

Credit, Debt Collection, and Bankruptcy Handbook for North Carolina Consumers

**The 2011 Financial Health Clinics of North Carolina
A Public Service project of
the Bankruptcy Section of the North Carolina Bar Association**



**By: North Carolina Central University School of Law, Spring 2011 Bankruptcy class, in
conjunction with The Bankruptcy Section of the North Carolina Bar Association**

I. Introduction

This publication was written by law students at North Carolina Central University School of Law¹ and is designed to provide North Carolina consumers with information that will increase personal financial knowledge to assist with financial problems and prevent future financial problems. This handbook is not intended to provide legal advice. Instead, it provides general consumer education information that the Bankruptcy Section, as a group, wants to provide North Carolinians in conjunction with its Financial Health Clinics.

II. Frequently Asked Questions: Credit Reports, Credit Scores, and Credit Help

1. What is a credit report? How many credit reports do I have?

A credit report provides information about an individual's buying, borrowing, and repayment habits. There are three major credit reporting agencies: Experian, TransUnion, and Equifax, and each maintains a separate report. Credit reports include public information like child support arrearages, bankruptcy filings, and legal judgments. They also include nonpublic information reported by creditors. Credit reports provide the type of account (revolving, installment, joint/individual), balance owed, high balance, credit limit, and past due payments. When a consumer applies for credit, the potential lender usually requests a copy of the consumer's credit report. Credit reports list creditor inquiries for two years.

2. How do I get a free credit report?

Under the federal Fair Credit Reporting Act, you are entitled to a free copy of your credit report once every 12 months from each of the three nationwide consumer credit reporting agencies (Equifax, Experian, and TransUnion). The three credit reporting agencies have created a "central source" to provide free credit reports to consumers. This central source is the only way for consumers to obtain their credit reports free of charge and it is accessed via the website, www.annualcreditreport.com or via telephone at (877) 322-8228. Using the website gives you instant access to your credit report and telephone requests get your report to you within 15 days. You can also request a free credit report by mail as explained on the website.

You have the option to request all three reports at once or to order one report at a time. If you request the reports separately, you can monitor your credit more frequently throughout the year.

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3. A lot of companies advertise “free credit reports.” Are they all the same?

No. Websites other than www.annualcreditreport.com do not provide free reports. These other sites, many with the word "free" in their name, will usually attempt to sell you expensive and unnecessary monitoring services or other items. The only way to receive a free credit report is by using the central source as explained above. For more information on "imposter sites" see the consumer information on the website of the Federal Trade Commission, www.ftc.gov.

4. How do credit reporting agencies get information about me?

Credit Reporting Agencies, also called Consumer Reporting Agencies, collect information from parties that have previously extended credit to you. Examples of such parties include a local department store that issued you a credit card, a commercial bank that granted you a personal loan, or a governmental loan agency, like College Foundation, Inc., that gave you a loan for college.

5. Who has the right to see my credit report?

A copy of your credit report may be provided to anyone who is granting you credit or considering granting you credit. This includes potential lenders, potential landlords, potential service providers (utility and insurance companies, etc.) or your current creditors. In addition, if you have an account in collections, the collector may access your credit report. Other parties who are not considering granting you credit, such as potential employers, may not access your credit report without your prior written permission. However, potential employers or grantors of professional licenses may require you to give written permission to access your credit report as part of their job or license application process.

6. Some of the information in my credit report is wrong. What can I do about that?

Credit report errors are very common. To correct them, you should notify the specific reporting agency that provided the credit report about the error in writing, either by certified mail or online. Include copies (never the originals) of evidence (if any) supporting your side of the dispute. The Fair Credit Reporting Act then requires the credit reporting agency to reinvestigate the error without charge to you. If the reporting agency verifies the error, it will notify you within 30 days that your report will be corrected. If the reinvestigation does not resolve the dispute, you can file a personal statement explaining your dispute. This statement will appear on your credit report permanently, or until the dispute is resolved.

If you cannot resolve a dispute with the credit bureau, you may want to contact the creditor directly, in writing (by certified mail with return receipt requested) to try to resolve the matter. If resolved with the creditor, the creditor will advise the credit reporting agency to make the change to your report.

7. How long does information stay on my credit report?

Most types of negative information are removed from your credit report after seven years. Bankruptcies and tax liens can remain on your credit report for ten years. You should raise a dispute about any negative information that remains on your report for longer than it should. Good information, like your on-time payment of credit card bills or your mortgage, can stay on your credit history forever. Having more good information helps strengthen your credit history and increase your credit score.

8. What is a credit score? Can I get this for free?

A credit score is a number that is derived from information in your credit report. Lenders use a credit score number (usually ranging from 300 to 850, the higher the better) to assess the risk of loaning money to a particular borrower. Because your three credit reports may differ, your credit score may also differ depending on which report was used. There are several types of credit scores, but the most important of these is the “FICO” score developed by the Fair Isaac Corporation, a for-profit company.

In general, you do NOT have the right to obtain a free credit score, although the Fair Credit Reporting Act (FCRA) may entitle you to receive a copy of your “mortgage score” for free if you are denied a mortgage loan. Consumers have the right to obtain a credit score from the three nationwide credit reporting agencies (Experian, Equifax, and TransUnion) for a “reasonable fee” or you can purchase your scores directly from the Fair Isaac Corporation at www.myfico.com. Services other than your credit score that are marketed by FICO and the three credit bureaus are generally unnecessary and costly.

9. How do I find a reputable credit counseling service?

Most credit counseling services are non-profit organizations, but some have been investigated for abusing their non-profit status. The Federal Trade Commission (FTC) recommends that you choose an organization "that offers a range of services, including budget counseling, savings and debt management classes, and counselors who are trained and certified in consumer credit, money and debt management, and budgeting. Counselors should discuss your entire financial situation with you, and help you develop a personalized plan to solve your money problems now and avoid others in the future. An initial counseling session typically lasts an hour, with an offer of follow-up sessions. Avoid organizations that push a debt management plan as your only option before they spend a significant amount of time analyzing your financial situation." The FTC also recommends that you verify that any company you deal with is licensed in your state. For more information, see [For People on Debt Management Plans, a Must Do List](#) on www.ftc.gov.

