

CHAPTER 3

How To Stop Your Creditors Cold!

Wipe Out Your Debts!

If you're afraid to answer the phone because your creditors have been calling every night; and you're worried that one of them is going to call your boss and tell him you're a deadbeat; and just trying to pay off your bills leaves you almost nothing for food - its time you thought about bankruptcy!

With a small amount of money, a lawyer (and even he's not necessary a lot of the time), and a careful evaluation of your assets (what you own) and your liabilities (what you owe), you too can make a new start with the help of the Federal and State bankruptcy laws. But don't rush into this without carefully determining which is the right way for you, for there are several different ways to stop your creditors cold, and choosing the wrong way can result in your losing much more than you might otherwise have to.

Straight Bankruptcy Usually Costs Less, and It's Quick!

If you have very few assets, and lots of debt, and not enough income to pay the debts off, even on an extended plan (more about that later), then you will probably have to file straight bankruptcy. You must file the proper forms (or "schedules") which you can purchase from any really good office supply stationery store in your nearest city, especially one in a district where there are lawyers' offices.

Bankruptcy is not a very complicated court action, so don't be too afraid of it. You will need to know which district you live in for Federal Court purposes; look in the telephone (white pages) under U.S. Government - Courts, and locate the U.S. District Court in your nearest city. Probably that court has jurisdiction; but check this out by phoning the Clerk of the Court and asking him, giving him you home address. You will have to fill out several "schedules" or lists of your creditors: creditors having priority, creditors having security, and creditors having unsecured claims without priority. You must list every creditor.

What Will You Have Left?

Will you be put out in the cold without food, clothing and a house to live in after your creditors get paid? Not at all - because most State bankruptcy laws allow some of your assets to be "exempt" from being used to pay your creditors! You must check the specific laws of your State, but usually, the house you live in, the tools of your trade, your personal clothes (within reasonable limits) and certain specific basic home furnishings are all not taken away from you. In fact, in this totally absurd world we live in, many States now permit you to also keep your TV, because, apparently, they regard it as a necessity for life!

Where to File

Once you have all the forms filled out and notarized, bring them to the Clerk of the U.S. District Court in your district, along with the appropriate amount to file. You don't have to notify your creditors - the Clerk does that, while also reminding them that now that you have filed bankruptcy papers, they may not press you for any more money, but may come to your hearing.

Usually your creditors don't show up, since by that time you have filed bankruptcy, you have very few nonexempt assets left that they are interested in. Whatever assets you do have that are not exempt (if any) must be sold under the Court's supervision. Any money thus realized is added to whatever cash you may have had at the time you filed (if any) and the total amount (which might be, and often is, as low as \$50 or \$750 is divided up by the trustee appointed at your hearing and your creditors get paid on a pro rata (proportional) basis to the amount you owe them. If your assets add up to an amount that, for example, only allows each creditor 3 1/2 cents for every dollar of debt you owed them, then that 3 1/2 cents is all he gets!

About three months after you have filed, you adjudged "bankrupt". And you can start over again to incur, pay bills and establish a new credit record. Be careful, however, about talking to your old credits at this time. They may offer to help you out by extending new credit, and maneuver you into signing "reaffirmation" of your old debt! Read anything you sign very closely, and don't agree to repay any debt that you have already discharged through your bankruptcy!

Lawyers for Complications

There are some people who should definitely hire a lawyer to help them through their bankruptcies, especially people who have assets like real estate that they want, somehow, to keep. Aside from real estate, if you have been accused by any creditor of fraud, you should also have a lawyer handle your case. If you decide you don't need a lawyer to handle your bankruptcy, you are still responsible for filling out all of the forms accurately and completely, and every bit as carefully as if a lawyer had done them. Leaving out a creditor's address from a schedule, or forgetting a loan you co-signed can bring lawsuits against you even after your bankruptcy. So be careful, and if you find the bankruptcy process is too complicated, do see a lawyer!

