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K.3 Your Legal Rights During and After Bankruptcy: Making the Most of Your Bankruptcy Discharge

About Bankruptcy

Bankruptcy is a choice that may help if you are facing serious financial problems. You may be able to cancel your debts, stop collection calls, and get a fresh financial start. Bankruptcy can help with some financial problems, but does not guarantee you will avoid financial problems in the future. If you choose bankruptcy, you should take advantage of the fresh start it offers and then make careful decisions about future borrowing and credit, so you won't ever need to file bankruptcy again!

How Long Will Bankruptcy Stay on My Credit Report?

The results of your bankruptcy case will be part of your credit record for **ten (10) years**. The ten years are counted from the date you filed your bankruptcy.

This does not mean you can't get a house, a car, a loan, or a credit card for ten years. In fact, you can probably get credit even before your bankruptcy is over! The question is, how much interest and fees will you have to pay? And, can you afford your monthly payments, so you don't begin a new cycle of painful financial problems?

Debts discharged in your bankruptcy should be listed on your credit report as having a **zero balance**, meaning you do not own anything on the debt. Debts incorrectly reported as having a balance owed will negatively affect your credit score and make it more difficult to get credit. You should check your credit report after your bankruptcy discharge and file a dispute with the credit reporting agency if this information is not correct.

Which Debts Do I Still Owe After Bankruptcy?

When your bankruptcy is completed, many of your debts are "discharged." This means they are canceled and you are no longer legally obligated to pay them.

However, certain types of debts are NOT discharged in bankruptcy. The following debts are among the debts that generally may not be canceled by bankruptcy:

- **Alimony, maintenance, or support for a spouse or children.**
- **Student loans.** Most student loans are not canceled by bankruptcy. But you can ask the court to discharge the loans if you can prove that paying them is an "undue hardship." Occasionally, student loans can be canceled for reasons not related to your bankruptcy when, for example, the school closed before you completed the program or if you have become disabled. There are also many options for reducing your monthly payments on student loans, even if you can't discharge them. For more information, look at the *NCLC Guide to Surviving Debt* or go to the Student Loan Borrower Assistance Project website at www.studentloanborrowerassistance.org.
- **Money borrowed by fraud or false pretenses.** A creditor may try to prove in court during your bankruptcy case that you lied or defrauded them, so that your debt cannot be discharged. A few creditors (mainly credit card companies) accuse debtors of fraud even when they have done nothing wrong. Their goal is to scare honest families so that they agree to reaffirm the debt. You should never agree to reaffirm a debt if you have done nothing wrong. If the company files a fraud case and you win, the court may order the company to pay your lawyer's fees.
- **Most taxes.** The vast majority of tax debts cannot be discharged. However, some older tax debts can be discharged. This can be a complicated issue, so if you have tax debts, you will need to discuss them with your lawyer.
- **Most criminal fines, penalties and restitution orders.** This exception includes even minor fines, including traffic tickets.
- **Drunk driving injury claims.**

Do I Still Owe Secured Debts (Mortgages, Car Loans) After Bankruptcy?

Yes and No. The term “secured debt” applies when you give the lender a mortgage, deed of trust, or lien on property as collateral for a loan. The most common types of secured debts are home mortgages and car loans. The treatment of secured debts after bankruptcy can be confusing.

Bankruptcy cancels your personal legal obligation to pay a debt, even a secured debt. This means the secured creditor can't sue you after a bankruptcy to collect the money you owe.

But, and this is a big “but,” the creditor can still take back their collateral if you don't pay the debt. For example, if you are behind on a car loan or home mortgage, the creditor can ask the bankruptcy court for permission to repossess your car or foreclose on your home. Or the creditor can just wait until your bankruptcy is over and then do so. Although a secured creditor can't sue you if you don't pay, that creditor can usually take back the collateral.

For this reason, if you want to keep property that is collateral for a secured debt, you will need to catch up on the payments and continue to make them during and after bankruptcy, keep any required insurance, and you may have to reaffirm the loan.

What Is Reaffirmation?

Although you filed bankruptcy to cancel your debts, you have the option to sign a written agreement to “reaffirm” a debt. If you choose to reaffirm, you agree to be **legally obligated** to pay the debt despite bankruptcy. If you reaffirm, the debt is not canceled by bankruptcy. If you fall behind on a reaffirmed debt, you can get collection calls, be sued, and possibly have your pay attached or other property taken.

Reaffirming a debt is a serious matter. You should never agree to a reaffirmation without a very good reason.

Do I Have to Reaffirm Any Debts?