The National Foundation for Credit Counseling (NFCC) is a well-regarded association of consumer credit counseling agencies that has an agency locator at www.nfcc.org, and over the telephone at 800-388-2227 (in English) or 800-682-9832 (en Espanol).

10. Some companies say they can “repair” my credit. Can they? What about those “debt consolidation plans” that I see advertised?

The only way that credit can be repaired legitimately is through long-term, conscious effort and dedication to paying bills on time. Companies that promise quick or easy “credit repairs” are scams. No one can permanently and legally remove accurate negative history from your credit report. The FTC website has detailed information about credit repair scams under Consumer Information at www.ftc.gov.

The website of the North Carolina Attorney General also offers several tips to avoid consumer scams. If you have been the victim of a credit repair scam, the Attorney General’s Office allows you to file an electronic complaint at <http://www.ncdoj.gov> or by phone at 1-877-5-NO-SCAM. To learn more about debt consolidation, credit repair and debt settlement,

read "Knee Deep in Debt" under the Debt and Loans section of Consumer Resources on <http://www.ftc.gov>

11. What about companies that promise to stop a foreclosure without bankruptcy? Can they do that?

No. Any company that promises or "guarantees" to stop a foreclosure is running some sort of scam. Avoid any company that requires you to pay substantial fees for their help, that promises or guarantees foreclosure relief, or that tells you not to pay your mortgage or not to talk to your mortgage company. These scams are difficult to undo once they happen.

When house payments become delinquent, the lender may call the loan in default, accelerate the debt, and begin foreclosure proceedings. Just saying that a loan is "in foreclosure" or receiving a letter about late payments does not mean a foreclosure action has been filed. When a creditor begins foreclosure, you will receive a legal notice about it in the mail giving you a date for a hearing with the clerk of court prior to a sale. At this point, a HUD-certified housing counselor, bankruptcy lawyer or (if financially qualified) Legal Aid representative should be consulted if you have not already done so.

In a chapter 13 bankruptcy, regular mortgage payments can be made and the arrearage (amount that is behind) on your mortgage can be paid over a period of up to five years through the chapter 13 payment plan. Loan modifications can sometimes be obtained, even while in chapter 13 bankruptcy.

III. Frequently Asked Questions: Debt Collection

1. Can my creditors put me in jail for not paying my debts? Does it matter what *kind* of debt?

No, in North Carolina, creditors (other than taxing authorities) cannot jail you for not paying your debts, they cannot even legally threaten you with jail. However, this does not prevent creditors from initiating a legitimate criminal proceeding if you have violated a law, such as writing a worthless check. Even then, you can avoid jail time by paying off a worthless check along with court fees.

2. My creditors keep calling. Can I make them stop?

Yes. Creditors are allowed to try to collect their debts so long as they are reasonable and respectful in their debt collection activities. Both North Carolina and federal law give you rights against harassment and unreasonable collection actions. When a debt collector calls you he must identify himself and the company that he represents and phone calls cannot be unreasonable in number or made outside of normal waking hours. Creditors may not tell other people that they are trying to collect from you, nor may they use profane or abusive language when talking to you. So long as the creditor has a telephone number to reach you outside of work, the creditor may not call your place of employment after you have told the creditor not to call your workplace. You can stop all collection telephone calls by writing a letter to the creditor telling them to stop. A sample letter and information is available on the FTC's web site.

A great source of information not just on debt collection, but on all of your debt relief options is the Federal Trade Commission's article "Knee Deep in Debt" which is available at www.ftc.gov under "Consumer Information" --> "Credit and Loans" --> "In Debt?"

3. Can a creditor garnish my wages for a debt that I owe?

Probably not. First of all, ordinary creditors cannot garnish wages without first getting a legal judgment on the debt. Secondly, North Carolina is currently one of only 4 states in which wage garnishment is not allowed for ordinary creditors, only for creditors owed debts for taxes, child support or alimony, some public hospitals, and certain student loans. Creditors who threaten to garnish the wages of a North Carolina resident are violating Fair Debt Collection law.

4. I have debts that family or friends co-signed with me. What does this mean for them?

A co-signer is a person who agrees to accept legal responsibility for repayment of a loan along with the original borrower. The co-signer will be held responsible for the full amount of the loan if you, the borrower, cannot make payments. A co-signer is legally obligated to make payments and abide by the contract if the original borrower fails to do so.

If you file a bankruptcy, the effect on your co-signer will differ with the type of bankruptcy that you plan to file. In a Chapter 7 bankruptcy, the co-signer will not be protected against creditor action but in chapter 13 bankruptcy, your co-signer will be protected against creditor action by an injunction called the co-debtor stay. Under both types of bankruptcy, the co-signer is obligated to pay any outstanding debt remaining at the conclusion of your bankruptcy case.

5. What happens if I can't make my motor vehicle payments?

If you realize you cannot make your car payments, you can contact your creditor to try to set up a payment plan, but your car lender has no obligation to give you a payment plan or other help. If you cannot make the payments as agreed or otherwise live up to your contract (this includes keeping insurance on the vehicle), your vehicle is collateral that the lender is entitled to repossess. There is no amount of time that a vehicle lender must wait. Legally, they are entitled to repossess if you are one day late. The creditor also has the right to sue you for the unpaid loan without repossessing the vehicle.

Creditors may repossess a vehicle without resort to court action only if the repossession does not "breach the peace." A breach of the peace might consist of breaking into a garage, threatening you or using violence during the repossession. If your lender threatens repossession, you are not required to voluntarily turn over the car. You may refuse to allow the repossession onto your property or into your home, and you may tell them to leave immediately. Do not use violence to resist repossession; instead call the police if necessary.

If your car is repossessed, you may be able to file a chapter 13 bankruptcy to recover your car and pay the creditor over time. If you don't file chapter 13, the creditor has the right to ask you to pay for the late payments along with the costs of repossession. If you are unable to pay these costs to retrieve your car, the creditor has the option of selling the vehicle and deducting the proceeds from your total loan balance. If you decide you want to avoid repossession by voluntarily returning the car, you will eliminate the repossession costs; however, you will still be responsible for the balance on your loan.

