Ten Myths of Bankruptcy:

THE TRUTH ABOUT DEBT RELIEF IN AMERICA

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Introduction

The subject of bankruptcy is filled with confusion, misinformation, and myth. Players in the credit and financial industry have an interest in spreading falsehoods and fear-based half-truths about debt relief.

Moralists and would-be do-gooders preach about the ethical superiority of “toughing it out,” with little understanding of the longstanding legal and moral tradition that helps individuals and families re-establish their finances after experiencing misfortune in their financial lives.

Unscrupulous debt consolidators and other “advisors” may be more interested in the fees they take from you, rather than actually helping you get back on your feet.

It’s so difficult to know what to do next when you are struggling to pay the bills and trying provide a decent life for yourself and your family. You might be wondering if your financial life will ever see the light of day again. What is the truth about filing bankruptcy? Is it the right thing to do?

In this e-book, I will address common misunderstandings about bankruptcy. In the 20 to 30 minutes it takes you to read this, you will learn the answers to important questions you may have asked about how bankruptcy can help you and your family. I am a **practicing bankruptcy lawyer in Orlando, Florida** and my law practice has helped hundreds of individuals and families get a fresh start on their finances and experience the freedom of a debt-free life.

Rather than scaring you, selling to you, or trying to preach to you, I will simply explain **how bankruptcy actually works**. I will support every answer with facts and information based on the law, not fearmongering, speculation, or “common sense” gossip.

I hope that you will find this little e-book helpful and illuminating. I know from experience the power of legal debt relief to set you free and allow you to once again become the **master of your life**. So read… and get wise!

P.S. I practice bankruptcy in Orlando, Florida. Although every bankruptcy is governed by the Federal Bankruptcy Code, the bankruptcy court must also apply the laws of the state where the case is filed. Also, practices may also differ from court to court within a state. This book is written as a guide to **help people better understand how bankruptcy works.** It is not intended as a "how to" manual. You should not rely on this book to prepare a bankruptcy petition or file a case. If you are seriously considering bankruptcy, there is no substitute for professional advice from an experienced and knowledgeable bankruptcy attorney from your local area.

Myth No. 1: Only losers file bankruptcy

What do Burt Reynolds, Abraham Lincoln, Mike Tyson, Henry Ford, Larry King, Donald Trump, and Kim Basinger have in common? You guessed it: they all used the bankruptcy code to get a fresh start on their financial life after going through tough financial times. That puts you in pretty good company if you decide that bankruptcy is the best solution for your debt situation. Filing bankruptcy is about starting anew and getting the past behind you.

Here is a short list of the intelligent, talented people who have benefited from bankruptcy and gone on to do even greater things:

POLITICIANS

1. Abraham Lincoln – filed several times, due to business failures
2. Thomas Jefferson – filed several times, including after leaving office due to large debt
3. Ulysses S. Grant – 18th US President - filed in 1884 after leaving office
4. Daniel Webster – US Secretary of State- 1841
5. George McGovern – US Senator – filed in 1991 after his inn went out of business
6. John Connally – former Texas Governor and Treasury Secretary – filed chapter 11 in 1987
7. William McKinley – 25th US President
8. J. Fife Symington – Governor of Arizona – filed in 1995 while still in office

FAMOUS PEOPLE

1. Walt Disney – filed after a company owing him money filed bankruptcy

2. Henry Ford – Founder of Ford Motor Company
3. William Durant – Founder of General Motors
4. Larry King – filed in 1971 and 1978
5. Donald Trump – filed several bankruptcies
6. P. T. Barnum – Founder of Barnum & Bailey Circus
7. H.J. Heinz – Founder of the H.J. Heinz Ketchup Company
8. Mark Twain (Samuel Clemens) – filed in 1894 due to failed investments
9. Oscar Wilde – acclaimed poet and author
10. William Fox – Founder of 20th Century Fox Film Corporation

