

# Consumer's Guide to Credit and Bankruptcy

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**Bankruptcy Overview:** For many people, the loss of a job, an extended illness, or other change in life can create serious financial problems. Bankruptcy is a legal way to get a fresh start in your financial affairs. You can do this either by eliminating your debts through Chapter 7, or by repaying your debts under the supervision and protection of the Bankruptcy Court, which is Chapter 13. Deciding whether a Chapter 7 or Chapter 13 bankruptcy is right for you depends on the type of bills you have, and your overall financial situation. To start, here are...

## 11 Costly Misconceptions About Bankruptcy

**Misconception #1: Filing bankruptcy is dishonest.** Not at all. If filing bankruptcy was dishonest, the law wouldn't let you do it. Our lawmakers didn't want people to live their entire lives under the burden of impossible debt. They knew that some people have bad luck, perhaps because they lost their job or face high medical bills. They wrote the bankruptcy laws to allow you to get rid of your bills, so you can get a fresh start. It's all perfectly legal.

Banks and finance companies spend millions of dollars trying to get you to use their credit cards, borrow their money, and take out their home equity loans. They know that some people will make late payments -- and some will file bankruptcy. This is part of their cost of doing business. After all, do you see these companies cutting back on their advertising? No. They want consumers to get more and more credit -- and to run up more and more bills.

Why? Because they make billions of dollars by charging (1) annual fees, (2) interest rates often over 20%, (3) penalties for late payments, (4) penalties for going over your credit limit, and more. If some credit card holders file bankruptcy, it's a small tradeoff.

**Misconception #2: If I file for bankruptcy, I will lose my home and car.** Probably not. If you file Chapter 7, creditors with valid mortgages or liens against your property are entitled to ask for their property back. Or, they can allow you to reaffirm the debt and keep the property. Reaffirming the debt means you keep making your payments, as if you had never filed bankruptcy. Not all creditors will allow you to reaffirm your debts, but most will. Chapter 13 gives you even more control - in most cases, you keep everything you own and you can include missed payments in a multi-year repayment plan.

Note, however, that the bankruptcy law changes as of October 17, 2005. The new law makes it much more difficult to file for bankruptcy so if you have ever considered filing, now is the time to learn more about the bankruptcy option.

**Misconception #3: If I file a Chapter 7 bankruptcy, I'll lose all my assets.** Not true. In many cases, most of your personal property that you have already paid for -- such as your TV, stereo and household items -- is exempt from bankruptcy and cannot be taken from you. What's more, in some cases, you can remove a lien from household goods, even if you have previously used them as security.

But -- a Chapter 7 bankruptcy will not affect your home mortgage or the lien on your car. Also, it will not affect current liens against items you bought, such as furniture loans, jewelry loans, or other loans against other items you bought new. For property that is subject to a valid lien, you can give back the property and owe nothing, or you can reaffirm the debt and keep the property. Your lawyer will help you identify which of your loans can be modified, and which are not affected by Chapter 7. He can also tell you if any of your property is at risk.

**Misconception #4: Bankruptcy lets me get rid of all my debts.** No. Under a Chapter 7 bankruptcy, you can erase most debts, but not all. For example, cases in which you cannot discharge debts include some forms of taxes; debts incurred by fraud; debts for alimony, maintenance or child support; and debts for some student loans. Under a Chapter 13 bankruptcy, you set up a payment plan to repay your bills. Chapter 13 simply buys you time and gets your creditors off your back. You get time to take a breath, perhaps get a part-time job, and create a payment plan you can afford.

**Misconception #5: I won't be able to get a job if a prospective employer finds out I filed bankruptcy.** Not true. It is against the law for private or governmental employees to discriminate against a person who has filed a Chapter 7 bankruptcy. Likewise, it is illegal for local, state or federal government agencies to discriminate against a person when it comes to granting licenses (including a driver's license), permits and similar grants.

**Misconception #6: I will lose my bank account if I file bankruptcy.** In most cases, the only way a bank would know if you filed bankruptcy is if you owed money to that bank. If you don't owe the bank money, they would probably never know. Why would a bank close your account? They want to profit from your services charges, check charges, ATM fees, and everything else they offer that puts money into their pockets.