6. I couldn't make the payments on my car, so I gave it back. Do I still owe the lender any money?

Usually yes. After you surrender the vehicle to the creditor, it is sold at a private or public sale or auction, often for a fraction of what you owe. You must be notified of the date, time and location of the sale and the creditor must try to get a fair price. The amount owed to the creditor after deducting the sale price from the balance on your loan (plus storage and sale costs) is called a deficiency balance. You are responsible for any deficiency balance even after you have surrendered the car. In North Carolina, the creditor may file a law suit against you to get a legal judgment for the deficiency balance amount. The deficiency can be dealt with in a chapter 7 or chapter 13 proceeding.

7. My car got repossessed. Do I still owe the lender any money?

Probably. As is the case with surrendering a vehicle back to the lender, you will be responsible for any amount owed (including the costs of repossession, storage and sale) after the vehicle is sold. See the answer to item 6 in this section. You are entitled to reclaim any personal property that was in the vehicle when it was repossessed, but you must act quickly to do so.

8. I can't make my credit card payments. What's going to happen?

First, stop using the card immediately. Second, contact the card issuer to explain your situation and ask for a lower interest rate and a payment arrangement. If you are unable to make arrangements with the card issuer and you don't make payments, you will be in default of your credit card agreement. You will most likely begin to get calls demanding payment; See item number 2 in this section regarding collection calls and your rights. Additionally, your credit report and score will be damaged because your creditor will report the missed payments. Penalties like late fees and over limit fees will probably be charged to you and interest on the balance due will continue to add up. Eventually, depending on the amount of the debt, the creditor may sue you on the debt if unable to collect.

9. I'm making the minimum payments on my credit cards. How long will it take me to pay them off?

Although it seems like making minimum payments is easier, it actually costs you a great deal more in the long run. In fact, if you only make the minimum payment, it will take years to pay off the balance and will cost you a tremendous amount (often as much or more than the amount you owe) in interest by the time your balance is paid off. Under the CARD Act, card issuers are required to display on your statements how long it will take, and the total interest paid, if the cardholder pays only the minimum amount due. For example, if your balance on a card was \$1,000 and the APR was 18 percent and you paid only 1.5 percent per month, it would take you 153 months (almost 13 years) to pay off the card balance and you would pay a total of about \$1,115 in interest. Certain websites provide a calculator where you can determine the amount of time and total amount of interest paid if you pay a certain amount each month at a given interest rate. Two examples are www.creditcards.com and www.bankrate.com.

10. One of my creditors has sued me. What happens next?

After you receive the summons and complaint (usually in the mail), contact an attorney. If you cannot afford an attorney, contact your local legal aid office. If you are sued in North Carolina state court, you will have 30 days from the date you received the summons to file a written answer to the complaint. If you do not file a written answer (instructions will be on the summons), within the time allowed, the creditor suing you will be able to get a default judgment against you. A default judgment allows the creditor to automatically win the lawsuit because of your failure to answer. The default judgment will give the creditor what it asked for in the complaint.

An attorney may be able to assert defenses to the enforcement of the agreement in your pending suit. Even if you believe you have no defenses to the claims asserted in the complaint, you may be “judgment proof” if all of your property is exempt.

11. One of my creditors has a judgment against me. What happens next?

Under North Carolina law, before the creditor may take action to collect from your assets to satisfy the judgment, you must be given the opportunity to claim some of your property as "exempt" or protected from the creditor's reach. North Carolina exemption law allows the protection of usual property such as a vehicle, home, household goods, tools of the trade and the like, up to certain dollar amounts. Only the equity in the property (value of the property less the debt owed on it) needs to be protected under exemption law. If you receive a notice of your right to claim exempt property and a form in the mail, it is extremely important that you complete and return the form within the time allowed. Exemptions are waived if you fail to claim them. If all of your property is exempt, the creditor will not be able to execute on your property at this time, but judgments last for 10 years and can be renewed for up to two more 10 year periods, although this is rare.

If you have any ownership rights in land, a judgment automatically creates a lien on this land when it is docketed (filed) in the courthouse of the North Carolina county where the land is located. This lien against the land must be paid in full with interest before the land can be transferred, and in rare cases, could result in a foreclosure action on the land. Even if you do not have any ownership interest in land, a creditor with a legal judgment can get a writ of execution directing the local sheriff to seize any non-exempt personal property, sell it, and turn over the proceeds to the creditor. There can be no lien on personal property, however, unless and until the property is seized by the sheriff pursuant to a writ of execution.

12. What are exemptions? How do I claim them?

Exemptions protect certain property in the debtor's possession from being seized by creditors to satisfy the judgment owed by the debtor. In North Carolina, the specific types and amounts of exempt property are described in North Carolina General Statute 1C-1601. These same exemptions are used in most consumer bankruptcy cases in North Carolina. Exemptions prevent debtors from becoming destitute and allow them to keep sufficient property to stay productive members of society.

In North Carolina, after judgment has been entered in a state court, the clerk of court may not issue a writ of execution unless a notice from the court has been served upon the debtor notifying the debtor of the judgment and his or her right to claim exemptions. This notice will be accompanied by the form that will allow the judgment debtor to request for certain property to be exempt. To claim your exemptions, you must complete, notarize and mail this form back within twenty (20) days after the receipt of the notice. These exemptions may include, but are not limited to: real or personal property used as a residence, furniture and other household items, tools of the trade, a motor vehicle, social security benefits, unemployment benefits, workers' compensation benefits, and earnings for your personal services rendered within the last 60 days.

13. I know I am in debt trouble, is it okay if I just transfer some of my property to my relatives to protect it?

No. Usually this tactic will not work and will just cause you more problems in the long run. Transferring property out of your name with the "intent to hinder or delay your creditors" is fraudulent and such transfers can be undone later by the creditor or by a bankruptcy trustee. Your best option is to seek professional advice from a bankruptcy lawyer, legal aid attorney, or a reputable credit counselor.

IV. Frequently Asked Questions: Bankruptcy

1. How do I start a bankruptcy case?

First determine which bankruptcy chapter is best for you to file. After you decide which chapter to file, all necessary paperwork is gathered and processed to file a bankruptcy petition with the federal bankruptcy court. Your bankruptcy petition includes numerous schedules and statements, including a listing of all creditors (anyone to whom you owe a debt), a listing of all of your real and personal property, and a schedule claiming your exemptions. You must honestly disclose all requested information under penalty of perjury. Failure to do so can also cause the denial of a bankruptcy discharge or the dismissal of your case. After your petition is filed, a bankruptcy estate is created and then administered by the trustee.

