

# BANKRUPTCY INFORMATION

## CONSUMER BANKRUPTCY & DEBT RELIEF

★ Please read this [Disclaimer](#) before proceeding ★

### CHAPTER 7 BANKRUPTCY

Chapter 7 Bankruptcy, also known as "Straight Bankruptcy" is a liquidation proceeding in which the debtor's non-exempt assets, if any, are sold by the Chapter 7 trustee and the proceeds distributed to creditors according to the priorities established in the Bankruptcy Code. To qualify for Chapter 7 a debtor must pass the "means test" established by Congress in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA). The means test is part of the Chapter 7 petition and basically takes the average gross monthly income over the preceding 180 days, applies a standard deduction for expenses calculated for your locale and compares it to a calculated standard income also for your locale. If your income falls below the standard, you qualify for a Chapter 7 filing without a presumption of abuse. If it is above the standard, you still may qualify.

Chapter 7 is generally the simplest and quickest form of bankruptcy and is available to individuals, married couples, corporations and partnerships. The case is begun by filing the official petition, schedules and statement of financial affairs. These forms prompt you to list all of your assets and all of your debts, along with some recent financial history. This is the most important and most time consuming part of a bankruptcy filing. It is important that every creditor is listed in the schedules with an accurate mailing address. You must list all of your debts, even if the debt is non dischargeable or if you intend to reaffirm the debt. The schedules also list your property, any debts secured by that property, and the sale value of the property. "Property" here means "assets" or "possessions", not just real estate. More on property in bankruptcy. Your choice of exemptions is made on one of the schedules. The schedules are signed by the debtor under penalty of perjury.

The schedules are filed with the bankruptcy clerk in the district in which you live, or have lived for the greater part of the last 180 days. For most purposes the rights of the debtor and the creditors are those that exist on the day the case is filed. All of the proceedings in bankruptcy after the filing relate to the situation as it was on the day the case was filed.

The automatic stay goes into effect upon filing the petition, creating a legal barrier to collection actions by creditors. The court appoints a trustee and gives notice to all creditors listed in your schedules that you have filed bankruptcy. You will get a copy of that notice at the same time it is sent to creditors. The debtor must appear at the "first meeting of creditors" (also called the §341 meeting). The trustee can ask the debtor questions under oath about assets and liabilities. Creditors can also question the debtor on those subjects, but seldom do creditors attend in a no asset Chapter 7 case.

If there are assets which are not exempt, the trustee takes control of those assets. From the sale of assets or the recovery of avoidable transfers, the trustee pays the expenses of the administration of the case, then distributes any remaining funds to creditors with allowed claims, according to the priority of the claims. The trustee may review your income and expense schedule to see if you have enough money left after your current living expenses to pay something to creditors. Any wages the debtor earns after the case is begun are beyond the reach of creditors who had dischargeable claims on the date of filing. Generally, the only responsibilities the debtor has with respect to the bankruptcy after the §341 meeting is to cooperate with the trustee in providing any information requested by the trustee.

Creditors and the trustee have a 60 day period from the §341 meeting in which they may challenge the debtor's right to a discharge or the dischargeability of a particular debt by filing an adversary proceeding. Unless an action to deny the debtor a discharge is filed, the order providing for the discharge of debts is issued by the court shortly after the 60 day period expires.

## CHAPTER 13 BANKRUPTCY

Chapter 13 bankruptcy is basically a debt repayment plan that allows you to pay off your debt over a three- to five-year period, often at pennies on the dollar for unsecured debt such as credit card bills. At The Bullard Firm in Honolulu, we offer free attorney consultation to discuss your case and determine if Chapter 13 bankruptcy is the best solution for your debt problems. You may choose to file Chapter 13 bankruptcy for several reasons:

- You may have too much income to file Chapter 7 bankruptcy.
- You may have secured debts that you would lose by filing Chapter 7 bankruptcy.
- You may be significantly behind on your house payments and other secured debts.

