Testimonials

Here's what clients we helped to achieve a fresh start have to say:

Life After Bankruptcy

Life after bankruptcy gets easier every day. Since our bankruptcy was discharged a year ago we have found out that we do not need credit cards or even a car payment. We pay for everything with cash. If we do not have the money we save until we have the money and we pay for it with cash. After I was no longer able to work, we depleted most of our savings in the amount of $20,000, paying our bills trying to avoid filing bankruptcy. When we could not pay our bills because the money ran out, we contacted Flume and Associates to help us file bankruptcy. Mr. Flume and his staff were very helpful from the initial consultation through the entire bankruptcy process. We would recommend Flume and Associates to anyone who needs help in filing bankruptcy.

POSTED ON AVVO.COM BY JOHN D. ON FEBRUARY 24, 2015.

Highest Integrity

Mr. Flume was extremely knowledgeable and helpful. Even though he was not able to handle my specific case, he took the time to explain the bankruptcy process and gave me several referrals to attorneys who would be able to assist. He obviously is a man of integrity and I would highly recommend Mr. Flume.

POSTED ON AVVO.COM BY TRISH W. ON JANUARY 27, 2015.

New Beginning

Not that I would recommend bankruptcy, but unfortunately I had no other choice. My experience with Mr. Flume and case manager, Yvonne, was excellent. Everything was professionally handled and filed within a few weeks. It's a relief knowing I get a fresh start because of his office. They cared and made the process as quick and painless as possible.

POSTED ON AVVO.COM BY KRISTEN H. ON NOVEMBER 22, 2014.

Honest and Informative

Rick Flume spent several hours with me during our initial consultation. He advised me and gave me important information so I could make an educated decision. I was truly thankful for his time! Don't waste your time with any other attorney!

POSTED ON AVVO.COM BY JENNIFER S. ON NOVEMBER 1, 2014.

Professional and Caring Attorney and Staff

Rick and his staff have been amazing through this tough process. Going through financial trouble is mentally draining as it is, and when you come to terms with your options, they can be very tough to swallow. Rick made it a lot easier to deal with. Very caring and understanding. We are extremely grateful and glad we sought out his help.

POSTED ON AVVO.COM BY KEN G. ON OCTOBER 30, 2014.

Initial Consultation Visit

Mr. Flume exceeded my expectations of what it takes to be an attorney at law. He clearly explained to me the options my spouse and I have on whether to file or not. He really seemed to care about our debt situation and what steps we would need to take to resolve and move forward to financial freedom. My visit to Rick Flume's law firm was peaceful, pleasant, and very professional!

POSTED ON AVVO.COM BY JESSE T. ON SEPTEMBER 2014

BANKRUPTCY MADE SIMPLE TO UNDERSTAND

By Rick Flume

BANKRUPTCY MADE SIMPLE TO UNDERSTAND

Rick Flume

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First Edition

I dedicate this book to anyone facing financial troubles.

I hope this book might help you learn how to live debt-free whether or not you file for bankruptcy.

Introduction

You're holding this book in your hands and you're probably a little scared because you're behind on your bills. You have some real questions:

- *What can I do about my bills?*
- *Do I have to declare bankruptcy?*
- *Can I keep my house and my stuff?*
- *What is bankruptcy?*
- *What happens after a bankruptcy?*

More than likely, you got behind on payments because of (1) a divorce, (2) the loss of a job or income, (3) an injury or illness that caused a decrease in your income, or (4) a combination of two or more of these common causes of debt problems.

If you're like most people I see in a bankruptcy consultation, you could handle all of your bills when everything was OK with your situation. But now...

Perhaps you picked up this book because you want to pay your bills but don't know how you're going to do it and you're losing sleep over it. You may be having some "marital discussions" about your debt problems and you definitely want to know what your options are for handling your situation.

I see lots of folks for a bankruptcy consultation that have the idea of getting out of debt, but what they really want is to get back to normal, back to where they were before the debt problems started. Many of theses folks also want to increase their credit score, so they can qualify for a home loan.

In writing this book I have three goals:

1) To answer all your questions;
2) To identify your options for handling a sticky debt situation; and
3) To guide you through both the legal side of bankruptcy and the practical and personal aspects that accompany a painful but common financial phenomenon in the United States.

I enjoy helping people resolve their debt problems, so they can get back to normal quickly. My clients find it easy to talk with me about their financial problems, in part because I had bill troubles in my own life due to some mistakes I made. Although I never had to file bankruptcy, I have a strong sense of what my clients are feeling when they meet with me.

I'm not a tall-office-building lawyer. Instead, I'm relaxed, down-to-earth and good at explaining complex legal matters in ways that everyday people can understand. My goal is to provide you with a good understanding of how to analyze the nature of your debt so you can find the best way to start fresh.

~ Rick Flume

Bankruptcy

Made

Simple

To

Understand

Table of Contents

Part I - LOOK AT ALL YOUR OPTIONS

The "No-Regrets" formula for solving a debt problem is this: Look at *all* your options and then pick the one that's best for you.

Part I of this book helps you understand the pros and cons of the different ways to approach your financial situation.

This book does not attempt to "put lipstick on a pig" regarding bankruptcy. Instead, you will notice that I recommend bankruptcy only as a last resort.

1 – Handling a Debt Problem

Most people looking at their options for handling a debt problem are doing so because they cannot pay their bills in full or they feel they will soon reach that point.

Everything was fine, until one day, the world changed. Health issues might have caused you or your spouse to stop working. Maybe when the recession hit, you were living paycheck-to-paycheck and never fully recovered. Maybe all the stress pushed your marriage over the edge and divorce (a very common cause of bankruptcy) took the wind out of your financial sails.

Clients typically ask me what is the best way for handling their unpaid debts. Since there is no "one-size-fits-all" solution for handling a debt problem, I look at several possibilities to determine the best option for each client.

Here are three things you must do to solve a financial problem:

1. Know your numbers
2. Know your options
3. Select the option that's best for you

Know Your Numbers

Have you noticed that when you go to the doctor, they want to check your weight, blood pressure and temperature before they analyze your situation? They need to get an idea of your current condition before they start the process of solving your medical problem.

In much the same way, I review a client's numbers during the initial consultation so I have a clear idea of their financial problem.

List Creditors and Debts: You need to know the extent of your financial problem before you can determine how to solve it. Start by listing on a sheet of paper everything you owe, the estimated balance and monthly payment on each debt, and the amount you are behind on each one. It can be as simple as this the list below. You can also download blank forms on our website at www.flumelaw.com/resources.

DEBTS, CREDITORS and PAYMENTS			
Type of Debt	**Name of Creditor**	**Payment**	**Amt. Behind**
Home Loan			
Taxes			
Car Loan #1			
Car Loan #2			
Furniture Loan			
Credit Card #1			
Credit Card #2			
Credit Card #3			
Student Loan			
Medical Bills			
Other			
Other			
Other			

Before you start using the forms, it might be helpful to go through all of your records and make a big list on a plain sheet of paper. If you have no records, then go through your check register or your bank account statements to see who you have paid during the past several months.

Next, you can pull a free credit report at www.annualcreditreport.com. Compare the information on your report against the list you made. Credit reports may not list everyone you owe, ***so don't skip the step of going through your records*** when you determine who you owe and how much you owe.

Find Out Your Household Income: Here's the deal. We're hoping to see if we will be able to make a budget *so you can pay your way out of your debts.* That would be the best outcome! The starting point for creating this budget is finding out how much you really have coming in each month. I'm talking about household income, so that means you and your spouse. The two of you may have separate bank accounts and pay bills separately, but to produce a monthly household budget, you want to know all of the income, all of the expenses and all of the debts.

If looking at "household" income is giving you trouble, remember that the goal is to get a good idea of your current situation. If it is still giving you trouble, then you may also want to read the chapter titled "It's Cheaper to Keep Her; Bankruptcy's Cheaper than Divorce." (Actually, gender doesn't matter, here. Divorce is expensive in more ways than one.)

List All Your Expenses: Although some expenses are paid only every three or six months, we want to see a monthly average of each type of expense. The only debts I include in a budget are the debts that, if you didn't pay them, would lead to the loss of the asset associated with it—typically, your house payment and car payment. I want to see what it takes to keep a roof over your head, wheels under you, and the living expenses in between.

The rest of the numbers in the budget are easy for clients to fill in. Section 4 of the budget is for insurance expenses. If the homeowner's insurance is included in your house payment, then don't list that expense in this section. Likewise, if the health and dental insurance expense is payroll-deducted, then don't list it in your budget as something you pay here, as you'll be double counting it.

What's Left Over? Now, you want to see what's left over. The cash flow that's left over monthly is what you have to solve your debt problems.

TOTAL	
Household Monthly Income	$________
Less Total Monthly Living Expenses	$________
Equals Amount Left Over to Solve Debt Problems	$________

Most often, debt problems are not solved with cash savings. This is because most people do not have access to enough savings. Instead, most people's debt troubles are solved with cash flow, simply because that's the only resource that most folks have.

