

TIPS FOR CONSUMERS WITH DEBT PROBLEMS

- **Yes! You Can Still File Bankruptcy!** Bankruptcy relief is still available.
- **Do not procrastinate** if you are facing legal action.
- **Avoid debt counseling, credit repair, and bankruptcy-related scams.**
- **Why you need a knowledgeable bankruptcy lawyer.**
- **What if I Can't Afford to Pay an Attorney? I'm Broke.**
- **How to Find a Good Bankruptcy Lawyer.**

Yes! You Can Still File Bankruptcy! Bankruptcy relief is still available. You may have heard about a new law passed by Congress that went into effect in October 2005. While it is true that the new law makes the process much more complicated, the basic right to file bankruptcy and most of bankruptcy's benefits still remain for most consumers. The cost of filing for bankruptcy also has increased, both in terms of fees you have to pay the court and the fee you will have to pay your attorney.

Do not procrastinate if you are facing legal action. Often, even when people are in danger of foreclosure or car repossession, or are being sued, or are having their wages garnished – even then, they do not want to think about filing bankruptcy. It is very painful to think of filing bankruptcy – especially before the person understands bankruptcy. In most cases, once bankruptcy options are explained by an experienced attorney, people are greatly relieved to find that their problems can be resolved after all. Do not wait until after your house is foreclosed, your car is repossessed, or your wages are being garnished. Find out what bankruptcy relief is available to you sooner rather than later.

Avoid debt counseling, credit repair, and bankruptcy-related scams. Sometimes when people are in difficult financial situations and they fear they cannot afford an attorney, they may listen to the assurances of unscrupulous operators who are all too willing to take their last remaining dollars. These operators appear in a number of types of businesses, but all offer the lure of a cheap, easy way to make financial problems disappear. They invariably leave the person poorer and, in many cases, much worse off than before. Here are some of the scams:

Typing services (also called bankruptcy petition preparers) never provided very good service to bankruptcy clients. However, under the old bankruptcy law if you had a simple case the mistakes they made probably wouldn't cause

your case to be rejected by the bankruptcy court. That is different now. Congress has made filing bankruptcy so complex and the legal knowledge to prepare a case is so important that typing services just cannot do the job. They cannot advise the debtor of ways to eliminate liens or pursue more complicated procedures. They cannot go to court or defend the debtor if a creditor attempts to oppose the bankruptcy or take advantage of the debtor. They cannot give legal advice that could save the debtor hundreds or thousands of dollars. A bankruptcy filed with only the help of non-attorneys often fails to accomplish even its basic purposes, thus leaving the debtor worse off than before. In fact, many cases prepared by typing services and filed under the new law have been rejected by bankruptcy courts. When debtors whose cases are rejected they try to file a second, corrected case, the new law takes away many rights they would have had in the first case. **Therefore, it is very important to get the advice of an experienced bankruptcy attorney for your first case so that you will have all the rights and protections possible in that case.**

Other operations offer “credit repair” or credit counseling but are not associated with the established nonprofit credit counselors in the community. These outfits promise to make credit problems go away and to obtain new credit for those who have bad credit records. However, they know no magic tricks. At best they may obtain an expensive “secured” credit card, which can be used as long as the card user keeps enough money in a special account to cover the amount charged on the card. In most cases, customers do not even receive this dubious benefit, and the operators simply fail to deliver on their promises after taking the customer’s money.

Other rip-off artists sell services that consumers could obtain for free or at minimal expense. After taking the consumer’s money, some offer only a referral to a bankruptcy attorney, who may not be very knowledgeable. Others, who claim that they can help consumers with bad credit to find housing, give lists of apartments taken directly from newspaper advertisements. Finally, some offer a debt-consolidation loan, which often means a home-equity loan or a refinancing of the debtor’s first mortgage. These loans can be big mistakes, turning unsecured credit card debts that can be wiped out in bankruptcy into mortgages that cannot be discharged; or trading debts with little or no interest for debts with high interest rates. The brokers

or lenders who push these loans on debtors with poor credit histories usually charge very high fees.