By filing chapter 13 bankruptcy, you can place your arrearage in your payment plan, which would give you up to five years to get caught up. You may have other debts such as child support that cannot be discharged by filing Chapter 7 bankruptcy. By filing Chapter 13 bankruptcy, those debts can be placed in your payment plan and paid over time. Secured debts such as home mortgages must be fully repaid when you file Chapter 13 bankruptcy. Child support and student loans must also be repaid 100 percent. But you may only have to pay pennies on the dollar for unsecured debts such as credit card bills, hospital bills, lawsuit judgments and payday loans. To qualify for filing Chapter 13 bankruptcy, you must have a regular source of income such as a job, Social Security disability or alimony.

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## WORKOUT OPTIONS

One of the available options to debt relief is to consider a debt workout instead of bankruptcy. Often people prefer this process as debt settlement, particularly when used as a tool to deal with credit card debt. When a mortgage payment problem requires a debt workout it can be called a mortgage modification. A workout avoids bankruptcy when your attorney unsecured debt professional or mortgage negotiation expert contacts your creditors and makes arrangements which would require you to make some payments to them, although less than what they may be owed to settle the account in full. Other times arrangements call for payment in full but over a longer period of time than originally planned. Sometimes you can even pay a smaller settlement figure and make payments over time. Because most debtors in workouts classify as candidates for bankruptcy or foreclosure creditors are willing to negotiate new debt terms. If a filing from a bankruptcy attorney would occur the creditors would likely end up with little or nothing. By doing a workout they get more than they otherwise would. While you could renegotiate your debts yourself, an experienced attorney who handles these types of cases often can navigate through the pitfalls that the inexperienced negotiator may not be aware of. This includes the lawyers and professionals. Do not choose a lawyer unless he or she handles these types of cases often. Even then, make sure you share their attitude and philosophy about these cases and it makes you comfortable. Check out debt and mortgage negotiation companies well, these people need no license and along with some great people you will find inexperienced folks as well as con artists and thieves.

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## UNFAIR DEBT COLLECTIONS

Under the Fair Debt Collection Practices Act (FDCPA) enforced by the Federal Trade Commission, a debt collector is someone who regularly collects debts owed to others. This includes collection agencies, lawyers who collect debts on a regular basis, and companies that buy delinquent debts and then try to collect them. The FDCPA strictly limits the methods and actions that debt collectors may use. When a debt collector violates the act in attempting to collect debts from you, you have the right to sue a collector in a state or federal court within one year from the date the law was violated. If you win, the judge can require the collector to pay you for any damages you can prove you suffered because of the illegal collection practices, like lost wages and medical bills. The judge can require the debt collector to pay you up to \$1,000, even if you can't prove that you suffered actual damages. You also can be reimbursed for your attorney's fees and court costs. A group of people also may sue a debt collector as part of a class action lawsuit and recover money for damages up to \$500,000, or one percent of the collector's net worth, whichever amount is lower. Even if a debt collector violates the FDCPA in trying to collect a debt, the debt does not go away if you owe it.

## STOPPING FORECLOSURE

There are many methods of stopping foreclosure and the best alternative depends greatly upon what the debtor wants to achieve. With the short pay or short refinance method stopping foreclosure is accomplished through a refinance of the property facing foreclosure. For example a debtor owes \$100,000 on their mortgage with another \$15,000 in arrearage and legal fees. A new loan is negotiated for \$85,000 and the mortgage is settled for \$80,000 leaving \$5,000 to pay the associate transaction fees. The debtor is back on schedule and likely has smaller monthly mortgage payments. The debtor has now avoided the foreclosure and eliminated \$30,000 of debt.

Alternatively, modifying the existing mortgage can achieve the same outcome. The creditor, usually a bank, agrees to change the terms of the loan. Most often the changes are temporary. Reducing the interest rate, principal portions of payments, or extending the amortization in an effort to reduce overall payment obligations, remain the changes most acceptable to creditors. Unless the delinquency remains small with a loan at a local bank or the debtor has a nasty hardship under a government program this can be a tough plan to get through the creditor's guidelines. During the foreclosure crisis of 2008 to present day the large numbers of potential foreclosures and government programs and pressure to avoid foreclosure resulted in mortgage modification emerging as an option accepted much more frequently. Some can even involve principal forgiveness in limited cases. Often a professional foreclosure negotiator can get these plans approved even when the debtor can not.