Although there are several options for handling your financial difficulties, you may find that most will not work if you don't have sufficient cash flow.

Give careful thought to your income and expenses. The information you gather from your lists will help you determine which options may help you find a way out of your predicament.

Know Your Options

Look at **ALL** of your options, including those that you don't think you'd like, and try to see where you would be five years in the future with each road taken. (Think of yourself at a crossroads.) You owe yourself a consultation with someone who solves financial problems for a living, so you can see how each option might apply to your specific situation.

The options for handling a debt problem are rather straightforward. How each option will apply to your situation will depend on the monthly income you have available to devote to cleaning up your bills.

Here's a quick look at the options for handling your debt problem. They are listed in order of cost, from what I consider most expensive to least expensive.

- Pay your bills on time
- Pay what you can
- Make a debt management plan
- Seek a bill consolidation loan
- Arrange for a debt settlement
- See about a credit card lawsuit defense
- Do nothing
- File for bankruptcy

You will want to fully consider these options as they pertain to your specific situation. Although you can find lots of information on the Internet about these choices, you still need to get the help of a professional—one that solves debt problems for a living—to help you determine how each of these strategies would be best for you.

After that, you need to sleep on it, pray about it, and put a pencil (or a computer spreadsheet if you're so inclined) to all of the numbers. Once you feel that you've found the best road, take action.

Select the Option That's Best for You

To determine which option or road is best for your situation, you need to "rise above the tree line" to see where each road is going. Here's my general advice. *If you can't see yourself going all the way down a certain road, then why take even one step in that direction?* Sometimes you'll start down a road and find it's the wrong one. That's okay. The *very* worst thing to do is to be paralyzed and do nothing at all. Otherwise, you'll be "another day older and deeper in debt," as the old Tennessee Ernie Ford song goes.

The next few chapters will explain each of the options in detail so you can take that first step.

PART II – ALTERNATIVES TO BANKRUPTCY

Although bankruptcy is a method of resolving your money problems in one sense, it's also painful. In fact, you may be surprised to know that I don't recommend it. Not right away. You may end up having to file bankruptcy, but it's not a good first step until you have carefully looked at all of your other choices.

I would rather help you through the analysis so you can *make sure you're making the right choices*.

Let's get started.

2 – Paying Your Bills on Time

Paying every bill on time and in full is a great idea, but it's not usually a workable option when you're having money troubles. The next step after paying on time and in full is paying the minimum payment on time.

Most people I see for a bankruptcy consultation have experienced a divorce, a job change or a health change that led to an income change. Each of those events can happen despite the best preparation, and each one can make it difficult, if not impossible, to stay current on your bills.

Here's my view on this option: When you're having money troubles, you want to make sure that you use *cash flow*, not cash savings, to pay your credit card bills.

If you discover that your cash flow will soon be not enough to stay current on your bills, then think twice before using your cash savings to stay current on your bills "just to maintain your credit."

The old saying "measure twice, cut once" applies here. You may have a more important use for your cash savings if you're having money troubles. You may need it for necessities rather than using it to pay credit cards.

Case Study: *I had a couple that came in for a consultation and they were current on all of their bills, but they had just received notice that his income was to be reduced as a result of some* *across-the-board cuts at work. They had also received notice that his job would move to a different city in six months. They had $3,000 in cash and wanted to know if they should pay that toward bills "just to save their credit." I asked them to perform a gut-check:* ***If you can't see yourself going all the way down a certain road, then why take even one step in that direction?***

Here are the questions I had for them:

They had to pay for their move to the other city, so I asked them how they would do that if they had already used their cash savings to pay off some credit card bills.

I also asked them if they had estimated their new income level and what their new living expenses would be after the move. Would they need any of their cash savings to cover basic necessities?

They could break even if they sold one car, so I asked if they could actually see themselves selling that car. Then they could use the savings to buy a car with cash (and no car payments) just so they could make ends meet at the new income and expense level.

The couple in this case study had no clear idea on the answers to my questions. They felt uneasy about using their cash "just to save their credit."

Perhaps you can identify with their stress.

3 - Pay What You Can

This step usually involves choosing which bills to pay first, *if at all*. If "*pay what you can*" would really work for you, then you wouldn't be looking into other options.

My view on this option, and all others, is this: If you can't see yourself going all the way down a certain road, then why take even one step in that direction?

***Case Study**: A 75-year-old woman came in for an initial consultation. The monthly minimum payments on her credit cards were $750. She was current on all of her credit card payments, until she suffered a $450 drop in her monthly income.*

After the drop in income, she could only pay $300 toward her credit cards. She paid the ones that she could afford, but left alone the ones that she could not afford to repay. Her reasoning was this: "Hey, I'm paying all that I can afford to pay."

Her strategy worked for the credit cards she was paying, but not for the ones she couldn't afford to pay. She came into my office because she had just been served with a lawsuit from each of the two credit card companies she had stopped paying. She had no cash savings. She was living paycheck-to-paycheck.

I told the woman in that case study that when she got to where she couldn't pay all of her credit cards, she should have stopped paying any. My thought is this: *If you can't pay them all, then why pay at all?*

Although paying what she could afford was a valiant effort, she had unfortunately exposed herself to a lawsuit—actually two of them—at a time when she had no cash reserves. If she had no cash, how was she going to pay for the credit card lawsuit defense, or follow some other option?

Fortunately, we were able to craft a strategy to keep her protected. She had to stop paying the other credit cards so she could save up some money to exercise some options available to her.

4 - Debt Management Plan

Debt management, which is also known as bill consolidation, is where you use a company to help you pay all of your credit card bills in full. They figure out how much it would take each month for you to pay your credit cards in full, and they say “fit it into your budget.” That works for people that can pay their bills in full.

The debt management company may be able to negotiate a lower interest rate, but it never negotiates a lower balance. Since you’re paying the full balance, your credit doesn’t take much of a hit after you have completed the plan.

You have to review your budget (see your work in the “Know Your Numbers” chapter) to see if you have enough income to cover your living expenses, the debt management plan payment, and all payments on your other debts not in the debt management plan.

The main advantage of a debt management plan is that you have just one consolidated bill that covers all of the credit card debts you enrolled in the plan. Another advantage is that the monthly fee is low—approximately $75-$125.

The disadvantage of a debt management plan is that you have to have enough disposable income, *after* you have covered your living expenses, to make the payment. Since a debt management plan is simply a tool for paying your credit cards in full, it usually requires a high payment.

Most of the clients I see in an initial consultation have already looked into this option and ruled it out for their situation. If they could pay their credit cards in full, they wouldn't be coming to see me for advice.

5 – Bill Consolidation Loans

Unlike a debt management plan or bill consolidation plan, the bill consolidation loan is a new loan that is used to pay off various other debts, like credit cards.

Although a bill consolidation loan may give you a monthly payment that is lower than the total of all the bills that you want to pay off, *it does not get you out of debt*. The rule here is that you can't borrow your way out of debt.

Loan from a family member: There is no quicker way to destroy a family relationship than to borrow money from that family member, and then not repay the debt as you agreed.

Here's what causes you REGRET in this situation: You borrow money from a family member, and make some payments on the loan, but then you still file bankruptcy to solve your debt problem.

Here's what can cause you REMORSE in this situation: After you file bankruptcy, the bankruptcy trustee may go after the family member for each of the payments you made on the loan in the 365 days before you filed bankruptcy.

The lesson here is this: If you think that there's even a one percent chance that you'll need to file bankruptcy, then get a consultation from a bankruptcy attorney in your area so you don't dig your financial hole any deeper and face either regret or remorse or both.

Loan from a bank: Getting a loan from a bank to pay your debts is the most difficult step, especially if you have already missed payments on the debts you planned to pay off with the consolidation loan. Even if you haven't missed a payment on the debts you want to consolidate, the bank will almost always want collateral (like a CD) for the loan. Well, if you had money in a CD, you probably wouldn't need to get a loan.

Loan from a credit union: Getting a loan from a credit union might be easier, but you need to be careful. If you have a car loan with them, the credit union can hold the title to your car until you pay off the bill consolidation loan.

The issue here is cross-collateralization, but the credit union will probably not bring up that issue until you miss a payment on the consolidation loan.

Cross-collateralization happens when you go into default on a credit card, signature loan, personal loan or line of credit at the same credit union where you have a car loan. If you go into default on one of those debts, then the credit union can repossess your car even if you are current on your car payments!

My advice is this: don't get any new credit at the same credit union where you have a car loan, especially another car loan. I've had clients with two car loans at the same credit union. They were facing the prospect of getting both vehicles repossessed because they got behind on only one of their car loans.

Borrowing from your retirement: You can also get a bill consolidation loan by borrowing from your retirement fund or your home equity.

