

# BANKRUPTCY INFO PAGE

## CHAPTER 7

### Eligibility

Generally, combined gross income must be less than median region, depending on family size. After, federal allowances for expenses, there must be no income left over to pay all bills. This is called the **Means Test**. In addition, you must have not filed for Chapter 7, within the last eight years proceeding. To see if you meet that initial Means test. See Median Income Chart.

### Census Bureau Median Family Income By Family Size

STATE	FAMILY SIZE			
	1 EARNER	2 PEOPLE	3 PEOPLE	4 PEOPLE *
North Carolina	\$38,794	\$52,194	\$56,930	\$67,295

\* Add \$6,900 for each individual in excess of 4.

### Collection Financial Standards for Food, Clothing and Other Items

Expense	One Person	Two Persons	Three Persons	Four Persons
Food	\$293	\$537	\$626	\$752
Housekeeping supplies	\$28	\$66	\$61	\$74
Apparel & services	\$86	\$162	\$209	\$244
Personal care products & services	\$31	\$55	\$59	\$65
Miscellaneous	\$87	\$165	\$197	\$235
<b>Total</b>	<b>\$526</b>	<b>\$985</b>	<b>\$1,152</b>	<b>\$1,370</b>

### Collection Financial Standards for Health Care Expenses

#### Out of Pocket Costs

Under 65	\$60
65 and Older	\$144

### Local Housing and Utilities Standards\*

#### NORTH CAROLINA

County	FIPS Code	Family Size and Expense Type									
		1 Person		2 People		3 People		4 People		5 or More People	
		Non-Mortgage	Mortgage/Rent	Non-Mortgage	Mortgage/Rent	Non-Mortgage	Mortgage/Rent	Non-Mortgage	Mortgage/Rent	Non-Mortgage	Mortgage/Rent
Cabarrus	37025	\$372	\$853	\$437	\$1002	\$461	\$1,056	\$514	\$1177	\$522	\$1196
Mecklenburg	37119	\$365	\$997	\$429	\$1,170	\$452	\$1,223	\$504	\$1,375	\$512	\$1,398

Union	37179	\$362	\$891	\$425	\$1,047	\$448	\$1,103	\$500	\$1,230	\$508	\$1,249
Gaston	37071	\$374	\$710	\$440	\$833	\$463	\$879	\$517	\$979	\$525	\$995

### **Discharge**

Unsecured lines of credit and secured debt. Unsecured debt is discharged with no exceptions. Secured debts, car loans and mortgages, are discharged as well. But with secured debts you will have to surrender the property if you wish to have it discharged, otherwise you can wait till the end of your bankruptcy once it is finalized and enter into an agreement with your creditor to continue with the contract. PLEASE NOTE THAT TAXES (in certain situations are dischargeable we can evaluate your situation individually).

### **TAX DEBT IS DISCHARGED IF:**

- The due date for filing a tax return is at least three years ago.
- The tax return was filed at least two years ago.
- The tax assessment is at least 240 days old.
- The tax return was not fraudulent.

### **(Non-Dischargeable) The Following Debts Arising from:**

- **STUDENT LOANS,**
- **DOMESTIC OBLIGATIONS**
- **Payroll withholding**
- **Traffic Tickets**
- **Alcohol related injuries**
- **Cash advances and purchase of luxury goods within the last ninety (90) days**
- **Certain Taxes**
- **Payroll withholding and deductions**
- **Debts incurred POST filing**

### **Petition**

A Petition is prepared by an Attorney. Your Credit Report, current bills, all documents listed in required documents\* are used to prepare your petition. Once it is prepared, you will review a copy of the petition to ensure all information is accurate. Upon your final review and receipt of your filing fee, a copy is filed with the court electronically. A 341 Meeting is then scheduled a month later.

Once your case is filed, your assets now become part of the bankruptcy estate. Then, a trustee from the court will be assigned to review your filing. In addition, your creditors will be put on notice of your filing. The creditors will notify the trustee of their intent to file a claim against the bankruptcy estate to collect on their debt.

