

# A Few Words about Bankruptcy

a service of the Banks Law Office

## Social Security is safe from collectors

Federal Law makes your Social Security benefits exempt from levy, garnishment, assignment by regular creditors, and from the trustee in bankruptcy. (The federal government can withhold some part of Social Security payments for taxes, student loans, or support, however.)

This means that even a creditor with a judgment cannot intercept your Social Security payments nor can they take the money from you after it has been paid to you.

## Other exemptions

In addition to the federal exemption for Social Security benefits, each state has law protecting certain assets from the individual's creditors. These exemptions are available without filing bankruptcy. Be advised that most retirement plans, pensions, and 401K plans are exempt from collection.

Resisting overly-aggressive collection tactics.

**Collectors often use fear, shame, and intimidation tactics to get you to pay them, regardless of the other demands you may have on your budget. If you look at what you own and your sources of income, it may be that everything you have is exempt. In that case, even if an unpaid creditor sued you, obtained a judgment and tried to use the law to collect its money, that creditor will get nothing. Therefore, resist being pressured to pay money just because a bill collector insists you "have to."**

## Repaying debts outside of bankruptcy

### 1. First things first

In making a plan to get control of your financial situation, make sure that you pay the bills that are the most important, not necessarily the ones who call and threaten you the most.

For most families, housing and transportation are there two most important expenses because if :

You get evicted or foreclosed on, and you will become homeless;

you have your car repossessed you can't get to work

Pay these expenses first.

## **Dealing with debt collectors**

Don't be intimidated into paying unsecured credit card debt before housing, transportation and taxes. When all is said and done, credit card collectors don't have easily available ways to MAKE you pay; they rely on irritation or fear to GET you to pay voluntarily. Don't be swayed from your plan to put first things first.

Collectors rely on your ignorance about collection procedures to create fear, shame, and insecurity. Unsecured creditors can't take money from your account or seize your assets without suing you first and getting a judgment. You have to get notice of such a suit and an opportunity to contest the charge.

Creditors sometimes threaten to "send you to collections" as though it was a real place, full of horrors. It just means they are handing the problem off to someone else, who has no more real power to take your assets than the speaker does. Don't be fooled.

The Federal Fair Debt Collection and Practices Act gives you the right to tell debt collectors not to contact you. Some states have similar laws. The Ohio statute applies to the creditor itself as well as any third party collector.

Know your rights about debt collection. Beware of their tactics.

## **Be cautious about debt consolidation loans**

Whole industries have cropped up to help those who are financially strapped recover. Some of their "help" you are better off without . . .

### **Avoid credit repair scams**

Another group of scammers preys on the fixation of consumers with their credit reports and want you to pay them to "fix" your credit report. The things that can be done legally to correct credit reports, you can do yourself; what they propose to do may well be illegal or ineffective.

Recommended Reading: Elizabeth Warren's book All Your Worth.

## **Dangers of debt counseling**

Be a savvy consumer of debt counseling or debt management programs. It is an unfortunate truth that not everyone offering to help you get control of your finances has your best interest (as opposed to their own) at heart.

## Consumer Fed blasts high fees, bad advice.

A credit briefing from a certified provider is now a prerequisite to filing bankruptcy. Each judicial district has a list of approved counselors.

### **Approach debt consolidation loans with skepticism**

1. While a loan to consolidate all of your debt into a single obligation is appealing and may have a lower interest rate than credit card interest rates, make sure that you can *really* repay that amount.
2. Understand clearly the term, interest rate, and fees associated with the loan. It may be that even lowering the interest rate does not make your present debts manageable, but it just postpones the day of reckoning.
3. Determine whether the loan will pay off over the life of the loan, or whether you will owe a "balloon" payment at the end. For most borrowers, balloon payments are just an invitation to another loan, and you never get free of this debt!

### **Home equity loans may put your home in jeopardy**

If you can't pay your present unsecured debts, all your creditors can do is sue you and try to collect any judgment it gets. If you can't pay your home equity loan, you may lose your house in foreclosure.

Most states provide an exemption that protects a given amount of equity in your home and puts that equity beyond the reach of your creditors. If you voluntarily pledge that equity to a home equity lender, the exemption no longer protects the pledged portion of your home's value.

### **Understand the program**

If you participate in a program where a service negotiates with your creditors or makes payments on your debts for you, understand whether the service promises to lower the total you owe or the interest rate you pay, or just promises to lower the payments you make every month, without significantly changing your obligation. Know what happens if a creditor won't negotiate.

The debt settlement model in which you set aside money with a third party who will attempt to negotiate a reduced payoff seldom solves the entire problem. Creditors seldom accommodate such approaches which are why the debt settlement company pays themselves first. In our opinion, the plan is bound to fail.

### **Make sure the program deals with all your debt**

Some debt counselors confine themselves to dealing with your unsecured commercial creditors, excluding your obligations for nondischargeable child support, unpaid taxes, or the crushing car loan. In effect, they ignore the debts that are most important, while channeling your money to creditors whose claims could be discharged in bankruptcy.

## **Don't overpay**

There are several debt management programs with modest cost to you, the client. Approach fee-based services with caution and make sure that the service is worth what it costs. Many debt counseling programs advertising themselves as "non profits" may be fronts for profit making entities more interested in their own pocketbook than yours. Chapter 13 is a more reliable alternative.

## **Beware of tax consequences**

The IRS treats debts that are forgiven or reduced, outside of bankruptcy, as taxable income. That means that if your creditor agrees to settle the debt for 50% of what you owe, the other 50% will be reported to the IRS as income, just as if they had written you a check for that amount! Under some circumstances, you can avoid cancellation of debt income, but it raises a complicating factor when you compromise debts outside of bankruptcy.

## **Conclusion:**

Make sure that you don't worsen your situation by enlisting others to help with debt management. While it is comforting to have an ally in your struggle to pay your bills, make sure that their help is really helpful.

Remember that Chapter 13 is a repayment plan in which **you** propose the percentage that you can repay creditors and upon confirmation, the court makes it bind on creditors.

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