CONSUMER CONCERNS
Information for Advocates Representing Older Adults
National Consumer Law Center®

Advice for Older Consumers About Bankruptcy

An increasing number of older consumers are experiencing problems with debt, often by using credit cards to pay for groceries, prescription drugs, major home repairs, loans to children or grandchildren, and other necessities. The average credit card debt of Americans over 65 increased by 89 percent between 1992 and 2001, from $2,143 to $4,041. Elders between 65 and 69 years old saw the most staggering rise in credit card debt–217 percent– to an average of $5,844.[1] One study of individuals who file chapter 7 bankruptcy found that seniors (65 or older) on average have nearly four times as much credit card debt as filers under the age of 25.[2]

Older consumers who are unable to pay for the costs of health care and prescription drugs are also more likely to have debt problems. A joint study by researchers at Harvard Law School and Harvard Medical School found that illness and medical bills contributed to at least 46.2%, and as many as 54.5% of all bankruptcy filings.[3]

This publication is designed to help elder advocates to educate their clients about bankruptcy. A more detailed discussion about bankruptcy can be found in chapter 19 of National Consumer Law Center, Guide to Surviving Debt (2010 ed).

Evaluating Alternatives to Bankruptcy

Most consumers file bankruptcy only as a last resort after carefully considering other alternatives. Those who are struggling to keep up with unmanageable debt should weigh these alternatives in relation to the hardships that may be avoided by obtaining bankruptcy relief. In some cases, bankruptcy may be the only way to eliminate debt and preserve income and property that an older consumer may need to maintain a healthy and safe lifestyle. It may be that bankruptcy is the best or only realistic alternative.

1. Tamara Draut and Heather C. McGhee, Demos, *Retiring in the Red: The Growth of Debt Among Older Americans* (February 2004). This report is available on the Demos web site, http://www.demos-usa.org
2. Ed Flynn and Gordon Bermant, Credit Card Debt in Chapter 7 Cases, American Bankruptcy Institute Journal, Dec./Jan. 2004.
3. David U. Himmelstein, Elizabeth Warren, Deborah Thorne, and Steffie Woolhandler, *Illness And Injury As Contributors To Bankruptcy*, Health Affairs Journal, Feb. 2005.

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The law requires that before filing bankruptcy, a consumer must first meet with an approved credit counseling agency. Because most consumers who are considering bankruptcy are already too deep in financial trouble, the approved bankruptcy counselors are often unable to recommend any viable options. However, some credit counselors, including some of the approved bankruptcy agencies, may offer debt management plans (also called DMPs) as a way of avoiding bankruptcy whether it makes sense or not. This is a plan for a consumer to repay debts by sending to the counseling agency a monthly payment that is then distributed to creditors. Debt management plans can be helpful for some consumers, but for others they are a terrible idea.[4]

It is generally not a good idea for consumers to wait until the last minute to think about bankruptcy because some important bankruptcy rights may be lost by delay. If the consumer needs to file bankruptcy quickly to stop a foreclosure sale or repossession, she should get the required counseling done as soon as possible, preferably as soon as she considers bankruptcy as an option. The counseling can be taken at any time, though it must be received from an approved agency within 180 days before the bankruptcy case is filed.[5]

It is usually a good idea for a consumer to meet with an attorney before receiving the required credit counseling. Unlike a credit counselor, who can not give legal advice, an attorney can provide counseling on whether bankruptcy is the best option. If bankruptcy is not the right answer, a good attorney will offer a range of other suggestions.

Evaluating Alternatives to Bankruptcy

Older consumers with debt problems often want to file bankruptcy primarily to stop collection harassment. While this can be a good reason for seeking bankruptcy protection, there may be other ways to stop the harassment or to ease the senior's fears about the col-lection process. For some, simply becoming aware that they are "judgment proof" may reduce their stress and desire to file bankruptcy. A consumer is "judgment proof" if all of her assets and income are protected by law from a creditor trying to collect on a debt or enforce a court judgment. Other seniors get comfort in knowing that they can take steps to stop the collection calls. The simplest way to stop collection harassment is to write the collector a cease letter. Federal law requires collection agencies to stop their col-lection efforts after they receive a written request to stop.[6]

Concerns about Reputation and Moral Obligation

Sometimes, elders may refuse to consider bankruptcy out of concern about their reputation in the community or based on their sense of moral obligation. Generally, providing information to consumers about the process helps them to resolve these concerns and to weigh any possible negative feelings against bankruptcy's potential advantages. Many are

4. For more information on counseling agencies and DMPs, see NCLC's Consumer Concerns for Older Americans, *Credit Card Debt and Credit Counseling.*

5. A list of approved credit counseling agencies can be found on the website for the United States Trustee Program office at www.usdoj.gov/ust.