### **341 Meeting**

At this meeting the trustee briefly goes over your petition with you and your Attorney. You will be asked to swear and affirm that you have read and signed your petition. He asks for additional documentation if necessary. He will also order non-exempt property to be turned over and sold in order to pay himself; he receives 5%, and creditors. To read more about the 341 and the details please see <http://maxwelllegal.com/341-Meeting%20of%20Creditors.html>

### **Exemptions under North Carolina Law**

An exemption is the amount that under the law is non-attainable by the trustee or creditor, if however your property is valued at more than you would receive that amount once property sold and trustee and creditors receive remaining (disbursement).

NOTE THE EXEMPTIONS ARE DOUBLED IF YOU ARE MARRIED

<b>NORTH CAROLINA EXEMPTIONS</b>		
<b>Exemption type</b>	<b>Amount</b>	<b>Statute</b>
Home <b>Equity</b> If you have no equity disregard	\$18,500.00/ Individual \$37,000.00 /OVER AGE 65	1601-C (a)(1)
Wages	Unlimited	1-362
Worker's Compensation	Unlimited	97-28
Household furnishings	\$5,000.00 + \$1,000.00 PER DEPENDENT (not to exceed \$4,000.00)	1601-C (a)(4)
Vehicle	\$3,500.00	1601-C (a)(3)
Any Property	\$5,000.00	1601-C (a)(2)
Professional books aids, tools, books	\$2,000.00	1601-C (a)(5)
IRA/401K Accounts	Entire Amount	1601-C (a)(10)
Recent purchases (90 days)		1601-C (d)
College Savings Plan	Up to \$25,000.00 placed into account in last 12 months	1601-C (a) 10

<b>SOUTH CAROLINA EXEMPTIONS</b>		
<b>Property</b>	<b>Exemption Amount</b>	<b>Statute</b>
Primary Residence	\$50,000.00	15-41-30 (a) (1)
Wages	Unlimited	15-39-410
Alimony / Child Support	Unlimited	15-41-30(11)(D)
Disability, Unemployment	Unlimited	15-41-30(11)(C)
Worker's Compensation	Unlimited	42-9-360(A)
Vehicle	\$5,000.00	15-41-30 (a)(2)
Retirement Accounts	Unlimited	15-41-30 (13)
Personal Property	\$5,000.00	15-41-30 (5)
Household Furnishings	\$4,000.00	15-41 (a)(3)
Cash Values on Life insurance policies	Unlimited	38-63-40(A)

Trustee disburses your NON-EXEMPT assets, except with respect your **exemptions**, according the creditor's rank and priority. If all your assets are exempt than you have a **no asset case** and you will receive a discharge without any claims to your assets by the Trustee or the creditors. Once the disbursements are made by the trustee then your case is finalized and closed. Typically, this entire process should take no longer than four to six (4-6) weeks.

Please be informed that once your bankruptcy is finalized, that this will remain on your credit report for ten (10) years. Filing may actually increase your credit score because your accounts will no longer be delinquent

**NOTE THAT THE EXEMPTIONS APPLIED TO YOUR CASE, ARE DETERMINE BY WHERE YOU LIVED IN FOR AT LEAST 720 DAYS PRIOR TO FILING (APPROXIMATELY 2 YEARS). IF YOU LIVED IN ANOTHER STATE PRIOR TO FILING, THOSE STATE EXEMPTIONS OR THE FEDERAL EXEMPTIONS WILL APPLY.**

<b><u>FEDERAL EXEMPTIONS</u></b>		
<b><u>Exemption Type</u></b>	<b><u>Amount</u></b>	<b><u>Statute 11 USCA §</u></b>
Homestead- Real property, including mobile homes and co-ops, or burial plots up to \$20,200. Unused portion of homestead, up to \$10,125, may be used for other property	<b>\$20,000.00</b>	522(d)(1)
Motor vehicle	<b>\$3,225.00</b>	522(d)(2)
Animals, crops, clothing, appliances and furnishings, books, household goods, and musical instruments up to \$525 per item	<b>Up to \$10,775.00</b>	522(d)(3)
Jewelry	<b>\$1,350.00</b>	522(d)(4)
Wild Card	<b>\$1,075.00</b>	522(d)(5)