Here's my general caution in this area: If you can handle your debts without touching your retirement, then it may be a better route to take than bankruptcy, *so long as you are not touching your home equity to solve the debt problem!*

If you are a Texas resident, your retirement is protected, in or out of bankruptcy. You will need your retirement money during retirement so don't touch it.

However, borrowing from your retirement is fairly easy if you participate in a retirement plan at work. It may be a 401(k) plan, 403(b) plan, a Thrift Savings Plan, or a similar tax-protected plan through your employment. Since borrowing is a loan from your retirement plan, it is not treated as income. The payments on the retirement loan are payroll-deducted.

One problem in this situation is that the person obtaining the loan usually reduces or eliminates their contribution to the plan to afford the payments on the loan.

Another problem arises if there is a layoff or job change before the retirement loan is repaid in full. The person that obtained the loan usually cannot afford to pay off the loan, so the unpaid balance is then treated as a distribution, which is treated as income by the IRS. At that point, the IRS will look to collect a 10 percent penalty for early withdrawal and income tax on the amount of the distribution.

Home equity loan: It's easy to get a home equity loan...if you have substantial equity in your home. You can determine the amount of equity in your home by subtracting the amount you owe on your home loan from the value of your home. If the value of the home is $100,000, and you owe $20,000 on your home loan, then the amount of the equity in your home is $80,000.

In Texas, the maximum amount of a home equity loan you can get is up to 80 percent of the value of your home. In the previous example, where the value of the home is $100,000, the maximum loan amount would be $80,000. The $80,000 loan would pay off the $20,000 balance on the existing loan and give the homeowner $60,000 in cash. The length of the loan can be up to 30 years.

Although the home equity loan may give you a lower payment than the total of the payments on the debts that you want to pay off, *the risks to you as the borrower are huge.* Although you may think that you would never miss a house payment, honestly and carefully evaluate your ability to make the house payment if your income were to decrease.

Here's my general caution in this area. If you can handle your debts without touching your home equity, then it may be a better route to take than bankruptcy, *so long as you are not touching your retirement money to solve the debt problem*.

If your health or employment changes during the life of the home equity loan, will you still be able to make that payment? Remember, you can lose your home if you can't pay the loan. That's a huge concession for obtaining that kind of "consolidation loan."

Compare that to the credit card situation. Suppose your income changes because your health or employment changes, and then you can't pay your credit cards. You will face debt collection harassment and maybe a credit card lawsuit, too, *but they can't touch your home.* Protect your home by saying NO to a home equity loan.

The problem with this loan is not the loan itself. It's the people that get them. They are typically older, and they overestimate how long their health and their income will stay the same.

They get the loan and things seem fine...until there is a job loss or a health change (or both) that results in lower household income. People in that situation can find themselves missing mortgage payments and property tax payments, either of which can trigger a foreclosure.

One of the toughest parts of my job as a bankruptcy attorney is having to explain to a person in their 50s or 60s that bankruptcy cannot get rid of a home equity loan. In 80 percent of the cases like this, the individual is short on covering their bills by nearly the same amount as the home equity loan payment! I usually have to tell them that they have to find family to make the home equity loan payment. Or find family they can go live with.

Seeing a grown person cry is gut wrenching. What's even worse is when they are married and they suddenly realize that they will leave their spouse on Social Security to figure out how to make the house payment they couldn't afford together.

Perhaps I just see the worst-case scenarios, but I strongly believe that someone in the 50-and-older age group should not be tapping into their home equity, because it is NOT likely that their income will remain stable for the 10 to 30 years they will have the home equity loan.

Reverse mortgage: Another source of bill consolidation loans can be a reverse mortgage. Here again, you are using your home equity to pay bills. In the example we've been using, where the home value is $100,000 and the home loan balance is $20,000, the reverse mortgage would pay off the $20,000 loan balance and may also provide some, but not very much, cash to the home owner.

The biggest benefit of the reverse mortgage would be that there are no more house payments. Sometimes that makes it worthwhile.

One of the big drawbacks, however, is that your kids will not get the house free and clear when you die because the debt is due upon your death. They can buy the house from the mortgage company, but guess what? Your kids don't want to buy your house. They may want to live in it for free, or sell it to get money, but they will likely find there is practically nothing left for them, because most or all of your home equity was used to eliminate your house payments for the rest of your life.

I think it is best not to use a reverse mortgage to pay bills. Instead, use bankruptcy to get out of debt, and then use a reverse mortgage only if you need to end the requirement to make the monthly house payments to live within your income.

6 – Debt Settlement

Most of my clients looked into this option before coming in for a debt consultation. The debt settlement company that was trying to sell the idea to them hit all of the right buttons:

Get out of debt at a discount!
Save money while getting out of debt!
Get out of debt without filing bankruptcy!

While those steps are possible, that doesn't mean that debt settlement works for everyone.

Here's how it works. A credit card company, or a company that bought the old credit card debt, accepts a discounted payment amount and treats it as full payment. If you go long enough without having made a payment toward your credit card balance, your credit card company may send you a letter offering to accept a discounted payment as full payment.

Some debt settlement companies offer to set up monthly withdrawals from your bank. They will also negotiate debt settlements after you save up enough cash to fund a settlement of one of your debts.

I've had many clients that came to see me for a bankruptcy consultation after having tried debt settlement through a debt settlement company. They all complained that they were getting phone calls or lawsuits from credit card companies that were *not* getting paid while they were having monthly withdrawals from their account for debt settlement in the future.

Debt settlement works best if you already have the cash savings for the debt settlement.

Another key point regarding debt settlement: you have to pay income tax on the debt that the creditor cancels.

Case Study: *A client came in for a debt consultation after he had settled $60,000 in debt for just $20,000! He came to me because he'd received a letter from the IRS saying he owed $15,000 in income taxes. I told him he had no debt problem. What he had was a tax problem with the IRS. I also informed him that, had he filed bankruptcy, he would have owed no taxes on the debts discharged in bankruptcy and he would have been able to protect/keep most of the $20,000 in cash he used for the debt settlement. Now, I told him, he was not only out the $20,000 to settle the debt, but he had to pay the IRS another $15,000, plus interest and penalties.*

Debt settlement is a valid option for handling debt problems. The best practice is to make sure that *you already have the cash savings for the settlement and the taxes due after the settlement.* Note that if you're paying someone to handle the debt settlement process, then you will also need the cash savings to handle their fee during the settlement.

7 – Credit Card Lawsuit Defense

If you go long enough without paying your credit card debt, you face the risk of getting sued for that debt. If that happens, the soonest it may occur may be after you are 6 to 18 months in default, depending on the creditor. In Texas, the creditor must file the lawsuit no later than four years from the time you defaulted after you made your last payment on the credit card.

You can expect to spend about $1,500 in the state of Texas to hire an attorney to perform a credit card lawsuit defense. If you win the case, then you don't have to pay the creditor anything and you owe no income taxes regarding that debt you no longer owe. If you lose the case, then the creditor gets a judgment against you.

The judgment says who wins and who loses. The important thing is how that judgment can be used. It can be used to get a writ of garnishment to *grab the money out of any bank account with your name on it.*

The creditor cannot, however, reach Social Security proceeds or VA disability proceeds. Everything else is fair game, and the only limit to what can be taken is the amount of the judgment.

If the creditor files a summary of that judgment (called an "abstract of judgment") in the real estate property records for the county, then it operates as a lien against real estate. Although that lien is ineffective against your homestead, it can be used to grab any of your real estate that is not your homestead.

As you can see, important legal consequences can arise if a debt problem gets to this point. To fully analyze this option for handling your debt problem, you need to get competent legal advice. Consult an attorney who does credit card lawsuit defense.

8 – Doing Nothing

There's one thing certain about debt problems...*they don't go away on their own!*

Doing nothing means that the amount you owe will grow. This may lead to a credit card lawsuit, and possibly a bank account garnishment. Another outcome is that you may owe income tax on a cancelled debt.

Sometimes doing nothing is the best option. You will need to get competent legal advice, however, before you choose that course. It may be a viable option if your only income is Social Security or VA disability and you own no real estate that you want to leave family members.

If I am going to recommend this option, I prefer a situation in which the debts are beyond the time period for the creditor to file a lawsuit. In Texas, the creditor must file the lawsuit within four years from the default after your last payment on the debt.

The problem with this situation is that *very* aggressive debt collectors work in this area. I've had several clients come in for a debt consultation after one of these debt collectors scared them (I can use the word "bullied" here) into making a small payment. *The difficulty there is that the new payment started a new four-year timeframe for the filing of a lawsuit.*

About half of the elderly people to whom I have recommended the "do nothing" strategy return to file bankruptcy. They come back to file bankruptcy as a way to "buy peace of mind."

PART III – HOW DOES BANKRUPTCY WORK?

Now I address your “burning questions” about bankruptcy.

Remember that, as with any of your options, you want to consult with someone who works in this area of law so you can see how bankruptcy may apply to your specific situation.