CELEBRITIES

1. Burt Reynolds – chapter 11 in 1996 after owing more than $8 million in debts
2. Lorraine Bracco – filed after long custody battle
3. Mickey Rooney – 1986 filing – first bankruptcy was in 1962
4. Kim Basinger – filed due to $8 million judgment after backing out of a movie
5. Jerry Lewis – filed in the 70's after losing stage bookings
6. Gary Coleman – 1999 bankruptcy
7. Redd Foxx –chapter 11 after owing millions to IRS
8. Mike Tyson – filed after blowing $300 million foolishly
9. Morton Downey, Jr. – filed 5 bankruptcies
10. Larry King – filed in 1971 and again in 1978
11. Gloria Vanderbilt – 1938 bankruptcy
12. John Wayne
13. Toni Braxton – filed in 1998
14. Francis Ford Coppola – filed in 1999
15. David Crosby – filed in 1985

16. Mick Fleetwood – filed in 1984
17. Dorothy Hamill – filed in 1996
18. Marvin Gaye – filed in the 70’s
19. M. C. Hammer – filed in 1996
20. Merle Haggard – filed in 1993
21. Chaka Kahn
22. Jackie Mason – filed in 1983 after bad investments
23. Ted Nugent
24. Tom Petty – filed in 1979
25. Debbie Rooney – filed in 1962
26. Anna Nicole Smith
27. Cindy Lauper – filed in 1981
28. Latoya Jackson – filed in 1995
29. Wayne Newton – filed in 1992
30. Curtis “50 Cent” Jackson – filed in 2015

Myth No. 2: I will lose my house, car, and everything I own

This is not true. Bankruptcy is actually set up to help you keep your property. In fact, based on statistics from the U.S. Department of Justice, over 90% of people filing bankruptcy during 2015 did not have surrender any property at all.

You can keep your home and your car, as long as you can afford them with the income you have after your debts are discharged. The truth is, you are more likely to **lose your home or car if you do not file bankruptcy** to eliminate your unmanageable debt.

However, there is a limit to what you can keep when you file bankruptcy. What you need to know is the **law of exemptions**.

Simply put, exemptions are like an allowance for what you can keep when you file bankruptcy. These exemptions are defined by law. In Florida, most of those exemptions are listed in Chapter 222, of the Florida Statutes.

Here is a brief list of what **Florida exemptions law** allows a debtor to keep:

1. Unlimited value of a homestead (the house you own and live in).

2. Personal property – Your allowance is $1,000.00 per person if you claim the homestead exemption. This increases to $4,000.00 per person, if you do not claim the homestead exemption.

3. Autos – $1,000.00 per vehicle per person. Admittedly, this is stingy, but what you are exempting is the *equity* in your vehicle. The equity is the value of the car minus the balance of the car loan. For example, a car worth $6,000.00 with a car loan balance of $4,500.00 has equity of $1,500.00.

Most people filing bankruptcy are "upside down" on their cars. That is, the loan balance exceeds the fair market value of the car. Your car's value will be determined by the National Associate of Auto Dealers Blue Book valuation. Check the web site at http://www.nadaguides.com to determine the value of your car, truck, or SUV.

If your car equity is more than $1,000.00, you will have to pay the non-exempt value to the trustee. This can be paid in monthly installments, over a 6-10 month period. If you are unable to do this, you will need to consider using chapter 13. More about that below.

4. Unlimited value of retirement saving accounts such as 401(k), IRA, and other forms of tax-exempt saving.

5. For married individuals who file without their spouse, unlimited value of property owned together as husband and wife ("entireties property") for debts that are owed only by the filing spouse.

6. Money from the earnings of a head of household.

7. The surrender value of whole life insurance policies or annuities.

8. Alimony and child support.

9. Disability benefits.

10. Workers compensation benefits.

11. Social security benefits.

12. Veteran's benefits.

13. Unemployment compensation.

There are other exemptions as well, but these are the ones that apply to most individuals filing bankruptcy.