Health aids	<b>Complete</b>	522(d)(9)
Wrongful death	<b>Complete</b>	522(d)(11)(B)
Personal Injury	<b>\$20,000.00</b>  Except for pain and suffering or for pecuniary loss.	522(d)(11)(D)
Retirement Accounts	<b>\$1,095,000.00</b>	522(b)(3)(C)
Crime victim's compensation		522(d)(11)(A)
Public assistance, Social Security, Veteran's benefits, Unemployment Compensation		522(d)(10)(A)
Implements, books and tools of trade, up	<b>\$2,025.00</b>	522(d)(6)
<b>Alimony and Child Support</b>		522(d)(10)(D)
Unmatured life insurance policy except credit insurance		522(d)(7)
Life insurance policy with loan value	<b>\$10,775.00</b>	522(d)(8)
Disability, unemployment or illness benefits		522(d)(10)( C )
Life insurance payments for a person you depended on, which you need for support		522(d)(11)( C )

## **CHAPTER 13**

Chapter 13 bankruptcy is a debt repayment plan that protects the debtor from collection action during the plan and discharges (forgives) any unpaid balance of dischargeable debts at the end of the plan. Chapter 13 is available to individuals that have regular income and have liquidated, unsecured debts not exceeding \$336,900 and secured debts not exceeding \$1,010,650.

When a debtor files bankruptcy under Chapter 13 his debts are consolidated and he proposes a repayment plan to repay all or a portion of his debts over a 3 to 5 year period. Payments under the plan are made to a court-appointed trustee who disburses payments to creditors. In most cases, the amount of the debtor's Chapter 13 payment is the amount he has left over each month after paying his/her entire see <http://www.justice.gov/ust/eo/bapcpa/20091101/meanstesting.htm>).

### **Automatic Stay**

While the Chapter 13 plan is in effect, creditors cannot contact the debtor, sue him, garnish his wages or repossess or foreclose on any of his property. Unlike Chapter 7 bankruptcy, cosigners and co-debtors are also protected.

### **Plan**

Chapter 13 allows the debtor up to 5 years to catch up on delinquent mortgage and vehicle payments. Unsecured mortgages can be "stripped off" altogether if there is no equity in the property to support the mortgage.

### **Secure Debt**

In many cases, Chapter 13 will reduce the principal balance and interest rate on vehicles and other collateral that the debtor wants to keep (other than his primary residence). In many cases, vehicle payments can be reduced by as much as 50%.

### **Priority Debt**

Priority debts include domestic support obligations and certain non-dischargeable tax debt. If there are any arrearages than these will be included in the plan payment. These debts are not discharged at the close of the bankruptcy and may continue if not paid in full or in accordance to the terms.

### **Unsecured Debt**

Unsecured debts (debts that are not secured by collateral) are normally discharged (forgiven) after 60 months, regardless of the remaining balance owed. If the debtor's annual gross family income is more than the median family income for his state and family size he will normally have to pay for 60 months before the balance of his unsecured debts is discharged. No interest accrues on most unsecured debts during the repayment period.

### **How often can you file**

A debtor cannot obtain a discharge in a Chapter 13 case if the debtor obtained a discharge in (a) a Chapter 7 case filed within the past 4 years, or (b) a Chapter 13 case filed within the past 2 years. The time periods in either case are measured from the commencement dates of the respective cases. The dates of discharge have no bearing on the disqualification.

### **Petition/Process**

A Chapter 13 bankruptcy proceeding is commenced by filing Official Bankruptcy Forms in the U.S. Bankruptcy Court. These forms require a debtor to list all of his assets and debts, along with some recent financial information.

This is the most important and time-consuming part of a bankruptcy filing. A proposed Chapter 13 repayment plan is also required to be filed.