No. Reaffirmation is always optional. It is not required by bankruptcy law or any other law. If a creditor tries to pressure you to reaffirm, remember you can always say no.

Can I Change My Mind After I Reaffirm a Debt?

Yes. You can cancel any reaffirmation agreement for **sixty days** after it is filed with the court. You can also cancel at any time before your discharge order. To cancel a reaffirmation agreement, you must notify the creditor in writing. You do not have to give a reason. Once you have canceled, the creditor must return any payments you made on the agreement.

Also, remember that a reaffirmation agreement has to be in writing, has to be signed by your lawyer or approved by the judge, and has to be made before your bankruptcy is over. Any other reaffirmation agreement is not valid.

Do I Have to Reaffirm on the Same Terms?

No. A reaffirmation is a new contract between you and the lender. You should try to get the creditor to agree to better terms such as a lower monthly payment or interest rate. You can also try to negotiate a reduction in the amount you owe. The lender may refuse but it is always worth a try. The lender must give you disclosures on the reaffirmation agreement about the original credit terms, and any new terms you and the lender agree on must also be listed.

Should I Reaffirm?

If you are thinking about reaffirming, **the first question should always be whether you can afford the monthly payments.** Reaffirming any debt means that you are agreeing to make the payments every month, and to face the consequences if you don't. The reaffirmation agreement must include information about your income and expenses and your signed statement that you can afford the payments.

If you have any doubts whether you can afford the payments, do not reaffirm. Caution is always a good idea when you are giving up your right to have a debt canceled.

Before reaffirming, **always consider your other options.** For example, instead of reaffirming a car loan you can't afford, can you get by with a less costly used car for a while?

Do I Have Other Options for Secured Debts?

You may be able to keep the collateral on a secured debt by paying the creditor in a lump sum the amount the item is worth rather than what you owe on the loan. This is your right under the bankruptcy law to “redeem” the collateral.

Redeeming collateral can save you hundreds of dollars. Because furniture, appliances, and other household goods go down in value quickly once they are used, you may redeem them for less than their original cost or what you owe on the account.

You may have another option if the creditor did not loan you the money to buy the collateral, such as when a creditor takes a lien on household goods you already have. You may be able to ask the court to “avoid” this kind of lien. This will make the debt unsecured.

Do I Have to Reaffirm Car Loans, Home Mortgages?

If you are behind on a car loan or a home mortgage and you can afford to catch up, you can reaffirm and possibly keep your car or home. If the lender agrees to give you the time you need to get caught up on a default, this may be a good reason to reaffirm. But if you were having trouble staying current with your payments before bankruptcy and your situation has not improved, reaffirmation may be a mistake. The collateral is likely to be repossessed or foreclosed anyway after bankruptcy, because your obligation to make payments continues. If you have reaffirmed, you could then be required to pay the difference between what the collateral is sold for and what you owe.

If you are up to date on your loan, you may not need to reaffirm to keep your car or home. Some lenders will let you keep your property without signing a reaffirmation as long as you continue to make your payments. Sometimes lenders will do so if they think the bankruptcy court will not approve the reaffirmation agreement.

And What About Credit Cards and Department Store Cards?

It is almost never a good idea to reaffirm a credit card. Reaffirming means you will pay bills that your bankruptcy would normally wipe out. That can be a very high price to pay for the convenience of a credit card. Try paying cash. Then in a few years, you can probably get a new credit card, that won't come with a **large unpaid balance!**

If you do reaffirm, try to get something in return, like a lower balance, no interest on the balance, or a reasonable interest rate on any new credit. Don't be stuck paying 18–21% or higher!

Some store credit cards may be secured. The things you buy with the credit card may be collateral. The store might tell you that they will repossess what you bought, such as a TV, washer, or sofa, if you do not reaffirm the debt. Most of the time, stores will not repossess used merchandise. So, after a bankruptcy, it is much less likely that a department store would repossess “collateral” than a car lender.

However, repossession is possible. You have to decide how important the item is to you or your family. If you can replace it cheaply or live without it, then you should not reaffirm. You can still shop at the store by paying cash, and the store may offer you a new credit card even if you don't reaffirm. (Just make sure that your old balance is not added into the new account.)

For Example

Some offers to reaffirm may seem attractive at first. Let's say a store lets you keep your credit card if you reaffirm \$1000 out of the \$2000 you owed before bankruptcy. They say it will cost you only \$25 per month and they will also give you a \$500 line of credit for new purchases. What they might not tell you is that they will give you a new credit card in a few months even if you do not reaffirm. More importantly, though, you should understand that you are agreeing to repay \$1000 plus interest that the law says you can have legally canceled. That is a big price to pay for \$500 in new credit.