There are special considerations for keeping a house and car. You will want to get the advice of a good bankruptcy attorney to help you decide if keeping your house or car is the best option for you. Generally speaking, **you can keep your house while filing chapter 7 bankruptcy** if you are current on your payments and you are able to afford the monthly mortgage payments once all your debts are discharged. If you are not current, you may still be able to keep your house in a chapter 13 bankruptcy. Chapter 13 allows you to re-start monthly payments, while paying the amount of the missed payments over time. Whether you have enough income to catch up on your payments and get current depends upon how much income you have to dedicate to paying each month. You must have the full amount of the missed payments paid within five years to keep the house. So add up the total amount of missed payments, divide by sixty, and add that number to the amount of monthly payment due under your mortgage loan. Is this an amount you can afford to pay every month? If so, a **chapter 13 bankruptcy might be a good way for you to keep your house.**

As mentioned above, **you can keep your car in a chapter 7 bankruptcy** if you are current on your monthly payments, provided you can afford the monthly payment after your debts are discharged. Like the house situation, if you are behind in your car payments, you can pay the missed payments over time in a chapter 13 bankruptcy.

If you have **property that exceeds the total of your exemption allowances**, you will be required to turn that property over to the trustee, or pay the trustee the value of the non-exempt property. So, going back to the example, if you have a car worth $6,000.00, with a loan balance of $4,500.00, you apply your $1,000.00 exemption to the equity of $1,500.00. That leave $500.00 of non-exempt equity. You will have to pay the trustee $500.00 to keep your car. (Note: if you had anything left over on your personal property exemption allowance, you could apply it to the car.)

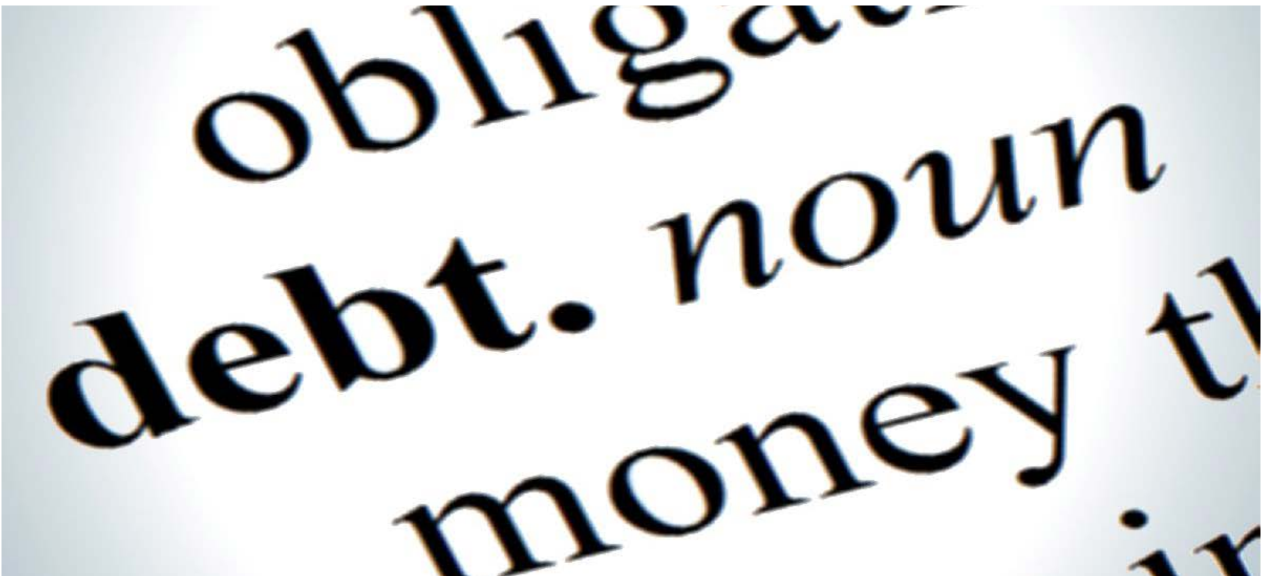
Usually, you can arrange to make these payments over time, for a period of 6-10 months. One option is to make this payment from exempt funds, such as a retirement account. If you do not want to do that, you might consider chapter 13 bankruptcy. Chapter 13 allows you to keep non-exempt property as long as your creditors are paid out the value of that property during the life of your plan. **Chapter 13 is often a good option for debt relief for individuals who have property that exceeds the exemption allowances.**

As a practical matter, most people do not have a lot of non-exempt property by the time they reach the decision to file a bankruptcy. People will sell their property to raise cash for expenses, hoping that their financial situation will improve.