It is important that every creditor is listed on the bankruptcy forms with an accurate mailing address. All debts must be listed, even if a particular debt is non-dischargeable.

The bankruptcy forms are signed by the debtor under penalty of perjury then filed with the bankruptcy court clerk in the district in which the debtor resides, or has resided for the greater part of the last 180 days.

To file an individual or joint Chapter 13 bankruptcy, a court filing fee in the amount of \$281 must be paid to the U.S. Bankruptcy Court at the time of filing or within 4 monthly installments. The Chapter 13 filing fee cannot be waived.

A Chapter 13 bankruptcy is effective immediately upon filing and an "automatic stay" immediately stops all collection activity, including foreclosure, repossession, garnishment, lawsuits, creditor contact, etc.

The bankruptcy court will mail notice of the bankruptcy filing and automatic stay to each of the creditors listed on the debtor's bankruptcy forms. Any creditor that violates the automatic stay by attempting to collect a debt from the debtor may be held in contempt of court and punished by fine or imprisonment.

### **341 Meeting**

About 4-6 weeks after the bankruptcy filing date, the debtor must attend a "341a meeting" (also known as a "meeting of creditors"). At the 341a meeting, the trustee will ask the debtor a few questions regarding his financial situation. The meeting in a typical consumer case lasts about 3-4 minutes and creditors virtually never attend the meeting.

In some bankruptcy court districts, the debtor must also attend a brief confirmation hearing in court to have their proposed repayment plan approved.

Upon completion of all payments provided for in the Chapter 13 plan, the debtor receives a final discharge of any remaining balance due on all dischargeable debts.

### **WARNING AND INFORMATION**

If you fail to provide information requested by a trustee and or lie on the petition, your bankruptcy will not be discharged and you may face perjury charges.

## Allowable Living Expenses

The following expenses are typically considered as "allowable living expenses" in a Chapter 7 or 13 bankruptcy proceeding if reasonable in amount:

- Rent or home mortgage payment (including lot rented for mobile home)
- Electricity, natural gas, butane
- Cable television
- Internet service
- Water and sewer
- Telephone (including cellular phones)
- Trash service
- Home maintenance/repairs
- Food
- Clothing
- Laundry and dry cleaning
- Medical and dental expenses (out of pocket)
- Transportation (including gasoline, vehicle maintenance and/or public transportation)
- Recreation/entertainment (must be reasonable in amount)
- Charitable contributions (not exceeding 15% of gross monthly income)
- Homeowners or renters insurance
- Term life insurance for yourself (but not insurance on any of your dependents)
- Health insurance (including HMO, etc.)
- Automobile insurance
- Property taxes
- Automobile payments (including lease payments)
- Alimony or child support payments
- Child care (such as baby-sitting, day care, nursery and preschool)
- Pet care
- Regular expenses from operation of a business or profession
- Student loan payments
- Educational expenses that are required as a condition of employment
- Tax payments to I.R.S. or state taxing authorities if not dischargeable in bankruptcy
- Involuntary retirement contributions that are required by your employer
- Voluntary retirement contributions\*
- Payroll taxes (including income taxes, social security, medicare, etc.)
- Self-employment taxes
- Union dues
- Mandatory expenses required for employment (such as uniforms, parking, etc.)
- Payments for necessary household items (such as furniture, appliances and/or computer)
- School expenses for minor children under 18 years (up to \$137.50 per month per child)
- Sport or school activities for minor children

\* Voluntary retirement contributions and loan repayments to qualified retirement plans are typically allowed in Chapter 13 cases if reasonable in amount. In Chapter 7 cases, these expenses may be considered allowable only if reasonable in amount and necessary for the debtor's support. If the debtor is many years away from retirement, the bankruptcy trustee may feel that these continued contributions and loan repayments are not currently necessary and exclude them as allowable expenses when calculating whether or not the debtor has sufficient disposable income available to repay his debts. To prevent a debtor's Chapter 7 case from being dismissed or having to be converted to Chapter 13, the debtor should list plenty of additional allowable expenses to demonstrate that he has little or no funds available after paying all of his allowable living expenses. The allowable expenses that he lists, however, should be truthful and reasonable.