Why you need a knowledgeable bankruptcy lawyer. The decision to file for bankruptcy requires careful analysis of your situation. You should file for bankruptcy only after determining that it is the best way to deal with your financial problems. There are a number of potential pitfalls and tricks in the new law, so it is very important to consult with a **knowledgeable bankruptcy attorney**. If your case is filed wrong, it may be dismissed for not filing a required document and if you have to file a new case you may not be able to get the same protection from your creditors. A good bankruptcy attorney:

- is well-versed in the possible complications that might arise in what seems to be a simple and straightforward case;
- is aware of recent changes in the law and of court decisions in the local courts;
- can usually find ways of making a bankruptcy case more productive and effective than it would be if the debtor tried to handle it without an attorney, ultimately saving the debtor many hundreds or thousands of dollars more than the attorney's fee.

Finally, having a good bankruptcy attorney can bring debtors the peace of mind that results from knowing their cases are being handled without the mistakes that they might make on their own.

What if I Can't Afford to Pay an Attorney? I'm Broke. Many people do not want to talk with an attorney about bankruptcy because they think they cannot afford to pay an attorney. Understandably, they try to find a typing service which they think will be cheaper. Several things are wrong with this conclusion:

Free legal services are sometimes available. For low-income debtors, legal services may be available at little or no cost through government-funded legal services and legal aid offices. Unfortunately, these programs do not have enough lawyers to handle even a small fraction of the legal problems that people bring to them. In some areas, in connection with legal aid programs, private lawyers contribute some of their time to handling cases for low-income people without charging fees.

Many attorneys do not charge for the initial consultation. During that free consultation, many attorneys will give you a preliminary idea of what bankruptcy options are available to you.

Often they will explain about both Chapter 7 and Chapter 13 and how they would work in your situation. Although there will still be much more work to be done to complete your case analysis, the attorney will probably be able to give you a fairly good idea of the cost.

During the initial consultation, the attorney may develop a filing strategy which will allow you to save money you are currently paying to creditors, or suggest a chapter 13 plan that may not require you to pay much or all of the attorneys' fees at that time or even before filing the case. Many people think they do not want to file chapter 13 because they think they will have to pay back all of their debts in full in a chapter 13. In most cases that is not true. Usually, most or all of your debts can still be wiped out and sometimes a chapter 13 helps you more than a chapter 7 would.

How to Find a Good Bankruptcy Lawyer. Just as there are good doctors and bad doctors, good teachers and bad teachers, good auto mechanics and bad auto mechanics, so too there are good lawyers and bad lawyers. Indeed, some attorneys are barely competent or even downright incompetent. Just as there is no simple, guaranteed way of finding a good doctor, there is no simple, guaranteed way to find a good lawyer. Here are some things to look for:

Experience. It would seem obvious that an attorney who has been practicing for 25 years should know more than an attorney with only 10 years experience. However, that is not always the case. There are some attorneys who have practiced bankruptcy law for many years, but have never really mastered the subject. There are other attorneys who have pursued a general practice, filing a case now and then. If they have been practicing for 25 years without much in-depth experience in bankruptcy, that does not translate to the expertise you need. ***Tip #1:*** *Look for an attorney with many years experience in consumer and small business bankruptcy law, who enjoys the respect of other bankruptcy attorneys, the trustees, and the judges.*

Training & Competence. After an attorney graduates from law school and passes the state bar examination, then the real learning begins. Even when there are not many new laws being passed on a particular subject, attorneys improve their skills by attending educational seminars. Now, with the enactment of a completely different bankruptcy law, education is an absolute

necessity. So many basic concepts under the prior law just don't work anymore. And, the new law is so complex, an attorney is making a big mistake if s/he thinks s/he can understand it by just sitting down and reading it. There is only one organization that is devoted to training attorneys who represent debtors – the National Association of Consumer Bankruptcy Attorneys (NACBA). NACBA held two-day workshops in Chicago (July 2005) and Orlando (September 2005) to teach attorneys how to practice under the new law. More than 3,000 attorneys crunched numbers, filled out worksheets, and learned the new concepts necessary to practice under the new law. **Tip #2:** *Is the attorney a member of NACBA? Did the attorney attend NACBA educational events?*

Someone Who Will Listen to You. An attorney who tells you what you should do before s/he even listens to the facts of your situation is not the right attorney. Unfortunately, some attorneys have a "cookie cutter" approach to legal advice which completely ignores the true difficulties or opportunities that your case may present. **Tip #3:** *You want an attorney who will listen to your facts and ask the right questions so s/he will truly understand your case.*

Someone Who Will Give You Specific Advice About Your Situation. **Tip #4:** *Your attorney should listen to you and then consider your specific facts in the context of the law. Only by doing that will s/he be able to give you the advice you deserve - good advice.*