We started out by advising you to clearly see your current status. We helped you peek under rocks and in drawers and behind the desk to find all the hidden cobwebs of debts. We thought we could help you find an alternative to bankruptcy. If we have now exhausted all your alternatives and you’re here, you need to know everything the courts have to offer.

Will you get to keep your house and your stuff? What if you don’t? What do you do after bankruptcy?

We’ll help you.

9 – What Is Chapter 7 Bankruptcy?

Chapter 7 bankruptcy (sometimes just called a Chapter 7) is the form of bankruptcy where there are no monthly payments to a trustee. A typical Chapter 7 bankruptcy is finished 90 days after the case is filed. When the case is successfully completed, the Court issues a "discharge order," which simply means that the person that filed bankruptcy is no longer personally liable for the debts covered in the bankruptcy. The discharge order is your "diploma" for successfully completing the bankruptcy case.

The only debts not affected by the filing of the Chapter 7 bankruptcy are these:

1) **Debts you want to keep**, like a house payment or a car payment; or

2) **Debts you have to keep**, such as child support, certain taxes and student loans. (The technical name for these types of debts is *non-dischargeable debts*.)

A Chapter 7 bankruptcy is usually the form of bankruptcy that is best for those clients that have no money left over to make a plan payment to a trustee after they have covered their living expenses. Basically, the requirement is that there is "no disposable income" left over after they have covered their living expenses to pay toward credit cards, medical bills and personal loans.

Can I file a Chapter 7 bankruptcy if I'm current on my bills? Yes, but here is where you may need the help of someone who specializes in bankruptcy law. Some people reading that general description might think they don't qualify for a Chapter 7 bankruptcy, because they have been able to pay something to their credit cards. Be careful. If you have been able to pay something to your credit cards only as a result of short-changing your reasonable and necessary living expenses, then you may still qualify.

Case Study: *A couple came in for a consultation, and they said they wanted a Chapter 7 bankruptcy, but that from what they'd read on the Internet, they did not qualify. They said that they didn't qualify for a Chapter 7 because they had been able to pay about $400/month to their credit cards. After looking at their budget, I noticed that they were only able to make those credit card payments as result of short-changing themselves in their living expenses. The amount of their income that they were allocating to their living expenses was more than $400 below the IRS allowances for their household size. I adjusted their budget and explained to them that, after making their budget "realistic," we could easily show they would qualify for relief under Chapter 7.*

Before you look at your budget to figure out if you qualify for a Chapter 7 bankruptcy, *make sure your budget is realistic.* The IRS allowances for your household size sets an easy benchmark, but you can exceed IRS allowances if you can show that the amounts you need for certain categories are reasonable and necessary.

Special treatment for Social Security recipients: There is a huge exception to the "no disposable income" requirement for clients with Social Security income. They can have money left over after they have covered their living expenses as long as the money left over is equal to or less than their Social Security income. Clients that fit into this category can simply save all of their Social Security income instead of having to pay it toward old debt.

Will I lose anything in a Chapter 7 bankruptcy? A Chapter 7 bankruptcy is sometimes called a "liquidation bankruptcy." The label of a "liquidation bankruptcy" is misleading, because most people who file a Chapter 7 lose none of their stuff; everything they own is protected through exemptions. In the rare case that someone considers bankruptcy at a time when they do not have enough exemptions to protect all of their stuff, their attorney would advise them not to file bankruptcy.

As a result, the only way most people would ever lose anything in a Chapter 7 bankruptcy would be if they stopped paying for the things they wanted to keep, like their house or their car. *In or out of bankruptcy, there's a general rule: If you want to keep your stuff, you have to keep paying for your stuff.*

A Chapter 7 bankruptcy may be for you if: your income has ended or has decreased to where you are only able to cover your living expenses and no longer able to pay your unsecured debt, which includes credit cards, medical bills or personal loans.

Chapter 7 is typically not advisable for people who want to keep a home or a car *and* they are behind on the payments on the house or car. The best practice is for this client to be current on the house and car payments during the 90 days *before* filing the Chapter 7 bankruptcy case, and for the 90 days that the Chapter 7 case is open with the Court.

10 – What Is Chapter 13 Bankruptcy?

Chapter 13 bankruptcy is the form of bankruptcy where there is a monthly payment to a trustee. Chapter 13 is also known as a debt consolidation plan.

As an example of the power of a Chapter 13 bankruptcy, you can consolidate all your medical bills, credit cards and personal loans into one payment that may be as low as $200 per month, depending on a few factors.

Under a Chapter 13 bankruptcy, a debtor (the person who files bankruptcy) proposes a three to five year repayment plan to the creditors (the people that extended credit to the debtor). The amount to be repaid is usually determined by the debtor's income and expenses.

Although there are several factors used to determine the amount of the plan payment, the general concept of a Chapter 13 plan payment is that you only have to pay as much as you can afford.

The "dischargeable" debts (like credit cards, medical bills and personal loans) that are not paid in full by the plan are then "discharged" in bankruptcy at the end of the plan. "Dischargeable" means that the bankruptcy discharge will make those debts go away when the case is successfully completed. The "discharge" means that the person who filed bankruptcy no longer has any personal liability for the debts covered by the Chapter 13 plan.

Common examples of debts that are *non*-dischargeable (will *not* go away in bankruptcy) include debts like child support, most taxes, and most student loans. Those debts only go away by payment.

A Chapter 13 bankruptcy may reduce the amount of money that you pay each month, and give you some breathing room so you can reorganize your finances.

A Chapter 13 bankruptcy may be for you if:

- Your home is facing foreclosure, and you CAN afford the monthly payment, but you CANNOT afford to catch up on the missed payments or the back payments.
- You need more time to get caught up on your vehicle loan.
- You have too much income to qualify for a Chapter 7 bankruptcy.
- You made too many charges, balance transfers or cash advances on your credit cards in the previous six to twelve months.
- You have non-exempt property you would lose in a Chapter 7 case.

What Should You Do? If your credit is damaged and you can't pay all of your bills, then your credit worthiness is declining with each passing month of unpaid bills.

However, if you believe there is a chance you can get debt free on your own, then you need to "rise above the tree line" to see if you can go all the way down that road. Look at the table below to get some ideas for your situation.

WHAT SHOULD YOU DO?
• Do it on our own?
• File a debt consolidation plan under Chapter 13?

Consider how these two people in your same position might end up five years later:

Year	Person 1 Tried to take care of the debt ON HIS OWN	Person 2 Used Ch. 13 bankruptcy
Yr 1	Income - Living expenses = Disposable Income to pay debt	Income - Living expenses = Disposable Inc. to pay Ch. 13 plan
Yr 2	Late payments? Over-limit fees? Missed payments? High interest?	No more interest on credit cards.
Yr 3	Late payments? Over-limit fees? Missed payments? High interest?	No more late fees or over-limit fees
Yr 4	Judgment? Garnishment? Repossession? Foreclosure?	Stops legal proceedings.
Yr 5	IRS Form 1099 for cancellation of debt?	No risk of 1099 for cancelled debt.
	Lots of debt remaining?	DEBT FREE! (as to debts covered by BK)

Who is more credit-worthy after Year 5? Person 1 or Person 2?
Who will have more money at the end of the month? Who will have more money for a down payment? Who will be in a better position to repay a new debt?

11 – Take Advantage of a Bad Financial Situation

We all know what it's like to have debt problems. It's not that you don't want to pay your bills. It's just that you don't have the choice of paying your bills until you have the cash flow to pay them.

There is a so-called secret that may totally change the way you're looking at your life. Here it is: *The best time to resolve your debt problems is when you are at a low point***.** If you wait until you "get back on your feet," then it may cost you more to clean up your financial mess.

If you owe money to anyone, the best time to negotiate a lower monthly payment or a cheap settlement with them is when you have minimal cash flow. This is when you get the absolute best deal possible from anyone you owe. Even the IRS will settle for less when that's all you have.

Case Study: *A woman came to see me shortly after her divorce. I went over all of her options for handling her debt problems. Although she was qualified to file a Chapter 7 bankruptcy, where there is no monthly payment to a trustee, she chose the option of "doing nothing," because she was afraid bankruptcy.*

Three years later, she came back to my office to file bankruptcy. When I asked her what had brought about the change of heart, she told me that she was getting married in four weeks. I had to inform her that, although she could file bankruptcy, she didn't qualify for a Chapter 7 bankruptcy. The reason for the change? Thanks to a new spouse with a good income, there was a substantial increase in household income.

She had to file a Chapter 13 bankruptcy, and her monthly plan payment was over $700 per month, simply because they could afford to pay that each month. Although her new spouse did not file bankruptcy, the law requires that we look at household income for determining the amount of a Chapter 13 plan payment.

By not taking advantage of her bad financial situation three years earlier, this woman had brought her old debt problems into the new relationship.