## **WAYS TO IMPROVE YOUR CREDIT SCORE**

### **Q. Generally what affects my Fair Isaac Corporation (FICO) score?**

A. **Have you missed any payments?** Late payments, collection accounts, settled accounts, repossessions, foreclosures, and public record items (tax liens, judgments, bankruptcies) can have a major negative impact on your FICO score. Even minor late payments, such as 30-day delinquencies, can negatively affect your score. Your payment history makes up the largest part of your FICO score, so the longer you pay your bills on time, the better your FICO score. Your score even affects your insurance premiums. Insurance companies often run your credit before writing and or reissuing your policy.

### **Q. How long does Bankruptcy remain on my credit report?**

A. Typically, here is how long you can expect bankruptcies to remain on your credit report (from the date filed):

- Completed Chapter **13 bankruptcies up to 7 years.**
- Chapter 11 and **7 bankruptcies up to 10 years.**

### **Q. How long will foreclosure remain on my credit report?**

A. A foreclosure remains on your credit report for **7 years** as well.

### **Q. Are the alternatives to foreclosure any better as far as my FICO score is concerned?**

A. The common alternatives to foreclosure, such as short sales, and deeds-in-lieu of foreclosure **are all "not paid as agreed" accounts, and considered the same by your FICO® score.** This is not to say that these may not be better options for you from a financial perspective, just that they will be considered no better or worse for your FICO score.

### **Q. How can I minimize the negative affect of a bankruptcy?**

A. A bankruptcy is going to be factored into your FICO® score until it falls off of your credit report. While it may take up to ten (10) years for a bankruptcy to fall off of your report, the impact of the bankruptcy will lessen over time.

If you plan to file a bankruptcy, here are some things you should do to make sure your creditors are accurately reporting the bankruptcy filing:

- Check your credit report to ensure that accounts that were not part of the bankruptcy filing are not being reported with a bankruptcy status.
- Monitor your score and items on your report monthly.
- Make sure your bankruptcy is removed as soon as it is eligible to be "purged" from your credit report.

After a bankruptcy has been filed, the sooner you begin retaining or re-establishing credit in good standing, the sooner you can expect your FICO score to rebound. A good practice is to obtain a secured credit card and continually make all of your payments on time. As time passes and the impact of the bankruptcy lessens, you might apply for a traditional credit card and also continually make all of your payments on time.

Information taken from [www.myfico.com](http://www.myfico.com)

### **Q. How soon after bankruptcy can I obtain a loan?**

A. Almost anyone can get credit soon after a bankruptcy. It's just a matter of knowing how. Long before the bankruptcy drops off your credit report, you could be qualifying for loans with good rates and terms.

B. There is not an average time frame. As long as you are taking the steps necessary to rebuild your credit, you will see results sooner than later.

C. It will take **two (2) years** to qualify for an **FHA loan** and four (4) years for a conventional mortgage at an affordable interest rate.

### **Q. What steps can I take to rebuild my credit after bankruptcy?**

A. **Credit Report Check:** One common problem people emerging from bankruptcy often face is that credit reports frequently show accounts as open and overdue -- when in fact they were closed and the obligations wiped out as part of the bankruptcy. Your credit score is based on information in your credit report, so errors on your report can seriously dampen your score. Hence, you should see that these items are corrected. Banks report to all three credit bureaus (Experian, Equifax and Trans Union)

B. **Obtain one or more secured credit cards.** A secured card requires a cash collateral deposit that becomes the credit line for that account. For example, if you put \$100 in the account; you can charge up to \$100. Do not use up the entire limit that you deposit. Using part of the limit is a good credit behavioral activity and will increase your score. You may be able to add to the deposit to add more credit and to cover any fees associated with the card. Sometimes a bank will reward you for good payment and add to your credit line without requesting additional deposits, essentially making your card unsecured. This will improve your credit score gradually. You may shop for prepaid cards here <http://www.creditcards.com/prepaid.php>. Be sure to ask the creditor if they report to the credit agencies before applying and using for their product. It is important that they do, in order to raise your score.