There is nothing wrong with this strategy, with one exception – **spending exempt property to pay creditors**, particularly when people use their retirement assets to try to keep the credit card collectors happy. This sad choice often results in unnecessary impoverishment. I have filed too many bankruptcies for people that have **spent their retirement savings hoping to avoid bankruptcy**, only to have to file bankruptcy after the money ran out. Plus, liquidating retirement assets can leave you with tax liabilities, thereby creating new debt. You should consider carefully the decision to spend retirement assets to pay off credit card debt – **the law does not require it!**

Myth No. 3: It is immoral to file walk away from my debts

This is one of the easiest myths to dispel. The bankruptcy laws are designed to give every hard-working person a second chance at financial and business life, rather than spending the rest of their years dealing with the **crippling burden of unmanageable debt.**



This practical and ethical idea has its roots in the Bible. Long before the United States Congress adopted a system of bankruptcy laws for our country, the Bible established a system for forgiveness of debts that could not be repaid after seven years:

> Every seven years you must announce, "The LORD says loans do not need to be paid back." Then if you have loaned money to another Israelite, you can no longer ask for payment. (Contemporary English Version)
>
> At the end of every seventh year you must cancel your debts. This is how it must be done. Creditors must cancel the loans they have made to their fellow Israelites. They must not demand payment from their neighbors or relatives, for the LORD's time of release has arrived. (New Living Translation)
>
> ***~Deuteronomy 15:1-2.***

In their wisdom, our country's founding fathers implanted this concept into the Constitution of the United States. That is how important they felt it was to have a legal method of helping individuals and businesses work through a time of misfortune. The Supreme Court has explained why anyone should consider the benefits of a bankruptcy:

> "It gives the honest but unfortunate debtor… a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt."
>
> ***~Local Loan Company vs. Hunt, 294 U.S. 234,244 (1934).***

So, there it is – the Bible, the United States Supreme Court, and the United States Congress all affirm that debt forgiveness and debt relief are **moral, practical, and reasonable options** under the right circumstances.

Myth No. 4: I will never get credit again

This myth is as wrong as any on the list. The truth is that the credit industry will welcome you back soon after your discharge is granted by the court. You will likely find your mailbox filled with credit offers within months, and sometimes even weeks after your bankruptcy is complete. How is that possible you ask? Because you now have freed up additional income by discharging debt. You are once again attractive to credit card companies who make big profits from high interest debt. Of course, you are smarter than that - like most people who go through debt relief in bankruptcy, you will **approach credit cards in a completely new way.**

It is true, however, that a bankruptcy can be reported on your credit for 10 years, thanks to a law passed under the influence of the credit industry. However, this is a reporting law only. It has nothing to do with the effect of the bankruptcy on your credit score.

If you have steady income, practice restraint with your finances, and engage in credit repair practices, you can **repair your credit usually within a period of approximately two years.** During that time, you will pay more for credit, so you should be carefully with incurring any significant levels of debt. With patience, and a keen awareness of your financial habits, your credit score and your financial life will return to normal. And, this will happen much sooner than if you take five or more years to pay off excessive balances on high interest credit cards.

Myth No. 5: I will never be able to buy a house again

Bankruptcy is the fastest path to buying a house if you have credit card debt that has gone out of control. If this statement sounds the opposite of true, you have to consider what your future will look like if you continue to struggle with your debt. **Excessive debt depresses credit scores.** Low credit scores will prevent you from qualifying for a home loan. If you are reading this book, chances are you have a level of credit card debt that, compared to your current income, cannot be paid off in a period of three to five years, even if you made payments every month on your accounts. If that is your situation, then filing bankruptcy is the **fastest way to erase the debt** that is holding you back. Then you can begin to rebuild your credit so that you will be eligible for a home loan.