2. Do I need a lawyer to file bankruptcy?

It is possible to file a bankruptcy case "pro se," meaning without the assistance of an attorney, but it is difficult to do so successfully. It is highly recommended that you hire a bankruptcy attorney to advise you on the best way to proceed with your case. Attorney fees in bankruptcy are regulated by the bankruptcy court and can be paid over time in a chapter 13 plan. An attorney can advise you on whether or not you need to file bankruptcy, and if you do, the best chapter to file. The process is quite technical, and if not done correctly, it can have extremely negative consequences.

3. How can I find a bankruptcy lawyer?

Sometimes trying to find a lawyer using the phone book or TV ads can be confusing or fail to give you enough information. Bankruptcy is a very specialized area of the law so you will want to find an attorney that does a lot of work in the bankruptcy area. One way to find a good bankruptcy lawyer is by asking family, friends or co-workers about their experiences or by asking an attorney you have used for other reasons (i.e. a will or a real estate) for a bankruptcy recommendation. The Consumer Resources section of this Handbook includes some excellent resources for finding bankruptcy attorneys in North Carolina.

4. I've heard about chapter 7 and chapter 13. What happens in each of them?

Most consumer debtors file bankruptcy under either chapter 7, a liquidation proceeding, or chapter 13, a reorganization proceeding. In chapter 7 bankruptcy, any non-exempt property is sold by the Chapter 7 trustee who then distributes the proceeds to your creditors according to bankruptcy law. Over 90% of chapter 7 cases are "no asset" cases in which all of the debtors' property is exempt, or protected, and therefore nothing is sold. You will receive a discharge at the conclusion of your case that will erase your liability on many of your debts. Some of your property may be subject to liens or mortgages that pledge the property as collateral to creditors. Although these liens and mortgages are usually unaffected by bankruptcy, a bankruptcy attorney

may be able to help you avoid some liens. Additionally, certain types of debt may not be discharged in chapter 7.

In a chapter 13 bankruptcy case you will be able to keep property even if it exceeds the amount you are allowed to claim as exempt, but you must file a plan of reorganization promising to make payments toward your debts. You may not be required to fully repay your debts. Your chapter 13 plan provides for payments over a period of time (up to five years) and shows how you will repay your debts based on your income. If your current monthly income is less than the median income in North Carolina for a family of similar size, then the repayment plan is usually for three years. If your current monthly income is greater than the state median, then the plan generally must be for five years. During this time, the law forbids creditors from starting or continuing collection efforts without permission from the bankruptcy court.

The choice between chapter 7 or chapter 13 depends on your financial circumstances, as well as on whether you meet the eligibility requirements for each chapter. You may not be eligible to file a chapter 7 case if your income is higher than the median income for a family of your size and your disposable income, excluding certain allowed expenses and required debt payments, would allow you to pay back a specified portion of your unsecured debt within a five-year period. On the other hand, you cannot file chapter 13 if your debts exceed certain limits (currently \$1,081,400 for secured debts and \$360,475 for unsecured debts). These amounts do change over time so you should consult an attorney to verify them.

If you have a substantial amount of non-exempt property that you wish to keep, chapter 13 may be the better choice. On the other hand, many people opt to file bankruptcy under chapter 7 because it is a quicker process that allows them to continue to pay their secured debts, such as a mortgage and car payment, while discharging most unsecured debts, such as credit cards and medical bills. The choice between chapter 7 and 13 is complicated and best resolved with the assistance of an attorney.

5. What will happen if I file chapter 7?

In a chapter 7 case, a debtor's non-exempt assets, if any, are liquidated under the supervision of a bankruptcy trustee and the proceeds are distributed to creditors. In most chapter 7 cases, all assets are exempt and nothing is liquidated. Attorney fees are generally paid up front from funds that might have gone to pay bills that are being discharged in the bankruptcy. At the conclusion of this process, the debtor receives a bankruptcy discharge that relieves the debtor of personal liability for most debts.

6. What will happen if I file chapter 13?

In a chapter 13 case, debtors propose a payment plan to use future income to pay creditors over a period of time up to five years. The chapter 13 plan usually pays a portion of the debtors' unsecured debts, as well as some secured debts. A chapter 13 trustee is appointed to administer the case. The debtor makes payments to the trustee, who then disburses the payments to creditors in the manner provided by the chapter 13 plan. Attorney fees are regulated by the bankruptcy court and are usually paid primarily through the chapter 13 payment plan.

The filing of the petition automatically stops ("stays") almost all collection activity and legal proceedings involving the debtor, the debtor's property, as well as any action directed against a non-filing co-debtor (this is the "co-debtor stay," which is only available in chapter 13). The automatic stay allows individuals to stop foreclosure proceedings, and debtors may be able to cure delinquent mortgage payments over time through the chapter 13 plan. Chapter 13 does

not change the terms of a mortgage; Debtors who wish to keep their houses must still make all mortgage payments that come due after the chapter 13 is filed. To be eligible to file under Chapter 13, individuals must have regular income and unsecured debts of less than \$360,475 and secured debts of less than \$1,081,400. Debtors receive a chapter 13 discharge after all payments under the chapter 13 plan are completed.

7. Can I get rid of all of my debts if I file bankruptcy? What types of debts are not discharged in bankruptcy?

You will be discharged from personal liability on most debts after filing bankruptcy. However, certain types of debts are not discharged, and you will still have to pay these even if you file bankruptcy. The most common debts that are NOT discharged are debts for alimony and child support. Other less common debts that are not discharged include certain taxes, most student loans, debts for willful and malicious injury by the debtor to someone else or to the property of someone else (civil judgments for assault, battery, trespass and other injuries to person or property), judgments for personal injury or wrongful death that occurred as a result of driving while intoxicated, debts incurred through fraud, misrepresentation, false financial statements, loading up on credit just before filing, and debts for certain criminal restitution orders.