C. **Stay current** on your utility bills and other debts that resumed after the bankruptcy (i.e. student loans, mortgages, car loans), or were not part of the bankruptcy.

D. **Be mindful of the purchases you make on your card:** Behavioral scoring analyzes the behavioral patterns of consumers to determine credit risk – and if they're viewed as a risk, credit card companies may choose to lower their credit lines. Here are a few items that credit card companies may use to profile you as a risk:

- **Watch what you purchase.** One characteristic of behavioral scoring is that banks are looking at the items and services you purchase and deciding on their own whether they are appropriate. If they determine that they're not appropriate, or show you may be in financial distress, you may be viewed as a credit risk.
- **Watch where you shop.** Another characteristic is if customers shopping in the same stores as you have poor repayment histories, you may be punished as well – sort of a “birds of a feather” assumption. See <http://www.consumerismcommentary.com/10-purchases-that-can-harm-your-credit/>

For example, The FTC has filed suit against CompuCredit claiming did not properly disclose that it monitored spending and cut credit lines if consumers used their cards at certain places. **Among them: tire and retreading shops, massage parlors, bars, billiard halls and marriage counseling offices.** See <http://www.ftc.gov/os/caselist/0623212/081219compucreditstiporder.pdf>

## **BANKRUPTCY TERMS & DEFINITIONS**

Bankruptcy has its own language. Here is a brief definition of those terms used in this site and in the Bankruptcy Code.

- **Adversary proceeding:** A lawsuit filed in the bankruptcy court which is related to the debtor's bankruptcy case. Examples are complaints to determine the dischargeability of a debt and complaints to determine the extent and validity of liens.
- **Automatic stay:** The injunction issued automatically upon the filing of a bankruptcy case which prohibits collection actions against the debtor, the debtor's property or the property of the estate.
- **Avoidance:** The Bankruptcy Code permits the debtor to eliminate (avoid) some kinds of liens that interfere with (or impair) an [exemption](#) claimed in the bankruptcy. Most judgment liens that have attached to the debtor's home can be avoided if the total of the liens (mortgages, judgment liens and statutory liens) is greater than the value of the property in which the exemption is claimed. This is sometimes called "lien stripping."
- **Avoidance powers:** Rights given to the bankruptcy trustee or the debtor in possession to recover certain transfers of property such as preferences or fraudulent transfers or to void liens created before the commencement of a bankruptcy case.
- **Bankruptcy Code.** Title 11 of the United States Code governs bankruptcy proceedings. Bankruptcy is a matter of federal law and is, with the exception of exemptions, the same in every state. When federal bankruptcy law conflicts with state law, federal law controls.
- **Bankruptcy estate:** The estate is all of the legal and equitable interests of the debtor as of the commencement of the case. From the estate, an individual debtor can claim certain property exempt; the balance of the estate is liquidated in a Chapter 7 to pay the administrative costs of the proceeding and the claims of creditors according to their priority.
- **Chapter 7:** The most common form of bankruptcy, a Chapter 7 case is a liquidation proceeding, available to individuals, married couples, partnerships and corporations.
- **Chapter 11:** A reorganization proceeding in which the debtor may continue in business or in possession of its property as a fiduciary. A confirmed Chapter 11 plan provides for the manner in which the claims of creditors will be paid in whole or in part by the debtor.
- **Chapter 12:** A simplified reorganization plan for family farmers whose debts fall within certain limits. Chapter 12 was not renewed when it expired this session of Congress.
- **Chapter 13:** A repayment plan for individuals with debts falling below statutory levels which provides for repayment of some or all of the debts out of future income over 3 to 5 years.
- **Collateral:** The property which is subject to a lien. A creditor with rights in collateral is a secured creditor and has additional protections in the Bankruptcy Code for the claim secured by collateral. The measure of the secured claim is the value of the collateral available to secure the claim: it is possible to have a lien on property that is subject to a senior lien or liens such that the security available to pay the claim is really without value to the junior creditor. The general rule with respect to liens is "First in time, first in right."
- **Confirmation:** The court order which makes the terms of the plan for repayment of debts in a Chapter 11, 12 or 13 binding. The terms of the confirmed plan replace the prepetition rights of the debtor and creditor.
- **Conversion:** Cases under the Code may be converted from one chapter to another chapter; for example, a Chapter 7 case may be converted to a case under Chapter 13 if the debtor is eligible for Chapter 13. Even though the chapter of the Code which governs it changes, it remains the same case as originally filed.
- **Creditor:** The person or organization to whom the debtor owes money or has some other form of legal obligation.
- **Debtor:** The debtor is the entity ( person, partnership or corporation) who is liable for debts, and who is the subject of a bankruptcy case.
- **Debtor in Possession:** In a Chapter 11 case, the debtor usually remains in possession of its assets and assumes the duties of a trustee. The debtor in possession is a fiduciary for the creditors of the estate, and owes them the highest duty of care and loyalty.
- **Deficiency:** difference between the amount owed on a mortgage note and what the foreclosing party receives on the sale of the foreclosed property at auction.
- **Denial of discharge:** Penalty for debtor misconduct with respect to the bankruptcy case or creditors as a whole. The grounds on which the debtor's discharge may be denied are found in 11 U.S.C. 727. When the debtor's discharge is denied, the debts that could have been discharged in that case cannot be discharged in any subsequent bankruptcy. The administration of the case, the liquidation of assets and the recovery of avoidable transfers, continues for the benefit of creditors.