Don't be like this woman. If you're in a bad financial position, don't let opportunity slip through your fingers by doing nothing. Take advantage of the bad financial times in your life.

12 – How to Remove Guilt From Debt

Most people I see for an initial consultation have spent many sleepless nights before they come to my office. They're people that want to pay their bills, and they're losing sleep as a result of not being able to pay their bills. Now they want to know their options.

The average client I see is carrying two burdens: (1) the burden of debt they can't pay, and (2) the burden of guilt associated with not being able to pay their debts.

There are ways of handling your debt problem, and you can get lots of information about that in this book and on the Internet. There is not, however, an equal amount of information or guidance for handling the *guilt* that goes with the debt problem. Perhaps this is because the relief from guilt comes from God, whereas the relief from debt is handled by our legal system.

Case Study: *I talked with a client who wanted the legal system to handle her debt problem as well as her guilt problem. She was earning $1,600/month in after-tax income as a dog groomer and she was barely getting by. She insisted on filing a Chapter 13 bankruptcy, which is the form of bankruptcy where you make a monthly payment to the Chapter 13 trustee, who then pays your creditors with that cash flow. Because my client had no disposable income to make a monthly payment to a trustee, I told her she should file a Chapter 7 bankruptcy, which is the form of bankruptcy where there is no monthly payment to a trustee.*

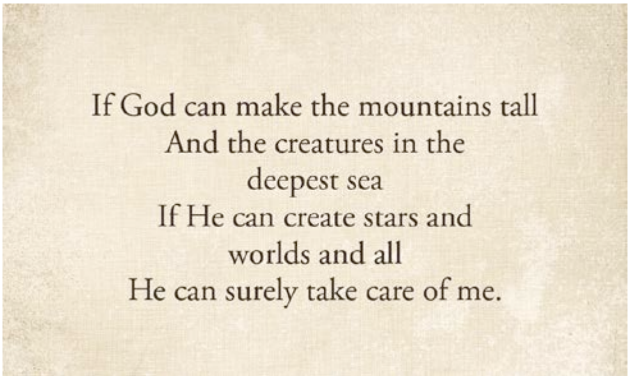
Although she understood that her budget showed there was no cash flow to make a Chapter 13 plan payment, she still insisted on a Chapter 13. The math didn't add up. I knew there was a bigger problem: the guilt.

Like I tell all of my clients, you have to look at all of your options (including those you don't think you'd enjoy) and then pick the option that's best for you. More importantly, you have to pray about all of your options, put a pencil to all of the numbers, and then sleep on it. The alternative that gives you the most peace is most likely the choice you should make.

For the client in the case study cited above, we spent more time on the issue of guilt. Basically, I told her that only God—not the bankruptcy system—could help her with her guilt. I suggested that she take the guilt to God in prayer.

If you are struggling as she did, then do some soul searching and realize that if God can save you from sin by providing you the gift of salvation through His Son, Jesus Christ, then He can save you from the guilt associated with your debt problem.

At the conclusion of my initial consultations, I give clients a business card. Then I give them another card, which I tell them is more important than my business card. It is a Scripture card with Hebrews 13:6 on the front. Look it up. Below is a copy of the back of that card.



13 – Can I Keep My House, Car and Stuff?

Keeping their stuff is a big concern for people who consider bankruptcy as a means for getting their debt problems under control.

This question involves exemptions that protect your stuff from the bankruptcy process. Most people know about the homestead exemption, which protects your home from your creditors. There are also exemptions for many other things you own, like a car, household goods and furnishings, tools of the trade, and so on.

Nearly all people I see in debt consultations have no problem keeping all of their possessions as they go through the bankruptcy process. Typically, the only reason a Texas resident loses a house or a car in bankruptcy is that their situation changes somewhere along the way and they no longer can afford to keep paying for their house or car.

Big difference for Texas residents: Although bankruptcy is federal law, the exemptions you get to use are different in each state. The exemptions available to Texas residents are probably the most generous of all of the states. For that reason, you need to make sure that you are getting your information from a Texas bankruptcy attorney when you have a question about what is protected in your bankruptcy case. If the information in this chapter seems different from what you are reading on the Internet, then it was likely written by an attorney that practices bankruptcy in a different state.

There is a general rule in bankruptcy and outside of bankruptcy: *If you want to keep your possessions, then you must continue to pay for your possessions.* So, if you want to keep your house and car, you simply keep paying for them.

What if my house and car are paid off? In bankruptcy, you protect your house, car and everything else you own by claiming them as exempt under specific exemptions. In a typical bankruptcy case for a Texas resident, everything is protected and the person who files bankruptcy gets to keep everything that they own.

If a client owns something that cannot be protected and claimed as exempt in a Chapter 7 bankruptcy, then the person has the option of either not filing bankruptcy or choosing a Chapter 13 bankruptcy so they can keep their property even though it is not protected by an exemption.

14 – Is My Retirement Protected?

Retirement accounts are exempt in bankruptcy. Creditors and bankruptcy trustees cannot touch them. In a Chapter 13 bankruptcy, your retirement accounts will not affect how much you must repay to your creditors.

For IRAs (Individual Retirement Accounts) and Roth IRAs, the exemption in 2015 is limited to $1,245,475 per person, and the amount is adjusted for inflation every three years. I haven't had a case that came close to that limit.

The exemption for other retirement plans or pensions has no limit.

Consult with a local bankruptcy attorney. Although bankruptcy is federal law, it allows for differences in exemptions, based on the state where you file. So, some of the information you read on the Internet may not be applicable to your situation. Additionally, you can get overloaded with information on the Internet, and it may be difficult for you to determine how bankruptcy may apply to your situation.

The next case study involves a client who confused the issue of "disposable income" with the "exemption" of the retirement asset. Although a retirement account is an "asset" that is entitled to an exemption (which means it is out of the reach of creditors and the bankruptcy process) the retirement benefits paid to you as income are not an "asset." Exemptions cover assets, not income.

Case Study: *I had a client who received a monthly check from DFAS (Defense Finance and Accounting Service) for his military retirement benefits. His monthly income was about $500 more than his living expenses, so I told him he would not qualify for a Chapter 7 bankruptcy. (Remember, Chapter 7 is usually for those clients who have no cash flow left over after they cover their living expenses.) This client showed me something that he'd pulled from the Internet that states that military retirement is exempt from creditors. I pointed out that the military retirement* ***asset*** *is exempt, but the* ***income*** *from that asset is not exempt. Thus, the $500 in income that was left over after covering his living expenses was considered "disposable income," and it disqualified him from a Chapter 7 bankruptcy. What he qualified for was a Chapter 13 bankruptcy.*

There are only two situations in which the income from an exempt asset also has the same exemption as the asset itself: (1) income from Social Security and (2) income from VA (Veterans Administration) disability. The exemption flows through to the cash after it is deposited into your account.

This becomes important when someone faces a credit card lawsuit and does *not* seek bankruptcy protection. If the creditor wins the lawsuit, then the creditor can seek a Writ of Garnishment. While the creditor could never garnish the military retirement asset, the creditor could garnish that person's bank account after the monthly military retirement check is deposited into that person's bank account. Fortunately, if you qualify for bankruptcy protection, the bankruptcy stops the garnishment.

15 – Should Both Husband and Wife File Bankruptcy?

You do not have to file bankruptcy with your spouse.

Whether you should file bankruptcy with your spouse depends on your circumstances. Although only one spouse files bankruptcy, we must still look at “household income” to determine if that spouse qualifies for a Chapter 7 bankruptcy.

What if I’m going to get married, soon? You may be wondering if you should file bankruptcy before you get married. If so, then be sure to read the chapter titled “Take Advantage of a Bad Financial Situation.”

Another consideration is that only the person who files bankruptcy gets their debts handled in bankruptcy. If your spouse is a co-signer on one of your old credit card debts in your bankruptcy, that creditor can contact your spouse about collecting on that debt after the bankruptcy is over.

In a community property state like Texas, both spouses may be liable for debts incurred during the marriage even if only one spouse's name is on the debt. That comes up when the debt was incurred during the marriage and the debt was for necessities.

There is another situation where both spouses need not file. This is if the marriage was recent, the debts were not incurred during the current marriage, and the non-filing spouse had no debts prior to getting married. In that situation, the non-filing spouse would *not* be liable for the other spouse’s debt.

This can be an involved and intricate legal issue that requires the counsel of an attorney.

16 – Bankruptcy versus Divorce: It's Cheaper to Keep Her

Yes, bankruptcy is cheaper than divorce. One of my legal assistants once told me something that I thought was funny. She said, "I don't know why people are so concerned about how bankruptcy affects your credit. Heck, you can get a home loan two years after filing bankruptcy. They should be more concerned about the idea of divorce. There's no 'getting the divorce behind you' when you have to pay child support until the kids are 18 and you're constantly dealing with your ex-spouse. The bankruptcy goes away, but the ex-spouse won't!"