But, you might be thinking, won't a bankruptcy on my credit report prevent me from qualifying for a home loan? Absolutely not. Current FHA guidelines allow borrowers to apply for an FHA insured home loan **two years after the date of their discharge in a chapter 7 bankruptcy.** If you file a chapter 13 bankruptcy, the period is one year from the time your file your chapter 13 petition.

You don't have to take my word for it; here's a link to the **FHA website** where these underwriting standards are published on the internet: http://portalapps.hud.gov/FHAFAQ/controllerServlet?method=showPopup&faqId=1-6KT-188.

There are similar guidelines for loans guaranteed by the Veteran's Administration. Other loan programs may have longer hold periods.

The point is, you will start repairing your credit and render yourself eligible for a home loan *faster* by getting a fresh start from the crippling debt that you can no longer manage.

Myth No. 6: I will never be able to buy a car again

This one is really wrong. I have had clients receive offers for financing within months of their chapter 7 discharge. My office routinely process requests for car loans for clients that are in a chapter 13 debt repayment plan. Lenders are very comfortable with **extending car loans to individuals with bankruptcy in their recent history**. This makes sense: the loans are collateralized, cars are essential for normal life, and individuals with recent discharge of debt have more disposable income. And you won't just have to deal with sleazy used car lots that might sell you junker cars. Reputable dealers of almost every car manufacturer make these car loans on new cars. For some reason, we have noticed that Kia, Honda, and Toyota dealerships seem to be the friendliest to car shoppers with bankruptcies in their recent past.

Now it is true that you will pay a higher interest rate if you secure a care loan shortly after your bankruptcy. But until the process of credit repair has run its course (usually a period of two years, depending on how hard you work at it), you will be paying more for credit of any kind.

Myth No. 7: I'll lose my job

Federal bankruptcy law prohibits any employer, public or private, from terminating employment, or taking any discriminatory action against an employee solely because they sought bankruptcy relief. **So you cannot lose your job or incur adverse consequences in your job simply because you filed for bankruptcy.** If you suffer such discrimination, you can file a lawsuit to enforce this law and recover damages.

As a practical matter, your employer is unlikely to find out if you filed for bankruptcy. However, if you don't get debt relief and one of your creditors sues you, it is very likely that your employer *will* find out. That is because the next step for a creditor after obtaining a judgment against you is to obtain what is called a writ of garnishment. This is a legal order sent from the court to your employer that requires your

employer to deduct up to 25% of your wages to pay to the creditor. You can avoid this unpleasantness by getting your debts discharged before the collection process reaches this point.

In some jurisdictions, individuals in a chapter 13 plan are required to have an income deduction order sent to their employees. **In the Middle District of Florida where I practice, this is not required.**

If you are applying for a job, public employers who are aware of your bankruptcy **are not permitted to discriminate against you because you sought debt relief.** This same requirement protects you if you hold license from a government agency, such as a real estate license.

However, there is such no anti-discrimination requirement for a private employer who interviews for a new job position. So if the interviewing employer asks for authorization for a credit report, they would find out about your bankruptcy.

In such situations, it is best to be candid about why you had to file bankruptcy and how much the experience taught you about good financial health. Unless the job you are interviewing involves accounting, or direct responsibility for money, it is unlikely your past will be held against you, but there are no legal protections against this for private employers. Practically speaking, in the aftermath of the financial crisis in our country, there are many individuals in the job market that have been forced to seek debt relief. It is nothing you should be ashamed of, if you have skills and dedication to offer to a prospective employer.

Finally, there are certain jobs that have security clearances. Bankruptcy can affect a security clearance. This is dealt with on a case-by-case basis. Again, the best way to deal with the situation is to make a candid inquiry with your employer. Often, they are pleased that you are seeking debt relief because excessive debt can subject individuals to blackmail and make them a greater security risk.