6.For more information on responding to debt collectors and the federal law that protects consumers from debt collection harassment, see chapter 8 of NCLC's *Guide to Surviving Debt* (2010 ed). See also NCLC's Consumer Concerns, "Dealing with Debt Collection Harassment."

relieved to learn that most people do not find that their reputations suffer any noticeable harm from filing bankruptcy. Bankruptcies are not generally announced publicly, although they are a matter of public record. It is unlikely that friends and neighbors will learn that a consumer filed bankruptcy unless the consumer chooses to tell them.

While individuals vary in their sense of moral obligation, most people want to pay their debts and make every effort to do so if payment is possible. If bankruptcy is the right solution, the elder consumer will need to balance feelings of obligation with other considerations. It may help some to know that a provision concerning bankruptcy is contained in the United States Constitution and that the Bible mentions the need for a process which is like bankruptcy. Others may find comfort in knowing that they are not alone in needing to resort to bankruptcy and many big corporations like Kmart, TWA, A.H. Robbins, Johns Manville, Macy's and Penn Central, and famous people like Kim Basinger, Tammy Wynette and Mickey Rooney, have all chosen to file bankruptcy.

Do the Changes to the Bankruptcy Law Prevent Many Older Consumers From Filing Bankruptcy?

There were many changes made to bankruptcy by a law passed by Congress in 2005. Some news reports initially suggested that these changes would prevent many individuals from filing bankruptcy. It is true that the changes have made the process more complicated. However, the basic right to file bankruptcy still exists and most of the benefits of bankruptcy remain available for most individuals.

Much of the initial concern about the law focused on a “means test” for determining whether someone can file a chapter 7 bankruptcy. This change in the law has not prevented most consumers from filing under chapter 7. However, if the consumer’s income is above the state median family income, (the national median family income for a family of 4 in 2011 ranged from a low of just over $53,000 in New Mexico to almost $103,500 in Maryland), a chapter 13 case may need to be filed. Higher-income seniors must fill out a full set of “means test” forms requiring detailed information about their income and expenses. If the forms show, based on standards in the law, that they have a certain amount left over that could be paid to unsecured creditors, the bankruptcy court may decide that they can not file a chapter 7 case, unless there are special extenuating circumstances.

Advising Older Consumers About Whether Bankruptcy Is The Right Choice

Is Bankruptcy the Right Choice?

Bankruptcy can be the right choice if the consumer has no better way to deal with debts. It may make it possible for the consumer to:

- Eliminate the legal obligation to pay most or all debts. This benefit comes from the bankruptcy “discharge” that a consumer gets for successfully completing a bankruptcy case.

- Stop almost all creditors from taking any steps against the consumer except through the bankruptcy process. This is provided by the “automatic stay” that goes into effect as soon as the consumer files the necessary paperwork at the beginning of a bankruptcy case. Foreclosures, tax sales, repossessions, utility shut-offs, lawsuits, and other creditor actions will be immediately (but perhaps only temporarily) stopped.

- Catch up on missed payments on home mortgages, property taxes, auto loans and other debts secured by property the consumer wishes to keep. Bankruptcy does not, however, automatically eliminate mortgages and other liens on the consumer’s property without payment.

- Stop debt collection harassment, wage garnishment, and similar creditor actions to collect a debt.

- Lower the monthly payments on some debts, including some secured debts such as car loans.

- Prevent termination of utility service or restore service if it has already been terminated.

- Allow consumers to challenge the claims of creditors who have committed fraud or who are otherwise trying to collect more than the consumer really owes.

Bankruptcy can not, however, cure every financial problem. Nor is it the right step for every individual. In bankruptcy, it is usually not possible to:

- Eliminate certain rights of “secured” creditors. A creditor is “secured” if it has taken a mortgage or other lien on property as collateral for a loan. Common examples are car loans and home mortgages. Consumers can force secured creditors to take payments over time in the bankruptcy process and bankruptcy can eliminate an obligation to pay any additional money on the debt if the consumer decides to give back the property. But a consumer generally can not keep secured property unless she continues to pay the debt.

- Discharge types of debts singled out by the bankruptcy law for special treatment, such as child support, alimony, most student loans, court restitution orders, criminal fines, and most taxes.

- Protect cosigners on debts. When a relative or friend has co-signed a loan, and the consumer discharges the loan in bankruptcy, the cosigner may still have to repay all or part of the loan.

- Discharge debts that arise after bankruptcy has been filed. Because of this, consumers may wish to delay a bankruptcy filing until they are reasonably sure that they will not incur new major debts.

Additional Resources

National Consumer Law Center, *Consumer Bankruptcy Law and Practice* (2009 ed.)

National Consumer Law Center, *Guide to Surviving Debt* (2010 ed).

NCLC's Consumer Concerns for Older Americans, *Credit Card Debt and Credit Counseling*.

NCLC's Consumer Concerns for Older Americans, *Dealing with Debt Collection Harassment*.

NCLC's Consumer Information on Bankruptcy, *Your Legal Rights During and After Bankruptcy*.

NCLC's Consumer Information on Bankruptcy, *Using Credit Wisely After Bankruptcy*.

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