Under a negotiated repayment plan, the debtor pays a portion of the arrearage and agrees to pay the rest in addition to the regular payment over a period of months. Much like a Chapter 13 bankruptcy, the debtor's plan is linked to the proof of income and the proper down payment. The benefit here lies in the fact that the debtor is typically on a five year plan monitored by the court and most lenders will readily accept this type of plan. Expect half of the arrearage plus their legal fees get paid up front with a promise to pay the rest of the arrearage in addition to the regular payment within six months. Plans with less money down and paid over a longer period of time can be negotiated by loss mitigation professionals.

A deed in lieu of foreclosure benefits a debtor that has little or no equity in the property and an agreement is negotiated to give the property back to the creditor usually in exchange for their forgiveness of potential deficiencies. In other words, the homeowner gives the deed to the bank then walks away without owing any more money.

Much like the deed in lieu of foreclosure a short sale is where the property is sold to a third party for a price discounted for a quick sale and by agreement the creditor accepts this price as full settlement of the debt even though the short sale price does not cover the mortgage owed.

These are just a few of the many methods of stopping foreclosure without filing bankruptcy. Most often a Chapter 7 filing will not save the home because typically the allowable exemptions will not "cover" the value of the home. Those that wish to take advantage of bankruptcy protection and save the home, may file Chapter 13 along with the Chapter 13 payment plan allowing the debtor to reorganize his payments of debt over a three to five year period. The home may be paid on regular terms in or outside of the bankruptcy.

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## EXEMPT PROPERTY

In a Chapter 7 bankruptcy the debtor is allowed a certain amount of property that the debtor may claim as exempt from creditors. In Hawaii, a debtor has a choice between using the exemptions provided by Hawaii state statutes or using the exemption provided under the federal Bankruptcy Code. Under a Chapter 13 bankruptcy, there is usually no reason to use either of the exemptions because you are able to keep all of your possessions while in bankruptcy and after your discharge - unless something happens that causes the Chapter 13 plan to fail and you are forced into Chapter 7. The following is a list of the exemptions provided by the State of Hawaii and those provided under the US Bankruptcy Code.

More information can be found in the [Hawaii Revised Statutes](#) and [US Code Title 11 § 522](#).

★ This list is not exhaustive and the information is subject to change. ★

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### HAWAII STATE EXEMPTIONS

#### HOMESTEAD

- Head of family or over 65 to \$30,000 ; all others to \$20,000 ; property cannot exceed 1 acre. sale proceeds exempt for 6 months after sale.
- Property held as tenancy by the entirety may be exempt against debts owed by only one spouse

#### INSURANCE

- Annuity contract or endowment policy proceeds if beneficiary is insured?s spouse, child or parent
- Disability benefits
- Fraternal benefit society benefits
- Group life insurance policy or proceeds
- Life or health insurance policy for spouse or child
- Life insurance proceeds if clause prohibits proceeds from being used to pay beneficiary?s creditors

#### MISCELLANEOUS

- Property of business partnership

#### PENSIONS

- ERISA-qualified benefits deposited over 3 years before filing bankruptcy
- Firefighters
- Police officers
- Public officers and employees

#### PERSONAL PROPERTY

- Appliances and furnishings needed
- Books
- Burial plot to 250 square feet plus tombstones, monuments and fencing on site
- Clothing
- Housing down payments for home in state project
- Jewelry and articles of adornment to \$1,000
- Motor vehicle to wholesale value of \$2,575
- Proceeds for sold or damaged exempt property; proceeds exempt only 6 months

#### PUBLIC BENEFITS

- Public assistance paid by Dept. of Health Services for work done in home or workshop
- Unemployment compensation
- Unemployment work relief funds to \$60 per month
- Workers? compensation

#### TOOLS OF TRADE

- Tools, implements, books, instruments, uniforms, furnishings, fishing boat, nets, motor vehicle and other personal property needed for livelihood

#### WAGES

- Unpaid wages due for services of past 31 days; after 31 days, 95% of 1st \$100; 90% of 2nd \$100; 80% of rest
- Prisoner?s wages held by the Department of Public Safety

#### WILD CARD

- NONE

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### EXEMPTIONS UNDER THE US BANKRUPTCY CODE

#### HOMESTEAD

- Real property, including mobile homes and co-ops, or burial plots up to \$21,625. Unused portion of homestead, up to \$10,825, may be used for other property.