With these exceptions, all of your unsecured debts will be discharged (forgiven) after bankruptcy and you will no longer have any legal responsibility to pay them. If you have secured debt (debt for which there is property as collateral), your personal liability to pay will be discharged, but the secured lender will still have unchanged rights against the collateral property. Thus, if you do not live up to the secured debt contract, the secured creditor can reclaim the collateral from you, but cannot pursue for the debt or a deficiency balance. Common examples of secured debt include mortgages and car loans. If you want to keep the property, you can reaffirm the debt. By reaffirming, you agree to keep your personal liability on the debt and pay all or part of the remaining debt in return for the creditor's promise to not repossess or take back the property. The amount you will have to pay will be an amount you and the creditor agree on.

8. If I owe debts that cannot be forgiven in bankruptcy, then how can bankruptcy help me?

In chapter 7, you will receive a discharge for your other debts which will hopefully make you better able to pay the debts that cannot be discharged. In chapter 13, you may be allowed to deal with nondischargeable debt (debts that cannot be forgiven in bankruptcy) in a helpful way, by spreading repayment out over a period of time while dealing with your other debts. Finally, a bankruptcy attorney may be able to help you plan ways to use both chapter 13 and chapter 7 to better deal with debts that are not discharged.

8. Do I have to give up all of my property if I file bankruptcy?

No. Once you file bankruptcy, an "estate" is formed that is composed of all property that you own when you file your bankruptcy petition. Any property that is acquired within 180 days after filing bankruptcy will also be included in the estate if the property is acquired through inheritance, property settlement of a divorce, or life insurance.

Property that is exempt does not become property of the estate but is instead retained by the bankruptcy debtor and need not be given up. A bankruptcy lawyer can tell you which exemption laws will apply to you, but if you have lived in North Carolina for the last two years,

North Carolina exemptions will probably apply to you. Only the "equity" or amount of value above what is owed on an item of property need be claimed as exempt. North Carolina exemptions under North Carolina General Statute § 1C-1601(a), include: (1) up to \$35,000 in real or personal property used as a residence (up to \$60,000 for certain people 65 or older); (2) up to \$3,500 in one motor vehicle; (3) up to \$5,000 plus \$1,000 per dependant (up to a maximum of \$4,000) in household goods such as furniture, wearing apparel, appliances, etc.; (4) up to \$2,000 in tools of the trade or work related items; (5) certain life insurance; (6) professionally prescribed health aids; (7) compensation for personal injury; (8) IRA plans; (9) up to \$25,000 in a college savings plan for a child of the debtor; (10) retirement benefits; (11) alimony, support, and child support payments; and (12) a "wildcard" exemption of up to \$5,000 in unused residence exemption that can be taken in any property. If a husband and wife file bankruptcy jointly, each spouse is entitled to claim a separate set of exemptions.

10. Do I have to include everyone that I owe money to in the bankruptcy case?

Yes, you are required, under penalty of perjury, to list everyone you owe, but you may have choices on how these debts are treated. Your list would include all debts owed or potentially owed to banks, credit card companies, friends, family, etc. Failure to list a debt may mean your debt to that creditor will not be discharged. Even when a debt is discharged, you may voluntarily repay it after the bankruptcy case is over, you simply cannot be forced to pay it.

11. If I file a bankruptcy can my employer fire me? Will I be denied student loans in the future?

Section 525 of the Bankruptcy Code provides protection against this type of discrimination. No private employer may terminate the employment of, or discriminate with respect to employment against an individual who has filed bankruptcy or is currently involved in a bankruptcy case. Likewise, no governmental unit that operates a student grant or loan program and any person engaged in a business that includes the making of loans guaranteed or insured under a student loan program may deny a grant, loan, loan guarantee, or loan insurance to a person who has filed for bankruptcy or is currently involved in a bankruptcy case. Thus, as long as you are applying for student aid through a federal government insured program and you otherwise qualify for aid, you cannot be denied a grant or loan just because you have filed or are currently involved in a bankruptcy case.

12. How will filing bankruptcy affect my credit?

Bankruptcy stays on your credit report for up to 10 years from the date the bankruptcy is discharged. After filing bankruptcy, your credit score will be poor. This may impact the terms of credit more than its availability. For example, you may be able to obtain a loan, but the interest rate will be higher than that offered to borrowers with better credit. If your credit score was poor before you filed bankruptcy, the impact of the bankruptcy filing may be small. With good financial management, it is possible to reestablish credit and improve your credit score within a few years.

13. I've filed bankruptcy before. Can I file again?

If you received a bankruptcy discharge, there are limits. After receiving a discharge in a chapter 7 case, you must wait eight (8) years before filing another chapter 7 bankruptcy. After receiving a discharge in a chapter 13 case, you must wait two (2) years before filing another

chapter 13 bankruptcy. If you have previously received a discharge in a case filed under chapter 7, 11, or 12, you must wait four (4) years before filing another chapter 13 case. If your bankruptcy was dismissed without a discharge, you must usually wait 180 days to re-file.

V. Glossary of Terms

Automatic Stay

The automatic stay is an injunction that takes effect immediately when a bankruptcy petition is filed. The automatic stay stops most creditors' collection activities, including telephone calls, letters, legal proceedings, and repossessions. Some actions are not stopped by the automatic stay, including criminal proceedings and actions to establish paternity, alimony or child support, child custody, and divorce. If a secured creditor is not adequately protected during the bankruptcy (meaning payments are missed or insurance is not maintained) the creditor may ask the bankruptcy court for relief from the automatic stay so that they may collect on their assets.

Bankruptcy

Bankruptcy is a legal proceeding governed by Title 11 of the United States Code, a federal law. Bankruptcy proceedings usually begin when the debtor files a voluntary petition for relief in the United States Bankruptcy Court, a federal court. Consumer bankruptcy debtors typically file bankruptcy under either chapter 7 or chapter 13 of the Bankruptcy Code.

Bankruptcy Discharge

A bankruptcy discharge is a release of the debtor from personal liability to pay back debts. This means that the debtor is no longer responsible for paying those debts. After the discharge is entered, creditors cannot make any attempt to collect a discharged debt.

Bankruptcy Trustee

An individual appointed in chapter 7 and 13 cases who is responsible for managing and administering the bankruptcy estate, and who represents the interests of the estate and the creditors.