Perhaps it was her delivery that made it so funny. Perhaps it was funny, because it's true.

About half of marriages in the United States end in divorce, and most "marital discussions" are about money problems. I think it might pay big dividends for you and your spouse to take Dave Ramsey's *Financial Peace University*, which can be found at http://www.daveramsey.com/fpu. He teaches you how to get debt free and how to stay debt free. The class is free, and is usually held at area churches at different times of the year. You just have to buy the books.

What about the divorce decree? The other thing you want to remember is that *your debt problems aren't going away in a divorce.* The divorce decree can state that the other spouse is to pay the credit cards, but it cannot stop the creditor from contacting you or suing you for non-payment, assuming you are on the debt, too.

Most often the old debt is brought into the next relationship, making that marriage tougher to keep together. If it takes two incomes to cover the expenses of the household and the credit cards, then a divorce usually means that the credit cards will go into default.

Use the carpenter's rule: measure twice and cut once. If you and your spouse are at odds over finances, save the relationship and dump the debt, not the spouse.

17 – What Is the Bankruptcy Filing Process?

Here's the good news: It's quick once you're ready and you're qualified.

The bankruptcy court requires cases to be filed online, so it is a quick process. Getting ready to file is where most of the work is done.

We First Determine What's Right for You

That's right...*"we"* not *"me."* Remember when we gathered up all those numbers? That's why we did that work. Now, we'll work together and go over your income, expenses, and your debts again, and we'll also look at all your options for getting out of debt. At this point, you'll get an answer to one of your big questions.

We Get Started and You Breathe Easier

No one looks for help with their debt problems unless they've been having some "marital discussions" about debt or they've been losing sleep over their debt problems. We'll take a load off your shoulders and help you get your life back from your debt troubles. You just say the word, and we'll take it one step at a time.

We Get to Work

To get your bankruptcy case filed:

- We give you an assignment. That means you give us some paperwork and some information.

- You pay your legal fees and filing fees.

- You complete your credit counseling—either on the phone or via the Internet.

- Using the information and paperwork you gave us we prepare the court documents.

- You sign the bankruptcy court papers.

- And, finally, we file the case electronically over the Internet with the court.

The first three steps will probably take you some time to complete, but we'll set a schedule that works best for you.

18 – Will I Have to Go to Court?

This is a very common question, and in 99 percent of cases, my clients only must go to what I call the "Meeting with the Trustee." Although the technical name for this meeting is the Section 341 Meeting of Creditors, there are typically no creditors present at this meeting. That's the reason I call it the "Meeting with the Trustee."

The Meeting with the Trustee is conducted by the trustee assigned to your case. This is a meeting that allows the trustee to meet you, review your paperwork and ask any clarifying questions. I will be present with you at the meeting. There are usually several other debtors (people who filed bankruptcy) that are scheduled to have their meeting at the same location for the same time. Once your case is called, the meeting lasts only a few minutes.

The Meeting with the Trustee is usually held about 30 days after your case is filed. About 14 days after the case is filed, you should receive a copy of the case filing notice from the U.S. Bankruptcy Clerk. This is a notice sent to you and all of your creditors (people that extended you credit) and serves as notice that you have filed. It also gives the date, time and location of the Meeting with the Trustee. Therefore, you will have approximately three weeks advance notice of the Meeting with the Trustee.

You will need to bring…

- A government-issued photo ID (such as driver's license or military ID)
- Proof of your Social Security number (Social Security card or W-2).

The trustee will verify the following information:

- Did you list all of your debts?
- Did you list everything you own?
- Is everything on the paperwork filed with the court true and correct to the best of your knowledge?

We make the process go smoothly by carefully preparing your paperwork before we file the case.

19 – Can Bankruptcy Stop Foreclosure?

If you qualify, you may be able to file bankruptcy and stop a foreclosure. You must file the bankruptcy case before the foreclosure occurs, however, and you must be able to make your on-going house payment and the Chapter 13 plan payment.

Most often, clients filing bankruptcy to stop a foreclosure are using a Chapter 13 bankruptcy, so they can have up to 60 months to pay back all of the missed house payments that led to the foreclosure process.

Case Study: *The client has $5,000 in missed house payments; his house is to be sold at foreclosure on the first Tuesday of next month, and he has about $30,000 in credit card debt.*

A Chapter 13 bankruptcy could be filed to stop the foreclosure, and the Chapter 13 plan would have a monthly minimum payment of $252 for 60 months. In this example, the plan can be as short as 36 months, but that would cause the plan payment to increase.

The monthly plan payment of $252 would go to the Chapter 13 trustee, who is appointed through the U.S. Department of Justice. The trustee then uses that money to send checks to: (1) the client's mortgage company for the missed house payments, (2) the client's lawyer for the balance of the legal fees in the case, (3) the trustee, who gets a fee of 10 percent of what is paid out, and (4) the client's credit cards in the plan if there is anything left over.

In the typical Chapter 13 case, there's no need to worry about there being enough in the plan to pay the credit cards in full. The credit cards usually only get the leftovers, and the credit card companies can't go after the client for any unpaid amounts in the Chapter 13 plan if the bankruptcy is successfully completed.

During the Chapter 13 bankruptcy plan, the client is still in the house and is still making their regular house payment as it comes due each month. The monthly plan payment covers the missed house payments, but not the on-going house payments.

When the Chapter 13 plan is completed, the client is considered current on the home loan as long as he has been making the monthly house payments on time and in full. The client will also be debt-free of the credit card debt he had when the case started. Also, there is no income tax on the debt discharged in a bankruptcy case.

Another Strategy: *Sometimes it's useful to file a Chapter 7 bankruptcy to stop a foreclosure. Let's say that the client comes into the office knowing he wants to let the house go, and he is planning to move into a rental after the foreclosure.*

Depending on the situation, I might recommend that he file a Chapter 7 bankruptcy to stop the foreclosure. After the Chapter 7 is filed with the Bankruptcy Court, it is only open for 90 days, after which, the mortgage company can restart the foreclosure process. The client can stay in the house for up to four to six months while that process is underway.

In the meantime, the client has some additional time to find a new place to rent. He also gets time in the house without having to make a house payment or pay rent. In this situation, the Chapter 7 really pays for itself.

20 – Can Bankruptcy Stop Repossession?

If you qualify, you may be able to file a Chapter 13 bankruptcy to stop the repossession of your vehicle, provided that you can file quickly and afford the Chapter 13 plan payment. In this situation, your cash flow is crucial.

Clients who can successfully use a Chapter 13 bankruptcy to stop the repossession of a vehicle are those who have experienced a temporary drop in income, but now their income is back to normal. They don't have enough cash flow coming in to get caught up, but they have enough to stay current on payments, and they have enough cash savings to get the bankruptcy case filed.

By contrast, someone that has experienced a drop in income and cannot afford a car payment or a Chapter 13 plan payment may not have the income to qualify for a Chapter 13 bankruptcy.

The most difficult issue for clients is that their car can be repossessed if they are just one day late on the payment. However, if the lender is a national lender, then you may not be facing repossession until after two missed payments. This means you may have time to file bankruptcy.

If you want to keep the car, another difficult issue is that the car payment will be replaced by a Chapter 13 plan payment. In or out of bankruptcy, there is our KYS (Keep Your Stuff) general rule: *If you want to keep your possessions, you have to keep paying for* *your possessions.* The Chapter 13 bankruptcy will simply be a different way of paying for the vehicle.

21 – Can Bankruptcy Stop a Lawsuit?

Creditors are getting more aggressive. One of the debt-collection techniques that I've been seeing creditors use more frequently is suing on an old credit card debt. How do I know this? More clients are coming in for debt consultations after just being served with a lawsuit based on an old credit card debt.

If you qualify for bankruptcy, then filing the bankruptcy may stop a lawsuit.

Here are the questions I get most often from people that have just been sued:

Will I go to jail?
No. You can't go to jail for failure to pay a debt.

Will my paycheck be taken?
There is no wage garnishment in Texas, except for student loans, child support and IRS debt.

Will I lose my house or car?
The only way you lose your house or car is by not paying for them. Let's repeat the KYS (Keep Your Stuff) general principle here: In or out of bankruptcy, if you want to keep your possessions, then you must continue to pay for your possessions.

What can happen to me?
If the creditor wins the lawsuit, then he will get a judgment that says he wins and you lose. The creditor can use that judgment to get a Writ of Garnishment to grab the cash in any bank account with your name on it, unless the cash is from Social Security or VA (Veteran's Administration) Disability. The cash is taken, even if you have checks outstanding that have not yet cleared your bank.

Now you're asking, *if my cash is taken, how will I pay my car payment, house payment and other expenses?*

Here are you choices:

- You can do nothing, and then hope that the creditor with the judgment does nothing to you or your cash.
- You can spend about $1,500 to fight the lawsuit. But will you win the lawsuit?
- You can simply pay the creditor what is owed.
- You may be able to file bankruptcy to handle that debt and all others like it.