Myth No. 8: I can't afford it

The reality behind this myth is that you can't afford not to file for bankruptcy if your debts have become unmanageable. The fees for a good bankruptcy lawyer are much less than the thousands of dollars that you will spend on high interest, late fees and penalties while you try to pay off a mountain of debt. **For a chapter 7 bankruptcy, the fees for a good bankruptcy lawyer in my jurisdiction range between $1,500 and $2,100.00**, depending on the complexity of your case. (Beware of high-volume bankruptcy law firms that file petitions for a rock bottom price. You will get what you pay for!). This amount of money often presents 50% to 100% of the amount you are paying on high interest credit card debt. Fees for a chapter 13 bankruptcy are higher, but they are almost always paid over time as part of the plan payments.

Sit down with a calculator and figure out how much you are spending on credit card interest payments in a year. **How long do you want to throw that money away, to the detriment of your financial health?** For as long as your debt balances remain high in comparison to your income, you will suffer from low credit scores, little or no savings for the future, and a loss of disposable income.

Most bankruptcy lawyers, including myself, set up flexible payment plans that allow you to pay your fees with monthly installments, so that you can prepare for your fresh start. Also, it is completely legitimate and legal to use the money you were paying on credit card debts every month to finance your bankruptcy. Wouldn't you rather make those monthly payments to a professional who can help you get a fresh start on your financial life, rather than a credit card company who will continue to gouge you with unreasonably high interest rates?

The cost of paying for your bankruptcy is usually a very small percentage of the tens of thousands of dollars you will be discharging in a bankruptcy. **From a pure dollars and cents perspective, filing bankruptcy is *always* a good deal.**

Myth No. 9: I cannot live without a credit card

I won't sugar-coat this for you: bankruptcy does require that you list every credit account, which means an end to your credit cards. However, I have found that most of my clients find this to be a relief, rather than a problem, after going through a debt crisis.

For those that are concerned about using a plastic card for personal or business purposes, you should know that you can still keep and use a debit card with any bank account. Also, immediately after bankruptcy, you can establish a secured credit card account. This requires that you place a certain amount of cash on deposit that either is replenished for more "credit," or stays on deposit while you spend up to the limit. **This is a great way to rebuild your credit** and take advantage of the convenience of that plastic card. And, to take a line from the credit card ads, your feeling of freedom from debt and monthly statements with ridiculous interest charges - PRICELESS!

Myth No. 10: Everyone will know and I will feel ashamed

It is highly unlikely that anyone who is not entitled to see your credit report will ever know that you sought debt relief with a bankruptcy court. It is also very likely that someone you know has made the move to discharge his or her debts in a bankruptcy. You might be surprised to learn who that might be.

Ninety per cent of people filing bankruptcy are in the middle class of our society. And most are employed, paying mortgages and just trying to support their families. Now if someone really wanted to go investigating, there are search methods to locate the records of your local bankruptcy court. **But as a practical matter, most people don't know how to go about it and they would never bother to do so.** Some specialized business papers will report bankruptcy filing in their legal notices section at the very back of the paper. Newspapers of general circulation generally do not report this information. (They do however report foreclosures and credit card lawsuits). So, while theoretically possible, most people will have no way of ever knowing that you filed a bankruptcy case.

Besides, after you complete reading this book, you will know that seeking help from the bankruptcy court is a good, healthy choice for dealing with excessive debt. With a clean conscience, you will be able to say your friends that **you did the right thing by filing your bankruptcy to get a fresh start on your finances** after going through a bad time. You might even learn that they will want to know more about how you did it, and ask you for the number of your lawyer so they can get help!

Conclusion – The choice is yours

The decision to file a bankruptcy is not an easy one and it should not be made without a great deal of thought. However, the best decision will be made when you are armed with good information about the consequences of your decision and its impact on your financial future.

No one ever files bankruptcy because they want to. They file because it is the best option among many difficult choices. So carefully compare bankruptcy with your other options for resolving debt. Whether you decide to file bankruptcy or not, I hope that this brief e-book has been helpful to you in considering your options.