## TOOLS OF TRADE

- Implements, books and tools of trade up to \$2,175.

## ALIMONY AND CHILD SUPPORT

- Alimony and child support needed for support.

## PUBLIC BENEFITS

- Public assistance, social security, veteran's benefits, and unemployment compensation.
- Crime victim's compensation.

## INSURANCE

- Unmatured life insurance policy.
- Life insurance policy with loan value up to \$11,525.
- Disability, unemployment or illness benefits.
- Life insurance payments for a person you depended on, which you need for support.

## PERSONAL PROPERTY

- Motor vehicle up to \$3,450.
- Animals, crops, clothing, appliances and furnishings, books, household goods, and musical instruments up to \$550 per item, and up to \$11,525 total.
- Jewelry up to \$1,450.
- \$1,150 of any property, and unused portion of homestead up to \$10,825.
- Health aids.
- Wrongful death recovery for person you depended upon.
- Personal injury recovery up to \$20,200 except for pain and suffering or for pecuniary loss.
- Lost earnings payments.

## PENSIONS

- Tax exempt retirement accounts; IRAs and Roth IRAs up to \$1,171,650 per person.

NOTE: Generally the term "household goods" means

- clothing
- furniture
- appliances
- 1 radio
- 1 television
- 1 VCR
- linens
- china
- crockery
- kitchenware
- educational materials and educational equipment primarily for the use of minor dependent children of the debtor
- medical equipment and supplies
- furniture exclusively for the use of minor children, or elderly or disabled dependents of the debtor
- personal effects (including the toys and hobby equipment of minor dependent children and wedding rings) of the debtor and the dependents of the debtor
- 1 personal computer and related equipment.

But the term "household goods" does NOT include

- works of art (unless by or of the debtor, or any relative of the debtor)
- electronic entertainment equipment with a fair market value of more than \$600 in the aggregate (except 1 television, 1 radio, and 1 VCR)
- items acquired as antiques with a fair market value of more than \$600 in the aggregate
- jewelry with a fair market value of more than \$600 in the aggregate (except wedding rings)
- a computer (except as otherwise provided for in this section)

- motor vehicle (including a tractor or lawn tractor)
  - boat, or a motorized recreational device, conveyance, vehicle, watercraft, or aircraft.
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## DISCHARGABLE DEBT

Unlike exemptions, debts are determined to be dischargeable or non-dischargeable by the federal bankruptcy code. Dischargeable debts vary under the different chapters of the Bankruptcy Code. For individual debtors § 523(a) specifically states various categories of debt that cannot be discharged. The debtor will still be liable for these debts after bankruptcy. These type of debts are discussed in the next section. Debts that are generally dischargeable are listed here subject to other sections of the Bankruptcy Code.

Debts that generally dischargeable in Chapter 7

- Personal loans
- Credit card debt
- Repossession deficiencies (e.g. the difference between what a creditor sold your car for and the amount you owed on it)
- Auto accident claims
- Monetary judgments against you
- Negligence claims (personal injury)
- Business debts
- Leases
- Debts incurred through embezzlement or larceny

Generally, debts that are at least partially dischargeable under Chapter 13 include

- Recent tax penalties
  - Debts for willful and malicious injury to property
  - Debts incurred to pay nondischargeable tax debts
  - Debts related to divorce or separation proceedings and property settlements
  - Debts incurred by fraud or malicious and criminal activity
  - Priority debts such as taxes, wages owed to employees, Social Security benefits, pensions, etc.
  - Secured debt (car loans, mortgage debt)
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## NON-DISCHARGABLE DEBT

Generally, Chapter 7 will not allow you to discharge

- Criminal fines and debts (e.g. debts resulting from a DUI/DWI/driving while intoxicated accident)
- Student loans (can be discharged under EXTREMELY RARE CIRCUMSTANCES)
- Recent taxes (within three years)
- Fraudulent debts (e.g. credit card abuse prior to bankruptcy)
- Dischargeable debt you incurred to pay off nondischargeable debt (e.g. using a credit card to pay off mortgage companies or the IRS)
- Court-ordered spousal support or child support
- Divorce property settlements (unless agreed to)
- Debts not listed on the Chapter 7 petition or where the creditor is not listed in the petition matrix of creditors.