Keeping Your Assets Instead

The major advantage of the Wage Earner Plan, besides not being recorded permanently on your credit record, is that you get to keep all your assets, exempt and non-exempt alike (assuming you still have any left!). This is quite important, if, for example, you have a good paid-up car, or expensive household furnishings or a boat or other valuable assets that you want to keep. Under Chapter 13, you can get your current debts "stretched out" to three years, which may well result in lower total monthly payments than you are currently paying, and as long as you pay off your debts in

accordance with the agreement files with the Court, month by month, no creditor will be able to sue you to try to seize any other of your assets, and force their public sale at disadvantageous prices.

Even if they have begin to sue you, once you file for relief under the Bankruptcy Act, either under Chapter 13 or under Chapter 11, straight voluntary bankruptcy, they can't touch you! They are immediately restricted to getting from you only what the referee or trustee will give them and that only after the court proceedings have been completed. Often, if the creditor threatens to sue you, the most effective thing you can do to stop him (besides paying the debt!) is to tell him frankly that, if he sues you, you have no other recourse than to declare bankruptcy. This will often make your creditor willing to negotiate the debt, and you may be able to satisfy him by paying the debt back, but over a longer period of time (with smaller monthly payments) than you originally contracted for. Creditors know well that if you file bankruptcy, the chance of their getting payment in full on their overdue account is very low, so it is in their interest to try to ease your credit burden at least for a while.

Make Yourself "Judgment-Proof"

If a creditor goes ahead and sues you, and gets a judgment against you, he can then get a court order directing the sheriff to seize your personal property, sell it and pay the creditor the amount of your debt. However, if you have no valuable assets, there is nothing for the sheriff to seize, and you are what is generally called "judgment proof", or in other words, can't be made to pay the debt. Because they know this is likely to happen, street-smart debtors often hide their possessions, or move them out-of-state, before the sheriff (or marshal) arrives. This is, of course, illegal. The creditor's next move is to try to "garnishee your wages, which he does by getting a court order directing your employer to set aside part of your wages or salary every pay period and turn the amount over to him. However, he can only do this if he knows, or can find out, where you work. But even if your wages are garnisheed, there are limits on what a creditor can take! Laws vary from State to State. In some states wages cannot be garnisheed at all while in others only small amounts are exempt from garnishment.

If you have no job, and no visible assets, or you live in a State where your wages cannot be garnisheed, your creditors actually have very few ways of ever collecting on that judgment!

Harassment and Other Creditor Tools

Before your situation gets bad enough to need bankruptcy relief, and before your creditors actually sue you, they will try to make you pay up using informal techniques, rather than formal court orders, as this is far less expensive and time-consuming. First among these informal attempts may be turning their bills over to a collection agency which may then begin harassment, by calling you often and at odd hours by telephone, by trying to talk to your employer about your debts, and/or by threatening you with legal actions, etc. Many of these techniques that they use are illegal! Yes, a creditor or

agency can write you letters, call once a day seeking payment, try to bring legal action against you, but he is forbidden by law to harass you or invade your privacy, or use deceptive means to get you to pay your bills. He may not use foul and abusive language over the telephone, tell anyone beside you the reason for his phone call, insist on payment for a product or service that you claim to have a legitimate grievance about, nor issue false threats (such as saying that he is going to drag you into court to collect \$35, when in fact his agency's policy is not to file suit on accounts of less than \$100, because of the high legal costs involved). He may not inconvenience you (by calling you at work when you are not easily able to receive calls), or invade your privacy (telling your employer or your neighbor that he is trying to collect a debt from you). There are books that provide detailed additional information on personal bankruptcy, and include sample letters with which you can try to arrange "stretch-outs" on your own with your creditors before bankruptcy is necessary. Some include sample bankruptcy forms filled out that you can use as a model. Since the accurate filing of all your debts and assets is so important, it's a good idea to follow their detailed instructions closely, with or without a lawyer, so that once you get your creditors off your back, they stay off!