- **Discharge:** The legal elimination of debt through a bankruptcy case. When a debt is discharged, it is no longer legally enforceable against the debtor, though any lien which secures the debt may survive the bankruptcy case.
- **Dischargeable:** Debts that can be eliminated in bankruptcy. Certain debts are not dischargeable; that is, they may not be discharged through bankruptcy or may only be discharged through Chapter 13. Family support and criminal restitution are examples of debts which cannot be discharged. Debts incurred by fraud can only be discharged in Chapter 13.
- **Dismissal:** The termination of the case without either the entry of a discharge or a denial of discharge; after a case is dismissed, the debtor and the creditors have the same rights as they had before the bankruptcy case was commenced.
- **Exempt:** Property that is exempt is removed from the bankruptcy estate and is not available to pay the claims of creditors. The debtor selects the property to be exempted from the statutory lists of exemptions available under the law of his state. The debtor gets to keep exempt property for use in making a fresh start after bankruptcy.
- **Exemptions:** Exemptions are the lists of the kinds and values of property that is legally beyond the reach of creditors or the bankruptcy trustee. What property may be exempted is determined by state and federal statutes, and varies from state to state.
- **Foreclosure:** legal process by which a homeowner is disposed of their interest in real estate by the lender/mortgagee.
- **Fico:** A credit score established by the Fico corporation based on a debtor's payment history, amounts owed, length of credit, new credit, and types of credit.
- **Fiduciary:** one who is entrusted with duties on behalf of another. The law requires the highest level of good faith, loyalty and diligence of a fiduciary, higher than the common duty of care that we all owe one another. The debtor in possession in a Chapter 11 is a fiduciary for the creditors, owing loyalty to the creditors and not the shareholders of the debtor.
- **General, unsecured claim:** Creditor's claim without a priority for payment for which the creditor holds no security (or collateral). If the available funds in the estate extend to payment of unsecured claims, the claims are paid in proportion to the size of the claim relative to the total of claims in the class of unsecured claims.
- **Lien:** An interest in real or personal property which secures a debt; the lien may be voluntary, such as a mortgage in real property, or involuntary, such as a judgment lien or tax lien.
- **Liquidated:** A debt that is for a known number of dollars is liquidated. An unliquidated debt is one where the debtor has liability, but the exact monetary measure of that liability is unknown. Tort claims are usually unliquidated until a trial fixes the amount of the liability of the tortfeasor.
- **Non dischargeable:** A debt that cannot be eliminated in bankruptcy. Non dischargeable debts remain legally enforceable despite the bankruptcy discharge.
- **Perfection:** When a secured creditor has taken the required steps to perfect his lien, the lien is senior to any liens that arise after perfection. A mortgage is perfected by recording it with the county recorder; a lien in personal property is perfected by filing a financing statement with the secretary of state. An unperfected lien is valid between the debtor and the secured creditor, but may be behind liens created later in time, but perfected earlier than the lien in question. An unperfected lien can be avoided by the trustee.
- **Personal property:** Property that is not real property or affixed to real property, such as cars, stock, furniture, etc.  
**Petition:** The document that initiates a bankruptcy case. The filing of the petition constitutes an order for relief and institutes the automatic stay. Events are frequently described as "prepetition", happening before the bankruptcy petition was filed, and "post petition", after the bankruptcy.
- **Preference:** A transfer to a creditor in payment of an existing debt made within certain time periods before the commencement of the case. Preferences may be recovered by the trustee for the benefit of all creditors of the estate.
- **Pre-petition:** Claims or events arising before the commencement of the bankruptcy case, that is, before the filing of the bankruptcy petition. Generally only pre petition debts may be discharged in a bankruptcy proceeding.
- **Priority:** The Bankruptcy Code establishes the order in which claims are paid from the bankruptcy estate. All claims in a higher priority must be paid in full before claims with a lower priority receive anything. All claims with the same priority share pro rata. Claims are paid in this order: 1) costs of administration 2) priority claims and 3) general unsecured claims. Secured claims are paid from the proceeds of liquidating the collateral which secured the claim.