CARD Act

The Credit Card Accountability, Responsibility, and Disclosure (CARD) Act of 2009 was signed into law by President Obama on May 22, 2009 and was designed to establish fair and transparent practices relating to the extension of credit under open end consumer credit plans. Among other things, the CARD Act bans retroactive interest rate increases, ends late fee traps, enforces fair interest calculation, requires opt-in to over limit fees, limits fees on gift and stored value cards, gives information about the financial consequences of consumer credit decisions, protects college students from certain credit card practices, holds regulators accountable to enforce the law, and increases the penalties on card issuers who violate the new restrictions.

Chapter 7

In a chapter 7 bankruptcy case, a bankruptcy trustee sells any of the debtor's property that is not exempt and administers the proceeds for the benefit of creditors. In most chapter 7 cases,

there is no property that is non-exempt so nothing is sold. When the trustee either administers the non-exempt property or declares that there is no property that is not exempt, the debtor receives a discharge of remaining debt and gets a fresh financial start.

Chapter 13

In a chapter 13 case, the debtor proposes a plan of reorganization that uses future income to make some payments to creditors over period of up to five years. The debtor makes payments to a chapter 13 trustee, who then distributes the payments to creditors in the manner provided by the debtor's plan. Debtors can use chapter 13 to keep non-exempt property that would be surrendered in chapter 7. To be eligible to file under Chapter 13, individuals must have regular income and unsecured debts of less than \$360,475 and secured debts of less than \$1,081,400. Chapter 13 debtors receive a discharge after all payments under their chapter 13 plans are made.

Credit Report

A credit report provides information about an individual's buying, borrowing, and repayment habits. There are three major credit reporting agencies: Experian, TransUnion, and Equifax, and each maintains a separate report.

Credit Reporting Agency

A credit reporting agency is a company that collects information about an individual from various sources and provides that information in the form of a credit report. Credit reporting agencies are governed by the Fair Credit Reporting Act. The three major credit reporting agencies are Experian, TransUnion, and Equifax. These three agencies are for profit businesses and have no governmental affiliation.

In addition to the three agencies listed above, there are other credit reporting agencies that report specialized information such as insurance claims and bounced checks. Insurance companies and financial institutions use these specialized consumer reports to decide whether to grant you insurance or a bank account, and on what terms. The Consumer Resource section of this booklet lists these agencies.

Credit Score

A credit score is a three digit number used by lenders to determine risk in deciding whether or not to offer credit and if so, under what terms. In general, the higher the score the better. Credit scores are based upon information in a consumer's credit report. Credit scores are not provided free, but can be purchased for less than \$20.

Deficiency Claim/Deficiency Balance

A deficiency claim is a creditor's right to payment for the shortage from the sale of collateral that has been repossessed. A deficiency claim is created when the creditor sells repossessed collateral (for example, a repossessed car) for less than the amount owed under the loan plus any costs of repossession, sale, storage, etc. The debtor is responsible for this amount and the creditor can enforce this claim in court. The deficiency balance is the amount owed under a deficiency claim.

Execution

Execution is the judicial process used to force a debtor to relinquish property for the purpose of satisfying a debt owed under a legal judgment. Executions are carried out by the Sheriff after a judgment creditor has provided the debtor with the right to claim his or her exemptions.

Exemptions, Exempt property

State exemption law allows individuals to keep certain property away from their creditors and for their own use by claiming the property as exempt, or protected from their creditors. Exempt property may not be executed against or used to satisfy a judgment. Individuals who file bankruptcy are also allowed to claim certain property as exempt and keep it free from the claims of creditors. In both state court and bankruptcy court, exemptions can be inadvertently forfeited (waived) if the individual does not complete an exemption claim form and file this with the court.

The property that debtors are allowed to keep is known as exempt property. In North Carolina, the specific types and amounts of exempt property are described in North Carolina General Statute §1C-1601. This same statute controls the exemptions that can be claimed in most bankruptcy cases filed in North Carolina, although this may differ depending on the specific facts of a debtor's property and prior residence. If you are considering filing bankruptcy, you should consult a bankruptcy lawyer to determine exactly which exemptions will be available to you.

Fair Debt Collection Practices Act (FDCPA)

The FDCPA is a federal law that was passed to protect consumers against abusive debt collection practices. The FDCPA lists what a creditor may do, what it may not do, and what it must do as it attempts to collect a debt. The FDCPA also provides an avenue for debtors to dispute and obtain debt information, helping to ensure the information's accuracy. Finally the FDCPA sets out damages that a debtor may seek for violations of the Act by a creditor. For more information see the consumer information under Debts at www.ftc.gov North Carolina has its own Fair Debt Collection laws that expand and add to the federal law.

Fair Credit Reporting Act (FCRA)

The FCRA is a federal law intended to insure the confidentiality, accuracy and privacy of the contents of credit reports and to regulate the use of the information they contain. The banking system is dependent upon fair and accurate credit reporting, and Congress created the FCRA as a policing mechanism for Credit Reporting Agencies. The FCRA gives consumers important rights to correct errors in their credit reports.

Garnishment

Garnishment is a collection remedy directed at a third party who holds money or property belonging to the debtor. A garnishment order directs the third party to pay the debtor's money or property to the creditor. Wage garnishment occurs when a garnishment order is directed to the debtor's employer and directs the employer to pay a portion of the debtor's wages to a creditor. In North Carolina, wage garnishment is limited to child support and certain public debts like taxes. Wage garnishment may not be used by ordinary creditors in North Carolina.

Judgment

A judgment is a final adjudication of a legal claim by a court. The term also refers to the piece of paper, signed by the Judge that represents the final decision on a lawsuit. When a creditor holding a judgment records (files) it in the county in which the judgment debtor owns real property (land), the judgment automatically creates a lien on that property.

Judicial lien or Judgment lien

A judicial lien is a lien against the debtor's property that is created by any court-related process. A judgment lien is one type of judicial lien. In North Carolina, a judgment lien is created when a judgment is docketed (filed) in a county where the debtor owns real property. The lien will attach to all real property located in the county, including property acquired after the judgment is docketed. In North Carolina, judgment liens against personal property are not created until the property is seized by the sheriff pursuant to a writ of execution.