## LIEN AVOIDANCE

### Consensual and Nonconsensual Liens

There are two types of liens: consensual and nonconsensual. A consensual lien is basically a situation where you have agreed to use an asset as collateral for a debt. Mortgages and auto loans are good examples of consensual liens. Consensual liens on real estate, like mortgages, are typically not capable of being avoided.

A nonconsensual lien is one that a creditor imposes on you and that essentially gives him or her the right to force you to sell the asset so he or she can be paid. Liens arising out of personal injury judgments against you, judicial liens obtained for credit card debt, or taxes are good examples of this type.

One of the main criteria for avoiding liens is that the asset to which the lien is attached MUST otherwise qualify as an allowable exemption under normal circumstances. Consensual liens against houses can be avoided if the house value is less than the value of the lien. This is becoming more and more common as housing prices continue to fall. Nonconsensual liens that can be avoided include judicial liens on exempt property and liens involving your homestead exemption.

### Avoiding liens in bankruptcy

One of the most powerful tools for achieving a truly fresh start in bankruptcy is the debtor's power to avoid certain liens on his assets. The power to avoid liens modifies the general bankruptcy rule that liens pass through bankruptcy unaffected by the discharge. The bankruptcy discharge only discharges the personal liability of the debtor, not the liability of property that is subject to a pre petition lien.

The liens that can be avoided are liens that attached to assets that the debtor would otherwise be entitled to claim as exempt and can only be avoided to the extent that the lien impairs (eats into) the value of the exemption. The avoidance process of these liens typically involves a motion and court hearing and is considered an adversarial hearing, meaning that the creditors must be notified and have the right to attend and contest the matter. This is further discussed in the Bankruptcy Process Section below.

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## TAXES AND BANKRUPTCY

### Non-Dischargeable Tax Debt

In a Chapter 7 bankruptcy, if the taxes you owe are less than three years old, they cannot be discharged. Similarly, if the taxes are older than three years but you did not file tax returns in those years they may not be discharged in Chapter 7.

In Chapter 13 cases, taxes that are otherwise non-dischargeable in Chapter 7 bankruptcy are considered a "priority debt" and must be paid in full. The good news is that you do not have to pay interest and penalties going forward on that priority debt, saving potentially thousands of dollars on charges that might otherwise be imposed by the IRS. Chapter 13 can decrease the amount you owe by erasing future IRS penalties and interest payments from the amount payable under the Chapter 13 payment plan.

In cases where the tax is non-dischargeable or where the Internal Revenue Service has placed a lien on your property, an aggressive attorney can usually negotiate a workout with the IRS, often for pennies on the dollar. So where the tax is non-dischargeable in bankruptcy other options exist to reduce the amount owed.

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## THE BANKRUPTCY PROCESS

The first step to financial freedom begins with a call to our office where you can schedule a *free initial consultation*. Schedule one [here](#).

During the initial consultation, we will discuss your current financial problems and the primary issues (credit cards, mortgages, creditor harassment, taxes, etc.) behind them. Typically, the initial consultation will take about one hour and you will be asked a series of questions that will help us get to know you and together we can determine if bankruptcy is right for you or identify a different debt relief solution to legally resolve your financial needs. Also during the initial consultation you will be provided a lot of information required by law regarding bankruptcy and other options available. This information will be given to you in a packet that you may take home to read. Also included in your packet will be a list of all documents and information that you will be required to provide us with in order to file your bankruptcy petition or take other legal action on your behalf. We will also need you to provide us with authorization to get a current copy of your credit report. The credit report will not be charged to you. Any questions and concerns that you may have during the meeting or later after reading the packet will be answered for you right away.