Best Advice: *Get a consultation from someone that handles these types of debt problems for a living. Forget about calling the law firm that sued you. That law firm represents the creditor. They may get paid only if they collect from people like you. Talking to that law firm will not stop the lawsuit.*

22 - Bankruptcy and Your Employment

You have probably noticed that most large employers are pulling credit reports as part of the employment process. My clients worry that a prospective employer may learn that they filed bankruptcy (and have no unpaid bills). This is a valid concern, but I point out that I've had several clients file bankruptcy as a result of being turned down for a job because lots of unpaid bills showed up on their credit report.

I've found there is greater risk of being denied a new job because you have lots of unpaid bills, not that you have no bills and a bankruptcy. Why? Potential employers see that there may be a risk that a prospective employee stressed out over bill problems may sell access, disclose proprietary information, or do something else illegal.

In contrast, someone with a bankruptcy and no debt problems does not present the same risk to the employer. Want proof? Just ask an employer that does a credit check as part of the employment application process.

Case Study: *A client came in for a consultation after he was offered a job at one of the largest employers in San Antonio. (The company sells insurance and financial services to military families across the nation.) He had formerly worked for them, but they had laid him off when they were downsizing. When they started to* *hire again, they called him up and invited him to apply for reemployment. He was offered a job at the interview.*

Here's the reason he came into my office: the day after he was offered a job, they called him up to let him know that he hadn't passed the credit check. He said, "Well, yeah! I was on unemployment and trying to find a job and it was impossible to stay current on my bills." They told him to file bankruptcy to end the debt problems, and then they would accept him for employment.

Can you survive a credit check by your employer or prospective employer without filing bankruptcy?

What about my current employer? Can you be fired for filing bankruptcy? Based on a ruling in the Fifth Circuit Court of Appeals, you cannot be fired by your *current employer* for filing bankruptcy.

23 - Bankruptcy and Job Loss

Job loss, along with divorce and injury or illness, is one of the top triggers for most bankruptcy cases.

Use the job loss to your advantage: If you have experienced a job loss, you may be focused on the loss of income. Look at the bright side! Job loss can make it easier to resolve your debt problems. (See the chapter titled "Take Advantage of a Bad Financial Situation.") Basically, it's cheaper to resolve debt problems when you have reduced cash flow.

Use a job loss to lower your Chapter 13 plan payment: If the job loss occurs during a Chapter 13 case, you can use that as a reason to lower your plan payment, unless your plan is already at the

minimum payment amount. Remember, subject to a few exceptions, you only have to pay as much as you can afford. If your income is reduced, you may be able to reduce your plan payment.

Use your job loss to qualify for, or convert to, a Chapter 7: Sometimes a job loss can bring you into qualification for a Chapter 7 bankruptcy. If you are already in a Chapter 13 bankruptcy, then the job loss might be a substantial change of circumstances that can justify conversion to a Chapter 7 bankruptcy.

Sometimes I talk with potential bankruptcy clients who are nervous about doing a Chapter 13 bankruptcy, because they are very concerned that they may have job troubles in the next several months. That can be the best time to pull the trigger on a Chapter 13 filing.

Case Study: *A couple that came in for a debt consultation had $85,000 in credit card debt, and they were current on the payments. Because they had a very good income, they would have had to file a Chapter 13 plan with a payment of $1,637/month that paid all of their credit cards, 100 cents on the dollar.*

Since the plan would pay the debts in full, then what would be the motivation for using the "tool" of filing bankruptcy? Their credit card payments totaled $2,257/month, so the Chapter 13 would require $620 less per month, and they had a certainty that they would be debt free at the end of the 60-month Chapter 13 plan.

But despite the $620/month savings, they were hesitant to go forward with the Chapter 13 because of the husband's uncertain job prospects in the next year. Their fears became reality as the husband lost his job 18 months later. Had they filed the Chapter 13, they could have saved $620/month for the 18 months until he lost his job. (That's 620 x 18 = $11,160, which would have come in handy when he got downsized.) And when he lost his job, they could have converted to a Chapter 7 bankruptcy.

How do I know what happened to the couple in this case study 18 months after their first visit? They came back in when "doing it on your own" stopped working for them.

I get it. You don't want to ask your barber if you need a haircut. Uncertainty about your income is a valid concern for not filing a Chapter 13 bankruptcy. However, that uncertainty can be a great reason to use a Chapter 13 bankruptcy.

PART IV - LIFE AFTER BANKRUPTCY

After you get out of debt, then you can start getting back to normal, that is, back to where you were before your debt problems started.

This part of the book discusses the impact that bankruptcy has on your credit. I also discuss actions that you can take to rebuild your credit worthiness after the bankruptcy is over.

24 - How Will Bankruptcy Affect My Credit?

Let's set the stage for looking at this issue. Any reported event that pertains to how you have paid your debts will show up on your credit report. An event remains on your credit report for seven years, and a bankruptcy will show up on your credit report for up to ten years.

Good credit results from paying what you owe when it is due. Basically, when you pay on time and in full, your credit score remains high. Anything else reduces your credit score.

Consider your credit worthiness rather than your credit history: A lender determines your credit worthiness when you apply for credit. Although many people mistakenly believe that their credit report is the only determining factor in this process, a lender will also look at (1) your income, (2) your monthly living expenses, (3) the ratio of your income to the proposed monthly payment to determine how much of your income it takes to pay the proposed monthly payment, (4) your total debt, and (5) your payment history on your debts. *Your credit report typically provides information on items 4 and 5 only*.

Most people who have a hard time paying their bills will have difficulty showing they have enough money coming in each month to pay on an additional debt, regardless of what their credit report says.

Case Study: *Another example of how a bankruptcy can help someone's financial situation is shown by a former member of my staff. Less than two years after she filed a Chapter 7 bankruptcy, she and her husband were able to purchase a vehicle and a house using credit. There was one downside—the interest rate on her vehicle was 14 percent—but she was able to get that loan refinanced to a market interest rate after six months of on-time payments.*

Case Study: *A more recent example comes from one of my clients who obtained credit approval for the purchase of a house at 6.5 percent interest, due in part to his ability to show 24 months of on-time payments to creditors after the bankruptcy discharge was issued two years earlier. There was one downside—my client had to shop around for lenders. It was the third lender that approved him for the credit.*

As I like to tell my clients,

"Filing a bankruptcy will show up on your credit report, but the good thing is that it will show up on your credit report."

Bankruptcy will discharge most, if not all, of your debt, and for many people this is a big step toward improving their credit worthiness.

Bottom versus Rock Bottom: *I strongly recommend that you only use bankruptcy as a last resort.* So, if you are using bankruptcy as a last resort, meaning there is no other viable option for you to handle your debt, then does it matter what it does to your credit? Let's face it: There's not much difference between "bottom" and "rock-bottom."

Here's a similar situation in the medical context. I know someone who had a mild heart attack and he was able to drive himself to the ER for help. The medical staff quickly determined that he was having a heart attack, and then the doctor told him he needed a stent for an artery. He asked about the risks of having a stent, but then he chuckled. He knew that the risks didn't matter, because he knew that if he didn't get the stent, and then he might go to the mortuary.

If you did as I suggested at the beginning of this book and you looked at ALL of your options, and then picked bankruptcy only because it was the best route to take, then you will not have any regrets.

Sure, bankruptcy will stay on your credit for up to ten years, but you want it to show up so your unpaid bills do not show up. Besides, who looks better? Someone with no debt, or someone with a stack of bills they can't pay?

Recent credit activity is more important than old credit activity: Your credit score is determined by comparing you to people who have had no debt problems. After you file bankruptcy, your credit score is determined by comparing you to people who filed bankruptcy.

After you get a fresh start,
be sure to manage your credit carefully.

Case Study: *When a guy came in for a bankruptcy consultation, I asked him how he'd heard about me. He said his daughter had filed bankruptcy with my office and had finished her Chapter 13 bankruptcy about three months ago. He said that she was really happy with the process, and she was even happier that she could buy a house just three months after finishing her Chapter 13.*

It's not that the bankruptcy didn't show up on his daughter's credit report. What's important is that the old debt did NOT show up.

When you try to qualify for a home loan, the debt-to-income ratio will be a big hurdle for you. If you successfully complete your bankruptcy, there will be no old debt that will mess up the debt-to-income ratio. *Lenders are looking at what you did since you filed bankruptcy and they want to see that you have the income to handle the home loan.*

Credit Worthiness = Good Credit AND Good Income: The phrase "Cash Is King" in the world of credit means they want *cash savings* for a down payment and *cash flow* for the monthly payment. Go to a car lot and see how far you get when you tell them you don't have enough money coming in each month to make the car loan payment.

Target: Your first goal should be to get debt free as soon as you are able. Your next goal should be to increase your income, with the idea of saving most or all of that extra income.