Lien

A lien is an interest against property. There are liens that the property owner consents to (consensual liens) and liens to which the property owner does not consent (involuntary or non-consensual liens). Consensual liens include a mortgage lender's right against the home it finances and a vehicle lender's right against the vehicle it finances. Liens can also be involuntary, like judgment liens or statutory liens which are created by law. Examples of statutory liens are mechanics' or materialmen's liens for work or services provided.

Purchase Money Security Interest

A purchase money security interest is created when a buyer uses a lender's money to make a purchase. For example, a purchase money security interest is created when a debtor borrows money to buy a car and gives the lender a security interest in the purchase which includes lien rights against the vehicle.

Repossession

Repossession is a creditor's seizure of secured property (collateral) when there is a default on the creditor's secured loan. Secured loans typically allow the lender to repossess collateral without seeking permission from a court.

Secured debt

Secured debt is backed by some type of collateral such as tangible or intangible property belonging to the borrower. If the debtor defaults on the loan, the secured creditor has the right to take (repossess) the property in full or partial satisfaction of the debt.

Security interest

A security interest is an interest in personal property that is created by law or an agreement and that secures the borrower's obligation for repayment.

Unsecured debt

Unsecured debt is debt that is not guaranteed or "backed" by any collateral.

IV. Consumer Resources

Credit Reporting Agencies

AnnualCreditReport.com: The only source for FREE credit reports. Website: www.annualcreditreport.com Phone: 1-877-322-8228

Equifax Credit Reporting Bureau. Website: www.equifax.com

Experian Credit Reporting Bureau. Website: www.experian.com

TransUnion Credit Reporting Bureau. Website: www.transunion.com

Fair Isaac and Company; Credit Scoring organization. Website: www.myfico.com

ChexSystems; Reports consumer banking activities to banks. Website: www.consumerdebit.com

Lexis Nexis Personal Reports; Reports on insurance claims (CLUE report), employment history and residential history. Website: <https://personalreports.lexisnexis.com>

Education and Student Loans

NC Division of Child Development: This site helps with choosing childcare, financial assistance, and other parent resources (by county). Website: www.ncchildcare.dhhs.state.nc.us

National Consumer Law Center's Student Loan Borrower Assistance Project: A resource for borrowers, or anyone representing a student loan borrowers. Website: www.studentloanborrowerassistance.org

Finding NC Non-Profits and Community Resources

NC Care LINK: This website provides up-to-date information about programs and services across North Carolina for families, seniors, youths and everyone in-between. Website: www.nccarelink.gov

NorthCarolina.com: All the resources you need to live in, move to or visit any city in the state. Website: www.northcarolina.com

Food Programs

Meals on Wheels in NC : Delivers meals to seniors & others in need. Website: www.mowaa.org
Email: mowaa@mowaa.org Phone: 1-703-548-5558

Angel Food Ministries: Faith-based, non-profit provides low cost food. Website: www.angelfoodministries.com Phone: 1-877-366-3646

NC Homeless Shelters, Soup Kitchens & Pantries: Website: www.homelessshelterdirectory.org

Housing

HUD: Housing information & free HUD approved agencies in North Carolina. Website: www.hud.gov

NC Housing Coalition: Housing education and advocacy efforts. Website: www.nchousing.org

NC Housing Finance Agency: Creates affordable housing opportunities for North Carolinians whose needs are not met by the market. The Agency provides financing through several programs. Website: www.nchfa.com

The State Home Foreclosure Prevention Project (SHFPP): Led by the North Carolina Office of the Commissioner of Banks. SHFPP coordinates HUD-approved housing counseling, state and federal, and legal assistance organizations. Website: www.ncforeclosurehelp.org Phone: 1-866-234-4857

National Resources Directory: Homeless Assistance Resources in NC. Website: www.nationalresourcedirectory.gov/homeless_assistance/states_and_territories/north_carolina

The N.C. Foreclosure Prevention Fund: Fund for interest-free loans to help qualified NC homeowners who are struggling to make their mortgage payments due to job loss or temporary financial hardship. Website: www.ncforeclosureprevention.gov

Foreclosure Help and Hope: Information on avoiding foreclosure. Website: www.foreclosurehelpandhope.org Phone: 1-888-995-HOPE (4673)

NeighborWorks America: NeighborWorks America is a non-profit created by Congress to support local organizations in revitalizing communities. Website: www.nw.org

The National Low Income Housing Coalition: Dedicated to achieving just public policy that assures people with the lowest incomes in the U.S. have affordable and decent homes. Website: <http://nlihc.org>

Making Home Affordable: Website for the President's mortgage modification program. Information and users can determine if they are eligible for programs. Website: www.makinghomeaffordable.gov

National Center for Home Equity Conversion: Pros and cons of reverse mortgages, they allow older homeowners to receive additional income from their home's value. Website: www.reverse.org

Identity Theft and Consumer Protection

Privacy Rights Clearinghouse (PRC): A nonprofit consumer organization that educates regarding privacy issues including identity theft and offers sample dispute letters. Website: www.privacyrights.org

Consumer League's telemarketing and Internet fraud site: A non-profit informational site. Website: www.fraud.org

National Consumers League: Consumer advocacy group provides information about fraud and personal finances. Website: www.nclnet.org

Consumer Sentinel Network: International law enforcement uses program to fight fraud. Website: www.ftc.gov/sentinel

Federal Trade Commission: Government site on consumer protection, ID theft, fraud and more. Website: www.ftc.gov

The National Consumer Law Center: A nonprofit advocacy organization. Website: www.nclc.org

Department of Justice, NC State Attorney General's Office: Roy Cooper serves as NC's Attorney General to fight crime and protect consumers. Website: www.ncdoj.gov Phone: (919) 716-6400

Jobs

Jobs NOW: Governor Perdue's Jobs NOW initiative will bring together all the resources available to North Carolinians to create new jobs and to put our people back to work. Website: www.jobsnow.nc.gov

The Employment Security Commission of North Carolina: The Employment Security Commission provides employment services, unemployment insurance, and labor market information to workers, employers, and the public. Website: www.ncesc1.com

USA JOBS: Government site for Federal jobs and employment information. Website: www.usajobs.gov