**Misconception #7: My friends and relatives will be so disappointed in me for filing bankruptcy.** Not true. In fact, they probably won't know. Even though bankruptcies are public record, they are rarely, if ever, published in the newspaper. What's more, since the bankruptcy court's order prevents creditors from taking action to collect from you, you won't have to explain embarrassing phone calls from bill collectors or, even worse, a visit from a uniformed sheriff's deputy who is serving you with a lawsuit. In addition, bankruptcy is not that unusual anymore. For example, in the northern part of Georgia, for the past ten years, roughly 30,000 people every year file bankruptcy to get relief from their debts. It's likely that some of your friends and neighbors have filed bankruptcy and you never even knew it.

**Misconception #8: After I file for bankruptcy, I can get extra cash from my tax refund.** No. If you expect to receive an income tax refund, you should not file a Chapter 7 bankruptcy until after you receive and use the refund. If you file Chapter 7 before you get the refund, you will lose the nonexempt portion of the refund because you will have to turn it over to the bankruptcy trustee.

**Misconception #9: My boss won't be happy to learn that I filed bankruptcy.** Your boss won't likely find out. Employers are not notified when you file Chapter 7. On a rare occasion, your bankruptcy trustee in a Chapter 7 case may contact an employer to get information about your wages or salary at the time you file your case. But this happens only if the wages you claim are unusually high or low.

**Misconception #10: Once I file for bankruptcy, I'm locked into that plan.** Not true. Let's say you file Chapter 13 in an attempt to pay your bills. Then you discover you simply can't pay them. The law allows you to convert your case to Chapter 7 and erase your bills. In the reverse, if you file a Chapter 7 to erase your bills and later decide you can actually repay them, you can convert your case to Chapter 13.

**Misconception #11: If I file bankruptcy, I will never be able to get credit again.** Not true. The Fair Debt Reporting Act is the law that governs how long credit information can remain on your credit report. This law allows bankruptcy information to stay on your credit report for a maximum of ten years.

In practice, a Chapter 13 bankruptcy (where you reorganize and pay your debts) stays on your credit report for seven years. A Chapter 7 bankruptcy (where you erase your bills) stays on your credit report for ten years. Likewise, any negative information, such as late payments, stays on your credit report for seven years. As a result, if you now have a number of delinquencies, late payments, write-offs, or repossessions, this information will stay on your credit for seven years. In all likelihood, if your credit is damaged now, a bankruptcy won't make it any worse.

The concept of creditworthiness is not an all-or-nothing idea. For example, after you discharge your debts in Chapter 7, you cannot file another bankruptcy for six years. Who do you think is more worthy of credit? A consumer who last year discharged all debts in a Chapter 7, has no credit debt now and is gainfully employed? Or, a consumer who owes \$20,000 to five credit cards, and barely stays afloat by taking cash advances from one card to pay the minimum amount due on another card?

If you have a good job -- a regular income -- and few debts after bankruptcy, banks and other lenders would be foolish not to approve your mortgage or car loan.

## What Happens During Bankruptcy?

**Part 1: Bankruptcy.** First, you meet with a qualified bankruptcy lawyer. You decide if bankruptcy is appropriate for you and, if so, whether you'll file chapter 7 or chapter 13. You fill out a form, listing your assets and debts. Then you and your lawyer create a monthly budget showing how much money comes in and how much goes out. The bankruptcy law also requires you to reveal selected information about your financial history, including a listing of your property, your income over the past few years, and whether you are involved in any lawsuits.

Your lawyer will use this information to prepare a bankruptcy petition which is filed with the clerk of Bankruptcy Court. When your case is filed, it will be given a case number. Until you have a case number you are not officially under Bankruptcy Court protection. You should write down your case number as soon as it is available as you can use this number to stop any contact or legal action by creditors.

Within a week of filing, the Clerk of Bankruptcy Court will mail an official notice of your filing to all of the creditors listed in your case.

About thirty (30) days after your case is filed, you and your lawyer are required to attend a "meeting of creditors" at the Bankruptcy Court. This meeting is run by the Bankruptcy trustee assigned to your case and will likely take about 5 minutes. Creditors are invited to attend, but in practice, few actually show up. The main purpose of this meeting is for your lawyer to find out if the Trustee or any creditor has any objections to your case.

