joint filing is adding an additional name and social security number to the petition.

### **Will it affect my spouse's credit? Is he/she responsible for my credit cards if he/she is an authorized user?**

No, filing will not affect your spouse's individual credit, but if he or she is a co-signer on any debt that is not paid that will affect him or her.

The fact that you filed bankruptcy does not appear on a spouse's credit report unless he or she also files bankruptcy. Unless your spouse has signed to be legally responsible, they are not responsible. However, many credit card companies will argue that she is responsible. They may even put a "no pay" on her credit report if the amount is unpaid; however, she may ask any credit reporting service to correct that.

If she does so, the credit card company will have to show that she signed for it. If they can't, it will be removed from her credit report file. In other words, the credit card collectors may try to collect from her by claiming she is liable, but she really is not. If they damage her credit record, it may be grounds for a lawsuit. Credit is normally granted based on a score from your past payment history, the amount of debt that you owe, the length of time you have been repaying present credit, if you have opened credit recently, and the types of credit accounts you have.

### **Will my co-signers be protected?**

Co-signers are protected only in a Chapter 13 to the extent that the plan pays the full amount of the co-signed debt. If the plan pays the debt completely, the co-signer is protected, but it will be listed in his or her credit record as being paid late. The Creditor may ask the cosigner for any remaining portion of the debt if it not paid completely. In a Chapter 7, the co-signer will have some small protection regarding the collateral during the proceeding, but only because the Creditor can't go against the property of the estate. After a Chapter 7 is over, the Creditor will proceed against the co-signer personally.

### **Can I file a personal bankruptcy and not have it affect my business?**

If you own your own business, the business is a part of your assets. If it is worth very much, it may be property of the Court. If your business files bankruptcy, it won't affect you because the business does not own you.

### **back from an uninsured accident, stop evictions, a judgment, or remove Can Bankruptcy stop foreclosures, wage assignments, help me get my license a lien?**

Yes.

### **What will happen to my bills?**

When you file a bankruptcy, a Court order goes into effect that keeps Creditors from legally collecting from you. When you are discharged (i.e., the bankruptcy is final), the Creditor "charges off" the debt and gets a tax deduction for the loss. The bill is not paid, and the debt shows up as a bankruptcy charge-off on your credit report. Some Creditors will attempt to get around the law and will continue attempts to collect after the bankruptcy is filed. They can be sued for this, but you need to prove they did it. One of the best methods is to record their call and then surprise them in Court with it when they deny ever making the call. Most Creditors that ignore the law will never send you letters or anything on paper after you file, but they may make phone calls hoping that you will pay anyway.

### **What if I keep getting bills?**

You will continue to get some bills from bankrupted debts after you file. What happens is that the Bankruptcy Court sends out notices to the addresses that you give to them (that is why

correct addresses are so important), but some Creditors never get these notices and continue to bill you. You should make copies of your hearing notice. If you get a bill from a Creditor, send them a copy of the bill and the notice. Some Creditors will continue to send bills even if they receive notice. It may be that their computer can't stop sending out the bills, or they may simply be ignoring the stay hoping that you will pay anyway. You can file a motion for contempt with the judge, and you may also be able to sue for a violation of the Fair Debt Collections Practices Act.

### **Do I have to pay my bills during the Chapter 7 or 13?**

No. Don't pay any bill until after you file a Chapter 7 until you have negotiated with the creditor to keep the property. Don't pay any payment in a Chapter 13 unless it is the regular monthly mortgage payment or car payment, and the 13 was filed to catch up the arrearage. A stay is a federal Court order to stop. If the item is secured, your overdue payments will continue to add up while you don't pay on the item. However, the Creditor can't take the collateral until the stay is terminated. If no reaffirmation is filed within 45 days after the bankruptcy is filed the stay terminates and the bank can take the car.

The Creditor may also file a motion to terminate the stay after the bankruptcy is filed. Bankruptcy stops your obligation to pay, but the Creditor still has a lien and rights in the property. You often quit paying for items when you file so that you have time to decide if you want to workout a repayment, redeem, or surrender. I have rarely ever had a bank refuse to agree to repayment, but you don't want to make payments if they aren't going to let you keep the property. Signing a reaffirmation will make you liable for any deficiency if you have it repossessed later. In some rare cases, with people who are never going to repay, the bank may refuse to reaffirm. Some credit unions may refuse to keep a car or mortgage unless you also repay their credit cards. In cases like this, you may want to redeem property instead. That is why you don't want to make payments just before or after you file. You can take the time to negotiate your options. You don't have to be caught up on your payments to reaffirm, but some banks may request it—and all of them want it.

### **Who notifies the Creditors and bill collectors?**

After the bankruptcy petition is filed, the Court mails a notice to all the Creditors listed in the schedules. This usually takes 1-2 weeks.

### **Do I have to go to Court?**

Not exactly, but you will have to attend a hearing presided over by the bankruptcy Trustee. This hearing is called the 341 Hearing (Meeting of Creditors). At this hearing, the Trustee (who is an Attorney) will ask questions, under oath, regarding the content of your bankruptcy papers, assets, debts, and other matters. It is very much like a deposition, not like a trial. If you can't attend (example: if you are in the service overseas), you can answer the questions by Affidavit. **The Trustee is not the judge. He is there to take any assets from you, if he can, and to check the accuracy of your paperwork. The Trustee represents the banks—not you.** In a Chapter 13 you will have a second hearing to get your discharge if your case was filed after October 2005. In this hearing you must show that you are not charged or convicted of a crime of fraud or further behind in support.

### **Where is my 341 hearing?**

Your 341 hearing is always at the Federal Court closest to you.

## **What do I wear to the hearing?**

Don't wear cut-offs or jeans with holes in them and don't wear sandals. Suits are not required, but dress properly for a hearing in Federal Court. Children are not supposed to be in the hearing room. Do not borrow and wear flashy jewelry. This is not the time to brag about how rich you are or how much you own. The Trustee is looking for assets to take from you. He is not your friend. He represents the persons that you owe. You must report what you own and it's real value, but don't brag about your income and how much your car is worth—especially if you don't have any.

## **When should I file tax returns if I am going to file bankruptcy? If I file in December do I keep my refund?**

If you are considering filing a bankruptcy, you must file your tax returns. No file returns.... no file bankruptcy. If you can get your refund before you file. If you do and spend it, you will keep your refund no matter how much it is. If you get your refund after you file bankruptcy, and the refund is over the exemption, you may lose part of your refund. File a quick refund if you have to or apply any refund amount to next year's tax debt. If you are considering filing in the later part of the year, file before December. If you file in January, you may have to wait for some time after you get your refund back. You will be asked when you got your refund and how you spent it if you got a large refund.

## ***Conclusion***

**I hope that this Q&A has helped "shed some light" on the fact that:**

- A. You have rights.
- B. There is a "system" that will take advantage of you unless you know your rights and are prepared to enforce them.
- C. You're going to make it!

So, please call us, we'd love to help! Don't be embarrassed. Don't be ashamed and do not fear. The bottom line is that you'll be ok as long as you don't give up and you keep your head up. Be willing to work hard, harder than you ever have. We're all learning great life lessons here and are being reminded that money comes and goes as do belongings but NO ONE can take your health, your family, friends and your peace of mind unless you let them. These are your treasures so guard them for the treasures they are.

Thank you again for all that YOU do for our community. Every day that you wake up, you have the power to impact people's lives in a very positive way; and, sometimes the most impact is when you're going through a really tough time and people see how you handle it and that you never lose your servant spirit regardless of what's happening around you!

With much gratitude,

Regis Sauger