- **Priority claims:** Certain debts, such as unpaid wages, spousal or child support, and taxes are elevated in the payment hierarchy under the Code. Priority claims must be paid in full before general unsecured claims are paid.
- **Proof of claim:** The form filed with the court establishing the creditor's claim against the debtor.
- **Property of the estate:** The property that is not exempt and belongs to the bankruptcy estate. Property of the estate is usually sold by the trustee and the claims of creditors paid from the proceeds.
- **Reaffirm:** The debtor can choose to reaffirm debts that would otherwise be discharged by the bankruptcy. Generally, when a debt is reaffirmed, the parties to the reaffirmed debt have the same rights and liabilities that each had prior to the bankruptcy filing: the debtor is obligated to pay and the creditor can sue or repossess if the debtor doesn't pay.
- **Refinance:** Process by which a homeowner cashes in the [equity](#) in a property and pays off existing mortgage by acquiring a new one for up to 75% to 80% the current value of the home.
- **Relief from stay:** A creditor can ask the judge to lift the automatic stay and permit some action against the debtor or the property of the estate. If the motion is granted, the moving party (but no one else) is free to take whatever action the court permits. Relief can be absolute, for example, permitting the creditor to foreclose on property, or limited, as for example, allowing the recordation of a notice of default.
- **Schedules:** The debtor must file the required lists of assets and liabilities to commence a bankruptcy case, collectively called the schedules.
- **Secured debt:** A claim secured by a lien in the debtor's property by reason of the debtor's agreement or an involuntary lien such as a judgment or tax lien. The creditor's claim may be divided into a secured claim, to the extent of the value of the collateral, and an unsecured claim equal to the remainder of the total debt. Generally a secured claim must be perfected under applicable state law to be treated as a secured claim in the bankruptcy.
- **Short sale** –process whereby a lender agrees to allow homeowner sells the piece of real estate for less than the amount of the mortgage debt, contingent on the lender's approval of the buyers.
- **Trustee:** the court appoints a trustee in every Chapter 7 and Chapter 13 case to review the debtor's schedules and represent the interests of the creditors in the bankruptcy case. The role of the trustee is different under the different chapters.
- **Unsecured:** A claim or debt is unsecured if there is no collateral that is security for the debt. Most consumer debts are unsecured.