**Part 2: Starting Fresh.** When your bankruptcy case is over, the clerk of court will send you a document signed by a bankruptcy judge called a "Discharge." This means that your creditors are forbidden from trying to collect debts eliminated (in Chapter 7) or modified (in Chapter 13). You most definitely want to hang on to this paper!

Once you have received your discharge, you should concentrate on the important task of rebuilding your credit.

First, you should request new copies of your credit reports. In many cases, debts discharged in bankruptcy will still appear as derogatory entries on your credit report. Under the Fair Debt Reporting Act, you are permitted to challenge inaccurate information. We often encourage our clients to challenge the accuracy of these entries. In many cases, the account is sold or deleted from the creditor's computer systems after bankruptcy is filed - thus a legitimate challenge may result in a cleansing of negative credit entries. We can assist you in preparing these challenge letters - improperly worded objections to credit report entries will not be properly processed by the credit reporting agencies.

Second, the Fair Debt Reporting Act permits you to add written paragraphs explaining negative information to your credit report. For example, if you had to file bankruptcy because of unexpected medical bills or a divorce, you may want to prepare a brief written statement explaining your situation. Very few people take this step and bank loan officers we have interviewed advise us that these statements can make a big difference.

The third thing to realize is that banks and lending institutions look for consistency and stability. Try to avoid moving from job to job, or even from home to home. After all, who would you consider lending money - a person who has had six jobs and four addresses in two years, or someone who has been at the same job and home address for twelve years. If you have come through bankruptcy with a reaffirmed debt - such as a mortgage, car loan or even credit card, take special care to make each month's payment on time.

One of the most meaningful steps you can take to rebuild credit, believe it or not, is to get a MasterCard or Visa. Many companies offer "secured" credit cards that require you to send in a security deposit, after which you will be entitled to a line of credit equal to the security deposit. Some of these secured cards can become regular unsecured cards if you make your payments on time for a designated period of time. An excellent on-line resource for secured and other credit cards is [www.cardtrak.com](http://www.cardtrak.com).

## **11 Steps to a Safe and Happy Financial Future**

**Step #1:** Recognize that some good credit is better than all poor credit. Even in times of crisis, try to keep one or two accounts paid on time. One or two positive credit references can be the foundation for rebuilding poor credit.

**Step #2:** Strive for stability. Avoid moving from home to home or from job to job.

**Step #3:** If you cannot qualify for credit on your own, you may be able to qualify with a co-signer.

**Step #4:** Avoid "buy here, pay here" vehicle purchases. You will pay exorbitant interest rates (29 per cent or higher) for a used car.

**Step #5:** Avoid credit life or credit disability insurance. Lenders often try to tack credit insurance onto your purchase. These are profit centers for the lenders and poor deals for you.

**Step #6:** Before committing to a major purchase, prepare a household budget. On the income side, figure what you know will be coming in - do not factor in occasional overtime or a future part time job.

**Step #7:** Consider the associated costs to major purchases. For example, that new car will require more expensive insurance. A home will generate higher utility costs and repair bills. These costs should be factored into your budget.

**Step #8:** Save money for a rainy day. Avoid living paycheck to paycheck. You should have enough money in savings (not checking) to cover your expenses for three months.

**Step #9:** Avoid credit cards. Credit cards will get you into trouble faster than anything, especially around the holidays. If you need a credit card for emergencies, use it sparingly and pay off the balance in full each month.

**Step #10:** Review your credit report at least once a year. Measure your progress in keeping payments current and preparing for the day when you need credit (house or car purchase).

**Step #11:** Recognize the difference between “wants” and “needs” Along these lines, never make a major purchase (house, car or furniture) the first day you go shopping. The internet offers unprecedented resources to research your purchases. Use it and avoid high pressure sales tactics.

## **5 Potential Problems With Bankruptcy**

**Problem #1:** Getting credit after bankruptcy - despite the power of bankruptcy to give you a fresh start, keep in mind that bankruptcy is not a good thing. You will have to work hard to re-establish your credit. Fortunately, if you study the process, and start preparations now for life after bankruptcy, you can recover more quickly than others who don't think ahead.

**Problem #2:** Choosing the wrong type of bankruptcy. When you are sitting in your lawyer's office to discuss bankruptcy, its time to make some hard decisions. No one likes to give up a house or a car, but sometimes you have to take drastic steps to solve big problems. Your lawyer's job is to give you truthful, straightforward advice. Take advantage of your lawyer's experience and knowledge to make the best of a bad situation.