We charge a reasonable fixed legal fee to represent and prepare our consumer Chapter 7 and Chapter 13 client's bankruptcy petitions. Our base fee includes full representation through the first meeting of creditors. In most cases, the first meeting of creditors is the only court appearance a consumer will make before receiving the final discharge of their debts. We also charge the filing fee required by the court in addition to our legal fee. Most Chapter 7 consumer bankruptcies are relatively simple and legal fees are low compared to other legal work. As a guideline, a typical Chapter 7 case is approximately \$1,200 in legal fees (plus the \$299 filing fee) to file.

Attorney fees for Chapter 7 bankruptcy may be higher in business cases or in complicated personal bankruptcy cases. Business bankruptcy involves more complicated facts and individualized planning. Bankruptcy for individuals who own a business also costs more than the standard consumer case because the Trustee usually requires detailed information about the debtor's business.

Chapter 13 bankruptcy cases are always more complicated than Chapter 7 bankruptcy and, therefore, attorneys fees are higher. The court approves the amount of fees charged in a Chapter 13 case depending on the complexity of the case. The good news is that we only require a down payment of \$1,200 plus the filing fee to prepare and file a Chapter 13 case. The balance is paid through the Chapter 13 plan over a period of several months, without interest.

Under the new bankruptcy laws, a debtor who wishes to file bankruptcy must take a credit counseling class within 180 days preceding the date of filing the petition. This credit counseling class may be taken online and the debtor will receive a certificate usually by email. Some agencies provide this service over the phone but the certificate is delivered by mail. Another course required is known as the personal financial management course or debtor's education course. This course also can be taken online or on the phone. Each course typically costs less than \$50.00.

A list of approved Credit Counseling Agencies can be found [here](#).

A list of the approved Debtor Education Agencies can be downloaded [here](#).

After the initial consultation and determination of the best course of action for your situation, we only need to receive your documentation, certificate of credit counseling, legal and filing fees and then we can file your petition. The minute the petition is filed the automatic stay takes effect and no creditors may contact you, harass you, make collection attempts and so forth. You are under the protection of the federal court.

Within a day or so the Trustee will schedule the meeting of the creditors (generally within 20-30 days or 20-40 days on the outer islands). Your meeting will be scheduled at a courthouse on your island. **YOU AND YOUR ATTORNEY ARE REQUIRED TO ATTEND** the meeting of the creditors and you must bring with you the following:

- Your Social Security Card
- A Picture Id (State Identification, Driver's License, etc.)
- Your latest paycheck stub
- Any Tax Returns other than the latest required by either the Trustee or a Creditor

In the typical case, once the meeting of the creditors is over the trustee will issue a statement to the court that there is no presumption of abuse and within a couple of months you will receive your discharge. (Chapter 7 cases)

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## LIFE AFTER BANKRUPTCY

Certain debts survive a Chapter 7 bankruptcy because they are excepted from the discharge by law including priority taxes, child and spousal support, student loans, statutory liens and liens not avoided. Debts that were reaffirmed during bankruptcy also survive the bankruptcy.

While filing bankruptcy is not good for your credit, filing bankruptcy may also be the first step in rebuilding your credit. If your credit cards are "maxed out" and you are facing wage garnishments, repossessions, legal actions and harassing phone calls and letters from debt collection agencies, your credit score is probably already impaired. A bankruptcy filing will remain on your credit report for seven to ten years. However, often within a few months of discharge you can start rehabilitating your credit, provided you have sufficient regular income.

Within a few years, you may be able to get a mortgage on a home. Credit Cards after Bankruptcy Many people who have received a discharge of their debts in bankruptcy may be hesitant to use credit cards. However, prudent use of a credit card following a bankruptcy can help you to improve your credit score. You can do that by obtaining a credit card that is backed by cash deposits, or a secured credit card. After making regular payments on that credit card for a period of time, you may be able to change it to an unsecured or regular credit card. After obtaining a bankruptcy discharge, you will not be eligible for another Chapter 7 bankruptcy for eight years. For some creditors, this actually makes you a better risk, since bankruptcy is no longer an option.

Whether you have been discharged from Chapter 7 or Chapter 13 your financial life now has a fresh start. No more creditors with harassing phone calls, embarrassing calls at work, or threats of foreclosure. Your financial freedom has been won.