Save that extra income long enough and you can get out of the "car-payment-for-life" club by buying a good used car instead of buying a brand-new car at twice the price on credit. To see how this is done, see our chapter on "How to Drive Out of the Car-Payment-of-the-Month-Club."

25 - How Long Until I Can Buy a House or Car?

When people first come to me, they want to know how long after bankruptcy it will be before they can buy a house or a car. I answer their question by asking this question. "If you don't file bankruptcy, then when and how will you ever get your debt problems under control to the point that you will be able to buy a house or a car?"

Filing bankruptcy does not mark the end of your ability to borrow money. It is the end of sleepless nights, stress and fights caused by your debt problems.

> Fannie Mae Suggests There's a Two-Year
> Waiting Period for Mortgage Debt
> Discharged In Bankruptcy
>
> Read about it from their announcement:
> https://www.fanniemae.com/content/announcement/sel1410.pdf
>
> This destroys the myth that filing bankruptcy means
> you will never get a home loan.

If you're having debt problems, then buying a house or a car is very difficult. It may be easier to buy a house or car on credit after you get debt free, *provided you increase your income and show recent, positive credit history.*

What about the bankruptcy that shows on my credit report? It says you no longer have the unpaid debt that gave you so much trouble.

Consider this: Who is more creditworthy—a person with a lot of unpaid debt or someone with no debt? Who will have a better debt-to-income ratio? Someone who still has a stack of unpaid bills, or someone who has no debt?

Here are some questions that you should be asking yourself:

1. What is the best way for me to get debt-free?
2. How long is it going to take me to get debt-free?
3. After I get debt free, how long will it take me to save up a $1,000 emergency fund so I can avoid future debt problems?
4. After I create my "emergency fund," how long will it take for me to save enough for a down payment for the house or the car?
5. What are some ways that I can increase my income so I can afford the new car payment or the house payment?

26 - How to Reestablish Your Credit after Bankruptcy

After you've used bankruptcy as a tool to get debt free, your next task should be to rebuild your credit worthiness, not to simply show some post-bankruptcy credit history by using a secured credit card to fully repay each monthly purchase of gas and groceries.

For most of my bankruptcy clients, rebuilding their credit worthiness is really a task of increasing their income and saving money, because as we've said, cash is king in the world of credit: cash for a down payment and cash for a monthly payment.

Also, the more cash you have, the less credit you need. If you can remain on a budget and operate on a cash basis, then you may never need to rely on credit again.

Here are the 3 MOST IMPORTANT ACTIONS you should take to reestablish your credit worthiness after bankruptcy:

1. Save up a $1,000 emergency fund. Open a checking or savings account and do whatever you can to save up an emergency fund. As Dave Ramsey says, "Unexpected events are certain to occur." Most often, those unexpected events land on the credit card and stay there after the payment deadline.

2. Track your spending for 90 days. This will take just a few minutes each day, and it will give you valuable information. How are you going to live on a budget if you don't know where your money is going? Most of the time, you will be keeping track of the "Heart of the Living Expenses," which includes these categories: Food, Housekeeping Supplies, Clothing, Laundry and Dry Cleaning; Personal Care Products and Services; and Miscellaneous. There are smartphone apps that can make this super-easy to do.

3. Go slow and take a class, or two. Take Dave Ramsey's *Financial Peace University*, preferably with your spouse. It is taught at various churches, and it provides excellent information on how to live debt-free. The class is free; you just have to buy the books. The information you will gain from that class will far out-weigh the minimal financial and time cost to you.

Here's a testimonial from a client of mine who went through Dave Ramsey's *Financial Peace University*:

> Very informative. Despite having been through *Financial Peace University* early in our marriage, we ignored the wisdom of it and destroyed our finances. This was a great reminder of why we will never make use of debt again. Sincerely appreciate the course.
> 7/14/2015 feedback from J.L.

Because so many of my clients are concerned about their credit, I searched for the best credit education program. I found that people who have been through the credit education program offered by 720CreditScore.com (*7 Steps to a 720 Credit Score*) transform their credit scores, usually within 24 months of filing bankruptcy. The credit education program usually costs $1,000 for enrollment.

Here are some other actions you should take to reestablish your credit worthiness after bankruptcy:

Check your credit report seven months after you successfully complete your bankruptcy case. Make sure that zero balances are reported for your discharged debts. If they are not being reported correctly, then contact the credit reporting agency and give them a copy of the Discharge Order entered in your bankruptcy case.

Pay your rent and utilities on time and in full. Paying on time and in full is crucial to reestablishing your credit.

Delay making big purchases for as long as possible. This gives you more time to save money. It also gives you more time to improve your credit rating. Although you may be able to purchase a home by showing 24 months of on-time payments for all your expenses or bills, it may be best to wait a bit longer. Buying a house will most likely be more expensive than renting. Going forward with a home purchase may eliminate your ability to grow an emergency fund. Additionally, many hidden costs are associated with the pride of home ownership, like home maintenance, plumbing repairs and air conditioning repairs. If you don't maintain a large emergency fund, you may suddenly find yourself in financial trouble.

Hold onto your vehicle as long as you can, and get out of the "car-payment-for-life" club. Over 80 percent of my bankruptcy clients have car payments! When I suggest that they hold onto their vehicles, they often tell me they can't afford to maintain their vehicle, which is why they think they need to purchase a newer vehicle.

Note: It's cheaper to maintain a vehicle than to replace a vehicle.

What is a newer vehicle going to cost per month? Maybe $450 per month (or $5,400 a year)? Compare all the expenses to of maintaining an older vehicle that's already paid for. How much a month does that cost? Maybe $150 a month (or $1,800 a year)? If you can't afford to maintain your current vehicle, then how can you afford the newer vehicle payment ($450/month) AND the newer vehicle maintenance ($40/month)?

Buy used stuff with cash rather than new stuff with credit. If you are buying with cash, you are going to spend less than if you are purchasing with credit. Also, if you can buy used stuff, you will spend much less than if you buy new stuff. Let's take furniture, for example. My wife and I bought some used furniture about 15 years ago for one-third the price of new furniture. And it still looks great.

27 - How to Drive Out of the Car-Payment-For-Life Club

As I said, more than 80 percent of the people I see for a debt consultation have a car payment. Since the average car payment is over $460, a married couple with two car payments may have car payments of at least $920 monthly (and we haven't even touched car insurance, which may be higher with a more expensive car). Almost every couple agreed that they might not be in my office if they didn't have those car payments.

For years I've been telling clients it might be better to use their tax refund money to help them purchase a cash car, and then save what they would otherwise pay in car payments, which can amount to $5,520 ($460 x 12 months) in savings. Going from sending $5,520 over a 12-month period to a car lender, to saving $5,520 in a year is a difference of $11,040!

It's easy to say it's best to not have a car payment, but it's much tougher to make it happen, especially when you already have a car payment.

I was discussing this point with some of my legal assistants, and one of them asked how you buy your next car with cash when you have no cash. I pointed out that the steps are rather simple.

Three steps to buying your next car with cash:

1. Finish making the payments on your current vehicle.

2. Continue making those car payments, but instead of making them to the lender, make them to your savings account.
3. *This is key:* Be sure that those payments are made via an **automatic deduction** from your paycheck or your bank account into a different account at a different bank.

I recommend making payments to your savings account for the same number of months you took to pay off your vehicle. When you save all that money, don't rush out to buy a brand new car. Instead, take only one-half of the cash that you've saved and go buy a used Toyota Camry or a Honda Accord. Change the timing belt, tires, brakes, and oil. The rest of the cash should remain in your savings account, and you should add to it by the amount of the car payment you would have had if you hadn't bought the car with cash.

That way you are still making a monthly payment like your neighbor, but guess who sleeps better at night? Your neighbor who is paying a car creditor, or you who are making payments to a savings account? Most "marital discussions" are about money, but they are not about having too much money in the bank. Your spouse will sleep much easier when there is some measure of financial security because there is cash in the savings account.

Trust me on this: If you go at least a year without making car payments, you will never want to return to that way of life.

CONGRATULATIONS!

If you've read this far, or even if you've skipped around and looked at some of the different chapters that called out to you, you are better off than you were a few minutes ago.

YOU'RE ADMITTING YOU HAVE A PROBLEM.
THAT'S HALF THE BATTLE!

Your next step is to start at the beginning of the book and seriously consider your current situation. No one can tell you whether or not you need to file for bankruptcy until you (and I) all know the extent of the damage. I'm sorry, but there's really no other way around it. Use our online forms at www.flumelaw.com, or a computer spreadsheet, or paper and pencils.

Knowing what you earn and what you owe might surprise you! You might be able to salvage the situation without a bankruptcy. Or, you might choose a bankruptcy because it's the best thing you can do for yourself, your family and your future.

Please call us: (210) 610-2370

You do not have to do this alone.

~Rick Flume

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