**Problem #3:** Reaffirming too much old debt. Bankruptcy is a powerful tool. Only reaffirm debts that you need (i.e., a house or a car). Also, don't forget that even if you reaffirm a debt in Chapter 7, you have as many as 60 days to change your mind.

**Problem #4:** Not maximizing the benefits of bankruptcy. The bankruptcy law requires that you list all of your debts and assets. Did you know that if you forget to include a debt

it may not be discharged, or if you fail to reveal a car accident injury claim, you could be barred from collecting a pain and suffering remedy. Are you aware that there may be judgments against you on file that you never even knew about? There should be no loose ends. Your lawyer should have the experience to know what questions to ask.

**Problem #5:** Failing to change your spending and savings habits. Bankruptcy should be a wake-up call that you need to change your former financial life. Ask your lawyer to assist you in preparing a budget for your new financial life and use him as a resource in years to come if you have questions about contracts, offers or other major financial decisions.

## 18 Mistakes to Avoid When Choosing a Bankruptcy Lawyer

**Mistake #1: Not choosing a qualified bankruptcy lawyer.** Today, attorneys specialize in everything from criminal law to corporate mergers. Most attorneys have never handled a bankruptcy. Make sure you choose a lawyer who has in-depth qualifications in bankruptcy.

**Mistake #2: Not choosing an AV-rated lawyer.** International legal directory Martindale-Hubbell rates lawyers as AV, BV, and CV, with AV being the highest rating given. Why work with a low-rated lawyer when you could work with one rated AV?

**Mistake #3: Not choosing a lawyer who has practiced law for at least 10 years.** No question, all lawyers need to get experience somewhere. Unfortunately, some lawyers get their experience at the expense of their clients. Make sure you don't choose a lawyer who is new to the practice of law.

**Mistake #4: Not choosing a lawyer who owns and manages his own firm.** When you decide to buy a product or service from any business, don't you receive better treatment when you work with the owner? Why work with an employee lawyer when you can work with the founder and senior partner.

**Mistake #5: Choosing a lawyer who practices by himself.** For your protection, choose a law firm with at least two lawyers. This way, if you need help in a hurry, and if your primary lawyer isn't available, the other lawyer in the office can make sure your needs are met.

**Mistake #6: Choosing a lawyer who does not help you rebuild your financial life.** Bankruptcy has two parts. It's important that your lawyer help you with both parts. Why file bankruptcy if you don't have a plan to rebuild your financial future? Make sure your lawyer helps you with this, too.

**Mistake #7: Choosing a lawyer who works for a large law firm.** In some cases, large law firms have advantages over small firms. But they often charge astronomical fees. If you like the large firm environment, ask the receptionist for a tour. But don't hire a big-firm lawyer.

**Mistake #8: Choosing a lawyer because you like his advertising.** Advertising can help you learn which lawyers offer bankruptcy services. But learning the lawyer's name is only the beginning. Before you hire an attorney, talk with the lawyer, ask questions, and make sure the lawyer is qualified and competent to handle your case.

**Mistake #9: Choosing a lawyer only because he was referred by a friend.** Referrals are a common way of learning about good lawyers. But don't use a referral as your only measurement. Meet with the attorney, ask questions, and make sure you feel comfortable before you decide to hire the lawyer.

**Mistake #10: Choosing a lawyer because his office is close to your home.** Convenience is a consideration when hiring a lawyer. But don't put too much importance on the location of the lawyer's office. In today's electronic age, nearly all paperwork can be handled by mail, fax or e-mail. It's far more important that you choose an experienced, qualified lawyer -- than to choose a lawyer because his office is down the street.

**Mistake #11: Choosing a lawyer you don't like or don't trust.** Nothing is more important than a lawyer/client relationship built on friendship and trust. If you don't like or trust a particular lawyer, don't hire him.

**Mistake #12: Choosing a lawyer who provides second-rate service.** When you hire a lawyer, you deserve excellent service. Don't accept anything less.

**Mistake #13: Choosing a lawyer who doesn't return calls.** Lawyers are well known for not returning phone calls. Make sure the lawyer you choose returns your calls promptly.