North Carolina Job Network: Job search. Website: www.northcarolinajobnetwork.com

NC Careers: Job search. Website: www.nccareers.com

North Carolina Jobs: Job search. Website: www.northcarolinajobs.org

Legal Assistance

North Carolina State Bar Board-Certified Bankruptcy Specialists: A directory of NC attorneys who have been designated "specialists" in their area of the law as a result of education, peer review, and testing. Consumer bankruptcy is one area of specialization. Website: NCLawspecialists.gov

National Association for Consumer Bankruptcy Attorneys: Allows you to find consumer bankruptcy

attorneys in your area who are members of this educational organization. Website: www.nacba.org

ABI's Bankruptcy Pro Bono Resource Locator: The American Bankruptcy Institute's national database of legal aid organizations for low income. Website: probono.abiworld.org

Legal Aid of North Carolina: Find free non-criminal legal help in your area for qualifying low-income individuals. Website: www.Legalaidnc.org

LawHelp.org/NC : Helps low-and moderate-income North Carolinians find legal help and information to solve civil legal problems. Website: www.lawhelp.org/NC

National Senior Citizen Law Center: This advocacy group represents the poor, elderly and disabled. Legal resources for seniors, a pension help tool & articles regarding nursing home and assisted living issues. Website: www.nsclc.org

National Association for Consumer Attorneys: Allows you to find a non-bankruptcy consumer attorney in your area to handle debt collection violations, landlord disputes and a variety of other consumer-oriented issues. Website: www.naca.net

American Bar Association Guide to Legal help: This site gives you links to learn about your state's laws and courts, to find a lawyer, to check on lawyer licensing and information on how to deal with any disputes with a lawyer. Website: apps.americanbar.org/legalservices/findlegalhelp/home.cfm

Medical, Disabled, and Elderly

Medicare : Website: www.medicare.gov

Insure Kids now NC: President Obama has increased the children's health insurance program to include many of America's working class This site will tell you whether your child or children are eligible for medical and dental coverage. Website: www.insurekidsnow.gov Phone: 1-877-KIDS-NOW

NC Prescription Drugs Assistance: Income based programs for elderly NC Residence. Website: www.ncrx.gov

Family Caregivers Resources Center: Website: www.fullcirclegcare.org/states/nc.html

NC Health Info: An online guide to sites of medical information and local health services throughout North Carolina. Website: www.nchealthinfo.org

2-1-1 NC: An easy to remember telephone number that, where available, connects people with community services and volunteer opportunities. Phone: 211

AARP: This organization offers consumer protection information, news, advocacy and discounts for people 50 and older. A \$12.50 annual membership fee is charged per person or couple. Website: www.aarp.org Toll-Free Nationwide: 1-888-OUR-AARP (888-687-2277) Toll-Free TTY: 1-877-434-7598 Toll-Free Spanish: 1-877-MAS-DE50 (877-627-3350)

North Carolina Division of Aging and Adult Services: The Division of Aging and Adult Services supports older and disabled adults and their families through a community-based system of opportunities, services, benefits, and protections. Website: www.ncdhhs.gov/aging

Disability.Gov: The federal government's website to connect those with disabilities to information and opportunities on a wide variety of topics. Website: www.disability.gov

Disabled American Veterans: Search for Local Chapters in NC. Website: www.davmembers.org

U.S. Department of Veteran's Affairs: National Service Offices of the VA function as attorneys-in-fact, assisting veterans and their families in filing claims for VA disability compensation and pension; vocational rehabilitation and employment; education; home loan guaranty; life insurance; death benefits; health care and more. Website: www.va.gov Phone: 1-800-827-1000

North Carolina Department of Administration Division of Veterans Affairs: NCDVA assist veterans and

their families in the claims process, privileges, rights and benefits as they may be entitled. Provides skilled level nursing care, burial plots for qualified veterans. Scholarship program for children of N.C. disabled, combat or deceased war veterans. Website: www.doa.state.nc.us/vets

The Seniors' Health Insurance Information Program (SHIIP): Information for Medicare beneficiaries and caregivers about Medicare plans, programs and insurance. Website: www.ncdoi.com/shiip Phone: 1-800-443-9354 or (919) 807-6900

Social Security Administration: The government's site for social security benefits. Website: www.ssa.gov Phone: 1-800-772-1213

Support Groups

Debtors Anonymous: Program for overspenders. Website: www.debtorsanonymous.org

Gamblers Anonymous: Gamblers' support group. Website: www.gamblersanonymous.org

Depression and Bipolar Support Alliance: Support groups and help. Website: www.dbsalliance.org

Alcoholics Anonymous: A.A. support groups. Website: www.alcoholics-anonymous.org

Al-Anon and Al-Anon Teen: Support for the friends and family of alcoholics. Website: www.alanon.com

Narcotics Anonymous: N.A. is a 12 step program for drug addiction. Website: www.na.org

Suicide Hotlines: Phone: 1-800-784-2433, 1-800-273-8255 & 1-800-799-4889 (deaf hotline)

Telemarketing

Direct Marketing Association: Provides opt out options for mail solicitations and telemarketing calls.

Website: www.dmchoice.org Phone: 1-888-5-OPT OUT

Direct Mail Opt-Out: Direct Marketing Assoc. P.O. Box 9008, Farmingdale, NY 11735-9008

Telephone Solicitations Opt-Out: Direct Marketing Assoc., P.O. Box 9014, Farmingdale, NY 11735-9014

National Do Not Call Registry: Opt off telemarketer call lists. Website: www.donotcall.gov

OptOutPrescreen.com: This website is authorized by the 3 Credit Reporting Agencies. The Fair Credit Reporting Act provides you the right to "Opt-Out", which prevents CRAs from providing your credit file information for credit or insurance offers. Website: www.optoutprescreen.com Phone: 1-888-567-8688

Transportation

Share The Ride NC: Register to find carpools, vanpools, and park-and-ride lots. Website: sharetheridenc.org

Department of Energy and Environmental Protection Agency: This site gives links to find the cheapest fuel in your area. Website: www.fueleconomy.gov

Utilities

NC Low-income Energy Programs: Website: www.liheap.ncat.org/profiles/NC.htm Phone: 1-800-662-7030

Safelink Wireless Free cell phone: A government program that provides a free cell phone and airtime each month to income-eligible customers. Website: www.safelinkwireless.com Phone: 1-800-977-3768

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