**Mistake #14: Choosing a lawyer whose fees are unfair.** If the fee is too low, the lawyer may be doing on part of the job. If the fee is too high, the lawyer may be overcharging you.

**Mistake #15: Choosing a lawyer who charges for phone consultations.** The lawyer who puts your needs first will talk with you on the phone or in his office for free. If the lawyer insists on a consultation fee, look for another lawyer.

**Mistake #16: Choosing a lawyer who really doesn't want to answer your questions.** Filing bankruptcy is an important decision that will affect your life for years. You must understand the bankruptcy process before you choose a lawyer. If a lawyer is annoyed

with your questions, find another lawyer.

**Mistake #17: Choosing a lawyer who does not belong to national bankruptcy groups.** You need a lawyer who is up to date on bankruptcy laws and court decisions. Since bankruptcy laws are federal laws, national memberships are an important way for lawyers to stay current in their field.

**Mistake #18: Choosing a lawyer who is not respected for his knowledge.** Make sure the lawyer you choose presents financial and bankruptcy seminars to professional groups. This is one way to know that your lawyer is competent and qualified to represent you.

## Meet Jonathan C. Ginsberg

Jonathan Ginsberg is founder and managing partner of Ginsberg Law Offices in Atlanta, Georgia. He has practiced law for 16 years.

On January 15, 2001, the respected law directory Martindale-Hubbell awarded Jonathan its highest rating of AV. Martindale Hubbell says, “An AV Rating signifies that the lawyer has reached the heights of professional excellence. He has practiced law for a number of years, and is recognized for the highest levels of skill and integrity.”



In 1983, Jonathan graduated cum laude with honors from Tulane University College of Arts & Sciences in New Orleans, Louisiana. The same year he was named the outstanding history student in the senior class and awarded the Montgomery History Prize for excellence in history. In 1986, Jonathan earned his Juris Doctor Degree from Tulane University College of Law in New Orleans.

Jonathan is admitted to practice before all Georgia state and superior courts, the Georgia Court of Appeals and the Georgia State Supreme Court. In addition, he is admitted to practice before the U.S. District Court, Northern District of Georgia.

Jonathan is a member of the Atlanta Bar Association and the Georgia Bar Association, including its sections on bankruptcy, consumer bankruptcy and social security disability.

Jonathan delivers legal seminars and continuing education programs for professional groups, including the Atlanta Chapter of Enrolled Agents (tax counselors), as well as to fellow lawyers at continuing legal education seminars. He is the author of two “how to” books about Social Security disability - the Disability Answer Guide ([www.disabilityforms.com](http://www.disabilityforms.com)) and the Child SSI Disability Answer Guide ([www.child-disability.com](http://www.child-disability.com)).

Jonathan is a member of the American Trial Lawyers Association, American Bar Association, Georgia Trial Lawyers Association, National Association of Consumer Bankruptcy Representatives (NOSSCR), and National Association of Consumer Bankruptcy Attorneys (NACBA).

Jonathan is an accomplished web site designer, student of Aikido (martial arts), and a recreational basketball player. He enjoys photography and is a published photojournalist. Also, Jonathan is a past winner of the Zoo Atlanta photo contest.

Jonathan is a member of the Marcus Jewish Community Center of Atlanta, where he coaches elementary-school-age girls’ basketball and boy’s baseball. In 2001, he was named coach of the table tennis team for the 2001 Maccabiah Games, an Olympic style competition for young athletes 13 to 15 years of age. In 2002, Jonathan coached a 13-14 year old boy’s baseball team in this national tournament.

Jonathan and Jodi, his wife and law partner at Ginsberg Law Offices, live in Atlanta with their two children.

### **You’re Invited to Call or E-Mail!**

If you want to erase your debts in a Chapter 7 bankruptcy -- or if you’d like to repay your bills through a Chapter 13 bankruptcy -- please call me right away. Lawmakers talk about changing the federal bankruptcy laws, so the opportunities you have today might not be available to you in the future. I’ll explain how you can protect your legal rights and start fresh, free from the burden of unpaid bills. I will gladly talk with you on the telephone or in my office, without cost or obligation. You’re invited to call me at **770-393-4985**. Or send your e-mail to me at [jonathan@glolaw.com](mailto:jonathan@glolaw.com).

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